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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DOUG LADORE, an Individual, for himself and those similarly situated; MOES 1 Through 3000 and the proposed class,

Plaintiffs,

v.

ECOLAB, INC., a Delaware Corporation; and DOES 1 Through 100, Inclusive,

Defendants.

CASE NO. CV11-9386 FMO
The Honorable Fernando M. Olguin

(Los Angeles County Superior Court Case No. BC471168)

CLASS ACTION

Complaint Filed: October 7, 2011

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date: October 31, 2013 (Per Court Order Dated 8/2/13, Docket No. 99.)
Time: 10:00 a.m.
Courtroom: 22

TO ALL PARTIES HEREIN AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 31, 2013 (per Court Order dated August 2, 2013, Docket no. 99), at 10:00 a.m., or as soon thereafter as the matter can be heard in Courtroom No. 22, Fifth Floor, in the above-entitled courthouse located at 312 North Spring Street, Los Angeles, California 90012-4701, Plaintiffs, on their own behalf, and on behalf of the certified Class, will move for final approval of a class-wide settlement reached with defendant Ecolab Inc. This motion is unopposed.

Said Motion shall be based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities filed herewith, the declaration of Alejandro P. Gutierrez, the declaration of Michael A. Strauss, the declaration of Jody A. Landry, and upon such further evidence, both documentary and oral, as may be presented at the hearing of said motion.

Dated: September 13, 2013

PALAY LAW FIRM
A Professional Corporation

By: /S/
Michael A. Strauss
Attorneys for Plaintiff

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I. INTRODUCTION

By this unopposed motion, Plaintiffs Doug Ladore, Antonio Carbajal, and the Certified Class seek final approval of a substantial settlement of all claims between the parties. Previously, this Court issued its Order of August 2, 2013 granting the Plaintiffs' motion for preliminary approval of class action settlement, preliminarily finding therein that "the terms of the [Settlement Agreement] are fair, adequate and reasonable and comply with Rule 23(e) of the Federal Rules of Civil Procedure." (Docket no. 99 at 20.) Now, after the Class has been given notice of the settlement and the opportunity to make claims and objections or request exclusion, and none have heretofore[1] objected or requested exclusion, Plaintiffs seek this honorable Court's final approval of the settlement reached. (Plaintiffs are separately filing their Motion for Attorney Fees and Costs and Motion for Incentive Awards.)

The settlement requires Defendant Ecolab Inc. to pay $29 million to the roughly 396 class members[2]. Additionally, and perhaps more importantly, as part of the settlement, Defendant agreed to (and has already begun) classifying the three employment positions at issue in this lawsuit as non-exempt for the purposes of overtime compensation. These two enormous benefits to the Class Members, both current and former employees of Ecolab, warrant approval of the settlement.

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on several occasions throughout March 2013. This motion is unopposed.

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[1] The claims deadline is October 18, 2013, over one month after the deadline for filing of this Motion. Plaintiffs will file declarations from the claims administrator, and any necessary points and authorities, at the conclusion of the claims deadline and prior to the hearing on this Motion.

[2] Of the 396 class members, some of them are ineligible to receive any payment because they participated in the *Roe* settlement and left their employment before March 1, 2008. (Strauss Decl., ¶ 27(c).)

II. FACTUAL BACKGROUND

The Pest Elimination Service Specialists ("PESS") of Defendant Ecolab (and other employees with similar or identical job duties[3]) have been fighting since at least mid-2005 for unpaid overtime and a finding that their job is a non-exempt position under California law. PESSes are pest control workers who generally provide pest control services to between 90 and 120 customers each. Those customers are restaurants, hotels, and other businesses in the hospitality industry. PESSes throughout California typically work between 50 and 60 hours each week. Ecolab, relying on the so-called "Haz/Mat" exemption, has treated the PESSes as exempt from overtime premium pay, and so Ecolab PESSes have historically not been paid overtime. (Strauss Decl., ¶ 2.)

The PESSes' first collective effort against Ecolab to recover unpaid overtime premium pay was *Roe v. Ecolab, Inc./Dietz v. Ecolab, Inc.* (Ventura County Superior Court case numbers CIV 233936 and CIV 241827, hereinafter "*Roe*"). (Counsel in *Roe* were the same two firms appointed Class Counsel in this case.) Filed in May 2005, *Roe* was a tremendous legal battle; as an example, the docket for *Roe* shows 559 entries. The docket entries included motions for class certification and decertification, motions for summary judgment and adjudication (including cross-motions on the applicability of the Haz/Mat exemption), and a lengthy appeal. (Gutierrez Decl., ¶¶ 2-4.) *Roe* resolved on a class-wide basis in 2007[4], but without a determination over the Haz/Mat exemption, since the court denied both cross-motions for summary judgment on the issue. (Gutierrez Decl., ¶ 4.)

After *Roe*, Ecolab continued treating its PESSes as exempt from overtime pay,

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[3] The three positions included in the Class Definition are Pest Elimination Service Specialists, Senior Pest Elimination Service Specialists, and Select Segment Specialists. Unless otherwise noted, any reference to PESSes includes the other two categories.

[4] The actual conclusion of *Roe* was in late 2009, after the ruling on Ecolab's appeal in favor of the class. *See Roe v. Ecolab, Inc.*, 2009 WL 2517569 (Cal. Ct. App. Aug. 19, 2009).

and the PESS continued working unpaid overtime hours. In October 2011, Doug Ladore, a Senior PESS and witness in the *Roe* case brought a class action suit for unpaid overtime (in the form of the instant action). (Strauss Decl., ¶ 4.)

