UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-9187 PSG (KSx)	Date	April 09, 2018
Title	Jeremey Edwards v. Chartwell Staffing Services, Inc., *et al.*		

Present: The Honorable	Philip S. Gutierrez, United States District Judge	
Wendy Hernandez		Not Reported
Deputy Clerk		Court Reporter
Attorneys Present for Plaintiff(s):		Attorneys Present for Defendant(s):
Not Present		Not Present

Proceedings (In Chambers): **The Court GRANTS Plaintiff's motion for preliminary approval of class action settlement**

Before the Court is Plaintiff Jeremey Edwards' ("Plaintiff") motion for preliminary approval of a class action settlement. *See* Dkt. # 48 ("*Mot.*"). The Court considers this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); L.R. 7–15. After considering the arguments in the moving papers, the Court **GRANTS** the motion for preliminary approval of class settlement.

I. Background

Chartwell Staffing Services, Inc. ("Chartwell" or "Defendant") is a national employment staffing agency which provides temporary, temporary to hire, direct hire, and other staffing services to manufacturers and businesses. *See* Dkt. # 48-1, *Declaration of Matthew J. Matern* ("*Matern Decl.*") ¶ 7. Cross-Defendant Avalon Food Packing ("Avalon") is a fresh food processing and packaging plant and cold storage facility located in Los Angeles, California. *Id.* Chartwell provided employees to work at the Avalon during the time period from approximately February 23, 2015 to approximately June 30, 2017. *Mot.* 3. Plaintiff was hired by Chartwell and worked at the Avalon facility from June 2015 to approximately October 2015. *Id.* 4.

Plaintiff brought this action as a wage-and-hour class action on behalf of himself and all other persons who work or have worked as non-exempt employees of Defendants at the Avalon facility at any time ("Class" or "Class Members") during the period from December 12, 2012 through the date the Court grants preliminary approval (the "Class Period"). *Id.* 1. Plaintiff asserted claims for: (1) Failure to Provide Required Meal Periods; (2) Failure to Provide Required Rest Periods; (3) Failure to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay All Wages Due to Discharged and Quitting Employees; (6) Failure to Maintain Required Records; (7) Failure to Furnish Accurate Itemized Wage Statements; (8)

Unfair and Unlawful Business Practices; (9) Penalties under the Labor Code Private Attorneys General Act; and (10) Failure to Pay All Wages and Overtime Compensation in Violation of the Fair Labor Standards Act. *Mot.* 10–11.

The parties ultimately reached a settlement of all claims that provides for an $800,000 gross settlement amount to resolve the released claims of Plaintiff and Class Members. Plaintiff now moves for preliminary approval of the Settlement Agreement, certification of the proposed settlement class, approval of the proposed notice to the class, and the scheduling of a hearing for final approval of the settlement and entry of judgment. *See generally Mot.*

II. Class Certification for Settlement Purposes

Plaintiff seeks to certify a class for settlement purposes only, defined as "all persons who work or have worked as non-exempt employees of Defendants at the Avalon Facility located at 2501 Rosecrans Avenue, Los Angeles, California 90059 at any time during the Class Period." *Mot.* 5.

When parties settle an action prior to class certification, the Court is obligated to "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). Preliminary approval of a class settlement is generally a two-step process. First, the Court must assess whether a class exists. *Id.* (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). Second, the Court must "determine whether [the] proposed settlement is fundamentally fair, adequate, and reasonable." *Staton*, 327 F.3d at 952 (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). The decision to approve or reject a settlement is within the Court's discretion. *Hanlon*, 150 F.3d at 1026.

