UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANA GARCIA, on behalf of herself and all others similarly situated, Plaintiff, v. STG INTERNATIONAL, INC., a Virginia Corporation, Defendant.	Case No.: 20-cv-1701-AJB-AHG **ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT** **(Doc. No. 35)**

Before the Court is Ana Garcia's ("Plaintiff") motion for preliminary approval of class and collective action settlement. (Doc. No. 35.) STG International, Inc. ("Defendant" or "STGi") does not oppose the motion. (Doc. No. 37.) For the reasons set forth below, the Court **GRANTS** Plaintiff's motion.

I. BACKGROUND

Defendant STGi is a government contractor that employs individuals across various sectors, including nurses and other healthcare workers at U.S. Immigration and Customs Enforcement ("ICE") Detention Centers. Plaintiff worked for STGi from December 2018 through July 2020. She worked for STGi in El Paso, Texas and at the Otay Mesa Detention Facility in California. Plaintiff was a non-exempt employee who earned hourly wages, plus

shift differentials, bonuses, and cash-in-lieu of benefits payments provided under the McNamara-O'Hara Service Contract Act.

On August 31, 2020, Plaintiff filed a Class and Collective Action Complaint, alleging (1) failure to pay all wages owed under the Fair Labor Standards Act ("FLSA"), (2) failure to pay all wages owed under California Labor Code §§ 1194 and 1194.2, (3) failure to pay overtime wages under Labor Code §§ 510 and 1194, (4) failure to timely pay wages at separation of employment under Labor Code §§ 201-203, (5) failure to provide accurate itemized wage statements under Labor Code § 226(a), (6) meal period violations under Labor Code §§ 226.7 and 512, (7) rest period violations under Labor Code §§ 226.7 and 512, and (8) violations of Business and Professions Code §§ 17200 to 17208. (Doc. No. 1.) Plaintiff later filed a First Amended Class and Collective Action Complaint, adding claims nine through sixteen under the Private Attorneys General Act ("PAGA"). (Doc. No. 3.)

On December 18, 2020, Defendant filed an Answer (Doc. No. 5). In anticipation of a February 2021 early neutral evaluation ("ENE") before the Magistrate Judge, the parties filed with the Court a Joint Discovery Plan and exchanged initial disclosures, including production of relevant and preliminary documents and information. The parties also met and conferred on various merits and discovery issues in advance of the ENE. The case did not resolve at the ENE, but the parties agreed to mediate the case with Lynn Frank, an experienced mediator of complex and class action litigation.

The parties thereafter conferred regarding the data, documents, information, and sample size necessary for a successful mediation. On July 18, 2021, the parties attended mediation. During the negotiations, the parties agreed to limit the scope of the putative class and collective from all of Defendant's non-exempt employees within the statutory period to only those who worked at the ICE Detention Centers. After an all-day mediation, the parties signed a Memorandum of Understanding to resolve the case.

On September 27, 2021, Plaintiff filed a Second Amended Class and Representative Action ("SAC") to reflect the narrowed class and collective definitions. The parties

subsequently finalized the Class and Collective Action Settlement Agreement ("Settlement Agreement") and fully executed it on February 1, 2022.[1]

On March 25, 2022, Plaintiff filed the instant motion for preliminary approval of class and collective action settlement. (Doc. No. 35.) Defendant does not oppose the motion. (Doc. No. 37.) In the motion, Plaintiff requests the Court (i) conditionally certify the California Class under Federal Rule of Civil Procedure ("Rule") 23(a) and the FLSA Collective under 29 U.S.C. § 216(b); (ii) appoint Plaintiff as the class representative and her counsel as Class Counsel under Rule 23(g); (iii) preliminarily approve the Settlement under Rule 23(e) and under 29 U.S.C. § 216(b); (iv) approve distribution of the Notice; (v) approve the proposed allocation to PAGA Penalties under Labor Code § 2699(l)(2); and (vi) set a final approval hearing. (Doc. No. 35-1 at 6.)

II. TERMS OF THE PROPOSED SETTLEMENT

The primary terms of the proposed settlement are as follows.

A. Class and Collective Definitions

The proposed settlement covers a "California Class" defined as "any and all non-exempt employees who worked in the ICE Detention Centers for Defendant in California during the 'California Class Period.'" (Settlement Agreement, Doc. No. 35-2 at 31.) The Class Period "means August 31, 2016 through October 16, 2021." (*Id.*) The proposal also covers PAGA Members, which are defined as members of the California Class who worked during the PAGA Period. The PAGA period means August 10, 2019 through October 16, 2021. In addition, the settlement covers a "FLSA Collective" defined as "any and all non-exempt employees who worked in the ICE Detention Centers for Defendant in the United States of America other than the State of California during the 'FLSA Collective Period.'" (*Id.* at 33.) The FLSA Collective period "means August 31, 2017 through October 16, 2021" (*Id.*)

[1] The parties later corrected a typographical error on one of the dates in the Settlement Agreement. (Doc. No. 25-2 at 80–81.)

B. Settlement Amounts

The parties agreed to settle the instant class and collective action for the gross settlement amount ("GSA") of $2,443,000 to be paid by Defendant. Plaintiff represents that she will not request at the final approval stage the maximum amount of attorneys' fees (33%) or maximum costs ($25,000) provided by the Settlement Agreement, but uses these amounts to illustrate that the distribution of the GSA results in a net settlement amount ("NSA") of $1,298,339 as follows:

Gross Settlement Amount	$2,443,000
Settlement Credit (minus)	($193,471)
Maximum Attorneys' Fees (33% of GSA) (minus)	($806,190)
Maximum Litigation Costs (minus)	($25,000)
Settlement Administrative Costs (minus)	($35,000)
Service Award (minus)	($10,000)
PAGA Payment (minus and separately allocated from the class and collective amounts)	($75,000)
Net Settlement Amount	**$1,298,339**

Plaintiff's counsel attests that based on the liability exposure among the class and collective groups, 56% of the NSA was allocated to the California Class and the remaining 44% of the NSA was allocated to the FLSA Collective. The percentages are based on an apportionment of the settlement that corresponds with the prospective damages for federal versus state law claims and penalties.