Like *Roe*, the instant case has been hard-fought ever since its filing in October 2011. Ecolab removed the case from the Los Angeles County Superior Court. The Court certified the case under F.R.Civ.P. 23(b)(3) in April 2012, after strong opposition from Ecolab. Ecolab then unsuccessfully petitioned the Ninth Circuit Court of Appeals to review the certification order. Over the next few months, Class Counsel propounded multiple rounds of written discovery, responded to Ecolab's written discovery, took numerous depositions of Ecolab's witnesses, and defended Ecolab's depositions of class representatives. Then, in October 2012, the parties filed cross-motions for summary judgment/partial summary judgment relative to Ecolab's only overtime exemption affirmative defense (the "Haz/Mat" exemption). Plaintiffs prevailed on their motion in January 2013. (Strauss Decl., ¶ 15; Doc. 65.)

Undeterred by a conclusive judicial determination as the applicability of Ecolab's only exemption, Ecolab continued to fight by disputing Plaintiffs' proposed trial plan. With liability established, Class Counsel had to begin to gather information from the class members relative to their damages, and Class Counsel interviewed roughly 100 of the 396 class members. Late on a Friday immediately before the Monday when Class Counsel were to commence taking up to approximately 50 depositions of class members throughout the state in a one-week period (after working feverishly to set up those depositions and serve subpoenas on the deponents), the case resolved at mediation. (Strauss Decl., ¶¶ 16-17.)

In the settlement reached by the parties, Ecolab has agreed to pay an all-in total of $29 million, the rough equivalent of 13.79 overtime hours per week to the class members for the claims period, and finally change its ways by reclassifying the job positions as non-exempt. In short, the settlement represents a very favorable result for the class members. The reclassification of Class Members as non-exempt employees is

an intangible benefit, though Class Members will likely benefit from being paid overtime from July 1, 2013 (the date on which Ecolab began the reclassification) onward. (Strauss Decl., ¶ 24.)

The terms of the settlement are set forth in the Stipulation of Settlement entered into by and between the parties. (Doc. 98.) Pursuant to the Settlement, Plaintiffs request that the Court enter an order granting final approval of the settlement.

III. NATURE OF THE CASE

The Complaint has three causes of action. The first is for unpaid wages, interest thereon, and a statutory penalty under California Labor Code section 203. The second is for unfair business practices in violation of California Business and Professions Code section 17200 *et seq.* (the "UCL"). Together, these first two causes of action seek unpaid overtime premium pay from Ecolab for members of the class for the period from October 7, 2007 to the present. However, in *Roe*, any person who participated in the settlement released his or her claims for unpaid wages against Ecolab through March 1, 2008, per order of this Court. (Doc. 84.) Therefore, for practical purposes, the time period covered by the overtime wages portion of the case (for all but a small handful of persons who did not participate in the *Roe* settlement) is from March 1, 2008 to the present. The time period for the statutory penalty under California Labor Code section 203 is from October 7, 2008 to the present.

The third cause of action is for civil penalties available under the Private Attorneys General Act of 2004, California Labor Code section 2699 *et seq.* ("PAGA"). The PAGA claim seeks civil penalties against Ecolab for violation of various sections of the California Labor Code. The time period covered by the PAGA claim is from October 7, 2010 to the present.

IV. PROCEDURAL HISTORY

On October 7, 2011, Plaintiff Ladore filed his Complaint in the Los Angeles County Superior Court.

On November 10, 2011, Defendant removed this action to this Court. The

answer filed by Defendant raised the affirmative defense that Plaintiff is exempt based on the "hazardous materials" exemption. (Doc. 1.)

On February 17, 2012, Plaintiff filed his Motion for Class Certification requesting that the Court certify the class consisting of "All current and former Senior Pest Elimination Service Specialists and Pest Elimination Service Specialists employed by Defendant Ecolab, Inc. in California from October 7, 2007 to the present." (Doc. 15.)

On April 11, 2012, the Court granted Plaintiff's motion for class certification pursuant to Rule 23, appointed Plaintiff Ladore as the class representative, and Michael Strauss and Alejandro Gutierrez and their law firms, Palay Law Firm and Hathaway, Perrett, Webster, Powers, Chrisman and Gutierrez, respectively, as the class counsel. (Doc. 30.) In its Order, the Court concluded that the Haz/Mat exemption was inapplicable since class members did not use relevant materials in quantities sufficiently large to be subject to regulation by the Department of Transportation. (*Id.*)

On April 25, 2012, Ecolab filed a petition for permission to appeal the district court's April 11, 2012 order granting class action certification, arguing in such petition that the district court's interpretation of California's exemption from overtime requirements for employees who transport hazardous materials was erroneous. (Strauss Decl., ¶ 15.)

On July 11, 2012, the United States Court of Appeals for the Ninth Circuit denied Ecolab's petition for permission to appeal the district court's April 11, 2012 order granting class action certification. (Strauss Decl., ¶ 15.)

On September 25, 2012, the Court, on stipulation of the parties, issued an order amending the class definition and adding Antonio Carbajal as a co-Representative Plaintiff. The amended class definition is: "All current and former Senior Pest Elimination Service Specialists, Pest Elimination Service Specialists, and Select Segment Specialists employed by Defendant Ecolab Inc. in California from October 7, 2007 to the present." (Doc. 41.)

On October 22, 2012, the parties filed cross-motions for summary judgment/adjudication on the applicability of the Haz/Mat exemption to the members of the class. (Docs. 42, 43-44.) As the Court is doubtless aware, these competing motions were extensively briefed, analyzed, and supported by numerous exhibits, references to deposition testimony, declarations, etc. They represented a comprehensive and detailed presentation by both sides of their respective positions, thus posturing the case for a significant dispositive ruling by the Court.

On January 14, 2013, Ecolab filed a motion for summary judgment on the issue of whether the release in the *Roe* case limited the period of liability in the instant action. (Doc. 60.) Plaintiffs opposed the motion on procedural grounds. (Doc. 63.)

On January 14, 2013, Plaintiffs brought an Ex Parte Application for Order re: Trial Management Plan, wherein they requested an order from the Court as to how to present damages evidence at trial. (Doc. 61.)

On January 23, 2013, the Court issued its order granting Plaintiffs' motion for summary adjudication of Ecolab's Haz/Mat exemption and denying Ecolab's motion for summary judgment. (Doc. 65.)

