UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SALVADOR CANAVA et al., Plaintiffs, v. RAIL DELIVERY SERVICES INCORPORATED et al., Defendants.	Case No. 2:19-cv-00401-SB-KK ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs, truck drivers who hauled freight for Defendants, allege that Defendants misclassified them as independent contractors, which resulted in Defendants paying them less than the applicable minimum wage and committing other wage-and-hour violations of the Fair Labor Standards Act (FLSA) and California law, including California's Private Attorneys General Act (PAGA). Dkt. No. 208. The Court certified a class and FLSA collective in February 2020. Dkt. No. 111. The Court conducted a limited jury trial on the questions of whether Plaintiffs were employees under FLSA and California law, and the jury returned a verdict for Defendants on both issues. In August 2022, the Court held a bench trial on liability and damages under California law, after which the parties engaged in further settlement discussions. Dkt. No. 451-1 at 11. After weeks of negotiation, the parties reached an agreement, and Plaintiffs now move for preliminary approval of that settlement. Dkt. No. 451, 451-2 (Settlement Agreement). The Court held a hearing on the motion on December 2, 2022, and finds on this record that the settlement should be preliminarily approved.

The terms of the parties' settlement is set forth in the Settlement Agreement. Defendant agrees, in exchange for release of claims, to make a payment of $6 million, inclusive of class payments, administration costs, attorney's fees and expenses, and awards to the class representatives. Settlement Agreement § I(W).

Payments to class members will include a base amount of $500 plus a pro rata share of the settlement amount based on the number of weeks worked for Defendant. *Id.* at Ex. D. A portion of the settlement amount will also be allocated as a PAGA payment. PAGA permits plaintiffs to stand in for the state's Labor and Workforce Development Agency (LWDA) and assert claims on behalf of all "aggrieved employees." In this case, aggrieved employees for PAGA purposes are members of the class who worked for Defendant between March 4, 2018 and the filing of the motion for preliminary approval. *Id.* § I(D). PAGA provides for civil penalties at a statutory rate based on the number of aggrieved employees and number of pay periods for which an employer committed violations. Cal. Lab. Code § 2699(f). Penalties recovered are split, with 75% going to LWDA and 25% going to the aggrieved employees. *Id.* § 2699(i). The $100,000 allocated from the settlement as a PAGA payment will be so split between the LWDA and the aggrieved employees in the class. Settlement Agreement § I(GG)

The Court finds on this record that the settlement should be preliminarily approved.

I.

A proposed settlement class must meet the requirements of Federal Rule of Civil Procedure 23(a)—numerosity, commonality, typicality, and adequacy of representation—and satisfy at least one of the requirements of Rule 23(b). On February 7, 2020, the Court certified this action as a class action under Rule 23(b)(3) and the parties sent notice to the class in December 2020. Dkt. No. 111, 150. The parties' proposed settlement class is materially identical to the class certified, except that they propose a cutoff date for class membership to facilitate effective settlement. Dkt. No. 451-1 at 16. Plaintiffs propose extending the class from those who received notice to include any employees who meet the class criteria as of the filing of their motion for preliminary approval. Because this change "does not alter the reasoning underlying the Court's prior Order granting class certification," the modification to the class definition is appropriate. *Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723-JSC, 2021 WL 4924849, at *3 (N.D. Cal. Oct. 21, 2021). The proposed settlement class satisfies Rule 23's requirements. The settlement class is hereby defined as: All truck drivers who, from March 4, 2015[1] through October 21, 2022, owned or leased a truck that they

[1] The class as originally certified and as stated in the Settlement Agreement define the class to include "drivers who, at any time after March 3" drove for Rail Delivery Services, Inc. but the proposed notice to the class defines the class period

personally drove for Rail Delivery Services, Inc. (RDS) under an independent contractor agreement. Settlement Agreement § I(J) (as modified). Per the Settlement Agreement, the class will not include any individual who opted out of the class as a result of the notice of certification sent in December 2020. *Id*. § I(L).

II.

