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Case #21CV376394  
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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SANTA CLARA**

10  
11 BRYAN HICKS,

12 Plaintiff,

13 v.

14 CALIFORNIA WATER SERVICE,

15 Defendant.  
16  
17

Case No.: 21CV376394

**ORDER CONCERNING PLAINTIFF’S  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION AND  
PAGA SETTLEMENT**

18  
19 **I. INTRODUCTION**

20 This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiff  
21 Bryan Hicks alleges that Defendant California Water Service, a public utility company providing  
22 drinking water and waste water services to California residents, failed to provide employees with  
23 compliant meal and rest breaks and failed to pay required premiums, failed to pay minimum and  
24 overtime wages, issued noncompliant wage statements, and committed other wage and hour  
25 violations.

26 Now before the Court is Plaintiff’s motion for preliminary approval of a settlement,  
27 which is unopposed. The Court issued an early tentative ruling on this matter stating that the  
28 Court was generally inclined to grant preliminary approval, but wanted a supplemental

1 declaration from Plaintiff’s counsel regarding certain issues identified below. Additionally, the  
2 Court requested that certain changes be made to the notice and notice procedure.

3 Plaintiff provided a supplemental declaration and agreed to make the requested  
4 modifications to the class notice. In light of this additional information, the Court now  
5 GRANTS preliminary approval to this settlement.<sup>1</sup>

## 6 **II. BACKGROUND**

7 Plaintiff was employed by Defendant from May 2018 to November 2018 as an hourly,  
8 non-exempt employee. (First Amended Class Action Complaint (“FAC”), ¶ 23.) According to  
9 Plaintiff, Defendant failed to pay employees for all hours worked and for their missed meal and  
10 rest periods. (*Id.*, ¶ 24.) Employees worked for Defendant more than eight hours per day or 40  
11 hours per week but Defendant failed to pay overtime wages. (*Id.*, ¶ 24.) Defendant failed to  
12 timely pay wages during employment and upon separation and failed to provide accurate,  
13 itemized wage statements. (*Id.*, ¶ 38, 120.) Defendant also failed to reimburse employees for  
14 required business expenses. (*Id.*, ¶ 113.)

15 Based on these allegations, Plaintiff asserts, in the operative First Amended Complaint,  
16 putative class claims for: (1) failure to pay overtime wages, in violation of Labor Code section  
17 510, et seq.; (2) unpaid meal period premiums, in violation of Labor Code sections 226.7 and  
18 512, subdivision (a); (3) unpaid rest break premiums, in violation of Labor Code section 226.7;  
19 (4) failure to pay minimum wages, in violation of Labor Code sections 1194, 1197, and 1197.1;  
20 (5) failure to provide wage when due under Labor Code sections 201 and 202; (6) failure to  
21 provide timely wages during employment under Labor Code section; (7) violation of Labor Code  
22 section 226 by failing to provide accurate itemized wage statements; (8) failure to keep payroll  
23 records, in violation of Labor Code section 1174, subdivision (d); (9) failure to reimburse  
24 employees for required expenses under Labor Code sections 2800 and 2802; (10) violation of  
25 Business and Professions Code section 17200, et seq.; and (11) representative claim for PAGA  
26 penalties (Lab. Code, § 2698, et seq.).

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<sup>1</sup> The Court also grants Plaintiff’s unopposed request to exceed the page limit for his brief.

1 **III. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

2 **A. Class Action**

3 Generally, “questions whether a (class action) settlement was fair and reasonable,  
4 whether notice to the class was adequate, whether certification of the class was proper, and  
5 whether the attorney fee award was proper are matters addressed to the trial court’s broad  
6 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235  
7 (*Wershba*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.*  
8 (2018) 4 Cal.5th 260.)