On February 5, 2013, this Court granted Plaintiffs' Ex Parte Application regarding their trial plan. As part of the accepted trial plan, the Court allowed Plaintiffs to take up to 55 depositions of Class Members and extended the time within which Plaintiffs could submit their expert report. (Doc. 70.)

On February 22, 2013, the date the Court had set as the deadline for the parties to conduct a settlement conference, the parties came to a mediated resolution before Hon. Carl West (Ret.). Plaintiffs filed a notice of settlement with the Court on February 25, 2013. (Doc. 79.) The Court then vacated all previously set dates in the case. (Doc. 80.)

On May 28, 2013, the Court heard the original Motion for Preliminary Approval and requested further information in an Amended Motion for Preliminary Approval, including more detail regarding the requested incentive payments to the class

representatives, an amended proposed class notice, and the clarification of the temporal scope of the release of claims for class members who participated in the *Roe* settlement. (Doc. 84.) The Court also requested that Plaintiffs file an Amended Complaint to reflect the Court's Order of September 25, 2012, adding class representative Antonio Carbajal and expanding the class definition to include Select Segment Specialists. (*Id.*) The Court also ordered the parties to file a Joint Motion to Amend the Court's Memorandum & Order Regarding Motion for Class Certification of April 11, 2012 ("Motion to Amend Class Definition"), requesting a finding on the adequacy of representation of the Select Segment Specialists' interest by Ladore and Carbajal. (*Id.*)

On June 6, 2013, Plaintiffs filed a First Amended Complaint per the Court's May 28, 2013 Minute Order. (Doc. 85.)

On June 27, 2013, the Court heard the Motion to Amend Class Definition and Amended Motion for Preliminary Approval. The Court granted the Motion to Amend Class Definition. (Doc. 95.) The Court requested the parties to change a date in the settlement agreement and informed the parties that it would grant preliminary approval of the settlement upon receipt of the corrected agreement. (*Id.*)

On July 9, 2013, Plaintiffs filed an Amended Joint Stipulation of Class Action Settlement and Release, which corrected the dates accordingly. (Doc. 98.)

On August 2, 2013, the Court granted preliminary approval of the settlement, appointed CPT Group, Inc. ("CPT") as the claims administrator, and directed CPT to mail a Notice of Proposed Class Action Settlement and Claim Form to all Class Members (the "Notice Packet"). (Doc. 99.) The Court further set October 31, 2013 as the date for the Final Approval Hearing. (*Id.*)

On August 7, 2013, pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, Ecolab gave notice to the Attorney General of the United States and to the Attorney General of the State of California of the proposed class action settlement. (Landry Decl., ¶ 3.)

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V. THE MEDIATION

On February 22, 2013, the parties attended a mediation before the Honorable Carl J. West, a retired judge of the Los Angeles County Superior Court. (Strauss Decl., ¶ 17.) As noted, prior to the mediation, the parties exchanged all necessary payroll and related information necessary to permit a full and complete analysis of the value of the potential recovery. The information included the dates of employment of each class member, the salary and commissions earned by each class member throughout the claims period, and the names and dates of all class members who at any time during the claims period took a personal leave of absence. (Strauss Decl., ¶ 10.) Through discovery, the parties had gained even more knowledge of the claims and value thereof. (Gutierrez Decl., ¶¶ 8-14; Strauss Decl., ¶¶ 10-11.) In short, the parties began negotiations at the mediation with full knowledge of the strengths, weaknesses, and value of the claims and defenses asserted.

The mediation was successful. The parties entered into a settlement terms memorandum of understanding at the mediation. The proposed settlement echoes the terms of that settlement terms sheet. The key terms of the settlement are discussed in the following section.

VI. SUMMARY OF THE SETTLEMENT

The settlement discussions between the parties have been non-collusive, adversarial, and at arm's length. The investigation and discovery described above, the parties' ongoing case evaluations and exchanges of ideas, the full and complete briefing regarding class certification and summary judgment/adjudication, the Court's rulings, have all combined to enable the two sides to fully and completely assess the merits of their respective positions.

The terms of the settlement are set forth in the Settlement Agreement (Doc. 98) and incorporated herein by reference. The key terms are:

(a) Defendant will pay a Maximum Settlement Amount of $29 million. This sum includes payments made to claimants, $750,000 payable for PAGA penalties to the California Labor and Workforce Development Agency (the "LWDA payment"),

settlement administration costs, awards of attorneys' fees and costs, and incentive awards to the named plaintiffs.

(b) By no later than June 30, 2013 Defendant shall adopt and implement a new compensation model for its Pest Elimination Service Specialists, Senior Pest Elimination Service Specialists and Select Segment Specialists that treats them as non-exempt overtime eligible employees under California law.

(c) Defendant will not object to an award of attorneys' fees to Class Counsel not to exceed 30% of the Maximum Settlement, and up to $100,000 in actual costs and expenses.

(d) Plaintiffs will seek incentive awards up to a maximum of $25,000 each. Defendant will not object to incentive awards to each of the plaintiffs up to this amount. The settlement agreement does not explicitly or implicitly condition the incentive awards on the class representatives' support for the settlement. The amounts sought will be up to $25,000, and the Court, in its discretion, may approve a lower amount.

(e) Each Class Member who returns a valid and timely Claim Form will be entitled to receive a portion of the amount of the Net Settlement Amount, which shall be allocated as follows:

(1) Waiting-Time Subclass Members. Each Waiting Time Subclass Member, roughly defined as anyone whose employment terminated between October 7, 2008 and the date of preliminary approval, will receive $3,000 in addition to amounts payable to them under other sections of the Settlement. These payments will reduce the Net Settlement Amount accordingly.

(2) Participating Class Members. The remaining Net Settlement Amount will be divided on a weeks-worked basis amongst all of the Class Members (i.e., total weeks worked by an individual Class Member divided by the total number of weeks worked by all Class Members, multiplied by the Net Settlement Amount). Per Order of the Court dated May 30, 2013, those who participated in the *Roe* settlement will only be able to share in the Net Settlement Amount from March 1, 2008 through

the date of preliminary approval (Doc. 84), while those who did not participate in the *Roe* settlement, will be able to recover from October 7, 2007 through the preliminary approval date.

