

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MIRIAM MARROQUIN, et al.,

Plaintiffs,

v.

TELEFERIC BARCELONA PA, LLC, et al.

Defendants.

Case No.: 21CV388821

**ORDER CONCERNING PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS/PAGA
SETTLEMENT**

This is a putative class action. Plaintiffs allege that Defendant Teleferic Barcelona PA, LLC ("Teleféric") failed to provide compliant meal and rest breaks, failed to pay employees for off-the-clock work, and failed to maintain compliant tip pooling policies and practices.

Now before the Court is Plaintiffs' motion for preliminary approval of a settlement, which is unopposed. Under the settlement, the parties also seek leave for Plaintiffs to file a First Amended Complaint ("FAC") adding a claim under the Private Attorneys General Act ("PAGA"). The Court issued a tentative ruling on October 5, 2022, and no one contested it at the hearing on October 6. The Court now issues its final order, which GRANTS preliminary approval and GRANTS leave to file the FAC.

1 **I. BACKGROUND**

2 Plaintiffs and the other putative class members worked at Teleféric’s restaurant in Palo
3 Alto as servers and food staff. (Complaint, ¶ 5.) They worked shifts of up to twelve hours but
4 were not provided with compliant breaks. (*Id.*, ¶ 6.) In addition, Teleféric has a mandatory tip
5 pooling policy that required employees to pay out all tips at the end of their shifts, but the
6 distribution among employees is not based on a rational formula and is not disclosed to
7 employees. (*Id.*, ¶¶ 7–8.) And Teleféric’s management regularly serves tables but keeps the tips
8 and does not contribute to the pool. (*Id.*, ¶ 9.) Finally, Plaintiffs and class members often
9 worked off the clock without compensation. (*Id.*, ¶ 15.)

10 Based on these allegations, Plaintiffs assert putative class claims for: (1) wage and hour
11 violations for unpaid time; (2) meal period violations; (3) rest period violations; (4) wage
12 statement penalties; (5) waiting time penalties, and (6) unfair competition, including tip pooling
13 violations. In the proposed FAC, Plaintiffs also assert (7) a representative claim for PAGA
14 penalties based on the same underlying violations alleged in the original complaint.

15 Plaintiffs now move for an order preliminarily approving the settlement of the class and
16 PAGA claims, provisionally certifying the settlement class, approving the form and method for
17 providing notice to the class, and scheduling a final fairness hearing. The parties also seek leave
18 for Plaintiffs to file the proposed FAC.

19 **II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

20 **A. Class Action**

21 Generally, “questions whether a [class action] settlement was fair and reasonable,
22 whether notice to the class was adequate, whether certification of the class was proper, and
23 whether the attorney fee award was proper are matters addressed to the trial court’s broad
24 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
25 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
26 260.)

27 In determining whether a class settlement is fair, adequate and reasonable, the
28 trial court should consider relevant factors, such as the strength of plaintiffs’ case,

1 the risk, expense, complexity and likely duration of further litigation, the risk of
2 maintaining class action status through trial, the amount offered in settlement, the
3 extent of discovery completed and the stage of the proceedings, the experience
4 and views of counsel, the presence of a governmental participant, and the reaction
5 of the class members to the proposed settlement.

6 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

7 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
8 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
9 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
10 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91
11 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
12 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
13 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
14 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
15 marks omitted.)

16 The burden is on the proponent of the settlement to show that it is fair and
17 reasonable. However “a presumption of fairness exists where: (1) the settlement
18 is reached through arm’s-length bargaining; (2) investigation and discovery are
19 sufficient to allow counsel and the court to act intelligently; (3) counsel is
20 experienced in similar litigation; and (4) the percentage of objectors is small.”

21 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit
22 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently
23 and objectively analyze the evidence and circumstances before it in order to determine whether
24 the settlement is in the best interests of those whose claims will be extinguished,” based on a
25 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

26 **B. PAGA**

27 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall
28 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s

1 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
2 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA
3 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
4 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
5 (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v.*
6 *Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS 2940 (*Viking River*).)

7 Similar to its review of class action settlements, the Court must “determine independently
8 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
9 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72
10 Cal.App.5th 56, 76–77.) It must make this assessment “in view of PAGA’s purposes to
11 remediate present labor law violations, deter future ones, and to maximize enforcement of state
12 labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383
13 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA
14 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to
15 benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*
16 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

17 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*
18 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
19 verdict].) But a permissible settlement may be substantially discounted, given that courts often
20 exercise their discretion to award PAGA penalties below the statutory maximum even where a
21 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
22 CV-02198-EMC) 2016 WL 5907869, at *8–9.)