This results in a net amount of $727,069.84 for the California Class and $571,269.16 for the FLSA Collective. The amounts will be distributed through individual settlement checks to the estimated 142 class and 1,273 collective members on a pro rata basis based on the number of workweeks worked during the respective California Class and FLSA Collective Periods. The average estimated individual settlement payment is $5,120 for the California Class ($727,069.84 / 142 employees), and $448 for the FLSA Collective ($571,269.16 / 1,273 employees). Plaintiff's counsel represents that these numbers "will be higher at final approval, as Plaintiff's costs are less than $25,000, Class Counsel will

request attorneys' fees in an amount less than 33%, some individuals will likely opt out of the Settlement, and the settlement administration costs may be less than the amount quoted." (Doc. No. 35-2 at 7.)

Lastly, as indicated in the above chart, Defendant agreed to pay $75,000 in PAGA funds—75% of which (i.e., $56,250) will be paid to the California Labor and Workforce Development Agency and the remaining 25% (i.e., $18,750) will be distributed to the estimated 95 PAGA members based on the number of workweeks worked during the PAGA Period.

C. Settlement Notice and Administration

The proposed notice contains detailed information about this action, including what the lawsuit is about, why there is a settlement, who is included in the settlement, the settlement benefits, how to receive payment, how to object to or be excluded from the settlement, lawyer representation, and the final approval hearing. Notably, the proposed notice will provide individuals an estimate of their settlement payment and the number of workweeks worked during either the FLSA Period or Class Period and/or PAGA Period, as applicable. The notice informs them that they may dispute the number of workweeks and explains how to do so. The notice also explains the scope of the release, how to obtain more information, and will state the date of the final approval hearing.

The proposed notice provides the California Class and FLSA Collective the following three options with corresponding deadlines: (1) do nothing, (2) exclude yourself, and (3) object. For the California Class, the notice explains that doing nothing (Option 1) means they will be bound by the settlement if they do not request exclusion via Option 2 or object via Option 3. For the FLSA Collective, the notice informs them that if they do nothing (Option 1), they will receive an FLSA Settlement Check, and if they endorse that check, they will "have opted into, and agreed to be bound by, the FLSA Settlement." The notice advises the FLSA Collective how to exclude themselves (Option 2), which would preclude them from receiving an opportunity to opt in via endorsement of the FLSA Settlement Check, and how to object (Option 3). The Class and Collective Members have

45 days following the date of mailing to decide whether to do nothing, exclude themselves, or object.

The parties selected Phoenix Settlement Administrators ("Phoenix") to administer the settlement. Prior to mailing the notice, Phoenix will ascertain the proper mailing address for the Class and Collective members using data from Defendant's records and the National Change of Address database. Phoenix will also attempt to locate the correct address for any individual whose notice is returned as undeliverable.

Lastly, because this employment action involves employees across the United States who are employed under federal contracts, the parties selected HireHeroes USA as the *cy pres* recipient due to the organization's mission of helping veteran servicemembers (and their spouses) with employment and hiring prospects.

D. Attorneys' Fees, Costs, and Class Representative Award

The parties agree that Class Counsel may request attorneys' fees up to 33% of the GSA, as well as a reasonable recovery of litigation costs in an amount not to exceed $25,000. The parties also agree that the Class Representative may request from the Court a service award not to exceed $10,000. These amounts are deducted from the GSA.

E. Releases

California Class Members who do not opt out, upon final approval, release STGi and its Released Parties[2] of all claims "that were alleged or which could have been alleged in the Complaints" during the California Class Period" of August 31, 2016 through October

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[2] The Settlement Agreement defines "Released Parties" as the following:

> Defendant STG International, Inc. and its present and former parents, affiliates, divisions, subsidiaries, acquired companies, predecessors, successors, assigns, related entities, divested businesses and business units, and each of their respective present and former board members, directors, officers, shareholders, agents, representatives, employees, partners, attorneys, insurers, predecessors, successors, assigns, affiliated companies and entities, and any individual entity that could be jointly and/or severally liable with any of the foregoing.

(Doc. No. 35-2 at 34.)

16, 2021. (Doc. No. 35-2 at 49.) FLSA Collective Members who opt in by endorsing their individual FLSA Settlement Check, upon final approval, release STGi and its Released Parties of all claims "that were alleged or which could have been alleged in the Complaints" and arise under the FLSA during the FLSA Collective Period" of August 31, 2017 through October 16, 2021. (*Id.* at 50.) PAGA Members, upon final approval, release STGi and its Released Parties of all claims "that were alleged or which could have been alleged in the Complaints" and arise under the PAGA during the PAGA Period of August 10, 2019 through October 16, 2021. (*Id.* at 50.) Plaintiff Garcia agrees to a general release of all wage and hour and other claims against STGi and its Released Parties through October 16, 2021. (*Id.* at 50–51.)