A. Legal Standard

Parties seeking certification of a settlement-only class must still satisfy the Federal Rule of Civil Procedure 23 standards. *See id.* at 1019–24. Under Rule 23, a plaintiff must satisfy the four prerequisites of Rule 23(a) *and* demonstrate that the action is maintainable under Rule 23(b). *See Amchem*, 521 U.S. at 613–14. The four prerequisites of Rule 23(a) are: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *See* Fed. R. Civ. P. 23(a). Plaintiff seeks certification under Rule 23(b)(3), *see Mot.* 16–17, which requires that "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. Discussion

i. Numerosity

The first requirement for maintaining a class action under Rule 23(a) is that the class is "so numerous that joinder of all members would be impracticable." Fed. R. Civ. P. 23(a)(1). Courts generally presume numerosity when there are at least forty members in the proposed class. *See Charlebois v. Angels Baseball, LP*, No. SACV 10-0853 DOC (ANx), 2011 WL 2610122, at *4 (C.D. Cal. June 30, 2011).

Here, Plaintiff asserts that the proposed Class is currently estimated at 1,390 individuals. *Matern Decl.* ¶ 9. The Class is therefore sufficiently numerous so as to make joinder impracticable. *See Mot.* 25–26. Numerosity is therefore satisfied.

ii. Commonality

To fulfill the commonality requirement of Rule 23(a)(2), plaintiffs must establish questions of law or fact common to the class as a whole. *See* Fed. R. Civ. P. 23(a)(2). The class claims must depend on a common contention that "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). "What matters to class certification . . . is not the raising of common 'questions'—even in droves—but rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Id.* (internal quotation marks omitted). For the purposes of Rule 23(a)(2), even a single common question satisfies the requirement. *See id.* at 359; *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 957 (9th Cir. 2013) (citing *Mazza v. American Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012)).

Here, Plaintiff states that Class Members' claims arise from common, uniform practices which allegedly applied to all Class Members during the Class Period, and involve common questions of law and fact, including but not limited to:

1. Whether Defendants failed to provide compliant meal periods;
2. Whether Defendants failed to authorize and permit compliant rest breaks;
3. Whether Defendants failed to pay Class Members an additional hour of wages for missed meal periods and rest breaks;
4. Whether Defendants utilized an improper rounding policy which resulted in unlawful underpayments;

5. Whether Defendants failed to properly pay all overtime and minimum wages due;
6. Whether Class Members are owed waiting time penalties because Defendants willfully failed to pay them premium wages for missed meal periods and rest breaks and all overtime wages, upon termination of their employment;
7. Whether Defendants provided Class Members with wage statements which omitted the inclusive dates of pay and the employer's address;
8. Whether Defendants' conduct constituted unlawful and/or unfair business practices.

Mot. 26–27. These alleged practices result in common questions as to the affected class members. Commonality is therefore satisfied.

iii. Typicality

Typicality requires a showing that the named Plaintiffs are members of the class they represent and that their claims are "reasonably coextensive with those of absent class members," but not necessarily "substantially identical." Fed. R. Civ. P. 23(a)(3); *Hanlon*, 150 F.3d at 1020. The test of 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." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). The typicality and commonality requirements somewhat overlap. *See General Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n. 13 (1982).

Here, Plaintiff states that he and Class Members all worked as non-exempt employees for Defendants at the same location, and they were all subject to the same allegedly non-compliant policies. *Mot.* 27. Given that the practices were allegedly applicable to all employees, Class Members possess a similar interest and have suffered similar injuries as the named Plaintiff. Because Plaintiff's claims and those of the proposed class all arise from the same conduct, typicality is satisfied.

iv. Adequacy

The final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The Ninth Circuit has indicated that "[t]he proper resolution of this issue requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members

and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000).

Here, Plaintiff has no apparent conflicts of interest with other Class Members. *Mot.* 20. Plaintiff's interests are aligned with those of the Class Members, as they all seek monetary relief under the same facts and legal theories. *Id*. Plaintiff's counsel also does not appear to have any conflict of interest with the Class Members. *Id.* Additionally, both Plaintiff and his counsel have demonstrated that they are able to diligently represent the Class. *Id*. Plaintiff's counsel has extensive experience in prosecuting employment class action and wage-and-hour class cases, and has previously been appointed as class counsel in numerous wage-and- hour actions. *Id.* Adequacy is therefore satisfied.

v. Predominance and Superiority

Having concluded that Plaintiff satisfies the Rule 23(a) factors, the Court now turns to Rule 23(b)(3). Rule 23(b)(3) provides that a class may be certified where common questions of law or fact predominate over individual questions and a class action is the superior method for adjudicating the controversy as a whole. *See* Fed. R. Civ. P. 23(b)(3). The predominance aspect specifically "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. "When common questions 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." *Hanlon*, 150 F.3d at 1022.