23 **III. SETTLEMENT PROCESS**

24 On March 30, 2022, Teleféric produced data per the parties’ agreement to exchange
25 informal discovery and participate in the Civil Judges ADR Program. Teleféric’s production
26 included: (1) excerpts from its 2021 employee handbook including examples of the “Agreement
27 to Take Lunches and Breaks as Required”; (2) an Excel sheet (the “Overall Tip Distribution
28 Chart”) maintained by Teleféric to track how tips were collected and distributed to staff from the

1 date of the restaurant's opening in September 2019 through September 2021 (Teleféric
2 represented that it implemented a mandatory service charge policy at this point, which did not
3 involve a tip-pooling component, and allocates additional tips 50% to the server and 50% to the
4 kitchen staff); (3) another Excel sheet (the "Kitchen Tip Distribution Chart") maintained by
5 Teleféric to track tip distribution among employees working in the kitchen;¹ and (4) an Excel
6 spreadsheet reflecting approximately 50% of all punch-in and punch-out time records during the
7 class period, as well as instances in which premiums were paid for recorded non-compliant meal
8 periods. Meanwhile, Plaintiffs responded to questions from Teleféric about their allegations,
9 claims, and damages.

10 The parties prepared and exchanged mediation briefs. They were able to reach a
11 settlement following two mediation sessions with Hon. Patricia Lucas on April 21 and May 11,
12 2022.

13 **IV. SETTLEMENT PROVISIONS**

14 The non-reversionary gross settlement amount is \$150,000. Attorney fees of up to
15 \$52,500 (thirty-five percent of the gross settlement), litigation costs of up to \$5,000, and \$9,250
16 in administration costs will be paid from the gross settlement. \$15,000 will be allocated to
17 PAGA penalties, 75 percent of which (\$11,250) will be paid to the LWDA. The named plaintiffs
18 will seek incentive awards of \$5,000 each, for a total of \$10,000.

19 The net settlement, approximately \$62,000, will be allocated to settlement class members
20 proportionally based on their workweeks during the class period. By the Court's calculation, the
21 average payment will be around \$180 to each of the 344 class members. Class members will not
22 be required to submit a claim to receive their payments. For tax purposes, settlement payments
23 will be allocated 15 percent to wages and 85 percent to penalties and interest, with PAGA
24 payments allocated 100 percent to penalties. The employer's share of taxes will be paid
25 separately from the gross settlement. Funds associated with checks uncashed after 180 days will
26 be transmitted to Legal Aid at Work.

27
28 ¹ The Overall Tip Distribution Chart shows the amount distributed to kitchen staff as whole,
while the Kitchen Tip Distribution Chart shows how this overall amount was distributed to
individual kitchen staff employees.

1 In exchange for the settlement, class members who do not opt out will release all claims,
2 demands, etc. “that have been, or could have been, asserted against the Released Party based on
3 the facts alleged at any point in time in this Action during the Class Period.” The release
4 includes “all claims for violations of the California Labor Code related to unpaid wages,
5 including overtime wages, off-the-clock claims, minimum wage claims; claims for failure to
6 provide meal periods; claims for failure to provide rest breaks; claims for failure to provide
7 accurate and complete wage statements; claims for failure to timely pay wages, whether during
8 or following employment; and alleged violations of the UCL or any other law related to
9 Defendant’s policies and practices of collecting and distributing tips and/or gratuities to Class
10 Members.” Aggrieved employees will release “any and all PAGA claims that were, or could
11 have been, asserted against the Released Party based on the facts alleged at any point in time in
12 this Action during the PAGA Period,” including “all claims for penalties recoverable pursuant to
13 PAGA that relate to or arise out of the Released Class Claims.”

14 The releases are appropriately tailored to the allegations at issue. (See *Amaro v. Anaheim*
15 *Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) Consistent with the statute,
16 aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

17 **V. FAIRNESS OF SETTLEMENT**

18 During settlement negotiations, Teleféric argued that its written policies were compliant;
19 provided multiple employee declarations stating that employees generally took lunches together
20 and were offered food provided by the restaurant; demonstrated how Teleféric calculated and
21 distributed tips; and argued that different policies applied to the front and back of house staff
22 (both named Plaintiffs worked only in the back of the house). Teleféric also provided a
23 statistical analysis of its time records—demonstrating that class members took compliant meal
24 periods for nearly every qualifying shift—and showed that its payroll system automatically
25 distributed premiums when time entries did not indicate that a compliant meal period was taken
26 for a qualifying shift. Teleféric also raised that the restaurant was closed for part of 2020 and
27 2021 due to COVID-19, reducing the potential overall recovery.

1 Plaintiffs urged that some records appeared to show meal periods of exactly 30 minutes,
2 which in practical terms was not possible on such a regular basis. Further, Plaintiffs insisted they
3 were told to clock out but continue working, and they could not take any rest breaks and were
4 told work straight through their shifts. And Plaintiffs noticed drops in their tips that could
5 support an inference management was improperly taking tips from the pool.