III. LEGAL STANDARD

The Ninth Circuit has a strong policy that favors settlements in class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). A Rule 23 class action, however, may not be settled without approval of the court. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025-26 (9th Cir. 1998) (citing Fed. R. Civ. P. 23(e)). The primary concern is the protection of class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties. *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982). Similarly, "settlements of collective action claims under the FLSA also require court approval." *Hudson v. Libre Tech. Inc.*, No. 3:18-CV-1371-GPC-KSC, 2020 WL 2467060, at *5 (S.D. Cal. May 13, 2020) (quoting *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1333 (N.D. Cal. 2014)). Because an employee cannot waive claims under the FLSA, such a claim "may not be settled without supervision of either the Secretary of Labor or a district court." *Nen Thio*, 14 F. Supp. 3d at 1333. *See also Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 69, (2013) ("The FLSA establishes federal minimum-wage, maximum-hour, and overtime guarantees that cannot be modified by contract.").

Where the parties settle before class certification, the court must "peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the

settlement." *Staton v. Boeing Co.,* 327 F.3d 938, 952 (9th Cir. 2003). Court approval of a settlement involves a two-step process—preliminary approval, followed by final approval of the settlement. *See In re M.L. Stern Overtime Litig.*, No. 07-CV-0118-BTM (JMA), 2009 WL 995864, at *3 (S.D. Cal. Apr. 13, 2009). The court "need not review the settlement in detail at this juncture; instead, preliminary approval is appropriate so long as the proposed settlement falls within the range of possible judicial approval." *Id.* (internal quotation marks and citation omitted). At the same time, however, "a district court may not simply rubber stamp stipulated settlements." *Kakani v. Oracle Corp.*, No. C 06-06493 WHA, 2007 WL 1793774, at *1 (N.D. Cal. June 19, 2007).

IV. DISCUSSION

The instant motion concerns the first step of the settlement approval process: preliminary approval. As such, the Court considers the propriety of class and collective certification, and the fairness of the parties' proposed settlement, in turn. *See Staton.,* 327 F.3d at 952 (9th Cir. 2003).

A. Propriety of Conditionally Certifying the California Class

Plaintiff requests the Court conditionally certify the California Class under Rule 23(a) and appoint Plaintiff as the class representative and her counsel as Class Counsel under Rule 23(g). Rule 23(a) sets out four prerequisites for class certification: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. Fed. R. Civ. P. 23(a). In addition to these four requirements, a Rule 23(b)(3) class—the subsection at issue here—requires a court to find that common questions predominate over individual questions, and the class action device "is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b). Moreover, "a court that certifies a class must appoint class counsel" based on the Rule 23(g) factors. Fed. R. Civ. P. 23(g).

1. Numerosity

Rule 23(a)(1) requires that the proposed class be "so numerous that joinder of all members is impracticable[.]" Fed. R. Civ. P. 23(a)(1). "'[I]mpracticability' does not mean

'impossibility'"; rather, the inquiry focuses on the "difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (citation omitted). While there is no set threshold, classes of more than seventy-five members are generally sufficient. *Breeden v. Brenchmark Lending Grp.*, 229 F.R.D. 623, 628 (N.D. Cal. 2005). In determining whether numerosity is satisfied, the court may draw reasonable inferences from the facts before it. *Gay v. Waiters' & Dairy Lunchmen's Union*, 549 F.2d 1330, 1332 n.5 (9th Cir. 1977).

Here, there are approximately 142 California Class Members. (Doc. No. 35-2 at 7.) This amount is numerous and well within the range generally found sufficient to satisfy numerosity. *See Breeden*, 229 F.R.D. at 628 (more than seventy-five members are sufficient); *Abdeljalil v. Gen. Elec. Capital Corp.*, 306 F.R.D. 303, 308 (S.D. Cal. 2015) (more than forty class members are sufficient). Accordingly, the Court finds the numerosity requirement satisfied.

2. Commonality

Rule 23(a)(2) requires that there be "questions of law or fact common to the class[.]" Fed. R. Civ. P. 23(a)(2). Commonality is satisfied where claims "depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "[T]he key inquiry is not whether the plaintiffs have raised common questions, 'even in droves,' but rather whether class treatment will 'generate common answers apt to drive the resolution of the litigation.'" *Abdullah v. U.S. Sec. Assoc., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (quoting *Dukes*, 564 U.S. at 350).

Plaintiff argues that commonality is met because the class members' claims concern employees who worked for Defendant at ICE Detention Centers in California from a particular time period, and against whom Defendant committed similar wage and hour violations. The Court agrees that commonality is satisfied. The class members worked for the same employer, held similar positions, and were subject to company-wide payroll

procedures. In addition to the common facts giving rise to each class member's claims, the class also shares common questions of law, including whether Defendant failed to pay minimum and overtime wages, to provide accurate wage statements, to timely pay wages at separation, and to provide the required meal and rest breaks. *See Franco v. Ruiz Food Prod., Inc.*, No. 1:10-CV-02354-SKO, 2012 WL 5941801, at *6 (E.D. Cal. Nov. 27, 2012) (finding "common questions of law and fact as to whether Defendant violated the FLSA and multiple California Labor Code provisions, including, but not limited to, the requirement to pay overtime and to provide meal and rest periods, proper wage statements, and payment of all wages upon termination" were sufficient to satisfy commonality). Resolving these questions through class treatment, rather than through various individual cases concerning the same or similar employee experiences, "will generate common answers apt to drive the resolution of the litigation." *Abdullah*, 731 F.3d at 957 (internal quotation marks omitted). Accordingly, the Court finds that the commonality requirement is met.

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 of typicality is whether other members of the class 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 in the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation and internal quotation marks omitted). The standard is "permissive" and representative claims are considered typical "if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Castillo v. Bank of Am., NA*, 980 F.3d 723, 729 (9th Cir. 2020) (quoting *Hanlon*, 150 F.3d at 1020)).

