UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EDGAR MARISCAL V. ARIZONA TILE, LLC ET AL	CASE NO. 8:20-cv-02071-JLS-KES **ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT (DOC. 53); SETTING FINAL FAIRNESS HEARING FOR SEPTEMBER 8, 2023 AT 10:30 A.M.**

Before the Court is Plaintiff's Unopposed Renewed Motion for Preliminary Approval of Class Action and PAGA Settlement. (Mot., Doc. 53.) The Motion asks the Court to: (1) grant preliminary approval of the proposed class and representative action settlement; (2) conditionally certify the class for settlement purposes; (3) appoint Plaintiff Edgar Mariscal as class representative; (4) appoint Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers *for* Justice, PC as class counsel; (5) approve the proposed class notice; (6) direct the mailing of class notice to class members; (7) approve the proposed deadlines for the notice and settlement administration process; (8) approve Phoenix Class Action Administration Solutions as the settlement administrator; and (9) set a hearing for final settlement approval and consideration of requests for attorney fees and costs, class representative service awards, settlement administrator costs, and PAGA allocation. The Court finds this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. Accordingly, the hearing set for March 31, 2023 at 10:30 a.m. is VACATED. Having considered the briefing and supporting documentation, the Court now GRANTS Plaintiff's Motion for the reasons stated below.

I. BACKGROUND

A. Litigation History

Defendant Arizona Tile, LLC is a wholesaler of stone, granite, and tile pieces for residential and commercial spaces with over one dozen locations throughout California. (Mot. at 10.) Plaintiff Edgar Mariscal was employed by Arizona Tile as an hourly-paid, non-exempt employee from approximately February 2013 to July 2018. (*Id.* (citing Mariscal Decl., Doc. 37-2, ¶ 2).)

On September 15, 2020, Mariscal filed a Class Action Complaint for Damages in the Superior Court of the State of California for the Orange County against Arizona Tile for violations of the California Labor Code and the California Business and Professions Code. (*See* Compl., Doc. 1-1.) Arizona Tile answered the Complaint, and on October 26, 2020, it removed the case to federal court. (*See* Notice of Removal, Doc. 1.) Mariscal

filed a Motion to Remand, which the Court denied. (*See* Docs. 14, 27.) On May 28, 2021, Mariscal filed a First Amended Complaint ("FAC"). (FAC, Doc. 30.) Arizona Tile answered the FAC. (Answer, Doc. 31.)

The Parties have engaged in formal and informal discovery. On March 18, 2021, Mariscal served on Arizona Tile requests for production, two sets of special interrogatories, and a notice of Rule 30(b)(6) deposition of Arizona Tile's person most knowledgeable. (Mot. at 11-12.) On April 6, 2021, Arizona Tile served a notice of deposition on Mariscal and requests for production. (*Id.* at 12.) On April 18, 2021, Arizona Tile responded to Mariscal's discovery requests, and further, Arizona Tile provided Mariscal's counsel with, among other things, pertinent data regarding class members to permit investigation of the strengths and weaknesses of the claims at issue. (*Id.*)

On July 23, 2021, the parties attended a full-day mediation. (*Id.*) After a full day of mediation, the parties reached an agreement to settle Mariscal's claims on a class-wide and representative basis. (*Id.*)

Mariscal served a letter dated September 8, 2021 on the California Labor & Workforce Development Agency ("LWDA") and on Arizona Tile that provided notice of his intent to seek civil penalties for alleged violations of the California Labor Code, under PAGA. (*Id.*) Mariscal filed a Second Amended Complaint ("SAC"), which is the operative complaint in this action, on February 1, 2022, pursuant to a stipulation by the parties. (*See* Stipulation, Doc. 36; SAC, Doc. 41.) The SAC alleges claims for failure to properly pay overtime wages, failure to pay meal period premiums, failure to pay rest period premiums, failure to pay minimum wages, failure to timely pay wages upon termination of employment, failure to timely pay wages during employment, non-compliant wage statements, failure to keep requisite payroll records, failure to reimburse business expenses, violation of California Business and Professions Code § 17200 *et seq.*, and violation of California Labor Code § 2698, *et seq.* (SAC ¶¶ 60-153.)

