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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JENNIFER MODICA, individually and on behalf  
of other similarly situated current and former  
employees and as proxy for the LWDA,

Plaintiff,

v.

IRON MOUNTAIN INFORMATION  
MANAGEMENT SERVICES, INC., a Delaware  
corporation; and DOES 1-100, inclusive,

Defendants.

Case No. 2:19-cv-00370-TLN-EFB

**ORDER**

This matter is before the Court on Plaintiff Jennifer Modica’s (“Plaintiff”) Motion for Preliminary Approval of Class Action Settlement. (ECF No. 16.) The operative First Amended Complaint, filed January 15, 2020, alleges several class and representative causes of action: (1) Failure to Furnish Accurate Wage Statements in violation of California Labor Code § 226(a); (2) Failure to Properly Pay Overtime Wages in violation of California Labor Code § 510; (3) Failure to Properly Pay Sick Leave Wages in violation of California Labor Code § 218.5; (4) Failure to Pay All Wages Due and Owing on Separation in violation of California Labor Code §§ 201, 202; (5) Unfair Business Practices in violation of California Business and Professions Code § 17200; and (6) a Private Attorney General’s Act (“PAGA”) claim. (*See generally* ECF No. 13.) Plaintiff also alleges individual causes of action for failure to provide personnel and payroll records. (*Id.*) Defendant

1 denies Plaintiff's allegations in their entirety, contends it has complied with the law, and has asserted  
2 numerous affirmative defenses. (ECF No. 16-3 at 21.)

3 On November 14, 2019, the Parties participated in a mediation before mediator David  
4 Rotman. (ECF No. 16-1 at 10.) At the close of the mediation, the parties agreed to a Memorandum  
5 of Understanding ("MOU") from which Defendant had one week to withdraw. (*Id.* at 11.) On  
6 November 20, 2019, Defendant confirmed its agreement to the MOU. (*Id.*) On January 22, 2020,  
7 after several weeks of further negotiations, the parties executed the Settlement Agreement. (*Id.*)  
8 Plaintiff filed the instant motion for preliminary approval on January 31, 2020. (ECF No. 16.)  
9 Defendant filed a statement of non-opposition on February 20, 2020. (ECF No. 17.)

10 The Court has carefully considered Plaintiff's motion and all relevant documentation  
11 including the proposed Settlement Agreement (ECF No. 16-3 at 16, Ex. A) and proposed Notice to  
12 Class Members (ECF No. 16-3 at 51, Ex. 1).<sup>1</sup> For the reasons set forth below, the Court GRANTS  
13 Plaintiff's unopposed motion.

14 **1. SETTLEMENT CLASS, CLASS REPRESENTATIVE, AND CLASS COUNSEL**

15 In order for the Court to properly certify a class, a plaintiff must meet all of the prerequisites  
16 of Federal Rule of Civil Procedure 23(a) and at least one of the requirements of Rule 23(b). Fed. R.  
17 Civ. P. 23; *see also Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Rule  
18 23(a) requires the following:

- 19 (1) the class is so numerous that joinder of all members is  
20 impracticable;
- 21 (2) there are questions of law or fact common to the class;
- 22 (3) the claims or defenses of the representative parties are typical of  
23 the claims or defenses of the class; and
- 24 (4) the representative parties will fairly and adequately protect the  
25 interests of the class.

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28 <sup>1</sup> All terms used in this Order shall have the same meanings given those terms in the parties' Joint Stipulation of Class and Representative Action Settlement Agreement and Release of Claims ("Settlement Agreement" or "Settlement").

1 Fed. R. Civ. P. 23(a). These factors are known as “numerosity,” “commonality,” “typicality,” and  
2 “adequacy,” respectively. Rule 23(b) requires a plaintiff to establish one of the following: (1) that  
3 there is a risk of substantial prejudice from separate actions; (2) that declaratory or injunctive relief  
4 benefitting the class as a whole would be appropriate; or (3) that common questions of law or fact  
5 predominate and the class action is superior to other available methods of adjudication. Fed. R. Civ.  
6 P. 23(b). Where the parties have entered into a settlement agreement before class certification,  
7 district courts “must pay ‘undiluted, even heightened, attention’ to class certification  
8 requirements....” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) (quoting *Amchem*  
9 *Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997)).

