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**United States District Court  
Central District of California**

NICOLE ROMANO, JONATHAN BONO, and JAMES DOYLE, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

SCI DIRECT, INC., TRIDENT SOCIETY INC., NEPTUNE SOCIETY OF AMERICA, INC., and NEPTUNE MANAGEMENT CORP.,

Defendants.

Case № 2:17-cv-03537-ODW ()

**ORDER GRANTING  
PRELIMINARY APPROVAL [134]**

**I. INTRODUCTION**

Plaintiffs Nicole Romano, Jonathan Bono, and James Doyle allege that Defendants SCI Direct, Inc., Trident Society Inc., Neptune Society of America, Inc., and Neptune Management Corp.<sup>1</sup> misclassified Plaintiffs, and the class they seek to represent, as independent contractors rather than employees. As such, Plaintiffs allege that they were denied certain benefits like meal and rest periods, regular and overtime

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<sup>1</sup> Defendants Trident Society Inc., Neptune Society of America, Inc., and Neptune Management Corp. are purportedly subsidiaries/divisions of Defendant SCI Direct, Inc. (*See* Decl. of Adrian R. Bacon (“Bacon Decl.”) Ex. A (“Settlement Agreement”), ¶ 4.2, ECF No. 135-1.)

1 wages, reimbursement for reasonable business expenses, and other benefits. (*See*  
2 Fourth Am. Compl. (“FAC”) ¶ 2, ECF No. 133.)

3 The parties reached a settlement on behalf of the class, and Plaintiffs now move  
4 without opposition for preliminary approval of the settlement.<sup>2</sup> (Mot. for Prelim.  
5 Approval of Class Action Settlement (“Mot.”), ECF No. 134.) For the reasons  
6 discussed below, the Court **GRANTS** the Motion.

## 7 **II. BACKGROUND**

### 8 **A. Procedural Background**

9 Plaintiff Romano filed this lawsuit in Los Angeles Superior Court on April 6,  
10 2017, on behalf of herself and other similarly situated employees. (Notice of Removal  
11 Ex. A, ECF No. 1.) Defendant SCI Direct, Inc. removed the case on May 10, 2017,  
12 claiming that the Court had subject matter jurisdiction under 28 U.S.C. § 1332(c)(1)  
13 and the Class Action Fairness Act (“CAFA”). (*See generally* Notice of Removal.)

14 Following several motions and orders from the Court, on December 21, 2018,  
15 pursuant to the parties’ settlement agreement, Plaintiffs filed their Fourth Amended  
16 Complaint and alleged the following causes of action on behalf of themselves and the  
17 putative class: (1) Unpaid overtime wages under the California Labor Code and  
18 Industrial Welfare Commission Wage Order No. 4; (2) Failure to pay minimum wages  
19 under the California Labor Code; (3) Failure to pay all regular wages under the  
20 California Labor Code and the Wage Order; (4) Failure to allow or pay for meal periods  
21 under the California Labor Code; (5) Failure to allow or pay for rest periods under the  
22 California Labor Code; (6) Waiting time penalties under the California Labor Code; (7)  
23 Failure to provide accurate itemized wage statements under the California Labor Code;  
24 (8) Unfair business practices under the California Business and Professions Code; (9)  
25 Failure to pay overtime under the FLSA, 29 U.S.C. § 216(B); (10) Failure to reimburse  
26 business expenses under the California Labor Code; and (11) PAGA claim seeking civil

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27 \_\_\_\_\_  
28 <sup>2</sup> After carefully considering the papers filed in connection to the Motion, the Court deemed the matter  
appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 penalties for violations of the California Labor Code and sections 3, 4, 11, and 12 of the  
2 Wage Order. (*See generally* FAC.)