On January 21, 2022, Mariscal filed an unopposed Motion for Preliminary Approval. (*See* Doc. 37.) After hearing oral argument and ordering supplemental briefing, the Court denied the motion, stating:

> The Court finds the vast majority of Plaintiff's submissions in support of preliminary approval favor granting Plaintiff's Motion in its entirety. However, the Court takes issue with one key aspect of the Settlement Agreement, and therefore, it cannot preliminarily approve the settlement. The Settlement Class is comprised of an estimated four hundred and twenty-two (422) individuals who were full time employees and six (6) employees who worked part time. The Settlement Agreement provides that individual settlement payments to Class Members will be paid on a pro-rata basis according to the number of Compensable Workweeks each Member worked. Because the funds will be distributed according to number of workweeks, despite the fact that a "workweek" signifies a vastly different amount of work for six members of the Class than for the remainder of the Class, the Court cannot conclude that the Settlement Agreement, as drafted, is "fair, reasonable, and adequate."

(Doc. 49 (citations omitted).) Accordingly, on January 17, 2023 Mariscal filed the renewed motion now before the Court.

B. Settlement Details

The Settlement Agreement defines the Class, for purposes of settlement only, as: all persons who are employed or have been employed by Arizona Tile, LLC as non-exempt, hourly employees in California during the period from September 15, 2016 to October 21, 2021 ("Class Period"). (Settlement Agreement, Ex. 1 to Takvoryan Decl., Doc. 53-1 at 7.) The parties represent that this Class includes approximately 422 full-time employees and 6 part-time employees. (Mot. at 13.)

The Settlement Agreement provides for a gross settlement amount of $2,500,000 on a non-reversionary basis. (Settlement Agreement at 9.) The Settlement Agreement also

provides that to the extent the number of Compensable Workweeks[1] increases beyond 50,649 by more than 10%, the gross settlement amount will increase 1% for each 1% increase over 10%. (*Id.* at 27.)

The Settlement Agreement anticipates that the net settlement amount—that is, the gross settlement amount less (subject to court approval): attorney fees of $875,000, reimbursement of litigation costs and expenses to class counsel of $25,000, a class representative service award of $7,500, settlement administrator costs of $15,000, and the LWDA Payment of $112,500 for its 75% share of the $150,000 civil penalties allocation—totals $1,465,000. (*Id.* at 22.) The entire net settlement amount, as adjusted based on the court's approval of fees, awards, and expenses, will be distributed to participating Class Members with no reversion to Arizona Tile. (*Id.*)

The Settlement Agreement provides that individual settlement payments to Class Members will be paid from the net settlement amount on a pro-rata basis. For full-time class members, individual settlement payments will be based on the number of Compensable Workweeks during which they worked in proportion to the aggregate number of Compensable Workweeks worked by all participating class members. (*Id.* at 23.) For class members employed part-time, individual settlement payments will be based on the number of Compensable Workweeks they worked, pro-rated by the percentage of hours out of 40 hours they averaged per week, in proportion to the aggregate number of Compensable Workweeks by all participating class members. (*Id.*) Individual settlement payments will be allocated as 20% wages, and 80% interest, penalties, and non-wage damages. (*Id.*) Arizona Tile's share of payroll taxes due on the portion of the individual settlement payments allocated to wages, including but not limited to its FICA and FUTA

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[1] The Settlement Agreement defines "Compensable Workweeks" as the number of weeks in which Class Members performed work for Defendant in California during the Class Period based on Defendant's records. (Settlement Agreement at 7.) "It was represented to Class Counsel that the Class is estimated to consist of approximately 415 persons and to include 50,649 Compensable Workweeks." (*Id.* at 27.)

contributions, will be paid separately from, and in addition to, the gross settlement amount. (*Id.* at 22.) Assuming the net settlement amount of $1,465,000, the parties estimate the following range of individual settlement payments: employees who worked six months during the Class Period would be eligible for a payment of approximately $751.92; one year, $1,503.84; two years, $3,007.68; three years, $4,511.52; and four years, $6,015.36. (Mot. at 17.)

The Settlement Agreement also provides that Class Members may opt-out of the Settlement by mailing or faxing a written request to the Settlement Administrator. (Settlement Agreement at 20.) A request for exclusion must: (1) contain the full name, address, and telephone number of the Class Member requesting exclusion; (2) include a statement expressing that the Class Member elects to be excluded from the Settlement; (3) be signed by the Class Member; and (4) be postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax number. (*Id.*) Class Members who do not request to be excluded may object to the Settlement by submitting a written objection to the Settlement Administrator on or before the Response Deadline. (*Id.* at 21.) The Notice of Objection must state: (1) the full name, present address, and telephone number of the Class Member; (2) the basis for the objection; and (3) if the Class Member intends to appear at the Final Approval Hearing. (*Id.*)

The Settlement also includes a robust class release provision which, upon the effective date, states that Mariscal and participating Class Members will release all class claims with respect to the released parties. Released Claims include "all causes of action and factual or legal theories that were alleged in the operative complaint or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint." (*Id.* at 10.)

