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similarly situated

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REYNALDO LOPEZ et al.)
)
Plaintiffs,)
)
v.)
)
DELTA AIRLINES, INC. et al.)
)
Defendants.)

No. 2:15-cv-07302-SVW-SS
[Assigned to Hon. Stephen V. Wilson,
Courtroom 10A; Magistrate Judge: Hon.
Suzanne H. Segal]
**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**
Date: July 17, 2017
Time: 1:30 p.m.
Courtroom: 10A
Judge: Hon. Stephen V. Wilson

[Filed and served concurrently with Notice of Motion and Motion for Order Granting Preliminary Approval of Class Action Settlement; Declarations of Matthew J. Matern and Eileen B. Goldsmith; [Proposed] Order]

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6 *Amchem Products, Inc. v. Windsor* (1997)
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13 *Gardner v. GC Servs., LP* (S.D. Cal. Nov. 1, 2011)
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14 *Hanlon v. Chrysler Corp.* (9th Cir. 1998)
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16 *Hightower v. JP Morgan Chase Bank, NA* (C.D. Cal. Aug. 4, 2015)
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19 *In re On-Line DVD Rental Antitrust Litig.* (9th Cir. 2015)
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26 *LaFleur v. Med. Mgmt. Int’l, Inc.* (C.D. Cal. June 5, 2014)
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28 *Misra v. Decision One Mortg. Co.* (C.D. Cal. Apr. 13, 2009)
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TABLE OF AUTHORITIES (cont'd)

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3 *Morales v. Stevco, Inc.* (E.D. Cal. Nov. 10, 2011)
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4 *Moshogiannis v. Security Consultants Grp., Inc.* (N.D. Cal. Feb. 8, 2012)
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5

6 Nat’l Rural Telecomm. Coop. v. DirecTV, Inc. (C.D. Cal. 2004)
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7 *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016)
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12 *Stuart v. Radioshack Corp., C-07-4499 EMC* (N.D. Cal. Aug. 9, 2010)
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13 *Syed v. M-I, LLC* (E.D. Cal. Feb. 22, 2017)
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15 *Viceral v. Mistras Group, Inc.* (N.D. Cal. Oct. 11, 2016)
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14 Manual for Complex Litigation, Third § 30.41
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15 Manual for Complex Litigation, Third § 30.41 at p. 237
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16

17 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*,
§ 13.13 (5th ed., 2014) 12

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1 **I. INTRODUCTION**

2 Plaintiffs, on behalf of a class of approximately 3,400 non-exempt California
3 employees of Defendant Delta Air Lines, Inc. (“Delta”), seek preliminary approval of the
4 parties’ \$4.25 million class action settlement. The settlement is entirely non-reversionary.
5 The settlement easily “falls within the range of possible approval,” the lenient standard
6 that governs a preliminary approval motion. *Manual for Complex Litigation, Third*
7 § 30.41 (Federal Judicial Center 1995). It therefore warrants notice to the Class Members
8 of the terms of the settlement and a subsequent hearing to consider whether to grant final
9 approval of the settlement as fair, reasonable and adequate.

10 The settlement is documented in the Stipulation of Settlement (hereafter
11 “Settlement”), which is attached as Exhibit 1 to the Declaration of Matthew J. Matern
12 (“Matern Decl.”). The proposed notice to class members is attached to the Settlement as
13 Exhibit A.

14 The Settlement provides classwide relief that is superior to that which Plaintiffs
15 could reasonably expect to achieve if this case were to be litigated further. The Court
16 only certified Plaintiffs’ regular rate overtime claim concerning whether Delta improperly
17 excluded certain forms of compensation from its calculations of employees’ regular rate
18 of pay for overtime purposes. That claim was certified only as to certain issues under
19 Fed. R. Civ. P. 23(c)(4).

20 As discussed in detail below, the Settlement fully compensates class members for
21 the regular rate overtime claim, as to which the Court granted Plaintiffs’ summary
22 judgment motion as to Delta’s liability before vacating its order in light of the parties’
23 settlement. The Settlement provides additional compensation to class members for the
24 other claims for relief pleaded in Plaintiffs’ complaint – for missed meal and rest breaks,
25 unpaid wages, and expense reimbursements – that were not certified. Further, the
26 Settlement provides relief for Delta employees statewide (as originally sought in
27
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1 Plaintiffs' complaint), rather than for the more limited class of LAX-based employees as
2 to which partial class certification was granted.

3 All factors relevant to the Court's analysis support preliminary approval. This
4 Settlement is the culmination of two years of extraordinarily hard-fought litigation,
5 including numerous battles over discovery and the pleadings, and fully litigated class
6 certification and summary judgment motions. The parties conducted extensive discovery,
7 informal investigation, and analysis of potential outcomes. They mediated twice, with
8 the assistance of a highly experienced mediator. The \$4.25 million, non-reversionary
9 Settlement is the result of that mediation and further negotiation between the parties, and
10 reflects their well-informed understanding of the strengths and weakness of Plaintiffs'
11 claims and Delta's defenses. The Settlement provides substantial benefits to class
12 members and avoids the cost, risk, and delay attendant to further litigation, which could
13 take years and is uncertain to result in a classwide recovery. As we discuss in detail
14 below, the Court should certify the proposed settlement class and grant preliminary
15 approval of the Settlement.