### 3 III. SETTLEMENT TERMS

4 The key provisions of the parties' Class Action Settlement Agreement  
5 ("Settlement Agreement") are set forth below.

#### 6 A. Proposed Class

7 The Settlement Agreement defines the proposed class as: "All individuals who  
8 contracted with or provided services to SCI Direct, as an independent sales  
9 representative in California from May 18, 2014 to February 1, 2019 (the 'Class  
10 Period')." (Settlement Agreement ("SA") § 2.5.) The parties estimate that there are  
11 approximately 230 potential members of the class ("Class Size"). (SA § 10.2.)

#### 12 B. Payment Terms

13 In full settlement of the claims asserted in this lawsuit, Defendants agree to pay  
14 \$1,650,000 (the "Total Settlement Amount"). (SA § 2.1.) The Total Settlement  
15 Amount includes PAGA penalties, the incentive award, and the fees and costs of the  
16 Settlement Administrator. (SA §§ 10.4, 10.6–10.8.) Any amount not used by the  
17 Settlement Administrator will be added to the amount distributable to the class  
18 members. (SA § 10.7.) If the Class Size increases by 10% or more (i.e. 253 class  
19 members or more), then the Total Settlement Amount will be adjusted upwards, pro  
20 rata, for each additional member. (SA § 10.2.)

21 After deducting the payments from the Total Settlement Amount, the estimated  
22 total distributable amount to the class members is \$1,490,000. (SA § 10.8.) After 120  
23 days, any uncashed checks will revert to Defendants, with the exception of the  
24 settlement amount related to the PAGA penalties. (SA §§ 10.1, 14.2.) The settlement  
25 amount related to the PAGA penalties will be delivered to California Controller's  
26 Unclaimed Funds in the name of the class member. (SA § 14.2; Mot. 2.)

1 **C. Payment Calculation**

2 Plaintiffs represent that the most cognizable damage is the reimbursement of  
3 business expenses. (Decl. of Adrian R. Bacon (“Bacon Decl.”) ¶ 27, ECF No. 135.)  
4 Since potential class members traveled a substantial amount in their own vehicles as  
5 part of their employment, Plaintiffs seek to recover damages for the mileage  
6 reimbursement and represent that the other business expenses would be de minimis  
7 comparatively. (Bacon Decl. ¶ 32.) Due to the difficulty in obtaining records to  
8 establish that each member was entitled to their reasonable business expenses, including  
9 the mileage reimbursement, the parties agreed to calculate each members’ settlement  
10 based on the total Qualifying Workweek(s)<sup>3</sup> worked by the class member. (Bacon  
11 Decl. ¶¶ 34–36.)

12 If no class members opt-out of the settlement, the payment is calculated as  
13 follows:  $\text{Payment} = (\text{Distributable Amount} \div \text{Qualifying Workweeks of Class}$   
14  $\text{Members}) \times (\text{Authorized Claimant’s Qualifying Workweeks})$ . (SA § 11.3.)

15 If one or more class members opt-out, then the payment is calculated as follows:  
16  $\text{Payment} = ((\text{Distributable Amount} - \text{LWDA Payment}) \div \text{Qualifying Workweeks of}$   
17  $\text{Class Members}) \times (\text{Authorized Claimant’s Qualifying Workweeks})$ . (SA §§ 11.4.)  
18 The LWDA Payment will then be distributed pro rata to the remaining class members.<sup>4</sup>  
19 (SA § 11.5.)

20 **D. Attorneys’ Fees and Costs**

21 The Settlement Agreement authorizes Plaintiffs’ counsel to petition the Court for  
22 approval of attorneys’ fees in an amount not to exceed \$825,000 and costs not exceeding  
23

24 \_\_\_\_\_  
25 <sup>3</sup> Qualifying Workweeks is defined as “the total number of days worked by any Class Member during  
the Class Period divided by seven (7). (SA § 3.29.)