C. Class Notice Process

The Settlement Agreement seeks to appoint Phoenix Class Action Administration Solutions as the Settlement Administrator. (*Id.* at 11-12.) The parties agree to provide the following Class Notice: within fourteen days of preliminary approval of the settlement, Arizona Tile will provide the Settlement Administrator with a list of Class Members and their personal information as compiled from its records, which will include each Class Member's full name; last known address; last known home telephone number; social security number; Compensable Workweeks; and total weekly average hours worked, if the Class Member performed work on a part-time basis. (*Id.* at 18, 6-7.) Upon receipt of this data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. (*Id.* at 18.) Withing fourteen days of receipt of the class data, the Settlement Administrator shall mail copies of the Class Notice to all Class Members via regular First-Class U.S. Mail. (*Id.* at 18-19.) The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member, including performing a skip-trace to identify any updated addresses. (*Id.* at 19.) Any Class Notice returned as undeliverable on or before the Response Deadline shall be re-mailed to any forwarding address; if no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or social security number of the Class Member whose notice was undeliverable. (*Id.*) In such cases, Class Notice shall be re-mailed within ten days of receiving notice that the Class Notice was undeliverable. (*Id.*) Additionally, Class Members who receive re-mailed Class Notices shall have their Response Deadline extended twenty days from the original Response Deadline. (*Id.*)

Exhibit A to the Settlement Agreement is the proposed written notice to the Class. (Doc. 53-1 at 32-38.)

II. CERTIFICATION OF THE SETTLEMENT CLASS

Mariscal has moved to certify the Settlement Class for purposes of settlement. (Mot. at 28.) Arizona Tile has not opposed. Therefore, the court must determine whether to certify the proposed Class pursuant to Federal Rule of Civil Procedure 23.

A. Legal Standard

"A party seeking class certification must satisfy the requirements of Federal Rule of Civil Procedure 23(a) and the requirements of at least one of the categories under Rule 23(b)." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542 (9th Cir. 2013). Rule 23(a) "requires a party seeking class certification to satisfy four requirements: numerosity, commonality, typicality, and adequacy of representation." *Id.* Rule 23(a) provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defense of the representative parties are typical of the claims or defenses of the class; and
> (4) the representative parties will fairly and adequately protect the interest of the class.

Fed. R. Civ. P. 23(a). "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). This requires a district court to conduct a "rigorous analysis" that frequently "will entail some overlap with the merits of the plaintiff's underlying claim." *Id.* at 350-51.

"Second, the proposed class must satisfy at least one of the three requirements listed in Rule 23(b)." *Id.* at 345. Rule 23(b)(3) permits maintenance of a class action if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to

other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

B. The Proposed Class Satisfies Rule 23(a) Requirements

1. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). The proposed Class is estimated to consist of approximately 428 individuals. (Mot. at 13.) This proposed Class is sufficiently numerous such that joinder of all members would be impractical. *See Mazza v. Am. Honda Motor Co.*, 254 F.R.D. 610, 617 (C.D. Cal. 2008), *rev'd on other grounds*, 666 F.3d 581 (9th Cir. 2012) ("As a general rule, classes of forty or more are considered sufficiently numerous.").

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Dukes*, 564 U.S. at 349-50 (quotations omitted). Plaintiffs must allege that the Class's injuries "depend upon a common contention" that is "capable of classwide resolution." *Id.* at 350. In other words, the "determination of [the common contention's] truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke." *Id.* "What matters to class certification . . . is not the raising of common questions—even in droves—but, rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* (internal quotation marks and citations omitted).