16 **II. BACKGROUND AND LITIGATION HISTORY**

17 This action was filed on July 1, 2015 in the Los Angeles Superior Court and was
18 removed to this Court on September 17, 2015, pursuant to the Class Action Fairness Act.

19 The original complaint alleged claims on behalf of a statewide class of non-exempt
20 Delta employees for failure to provide meal and rest breaks; failure to pay overtime based
21 on Delta's "pay to schedule" policy, by which it paid class members for their scheduled
22 hours rather than based on their time punches; failure to adequately reimburse class
23 members for business expenses; and related derivative claims under the California Labor
24 Code and Unfair Competition Law. Dkt. 1-1; *id.* ¶7.

25 The parties first attempted to mediate this case on January 4, 2016, with the
26 assistance of Mark Rudy, a mediator who is highly experienced in complex wage and
27 hour class actions. That mediation was not successful. Matern Decl. ¶26.
28

1 On January 21, 2016, Plaintiff filed a first amended complaint. Dkt. 19. In the first
2 amended complaint, Plaintiffs sought to certify a class of all non-exempt employees in
3 California and added Plaintiff LaDona Narr as a proposed class representative. Dkt. 19,
4 ¶9.

5 Plaintiffs engaged in substantial discovery and investigation of their claims and
6 Delta's defenses. Matern Decl. ¶¶6-8. Class counsel conducted dozens of interviews of
7 Delta employees employed at LAX and other airports in California. Plaintiffs took the
8 depositions of two 30(b)(6) designees of Delta. Each of the six named Plaintiffs were
9 deposed, five of them twice. The parties also took the depositions of an additional fifteen
10 rank-and-file employees and Delta managers. Plaintiffs obtained thousands of pages of
11 documents from Delta, and served and received responses to interrogatories and requests
12 for admission. Plaintiffs also retained an expert, Dr. Richard Drogin, to analyze a sample
13 of class member payroll records and provide an expert report regarding the observed rates
14 of various Labor Code violations. Dr. Drogin provided two expert declarations (Dkt. 60-
15 48, 95), and also provided a damages analysis that Plaintiffs used in mediation. Delta
16 submitted a report of its own expert, Dr. Valentin Estevez. Dkt. 68-11. Both experts were
17 deposed.

18 The parties have also engaged in substantial motion practice in connection with
19 discovery, class certification, settling the pleadings, and summary judgment. As a result
20 of a series of discovery motions and conferences with Magistrate Judge Suzanne H. Segal,
21 the scope of discovery was limited to non-exempt employees of Delta in Departments 120
22 and 125 at LAX. Matern Decl. ¶17. On May 16, 2016, Plaintiff moved to certify a class
23 consisting of those LAX employees. Dkt. 60-1 at 1.

24 In its July 5, 2016 opposition to class certification, Delta challenged the adequacy
25 of each of the proposed class representatives on various grounds. Dkt. 68. In their reply
26 brief, Plaintiffs defended Narr's adequacy to serve as a class representative. Dkt. 98 at 4.
27 Plaintiffs also identified a new proposed class representative, Karl Armstrong, and
28

1 submitted his declaration in support of class certification. *Id.* at 3 n.1. Plaintiffs explained
2 they would seek to amend the complaint to add Armstrong as a class representative. *Id.*

3 On September 14, the Court issued an order on Plaintiffs' motion for class
4 certification, finding that while certain proposed class representatives did not satisfy the
5 adequacy standard of Fed. R. Civ. P. 23(a)(4), Narr was an adequate class representative.
6 The Court gave Delta additional time to depose any additional named plaintiffs, and
7 allowed the parties to file supplemental briefs regarding the adequacy of any such
8 plaintiffs. Dkt. 103 at 5.

9 Because Delta opposed Plaintiffs' amendment of the complaint to add a new class
10 representative and make other clarifications, Plaintiffs filed a motion for leave to file a
11 second amended complaint on September 22, 2016. Dkt. 104. After receiving full
12 briefing on Plaintiffs' motion (Dkt. 107 (Opp.), 108 (Reply)), the Court granted Plaintiffs'
13 motion on October 26. Dkt. 109. The operative Second Amended Complaint identifies
14 Narr and Armstrong as class representatives and clarifies the basis for, among other
15 things, Plaintiffs' claim that Delta failed to include required components of compensation
16 in its calculation of class members' regular rates of pay for overtime purposes. Dkt. 110.

17 After Delta took Armstrong's deposition, the parties submitted supplemental
18 briefing on class certification, focusing principally on Armstrong's adequacy as a class
19 representative. Dkt. 115, 116. On December 16, 2016, the Court issued its order granting
20 in part and denying in part Plaintiffs' class certification motion. Dkt. 118. The Court
21 granted the motion as to the regular rate overtime claim, on an issue-only basis under Rule
22 23(c)(4). Dkt. 118 at 10. The Court denied class certification as to Plaintiffs' other
23 claims. *Id.* at 4-7, 8-9.