A. Administration of Claims and Notice to the Class.

Pursuant to the Court's Order Granting Preliminary Approval, CPT was retained to act as the claims administrator. CPT mailed out Notice Packets to Class Members on September 3, 2013. (Strauss Decl., ¶ 36.) On or about October 2, 2013, Plaintiffs will file declarations from CPT regarding the mailing of the Notice Packets and number of claims, objections, and requests for exclusions made by Class Members. On or about October 22, 2013, after the conclusion of the claims period, Plaintiffs will file a supplemental declaration from CPT including the final number of claims, objections, and requests for exclusions, if any. (*Id.*)

VII. THE SETTLEMENT IS "FAIR, ADEQUATE AND REASONABLE" AND SHOULD BE GRANTED FINAL APPROVAL.

A. Legal Standard

Under Rule 23(e) of the Federal Rules of Civil Procedure, "claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed.R.Civ.P. 23(e). A court must engage in a two-step process to approve a proposed class action settlement. First, the court must determine whether the proposed settlement deserves preliminary approval. *Nat'l Rural Telecomms. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). Second, after notice is given to class members, the Court must determine whether final approval is warranted. *Id.* A court should approve a settlement pursuant to Rule 23(e) only if the settlement "is fundamentally fair, adequate and reasonable." *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993) (internal quotation marks omitted); *accord In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

Circuit law teaches that the Court must balance the following factors to determine

whether a class action settlement is fair, adequate, and reasonable:

(1) the strength of the plaintiff's case;

(2) the risk, expense, complexity, and likely duration of further litigation;

(3) the risk of maintaining class action status throughout the trial;

(4) the amount offered in settlement;

(5) the extent of discovery completed and the stage of the proceedings;

(6) the experience and views of counsel;

(7) the presence of a governmental participant; and

(8) the reaction of the class members to the proposed settlement.

Torrisi, 8 F.3d at 1375; *accord Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir.1998); *Hanlon*, 150 F.3d at 1026.

"In addition, the settlement may not be the product of collusion among the negotiating parties." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 458. These factors are not exclusive, and one factor may deserve more weight than the others depending on the circumstances. *Torrisi*, 8 F.3d at 1376. In some instances, "one factor alone may prove determinative in finding sufficient grounds for court approval." *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 525-26 (citing *Torrisi*, 8 F.3d at 1376). In addition, "[t]he involvement of experienced class action counsel and the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery had taken place create a presumption that the agreement is fair." *Linney v. Cellular Alaska Partnership*, 1997 WL 450064, *5 (N.D. Cal. 1997), *aff'd*, 151 F.3d at 1234.

B. Application of the *Torrisi* Factors.

1. The Strength of Plaintiffs' Case.

Plaintiffs' case is strong. Plaintiffs prevailed in the argument over the Haz/Mat defense, which was Ecolab's primary defense to liability on the overtime claim. The strength of Plaintiffs' case is one reason why the settlement of $29 million, plus an injunction against future overtime misclassification, is close to what Plaintiffs would have proved at trial. (Strauss Decl., ¶ 11.)

Despite these strengths, there is still risk. Given the risks of litigation, including the uncertainty over whether Defendant would prevail in an appeal of the final judgment on the basis of whether the Haz/Mat exemption decision was proper, and the possibility that the Court would reduce any PAGA penalties against Defendant, the settlement of $29 million represents a reasonable comprise. In essence, the $29 million figure roughly equals an average of 13.79 overtime hours worked per employee per week from March 1, 2008 to the present. The average payment (measured by dividing the Net Settlement Amount by 386) would be around $52,000. (Strauss Decl., ¶ 27.) So, while the Court may analyze the factors enumerated above for determining whether the settlement is fair, adequate, and reasonable, the fact that this settlement amount is close to what Plaintiffs would prove at trial strongly suggests that the settlement is fair, adequate, and reasonable.

2. The Risk, Expense, Complexity, and Likely Duration of Continued Litigation.

The central factor relating to the "risk, expense, complexity, and likely duration" prong of the *Torrisi* analysis is the expense of litigation. *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 526. "In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Id*. (quoting A. Conte & H. Newberg, *Newberg on Class Actions*, § 11:50 at 155 (4th ed. 2002)).

Continued litigation would also be expensive for all parties, and the settlement avoids these expenses. *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F.Supp.2d 503, 510 (E.D. N.Y. 2003), *aff'd* 396 F.2d 96 (2d Cir. 2005) ("The potential for this complex litigation to result in enormous expense, and to continue for a long time, was great."). This case has been vigorously litigated. Class Counsel has interviewed many dozens of class members and analyzed substantial documentary evidence, including payroll data produced by Defendant. (Gutierrez Decl., ¶ 9; Strauss Decl., ¶ 7.) Class Counsel has conducted an independent investigation of the facts and analyzed Ecolab's employment practices. (Gutierrez Decl., ¶ 8; Strauss Decl., ¶ 7.) Plaintiffs retained an

expert economist to analyze data, and to prepare detailed written reports in connection with the various liability and damage issues of the case. (Strauss Decl., ¶ 18.) Plaintiffs' expert also advised Class Counsel to take up to 50 depositions of Class Members for the purpose of establishing a statistically relevant sample of hours worked by Class Members. (Gutierrez Decl., ¶ 14.) Those depositions were set to commence the week after the mediation. (Strauss Decl., ¶ 16.)

The slight discount embodied in the $29 million settlement amount is largely due to the risk, expense, complexity, and likely duration of continued litigation. The risks of continued litigation are substantial. While Plaintiffs believe their case against Ecolab is strong, the settlement eliminates significant risks they would face if the action were to proceed against Ecolab. Although liability on the overtime claim has for all intents and purposes been established (because the Court granted Plaintiffs' motion for summary adjudication of the Haz/Mat defense), proving liability for the remaining claims is not without risk.