"In general, commonality is satisfied where the causes of action challenge 'a system-wide practice or policy that affects all of the putative class members.'" *J.P. v. Sessions*, No. 18-06081, 2019 WL 6723686, at *17 (C.D. Cal. Nov. 5, 2019) (quoting *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001)), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005). Here, Mariscal seeks remedies on behalf of the Class under wage-and-hour laws for violations arising from common, uniform, and

system practices which applied to all Class Members during the Class Period. (*See* Aiwazian Decl., Doc. 37-1 ¶¶ 11, 13, 15, 20.) The Court agrees that the questions posed by the various claims in this action are susceptible to common answers, and that the commonality requirement has been satisfied.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The test for typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal citation omitted). "[U]nder the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 613 (9th Cir. 2010) (en banc) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)), *rev'd on other grounds*, 564 U.S. 338 (2011). As to the representative, "[t]ypicality requires that the named plaintiffs be members of the class they represent." *Id*. The commonality, typicality, and adequacy-of-representation requirements "tend to merge." *Dukes*, 564 U.S. at 349 n.5.

Here, Mariscal's claims are generally typical of the proposed Class. Mariscal's claims arise from Arizona Tile's same employment and wage practices as other Class Members' claims and are based on the same legal theories. Accordingly, the Court determines that this requirement is satisfied.

4. Adequacy

Rule 23(a)(4) permits certification of a class action only if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2)

will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020.

It appears that Mariscal's interests align with those of other Class Members; he, like all other Members, was employed by Arizona Tile in California, and his claims are typical of those Class Members, which are confined to a limited group of similarly situated employees during the Class Period.

To assess counsel's adequacy, courts consider four factors: (1) the work done in identifying or investigating potential claims; (2) counsel's class action or complex litigation experience and the types of claims asserted in the action; (2) counsel's knowledge of the applicable law; and (4) the resources counsel will commit to representing the class. *See* Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv). Class counsel appears to be highly experienced in employment class action and complex wage-and-hour litigation, has handled many cases like this before, and has been appointed class counsel in many others. (*See* Aiwazian Decl. ¶¶ 4-7; Ghosh Decl., Doc. 48-1 ¶¶ 5-9.) Counsel have also devoted significant time, effort, and resources, and have prosecuted this lawsuit vigorously since its inception. Accordingly, the Court concludes that the adequacy requirement is satisfied.

C. Predominance and Superiority

Pursuant to Rule 23(b)(3), Mariscal must also demonstrate that common questions of law or fact predominate over individual questions and that a class action is superior to other available methods of adjudication. Fed. R. Civ. P. 23(b)(3).

1. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Hanlon*, 150 F.3d at 1022 (quotations omitted). "Rule 23(b)(3) focuses on the relationship between the common and individual issues." *Id.* "When common issues present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual

basis." *Id.* (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1778 (2d ed. 1986)).

As set forth above, Mariscal alleges that Arizona Tile's failure to properly pay Class Members for all hours worked and to provide compliant meal and rest periods result from uniform policies, practices, and procedures. Therefore, the Court agrees that common questions of law and fact predominate.

2. Superiority

"The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. "This determination necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." *Id.* "The overarching focus [of the superiority inquiry] remains whether trial by class representation would further the goals of efficiency and judicial economy." *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009)). Additionally, "[w]here recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010).

Here, the Court concludes that the superiority inquiry is satisfied as well. A class resolution is superior to other available means for the fair and efficient adjudication of this controversy. The alternative method of resolution—the adjudication of individual claims subject to proof and seeking relatively small amounts of damages—would not be economical for potential plaintiffs, particularly those who did not work for Arizona Tile for a long period of time.

As Rule 23's requirements have been satisfied, the Court grants the request to certify the Class for settlement purposes.

III. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

A. Legal Standard

To preliminarily approve a proposed class action settlement, Federal Rule of Civil Procedure 23(e)(2) requires the Court to determine whether the proposed settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). In turn, review of a proposed settlement typically proceeds in two stages, with preliminary approval followed by a final fairness hearing. *See True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1063 (C.D. Cal. 2010).

Although there is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned," *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (quotations omitted), "[t]he purpose of Rule 23(e) is to protect the unnamed members of the class from unjust or unfair settlements affecting their rights," *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008). Accordingly,

> [t]o determine whether a settlement agreement meets these standards, a district court must consider a number of factors, including: the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003) (internal citation and quotation marks omitted). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982). "'It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness,' and 'the settlement must stand or fall in

its entirety.'" *Staton*, 327 F.3d at 960 (quoting *Hanlon*, 150 F.3d at 1026) (alterations omitted).