24 Following the Court's class certification order, Plaintiffs moved for summary
25 judgment as to Delta's liability on the regular rate overtime claim on March 2, 2017. Dkt.
26 131. The briefing on Plaintiffs' motion proceeded while the parties returned to mediation
27 on March 10, again with Mr. Rudy's assistance. *See* Dkt. 132 (Opp., filed March 9), 133
28 (Reply, filed March 16)). Although the case did not resolve at the March 10 mediation,

1 the parties engaged in further negotiations over the ensuing weeks, and finally signed a
2 term sheet on March 30, 2017. Matern Decl. ¶27. The parties then spent substantial time
3 over the following two months negotiating and finalizing the terms of a detailed
4 settlement agreement. *Id.*

5 On March 30, 2017, just as the parties were notifying the Court that they had
6 reached a settlement in principle, the Court granted Plaintiffs' motion for summary
7 adjudication as to Delta's liability on the regular rate claim and related derivative claims
8 for relief. Dkt. 134. The Court's order focused primarily on the scope and interpretation
9 of the §3(N) exemption to Wage Order No. 9, which excepts certain hours worked by
10 airline employees from overtime requirements, and on the scope of an offset claimed by
11 Delta. Dkt. 134 at 2-8.

12 Agreeing with Plaintiffs on these two legal issues, the Court found that Delta's
13 regular rate calculations were legally flawed because Delta failed to include two forms of
14 employee compensation, shift differentials and "Shared Rewards" bonuses, in those
15 calculations. *Id.* at 6. The Court allowed Delta to file a summary judgment motion in
16 which it could argue that payments from its Profit Sharing Plan are not a form of
17 compensation that must be included in the regular rate of pay. Dkt. 134 at 9. The Court
18 subsequently vacated the summary judgment order in light of the parties' Settlement. *See*
19 Dkt. 136 (Notice of Def's Unopposed Mot. for Vacatur); 137 (Order Granting Def's
20 Unopposed Mot. for Vacatur).

21 The proposed Settlement is broader than the case before the Court at the time of
22 summary judgment, both because the Settlement covers a statewide class rather than only
23 employees based at LAX, and because it covers claims as to which the Court denied class
24 certification.

25 **III. KEY SETTLEMENT TERMS**

26 \$4.25 Million Non-Reversionary Settlement Fund. The Settlement provides for a
27 \$4.25 million payment to provide for class member settlement payments, attorneys' fees
28 and costs, a \$100,000.00 payment to the Labor & Workforce Development Agency

1 (“LWDA”) for the State’s share of penalties under the Labor Code Private Attorneys
2 General Act (“PAGA”), Cal. Labor Code §§2698 *et seq.*, incentive awards of \$10,000.00
3 each to the two class representatives, and \$45,000.00 for the costs of settlement
4 administration. Settlement ¶5.2.1. The \$4.25 million settlement fund is entirely non-
5 reversionary. Settlement ¶6.4.1. Delta shall also separately pay the employer’s share of
6 payroll taxes (e.g., FICA, FUTA) on the portion of class member settlement payments
7 that is allocated to wages. Settlement ¶5.7.4.

8 At the time the parties reached a Settlement in principle, the class size was
9 approximately 3,400.¹ However, Delta anticipated hiring additional employees in the
10 near future in class positions. Settlement ¶5.2.2. Therefore, the Settlement accounts for
11 the possibility that Delta might hire additional employees who would be eligible for
12 settlement payments before the close of the class period on June 30, 2017, by providing
13 that if the final class size exceeds 3,800 class members, Delta shall increase the value of
14 the gross settlement fund by 20 percent of the average individual settlement payment for
15 a 3,800-member class for each such additional class member. Settlement ¶5.2.2.

16 Distribution of Settlement Payments. The Net Settlement Amount available for
17 class member settlement payments is estimated to be \$2,478,333.00, for a class of 3,400,
18 providing for an average individual settlement payment of \$728.00 per class member.
19 Individual settlement payments will be calculated as each class member’s pro rata share
20 of the Net Settlement Amount, based on the number of workweeks worked by each class
21 member during the class period. Settlement ¶5.7.1.

22 Each class member who does not opt out of the Settlement and who can be located
23 in the Notice process will automatically be mailed a settlement payment. Class members
24 will not be required to submit a claim or fill out a form to receive a settlement payment.
25 Settlement ¶6.2.2, 6.4.2. The Settlement provides for skip tracing to locate class members
26 whose Notices are returned to the Administrator as undeliverable. Class members whose

27 _____
28 ¹ On April 5, 2017, Delta confirmed the total class size at the time of settlement was less than 3,500. Matern Decl. ¶29.

1 Notices are returned as undeliverable, and for whom a more current address cannot be
2 ascertained through skip tracing, will not receive a settlement payment, but will be bound
3 by the Settlement. The value of those class members' shares of the Settlement will be
4 distributed to those class members who can be located in the Notice process. Settlement
5 ¶6.4.2, 6.2.6.

6 There shall be a 180-day check cashing period for the initial settlement payments.
7 Settlement ¶6.4.2. Following the initial distribution of settlement payments, if more than
8 \$35,000.00 remains uncashed, the uncashed amount shall be redistributed to those class
9 members who cashed their checks in the initial distribution. If less than \$35,000.00
10 remains uncashed after the initial distribution, making a second distribution
11 uneconomical, the amount shall be donated to a *cy pres* recipient, the Los Angeles Center
12 for Law and Justice. Settlement ¶5.7.1(b).