10 The Court preliminarily and conditionally approves the following class for settlement purposes  
11 only, subject to a final fairness hearing and certification of the settlement class, under the Federal Rules  
12 of Civil Procedure and related case law:

13 The Class of employees covered by the Parties’ Settlement consists of all current and  
14 former California non-exempt employees of Defendant who (i) worked double time or  
15 used paid sick leave during a workweek when he/she also earned shift differentials,  
16 non-discretionary bonuses, or other remuneration on at least one occasion between  
17 October 1, 2017 and the earlier of preliminary approval or March 13, 2020; and/or (ii)  
18 received a wage statement during a pay period when he/she either (i) earned shift  
19 differentials and/or (ii) worked overtime between January 22, 2018 and the earlier of  
20 preliminary approval or March 13, 2020.

21 (ECF No. 16-3 at 21–22, ¶ 14.) Pursuant to Federal Rules of Civil Procedure, Rule 23, and for  
22 purposes of settlement only, the following Subclasses, are preliminarily and conditionally certified:

- 23 (1) All current and former California non-exempt employees of Defendant who  
24 worked more than twelve (12) hours in a workday and/or more than eight (8)  
25 hours on the 7th consecutive day worked in the workweek during a workweek  
26 when he/she also earned shift differentials, non-discretionary bonuses, or other  
27 remuneration on at least one occasion between October 1, 2017 and the earlier of  
28 preliminary approval or March 13, 2020 (the “DoubleTime Subclass”);
- (2) All current and former California non-exempt employees of Defendant who were  
eligible for and used paid sick leave during a workweek when he/she also earned  
shift differentials, non-discretionary bonuses, or other remuneration on at least one  
occasion between October 1, 2017 and the earlier of preliminary approval or  
March 13, 2020 (the “Sick Pay Subclass”);
- (3) All individuals who are members of the DoubleTime Subclass and/or the Sick Pay  
Subclass and separated from employment at any time between October 1, 2017

1 and the earlier of preliminary approval or March 13, 2020 (the “Former Employee  
2 Subclass”); and

- 3 (4) All current and former California employees of Defendant who received a wage  
4 statement during a pay period when he/she either (i) earned shift differentials  
5 and/or (ii) worked overtime between January 22, 2018 and the earlier of  
6 preliminary approval or March 13, 2020 (the “Wage Statement Subclass”).

7 (ECF No. 16-3 at 21–22, ¶ 14.) For purposes of preliminary approval, the Court finds that the  
8 settlement class meets the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3). The  
9 approximately 1,119 individuals who purportedly fall within the class (277 DoubleTime Subclass  
10 Members, 330 Sick Pay Subclass Members, 51 Former Employee Subclass Members, and 1,119 Wage  
11 Statement Subclass Members) are sufficiently numerous and would make joinder impracticable. (*See*  
12 ECF No. 16-3 at 20, ¶ 11.) The commonality and predominance requirements are met since there are  
13 questions of law and fact common to the class and that predominate over individualized issues, which  
14 include the following alleged policies and practices: Defendant’s failure to include other remuneration  
15 when calculating doubletime and sick pay, resultant failure to timely pay all wages due and owing at  
16 separation, and provision of itemized wage statements missing critical necessary information.  
17 Additionally, settlement class members seek the same remedies under state law. The typicality  
18 requirement for settlement purposes is also satisfied since the claims of Plaintiff — the named class  
19 representative in this case — arise from the same factual basis and are based on the same legal theory  
20 as those applicable to the purported class members.

21 Furthermore, the Court finds that a class action is superior to other forms of adjudication.  
22 Indeed, a class action avoids the inefficiency of each class member litigating similar claims  
23 individually. And this settlement will achieve economies of scale for class members with relatively  
24 small individual claims and conserve the resources of the judicial system.