6 The maximum liability in the action based on Plaintiffs' expert's valuations, excluding
7 PAGA penalties, was estimated at \$2,798,769.² This included \$407,419 in meal break
8 premiums, \$927,624 in rest break premiums, \$164,783 in unpaid wages, \$924,480 in waiting
9 time penalties, and \$374,463 in wage statement penalties. These estimates assumed that
10 Teleféric failed to provide compliant meal and rest breaks for every qualifying shift worked by
11 every class member, which is likely an overestimate. The settlement accordingly represents
12 about 10 percent of the value of the core claims (\$1,499,826), and perhaps a few percentage
13 points of the total potential value of the case with penalties (including PAGA penalties, which
14 Plaintiffs do not estimate in their moving papers). Based on the analysis above, the Court agrees
15 that this is a reasonable settlement, particularly considering the significant risks at class
16 certification. However, at final approval, Plaintiffs shall provide an estimate of the maximum
17 PAGA penalties in the action. For purposes of preliminary approval, the Court finds that the
18 settlement is fair and reasonable to the class, and the PAGA allocation is genuine, meaningful,
19 and reasonable in light of the statute's purposes.

20 Of course, the Court retains an independent right and responsibility to review the
21 requested attorney fees and award only so much as it determines to be reasonable. (See
22 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.)
23 Counsel shall submit lodestar information prior to the final approval hearing in this matter so the
24 Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half*
25 *Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the
26
27
28

² Plaintiffs provide a total of \$2,415,222, but do not explain how this was calculated.

reasonableness of a percentage fee through a lodestar calculation].) The Court is not inclined to award more than the usual 1/3 of the common fund for attorney fees here.

VI. PROPOSED SETTLEMENT CLASS

Plaintiffs request that the following settlement class be provisionally certified:

all of Defendant's current and former non-exempt employees employed in California during the Class Period [(October 21, 2017 through the date of preliminary approval)].

A. Legal Standard for Certifying a Class for Settlement Purposes

Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court"

Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence: (1) an ascertainable class and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On Drug Stores*).) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the ascertainable class

determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.* at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

B. Ascertainable Class

A class is ascertainable “when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980 (*Noel*)). A class definition satisfying these requirements

puts members of the class on notice that their rights may be adjudicated in the proceeding, so they must decide whether to intervene, opt out, or do nothing and live with the consequences. This kind of class definition also advances due process by supplying a concrete basis for determining who will and will not be bound by (or benefit from) any judgment.

(*Noel, supra*, 7 Cal.5th at p. 980, citation omitted.)

“As a rule, a representative plaintiff in a class action need not introduce evidence establishing how notice of the action will be communicated to individual class members in order to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with objective characteristics and transactional parameters, and can be determined by DIRECTV’s own account records. No more is needed.”].)

Here, the estimated 344 class members are readily identifiable based on Defendant’s records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

1 **C. Community of Interest**

2 The “community-of-interest” requirement encompasses three factors: (1) predominant
3 questions of law or fact, (2) class representatives with claims or defenses typical of the class, and
4 (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra*, 34
5 Cal.4th at pp. 326, 332.)

6 For the first community of interest factor, “[i]n order to determine whether common
7 questions of fact predominate the trial court must examine the issues framed by the pleadings
8 and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.*
9 (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict
10 of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court*
11 (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be
12 jointly tried, when compared with those requiring separate adjudication, are so numerous or
13 substantial that the maintenance of a class action would be good for the judicial process and to
14 the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105
15 (*Lockheed Martin*).) “As a general rule if the defendant’s liability can be determined by facts
16 common to all members of the class, a class will be certified even if the members must
17 individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

18 Here, common legal and factual issues predominate. Plaintiffs’ claims all arise from
19 Defendant’s wage and hour practices applied to the similarly-situated class members.

20 As to the second factor,

21 The typicality requirement is meant to ensure that the class representative is able
22 to adequately represent the class and focus on common issues. It is only when a
23 defense unique to the class representative will be a major focus of the litigation,
24 or when the class representative’s interests are antagonistic to or in conflict with
25 the objectives of those she purports to represent that denial of class certification is
26 appropriate. But even then, the court should determine if it would be feasible to
27 divide the class into subclasses to eliminate the conflict and allow the class action
28 to be maintained.

1 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,
2 brackets, and quotation marks omitted.)

3 Like other members of the class, Plaintiffs were employed by Defendant as non-exempt
4 employees and allege that they experienced the violations at issue. The anticipated defenses are
5 not unique to Plaintiffs, and there is no indication that Plaintiffs' interests are otherwise in
6 conflict with those of the class.