13 Releases. The class member release is coextensive with those claims that were or
14 could have been brought in the operative Second Amended Complaint (Dkt. 110), which
15 pleaded claims for failure to provide meal and rest breaks, failure to include certain
16 components of compensation in the calculation of employees' regular rate of pay for
17 overtime, failure to pay overtime based on Delta's pay to schedule system, failure to
18 indemnify class members for business expenses, and related derivative claims. Class
19 members' claims will be released through June 30, 2017. Settlement ¶5.8.1, 2.31.²

20 Attorneys' Fees and Costs. The Settlement provides that Class Counsel may seek
21 up to 33-1/3% of the \$4.25 million gross settlement fund for attorneys' fees, and their
22 actual litigation expenses incurred. Settlement ¶5.4.1, 5.2.2. Even if the gross settlement
23 fund is increased based on an increase in the class size, as discussed above, Class
24 Counsel's attorneys' fees are capped at 33-1/3% of \$4.25 million, or \$1,416,666.67.

25 _____
26 ² The settlement provides for a release of claims through June 30, 2017 or the date of
27 preliminary approval, whichever is earlier. Settlement ¶2.31, 5.8.1. In addition, in
28 consideration for their incentive awards, the two class representatives will also provide a
general release of claims against Delta and a waiver of their rights under Cal. Civ. Code
§1542. Settlement ¶2.9, 5.8.2, 5.8.3.

1 Settlement ¶5.2.2. Class Counsel anticipate seeking not more than \$190,000.00 in
2 litigation expenses from the gross settlement fund. Matern Decl. ¶39.

3 Incentive Awards to Class Representatives. The Settlement provides for incentive
4 awards of \$10,000.00 each to the two class representatives, LaDona Narr and Karl
5 Armstrong, in recognition of their efforts on behalf of the Class. Settlement ¶5.3.1. They
6 will receive these amounts in addition to their individual settlement payments. Settlement
7 ¶5.3.1.

8 Settlement Administrative Costs. The parties have agreed to use KCC LLC as the
9 settlement administrator. Settlement ¶5.6.1. Settlement administration costs are capped
10 at \$45,000.00. *Id.*

11 **IV. PROVISIONAL CLASS CERTIFICATION**

12 When considering a request for certification of a settlement class, the Court must
13 first determine “whether the proposed settlement class satisfies the requirements of Rule
14 23(a) of the Federal Rules of Civil Procedure applicable to all class actions, namely: (1)
15 numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation.” *Hanlon*
16 *v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). “[T]he parties seeking class
17 certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1),
18 (2) or (3).” *Id.* at 1022.

19 Plaintiffs seek provisional certification of a class defined as “all persons employed
20 by Defendant in non-exempt positions in California (except flight attendants and pilots)
21 at any time from July 1, 2011, through June 30, 2017, excluding persons who were
22 members of the settlement class in *Andrew Bell v. Delta Air Lines, Inc.*, Case No. 4:13-
23 cv-01199 YGR, USDC, Northern District of California, and who worked no shifts for
24 Defendant after November 20, 2014, the effective release date of claims for the *Bell*
25 settlement class.” Settlement ¶2.4. The Court previously certified a class of non-exempt
26 employees in Departments 120 and 125 at LAX as to certain issues pursuant to Rule
27 23(c)(4). *See* Dkt. 118. The California-wide settlement class meets all the applicable
28 standards for provisional certification for settlement purposes.

1 Even though the Court previously denied class certification of some of Plaintiffs’
2 claims for litigation, certification of a settlement class is appropriate. Fed. R. Civ. P. 23
3 gives the Court “broad discretion to determine whether a class should be certified, and to
4 revisit that certification throughout the legal proceedings.” *Armstrong v. Davis*, 275 F.3d
5 849, 871 n.28 (9th Cir. 2001). Had Plaintiffs not settled the case, they likely would have
6 gathered additional evidence and filed a renewed motion for class certification to address
7 the deficiencies that the Court identified in its class certification order. It is therefore
8 within the Court’s discretion to resolve these claims on a classwide basis now. The Court
9 questioned whether some of the policies Plaintiffs challenged were unlawful (Dkt. 118 at
10 5, 7), but that does not preclude the certification of a settlement class; the parties can agree
11 to a classwide settlement even if the Court believes that the claims at issue lack merit. *In*
12 *re American Int’l Group, Inc. Sec. Litig.* (“AIG”), 689 F.3d 229, 244 (2d Cir. 2012).

13 **A. The Requirements of Rule 23(a) Are Satisfied.**

14 **1. Rule 23(a)(1): Numerosity**

15 The settlement class, consisting of at least 3,400 people, plainly satisfies the
16 numerosity standard, which requires merely that the class be “so numerous that joinder
17 of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). For purposes of settlement,
18 the parties agreed to expand the class to all non-exempt employees who worked in
19 California, including at LAX, SFO, San Jose, and other airports, except for pilots, flight
20 attendants, and employees who already released the claims in this case in *Bell*. Matern
21 Decl. ¶29. Delta confirmed that this expanded class includes at least 3,400 employees.
22 *Id.*³

23 **2. Rule 23(a)(2): Commonality**

24 The case involves numerous questions of law and fact that are common to the class,
25 satisfying the requirements of Rule 23(a)(2). The claims being settled turn on the

26 _____
27 ³ Plaintiffs originally sought to certify a class of non-exempt employees in Departments
28 120 and 125 at Los Angeles International Airport. Dkt. 60-1 at 1. That class included
at least 1,333 employees, which the Court found satisfied the numerosity requirement.
See Dkt. 60-18, ¶11; Dkt. 118 at 9.