25 The Court also finds that Plaintiff Jennifer Modica and her counsel, Mayall Hurley P.C., by and  
26 through Lead Counsel Robert J. Wasserman and Jenny D. Baysinger, are adequate representatives of  
27 the settlement class and subclasses. Plaintiff provides that neither Plaintiff nor Class Counsel have  
28 conflicts with the class or subclass members, and it appears to the Court that Plaintiff and counsel have  
prosecuted the action vigorously up to this point, and nothing indicates they will not continue to do so.

1 The Court therefore preliminarily approves them as class representative and class counsel, respectively.

2 With respect to the provisionally-certified class for settlement purposes, if the Settlement does  
3 not become final for any reason, the fact that the parties were willing to stipulate to class certification as  
4 part of the Settlement shall have no bearing on, and will not be admissible in connection with the issue  
5 of whether a class should be certified in this action in a non-settlement context. The Court's findings  
6 are for purposes of conditionally certifying a Settlement Class and will not have any claim, issue, or  
7 evidentiary preclusion or estoppel effect in any other action against the parties, or in this action if the  
8 Settlement is not finally approved.

9 **2. PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT**

10 FRCP 23(e) provides that “[a] class action shall not be dismissed or compromised without the  
11 approval of the court . . .” Fed.R.Civ.P. 23(e) (2003). The purpose of preliminary evaluation of  
12 proposed class action settlements is to determine whether the terms of the settlement are within a  
13 range of possible judicial approval. *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 448 (E.D.  
14 Cal. 2013) (citing Newberg on Class Actions (4th ed. 2002) § 11.26). In reviewing the proposed  
15 settlement, the Court does not “reach any ultimate conclusions on the contested issues of fact and law  
16 which underlie the merits of the dispute . . .” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291  
17 (9th Cir.1992). Instead, the Court weighs several factors, including: (1) the strength of plaintiff's  
18 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of  
19 maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the  
20 extent of discovery completed, and the stage of the proceedings; and (6) the experience and views of  
21 counsel. *Id.*; *see also Collins v. Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 301 (E.D. Cal. 2011).

22 “Given that some of these ‘fairness’ factors cannot be fully assessed until the Court conducts  
23 the final approval hearing, ‘a full fairness analysis is unnecessary at this stage.’” *Tijero v. Aaron*  
24 *Bros., Inc.*, 301 F.R.D. 314, 324 (N.D. Cal. 2013) (*quoting Alberto v. GMRI, Inc.*, 252 F.R.D. 652,  
25 665 (E.D. Cal. 2008)). Preliminary approval of a settlement and notice to the proposed class is  
26 appropriate if: “[1] the proposed settlement appears to be the product of serious, informed,  
27 noncollusive negotiations, [2] [it] has no obvious deficiencies, [3] [it] does not improperly grant  
28 preferential treatment to class representatives or segments of the class, and [4] [it] falls with[in] the

1 range of possible approval....” *Collins*, 274 F.R.D. at 301–02 (quoting *In re Tableware Antitrust*  
2 *Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

3 The Court has reviewed the Settlement Agreement (ECF No. 16-3 at 16, Ex. A). To briefly  
4 summarize, Defendant will pay \$1,500,000 — the Maximum Settlement Amount (“MSA”) — to  
5 resolve the claims of Participating Class Members. The MSA will be deposited into a Qualified  
6 Settlement Fund within 7 calendar days of the Effective Date and does not include Employer-side  
7 Taxes, which will be separately paid by Defendant. After deducting the costs of administering the  
8 Settlement, the payment to the LWDA, Service Payment to Plaintiff, and fees and costs of Class  
9 Counsel, \$938,500 (the Net Settlement Amount or “NSA”), will be distributed to Participating Class  
10 Members.

11 The Class Notice will be mailed to Class Members within 28 calendar days after the Court’s  
12 entry of the Order of Preliminary Approval. Each Participating Class Member is entitled to a share  
13 of the NSA without the need to complete a claim form. Class Members will receive a Class Notice  
14 informing them of the terms of the Settlement, the right to opt-out or object, and an estimate of  
15 his/her share of the NSA. All Class Members will be a Participating Class Member and receive a  
16 payment unless he/she opts out.