9 In determining whether a class settlement is fair, adequate and reasonable, the trial court  
10 should consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense,  
11 complexity and likely duration of further litigation, the risk of maintaining class action status  
12 through trial, the amount offered in settlement, the extent of discovery completed and the stage  
13 of the proceedings, the experience and views of counsel, the presence of a governmental  
14 participant, and the reaction of the class members to the proposed settlement. (*Wershba, supra*,  
15 91 Cal.App.4th at pp. 244-245, internal citations and quotations omitted.)

16 In general, the most important factor is the strength of the plaintiffs’ case on the merits,  
17 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)  
18 168 Cal.App.4th 116, 130 (*Kullar*)).) But the trial court is free to engage in a balancing and  
19 weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91  
20 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the  
21 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
22 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a  
23 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation  
24 marks omitted.) The trial court also must independently confirm that “the consideration being  
25 received for the release of the class members’ claims is reasonable in light of the strengths and  
26 weaknesses of the claims and the risks of the particular litigation.” (*Kullar, supra*, 168  
27 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be  
28 “provided with basic information about the nature and magnitude of the claims in question and

1 the basis for concluding that the consideration being paid for the release of those claims  
2 represents a reasonable compromise.” (*Id.* at pp. 130, 133.)

3 **B. PAGA**

4 Labor Code section 2699, subdivision (1)(2) provides that “(t)he superior court shall  
5 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s  
6 review “ensur(es) that any negotiated resolution is fair to those affected.” (*Williams v. Superior*  
7 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA  
8 go to the Labor and Workforce Development Agency (“LWDA”), leaving the remaining twenty-  
9 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation*  
10 *Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River*  
11 *Cruises, Inc. v. Moriana* (2022) \_\_\_ U.S. \_\_\_, 2022 U.S. LEXIS 2940.)

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

22 The settlement must be reasonable in light of the potential verdict value. (See  
23 *O’Connor, supra*, 201 F.Supp.3d at p. 1135 (rejecting settlement of less than one percent of the  
24 potential verdict).) But a permissible settlement may be substantially discounted, given that  
25 courts often exercise their discretion to award PAGA penalties below the statutory maximum  
26 even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11,  
27 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at \*8-9.)

1 **IV. SETTLEMENT PROCESS AND PROVISIONS**

2 According to Plaintiffs' counsel, the parties engaged in significant informal discovery  
3 prior to mediation. Defendant produced, inter alia, employment records for Plaintiff and  
4 potential class members, a sampling of time and pay data, and relevant policies and procedures.

5 On February 23, 2022, the parties attended an all-day mediation session with Jeffrey  
6 Krivis, Esq., an experienced wage and hour class action mediator. After negotiations with his  
7 assistance, they were able to reach the agreement now before the Court.

8 The non-reversionary gross settlement amount is \$2,150,000. Attorney fees of up to  
9 \$752,500 (35 percent of the gross settlement), litigation costs of up to \$25,000, and up to  
10 \$20,000 in administration costs will be paid from the gross settlement. One hundred seventy-  
11 five thousand dollars of the gross settlement amount will be allocated to PAGA penalties, 75  
12 percent of which (\$131,250) will be paid to the LWDA, leaving 25 percent (\$43,750) for the  
13 aggrieved employees. The named plaintiff will seek an incentive award of \$8,000. The net  
14 settlement amount of approximately \$1,169,500 will be allocated to the approximately 1,040  
15 class members proportionally based on their pay periods worked during the class period.

16 The PAGA payment will be allocated to aggrieved employees on a pro rata basis based  
17 on their number of pay periods worked during the PAGA period of February 23, 2020 to August  
18 8, 2022. Based on the information class counsel provides, the Court calculates that the average  
19 payment will be around \$1,125 to each of the 1,040 class members if all class members do not  
20 opt out. Class members will not be required to submit a claim to receive their payments but  
21 instead may opt out if they wish. For tax purposes, settlement payments will be allocated 40  
22 percent to wages and 60 percent to penalties and interest. PAGA settlement payments will be  
23 allocated 100 percent to penalties. The employer's share of payroll taxes will be paid in addition  
24 to the gross settlement. Checks uncashed after 180 days will be cancelled and the funds will be  
25 transferred to Leadership Counsel for Justice & Accountability, a 501(c)(3) nonprofit  
26 organization.