1 application of Delta’s uniform policies regarding the exclusion of certain forms of
2 compensation from overtime calculations, the determination of class members’
3 compensable work hours from published schedules rather than time punches, the
4 provision of meal and rest breaks, and expense reimbursements. *See generally* Dkt. 60-1
5 at 12-21 (discussing common issues of law and fact as to the pending claims). Delta has
6 never disputed that the written policies challenged in this case applied statewide, not just
7 to employees at LAX. Delta’s defenses also raised common issues, such as the scope and
8 application of the limited exception to overtime requirements for certain airline
9 employees and the availability of offsets against damages liability. *See, e.g.*, Dkt. 98 at
10 6-9.

11 **3. Rule 23(a)(3): Typicality**

12 Class Representatives Narr and Armstrong both have claims that are typical of the
13 class. The typicality standard is satisfied when “the representative’s claims are
14 reasonably co-extensive with those of absent class members; they need not be
15 substantially identical.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010). Narr
16 and Armstrong were both employed by Defendant in non-exempt positions and were
17 subject to the same policies that were challenged in the Second Amended Complaint.
18 Dkt. 60-2, ¶2; Dkt. 118 at 10.

19 **4. Rule 23(a)(4): Adequacy of Representation**

20 The adequacy of representation requirement is met where the class representatives:
21 (1) have common, not antagonistic, interests with unnamed class members; and (2) will
22 vigorously prosecute the interests of the class through qualified counsel. *Amchem*
23 *Products, Inc. v. Windsor*, 521 U.S. 591, 625-26 (1997). This Court has already found in
24 certifying certain issues under Rule 23(c)(4) that Class Representatives Narr and
25 Armstrong could fairly and adequately represent the Class; and approved Matern Law
26 Group, PC, and Altshuler Berzon LLP to serve as Class Counsel. Dkt. 118 at 10.

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1 **B. The Predominance and Superiority Requirements of Rule 23(b)(3) Are**
2 **Satisfied.**

3 The predominance inquiry “tests whether proposed classes are sufficiently
4 cohesive to warrant adjudication by representation,” and focuses on the “relationship
5 between the common and individual issues.” *Hanlon*, 150 F.3d at 1022 (quotation marks
6 and citation omitted). “When common questions present a significant aspect of the case
7 and they can be resolved for all members of the class in a single adjudication, there is
8 clear justification for handling the dispute on a representative rather than on an individual
9 basis.” *Id.* (quotation marks and citation omitted). “[T]he existence of certain
10 individualized or deviating facts will not preclude certification if most class members
11 were subjected to a company policy in a way that gives rise to consistent liability or lack
12 thereof.” *Kamar v. Radio Shack Corp.*, 254 F.R.D. 387, 399 (C.D. Cal. 2008).

13 As noted above, the resolution of this case would turn primarily on the existence
14 and lawfulness of certain uniform Delta policies and the application of various legal
15 defenses, not on individualized issues, and the evidence permits damages to be
16 determined through expert analysis of Delta’s payroll and timekeeping records.
17 Accordingly, common questions of law and fact predominate over individualized issues.

18 Moreover, in light of the parties’ Settlement, the court need not consider any trial
19 manageability issues that might otherwise have borne on the propriety of class
20 certification. *See, e.g., Amchem*, 521 U.S. at 620; *AIG*, 689 F.3d at 240 (settlement class
21 could be certified even where district court had denied class certification for litigation,
22 because manageability was no longer at issue). Here the Court’s denial of class
23 certification of the meal and rest break, pay-to-schedule, and expense reimbursement
24 claims turned on the Court’s concerns about the need for individualized evidence
25 regarding Delta’s provision of breaks, hours worked and paid for, and expenses incurred
26 and reimbursed. Dkt. 118 at 5, 7, 8-9. Those concerns are not an obstacle to certifying a
27 settlement class.

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1 Class resolution of these claims would be “more efficient and fairer than individual
2 lawsuits.” *Ambriz v. Coca-Cola Co.*, No. CV 14-00715 SVW, 2015 WL 12683823 at *4
3 (C.D. Cal. March 11, 2015). Trying these claims individually in hundreds or thousands
4 of cases would require substantial repetition of evidence and could result in conflicting
5 judgments while imposing an extraordinary burden on the parties’ and the Court’s
6 resources. Moreover, each class member’s claims are likely to be modest, and therefore
7 it would not be economically feasible for most class members to litigate their claims
8 independently. Therefore, absent class treatment, most class members’ claims would go
9 unremedied regardless of their merit.

10 **V. THE SETTLEMENT MERITS PRELIMINARY APPROVAL**

11 **A. General Principles**

12 At the preliminary approval stage, the court must find only that the proposed
13 settlement is non-collusive and within the range of possible final approval. *In re*
14 *Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079-80 (N.D. Cal. 2007); *see also* Alba
15 Conte & Herbert B. Newberg, 4 *Newberg on Class Actions*, § 13.13 (5th ed., 2014). As
16 long as “preliminary evaluation of the proposed Settlement does not disclose grounds to
17 doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of
18 class representatives or of segments of the class, or excessive compensation for attorneys,
19 and appears to fall within the range of possible approval,” the Court should preliminarily
20 approve the Settlement. *In re Vitamins Antitrust Litig.*, 2001 WL 856292, at *4 (D.D.C.
21 July 25, 2001) (quoting *Manual for Complex Litigation, Third* § 30.41 at p. 237 (Federal
22 Judicial Center 1995)). A full fairness analysis follows at the final approval stage, after
23 class members have an opportunity to be heard regarding the Settlement. *Ambriz*, 2015
24 WL 12683823 at *5, n. 3.