17 Within 14 calendar days of the Court’s entry of the Order of Preliminary Approval,  
18 Defendant shall provide the Settlement Administrator with the Class List containing each Class  
19 Member’s: (i) name, (ii) last known address and telephone number, (iii) social security number, (iv)  
20 dates of employment, and (v) pay period data. Settlement Shares shall be based upon the number of  
21 workweeks worked by Participating Class Members during the Class Period, with DoubleTime and  
22 Sick Pay Subclass Members receiving credit for 1.025 workweeks for each workweek actually  
23 employed.

24 For purposes of taxes and required withholdings, the parties have agreed that (1) 100% of the  
25 amount distributed to each Participating Wage Statement Subclass Member who is not a member of  
26 any other subclass shall constitute penalties (for which an IRS Form 1099 shall be issued); (2) 100%  
27 of the \$500 paid to each and Former Employee Subclass Member shall constitute penalties (for  
28 which an IRS Form 1099 shall be issued); (3) 1% of each Participating DoubleTime and Sick Pay

1 Subclass Member's Settlement Share shall constitute wages (for which an IRS Form W-2 shall be  
2 issued), 49.5% shall constitute interest, and 49.5% shall constitute penalties (for which an IRS Form  
3 1099 shall be issued). Employer-side Taxes will be paid separately by Defendant (in addition to the  
4 MSA).

5 The Court finds on a preliminary basis that the Settlement Agreement appears to be fair,  
6 reasonable, and adequate. *See* Fed. R. Civ. P. 23(e)(2). Plaintiff asserts — and Defendants do not  
7 oppose — that the parties engaged in substantial investigations and both formal and informal  
8 discovery. The Settlement Agreement terms were reached after negotiation and mediation before a  
9 neutral mediator. Class counsel has thoroughly weighed the strengths and weakness of the case and  
10 has assessed the risks of continued litigation. There is no evidence of collusion between the parties  
11 and the Settlement Agreement appears to have been entered into only after substantial investigation  
12 that enabled the parties to make a reasoned and informed decision regarding settlement. The  
13 Settlement Agreement does not give any improper preferential treatment to Plaintiff, their counsel, or  
14 a particular segment of the settlement class. Additionally, it appears Class Counsel is experienced in  
15 this area of law, which further weighs in favor of preliminary approval. The Court also  
16 acknowledges that class members may object to the settlement or may opt-out of being bound by the  
17 preliminarily approved class settlement.

18 Because the Court finds the parties' settlement to have been agreed upon only after extensive  
19 and costly investigation, arms-length negotiations in mediation, and in an attempt to avoid further  
20 delays and costs, the Court preliminarily approves the proposed Settlement, which is incorporated by  
21 reference in its entirety, as if stated here in full. The monetary relief described herein is provisionally  
22 and conditionally approved as adequate and valuable consideration in support of the release of all  
23 known and unknown claims, and the Court preliminarily approves the proposed release of claims as  
24 set forth in the Settlement Agreement. (ECF No. 16-3 at 40–42.)

25 The Court orders and approves Phoenix Class Action Administration Solutions ("Phoenix")  
26 as the Settlement Administrator. Phoenix shall administer the Settlement in accordance with the  
27 terms set forth in the Settlement Agreement and perform the functions set forth therein. The Court  
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1 also preliminarily approves declared fees and costs of administering the Settlement of up to \$14,000,  
2 to act as the Claims Administrator in this case.

3 Subject to further consideration by the Court at the time of the Final Approval Hearing, the  
4 proposed PAGA allocation and payment to the LWDA is preliminarily approved. Subject to further  
5 consideration by the Court at the time of the Final Approval Hearing, the proposed Service Payment  
6 of \$15,000, or 1% of the Maximum Settlement Amount, to Plaintiff for her service as Class  
7 Representative is preliminarily approved. Subject to further consideration by the Court at the time of  
8 the Final Approval Hearing, Class Counsel's request of attorneys' fees in the amount of one-third of  
9 the Maximum Settlement Amount, or \$500,000, and declared costs of up to \$25,000, are  
10 preliminarily approved.