For instance, Ecolab could potentially assert equitable defenses and "considerations," including laches, good faith, waiver, and estoppel, in fashioning remedies for the Unfair Competition claim; thus, Ecolab might decrease its exposure for restitution based on equitable considerations. *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal.4th 163, 180 (2000).

Similarly, Plaintiffs' claim for waiting-time penalties under Labor Code section 203 requires proof of a willful failure to pay wages at termination or resignation, and a good faith dispute over whether the employer owes wages may preclude the imposition of penalties, so it is possible that Ecolab could avoid waiting-time penalties. Cal. Lab. Code § 203; 8 Cal. Code Regs. § 13520.

As for penalties under PAGA, the Court has discretion to lower the penalty assessment if it finds that to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory, so Ecolab could have avoided many millions of dollars in PAGA penalties. Cal. Lab. Code § 2699(e)(2).

Additionally, proving liability is only one hurdle; Plaintiffs must also prove damages at trial, which can be tricky in class contexts given that so-called "trials by formula" are discouraged. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2561, 180 L.Ed. 2d 374 (2011).

Finally, because of the large amount of money at stake and, after trial, the likely injunction against continuing to classify Class Members as exempt, there is a strong likelihood that Defendant would appeal the Court's decision that the Haz/Mat exemption is inapplicable. These risks are substantial, and the settlement, which reflects the risks, avoids them and still constitutes a significant gain for the Class Members.

The case is certainly complex. "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *In re Austrian and German Bank Holocaust Litig.*, 80 F.Supp.2d 164, 174 (S.D. N.Y. 2000). Here, there are 396 Class Members and few accurate records of hours worked by any of them, hence the necessity for gathering statistically relevant data as to hours worked. Moreover, while Plaintiffs agree with the Court's determination of the inapplicability of the Haz/Mat exemption, Plaintiffs recognize that there is no other case law directly on point, which Ecolab would attempt to argue in its favor in its appeal of the final judgment should the case proceed to trial. That almost certain appeal could drag the case out another few years. The complexity, expense, and likely duration of this case suggest that the settlement is fair, adequate, and reasonable.

3. The Risk Of Maintaining Class Action Status Throughout The Trial.

Although the Court certified the class in April 2012, there is always risk that a class may be decertified before trial. In *Pryor v. Aerotek Scientific, LLC*, 278 F.R.D. 516, 536 (C.D. Cal. 2011), the court denied class certification because, in part, the employees in question worked off-the-clock and their early arrivals were unrecorded and difficult, if not impossible, to reconstruct. While Plaintiffs believe certification was proper, Ecolab could make the same argument here, because the time records in

question may be incomplete and largely inaccurate. (Strauss Decl., ¶ 6.) If the Court were to agree at some point, it could decertify the class.

4. The Amount Offered in Settlement.

"[A] settlement should stand or fall on the adequacy of its terms." *In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 211 (5th Cir. 1981). The Court examines "the complete package taken as a whole, rather than the individual component parts," to determine whether the proposal is fair. *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982).

Under the terms of the settlement agreement, Ecolab has agreed to pay a non-reversionary Maximum Settlement Amount ("MSA") of $29 million, from which payments may be made for (1) attorney fees in an amount up to $8,700,000 (30 percent of the MSA); (2) litigation costs incurred by Class Counsel up to $100,000; (3) incentive awards of up to $25,000 each for the two Class Representatives; (4) settlement administration costs not to exceed $14,500 payable to the Claims Administrator; (5) the payment of $750,000 to the California Labor and Workforce Development Agency; (6) the remaining net settlement amount ("NSA," roughly $19.1 million, assuming these amounts are all approved by the Court) payable to the roughly 396 Class Members; and (7) any leftover amounts to be distributed *cy pres* to the California Rural Legal Assistance. The NSA amount will result in an average payment to Class Members of approximately $50,000, with the highest estimated payment calculated at about $90,000. (Strauss Decl., ¶ 27.) The agreement also includes a commitment by Ecolab to begin treating the positions at issue in this case as nonexempt for the purposes of overtime, which Ecolab implemented on July 1, 2013. (*Id.* at ¶ 34.)

On the whole, the terms of the settlement are fair and weigh in favor of granting final approval. The settlement provides substantial recovery for the class. Going into the mediation, Class Counsel roughly calculated Ecolab's maximum possible exposure at trial for unpaid overtime and interest thereon, penalties under Labor Code section 203, and civil penalties under PAGA" and determined that amount to be $40,100,000.

(Strauss Decl., ¶ 11; Gutierrez Decl., ¶ 12.) Class Counsel valued the realistic range of provable damages at between $20 million and $35 million. (Strauss Decl., ¶ 24.) Further, $8,200,000 of the total exposure amount consisted of PAGA penalties (Strauss Decl., ¶ 11), which the Court, in its discretion could have greatly reduced. Given the risks and uncertainty to Plaintiffs in moving forward to prove their damages before a trier of fact, the gross settlement amount of $29 million, or 75% of the maximum possible amount of recovery, is a substantial recovery for the class. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (ruling that "the [s]ettlement amount of almost $2 million was roughly one-sixth of the potential recovery, which, given the difficulties in proving the case [was] fair and adequate.").

Further, the agreement by Ecolab to reclassify the positions affected by this case is of enormous value over and above the $29 million settlement amount. Ecolab's agreement to this injunctive-type relief should bring finality to this conflict, which the parties have disputed since 2005, when the underlying state court action was filed. The settlement therefore not only protects class members' rights to alleged past overdue wages, but also gives due regard to future labor protections. *See Officers for Justice*, 688 F.2d 624 ("The primary concern of [Rule 23(e)] is the protection of th[e] class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.").

For these reasons, the amount offered in settlement weighs in favor of approval.