Here, Plaintiff argues that he and the Class Members are entitled to the same legal remedies based on the same alleged conduct. *Mot.* 21. For example, Plaintiff alleges that Defendants' uniform policies, practices, and procedures led Plaintiff and the other Class Members to suffer violations such as non-compliant meal and rest periods, unpaid overtime and minimum wages, and unpaid waiting time penalties. *Id.* Therefore, the question of whether Defendants' uniform policies failed to compensate Class Members as required by law is common to the entire class, and predominates over individual issues.

As for superiority, requiring thousands of class members to litigate their claims separately would be inefficient and costly, resulting in duplicative and potentially conflicting proceedings. *See Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978) ("Numerous individual actions would be expensive and time-consuming and would create the danger of conflicting decisions as to persons similarly situated."). Class members could face difficulty finding legal representation and could lose incentive to bring their claims if forced to do so in

isolation. *See In re Napster, Inc. Copyright Litig.*, No. C 04-1671 MHP, 2005 WL 1287611, at *8 (N.D. Cal. June 1, 2005) (finding superiority in part because "many small composers individually lack the time, resources, and legal sophistication to enforce their copyrights").

Here, class treatment is superior to other available means for the fair and efficient adjudication of the controversy. The Class is currently estimated to consist of approximately 1,390 individuals, making the litigation of individual cases impractical. *Mot.* 30. It is also unlikely that Class Members would pursue individual claims for relatively small damages, as doing so would be uneconomical for potential plaintiffs. *See Hanlon*, 150 F.3d at 1023. Thus, a class action would be the superior method for adjudicating this action.

The Court therefore finds the Rule 23(b)(3) predominance and superiority requirements satisfied.

C. Conclusion

Plaintiff has met the requirements for class certification under Rule 23. Therefore, the Court **CERTIFIES** the proposed class for settlement purposes only.

III. Preliminary Approval of the Proposed Class Action Settlement

The next step is to determine whether the settlement reached is "fair, reasonable, and adequate" under Rule 23(e). *See* Fed. R. Civ. P. 23(e)(2).

A. Legal Standard

The approval of a class action settlement is a two-step process under Rule 23(e) in which the court first determines whether a proposed class action settlement deserves preliminary approval. *See In re Am. Apparel, Inc. S'holder Litig.*, No. CV 10-6352 MMM (CGx), 2014 WL 10212865, at *5 (C.D. Cal. July 28, 2014). "At the preliminary approval stage, a court determines whether a proposed settlement is within the range of possible approval and whether or not notice should be sent to class members." *True v. American Honda Motor Co.*, 749 F. Supp. 2d 1052, 1063 (C.D. Cal. 2010). Preliminary approval amounts to a finding that the terms of the proposed settlement warrant consideration by members of the class and a full examination at a final approval hearing. *See Manual for Complex Litigation* (Fourth) § 13.14. Preliminary approval is appropriate if "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range

of possible approval." *Ma v. Covidien Holding, Inc.*, No. SACV 12-2161 DOC, 2014 WL 360196, at *4 (C.D. Cal. Jan. 31, 2014); *see also Eddings v. Health Net, Inc.*, No. CV 10-1744 JST (RZx), 2013 WL 169895, at *2 (C.D. Cal. Jan. 16, 2013).