Like the commonality requirement, the Court finds the typicality requirement satisfied here. Plaintiff's claims for wage and hour violations are typical of the putative class. She, like the other class members, was a non-exempt employee of Defendant at an

ICE Detention Center in California during the Class Period and worked under the same company-wide employment and payment procedures. This wage and hour action does not appear to be based on conduct unique to the named plaintiff. As Plaintiff's claim "are reasonably co-extensive with those of absent class members," the Court finds typicality is satisfied. *See Castillo,* 980 F.3d 723, 729 (9th Cir. 2020) (quoting *Hanlon*, 150 F.3d at 1020)).

4. Adequacy of Representation

Rule 23(a)(4) requires the class representative to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). In assessing this requirement, "courts must consider two questions: (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?" *Evon v. L. Offs. of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (internal quotation marks and citation omitted).

Here, Plaintiff and Plaintiff's counsel represent that they have no conflicts of interest with the proposed class. (Doc. No. 35-1 at 19– 20.) According to Plaintiff, she elected to file a class action as opposed to an individual lawsuit or administrative claim for the benefit of her former coworkers. The maximum $10,000 service award to Plaintiff does not appear disproportionate to the over $2 million in gross settlement amount such that it renders her an inadequate representative at the preliminary approval stage. And Plaintiff will provide justification for her service award at the final approval stage. There are no facts to suggest that Plaintiff and her counsel are not adequate representatives of the proposed class's interests or that any conflicts of interests exist. *See Evon*, 688 F.3d at 1031. Moreover, the amount of work already completed in this case, including participation in mediation and discovery, supports the conclusion that Plaintiff and her counsel have, and will continue to, prosecute the action vigorously on behalf of the proposed class. *See id.* Thus, the Court finds the adequacy requirement satisfied. *See In re Ferrero Litig.*, 278 F.R.D. at 559 (finding adequacy satisfied where there was "no conflict of interest between the proposed class representatives, their counsel, and the class").

5. Predominance & Superiority

Rule 23(b)(3) permits certification if "questions of law or fact common to class members predominate over any questions affecting only individual class members," and "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." As for predominance, the "inquiry tests whether the proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). "Rule 23(b)(3) focuses on the relationship between the common and individual issues." *Hanlon*, 150 F.3d at 1022. As for the superiority requirement, Rule 23(b)(3) requires "that a class action [be] superior to other available methods for fairly and efficiently adjudicating the controversy." The inquiry entails consideration of the class members' interests in pursuing separate actions individually, any litigation already in progress involving the same controversy, the desirability of concentrating in the particular forum, and the likely difficulties in managing the class action. *See* Fed. R. Civ. P. 23(b)(3)(A)–(D). "The last two considerations are not relevant in the settlement context." *Mitchinson v. Love's Travel Stops & Country Stores, Inc.*, No. 115CV01474DADBAM, 2016 WL 7426115, at *6 (E.D. Cal. Dec. 22, 2016). *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial."). The inquiry focuses "on the efficiency and economy elements of the class action so that cases allowed under subdivision (b)(3) are those that can be adjudicated most profitably on a representative basis." *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001) (internal quotation marks and citation omitted). A district court has "broad discretion" in determining whether class treatment is superior. *Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 210 (9th Cir. 1975).

Here, as previously mentioned, the proposed class consists of non-exempt, hourly employees who worked for Defendant at ICE Detention Centers during a specified period and were all subject to the same written company-wide policies alleged to have been

applied unlawfully. There is no indication of questions affecting only individual class members. As such, the Court is satisfied that questions of law or fact common to class members predominate in this action, and therefore finds Rule 23(b)(3)'s predominance requirement of met.

Additionally, because Defendant's liability will be determined by its company-wide written policies and employment practices, litigation of these issues in a class action as opposed to a series of more than 100 individual actions is most efficient. Litigating multiple individual cases concerning similar facts and claims that are likely to resolve in similar results would unnecessarily consume a significant amount of the Court's and the class members' resources. It is also likely that class members would not pursue litigation on an individual basis due to the high costs of pursuing individual claims, nor would Defendant likely be willing to accept programmatic relief on the scale secured in the settlement. Moreover, because the lawsuit concerns company-wide policy and practices, the class members' interests in individually controlling the litigation are minimal. Based on the foregoing, the Court finds that class treatment is the superior method of adjudicating this controversy, and the superiority requirement of Rule 23(b)(3) is met.

6. Appointment of Class Counsel and Class Representative

Next, Plaintiff requests the Court appoint her as class representative and her counsel as class counsel. (Doc. No. 35-1 at 6, 21, 30.) The choice of counsel has traditionally been left to the parties, "whether they sue in their individual capacities or as class representatives." *In re Cavanaugh*, 306 F.3d 726, 734 (9th Cir. 2002). In certifying a class, a court must appoint class counsel pursuant to the considerations set forth in Rule 23(g), including "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class[.]" Fed. R. Civ. P. 23(g).

Plaintiff requests the Court appoint her counsel, Lauren N. Vega and Nicholas J. Ferraro of Ferraro Vega Employment Lawyers, Inc., as class counsel. (Doc. No. 35-1 at 21.) Having reviewed counsel's declaration, the Court finds appointment of Ferraro Vega Employment Lawyers, Inc. as class counsel appropriate. As stated in counsel's declaration, counsel has engaged in significant pre-litigation investigation, witness interviews, formal and informal discovery, damage analysis, mediation, and litigation efforts on behalf of the putative class. (Doc. No. 35-2 at 3–5, 8.) Counsel has substantial experience in litigating wage and hour class and representative actions on behalf of both plaintiffs and defendants. (*Id.* at 8, 19–21.) Counsel's declaration also represents that Ferraro Vega Employment Lawyers, Inc. has and will continue to devote the necessary resource to bring the matter to conclusion. (*Id.* at 8.)