26 <sup>4</sup> There appears to be a formulaic error regarding the calculation if no class members opt-out. The  
27 Court cannot discern from the papers submitted why the LWDA Payment is not carved out of the  
28 formula (similar to if one or more members opt-out) because pursuant to the Settlement Agreement,  
the LWDA Payment is made on a pro-rata basis and is not based on the number of Qualifying  
Workweeks.

1 \$25,000. (SA § 10.3.) This amount is separate and will not be deducted from the Total  
2 Settlement Amount. (*Id.*)

3 **E. Incentive Payment**

4 The Settlement Agreement provides that Plaintiffs’ counsel will petition the  
5 Court for approval of incentive awards of \$5000 for Plaintiff James Doyle, \$10,000 for  
6 Plaintiff Jonathan Bono, and \$15,000 for Plaintiff Nicole Romano. (SA § 10.4.)

7 **F. Payment to the California Labor and Workforce Development Agency**

8 The Settlement Agreement requires payments to the California Labor and  
9 Workforce Development Agency (“LWDA”) pursuant to PAGA. (SA § 10.6.) The  
10 parties agreed to allocate \$160,000 of the Total Settlement Amount for PAGA penalties,  
11 \$120,000 (75% of \$160,000) of which shall be paid to the LWDA, with the remaining  
12 \$40,000 to be distributed to the settling class members on a pro rata basis. (SA § 10.6.)

13 **G. Releases**

14 The Settlement Agreement provides that all class members other than those who  
15 opted-out will:

16 [F]ully release and discharge the Released Persons from all Released  
17 Claims, whether known or unknown during the Class Period. Class  
18 Representatives and SCI Direct stipulate and agree that the  
19 consideration paid to the Class Members pursuant to this Agreement  
20 compensates the Class Members for all wages and penalties due to them  
arising from the claims alleged in the operative Complaint.

21 (SA § 18.1.) Further, the Settlement Agreement provides that the settling class  
22 members waive and relinquish the rights and benefits of California Civil Code section  
23 1542.<sup>5</sup> (SA § 3.26.)

24 **H. Notice to Settlement Class**

25 Within fifteen (15) days of this Order, Defendant SCI Direct will provide the  
26 potential class members’ contact information and number of total qualifying workweeks

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27 <sup>5</sup> The Court notes that California Civil Code section 1542 was updated on January 1, 2019. The parties  
28 and counsel may wish to review the update prior to final approval.

1 worked during the class period to the Administrator. (SA § 5.4.1.) Within fifteen (15)  
2 days of receipt of the information, the Administrator will calculate the settlement  
3 payment to each class member and provide notice of the settlement to the potential class  
4 members via first class U.S. mail. (SA § 5.4.2.) The Notice of Settlement (“Notice”)  
5 also instructs potential class members how to opt-out or object to the Settlement  
6 Agreement. (SA § 5.4.7; *see also* Bacon Decl. Ex. B (“Notice”), ECF No. 135-2.) The  
7 Settlement Agreement details the Administrator’s method of updating addresses and  
8 managing mail returned as undeliverable. (SA § 5.4.3–5.4.5.) The Administrator’s  
9 costs and expenses in carrying out its duties are estimated to be \$10,000. (SA § 10.7.)

10 Plaintiffs also submit a proposed Notice. The Notice informs the potential class  
11 members that they need not take any action to receive their share of the settlement  
12 proceeds. (Notice 3, 4.) The Notice also informs class members how they may object  
13 to the settlement or request exclusion from the class. (Notice 3, 4.) Objecting class  
14 members must submit their objection within forty-five (45) days of the Administrator  
15 mailing the Notice and indicate whether they intend to appear at the final approval  
16 hearing. (Notice 4.)

17 If more than 10% of the class members request to be excluded from the class,  
18 Defendants may cancel and void the Settlement Agreement. (SA § 17.4.)

#### 19 IV. ANALYSIS

20 The Court must first address whether the class may be provisionally certified for  
21 settlement purposes only, then evaluate the fairness, adequacy, and reasonableness of  
22 the proposed settlement, and finally review the adequacy of the proposed Notice.