After notice is given to the class, preliminary approval is followed by a review of the fairness of the settlement at a final fairness hearing, and, if appropriate, a finding that it is "fair, reasonable, and adequate." Fed R. Civ. P. 23(e)(2); *see also Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012); *Hanlon*, 150 F.3d at 1027. In making this determination, the district court must

> balance a number of factors: the strength of the 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.

Hanlon, 150 F.3d at 1026; *see also Staton*, 327 F.3d at 959; *Officers for Justice v. Civil Serv. Comm'n of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982) (noting that the list of factors is "by no means an exhaustive list").

The district court must approve or reject the settlement as a whole. *See Hanlon*, 150 F.3d at 1026 ("It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness."). The Court may not delete, modify, or rewrite particular provisions of the settlement. *See Dennis v. Kellogg Co.*, 697 F.3d 858, 868 (9th Cir. 2012); *Hanlon*, 150 F.3d at 1026. The district court is cognizant that the settlement "is the offspring of compromise; the question . . . is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon*, 150 F.3d at 1027. Because it is provisional, courts grant preliminary approval of a class action settlement where the proposed settlement does not disclose grounds to doubt its fairness and lacks "obvious deficiencies." *In re Vitamins Antitrust Litig.*, No. MISC 99-0197(TFH), 2001 WL 856292, at *4 (D.D.C. July 25, 2001) (quoting *Manual for Complex Litigation* (Third) § 30.41).

B. Overview of the Settlement Agreement

Under the Settlement, Defendants will pay a gross settlement amount of $800,000. *Mot.* 5. The gross settlement amount funds: (1) settlement awards to participating Class Members; (2) attorneys' fees totaling $266,666, or one-third of the settlement amount; (3) settlement administration costs of $35,000; (4) the class representative service award in an amount not to

exceed $10,000; and (5) $46,666.67 in PAGA civil penalties, of which $35,000 will go to the California Labor and Workforce Development Agency ("LWDA"). *Id.* 5–6. For tax purposes, the Settlement Administrator will treat the individual settlement payments as one-third wages, one-third penalties, and one-third interest. *Id.* 6.

C. Analysis of Settlement Agreement

i. Fair and Honest Negotiations

In general, evidence that a settlement agreement is arrived at through genuine arms-length bargaining with a private mediator supports a conclusion that the settlement is fair. *See Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms' length, non-collusive, negotiated resolution."); *Sarabi v. Weltman, Weinberg & Reis Co., L.P.A.*, No. CV 10-1777 AJB (NLSx), 2012 WL 3809123, at *1 (S.D. Cal. Sept. 4, 2012) (holding that a settlement should be granted preliminary approval after the parties engaged in extensive negotiations); *Aarons v. BMW of N. Am., LLC*, No. CV 11-7667 PSG (CWx), 2014 WL 4090564, at *10 (C.D. Cal. Apr. 29, 2014) (declining to apply a presumption but considering the arms-length nature of the negotiations as evidence of reasonableness).

Here, the Settlement was reached after extensive settlement negotiations, including a private mediation session conducted by the Honorable Louis M. Meisinger (Ret.), a respected mediator experienced in handling complex wage-and-hour matters. *Mot.* 13. At all times, the parties conducted their settlement negotiations at arm's length. *Id.* Both Parties went into the mediation session willing to explore the potential for a settlement of the dispute and prepared to litigate their position through trial and appeal if a settlement was not reached. *Id.*

The parties also conducted significant formal and informal discovery and investigations prior to the mediation. After the Complaint was filed, Plaintiff's counsel propounded multiple sets of written discovery on Defendants and reviewed their responses thereto, conducted a thorough evaluation of time records and payroll data provided by Defendants, which included obtaining a detailed analysis of the time records from a statistical analyst, and reviewed a volume of documents produced by Defendants and obtained through other sources. *Id.* 14. Both parties' investigation and discovery efforts enabled them to intelligently and effectively negotiate the proposed Settlement.