With respect to Plaintiff Ana Garcia's request for appointment as class representative, the Court also finds such appointment appropriate. As previously discussed, *supra* § IV.A.3–4, Plaintiff's claims and interests align with those of the proposed class members, and no conflicts of interest exist that would render her an unsuitable class representative.

Accordingly, the Court appoints Ana Garcia as class representative and Lauren N. Vega and Nicholas J. Ferraro of Ferraro Vega Employment Lawyers, Inc. as class counsel.

B. Propriety of Conditionally Certifying the FLSA Collective

Next, Plaintiff requests the Court conditionally certify the FLSA collective under 29 U.S.C. § 216(b). Preliminary certification of an FLSA collective action is "conditioned on a preliminary determination that the collective as defined in the complaint satisfies the 'similarly situated requirement of section 216(b)." *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1109 (9th Cir. 2018). As section 216(b) "omit[s] most of the requirements in Rule 23 for class certification," the statute "necessarily impose[s] a lesser burden." *Id.* at 1112. In *Campbell*, the Ninth Circuit explained that in the FLSA context, "[p]arty plaintiffs are similarly situated, and may proceed in a collective, to the extent they share a similar issue of law or fact material to the disposition of their FLSA claims." *Campbell*, 903 F.3d

at 1117. At the preliminary certification stage, "the district court's analysis is typically focused on a review of the pleadings but may sometimes be supplemented by declarations or limited other evidence." *Id.* at 1109. The court applies a "lenient" level of consideration "loosely akin to a plausibility standard." *Id.*

Applying *Campbell*, the Court finds that preliminary certification of the FLSA Collective is appropriate. The pleadings define the FLSA Collective as "any and all non-exempt employees who worked in the ICE Detention Centers for Defendant in the United States of America other than the State of California" during August 31, 2017 through October 16, 2021. (Doc. Nos. 27 at 3; 35-2 at 33.) Plaintiff contends that she and the FLSA Collective are similarly situated because they had substantially similar job requirements and pay provisions and were subject to Defendant's practices, policies, and procedures of willfully failing to pay them for all straight and overtime hours and failing to pay them at the legally required rates. (Doc. No. 27 at 13.) Considering that the putative party plaintiffs worked for Defendant, held similar jobs, and were subject to company-wide policies alleged to have led to FLSA violations (i.e., automatically deducting thirty minutes of pay each shift for a meal period regardless of whether a meal period was actually taken and failing to include all remuneration to correctly calculate the regular rate of pay), the Court is satisfied that the proposed party plaintiffs are alike in ways that matter to the disposition of their FLSA claims. *See Campbell*, 903 F.3d at 1117. Accordingly, the Court conditionally certifies the FLSA Collective.

C. Fairness of the Proposed Class and Collective Action Settlement

Rule 23(e) requires a district court to determine whether a proposed class action settlement is fundamentally fair, adequate, and reasonable. *See Class Plaintiffs v. City of Seattle,* 955 F.2d 1268, 1276 (9th Cir. 1992). It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness." *Hanlon*, 150 F.3d at 1026; *see also Officers for Justice*, 688 F.2d at 630 (holding a settlement must stand or fall in its entirety because a district court cannot "delete, modify or substitute certain provisions"). Rule 23(e)(2), effective December 1, 2018, enumerates factors for the

court to consider in making this determination; they are whether: (1) the class representatives and class counsel have adequately represented the class; (2) the proposal was negotiated at arm's length; (3) the relief provided for the class is adequate; and (4) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2).

Although the Ninth Circuit has not established a standard for district courts to follow when evaluating an FLSA settlement, district courts in California frequently apply the standard established by the Eleventh Circuit in *Lynn's Food Stores, Inc. v. U.S. By and Through U.S. Dep't of Labor*, 679 F.2d 1350 (11th Cir. 1982). *See Ambrosino v. Home Depot U.S.A., Inc.*, No. 11cv1319 L(MDD), 2014 WL 3924609, at *1 n.1 (S.D. Cal. Aug. 11, 2014) (collecting cases). Under that standard, the settlement must constitute "a fair and reasonable resolution of a bona fide dispute over FLSA provisions." *Lynn's*, 679 F.2d at 1355; *accord Ambrosino*, 2014 WL 3924609, at *1 ("A district court may approve an FLSA settlement if the proposed settlement reflects a reasonable compromise over [disputed] issues.") (internal quotations and citation omitted). While the standard for approving FLSA collective actions may be nominally different from that for approving Rule 23 class actions, "many courts begin with the well-established criteria for assessing whether a class action settlement is fair, reasonable and adequate under [Rule] 23(e) and reason by analogy to the FLSA context." *Millan v. Cascade Water Servs., Inc.*, No. 1:12-cv-1821-AWI-EPG, 2016 WL 3077710, at *3 (E.D. Cal. Jun. 2, 2016) (internal quotation marks omitted). Consequently, if the settlement merits approval under Rule 23(e), it is likely to merit approval under the FLSA as well.

1. Adequacy of Representation

As to the first Rule 23(e)(2) factor, the Court finds, as previously analyzed, that the class representative (Plaintiff) and class counsel (Lauren N. Vega and Nicholas J. Ferraro of Ferraro Vega Employment, Lawyers, Inc.) have adequately represented the class. *See* Fed. R. Civ. P. 23(e)(2)(A). *See also Hudson*, No. 3:18-CV-1371-GPC-KSC, 2020 WL 2467060, at *5 ("This analysis is redundant of the requirements of Rule 23(a)(4) and Rule 23(g), respectively.") (internal quotations omitted).