11 **3. APPROVAL OF THE NOTICE AND DISTRIBUTION TO THE CLASS**

12 "Adequate notice is critical to court approval of a class settlement under Rule 23(e)."  
13 *Hanlon*, 150 F.3d at 1025. For classes certified under FRCP 23(b)(3), the Court must direct to class  
14 members "the best notice practicable under the circumstances, including individual notice to all  
15 members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Pursuant to  
16 FRCP 23(c)(2)(B), the notice must clearly and concisely state as follows:

- 17 (i) the nature of the action;  
18 (ii) the definition of the class certified;  
19 (iii) the class claims, issues, or defenses;  
20 (iv) that a class member may enter an appearance through an attorney if the member  
21 so desires;  
22 (v) that the court will exclude from the class any member who requests exclusion;  
23 (vi) the time and manner for requesting exclusion; and  
24 (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

25 The Court finds that the proposed Class Notice (ECF No. 16-3 at 51) includes the  
26 elements required under Rule 23(c)(2)(B). The proposed Class Notice fairly and adequately  
27 advises the potential class members by (1) identifying the parties; (2) describing the claims  
28 and the Class Action in a straightforward manner; (3) succinctly describing the essential



1 terms of the Settlement, including the Class Representative’s proposed Service Payment and  
 2 the amount Class Counsel will request for attorneys’ fees and costs; (4) identifying the claims  
 3 to be released; (5) identifying all parties against whom claims are being released; (6)  
 4 providing information on how to participate in, opt out of or object to the Settlement; (7)  
 5 clearly providing all applicable deadlines for such action; (8) informing Class Members of the  
 6 consequences of excluding themselves; and (9) advising Class Members that, if they choose  
 7 to participate and the Settlement is approved, they will be bound by the resulting judgment.  
 8 Further, the Class Notice clearly explains the manner in which Class Members can obtain  
 9 further information (e.g., from Class Counsel, through the Court’s website, or the  
 10 Administrator’s website) and that the Final Approval Hearing may be moved without further  
 11 notice. In short, the Class Notice provides Class Members with all of the necessary  
 12 information to make an informed decision.

13 The Court further finds that Class Notice and proposed distribution of such notice by direct  
 14 mail to each identified class member at their most recent address based on Defendant’s records and  
 15 additional skip traces as necessary comports with all constitutional requirements, including those of  
 16 due process.

17 **4. IMPLEMENTATION SCHEDULE**

18 Accordingly, with good cause shown, the Court hereby approves and orders the following  
 19 implementation schedule:

20 Defendant to provide Class List to the Administrator	Within 14 calendar days of the Court’s execution of the Order Granting Preliminary Approval
21 Administrator to mail Class Notice and establish the website	Within 14 calendar days of its receipt of the Class List from Defendant
22 Deadline for Class Members to object to, or opt out of, the Settlement	Within 45 calendar days after the mailing of the Class Notice
23 Plaintiff to file Motion for Attorneys’ Fees, Costs and Service Payment	Not less than 35 calendar days after the mailing of the Notice
24 Deadline for Plaintiff to file Motion for Final Approval	Not less than 28 calendar days before the Final Approval hearing
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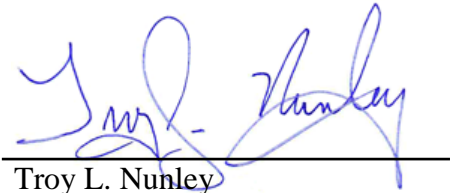
1 Final Approval Hearing

2 Not less than 95 days after the Court's execution of  
3 the Order Granting Preliminary Approval

4 The Court hereby sets a hearing for final approval of the Settlement Agreement and certification  
5 of the settlement class on **December 17, 2020**, at 2:00 p.m., with briefs and supporting documentation  
6 to be filed no later than **November 18, 2020**.

7 IT IS SO ORDERED.

8 DATED: August 18, 2020

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11 Troy L. Nunley  
12 United States District Judge  
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