Although the Parties did not reach an agreement at the time of the mediation, with the aid of the mediator's evaluation and proposal, they ultimately reached a conditional agreement,

which required Defendants to produce additional documents to confirm representations that had been made at mediation. *Id*. These documents included additional time and payroll records. *Id*. The additional records produced by Defendants were subsequently analyzed by Plaintiff's statistical analyst, and it was only after this process that the Parties ultimately executed the Stipulation. *Id.*

There is no indication that the negotiations were dishonest or collusive in any way, and the extensive discovery conducted in this case suggests that the parties were well informed and had sufficient information to assess the merits of their claims. *See Glass v. UBS Fin. Servs., Inc*., CV 06-4068 MMC, 2007 WL 221862, at *5 (N.D. Cal. Jan. 26, 2007) (reasoning that the parties' having undertaken informal discovery prior to settling supports approving the class action settlement). The Court is therefore satisfied that the Settlement is the product of fair and honest negotiation.

ii. Settlement Amount

To evaluate whether a settlement falls within the range of possible approval, "courts consider plaintiffs' expected recovery balanced against the value of the settlement offer." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).

Here, the non-reversionary gross settlement amount is $800,000. Based on payroll and class data provided by Defendants and Plaintiff's assessment of the likelihood of their success on each claim, Plaintiffs estimate a Class of approximately 1,390 individuals, and a maximum damages award of as much as $4,603,145 if the case proceeded to trial. *Mot.* 16.

The gross settlement amount of $800,000 therefore represents approximately 18 percent of the estimated potential recovery. This is within the range of possible approval. *See In re Mego*, 213 F.3d at 456, 459 (comparing a nearly $2 million gross settlement payment to a potential recovery figure of $12 million and finding that recovering "roughly one-sixth of the potential recovery" was fair and adequate under the circumstances of the case); *Glass*, WL 221862, at *4 (approving a settlement for unpaid overtime wages where the settlement amount constituted approximately 25 percent of the amount plaintiffs might have proved at trial); *see also Rigo v. Kason Indus., Inc.*, No. CV 11-0064 MMA (DHBx), 2013 WL 3761400, at *5 (S.D. Cal. July 16, 2013) ("[D]istrict courts have found that settlements for substantially less than the plaintiff's claimed damages were fair and reasonable, especially when taking into account the uncertainties involved with the litigation.").

Individual Settlement Awards will be determined by dividing the net settlement amount pro rata among participating Class Members based on each Member's number of compensable workweeks. *See Dkt. # 48-2, Stipulation of Class Action Settlement ("Stipulation")* ¶ 54a iv. Individual awards will be determined by dividing the net settlement amount by the total number of compensable workweeks for all participating Class Members, resulting in a "workweek value." *Id*. The workweek value will be multiplied by the number of compensable workweeks worked by each Class Member. *Id*. Prior to the final approval hearing, Class Counsel will provide the results of the administration of the Settlement as of that date, so the Court can evaluate the amount of the Individual Settlement Awards.

The Settlement Agreement confers a substantial benefit on class members who would face significant risk of no recovery and ongoing litigation expense if forced to proceed with litigation. Defendants contest liability, as well as the propriety of class certification, and are prepared to vigorously oppose certification and to defend against Plaintiff's claims if the action does not settle. *Mot*. 16. Plaintiff recognizes that a "legitimate controversy exists as to each cause of action." *Matern Decl*. ¶ 30. The Settlement's elimination of risk, delay, and further expenses weighs in favor of approval. In light of the delay and expense associated with continued litigation, the Court finds that the settlement amount may be within the range of approval, but will not make a final determination until it knows the approximate recovery for each Class Member.