##### 23 A. Class Certification

24 Class certification is a prerequisite to preliminary settlement approval. Class  
25 certification is appropriate only if each of the four requirements of Rule 23(a) and at  
26 least one of the requirements of Rule 23(b) are met. *Amchem Prods., Inc. v. Windsor*,  
27 521 U.S. 591, 614, 621 (1997). Under Rule 23(a), the plaintiff must show that: “(1) the  
28 class is so numerous that joinder of all members is impracticable; (2) there are questions

1 of law and fact common to the class; (3) the claims or defenses of the representative  
2 parties are typical of the claims or defenses of the class; and (4) the representative  
3 parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P.  
4 23(a).

5 Next, the proposed class must meet at least one of the requirements of Rule 23(b),  
6 specifically here, Rule 23(b)(3): (1) “questions of law or fact common to class members  
7 predominate over any questions affecting only individual members,” and (2) “a class  
8 action is superior to other available methods for fairly and efficiently adjudicating the  
9 controversy.” Fed. R. Civ. P. 23(b)(3). Where class certification is sought for  
10 settlement purposes only, the certification inquiry still “demand[s] undiluted, even  
11 heightened, attention.” *Amchem*, 521 U.S. at 620.

12 **1. Rule 23(a) Requirements**

13 The proposed class meets all of the 23(a) factors. First, it is sufficiently  
14 numerous. While “[n]o exact numerical cut-off is required,” “numerosity is presumed  
15 where the plaintiff class contains forty or more members.” *In re Cooper Cos. Inc. Sec.*  
16 *Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009). There are currently an estimated 230  
17 potential members of the settlement class, and joinder of these individuals would be  
18 impracticable. Thus, this class is sufficiently numerous.

19 Next, the claims of the potential class members demonstrate common questions  
20 of fact and law. *See Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012)  
21 (“commonality only requires a single significant question of law or fact.”). Plaintiffs  
22 allege that (1) all potential class members were subjected to Defendants’ wage  
23 statement policies that resulted in Labor Code violations; (2) Defendants failed to  
24 reimburse all potential class members for reasonable business expenses in violation of  
25 California Labor Code section 2802; (3) all potential classes members were  
26 misclassified in violation of the California Labor Code; and (4) all potential class  
27 members are entitled to damages. (Mot. 17; *see also* FAC ¶¶ 4, 7, 118, 125.) At this  
28

1 juncture, no discernable individualized issues appear to exist which might detract from  
2 the common questions of fact and law. As such, the class meets this requirement.

3 Plaintiffs also meet the typicality requirement. Typicality in this context means  
4 that the representative claims are “reasonably co-extensive with those of absent class  
5 members; they need not be substantially identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d  
6 1011, 1020 (9th Cir. 1998). Here, Plaintiffs’ claims arise out of the same circumstances  
7 as those of the other class members, specifically whether Defendants misclassified  
8 Plaintiffs resulting in various legal violations. (*See generally* FAC.) Thus, Plaintiffs  
9 share material common factual and legal issues with the other settlement class members  
10 and satisfies typicality.

11 Finally, Plaintiffs and their counsel satisfy the adequacy requirement for  
12 representing absent class members. This requirement is met where the named plaintiffs  
13 and their counsel do not have conflicts of interest with other class members and will  
14 vigorously prosecute the interests of the class. *Hanlon*, 150 F.3d at 1020. Plaintiffs and  
15 their counsel have vigorously pursued this case and represent that they have no known  
16 conflicts of interest with the class members. (Bacon Decl. ¶ 21.) Counsel appears well-  
17 qualified as they are experienced with wage-and-hour class action litigation. (Bacon  
18 Decl. ¶¶ 40–43.) In this action, they have engaged in thorough investigation, discovery,  
19 motion practice, mediation, and negotiations on behalf of the class. (*See* Bacon Decl.  
20 ¶¶ 10–13, 38.) These facts support counsel’s adequacy and vigorous representation of  
21 the putative class. As such, the proposed class and its representatives satisfy the Rule  
22 23(a) requirements. For the same reasons, Plaintiffs’ counsel is appointed to serve as  
23 Class Counsel for the purposes of this settlement as counsel has the requisite experience,  
24 knowledge, qualifications, and resources to represent the class members in this  
25 litigation. *See* Fed. R. Civ. P. 23(g)(1)(A).

## 26 **2. Rule 23(b)(3) Requirements**

27 Rule 23(b)(3) requires the Court to find “that the questions of law or fact common  
28 to class members predominate over any questions affecting only individual members,



1 and that a class action is superior to other available methods for fairly and efficiently  
2 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

3 Here, for the purposes of settlement, questions of law or fact common to class  
4 members predominate over individualized questions because the issue—whether all  
5 members of the class were improperly classified thereby entitling Plaintiffs and the class  
6 to receive damages—is common to the class. Further, a class action appears to be a far  
7 superior method of adjudicating the class members’ claims. The overall claim that all  
8 potential class members were misclassified resulting in the alleged violations makes  
9 individual actions prone to inefficiency. Hundreds of individual class members  
10 bringing individual actions would be inefficient, and the costs of litigation would dwarf  
11 any recovery.

12 As each of the four requirements of Rule 23(a) and at least one of the  
13 requirements of Rule 23(b) are met, the class may be provisionally certified for  
14 settlement purposes.

15 **B. Fairness of Settlement Terms**

16 The Court must also consider whether the proposed settlement warrants  
17 preliminary approval. For preliminary approval, “the court evaluates the terms of the  
18 settlement to determine whether they are within a range of possible judicial approval.”  
19 *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016) (internal quotation  
20 marks and alterations omitted). A court may preliminarily approve a settlement and  
21 direct notice to the class if “the proposed settlement appears to be the product of serious,  
22 informed, non-collusive negotiations, has no obvious deficiencies, does not improperly  
23 grant preferential treatment to class representatives or segments of the class, and falls  
24 within the range of possible approval.” *In re Tableware Antitrust Litig.*, 484 F. Supp.  
25 2d 1078, 1079 (N.D. Cal. 2007). “It is the settlement taken as a whole, rather than the  
26 individual component parts, that must be examined for overall fairness.” *Hanlon*, 150  
27 F.3d at 1026. “The settlement must stand or fall in its entirety”; a court may not “delete,  
28 modify or substitute” its provisions. *Id.*

1 The settlement negotiations appear fair and adequate and the proposed settlement  
2 terms appear to come within the range of possible judicial approval.

3 **1. Adequacy of Negotiations**

4 The Court is satisfied that settlement was the product of “serious, informed, non-  
5 collusive negotiations.” *Spann*, 314 F.R.D. at 319. The parties thoroughly investigated  
6 their claims, engaged in discovery, and briefed numerous motions before participating  
7 in a day-long mediation with the Honorable Charles McCoy (ret.) that ultimately  
8 resulted in the Settlement Agreement. (Bacon Decl. ¶¶ 10–13.) Plaintiffs assert that  
9 they considered the exposure analysis of continuing to litigate the claims and potentially  
10 receive a reduced amount. (Bacon Decl. ¶ 34.) Plaintiffs even rejected “substantial  
11 individual settlement offers . . . to pursue the case on a class-wide basis.” (Bacon Decl.  
12 ¶ 38.) Based on Plaintiffs’ damages analysis, Plaintiffs represent that class members  
13 will receive “their full amount of reimbursable business expenses . . . with additional  
14 value for the penalties.” (Bacon Decl. ¶ 35.) Under these circumstances, the Court  
15 accepts that the settlement negotiations were adequate.