2. Arm's Length Negotiation

As to the second Rule 23(e)(2) factor, the Court notes the parties met and conferred extensively regarding merits and discovery issues in the lead-up to their mediation. After months of preparation and investigation, the parties attended mediation and engaged in substantial negotiations facilitated by an experienced mediator—ultimately resulting in the Settlement Agreement. Thus, the Court finds the settlement proposal resulted from an arm's length negotiation. *See* Fed. R. Civ. P. 23(e)(2)(B).

3. Adequacy of Relief Provided to the Class and Collective

As to the third Rule 23(e)(2) factor, subsection (C) directs courts court to consider (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). *See* Fed. R. Civ. P. 23(e)(2)(C). With respect to the latter two considerations, the Court notes that it is not required to rule on a proposed award of attorney's fees at this stage, and counsel's declaration attests "[t]here are no ancillary agreements made in connection with the proposed settlement between or among Plaintiff, Defendant, or their respective counsel of record." (Doc. No. 35-2 at 7.) The Court therefore turns to the other two considerations to determine whether the proposed settlement provides adequate relief to the Class.

Regarding the costs, risks, and delay of trial and appeal, it appears the strengths and risks of the case support the compromises reached by both sides. In determining whether to settle this case, counsel, on behalf of Plaintiff and the putative Class and Collective, considered risks, including a denial of class certification on all or some of the claims, difficulties in establishing liability and defending against defenses raised, and delayed recovery due to prolonged litigation and potential appeals. (Doc. No. 35-2 at 9.) The Court agrees with Plaintiff that the proposed settlement eliminates these risks and allows for timely receipt of relief. *See In re Nvidia Derivs. Litig.*, No., C-06-06110, 2008 WL 5382544, at *3 (N.D. Cal. Dec. 22, 2008) ("The Settlement eliminates these and other

risks of continued litigation, including the very real risk of no recovery after several years of litigation."). Furthermore, counsel's declaration explains that the gross settlement amount "reflects approximately 66 percent of the total liability exposure—a fair and reasonable settlement that provides for the full recovery of unpaid wages and premiums, with negotiation and resolution of the civil and statutory penalties." (Doc. No. 35-2 at 17.) At this stage, the Court is satisfied that the Settlement is adequate relative to Defendant's potential exposure. *See, e.g.*, *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (finding "fair and and adequate" a settlement of "roughly one-sixth of potential recovery"). This consideration therefore weighs in favor of approval. *See* Fed. R. Civ. P. 23(e)(2)(C)(i).

Regarding the effectiveness of the proposed method of distributing relief to the class and processing their claims, the parties selected Phoenix to administer the settlement. California Class and FLSA Collective Members will be identified through Defendant's employment records, and Phoenix will search for each member's most recent address prior to sending them a Notice of Settlement.

Additionally, Defendant will provide Phoenix the number of workweeks worked by each Class and Collective Member. Phoenix will then calculate the Class and Collective settlement checks for each participating member based on the number of weeks he or she was employed by STGi, divided by the total number of weeks worked by all employees included in the California Class or FLSA Collective, as applicable. This method of calculating and dividing relief appears simple, fair, and effective as it provides proportional relief to each Class and Collective Member based on the number of weeks he or she worked during the Class and/or FLSA Collective Period.

The process for receiving relief is also straightforward. All California Class members will receive payment by mail unless they opt-out of the Settlement. All FLSA Collective members will receive their respective FLSA Settlement Check and may consent

to join the Settlement by affirmatively endorsing their FLSA Settlement Check.[3] Thus, the Court finds the effectiveness of the proposed method of distributing relief to the class also weighs in favor of approval. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii).

4. Equitable Treatment of Class Members and the Collective

As to the fourth and final Rule 23(e)(2) factor, the court examines whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Here, the Settlement provides for a service award to Plaintiff of up to $10,000 "to recognize her substantial effort, risk, and initiative in assisting with the prosecution and resolution of this case." (Doc. No. 35-2.) While the Court does not examine the reasonableness of Plaintiff's request for a service award at this time, the Ninth Circuit has explained that "[i]ncentive awards are fairly typical in class action cases." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). As such, the Court does not find, at this stage, that the enhancement award Plaintiff seeks amounts to inequitable treatment of class members. In addition, Plaintiff's counsel's declaration attests that the settlement funds are fairly and logically apportioned among the California Class and FLSA Collective based upon the liability exposure assessed by counsel and their economic consultant. Based on the foregoing, the Court finds this factor weighs in favor of preliminarily approval.

* * *

Upon consideration of the above factors, the Court finds, for purposes of the class action, that the settlement proposal is fair, adequate, and reasonable. The Court further finds, for purposes of the FLSA action, that the proposal is a fair and reasonable resolution

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[3] The Court finds this method of consent (opt-in via endorsement of the settlement check) sufficient to comply with 29 U.S.C. § 216(b)'s requirement that employees to give their consent in writing to become a member of the FLSA Collective. *See, e.g., Cavazos v. Salas Concrete, Inc.,* 2002 WL 506005, *3 n. 5, *20 n. 19 (E.D. Cal., Feb. 18, 2022). In further compliance with Section 216(b), Plaintiff will file with the Court a declaration listing the names of participating FLSA Collective Members (those who endorsed their checks and consented to the action) along with a redacted copy of the consent instrument no later than 30 calendar days after final approval.

of a bona fide dispute,[4] and that the settlement's overall effect is to vindicate, rather than frustrate, the purposes of the FLSA.