In addition to these factors, where "a settlement agreement is negotiated *prior* to formal class certification," the Court must also satisfy itself that "the settlement is not [ ] the product of collusion among the negotiating parties." *In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d 935, 946-47 (9th Cir. 2011) (quotation marks omitted) (alteration in original). In such circumstances, courts apply "a higher standard of fairness and a more probing inquiry than may normally be required under Rule 23(e)." *Dennis v. Kellogg Co*., 697 F.3d 858, 864 (9th Cir. 2012) (internal quotation marks and citation omitted).

At this preliminary stage and because Class Members will receive an opportunity to be heard on the settlement, "a full fairness analysis is unnecessary." *Alberto v. GMRI, Inc*., 252 F.R.D. 652, 665 (E.D. Cal. 2008). Instead, preliminary approval and notice of the settlement terms to the proposed class are appropriate where "[1] the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls with the range of possible approval. . . ." *In re Tableware Antitrust Litig*., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal quotation marks and citation omitted); *see also Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) ("To determine whether preliminary approval is appropriate, the settlement need only be *potentially fair*, as the Court will make a final determination of its adequacy at the hearing on Final Approval, after such time as any party has had a chance to object and/or opt out.").

In evaluating all applicable factors below, the Court finds that the proposed Settlement Agreement should be preliminarily approved.

The Settlement appears to be the product of arm's length negotiation, and adequate discovery and investigation. Class Counsel conducted a thorough investigation into the claims and interviewed Mariscal and many other Class Members; counsel also reviewed a

large volume of data and documents including employment records, Arizona Tile's employee handbook, job descriptions, agreements, and acknowledgments. (Aiwazian Decl. ¶¶ 10-14.) Counsel propounded multiple sets of discovery requests on Arizona Tile, noticed a deposition of Arizona Tile's most knowledgeable designees, and engaged in motion practice. (*Id.* ¶¶ 12-14.) The data and documents exchanged enabled Class Counsel to prepare damages and valuation models to prepare for mediation and estimate the potential recovery for class and PAGA claims. (*Id.* ¶ 23.) Moreover, the settlement was reached while participating in mediation conducted by a well-respected mediator who is experienced in handling complex wage-and-hour matters. (*Id.* ¶ 12.) These efforts support that counsel was well-informed in negotiating the Settlement Agreement, and that the agreement is not the product of collusion.

The terms of the Settlement Agreement also appear to be fair, reasonable, and adequate. The Settlement Agreement provides for a gross settlement amount of $2,500,000 and an estimated net settlement amount of $1,465,000; it guarantees monetary recovery to participating Class Members and to California in a relatively short period of time; and it allocates the settlement funds on a pro rata basis based on the number of Compensable Workweeks worked during the Class Period (and the amount of time worked, for part-time employees). The parties state they have considered the potential risks and rewards inherent in litigation; Class Members in particular face risks including the denial of class certification, adverse findings regarding damages and penalties, appeals, and uncertainty in collecting on judgment. (Aiwazian Decl. ¶¶ 12, 13, 23.) Moreover, even if Class Members were to obtain an award after years of litigation and trial, the amount could be less than the amount negotiated via settlement. (*Id.*)

Accordingly, the Court preliminarily approves the Settlement Agreement.

IV. APPOINTMENT OF CLASS COUNSEL AND CLASS REPRESENTATIVE

"An order that certifies a class action . . . must appoint class counsel under Rule 23(g)." Fed. R. Civ. P. 23(c)(1)(B). In appointing class counsel, the court must consider: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g).

The Court has reviewed counsel's submissions and agrees that the appointment of Lawyers *for* Justice, including Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh, as Class Counsel is warranted. Counsel have conducted extensive research, investigation, discovery, and analysis into the merits and value of the class claims, as set forth in the Aiwazian Declaration. (*See* Aiwazian Decl. ¶ 23 ("Both sides have also had the opportunity to interview witnesses and review documents and information relating to Plaintiff's and Class Members' employment with Defendant, and Defendant's operations and employment policies, practices, and procedures. The Parties also reviewed and analyzed a large volume of documents and data, including but not limited to a detailed sampling of Class Members' time and pay information, to determine the potential value and strength of the claims.").) Lawyers *for* Justice has extensive experience in litigating class actions and especially wage-and-hour class actions. (*See id.* ¶ 7 (setting forth examples of cases the firm has worked on).) Counsel has demonstrated an adequate understanding of the applicable law. And it appears that counsel has committed, and will continue to commit, significant financial and staffing resources to representation in this matter. (*See id.* ¶¶ 10-15 (setting forth counsel's actions in pursuing this action).) The Court is similarly satisfied that Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh have the experience and expertise to serve as class counsel. (*See* Ghosh Decl., Doc. 48-1 ¶¶ 6, 7, 9.)