5. The Extent Of Discovery Completed And The Stage Of Proceedings.

The amount of discovery completed affects approval of a stipulated settlement because it indicates whether the parties have had an "adequate opportunity to assess the pros and cons of settlement and further litigation." *In re Cylink Sec. Litig.*, 274 F.Supp.2d 1109, 1112 (N.D. Cal. 2003). Nevertheless, "[i]n the context of class action settlements, 'formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement." *Linney*, 151 F.3d at 1239 (quoting *In re Chicken Antitrust Litig.*, 669 F.2d 228, 241 (5th

Cir.1982)).

Here, both parties engaged in very active discovery. Plaintiffs propounded and responded to multiple sets of interrogatories and requests for admission. Plaintiffs also took the depositions of various Ecolab employees who were the "most knowledgeable" concerning various topics. In total, Plaintiffs took three depositions of non-Class Members. (Strauss Decl., ¶ 8.)

Plaintiffs propounded substantial requests for production of written documents relating to overtime hours worked by and payroll of class members. Ecolab produced many thousands of pages of documents, each of which was reviewed and analyzed by Class Counsel. (Gutierrez Decl., ¶ 8.) These documents proved crucial in regard to the investigation of the claims raised in the litigation, and in making ultimate determinations as to which alleged Labor Code violations could, in the opinion of Class Counsel, be factually established. (Gutierrez Decl., ¶¶ 8-10; Strauss Decl., ¶ 9-11.)

Among the documents produced by Ecolab were "E-Time" records and customer service reports ("CSRs"). The E-Time (also called "Teletime") records purport to show the hours phoned-in by PESSes at the start and end of their shifts. The CSRs are reports generated by PESSes at customer locations, and they are akin to receipts. A CSR shows the services performed by the PESS who serviced a client, and it also shows the date and the start and end time the PESS performed the services. (Strauss Decl., ¶¶ 6, 10.)

A review and analysis of the E-Time and CSRs was crucial in Class Counsel's investigation of this case. (Gutierrez Decl., ¶ 8.) First, it quickly became apparent that neither type of record was accurate. The E-Time records do not show all time worked by Class Members, like drive time or time spent working at home to prepare for a day's work. The CSRs are imperfect because they do not show the time actually spent (from start to finish) at each customer location or the drive time between customers. (Strauss Decl., ¶ 6.)

Due to the apparently flawed hours-worked data from the E-Time and CSR records, Class Counsel determined that it was necessary to interview dozens of Class

Members to gauge the accuracy of these records and, if they were not accurate, to better assess the number of overtime hours worked by Class Members. Class Counsel thus conducted extensive interviews with close to 100 class members. (Strauss Decl., ¶ 7; Gutierrez Decl., ¶ 9.)

Ecolab also produced payroll records for every Class Member for the entire class period. Class Counsel reviewed and analyzed these records in their entirety. (Strauss Decl., ¶ 9.)

Plaintiffs also hired Dr. Richard Drogin as an expert witness. Plaintiffs had Dr. Drogin analyze many of Ecolab's pay records and time records (like the E-Time and CSRs) in order to prepare an expert report. (Strauss Decl., ¶ 18; Gutierrez Decl. ¶ 14.)

Ecolab took various depositions as well, all of which Class Counsel defended. Ecolab took the deposition of both Representative Plaintiffs. (Strauss Decl., ¶ 8.)

As for the stage of the case, when the matter resolved at mediation, it was headed toward trial in June 2013. (*See* Doc. 70.) The Court had already granted class certification. (Doc. 30.) Ecolab had filed two dispositive motions. (Docs. 42, 60.) And Plaintiffs had filed – and prevailed – on their Motion for Partial Summary Judgment as to the Haz/Mat defense. (Docs. 44, 65.) And, of course, the same issues had been previously litigated in *Roe*. (Gutierrez Decl., ¶¶ 2-4.) Hence, the case was far enough along for the parties to be able to properly evaluate Ecolab's liability for unpaid overtime and PAGA penalties.

6. The Experience and Views of Counsel

"'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation." *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528 (quoting *In re Painewebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D. N.Y. 1997)). Furthermore, a presumption of fairness applies when settlements are negotiated at arm's length, because of the decreased chance of collusion between the negotiating parties. *In re First Capital Holdings Corp. Fin. Prods. Secs. Litig.*, 1992 U.S. Dist. LEXIS 14337, at *5-6 (C.D. Cal. June 10, 1992).

Here, all parties are represented by seasoned litigators, and Class Counsel has litigated many other class actions. (Strauss Decl., ¶ 25; Gutierrez Decl., ¶ 26.) Class Counsel and counsel for Ecolab support the settlement as fair, reasonable, adequate, and in the best interests of the Class. (Doc. 98 at § III(U).)

The proposed settlement here is the product of literally days, weeks and months of preparation and arm's-length negotiations between the parties and their counsel. Plaintiffs conducted significant investigation of the facts and law during the prosecution of this action, including (1) review and analysis of critical documents, (2) comprehensive depositions of key Ecolab personnel, (3) filing a certification motion which the Defendant strenuously opposed and attempted to appeal to the Ninth Circuit, (4) investigating, researching and drafting a motion for summary adjudication which would have resolved all issues except the amount of damages due the class, (5) researching and drafting a comprehensive opposition to Defendant's motion for summary judgment, (6) obtaining and reviewing detailed employment and wage histories for all class members, and (8) retention of Richard Drogin, Ph.D. for the purpose of conducting a comprehensive analysis of the employment data obtained. (Strauss Decl., ¶¶ 5-10, 17; Gutierrez Decl., ¶¶ 8-15.)

Plaintiffs' counsel considered the strengths and weaknesses of their case, and of Ecolab's defense. Considerable effort has been put forth to analyze the law as it would apply to the facts of this matter, including the Plaintiffs' claim that they and the class were improperly classified as exempt from overtime under the Haz/Mat exemption. (Strauss Decl., ¶¶ 5-10, 12-23.) This settlement of $29 million represents a substantial portion of the potential overtime damages that the class may have recovered. (Strauss Decl., ¶ 11.)