D. Proposed Notice Form and Method

Rule 23(b)(3) provides that for any class certified thereunder, "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(b)(3). Regular mail, electronic mail, and other appropriate means should all be considered. *See* Fed. R. Civ. P. 23(c)(2)(B). Additionally, where there is a class settlement, Rule 23(e)(1)(B) requires the court to "direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(b)(3). "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Rodriguez*, 563 F.3d at 962 (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). *See also Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 120 (8th Cir. 1975) ("[T]he mechanics of the notice process are left to the discretion of the court subject only to the broad 'reasonableness' standards imposed by due process.").

Because the Court has conditionally certified the California Class under Rule 23(b)(3) and the parties have agreed on a class settlement, Rule 23's mandatory notice procedures must be followed. According to the parties' Class and Collective Action Settlement Agreement, Phoenix will, within 35 days of the Court's filing of this Order, send by First-Class United States mail and electronic mail the Notice of Class and

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[4] Plaintiff alleges that Defendant failed to comply with the FLSA's wage compensation requirements based upon, among other things, "its policy of automatically deducting 30 minutes for each work day for an unpaid meal period even when employees did not actually take a full 30-minute, uninterrupted meal period" and failing to pay employees for time spent "before each scheduled shift waiting in security check lines". (Doc. No. 27 at 18.) Defendant has denied these allegations. Moreover, Plaintiff's counsel's declaration indicates that the parties vigorously defended and corroborated their respective positions with facts and case law during mediation, and that the resulting settlement accounts for the realistic exposure for these claims. (Doc. No. 35-2 at 9–13.) The Court is thus satisfied that there is a bona fide dispute between the parties over potential liability under the FLSA. *See Ambrosino*, 2014 WL 1671489, at *1.

Collective Settlement ("Notice") to each California Class Member and FLSA Collective Member using the most recent mailing address and electronic mail address. (Doc. No. 35-2 at 38.) Prior to mailing the Notice, Phoenix will ascertain the proper mailing addresses using data from Defendant's records and the National Change of Address database. Any returned mail with a forwarding address from the U.S. postal service will be promptly re-mailed to the new address. Phoenix will conduct a reasonable search for a new address for any returned mail without a forwarding address.

Regarding the substance, the proposed Notice is eleven pages long, the first of which contains an easy-to-read summary of the recipient's legal rights and options. (*Id.* at 58–59.) The remainder of the Notice provides detailed information about this case, including what the lawsuit is about, why there is a settlement, who is included in the settlement, the settlement benefits, how to receive payment, how to object to or be excluded from the settlement, lawyer representation, and the final approval hearing. (*Id.*) The information is written in plain English, organized by topic, and indexed in a descriptive table of contents. (*Id.*) The Court is satisfied that the Notice describes the terms of the Settlement "in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Rodriguez*, 563 F.3d at 96.

Having carefully reviewed the proposed Notice, the Court finds that its method of delivery and contents comply with Rule 23. Accordingly, the Court approves the proposed Notice.

E. Proposed PAGA Settlement

Next, a court must "review and approve any settlement of any civil action filed pursuant to [PAGA]" and the proposed settlement must be submitted to the Labor and Workforce Development Agency ("LWDA") at the same time it is submitted to the court. Cal. Lab. Code § 2699(l)(2). Plaintiff submitted the proposed settlement to the LWDA on the same day it filed the instant motion; thus, that requirement has been satisfied. (Doc. No. 35-2 at 73.)

Turning to review of the PAGA settlement, the Court notes that the California legislature, California Courts of Appeal, and the LWDA have not provided a definitive answer as to the appropriate standard for approval of a PAGA settlement. *See Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 971 (N.D. Cal. 2019). In the absence of a controlling standard, "a number of courts have applied a Rule 23-like standard, asking whether the settlement of the PAGA claims is fundamentally fair, adequate, and reasonable in light of PAGA's policies and purposes." *Id.* at 972 (internal quotations and citations omitted). Where, as here, the PAGA claims are settled in the same agreement with the underlying Labor Code claims, "courts have also looked to the interplay of the two recoveries to determine whether PAGA's purposes have been served." *Id.* In such cases, courts have adopted a "sliding scale, taking into account the value of the settlement as a whole." *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198-EMC, 2016 WL 5907869, at *9 (N.D. Cal. Oct. 11, 2016). "In other words, where the settlement of Labor Code claims under Rule 23 provides 'robust' relief to the class, it supports a greater reduction in PAGA penalties." *Haralson*, 383 F. Supp. 3d at 972.

Here, Plaintiff proposes a $75,000 allocation for the PAGA claims. Considering the risks in proving the PAGA allegations, counsel's declaration estimates the realistic exposure value of the PAGA claims to be $760,800. (Doc. No. 35-2 at 17.) The proposed PAGA allocation therefore amounts to approximately 10% of the exposure value of those claims. This percentage falls within the range approved by courts. *Compare Hernandez v. Dutton Ranch Corp.*, No. 19-CV-00817-EMC, 2021 WL 5053476, at *5 (N.D. Cal. Sept. 10, 2021) (approving a PAGA penalty "which is approximately 2%–4% of the PAGA exposure"), *with Haralson*, 383 F. Supp. 3d at 972 (noting "courts have raised concerns about settlements of less than 1% of the total value of a PAGA claim").