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1 **B. The Settlement Is the Product of Arms-Length, Non-Collusive**
2 **Negotiations, Has No Obvious Deficiencies, and Warrants a**
3 **Presumption of Fairness.**

4 The proposed settlement meets all of the standards to enjoy a presumption of
5 fairness.

6 **1. The Settlement is entirely non-collusive.**

7 The Settlement is the product of two mediation sessions with the assistance of a
8 highly experienced mediator, and several additional weeks of negotiations. The
9 Settlement was reached only after years of hard-fought litigation, a fully litigated class
10 certification motion, partial class certification, and a fully briefed summary judgment
11 motion. The Settlement is entirely non-reversionary.

12 **2. The Settlement contains no “obvious deficiencies.”**

13 The Settlement contains none of the provisions that courts sometimes identify as
14 cause for concern.

15 a. The Settlement provides substantial monetary relief to the
16 class and exceeds the best possible recovery available in the
17 litigation.

18 The Settlement provides substantial monetary relief for class members. The quality
19 of the Settlement is apparent from its relationship to the potential recovery on Plaintiffs’
20 strongest claim, the regular rate overtime claim. This was the only claim the Court
21 certified, and the claim as to which the Court granted summary judgment on Delta’s
22 liability. At the March 10, 2017 mediation, held before the Court ruled on Plaintiffs’
23 summary judgment motion, Plaintiffs estimated Delta’s liability for back wages and
24 interest on the regular rate claim at \$899,925.00, or about \$675.00 per class member, for
25 the estimated 1,333 class members employed in Departments 120 and 125 at LAX.
26 Matern Decl. ¶28; Dkt. 60-18 ¶11.⁴ For purposes of mediation regarding a statewide

27 ⁴ Back wages and interest on the regular rate overtime claim are inevitably modest sums
28 because employees are entitled to recover only for hours for which they already
received *some* overtime pay. Back wages are determined by adding the previously
omitted forms of compensation to the regular rate and recalculating the overtime owed,
then subtracting any overtime premiums that were already received. Plaintiffs’
summary judgment brief provided one example, where Plaintiff Narr’s recalculated

1 class, Plaintiffs extrapolated from the LAX sample based on a comparable violation rate.
2 For a class of 3,400, an average recovery of \$675.00 per class member yields
3 \$2,295,000.00 in classwide back wages and interest on this claim. *Id.* ¶32.

4 The gross settlement value of \$4.25 million is almost twice the value of the back
5 wages and interest owed on regular rate overtime claim to the 3,400-member class. *Id.*,
6 ¶33. Furthermore, with a net settlement fund available for class member settlement
7 payments of approximately \$2,478,333.00 and an expected class size of about 3,400,
8 individual class members will receive recoveries on average of \$728.00, exceeding the
9 amount that those class members could have recovered had the parties litigated the regular
10 rate claim – the sole certified claim – to a final judgment.

11 Moreover, the \$675.00 per class member estimate may overstate actual recoveries
12 available on the regular rate claim after judgment, because: (1) the Court had given Delta
13 leave to file a summary judgment motion regarding whether payments from its Profit
14 Sharing Plan were properly excluded from its regular rate calculations, Dkt. 134 at 9, and
15 (2) Delta would likely have challenged the Court’s rulings on the §3(N) exemption and
16 the scope of Delta’s potential offset on appeal. Thus, some risk remained as to the
17 potential recoveries on the regular rate claim notwithstanding the Court’s ruling on
18 Plaintiffs’ summary judgment motion. The proposed Settlement is an excellent result
19 because it fully compensates class members for their strongest claim, and provides
20 additional consideration for penalties and for the other wage and hour claims that were
21 pleaded in the complaint but were not certified.⁵

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24 overtime premium would have resulted in back wages of \$2.58 per overtime hour. Dkt.
131-1 at 7-8.

25 ⁵ Also, the overall settlement value is comparable to other settlements recently obtained
26 against Delta. For example, plaintiffs in a separate wage and hour class action
27 recovered a gross settlement of \$1.4 million for a class of 1,138 employees. *See Matern*
28 *Decl., Ex. 2, Bell v. Delta Air Lines, Inc.*, No. 4:13-cv-01199 YGR, Dkt. 58, Order
Granting Preliminary Approval (N.D. Cal. July 22, 2014). The *Bell* class members are
carved out of the class here (except for any weeks they may have worked after Nov. 20,
2014). Settlement ¶2.4.

1 b. The plan of distribution of settlement payments to class
2 members treats all class members equally and is fair and
3 reasonable.

4 The Settlement provides for a pro rata distribution of the Net Settlement Fund based
5 on each class member's weeks worked during the class period. In addition, class members
6 will not have to make claims to receive a settlement payment. Each class member who
7 can be located will be mailed a payment automatically. To protect the interests of all class
8 members, the Settlement incorporates procedures to ensure that as many class members
9 as possible can be located.