1 In exchange for the settlement, class members who do not opt out will release “all claims  
2 under state, federal, or local law during the Release Period that were or could have been alleged  
3 based upon the facts pleaded in the Action,” including specified wage and hour claims.

4 The release is appropriately tailored to the factual allegations at issue. (See *Amaro v. Anaheim*  
5 *Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) And the PAGA release is  
6 appropriately limited to “all claims, under PAGA for penalties during the PAGA Period that  
7 were or could have been alleged based upon the facts pleaded in the Action and the PAGA  
8 Notice, for alleged violations” including specified wage and hour claims. Consistent with the  
9 statute, aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

#### 10 **V. FAIRNESS OF SETTLEMENT**

11 Defendant asserted various defenses, denying all liability for each claim and articulating  
12 that it fully complied with all employment laws and that all time was accurately recorded.  
13 Defendant also maintains that the claims are inappropriate for class treatment.

14 Based on the records provided by Defendant, class counsel determined that the maximum  
15 potential damages for the failure to pay overtime claim was \$11,046,600 but after discounts for  
16 the risk associated with litigation, the estimated value of the claim was \$795,355.20. The  
17 maximum value of the failure to pay minimum wage claim was calculated to be \$7,363,800, or  
18 \$220,914 after discounts. The maximum exposure for the unpaid meal premiums was estimated  
19 at \$7,363,800, or \$530,193.60, after discounts. Potential maximum recovery for waiting time  
20 penalties was estimated to be \$2,228,776.80 or \$89,151.07 after discounts. With respect to the  
21 failure to reimburse business expenses claim, the maximum potential value was estimated to be  
22 \$1,080,000, or \$34,560 after discounts. Plaintiff’s counsel calculated potential PAGA penalties  
23 to be \$1,173,200 at maximum, or \$98,548.80 after discounts.

24 In light of the large portion of the case’s value attributable to highly uncertain penalties,  
25 the settlement achieves a good result for the class. The PAGA settlement amount of \$175,000 is  
26 significant, comprising about eight percent of the total settlement amount.

27 For purposes of preliminary approval, the Court finds that the settlement is fair and  
28 reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable in light

1 of the statute’s purposes. Of course, the Court retains an independent right and responsibility to  
2 review the requested attorney fees and award only so much as it determines to be reasonable.  
3 (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.)  
4 Counsel shall provide lodestar information prior to the final approval hearing in this matter so the  
5 Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half*  
6 *Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the  
7 reasonableness of a percentage fee through a lodestar calculation].)

## 8 **VI. PROPOSED SETTLEMENT CLASS**

9 Plaintiff requests that the following settlement class be provisionally certified: “All  
10 current and former hourly non-exempt Cal Water employees who worked for Cal Water in  
11 California from February 23, 2017, to and including August 8, 2022(.)”

### 12 **A. Legal Standard for Certifying a Class for Settlement Purposes**

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

18 Code of Civil Procedure section 382 requires the plaintiff to demonstrate by a  
19 preponderance of the evidence: (1) an ascertainable class and (2) a well-defined community of  
20 interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34  
21 Cal.4th 319, 326, 332 (*Sav-On Drug Stores*)). “Other relevant considerations include the  
22 probability that each class member will come forward ultimately to prove his or her separate  
23 claim to a portion of the total recovery and whether the class approach would actually serve to  
24 deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)  
25 The plaintiff has the burden of establishing that class treatment will yield “substantial benefits”  
26 to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d  
27 381, 385.)