iii. Attorneys' Fees and Costs

When approving attorneys' fees in common fund cases, courts in the Ninth Circuit have discretion to apply the percentage-of-the-fund method or the lodestar method to determine reasonable attorneys' fees. *See Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000). If employing the percentage-of-the-fund method, the "starting point" or "benchmark" award is 25 percent of the total settlement value. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). The percentage can range, however, and courts have awarded more than 25 percent of the fund as attorneys' fees when they have deemed a higher award to be reasonable. *See e.g.*, *Gardner v. GC Services, LP*, No. 10CV0997-IEG (CAB), 2012 WL 1119534, at *7 (S.D. Cal. Apr. 2, 2012) (finding as reasonable a departure from the 25 percent benchmark where the results achieved were favorable, the risks of litigation were substantial, and the case was complex); *In re Mego*, 213 F.3d at 463 (upholding district court's award of 33 1/3 percent of the settlement fund); *Knight v. Red Door Salons, Inc.*, No. 08-1520 SC, 2009 WL 248367, at *17 (N.D. Cal. Feb. 2, 2009) ("[N]early all common fund awards range around 30%.").

Here, Class Counsel will request an attorneys' fees award in an amount not to exceed $266,666.67, or 33 1/3 percent of the gross settlement amount, and costs and expenses not to exceed $22,000.00. *Mot*. 7. Because the contemplated attorneys' fees award is greater than the 25 percent "benchmark" established in this Circuit, Class Counsel must justify an upward departure from the 25 percent benchmark under the *Vizcaino* factors. *See Vizcaino*, 290 F.3d at 1048–50 (examining "(1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of the work; (4) the contingent nature of the fee and the financial burden carried by plaintiffs; and (5) awards made in similar cases").

Class Counsel will submit additional information regarding the work performed and request for attorneys' fees, as well as a detailed summary of its costs and expenses, in connection with its Motion for Attorneys' Fees, to be considered at the time of the final approval hearing. *Matern Decl*. ¶ 46. Class Counsel is further instructed to provide the Court with additional memoranda showing the requested hourly rate and hours expended in this case so that it can calculate the lodestar value and determine if use of a multiplier is required and acceptable.

iv. Administration Costs

The Settlement Administrator's fees and expenses are currently estimated not to exceed $35,000 and will be paid out of the Gross Settlement Amount. *See Stipulation* ¶ 55.d. Class Counsel has obtained a bid from KCC, LLC in the amount of $29,000 for the estimated settlement administration costs in this matter. *See Matern Decl.* ¶ 47.

This request is reasonable in light of the proposed class size of approximately 1,390 people, and the costs and expenses associated with administering the notices and distributing the awards and tax documentation to the claimants. *See Ching v. Siemens Indus.*, No. 11–cv–04838–MEJ, 2014 WL 2926210, at *2 (approving an estimated $15,000 claims administrator fee for sixty-eight claims); *Ozga v. U.S. Remodelers, Inc.*, No. C 09–05112 JSW, 2010 WL 3186971, at *2 (N.D. Cal. Aug. 9, 2010) (granting $10,000 to the claims administrator for 156 claims).

iv. Incentive Awards

"Incentive awards are fairly typical in class action cases." *Rodriguez*, 563 F. 3d at 958. When considering requests for service payments, courts consider five factors: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit

(or lack thereof) enjoyed by the class representative as a result of the litigation. *See Van Vraken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). Furthermore, courts typically examine the propriety of an incentive award by comparing it to the total amount other class members will receive and considering the efforts the plaintiff made in furtherance of the litigation. *See Staton*, 327 F.3d at 975.

Here, the Settlement Agreement provides that named Plaintiff will request an incentive award in an amount not to exceed $10,000. *Mot.* 7. The Court notes that this award seems high in relation to the potential recovery for each Class Member, but it will determine the reasonableness of the requested incentive award when ruling on Plaintiff's Motion for Final Approval, in which Plaintiff will submit a declaration outlining Plaintiff's efforts expended and risks taken on behalf of the Class. *Mot.* 15. The Court will also compare Plaintiff's award to that of each Class Member to determine whether it is reasonable.

v. PAGA Penalty

The parties have agreed to a PAGA award of $46,666.67. *Mot.* 8. In accordance with California Labor Code section 2699(i), the Settlement provides that the LWDA will receive 75 percent of the amount attributable to PAGA penalties. *See id.*; *see also* Cal. Lab. Code § 2699(i) (providing that 75 percent of civil penalties recovered by aggrieved employees should be distributed to the LWDA). Therefore, the LWDA will receive $35,000. *Mot.* 8. This PAGA allocation represents roughly 0.05 percent of the $800,000 gross settlement amount, which falls within the zero to two percent range for PAGA claims approved by courts. *See, e.g.*, *In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or $20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or $1,500); *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims). The Court finds that the settlement of the claims for penalties under PAGA is reasonable.

vi. Payroll Taxes

Finally, the Settlement Agreement provides that the employees' share of payroll taxes and withholdings with respect to the Individual Settlement Awards will be paid out of the gross settlement amount, while Defendants' share of payroll taxes and withholdings will be paid separately and in addition to the gross settlement amount. *Mot.* 8.

vii. Cy Pres

The Settlement Agreement provides that, if an Individual Settlement Award check is returned to the Administrator as undeliverable, or remains uncashed after one hundred and twenty (120) days after it is issued, the check(s) will be voided, and the funds will be distributed by the Settlement Administrator as follows: 25% to the California State Treasury for deposit in the Trial Court Improvement and Modernization Fund, 25% to the California State Treasury for deposit into the Equal Access Fund, and 50% to the *cy pres* recipient Safe Place for Youth, a 501(c)(3) nonprofit organization that provides services to homeless youth in the Los Angeles area. *Mot*. 7.

The Court is not persuaded that the proposed *cy pres* distribution is adequate. The Ninth Circuit requires all *cy pres* distributions to (1) address the objectives of the underlying statutes; (2) target the plaintiff class; and (3) provide reasonable certainty that any member will be benefitted. *See Naschin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011) (emphasizing that whether a *cy pres* remedy is fair, adequate and reasonable depends upon whether the award "account[s] for the nature of the plaintiffs' lawsuit, the objectives of the underlying statues, and the interests of the silent class members.").

The Court finds that the *cy pres* distribution to Trial Court Improvement and Modernization Fund, the Equal Access Fund, and Safe Place for Youth does not meet these standards. The parties fail to establish how Safe Place for Youth, a child advocacy program providing a range of services for homeless youth, bears any relationship to the underlying nature of this case, or how the *cy pres* distribution to this organization either targets or benefits the class. The same deficiencies exist as to the Trial Court Improvement and Modernization Fund and the Equal Access Fund; distributions to the court system and to those who cannot afford access to do not bear a relationship to this wage and hour case, nor do they benefit the class. *See Hofmann v. Dutch LLC*, CV 14-02418 GPC JLB, 2017 WL 840646, at *3 (S.D. Cal. Mar. 2, 2017) ("A *cy pres* award meets the objectives of the underlying statute when the *cy pres* recipient's mission and the statute's goals have a non-tenuous connection."). Therefore, under Ninth Circuit law, the Court cannot grant approval of the proposed *cy pres* distribution. *See Dennis v. Kellogg Co.*, 697 F.3d 858, 866 (9th Cir. 2012) (noting that "[i]n approving the *cy pres* distribution to charities that had no relation to the class or to the underlying claims, the district court 'applied the incorrect legal standard' and abused its discretion.") (quoting *Naschin*, 663 F.3d at 1040).

Although Class Counsel properly provided the Court with a declaration stating that no conflict of interest with this *cy pres* recipient exists, the Ninth Circuit factors are not met. *See*

Matern Decl. ¶ 50. The parties are therefore ordered to submit a new *cy pres* recipient and a memorandum outlining the work that the contemplated organization does, how it is related to the present action, and how the distribution will benefit class members.

D. Notice to Class Members

Before the final approval hearing, the Court requires adequate notice of the settlement be given to all class members. Federal Rule of Civil Procedure 23 provides:

> For any 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. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B). "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.'" *Churchill Vill., LLC v. General Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)).

The proposed Notice Packet will consist of the Class Notice, Information Sheet, and Exclusion Form. *Mot.* 10. The Class Notice will be provided in both English and Spanish, and is written in plain, concise language that, among other things, includes: (1) basic information about the Action and the Settlement; (2) the definition of the proposed Class; (3) a description of the claims in the Action; (4) an explanation of how Class Members can obtain benefits under the Settlement; (5) an explanation of how Class Members can exercise their right to request exclusion from or object to the Settlement; (6) information regarding the scope of the Released Claims and the binding effect of the Settlement; (7) the time and date of the Final Approval Hearing date; and (8) contact information for Class Members who wish to obtain additional information. *Mot.* 22–23.

Additionally, the Information Sheet will set forth each Class Member's number of Compensable Workweeks and estimated Individual Settlement Award, and will also contain

instructions for Class Members who wish to dispute their number of Compensable Workweeks. *Id.* 11.

Within fourteen (14) days of entry of the Preliminary Approval Order, Defendants will provide the Settlement Administrator with each Class Member's full name, last known address, Social Security number, and number of Compensable Workweeks ("the Class Information"). *See id.* 10. Within ten (10) days after receiving the Class Information from Defendants, the Settlement Administrator will mail copies of the Notice Packet to all Class Members by regular First Class U.S. Mail. *See id.* On the same date that the Notice Packet is mailed to Class Members, or as soon thereafter as possible, notice of the Settlement will also be published in both an English and a Spanish news publication. *See id.* That published notice will instruct Class Members who did not receive a Notice Packet how to contact the Settlement Administrator. *Id.*

Any Notice Packet returned to the Settlement Administrator as non-deliverable will be re-mailed to the forwarding address attached to the packet. *Id.* 23. If no forwarding address is provided, the Settlement Administrator will attempt to determine the correct address using skip tracing or another automated search, and will re-mail the Notice Packet to an updated address. *Id.*

Class Members will have until forty-five (45) days after the Settlement Administrator mails the Notice Packets to Class Members ("Response Deadline") to submit an Exclusion Form, Notice of Objection, or dispute regarding their number of Compensable Workweeks. *See Stipulation* ¶ 31, Ex. 2. Class Members who receive re-mailed Notice Packets will have their deadlines extended by ten days from the date of the re-mailing. *Mot.* 24.

Lastly, Plaintiffs propose that a final approval hearing take place in "late August, 2018," assuming that this Order is issued on or before April 16, 2018. *Mot.* 25. This proposed timing is acceptable to the Court and allows sufficient time for potential class members to act in their best interests.

IV. Conclusion

For the foregoing reasons, the Court **GRANTS** Plaintiffs' motion for preliminary approval of class action settlement. The Court **PRELIMINARILY APPROVES** the Settlement Agreement and **APPROVES** the Notice. The final approval hearing is set for **August 27, 2018 at 1:30PM**.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-9187 PSG (KSx)	Date	April 09, 2018
Title	Jeremey Edwards v. Chartwell Staffing Services, Inc., *et al.*		

The Court **ORDERS** at least thirty days before the final approval hearing and in addition to the motion for final approval for class action settlement:

· A memorandum justifying class counsel's award of attorneys' fees and costs that includes declarations supporting the reasonableness of each attorney's requested hourly rate, itemized billing statements showing hours worked, hourly rates, expenses incurred thus far, and expenses to be incurred in the future. The memorandum should explain in detail why an upward departure from the benchmark percentage rate is warranted;

· A memorandum justifying the incentive award for the named Plaintiff, including a detailed description of Plaintiff's efforts in pursuit of this case, and supporting declaration;

· A memorandum describing the process and results of the settlement administration, including the number of claimants and the settlement award to each; and

· A memorandum detailing a revised *cy pres* allocation under Ninth Circuit law and providing the organization to which Plaintiff wishes to contribute funds from the Settlement, and a declaration that the revised recipient presents no conflict of interest with Class Counsel, Defense Counsel, or Class Members.

IT IS SO ORDERED.