10 c. The release is coextensive with the operative complaint.

11 Also, the release given by class members in the Settlement is fair and reasonable,
12 because it is limited to those claims that were or could have been alleged in the operative
13 Second Amended Complaint.

14 d. The expansion of the class is fair and reasonable.

15 Nor does the expansion of the class from employees in Departments 120 and 125
16 at LAX to a statewide class of non-exempt employees raise any concerns in the context
17 of this Settlement. Plaintiffs originally brought the case on behalf of a putative statewide
18 class. Dkt. 1-1 ¶7. While Plaintiffs limited the class as to which they sought certification
19 to LAX employees in two departments (Dkt. 60-1 at 1), that limitation arose from the
20 Magistrate Judge's rulings limiting discovery to those two departments. Matern Decl.
21 ¶17. But Delta has never disputed that the written policies challenged by Plaintiffs
22 applied statewide. *Id.*

23 The same California state law and legal theories apply to all members of the
24 statewide class, and the same evidence that would be used to prove Delta's liability with
25 respect to the more limited LAX class would be used to prove liability in a statewide class
26 action. Moreover, members of the statewide class will receive substantial remuneration
27 from the Settlement on the identical terms as class members who worked in Departments
28 120 and 125 at LAX.

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1 e. The Class Representatives will not receive disproportionate
2 payments to those of class members, and their proposed
3 incentive awards are fair and reasonable.

4 Class Representatives will not receive any premium above the amounts received
5 by other class members, but instead will receive settlement shares calculated by the same
6 method. Although the Class Representatives will be eligible to receive incentive awards
7 in addition to their individual settlement payments, the Settlement is not contingent on
8 Court approval of those incentive awards. Any amount that is not approved by the Court
9 will be added to the Net Settlement Fund for class member settlement payments.

10 Moreover, the proposed \$10,000.00 incentive awards to each of the two Class
11 Representatives are within the range that courts in this circuit routinely approve. *See,*
12 *e.g., Hightower v. JP Morgan Chase Bank, NA*, No. CV 11-1802 PSG, 2015 WL 9664959
13 at *12 (C.D. Cal. Aug. 4, 2015) (approving \$10,000 incentive awards to each of seven
14 lead plaintiffs in \$12 million wage and hour settlement); *LaFleur v. Med. Mgmt. Int'l,*
15 *Inc.*, No. EDCV 13-00398-VAP (OPx), 2014 WL 2967475 at *8 (C.D. Cal. June 5, 2014)
16 (approving incentive awards of \$15,000 each to two class representatives from \$535,000
17 wage and hour class action settlement). The total of \$20,000 in proposed incentive awards
18 comprises a mere 0.4 % of the gross settlement amount of \$4.25 million, and is therefore
19 well within the range of reasonableness. *See, e.g., In re On-Line DVD Rental Antitrust*
20 *Litig.*, 779 F.3d 934, 937-38 (9th Cir. 2015) (approving incentive awards that comprised
21 in the aggregate less than 1% of gross settlement value). Plaintiffs will provide
22 declarations in support of final approval detailing the active participation of Class
23 Representatives Narr and Armstrong, and the services they provided to the class. *See*
24 *Matern Decl.* ¶¶36-38.

25 f. The Settlement's provisions for attorneys' fees and costs are in
26 the range that is routinely approved.

27 The attorneys' fees and costs provisions of the Settlement are similarly fair and
28 reasonable. The Settlement permits Class Counsel to seek attorneys' fees of up to one-
third of the gross settlement amount of \$4.25 million, except that if the gross settlement

1 amount is increased because the final class size exceeds 3,800 employees, Class
2 Counsel's fees will remain capped at one-third of \$4.25 million. A fee award of one-third
3 of the common fund is consistent with fee awards made by federal courts in the Ninth
4 Circuit. *See, e.g., In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995)
5 (affirming fee award of one-third of settlement); *Singer v. Becton Dickinson & Co.*, No.
6 08-821 IEG, 2010 WL 2196104 at *8-9 (S.D. Cal. Jun. 1, 2010) (33.33% of wage and
7 hour settlement "falls within the typical range ... in similar cases"; citing awards of
8 33.33%-40%); *Stuart v. Radioshack Corp.*, C-07-4499 EMC, 2010 WL 3155645, at *6
9 (N.D. Cal. Aug. 9, 2010) (awarding one-third of settlement fund in wage-and-hour class
10 action and noting that "[t]his is well within the range of percentages which courts have
11 upheld as reasonable in other class action lawsuits").

12 Class Counsel will also have the opportunity to seek reimbursement of their
13 litigation expenses, which are estimated at \$190,000.00. As will be set forth in detail in
14 Class Counsel's fee motion, the costs for which Class Counsel will seek reimbursement
15 are of the type routinely reimbursed as necessary litigation expenses, such as deposition
16 transcripts, expert fees, and mediation fees. The Settlement is not contingent on the Court
17 granting the attorneys' fees and costs requested. As with the Class Representative
18 incentive awards, any amounts not awarded by the Court will be added to the net
19 settlement fund that is available for class member settlement payments.

20 g. The allocation of \$100,000.00 to the State's share of PAGA
21 penalties effectuates PAGA's purposes in the context of the
22 entire Settlement.