Class actions may only be settled with court approval. Fed. R. Civ. P. 23(e). There is a "strong judicial policy" favoring settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). As such, the court's role is limited to determining whether the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e). At the preliminary stage, after a class has been certified, there is an "initial presumption of fairness," and a court may grant preliminary approval if the settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

The first factor is satisfied. Discovery is complete and the case has been tried, so the parties are fully informed about the merits of their claims and defenses. Dkt. No. 451-1 at 12–14. The settlement was negotiated by experienced counsel, who are satisfied that the settlement is in the best interests of the class. *Id*.; *see Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (according "great weight" on final approval to the recommendation of counsel acquainted with the case). The parties also engaged in formal mediation before a magistrate judge, participated in follow-up discussions, and exchanged drafts of the terms of the settlement. Settlement Agreement at 2. The Court has no reason to doubt that the settlement was the product of informed, arm's-length negotiations, which weighs "in favor of a finding of non-collusiveness." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011).

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as beginning on March 4, 2015. Dkt. No. 451-3. At the preliminary approval hearing, counsel confirmed that a starting date of March 4, 2015 is functionally the same as "any time after March 3, 2015." The Court accepts this explanation, concludes that the difference is immaterial, and modifies the proposed class definition to comport with the parties' intent and the proposed notice.

As to the second and third requirements, the settlement has no "obvious" deficiencies, nor does it display any preferential treatment to class representatives (other than the service awards discussed below) or portions of the class. The parties expect that pro rata distribution, after deductions from the gross settlement amount, will result in an average individual payment of approximately $8,000. Dkt. No. 451-1 at 12. The use of pro rata distribution ensures that any disparity of payments between class members will be based on the number of weeks worked, which appears to be an equitable method of distribution.

Plaintiffs intend to seek up to 25% (up to $1,500,000) in attorney's fees and up to $360,000 in costs, a $10,000 service award for each of the three named plaintiffs, and a $5,000 service award for each of the three plaintiffs who testified at trial. The typical benchmark for attorney's fees in common fund cases is 25%. *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995). Service awards are appropriate for both named plaintiffs and other class representatives involved in a lawsuit. *See, e.g.*, *Satchell v. Fed. Express Corp.*, No. C 03 2878 SI, 2007 WL 1114010 (N.D. Cal. Apr. 13, 2007) (preliminarily approving service payments for named plaintiffs and declarant plaintiffs); *Wren v. RGIS Inventory Specialists*, No. C-06-05778, 2011 WL 1230826 (N.D. Cal. Apr. 1, 2011), *supplemented*, 2011 WL 1838562 (N.D. Cal. May 13, 2011) (approving awards to named plaintiffs and other plaintiff who "made contributions to the prosecution of the class action that exceeded those of the class members"). A service award of $5,000 to named plaintiffs is considered presumptively reasonable in the Ninth Circuit. *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1024 (E.D. Cal. 2019); *see also In re Wells Fargo & Co. S'holder Derivative Litig.*, 445 F. Supp. 3d 508, 534 (N.D. Cal. 2020) ("An incentive award of $5,000 is presumptively reasonable, and an award of $25,000 or even $10,000 is considered 'quite high.'").

The Court will decide the reasonableness of the requested fees and service awards on final approval after reviewing Plaintiffs' requests and any objections thereto. To allow class members to submit any objections, the Court requires Plaintiffs (separate from their motion for final approval) to file their motion for attorney's fees before class members' objection or opt-out deadline. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993 (9th Cir. 2010) ("We hold that the district court abused its discretion when it erred as a matter of law by . . . setting the objection deadline for class members on a date before the deadline for lead counsel to file their fee motion."). Because the Court will further review the reasonableness of the fees and awards requested at final approval, Plaintiffs' anticipated requests do not preclude preliminary approval of the settlement.

Finally, the settlement amount falls within the range of possible approval. To determine whether the settlement amount is adequate, "courts primarily consider plaintiffs' expected recovery balanced against the value of the settlement offer." *In re Tableware Antitrust Litig.*, 484 F. Supp. at 1080. The settlement amount appears reasonable under this standard. The $6,000,000 settlement amount includes: no more than $25,000 for the settlement administrator and administration; up to $1,500,000 for attorney's fees and $360,000 for reasonable costs; up to $45,000 for service awards; an allocation of $100,000 for PAGA penalties—$75,000 for the Labor & Workforce Development Agency and $25,000 for employees eligible for PAGA payments; and the remainder to the class.[2] Twenty percent of the payments to class members will be allocated as wages, for which Defendant shall pay applicable taxes. Although Plaintiffs estimate that the potential remaining liability in this case is over $12 million, they acknowledge that they lost some of their claims at trial and that there are uncertainties—including proof of damages—about the resolution of their claims, as detailed in the motion. Dkt. No. 451-1 at 8–10. Given the significant risks of continued litigation, which the parties agree would be "expensive, complex and risky," the proposed settlement amount—almost half of Plaintiffs' estimate of potential recovery—appears to be fair and adequate for purposes of preliminary approval. *Id.*; *see In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (a settlement amounting to "only a fraction of the potential recovery" was fair "given the difficulties in proving the case").

Accordingly, the Court preliminarily finds that the settlement is fair and reasonable.

III.

Finally, Rule 23(e) requires notice of the settlement to the class to comport with due process. Notice "is satisfactory if it 'generally describes the terms of the

[2] The Settlement Agreement also provides for a $100,000 "Errors and Omissions" fund within the settlement amount to cover any errors in the calculation of awards to class members. Unused portions of that fund will be reallocated to the class, and errors in excess of the fund will be covered by Defendant. Settlement Agreement § I(S). The Errors and Omissions fund will not be used to compensate class members inadvertently left off the class list. Defendant will pay those class members a settlement share, determined by the administrator, separate from the gross settlement. *Id.*

settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Churchill Vill., L.L.C. v. Gen. 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)). Rule 23(c)(2)(B) provides that the notice must state: (1) "the nature of the action," (2) the class definition, (3) "the class claims, issues, or defenses," (4) that a class member may appear in the action through an attorney, (5) that the court will exclude any class member who requests exclusion, (6) "the time and manner for requesting exclusion," and (7) "the binding effect of a class judgment on members."

The proposed notice provided by the parties, Dkt. No. 451-3, contains a summary of the litigation and proposed settlement terms. The notice also includes the class definition and the method by which settlement payments will be calculated, for both the settlement shares from the net settlement amount and PAGA payments. Plaintiffs will be provided with an estimated settlement share based on the number of weeks they worked and have an opportunity to object to the calculation. The notice also includes an indication that payments will be automatically sent to class members and that they do not need to take action to receive payment. Finally, it informs class members of the claims they will release if they do not opt out and describes the procedures by which they can opt out or object to the settlement (including their right to appear at the final approval hearing). Class members will be mailed a copy of the notice within fifteen business days of the Court's ruling on preliminary approval. The notice packet will be sent to class members through first-class U.S. mail, and if returned to sender, the settlement administrator will take reasonable steps to trace class member mailing addresses. Settlement Agreement § II(E).

The Court finds that the proposed notice[3] and plan to disseminate notice comport with due process.

[3] The proposed notice contains a typographical error, stating that "*$75,0000* of the PAGA payment will be paid to the State of California." Dkt. No. 451-3 at 4 (emphasis added). At the preliminary approval hearing, the parties confirmed that they will correct this error.

IV.

For the foregoing reasons, the Court **GRANTS** Plaintiffs' motion for preliminary approval of the class action settlement as follows:

1. The settlement class is defined as: All truck drivers who, from March 4, 2015 through October 21, 2022, owned or leased a truck that they personally drove for Rail Delivery Services, Inc. (RDS) under an independent contractor agreement.
2. The Settlement Agreement, Dkt. No. 451-2, is preliminarily approved.
3. The form and content of and plan to disseminate the proposed class notice by first class U.S. mail is approved, subject to the parties' correcting the typographical error described *supra*.
4. Settlement Services, Inc. is approved as the settlement administrator.
5. Defendant is ordered to produce the class data required pursuant to Section I(K) of the Settlement Agreement within 5 business days after the entry of this Order.
6. The parties are ordered to proceed according to the following schedule and deadlines:

Event	Deadline
Deadline to Provide Notice to Class	December 23, 2022
Deadline to File Motion for Award of Attorney's Fees and Expenses	January 20, 2023
Deadline for Class to File Objections to Settlement	February 24, 2023
Deadline to File Motion for Final Approval of Settlement	March 10, 2023
Hearing on Final Approval of Settlement and Motions for Fees and Award	April 7, 2023 at 8:30 a.m. in Courtroom 6C

IT IS SO ORDERED.

Date: December 2, 2022

Stanley Blumenfeld, Jr.
United States District Judge