Counsel's request, however, seeks informal preliminary approval of attorney fees in the amount of 35% of the Gross Settlement Amount of $2,500,000. (*See* Mot. at 25; *see also* Proposed Order, Doc. 53-2, ¶ 4 ("The Court preliminarily finds that the Settlement, including the allocations for Attorneys' Fees and Costs . . . appear[s] to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court.").) The Ninth Circuit's benchmark for fees for common fund settlements is 25% of the total fund. *See Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 738 (9th Cir. 2016). Accordingly, the Court will review the request for fees in connection with the Motion for Final Approval, and Class Counsel's application for attorney fees must make a sufficient showing justifying any upward departure from the Ninth Circuit's benchmark.

Additionally, because it appears that proposed Class Representative, Edgar Mariscal, was an hourly-paid, non-exempt employee of Arizona Tile during the Class Period, he does not appear to have any conflicts of interest with the Class, and the Court appoints him as Class Representative. (*See* Mariscal Decl., Doc. 37-2.) The Court will assess the propriety of the proposed Class Representative Service Award at the Final Fairness Hearing.

V. APPOINTMENT OF SETTLEMENT ADMINISTRATOR

Mariscal asks the Court to appoint Phoenix Class Action Administration Solutions as the settlement administrator in this action. The Court has reviewed a declaration by Michael Moore, Phoenix's President and Managing Partner, and Phoenix's CV. (Moore Decl., Doc. 48-2; Ex. A, Phoenix CV.) Phoenix "has been appointed as a Claims Administrator in both State and Federal Courts in over 1,800 Class Action Settlements." (Moore Decl. ¶ 8.) It uses a "proprietary database that allows [it] to run NCOA and Skip Tracing Searches behind [its] secure servers and network secure IP, calculate and issue settlement payments, and to facilitate tax management, filings, account reconciliation, and final approval." (*Id.* ¶ 7.) The Court concludes that Mariscal has shown Phoenix can satisfactorily administer the settlement.

VI. CLASS NOTICE

For a class certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). However, actual notice is not required. *See Silber v. Mabon*, 18 F.3d 1449, 1452-54 (9th Cir. 1994).

The Court has reviewed the Settlement Agreement's Class Notice procedure and finds that it satisfies Rule 23(b)'s requirements. The individual mail notice to each Class Member, and the procedures when a notice is returned as undeliverable, is the best notice practicable under the circumstances. Additionally, the Court has reviewed the substance of the Class Notice as set forth in Exhibit A to the Settlement Agreement and finds that it is appropriate, with the following minor adjustment: in section 12, the statement "The hearing may be continued without further notice to you" should be altered to read "The date of the hearing may change without further notice to you." In the event that the Final Fairness Hearing is continued, Class Counsel should promptly update the class website referenced in section 13 of the Class Notice to reflect the new date. The Class Notice should state that the website will contain up-to-date information regarding the Final Fairness Hearing.

Accordingly, with these revisions, the Class Notice is approved.

VII. CONCLUSION

For the foregoing reasons, the Court GRANTS Mariscal's Motion for Preliminary Approval of Class Settlement. The Court ORDERS as follows:

1. For the reasons set forth above, the Court grants preliminary approval of the Settlement Agreement.

2. The Court concludes that, for settlement purposes only, the proposed Class meets the requirements for certification under Rule 23 of the Federal Rule of Civil Procedure.

3. For settlement purposes only, the Court hereby conditionally certifies the following Class:

> All persons who are employed or have been employed by Arizona Tile, LLC as non-exempt, hourly employees in the State of California from September 15, 2016 to October 21, 2021.

4. The Court finds that Plaintiff Edgar Mariscal is a suitable representative of the Class and hereby appoints him as a representative for the Class Members conditionally certified by this Order.

5. The Court hereby appoints Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers *for* Justice, PC as counsel for the Class, pursuant to Federal Rule of Civil Procedure 23(g).