The parties were able to negotiate a fair settlement, taking into account the costs and risks of continued litigation. The opinion of experienced counsel, as here, supporting the settlement is entitled to considerable weight. "A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in

arm's lengthnegotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2nd Cir. 2005). *See Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988) (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979) (recommendations of plaintiffs' counsel should be given a presumption of reasonableness).[5]

Based on the foregoing, Plaintiffs and their counsel have determined that the settlement set forth in the Agreement is a fair, adequate and reasonable settlement, and is in the best interests of Plaintiffs and the proposed Settlement Class. (Strauss Decl., ¶¶ 25-28; Gutierrez Decl., ¶ 18.) Defendant also has expended substantial amounts of time, energy and resources in connection with the litigation, and unless this settlement is approved, will continue to have to do so. Defendant has, therefore, agreed to settle in the manner and upon the terms set forth in the Settlement Agreement, to put to rest the claims as set forth in the Class Action.

The fact that all parties have seasoned counsel who negotiated at arm's length weighs in favor of final approval of the settlement.

7. The Presence of a Governmental Participant.

California's LWDA is a government entity affected by this action. Plaintiffs have complied with the statutory notice requirements prior to bringing their claim for PAGA penalties. (FAC ¶ 34, Doc. 85); *see* Cal. Lab. Code § 2699.3; (Landry Decl., ¶ 3 (Ecolab provided notice to the attorneys general of the United States and the states in which a class member resides as required by the Class Action Fairness Act of 2005.).) Section 2699(i) provides that any civil penalties recovered under these provisions shall be apportioned 75/25 between the agency and the aggrieved employees, as will occur in this case pursuant to the terms of the Settlement Agreement. *See* Cal. Lab. Code §

[5] The Class has been represented by highly experienced Class Counsel. See declarations of Alejandro P. Gutierrez and Michael A. Strauss, filed contemporaneously herewith.

2699(i); (Doc. 98 at 9.) Accordingly, this factor weighs in favor of granting final approval.

8. The Reaction of Notified Class Members to the Proposed Settlement.

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of [the] proposed class settlement ... are favorable to the class members." *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 529.

The notice packet in this action contained an estimate of the individual Class Member's settlement payment and explained the calculations, the settlement terms, and the procedure for opting out, objecting, or challenging the individual payment calculation. (Doc. 99, Exs. A and B to Order Preliminarily Approving Class Action Settlement and Class Notice and Setting Final Fairness Hearing.)

Plaintiffs will file declarations from the Claims Administrator prior to the hearing on this Motion with information regarding the number of claims, amount claimed, and amount objections and requests for exclusion. Plaintiffs will file supplemental briefing on this issue prior to the hearing. (Strauss Decl., ¶ 36.)

C. The PAGA Payment Should Be Approved.

1. The Labor Code Private Attorneys General Act Of 2004 Generally.

PAGA allows private litigants to stand in the shoes of divisions of the Labor and Workforce Development Agency ("LWDA"), like the Labor Commissioner, to assess and collect civil penalties for many Labor Code violations. *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1197 (2008). Prior to the enactment of PAGA, only the LWDA and its divisions could assess and collect such civil penalties. *Id.* In 2003 the Legislature determined that shortages in funding and staffing were preventing the LWDA from vigorously pursuing civil penalties and thus hampering their intended deterrent effect. *Id.* The Legislature enacted PAGA to allow "aggrieved employees," as private litigants, to seek and recover these civil penalties, provided that the aggrieved employee paid seventy-five percent of all penalties recovered to the LWDA. *Id.* at

1197; *Arias v. Superior Court*, 46 Cal.4th 969, 980-81 (2009); Cal. Lab. Code § 2699(i).

There are two general types of civil penalties that may be assessed for violations of the Labor Code. First, some provisions of the Labor Code specifically provide for a civil penalty for violations of one or more provisions of the Labor Code. For example, Labor Code section 210 establishes a civil penalty of either $100 or $200 and 25% of any amount unlawfully withheld per pay period per affected employee for violations of Labor Code section 204 (which Plaintiffs allege Ecolab violated by not paying all wages earned, i.e., overtime wages, each pay period), so an aggrieved employee can seek the specific civil penalties established by section 210 for violations of section 204.

On the other hand, if a section of the Labor Code lacks any specific provision for the assessment of civil penalties, PAGA has a catchall, default provision for the assessment of civil penalties: Labor Code section 2699(f). *Home Depot U.S.A., Inc. v. Superior Court*, 191 Cal.App.4th 210, 222 (2010). The default penalty is typically either $100 or $200 per pay period per affected employee. Cal. Lab. Code § 2699(f)(2). For example, Labor Code section 201 (which Plaintiffs allege Ecolab violated by failing to pay wages owed to employees on the date of discharge, does not have a specific provision establishing a civil penalty for violations thereof. In such a case, the default civil penalty provision of PAGA comes into play, and an aggrieved employee can seek the default civil penalties under the section 2699, subdivision (f) for violations of Labor Code section 201.

The Court must approve the amount of penalties sought in any settlement of a PAGA action. Cal. Lab. Code § 2699(l).

2. The PAGA Penalties Sought In The Settlement Are Reasonable.

Pursuant to the settlement, $1 million is designated as penalties pursuant to PAGA, 75% of which will be payable to the LWDA and 25% of which will be shared by the Class Members employed by Ecolab within one year of the filing of the original Complaint. The amount is well within reason.

In their First Amended Complaint ("FAC", Doc. 85), Plaintiffs alleged that Ecolab's business practices violated separate sections of the Labor Code, including sections 201 (failure to pay wages on date of discharge), 202 (failure to pay wages within 72 hours of date of resignation), 203 (willful failure to pay wages under sections 201 or 202), 204 (failure to pay all wages each pay period), 226 (failure to include all information required on paycheck stubs), 510 (failure to pay overtime wages), and 1194 (failure to pay overtime wages). (Doc. 85 at ¶ 36.)

The civil penalty provisions for these statues are Labor Code sections 210 (for violations of 204), 256 (for violations of section 203), 226.3 (for violations of section 226), 558 (for violations of section 510), and section 2699(f) (for violations of sections 201, 202, and 1194).

The statute of limitations on a PAGA action relates back to the date of filing of the original complaint. *Amaral*, 163 Cal.App.4th at 1200. Plaintiffs filed their original complaint on October 7, 2011. The statute of limitations on an action for a penalty is one year from the date of filing. Cal. Code Civ. Proc. § 340(a) ["An action upon a statute for a penalty or forfeiture"]; *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal.4th 1094, 1102 (2007). So the limitations period began on October 7, 2010 and continued through June 30, 2013, when Ecolab universally changed its employment policies a result of the settlement of this lawsuit. (Gutierrez Decl., ¶ 24.)

Based on calculations by Class Counsel, the first-tier ("initial violation") PAGA penalties for violations of these statutes was a maximum of $8,200,000. (Strauss Decl., ¶ 12.) If, however, Plaintiffs could prove that Ecolab's violations of California law deserved the second-tier ("subsequent violation") PAGA penalties, that amount would have been much, much higher (at least twice as much, plus 25% of unpaid wages). A "subsequent" violation only applies "after the employer has learned its conduct violates the Labor Code" and is therefore "on notice that any future violations will be punished" at the higher dollar amount per violation (i.e., $200 per employee per pay period per employee, plus 25% of the unlawfully withheld wages in the case of a penalty sought

under section 210). *Amaral*, 163 Cal.App.4th at 1209. Under this authority, it is possible that Plaintiffs would only recover the $100-per-employee-per-violation-per-pay-period civil penalties for "initial" violations, since there was never a judicial determination in *Roe* that Ecolab's conduct violated California law, and Ecolab continues to dispute liability.

Even had Plaintiffs prevailed on the PAGA claim, the amount awarded by the Court could have been significantly lower than the maximum available penalties. PAGA penalties may be reduced by a court for various reasons. *See* Cal Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1136 (2012), *review denied* (June 13, 2012) ("[T]he trial court reasonably determined that an award of the maximum penalty amount would be unjust under the facts and circumstances of this case."). Courts routinely approve small amounts for PAGA penalties. *See Nordstrom Comm'n Cases*, 186 Cal.App.4th 576, 589 (2010) ($0 out of nearly $9 million settlement allocated to PAGA penalties); Gutierrez Decl, ¶ 13 ($200,000 paid to LWDA for PAGA penalties in *Roe*); *Franco v. Ruiz Food Prods., Inc.*, 2012 WL 5941801, *14 (E.D. Cal. 2012) (approving PAGA penalties of $10,000 in $2.5 million common fund settlement and noting that amount was in line with settlement approval of PAGA awards in other cases.)

However, it is also possible that, because Ecolab paid PAGA penalties in *Roe* (Gutierrez Decl., ¶ 13), Ecolab would have had to pay the "subsequent violation" level penalties. This would have meant a possible doubling (or tripling) of the penalties.

Because of the uncertainty over what the Court would award for PAGA violations, and in light of the fact that Ecolab paid $200,000 in the *Roe* settlement, which weighs in favor of requiring a greater payment in this settlement, the parties agreed on allocating $1,000,000 as PAGA penalties, 75% of which would be payable to the LWDA and 25% redistributed to the class. *See Franco*, 2012 WL 5941801, *14 (25% of PAGA penalties added to net settlement amount for distribution to the class).

Plaintiffs' counsel believe this PAGA settlement amount is an excellent result

and favorably compares to other PAGA settlements in California. Accordingly, Plaintiffs respectfully request this Court to approve the amount of $1,000,000 in PAGA penalties that Ecolab shall pay under the settlement.

D. The *Cy Pres* Distribution Should Be Approved.

Plaintiffs request that the Court approve the *cy pres* distribution of unclaimed funds to California Rural Legal Assistance, Inc. ("CRLA"). Pursuant to the Settlement, if, after payments are made to participating class members, the total of any such funds that are left over (either due to inability to locate a class member or the class member's inability to cash a check) are equal to or less than $50,000, there shall not be another distribution of funds; instead, the leftover funds shall be paid to CRLA. (Doc. 98 at §III(G)(2)(e).)

The Ninth Circuit has established clear standards on *cy pres* distributions in class-action settlements. "Not just any worthy recipient can qualify as an appropriate cy pres beneficiary." *Dermis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012). Instead there must be "a driving nexus between the plaintiff class and the cy pres beneficiaries." *Id*. (quoting *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 2011)). "A cy pres award must be guided by (1) the objectives of the underlying statute(s) and (2) the interests of the silent class members, and must not benefit a group too remote from the plaintiff's class." *Id*. (internal citations and quotation marks omitted).

An appropriate charity is one that is "dedicated to protecting [workers] from, or redressing injuries caused by," violations of labor laws. *Eddings v. Health Net, Inc.*, 2013 WL 3013867, *4 (C.D. Cal. June 13, 2013). CRLA is dedicated to protecting workers throughout California in many types of actions, including wage-and-hour litigation. *See Rodriguez v. SGLC, Inc.*, 2010 WL 2943128 (E.D. Cal. 2010) (CRLA represented a group of 44 workers in Galt and Clarksburg, California in a claim for unpaid wages). CRLA has also been approved as a cy pres recipient in other class action settlements. *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 484 (E.D. Cal. 2010) (final approval of wage-and-hour class action settlement with cy pres

distribution of unclaimed funds to CRLA). CRLA is an appropriate *cy pres* recipient.

VIII. CONCLUSION

The parties have reached this settlement following extensive litigation, ongoing case discussions and arm's-length negotiations. Plaintiffs respectfully request that the Court grant final approval of the proposed settlement, including the allocation of $1 million of the settlement amount as PAGA penalties and the distribution of unclaimed funds on a *cy pres* basis to California Rural Legal Assistance, Inc. pursuant to the terms of the settlement.

Dated: September 13, 2013

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