Moreover, considering the value of the Settlement as a whole, the Court finds the Settlement provides robust relief because 56% of the net settlement amount is allocated to the Labor Code claims raised by the California Class, of which the PAGA members are a part. Additionally, the totality of the Settlement advances the PAGA's objective because

its overall effect vindicates the rights of the class members as employees and serves as deterrence on Defendant and other employers. This further "supports a greater reduction in PAGA penalties." *Haralson*, 383 F. Supp. 3d at 972.

In sum, because the proposed PAGA allocation falls within a range approved by courts and is justified considering the risks of continued litigation and the Court's ability to reduce penalties, the Court finds the compromise "fundamentally fair, adequate, and reasonable in light of PAGA's policies and purposes." *Haralson*, 383 F. Supp. 3d at 971.

V. CONCLUSION

For the reasons stated above, the Court enters the following Orders.

- **Motion for Preliminary Approval of Settlement**: The Court finds, on a preliminary basis, that the Settlement attached to the Declaration of Lauren N. Vega as Exhibit "A" incorporated by reference in full and made a part of this Order of preliminary approval, appears to be within the range of reasonableness of a settlement which could ultimately be given final approval by this Court. Accordingly, the Court **GRANTS** Plaintiff's unopposed motion for preliminary approval of class and collective action settlement. (Doc. No. 35.)
- **Conditional Certification**: As a part of the Court's preliminary approval, it finds for settlement purposes only, the Class meets the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3), and the FLSA Collective meets the requirements of 29 U.S.C. § 216(b). Accordingly, the Court **CONDITIONALLY CERTIFIES** the Class and Collective as defined in the Settlement.
- **Class Representative and Class Counsel**: For settlement purposes only, the Court **APPOINTS** Plaintiff Ana Garcia as Class Representative and Ferraro Vega Employment Lawyers, Inc. as Class Counsel.
- **Notice of Settlement**: The Court **APPROVES**, as to form and content, the "Notice of Settlement of a Class Action and FLSA Collective Action" attached to the Settlement Agreement as Exhibit 1. (Doc. No. 35-2 at 58.) The Court finds

the Notice advises the Class and Collective of the action, of the proposed Settlement terms, of the preliminary Court approval of the Settlement, of the automatic payment of a proportionate share of the Settlement monies if the Class Member does not request to be excluded for the California Class, and the consent procedure required for opt-in to the FLSA Collective after final approval, of the released claims, of the estimated amount each may expect to receive pursuant to the proposed Settlement, of their right to submit objections or requests for exclusion, and of the manner and timing for doing these acts.

- **Settlement Administration**:
  - The Court **APPOINTS** Phoenix Settlement Administrators to administer the Settlement pursuant to the Settlement terms.
  - No more than 30 calendar days after the date on which this Order is electronically docketed, Defendant **MUST** forward to Phoenix, information in electronic format, regarding all Class and Collective Members' names, last known residence addresses, email addresses, Social Security numbers, and total workweeks worked during the respective Class Period and FLSA Collective ("Class and Collective Data").
  - No more than 21 calendar days after receipt of the Class and Collective Data, Phoenix **MUST** email and mail (by first-class U.S. mail, postage pre-paid) the Notice to each Class and Collective Member. Phoenix must take those measures specified, and on the conditions set forth in the Settlement, for updating an address after the first mailing of the Class Notice.
  - All mailings **MUST** be made to the present and/or last known mailing and email address of the Class and Collective Members based on Defendant's records, and as may be updated and located by Phoenix and as may be provided to it by Class Counsel or Defendant's counsel.
- **Objections**: Written letters of objection to the Settlement must be filed with the

Court and served on Plaintiff's and Defendant's counsel as set forth in the Settlement no later than 45 days following the mailing of the Class Notice by Phoenix.

- **Final Approval Hearing**: The Court sets a Final Approval Hearing on Thursday, April 13, 2023 at 2:00 PM in Courtroom 4A, of the Edward J. Schwartz United States Courthouse, 221 W. Broadway, San Diego, CA 92101, to consider:
    - Whether the Class and Collective should be finally certified for settlement purposes;
    - Whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate;
    - The Class Counsel's application for attorneys' fees and expenses;
    - Plaintiff's request for a service award; and
    - The Settlement Administrator's expenses.
- **Other Filing Deadlines**: The Court **ORDERS** the following schedule for further proceedings:
    - The motion for final approval of class action settlement, motion for attorneys' fees and costs and Class Representative Award must all be filed no later than March 9, 2023.
        - The motion for final approval **MUST INCLUDE AND ADDRESS** any Objections or responses received as of the filing date.
        - As for the fee motion:
            - Class Counsel **MUST PROVIDE** documentation detailing the number of hours incurred by attorneys in litigating this action, supported by detailed time records, as well as hourly compensation to which those attorneys are reasonably entitled.

- Class Counsel **MUST ADDRESS** the appropriateness of any upward or downward departure in the lodestar calculation, as well as reasons why a percentage-of-the-fund approach to awarding attorney fees may be preferable in this case and why any upward or downward departure from the 25% benchmark may be merited.
- Class Counsel **MUST BE PREPARED** to address any questions the Court may have regarding the application for fees at the Final Approval Hearing.

- The deadline for Phoenix to prepare and Class Counsel to file a Declaration of Compliance with Class Notice requirements is March 23, 2023.

13. **CAFA Notice**: Defendant **MUST**, in compliance with the Class Action Fairness Act, 28 U.S.C. § 1715, serve written notice of the proposed Settlement on the U.S. Attorney General and the appropriate California state official, along with the appropriate state official in every state where a Class Member resides no later than ten (10) business days after the date on which this Order is electronically docketed.

IT IS SO ORDERED.

Dated: January 5, 2023

Hon. Anthony J. Battaglia
United States District Judge