7 Finally, adequacy of representation "depends on whether the plaintiff's attorney is
8 qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the
9 interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class
10 representative does not necessarily have to incur all of the damages suffered by each different
11 class member in order to provide adequate representation to the class. (*Wershba, supra*, 91
12 Cal.App.4th at p. 238.) "Differences in individual class members' proof of damages [are] not
13 fatal to class certification. Only a conflict that goes to the very subject matter of the litigation
14 will defeat a party's claim of representative status." (*Ibid.*, internal citations and quotation marks
15 omitted.)

16 Plaintiffs have the same interest in maintaining this action as any class member would
17 have. Further, they have hired experienced counsel. Plaintiffs have sufficiently demonstrated
18 adequacy of representation.

19 **D. Substantial Benefits of Class Certification**

20 "[A] class action should not be certified unless substantial benefits accrue both to
21 litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
22 internal quotation marks omitted.) The question is whether a class action would be superior to
23 individual lawsuits. (*Ibid.*) "Thus, even if questions of law or fact predominate, the lack of
24 superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a
25 class action is proper where it provides small claimants with a method of obtaining redress and
26 when numerous parties suffer injury of insufficient size to warrant individual action." (*Id.* at pp.
27 120–121, internal quotation marks omitted.)
28

1 Here, there are an estimated 344 class members. It would be inefficient for the Court to
2 hear and decide the same issues separately and repeatedly for each class member. Further, it
3 would be cost prohibitive for each class member to file suit individually, as each member would
4 have the potential for little to no monetary recovery. It is clear that a class action provides
5 substantial benefits to both the litigants and the Court in this case.

6 **VII. NOTICE**

7 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
8 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
9 for class members to follow in filing written objections to it and in arranging to appear at the
10 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining
11 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
12 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class
13 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
14 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
15 3.766(e).)

16 Here, the notice describes the lawsuit, explains the settlement, and instructs class
17 members that they may opt out of the settlement or object. The gross settlement amount and
18 estimated deductions are provided. Class members are informed of their qualifying workweeks
19 as reflected in Defendant’s records and are instructed how to dispute this information. The
20 notice makes it clear that class members may appear at the final fairness hearing to make an oral
21 objection without filing a written objection. Class members are given 45 days to request
22 exclusion from the class or submit a written objection to the settlement. Notice will be provided
23 in English and Spanish.

24 The notice is generally adequate, but must be modified to instruct class members that
25 they may opt out of the settlement by simply providing their name, without the need to provide
26 their telephone number or other identifying information. Class members’ estimated payments
27 and workweek information must be displayed in bold within a box set off from the rest of the
28 text on the first page of the notice. The notice must explain how the PAGA portion of the

1 settlement will be allocated and that aggrieved employees cannot opt out of this portion of the
2 settlement. The release language must be corrected to match the language in the settlement
3 agreement itself. And the notice must describe how notice of final judgment will be provided to
4 the class. (Cal. Rules of Court, Rule 3.771(b).)

5 Regarding appearances at the final fairness hearing, the notice shall be further modified
6 to instruct class members as follows:

7
8 Hearings before the judge overseeing this case will be conducted remotely. (As
9 of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class
10 members who wish to appear should contact class counsel at least three days
11 before the hearing if possible. Instructions for appearing remotely are provided at
12 https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml and
13 should be reviewed in advance. Class members may appear remotely using the
14 Microsoft Teams link for Department 1 (Afternoon Session) or by calling the toll
15 free conference call number for Department 1.

16
17 Turning to the notice procedure, the parties have selected Phoenix Settlement
18 Administrators as the settlement administrator. The administrator will mail the notice packet
19 within 35 calendar days of preliminary approval after updating class members' addresses using
20 the National Change of Address Database. Any returned notices will be re-mailed to any
21 forwarding address provided or located using a skip-trace or other search. Class members who
22 receive a re-mailed notice will have an additional 15 days to respond. These notice procedures
23 are appropriate and are approved.

24 **VIII. CONCLUSION**

25 Plaintiffs' motion for preliminary approval is GRANTED, subject to the modifications to
26 the notice and notice procedure stated above. The final approval hearing shall take place
27 on **February 23, 2023** at 1:30 p.m. in Dept. 1. The following class is preliminarily certified for
28 settlement purposes:

1 all of Defendant's current and former non-exempt employees employed in
2 California during the Class Period [(October 21, 2017 through the date of
3 preliminary approval)].
4

5 Before final approval, Plaintiffs shall lodge any individual settlement agreements they
6 may have executed in connection with their employment with Defendant for the Court's review.

7 The Court GRANTS Plaintiffs leave to file the proposed FAC, as stipulated by the
8 parties. Plaintiffs must file the FAC within 30 days of this order.

9 **IT IS SO ORDERED.**

10
11 Date: October 7, 2022



The Honorable Sunil R. Kulkarni
Judge of the Superior Court