16 **2. Settlement Terms**

17 After carefully reviewing the terms of the settlement, the Court finds that the  
18 settlement does not unfairly give preferential treatment to any party and falls within the  
19 range of possible approval.

20 Assessing a settlement proposal requires the district court to balance a  
21 number of factors: the strength of the plaintiffs’ case; the risk, expense,  
22 complexity, and likely duration of further litigation; the risk of  
23 maintaining class action status throughout the trial; the amount offered  
24 in settlement; the extent of discovery completed and the stage of the  
25 proceedings; the experience and views of counsel; the presence of a  
26 governmental participant; and the reaction of the class members to the  
27 proposed settlement.

28 *Hanlon*, 150 F.3d at 1026. “Ultimately, the district court’s determination is nothing  
more than an amalgam of delicate balancing, gross approximations, and rough justice.”

1 *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004)  
2 (internal quotation marks omitted). “The initial decision to approve or reject a  
3 settlement proposal is committed to the sound discretion of the trial judge.” *Id.*

4 Here, as with most class actions, there is risk to both parties in continuing towards  
5 trial. The parties reached settlement with trial approaching and only after conducting  
6 discovery and obtaining several orders from the Court. The settlement treats all  
7 members of a uniform class equally, awarding each class member with a pro rata share  
8 of the settlement proceeds based on a qualifying workweek calculation and a pro rata  
9 share of the PAGA penalties. (*See* SA § 11.2.) Accordingly, the settlement does not  
10 unfairly favor any member, represents a compromise, and avoids uncertainty for all  
11 parties involved.

### 12 **3. Settlement Funds**

13 The Court notes that the incentive award for Plaintiffs Bono and Romano appear  
14 to be substantial and beyond the amount that courts in this jurisdiction have deemed  
15 presumptively reasonable.

#### 16 *a. Incentive Award*

17 The Motion seeks approval of an incentive award for Plaintiffs Doyle, Bono, and  
18 Romano in the amount of \$5000, \$10,000, and \$15,000, respectively. (Mot. 9;  
19 SA § 10.4.)

20 “[D]istrict courts [should] scrutinize carefully [incentive] awards so that they do  
21 not undermine the adequacy of the class representatives.” *Radcliffe v. Experian Info.*  
22 *Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013). In evaluating incentive awards, the  
23 court should look to “the number of named plaintiffs receiving incentive payments, the  
24 proportion of the payments relative to the settlement amount, and the size of each  
25 payment.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947 (9th Cir. 2015)  
26 (quoting *Staton v. Boeing, Co.*, 327 F.3d 938, 977 (9th Cir. 2003)). “Generally, in the  
27 Ninth Circuit, a \$5,000 incentive award is presumed reasonable.” *Bravo v. Gale*  
28 *Triangle, Inc.*, No. CV 16-03347 BRO (GJSx), 2017 WL 708766, at \*19 (C.D. Cal. Feb.

1 16, 2017) (citing *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2012 WL 381202,  
2 at \*7 (N.D. Cal. Feb. 6, 2012)).

3 Here, there are three representative plaintiffs and each incentive award sought  
4 amounts to a small fraction of the total distributable amount. Mr. Doyle assisted counsel  
5 to “develop claims . . . [and] helped identify [a] damages analysis for mediation.” (Decl.  
6 of James Doyle (“Doyle Decl.”) ¶ 3, ECF No. 134-3.) Mr. Doyle estimated that he  
7 spent approximately 15–20 hours assisting in the case. (Doyle Decl. ¶ 4.) As a \$5000  
8 incentive award is presumed reasonable, and as Mr. Doyle has sufficiently  
9 demonstrated that he adequately participated and represented the class in litigation, on  
10 this preliminary record the Court finds that the incentive payment of \$5000 falls within  
11 the range of possible approval to compensate Mr. Doyle for his efforts.

12 Similar to Mr. Doyle, Mr. Bono assisted counsel to develop Plaintiffs’ claims,  
13 but also responded to discovery and sat for an all-day deposition. (Decl. of Jonathan  
14 Bono (“Bono Decl.”) ¶ 3, ECF No. 134-1.) Mr. Bono estimated that he spent  
15 approximately 30–35 hours assisting counsel with the case. (Bono Decl. ¶ 4.) However,  
16 Mr. Bono has not provided sufficient justification to warrant an award that is twice the  
17 presumed award. On this record, the Court does not find adequate support for an  
18 incentive award double the presumed-reasonable amount and is inclined to reduce the  
19 incentive award. However, Mr. Bono’s incentive award will depend on its adequate  
20 support upon the motion for final approval.

21 Ms. Romano similarly seeks an incentive payment that is above the presumed-  
22 reasonable amount, specifically \$15,000. (Decl. of Nicole Romano (“Romano Decl.”)  
23 ¶ 9, ECF No. 134-2.) Similar to Mr. Doyle and Mr. Bono, Ms. Romano also assisted  
24 counsel develop the claims. (Romano Decl. ¶ 8.) However, Ms. Romano also assisted  
25 with drafting the initial complaint, participating in written discovery, and engaging in  
26 an all-day deposition. (Romano Decl. ¶ 5.) Ms. Romano also attended the all-day  
27 mediation that ultimately resulted in the resolution of this case. (Romano Decl. ¶ 6.)  
28 Ms. Romano estimated that she spent approximately 90–100 hours in connection with

1 this case. (Romano Decl. ¶ 8.) Although Ms. Romano was involved in this case, more  
2 so than the other two class representatives, Ms. Romano has not justified an incentive  
3 payment triple the presumed-reasonable amount. Accordingly, as with the incentive  
4 award to Mr. Bono, on this record, the Court is inclined to reduce the award, subject to  
5 adequate support for such an extreme departure upon the motion for final approval.

6 *b. Attorneys' Fees*

7 The Settlement Agreement provides that Plaintiffs' counsel will seek attorneys'  
8 fees in an amount not to exceed \$825,000, or one-third of the entire settlement fund,  
9 and costs not exceeding \$25,000. (See SA § 10.3.) "While attorneys' fees and costs  
10 may be awarded in a certified class action where so authorized by law or the parties'  
11 agreement . . . courts have an independent obligation to ensure that the award, like the  
12 settlement itself, is reasonable, even if the parties have already agreed to an amount."  
13 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). Twenty-  
14 five percent recovery is the benchmark for attorneys' fees, although courts in the Ninth  
15 Circuit have found upward departures to fall within the acceptable range. *See id.* at 942  
16 (noting 25% benchmark); *Powers v. Eichen*, 229 F.3d 1249, 1256–57 (9th Cir. 2000)  
17 (upward departure acceptable when expressly explained). Further, "[w]here a  
18 settlement produces a common fund for the benefit of the entire class, courts have  
19 discretion to employ either the lodestar method or the percentage-of-recovery method."  
20 *In re Bluetooth*, 654 F.3d at 942.

21 Counsel are experienced wage-and-hour class action litigators and the fee  
22 request, while high, falls within the range identified as potentially acceptable in the  
23 Ninth Circuit. Accordingly, preliminary approval is appropriate, though final approval  
24 will depend on counsel providing sufficient information to support the requested award.

25 **4. Release of Claims**

26 "Beyond the value of the settlement, potential recovery at trial, and inherent risks  
27 in continued litigation, courts also consider whether a class action settlement contains  
28 an overly broad release of liability." *Spann*, 314 F.R.D. at 327; *see also Hesse v. Sprint*

1 *Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (“A settlement agreement may preclude a party  
2 from bringing a related claim in the future even though the claim was not presented and  
3 might not have been presentable in the class action, but only where the released claim  
4 is based on the identical factual predicate as that underlying the claims in the settled  
5 class action.”) (internal quotation marks omitted).

6 Plaintiffs indicate that the release is “limited in scope to the facts and employment  
7 claims alleged, or which could have been alleged . . . which occurred during the Class  
8 Period.” (Mot. 7–8; *see also* SA § 3.31.) Thus, while the release is broad in that it  
9 releases claims both alleged or that could have been alleged, the released claims are  
10 appropriately limited to the factual predicate of this action.

### 11 **C. Sufficiency of Notice**

12 To find notice to absent class members sufficient, the Court must analyze both  
13 the type and content of the notice. Here, the Court finds the Notice sufficient.

#### 14 ***1. Type of Notice***

15 “[T]he court must direct to class members the best notice that is practicable under  
16 the circumstances.” Fed. R. Civ. P. 23(c)(2)(B). For class action settlements, “[t]he  
17 court must direct notice in a reasonable manner to all class members who would be  
18 bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). The parties agree that the  
19 Administrator will distribute the Notice to all potential class members. (SA § 5.4.2.)  
20 The contact information for potential class members is available through Defendants’  
21 records, and the Administrator will send the Notice via U.S. Mail. (SA §§ 5.4.1–5.4.2.)  
22 Prior to mailing the notices, the Administrator will use the U.S. Postal Service National  
23 Change of Address registry to verify the accuracy of the addresses and perform skip  
24 traces when necessary. (SA §§ 5.4.3, 5.4.4.) The Administrator may also conduct any  
25 investigation it deems economically reasonable within industry practice to determine  
26 the correct address. (SA § 5.4.5.) The class members will have forty-five (45) days  
27 from the date the Administrator mails the Notice to request exclusion or object to the  
28 Settlement Agreement. (SA § 5.4.9.)

1           The Court finds the procedures for the Notice sufficient and the most practicable  
2 under the circumstances.

3           **2.     Content of Notice**

4           Class notice must state “(i) the nature of the action; (ii) the definition of the class  
5 certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter  
6 an appearance through an attorney if the member so desires; (v) that the court will  
7 exclude from the class any member who requests exclusion; (vi) the time and manner  
8 for requesting exclusion; and (vii) the binding effect of a class judgment on members  
9 under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B)(i)–(vii). “Notice is satisfactory if it  
10 generally describes the terms of the settlement in sufficient detail to alert those with  
11 adverse viewpoints to investigate and to come forward and be heard.” *Churchill Vill.,*  
12 *L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (internal quotation marks  
13 omitted). The notice “does not require detailed analysis of the statutes or causes of  
14 action forming the basis for the plaintiff class’s claims, and it does not require an  
15 estimate of the potential value of those claims.” *Lane v. Facebook, Inc.*, 696 F.3d 811,  
16 826 (9th Cir. 2012).

17           The Court finds the Notice contains all the information required under the Federal  
18 Rules. The Notice includes the basics of the case, the class definition, and the class  
19 action’s claims. (Notice 1–2.) The Notice explains the procedure for opting out and  
20 objecting to the settlement. (Notice 3–4.) The Notice indicates that, to participate and  
21 receive an award, a class member need not do anything. (Notice 4.) Further, the Notice  
22 provides that remaining a member of the class and receiving a payment will result in  
23 the class member giving up his/her claims and being bound by the Settlement  
24 Agreement. (Notice 2–4.) Thus, the Court finds the Notice content satisfactory.

1 **V. CONCLUSION**

2 The Court **GRANTS** Plaintiffs' Motion for Preliminary Approval of Class  
3 Action Settlement. The final approval hearing shall be held on **November 18, 2019 at**  
4 **1:30 p.m.** at the United States Courthouse, 350 West First Street, Courtroom 5D, Los  
5 Angeles, CA 90012.

6  
7 **IT IS SO ORDERED.**

8  
9 May 21, 2019

10  
11 

12 **OTIS D. WRIGHT, II**  
13 **UNITED STATES DISTRICT JUDGE**