1 In the settlement context, “the court’s evaluation of the certification issues is somewhat  
2 different from its consideration of certification issues when the class action has not yet settled.”  
3 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the  
4 settlement-only context, the case management issues inherent in the ascertainable class  
5 determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.*  
6 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or  
7 overbroad class definitions require heightened scrutiny in the settlement-only class context, since  
8 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

9 **B. Ascertainable Class**

10 A class is ascertainable “when it is defined in terms of objective characteristics and  
11 common transactional facts that make the ultimate identification of class members possible when  
12 that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980  
13 (*Noel*.) A class definition satisfying these requirements “puts members of the class on notice  
14 that their rights may be adjudicated in the proceeding, so they must decide whether to intervene,  
15 opt out, or do nothing and live with the consequences. (Citation.) This kind of class definition  
16 also advances due process by supplying a concrete basis for determining who will and will not be  
17 bound by (or benefit from) any judgment.” (*Ibid.*)

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

27 Here, the estimated 1,040 class members are readily identifiable based on Defendant’s  
28 employment and payroll records, and the settlement class is defined based on objective



1 characteristics. The Court finds that the settlement class is numerous, ascertainable, and  
2 appropriately defined.

3 **C. Community of Interest**

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

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

20 Here, it appears that common legal and factual issues predominate. Plaintiff’s claims  
21 arise from Defendant’s wage and hour practices, which would apply to the other class members,  
22 who are similarly-situated.

23 As to the second factor,

24  
25 The typicality requirement is meant to ensure that the class representative is able to  
26 adequately represent the class and focus on common issues. It is only when a  
27 defense unique to the class representative will be a major focus of the litigation, or  
28 when the class representative’s interests are antagonistic to or in conflict with the

1 objectives of those she purports to represent that denial of class certification is  
2 appropriate. But even then, the court should determine if it would be feasible to  
3 divide the class into subclasses to eliminate the conflict and allow the class action  
4 to be maintained.

5  
6 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,  
7 brackets, and quotation marks omitted.)

8 Like other members of the class, Plaintiffs were employed by Defendant as non-exempt  
9 employees and they allege that they suffered the violations at issue. The anticipated defenses are  
10 not unique to Plaintiff as they are based on Defendant's compliance with applicable labor laws  
11 and its own policies and procedures and whether it properly calculated wages. There is no  
12 indication before the Court that Plaintiffs' interests are otherwise in conflict with those of the  
13 class. The Court finds that Plaintiffs have sufficiently demonstrated typicality.

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

23 Here, Plaintiffs would appear to have the same interest in maintaining this action as any  
24 other class member would have. Plaintiffs are represented by experienced counsel who are  
25 qualified to represent the class. The Court finds that Plaintiffs and their counsel are adequate to  
26 represent the class.

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

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

10           Here, the class is large, comprised of an estimated 1,040 class members. It would surely  
11 be inefficient for the Court to hear and decide the same issues separately and repeatedly for each  
12 class member. Further, it would be cost prohibitive for each class member to file suit  
13 individually, as each member would have the potential for little to no monetary recovery. It is  
14 clear that a class action provides substantial benefits to both the litigants and the Court in this  
15 case.

16           **VII.   NOTICE**

17           The content of a class notice is subject to court approval. (Cal. Rules of Court, rule  
18 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures  
19 for class members to follow in filing written objections to it and in arranging to appear at the  
20 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining  
21 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of  
22 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class  
23 members; (5) The resources of the parties; (6) The possible prejudice to class members who do  
24 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule  
25 3.766(e).)

26           Here, the notice describes the lawsuit, explains the settlement, and instructs class  
27 members that they may opt out of the settlement (except the PAGA component) or object. The  
28 gross settlement amount and estimated deductions are provided. Class members are informed of

1 their qualifying pay periods as reflected in Defendant’s records and are instructed how to dispute  
2 this information. They are given 45 days to request exclusion from the class or submit a written  
3 objection to the settlement.<sup>2</sup> Class members are instructed that they may appear at the final  
4 fairness hearing to make an oral objection without submitting a written objection.

5 In the tentative ruling on this matter, the court noted that Plaintiff does not indicate  
6 whether the notice will be provided in any languages other than English and whether such  
7 translation would be reasonably necessary for the class members to understand the notice.  
8 Further, Plaintiff had not provided a breakdown of the expected costs of administration of the  
9 settlement. The Court requested that class counsel provide a supplemental declaration indicating  
10 whether notice should be provided in languages other than English and providing a breakdown of  
11 the expected costs of administration. In a supplemental declaration, Plaintiff’s counsel has  
12 provided the requested information. Counsel explained that all class members should be  
13 proficient in English and that translation into one or more other languages was not necessary.

14 The form of notice is generally adequate, but must be modified to instruct class members  
15 that they may opt out of or object to the settlement simply by providing their name, without the  
16 need to provide their phone number or other personal information. Counsel also provided a  
17 breakdown of the administrator’s costs.

18 With regard to appearances at the final fairness hearing, the notice shall be further  
19 modified to instruct class members as follows:

20  
21 The judge overseeing this case encourages remote appearances. Class members  
22 who wish to appear remotely should contact class counsel at least three days before  
23 the hearing if possible. Instructions for appearing remotely are provided at  
24 [https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml) and  
25 should be reviewed in advance. Class members may appear remotely using the  
26 Microsoft Teams link for Department 1 (Afternoon Session) or by calling the toll  
27 free conference call number for Department 1. However, any class member who

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28 <sup>2</sup> The notice will provide the date by which the class members must respond.

1 wishes to appear in person can do so.

2  
3 Turning to the notice procedure, the parties have selected Phoenix Settlement  
4 Administrators as the settlement administrator. Defendant will provide a list of class members to  
5 the administrator within 30 days of the date of preliminary approval of the settlement. The  
6 administrator will mail the notice to class members within 15 days of receipt of the class list.  
7 The deadline for responses will be 45 days after mailing. Any returned notices will be re-mailed  
8 to any forwarding address provided or better address located using a reasonable method,  
9 including skip tracing. Class members who receive a re-mailed notice will have an additional 15  
10 days to respond.

11 Given that class members only have 45 days to respond to the notices, the administrator  
12 must use the National Change of Address Database to locate updated addresses for class  
13 members prior to the initial mailing, to minimize time lost due to re-mailing. With that  
14 modification, the notice procedures are appropriate and are approved.

15 The Court also notes that paragraph 59 of the settlement agreement provides that, within  
16 14 days of the response deadline, Defendant will have the option to void the settlement  
17 agreement if 10 percent of the individuals eligible to become class members have opted out or  
18 are deemed by the court not to be bound by the settlement. Although such a provision is not  
19 inherently unfair, see *Hefler v. Wells Fargo & Co.* (N.D.Cal. Dec. 17, 2018, No. 16-cv-  
20 05479JST) 2018 U.S. Dist. LEXIS 213045, at \*22, the Court wondered whether class members  
21 should be informed of this provision in the notice. In Plaintiff's counsel's supplemental  
22 declaration, class counsel stated it would modify the notice to inform class members of this  
23 provision.

#### 24 **VIII. CONCLUSION**

25 Class counsel has provided the additional information and agreed to make the changes to  
26 the notice requested by the Court. Accordingly, the Court GRANTS Plaintiffs' motion for  
27 preliminary approval. The final approval hearing shall take place on **February 15, 2024** at 1:30  
28 p.m. in Department 1.

1 Before final approval, Counsel shall submit lodestar information prior to the final  
2 approval hearing in this matter so the Court can compare the lodestar information with the  
3 requested fees. Before final approval, Counsel shall submit lodestar information prior to the  
4 final approval hearing in this matter so the Court can compare the lodestar information with the  
5 requested fees.

6 **IT IS SO ORDERED.**

7  
8 Date: 8/11/2023

  
\_\_\_\_\_  
The Honorable Sunil R. Kulkarni  
Judge of the Superior Court