6. Class Counsel are authorized to act on behalf of Participating Class Members with respect to all acts or consents required by, or which may be given pursuant to, the Settlement, and such other acts reasonably necessary to consummate the Settlement. Any Participating Class Member may enter an appearance through counsel of such individual's own choosing and at such individual's own expense. Any Participating Class Member who does not enter an appearance or appear on his or her own will be represented by Class Counsel.

7. The Court hereby appoints Phoenix Class Action Administration Solutions ("Phoenix") as the Settlement Administrator to administer the Settlement pursuant to the terms of the Settlement Agreement.

8. With the revisions specified above, the Court hereby approves, both as to form and content, the Notice of Class Action Settlement attached as "Exhibit A" to the Settlement Agreement for distribution to the Class Members.

9. The Court finds that the proposed plan for distribution of the Class Notice substantially in the manner and form as set forth in the Settlement Agreement and this Order, meets the requirements of Federal Rule of Civil Procedure 23(e) and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to

all persons entitled thereto. The Court further finds that, with the revisions noted above, the Class Notice appears to fully and accurately inform Class Members of the material elements of the Settlement and how to seek exclusion from the Settlement or object to the Settlement.

10. Within fourteen calendar days after the Court grants preliminary approval of the Settlement, Defendant Arizona Tile, LLC shall provide the Settlement Administrator with the Class Data, as outlined in the Settlement Agreement. Within fourteen calendar days of receipt of the Class Data from Defendant, the Settlement Administrator shall send a Class Notice to each Class Member via First-Class U.S. Mail, at his or her most current, known mailing address.

11. The Court preliminarily approves the proposed procedure for Participating Class Members to receive payment of Individual Settlement Payments. Class Members who do not submit a Request for Exclusion from the Settlement will receive a *pro rata* share of the Net Settlement Amount.

12. The Court preliminarily approves the proposed procedure for requesting exclusion from the Settlement. A Class Member who wishes to request exclusion from (or "opt out" of) the Settlement must mail a written Request for Exclusion to the Settlement Administrator. The Request for Exclusion must be returned to the Settlement Administrator at the specified address or fax number and must: (1) contain the full name, address, and telephone number of the Class Member requesting exclusion; (2) contain a statement expressing that the Class Member elects to be excluded from the Settlement; (3) be signed by the Class Member; and (4) be postmarked on or before the date that is forty-five days after the Settlement Administrator mails the Class Notice to Class Members ("Response Deadline"). In the event of a re-mailed Class Notice, the Response Deadline will be extended twenty (20) calendar days from the original Response Deadline. Any Participating Class Member who submits a timely and valid Request for Exclusion will not be bound by the terms of the Settlement.

13. The Court preliminarily approves the proposed procedure for objecting to the Settlement. Only those Class Members who have not submitted a timely and valid Request for Exclusion ("Participating Class Members"), may object to the Settlement. Any written objection ("Notice of Objection") must be mailed to the Settlement Administrator on or before the Response Deadline. A Notice of Objection must be signed by the Class Member and state: (1) the full name, present address, and telephone number of the Class Member; (2) the basis for the objection; and (3) if the Class Member intends to appear at the Final Approval Hearing.

14. A Final Approval Hearing shall be held before the Honorable Josephine L. Staton in Courtroom 8A of the United States District Court for the Central District of California, at the First Street Courthouse, 350 W. First Street, Los Angeles, California 90012, on **September 8, 2023, at 10:30 a.m.**

15. It is further ordered that a motion for final approval of the Settlement be filed and served, along with the appropriate declarations and supporting evidence, including the Settlement Administrator's declaration, by **August 4, 2023**, to be heard at the Final Approval Hearing. This motion must include information regarding the number of opt-outs and any objections to the settlement received by Class Counsel, and should state whether any Class Members intend to appear at the Final Fairness Hearing.

16. It is further ordered that a motion for attorneys' fees and costs be filed and served, along with the appropriate declarations and supporting evidence, by **August 4, 2023**, to be heard at the Final Approval Hearing.

17. As of the date this Order is signed, all dates and deadlines associated with the action shall be stayed, other than those contemplated herein and in the Settlement Agreement and pertaining to the administration of the Settlement.

18. In the event the Settlement does not become effective in accordance with the terms of the Settlement Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become effective for any reason, this Order shall be rendered

null and void, shall be vacated, and the Parties shall revert back to their respective positions as of before entering into the Settlement Agreement.

19. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing and any dates provided for in the Settlement Agreement without further notice to the Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

IT IS SO ORDERED.

DATED: March 28, 2023

HON. JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE