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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BILLY ALABSI,
Plaintiff,
v.
SAVOYA, LLC,
Defendant.

Case No. 18-cv-06510-KAW

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL**

Re: Dkt. No. 62

United States District Court
Northern District of California

Plaintiff Billy Alabsi filed the instant putative class and collective against Defendant Savoya, LLC, alleging violations of the Fair Labor Standards Act (“FLSA”) and various state labor laws. (*See* First Am. Compl. (“FAC”), Dkt. No. 29.) Pending before the Court is Plaintiff’s motion for preliminary approval of a settlement agreement between the parties. (Pl.’s Mot., Dkt. No. 62.) Having considered the parties’ filings and the arguments presented at the January 16, 2020 motion hearing, and for the reasons set forth below, the Court GRANTS Plaintiff’s motion for preliminary approval.

I. BACKGROUND

A. Factual Background

Defendant operates a chauffeured limousine and luxury car transportation service. (FAC ¶ 15.) Plaintiff and the putative class worked for Defendant as drivers. (FAC ¶ 1.)

Plaintiff alleges that Defendant misclassified its drivers as independent contractors, rather than employees. (FAC ¶¶ 15, 29.) For example, Plaintiff asserts that Defendant has and exercises extensive control over its drivers, assigning specific customers, locations, pickup times, and destinations. (FAC ¶ 18.) Further, while drivers have the right to decline assignments, they are penalized for declining jobs by not receiving future jobs from Defendant. (FAC ¶ 19.) Defendant

1 requires drivers to provide their own vehicles, which must usually be black, less than three years
2 old, free of any visible damage, and be on Defendant's list of approved vehicles. (FAC ¶ 20.)
3 Defendant requires drivers to use environmentally responsible maintenance procedures. (FAC ¶
4 20.) Vehicles must be stocked with an umbrella, bottled water, newspapers, maps, GPS device,
5 and a detailing kit. (FAC ¶ 21.) They must also be free of magazines, tissues, candy, promotional
6 materials, or items hanging from the rearview mirror. Vehicles must be non-smoking and have a
7 neutral odor, and not contain visible air fresheners. (FAC ¶ 21.) Drivers must use tablets with
8 computer-generated signage, cannot speak unless spoken to, confirm radio and temperature
9 preferences with passengers during the first five minutes of the trip, and never discuss rates with
10 passengers. (FAC ¶ 22.)

11 Defendant monitors its drivers by requiring that they keep Defendant's app on and use
12 status update buttons to indicate when they are onsite, when the passenger is onboard, and when
13 the passenger is dropped off. (FAC ¶ 23.) Drivers must arrive at jobs fifteen minutes early, or
14 "spot time," and attend meetings, which they are not compensated for. (FAC ¶¶ 32-33.)
15 Defendant also requires that drivers have liability insurance in a minimum amount set by
16 Defendant, that Defendant is listed as an Additional Insured on the insurance policy, and that the
17 policy come from an insurance carrier with an A.M. Best rating of A-VII. (FAC ¶ 24.) Finally,
18 Defendant has the right to terminate drivers without cause with 30 days' notice. (FAC ¶ 25.)

19 Plaintiff asserts that by misclassifying drivers as independent contractors, Defendant fails
20 to reimburse drivers for expenses including vehicle costs and other operation costs such as
21 garaging, fuel, maintenance, repair, cleaning, licensing, insurance premiums, cell phone and
22 tablets services, and stocking the vehicle with Defendant-required items. (FAC ¶ 29.) Plaintiff
23 further alleges that after taking into account these expenses, drivers may earn less than minimum
24 wage. (FAC ¶ 67.) Plaintiff also points to the failure to pay for spot time and the mandatory
25 meetings. (FAC ¶ 68.) Finally, Plaintiff alleges that Defendant failed to pay overtime because
26 Defendant compensated its drivers at the same rate schedule for all hours worked, including
27 overtime. (FAC ¶ 76.)
28

B. Procedural History

1 **B. Procedural History**
2 On October 24, 2018, Plaintiff filed the instant putative class and collective action against
3 Defendant. (Compl., Dkt. No. 1.) On January 9, 2019, Plaintiff filed his amended complaint,
4 bringing claims for: (1) failure to pay minimum wage in violation of the FLSA; (2) failure to pay
5 overtime in violation of the FLSA; (3) failure to pay minimum wage compensation in violation of
6 California Labor Code §§ 1194 and 1197, and Industrial Welfare Commission ("IWC") wage
7 orders; (4) failure to pay overtime in violation of California Labor Code §§ 510, 1194, and 1198,
8 and IWC wage orders; (5) failure to reimburse business expenses in violation of California Labor
9 Code § 2802; (6) failure to provide and/or authorize meal and rest periods in violation of
10 California Labor Code §§ 226.7 and 512, and IWC wage orders; (7) failure to provide accurate
11 itemized wage statements in violation of California Labor Code § 226; (8) waiting time penalties
12 in violation of California Labor Code §§ 201-203; (9) unfair business practices in violation of
13 California Business & Professions Code § 17200 *et seq.*; and (10) civil penalties pursuant to the
14 Private Attorneys General Act. (FAC at 12-26.)

15 Defendant filed a motion to transfer and a motion to dismiss. (Dkt. Nos. 22, 34.) On
16 March 25, 2019, the Court denied the motion to transfer and granted in part and denied in part the
17 motion to dismiss. (Dkt. No. 52.) Plaintiff was ordered to file an amended complaint within
18 ninety days. The parties subsequently requested that the Court stay all deadlines in order to attend
19 private mediation. (Dkt. No. 56.)

20 On September 17, 2019, the Court was informed that the parties had successfully mediated
21 the case on August 29, 2019. (Dkt. No. 60.) On October 23, 2019, Plaintiff filed the instant
22 motion for preliminary approval of the class settlement. On November 8, 2019, Defendant filed a
23 statement of non-opposition. (Dkt. No. 64.) On November 13, 2019, the Court requested
24 supplemental briefing. (Dkt. No. 65.) On December 2, 2019, the parties submitted a supplemental
25 brief in response. (Supp. Brief., Dkt. No. 67.) On January 16, 2020, the Court held a hearing on
26 the matter, in which changes were requested. (*See* Dkt. No. 74.) On January 22, 2020, the parties
27 filed a declaration regarding the requested changes. (Chin Decl., Dkt. No. 76.) On January 30,
28 2020, the Court requested additional supplemental briefing. (Dkt. No. 77.) On January 31, 2020,

1 the parties filed a supplemental declaration in response. (Supp. Chin Decl., Dkt. No. 78.)

2 **C. Settlement Agreement**

3 Under the terms of the settlement agreement, Defendant agrees to pay a “Total Settlement
4 Amount” of \$750,000 to settle the claims of the 44 drivers who worked for Defendant in
5 California. (Schwartz Decl., Exh. 1 (“Settlement Agreement”) ¶ 35, Dkt. No. 62-2; Pl.’s Mot. at
6 1.) Of the Total Settlement Amount, Plaintiff’s counsel intends to seek an award of 25%, or
7 \$187,500 for attorney’s fees and \$6,000 in costs.¹ (Pl.’s Mot. at 4.) The Total Settlement Amount
8 also includes a \$7,500 incentive payment for the named Plaintiff, and an estimated \$10,000 for
9 administration costs.² (*Id.*; Settlement Agreement ¶¶ 45, 56.) Finally, the Maximum Settlement
10 Amount includes \$10,000 in penalties under California’s Private Attorneys General Act
11 (“PAGA”); \$7,500 shall be paid to the California Labor and Workforce Development Agency
12 (“LWDA”) and \$2,500 will be part of the Net Settlement Amount for distribution to the
13 participating class members. (Settlement Agreement ¶ 61; Supp. Brief at 6.) This leaves a Net
14 Settlement Amount of \$531,500 for the 44 class members. (Pl.’s Mot. at 4.)

15 The Settlement will be distributed to the class members based on the number of
16 workweeks completed during the relevant class period. (Settlement Agreement ¶¶ 25, 47.)
17 Additionally, 5% of the Net Settlement Amount will be allotted to waiting time penalties, as the
18 waiting time penalties represent approximately 5% of the total damages estimate. (Supp. Chin
19 Decl. ¶ 6.) This amount will be divided between former drivers, based on their average weekly
20 earnings. (Supp. Chin Decl. ¶ 7.) The claims being released by the Settlement are the causes of
21 action asserted in the Action, as well as any additional wage and hour claims that could have been
22 asserted in the Action based on the facts and transactions pled in the complaint. (Pl.’s Mot. at 12;
23 Settlement Agreement ¶ 8.)

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26 ¹ At the hearing, Plaintiff’s counsel stated that the 25% attorney’s fees does not in fact include
litigation costs, but that costs were expected to be \$6,000. Thus, the net settlement fund was
reduced to \$531,500.

27 ² In its supplemental briefing, the parties stated the expected settlement administration costs were
28 \$7,892.00.

1 Once the Court grants preliminary approval, the Settlement Administrator is responsible
2 for mailing a Class Notice to the class members. (Settlement Agreement ¶¶ 62(d), 63(a).) The
3 Settlement Administrator shall use the most current mailing address from Defendant’s records or
4 any more current address discovered from an address search. (Settlement Agreement ¶ 63(a).) If
5 a Class Notice is returned with a forwarding address, the Settlement Administrator shall re-mail
6 the Class Notice. If a Class Notice is returned without a forwarding address, the Settlement
7 Administrator will conduct address searches using skip tracing methods, and re-mail the Class
8 Notice. (Settlement Agreement ¶ 63(b).)

9 The class is bound by the settlement unless they timely submit an exclusion letter.
10 (Settlement Agreement ¶ 64(b).) Participating class members may also file a dispute, and
11 Defendant shall work with the Settlement Administrator to provide available information
12 necessary to resolve the issue. (Settlement Agreement ¶ 66.)

13 Individuals who do not opt out will receive a settlement check. The settlement check will
14 state: “By cashing this check, you are agreeing to release all claims covered by this settlement.
15 You will be opting into the Fair Labor Standards Act (‘FLSA’) settlement, and you will also be
16 exercising and releasing your claims under the FLSA.” (Settlement Agreement ¶ 68(c).) Payment
17 will be made in three installments, as Defendant will be delivering the Total Settlement Amount in
18 three equal payments, every six months, to the Settlement Administrator. (Settlement Agreement
19 ¶¶ 69, 70; Schwartz Decl. ¶ 11.) Defendant is also required to submit a Standby Letter of Credit
20 from a commercial bank, providing a guarantee to satisfy the settlement amount. (Settlement
21 Agreement ¶ 69.)

22 Class members will have 180 days to cash the settlement check. (Settlement Agreement ¶
23 48; Chin Decl., Exh. 2.) If the first and second installment checks are not cashed, they will be
24 voided and distributed in the next installment pro rata to the class members who did cash their
25 checks. Subsequent checks will not be sent to class members who could not be located and/or did
26 not cash their prior checks. (Settlement Agreement ¶ 48.) Any third installment checks not
27 cashed will be voided; if the amount is over \$20,000, the amount will be re-distributed to drivers
28 who cashed their third installment check. If it is under \$20,000, the amount will be paid to the cy

1 pres beneficiary, Legal Aid at Work. (Settlement Agreement ¶ 48; Chin Decl., Exh. 2.)

2 II. LEGAL STANDARD

3 Per Federal Rule of Civil Procedure 23(e), "[t]he claims, issues, or defenses of a certified
4 class may be settled, voluntarily dismissed, or compromised only with the court's approval." The
5 purpose of requiring court approval "is to protect the unnamed members of the class from unjust
6 or unfair settlements affecting their rights." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th
7 Cir. 2008). Thus, before approving a settlement, the Court must conclude that the settlement is
8 "fundamentally fair, adequate, and reasonable." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026
9 (9th Cir. 1998). This inquiry:

10 requires the district court to balance a number of factors: the
11 strength of the plaintiff's case; the risk, expense, complexity, and
12 likely duration of further litigation; the risk of maintaining class
13 action status throughout the trial; the amount offered in settlement;
14 the extent of discovery completed and the stage of the proceedings;
15 the experience and views of counsel; the presence of a government
16 participant; and the reaction of the class members to the proposed
17 settlement.

18 *Id.*; see also *Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (same).

19 Furthermore, the Ninth Circuit has recognized that where no class has been formally
20 certified, "there is an even greater potential for a breach of fiduciary duty owed the class during
21 settlement. Accordingly, such agreements must withstand an even higher level of scrutiny for
22 evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e)
23 before securing the court's approval as fair." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d
24 935, 947 (9th Cir. 2011); see also *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012)
25 ("when . . . the settlement takes place before formal class certification, settlement approval
26 requires a 'higher standard of fairness'"). This more "exacting review" is required "to ensure that
27 class representatives and their counsel do not secure a disproportionate benefit at the expense of
28 the unnamed plaintiffs who class counsel had a duty to represent." *Lane*, 696 F.3d at 819 (internal
quotation omitted); see also *Hanlon*, 150 F.3d at 1026 ("The dangers of collusion between class
counsel and the defendant, as well as the need for additional protections when the settlement is not
negotiated by a court[-]designated class representative, weigh in favor of a more probing inquiry

1 than may normally be required under Rule 23(e)").

2 When applying Rule 23(e), the courts use a two-step process for the approval of class
3 action settlements. First, the Court decides whether the class action settlement deserves
4 preliminary approval. Second, after notice is given to class members, the Court determines
5 whether final approval is warranted. *See O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110,
6 1121-22 (N.D. Cal. 2016). At the preliminary approval stage, courts in this district "have stated
7 that the relevant inquiry is whether the settlement falls within the range of possible approval or
8 within the range of reasonableness." *Cotter v. Lyft*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016)
9 (internal quotation omitted). "In determining whether the proposed settlement falls within the
10 range of reasonableness, perhaps the most important factor to consider is plaintiff's expected
11 recovery balanced against the value of the settlement offer." *Id.*; *see also O'Connor*, 201 F. Supp.
12 3d at 1122. This determination "requires evaluating the relative strengths and weaknesses of the
13 plaintiffs' case; it may be reasonable to settle a weak claim for relatively little, while it is not
14 reasonable to settle a strong claim for the same amount." *Cotter*, 176 F. Supp. at 936 (citing *In re*
15 *High-Tech Emp. Antitrust Litig.*, Case No: 11-cv-2509-LHK, 2014 WL 3917126, at *4 (N.D. Cal.
16 Aug. 8, 2014).

17 In addition to considering whether the settlement falls within the range of reasonableness,
18 courts in this district also consider whether the settlement: "(1) appears to be the product of
19 serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; [and] (3) does not
20 improperly grant preferential treatment to class representatives or segments of the class." *In re*
21 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal quotation
22 omitted). With respect to the level of scrutiny applied to this determination, "district courts often
23 state or imply that scrutiny should be more lax." *Cotter*, 193 F. Supp. 3d at 1035-36. Several
24 courts in this district have begun to question that "lax review" as "mak[ing] little practical sense."
25 *Id.* at 1036. Instead, these courts suggest that "scrutinizing the agreement carefully at the initial
26 stage and identifying any flaws that can be identified . . . allows the parties to decide how to
27 respond to those flaws (whether by fixing them or opting not to settle) before they waste a great
28 deal of time and money in the notice and opt-out process." *Id.*

III. DISCUSSION

A. Class Certification

Before determining the fairness of a class action settlement, the Court must as a threshold matter "ascertain whether the proposed settlement class satisfies the requirements of Rule 23(a) of the Federal Rules of Civil Procedure applicable to all class actions, namely: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation." *Hanlon*, 150 F.3d at 1019. The Court must also find that at least one requirement of Rule 23(b) is satisfied. *Id.* at 1022.

The Court finds that for the purposes of approval of the class action settlement, the Rule 23(a) requirements are satisfied. First, numerosity exists because the settlement class includes 44 class members. *Ries v. Ariz. Beverages USA LLC*, 287 F.R.D. 523, 536 (N.D. Cal. 2012) ("While there is no fixed number that satisfies the numerosity requirement, as a general matter, a class greater than forty often satisfies the requirement, while one less than twenty-one does not"). Second, commonality exists because there are "questions of fact and law which are common to the class," namely whether Defendant misclassified its drivers as independent contractors. Fed. R. Civ. P. 23(a)(2); *see also Hanlon*, 150 F.3d at 1019-20 (noting that the commonality requirement is "permissive" and "has been construed permissively"). Third, typicality exists because the named Plaintiff's claims are "reasonably co-extensive with those of absent class members," as Plaintiff was a driver for Defendant during the relevant time, and was subject to the same practices of misclassification and failure to pay overtime, minimum wage, and expenses. *See Hanlon*, 150 F.3d at 1020. Finally, adequacy exists because there is no evidence that Plaintiff and Plaintiff's counsel have any conflicts of interest with the proposed class, or that Plaintiff and Plaintiff's counsel will not vigorously prosecute the case on behalf of the class. *See id.* ("Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?").

The Court also concludes that the Rule 23(b)(3) requirement is satisfied. Under Rule 23(b)(3), the Court must find that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is

1 superior to other available methods for fairly and efficiently adjudicating the controversy." Here,
2 the Court finds that predominance is satisfied because Plaintiff's claims arise from Defendant's
3 alleged policy of misclassifying its drivers. Further, the Court finds that superiority is satisfied
4 because the alternative method to a class action likely involves "individual claims for a small
5 amount of . . . damages," resulting in most cases involving "litigation costs [that] dwarf potential
6 recovery." *Hanlon*, 150 F.3d at 1023.

7 The Court therefore provisionally certifies the class for settlement purposes.

8 **B. Preliminary Approval Factors**

9 **i. Range of Reasonableness**

10 In considering whether the Settlement Agreement falls within the range of possible
11 approval, the Court "primarily consider[s] plaintiffs' expected recovery balanced against the value
12 of the settlement offer." *Viceral v. Mistras Grp., Inc.*, Case No. 15-cv-2198-EMC, 2016 WL
13 5907869, at *7 (N.D. Cal. Oct. 11, 2016). Here, Plaintiff estimates the miscalculation of overtime
14 at \$27,283.84, missed meal breaks at \$231,218.83, missed rest periods at \$336,120.19, unpaid
15 minimum wages at \$44,685.27, expense reimbursements at \$672,742.50, inaccurate wage
16 statements at \$59,900, and waiting time penalties at \$68,801.92, for a total of \$1,440,752.55.
17 (Supp. Brief at 3-4.) Plaintiff also estimates PAGA penalties at \$1,042,000. (*Id.* at 4-5.) The
18 Gross Settlement Amount of \$750,000 represents 52% of the value of the non-PAGA claims, and
19 30.2% of all claims. Courts in this district have approved settlements with similar discounts,
20 depending on the strength of the plaintiff's case and the risks in pursuing further litigation. *See*
21 *Viceral*, 2016 WL 5907869, at *7 (approving case which represented 8.1% of the total verdict
22 value).

23 Plaintiff identifies a number of risks that make the proposed settlement fall within a range
24 of reasonableness. First, there is a risk that Plaintiff will not be able to establish that drivers were
25 misclassified as independent contractors. For example, under the FLSA, "employees are those
26 who *as a matter of economic reality* are dependent upon the business to which they render
27 service." *Real v. Driscoll Strawberry Assocs., Inc.*, 603 F.2d 748, 754 (9th Cir. 1979) (internal
28 quotation omitted). In turn, California applies the *Borello* right-to-control test, which considers

1 “whether the person to whom service is rendered has the right to control the manner and means of
2 accomplishing the result desired.” *Alexander v. FedEx Ground Package Sys., Inc.*, 765 F.3d 981,
3 988 (9th Cir. 2014) (internal quotation omitted). Under these tests, courts have found drivers for
4 Uber and Grubhub to be independent contractors, rather than employees. *See Razak v. Uber*
5 *Techs., Inc.*, Civil Action 16-573, 2018 WL 1744467 (E.D. Penn. Apr. 11, 2018) (finding on
6 summary judgment that UberBlack drivers were independent contractors); *Lawson v. Grubhub,*
7 *Inc.*, 302 F. Supp. 3d 1071 (N.D. Cal. 2018) (finding after a bench trial that the plaintiff did not
8 establish a right to control).

9 Alternatively, under the “ABC” test, an employer must prove: (A) a worker is free from
10 the control and direction of the hiring entity with respect to performance of the work, (B) the
11 worker performs work outside the usual course of the hiring entity’s business, and (C) the worker
12 is customarily engaged in an independently established trade, occupation, or business. *Dynamex*
13 *Operations W. v. Superior Court*, 4 Cal. 5th 903, 955-56 (2018). If the employer fails to prove
14 any factor, a worker is an employee. In denying Defendant’s motion to dismiss, the Court found
15 Defendant had not established Part B. (Dkt. No. 52 at 25-26.) Plaintiff, however, points out that it
16 is not clear the ABC test applies “in every instance where a worker must be classified as either an
17 independent contractor or an employee for purposes of enforcing California’s labor protections.”
18 *Cal. Trucking Ass’n v. Su*, 903 F.3d 953, 959 n.5 (9th Cir. 2018); *see Dynamex*, 4 Cal. 5th at 956-
19 57 (finding that the ABC test applies to claims arising from an IWC order). Moreover, it is not
20 clear if *Dynamex* applies retroactively, and the Ninth Circuit has recently certified that question to
21 the California Supreme Court. *Vazquez v. Jan-Pro Franchising Int’l, Inc.*, 939 F.3d 1045, 1048
22 (9th Cir. 2019). Thus, there is a risk that the ABC test would not apply to many of the claims in
23 this case, including all claims that do not arise from an IWC wage order.

24 Second, Plaintiff points to the risk that he would not have been able to prove that
25 Defendant’s violations were willful, which would also reduce the damages. (Pl.’s St. at 8-9.) For
26 example, if Plaintiff did not establish willfulness, the FLSA statute of limitations would be
27 reduced to two years. *See* 29 U.S.C. §255(a). If Defendant established a good faith defense,
28 Plaintiff’s claims under Labor Code § 203 and 226 could be barred, and liquidated damages could

1 be eliminated for the FLSA claims. 29 U.S.C. § 260. Finally, Plaintiff asserts that its PAGA
2 claim for violations of § 226.8 (willful misclassification) would have been reduced because §
3 226.8(i)(4) requires voluntarily and knowing misclassification. (Pl.'s Mot. at 8.) This claim alone
4 is worth an estimated \$420,000. (Supp. Brief at 5.)

5 Finally, separate from the legal challenges, Plaintiff also points to the risk of non-payment
6 due to Defendant's financial concerns. (Pl.'s Mot. at 5-6.) At mediation, Defendant presented
7 Plaintiff with information showing there was a significant risk of non-payment. (Schwartz Decl.
8 ¶18.) Defendant's counsel has also presented evidence for the Court's *in camera* review regarding
9 its financials. Such risk of non-payment, even if Plaintiff prevails on the merits, makes the
10 proposed settlement more reasonable.

11 Given the numerous legal risks and the risk of Defendant's inability to pay, the Court finds
12 that the proposed settlement falls within the range of reasonableness. This factor thus weighs in
13 favor of preliminary approval.

14 **ii. Serious, Informed Negotiations**

15 Next, the Court considers how the parties arrived at the settlement, specifically whether the
16 settlement was "the product of an arms-length, non-collusive, negotiated resolution." *Rodriguez v.*
17 *W. Publ'g Co.*, 563 F.3d 948, 965 (9th Cir. 2009). Here, Plaintiff initiated formal discovery and
18 obtained tens of thousands of pages of documents, and also conducted extensive mediation-related
19 discovery concerning damages. (Schwartz Decl. ¶ 2.) The parties then attended mediation with
20 Cynthia Remmers. (Schwartz Decl. ¶ 5.) After a full day of mediation, the parties executed a
21 memorandum of understanding. (Schwartz Decl. ¶ 6.) In agreeing to the Settlement Agreement,
22 Plaintiff relied on the information, documents, and data provided by Defendant. (Schwartz Decl. ¶
23 8.) Plaintiff's counsel was able to calculate the class members' theoretical damages. (Schwartz
24 Decl. ¶ 10; Supp. Schwartz Decl. ¶¶ 6-13, Dkt. No. 67-1.) The Court finds that the parties reached
25 the settlement via an arms-length, non-collusive, negotiated resolution, and that this factor weighs
26 in favor of preliminary approval.

27 **iii. No Obvious Deficiencies**

28 The Court finds no obvious deficiencies at this time. With respect to the \$7,500 incentive

1 payment, however, the Court will review the class representative service payment at the final
2 approval stage. The Court notes that "[s]everal courts in this District have indicated that incentive
3 payments of \$10,000 or \$25,000 are quite high and/or that, as a general matter, \$5,000 is a
4 reasonable amount." *Harris v. Vector Mktg. Corp.*, Case No. 08-cv-5198-EMC, 2012 WL
5 381202, at *6 (N.D. Cal. Feb. 6, 2012) (internal quotation omitted). When moving for final
6 approval, Plaintiff must be prepared to explain why he is entitled to more than the \$5,000
7 benchmark amount, citing to specific cases with similar facts as to the amount of time spent by
8 Plaintiff.

9 At the hearing, Plaintiff also confirmed that Plaintiff had submitted a copy of the
10 settlement to the LWDA, and had not received any comments. Likewise, the Court requested
11 information as to whether notice under the Class Action Fairness Act ("CAFA") was required.
12 (Dkt. No. 65 at 3.) The parties explained that CAFA notice was not required because the case was
13 not brought under CAFA jurisdiction but federal question jurisdiction, as there are not at least 100
14 plaintiffs in the class and the amount in controversy does not exceed \$5 million. 28 U.S.C. §§
15 1332(d)(2), (d)(5).

16 Finally, the Court requested changes to the Class Notice and procedures for objecting to
17 the settlement, which the parties have modified accordingly. At the hearing, the Court required
18 additional changes, including adding a \$10,000 maximum to Paragraph 10(a)(i) and removing "up
19 to" in Paragraph 10. The parties have submitted a new notice, and the Court has reviewed it. The
20 Court finds that the parties' changes have addressed most of the Court's concerns, and thus this
21 factor weighs in favor of preliminary approval.

22 **iv. Preferential Treatment**

23 Finally, the Court considers whether the Settlement provides preferential treatment to any
24 class members. The Court concludes that the Settlement does not. The Settlement provides that
25 each class member's share will be based on their number of work weeks. Additionally, while
26 former drivers are receiving an additional amount, this is to account for their waiting time
27 penalties claim. This factor weighs in favor of preliminary approval.

28 **v. Notice Procedure**

United States District Court
Northern District of California

1 The Court has reviewed the content of the proposed notice, including the revised draft
2 submitted on January 22, 2020, and finds that they are adequate to inform the putative class and
3 collective action members of the terms of the Settlement Agreement and their ability to object.
4 Accordingly, the Court approves the proposed notice procedures.

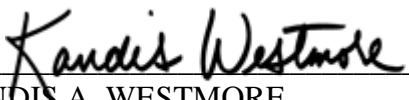
5 **IV. CONCLUSION**

6 The Court finds that based on the above factors, preliminary approval is warranted, subject
7 to the additional changes to the notices being made. The Court therefore GRANTS preliminary
8 approval of the parties' proposed Settlement Agreement, including the provisional certification of
9 the class action. The Court APPOINTS, for settlement purposes only, Billy Alabsi as class
10 representative; Bryan Schwartz Law as class counsel; and Rust Consulting as Settlement
11 Administrator. The Court APPROVES the revised notice provided by the parties on January 22,
12 2020. The Court sets the following schedule:

Action:	Date:
Defendants to provide Class Member list to Settlement Administrator	10 days from the date of this order
Settlement Administrator to mail Notice Packets	20 days from the date of this order
Class Counsel to file Motion for Attorney's fees, costs, and class representative service awards	35 days before the Final Approval Hearing
Deadline for Class Members to opt-out and/or object to the Settlement Agreement	40 days after mailing of Notice Packets
Plaintiffs to file Motion for Final Settlement Approval	35 days before the Final Approval Hearing
Final Approval Hearing	May 21, 2020 at 1:30 p.m.

21 IT IS SO ORDERED.

22 Dated: February 6, 2020

23 
KANDIS A. WESTMORE
24 United States Magistrate Judge