23 The \$100,000.00 payment to the LWDA for the State's share of PAGA penalties
24 is consistent with recent authority regarding the allocation of settlement proceeds to
25 PAGA in large wage and hour class actions. Under PAGA, 75% of the recoverable civil
26 penalties are paid to the LWDA for enforcement of California's labor laws, and the
27 remaining 25% is distributed to aggrieved employees. Cal. Labor Code §2699(i). The
28 \$100,000.00 payment to the LWDA for the State's share of PAGA penalties therefore
represents an allocation of \$133,333.00 to PAGA penalties from the gross settlement

1 amount. In a combined class action and PAGA settlement of wage and hour claims, “the
2 Court must evaluate the adequacy of compensation to the class *as well as* the adequacy
3 of the settlement in view of the purposes and policies of PAGA. In doing so, the court
4 may apply a sliding scale. For example, if the settlement for the Rule 23 class is robust,
5 the purposes of PAGA may be concurrently fulfilled. By providing fair compensation to
6 the class members as employees and substantial monetary relief, a settlement not only
7 vindicates the rights of the class members as employees, but may have a deterrent effect
8 upon the defendant employer and other employers, an objective of PAGA.” *O’Connor v.*
9 *Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1134 (N.D. Cal. 2016) (emphasis in
10 original).

11 Applying the sliding scale analysis, courts have held that comparable allocations to
12 PAGA penalties in a class action settlement fulfill the purposes of PAGA and warrant
13 approval. *See, e.g., Syed v. M-I, LLC*, No. 1:12-cv-01718-DAD, 2017 WL 714367 at *13
14 (E.D. Cal. Feb. 22, 2017) (granting preliminary approval of allocation of \$100,000 to
15 PAGA penalties from gross settlement of \$3.95 million settlement of California wage and
16 hour claims); *Viceral v. Mistras Group, Inc.*, No. 15-cv-02198-EMC, 2016 WL 5907869
17 at *9 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval of allocation of \$20,000
18 to PAGA penalties from \$6 million settlement based on overall quality of settlement
19 balanced against litigation risks).

20 Here, the Settlement as a whole provides substantial individual recoveries to class
21 members on their Labor Code claims, including the regular rate overtime calculation
22 claim as to which the Court granted summary judgment. Because the overall settlement
23 payments will accordingly provide substantial compensation to individual employees for
24 their strong regular rate claim as well as for other claims, *see supra* at p. 14, PAGA’s
25 goals of enforcing the Labor Code through private litigation are well effectuated by this
26 Settlement. The additional allocation of \$100,000.00 to the State’s share of PAGA
27 penalties further supports the State’s efforts to enforce California labor law.

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1 h. The overwhelming bulk of the settlement fund will be
2 distributed to class members and the State for PAGA
3 penalties, and nothing will revert to Defendant.

4 Finally, as noted above, the vast bulk of the \$4.25 million gross settlement fund
5 will be distributed to class members. The Settlement is entirely non-reversionary. The
6 entire net settlement amount after the deduction of the \$100,000.00 payment to the
7 LWDA for the State's share of PAGA penalties, attorneys' fees and costs, class
8 representative enhancement payments, and administrative fees will be distributed as
9 settlement payments to class members. Funds will be distributed to the cy pres recipient
10 only if the unclaimed amount after the initial distribution exceeds \$35,000.00.

11 **C. The Settlement Is Well Within the Range of Possible Approval.**

12 At the preliminary approval stage, courts often tentatively assess the factors that
13 will go into a final fairness determination: (1) the strength of the plaintiffs' case; (2) the
14 risk, expense, complexity, and likely duration of further litigation; (3) the amount of the
15 settlement; (4) the extent of discovery completed and the stage of the proceedings; and
16 (5) the experience and views of counsel. *See, e.g., Ambriz*, 2015 WL 12683823 at *5;
17 *Moshogiannis v. Security Consultants Grp., Inc.*, No. 10-05971, 2012 WL 423860 at *5
18 (N.D. Cal. Feb. 8, 2012); *Gardner v. GC Servs., LP*, No. 10-0997, 2011 WL 5244378 at
19 *6 (S.D. Cal. Nov. 1, 2011). All of these factors indicate that the Settlement is well within
20 the range of reasonableness, and the Court should direct notice to be issued to class
21 members.

22 **1. The Strength of Plaintiffs' Case on the Merits as Balanced**
23 **Against the Risk, Expense, and Likely Duration of Further**
24 **Litigation**

25 The overall benefits of the proposed Settlement greatly outweigh the potential
26 risks, expense, and likely duration of further litigation. While Plaintiffs are convinced
27 their claims are strong on the merits, they recognize the substantial risks involved in
28 litigating this case. This Court had denied class certification on all of Plaintiffs' claims
except the regular rate overtime claim, and had certified that claim only as to issues under
Rule 23(c)(4). The Court's class certification order focused in large part on the difficulty

1 of proving liability and damages from the available records. Thus, even though Plaintiffs
2 prevailed on summary judgment as to Delta’s liability on the regular rate overtime claim,
3 Plaintiffs still faced difficulty proving classwide damages even on that claim. Moreover,
4 although this Court agreed with Plaintiffs’ interpretation of the §3(N) exemption from
5 overtime requirements for certain hours worked by airline employees, *see* Dkt. 134 at 3-
6 6, Plaintiffs recognize this is an issue of first impression as to which the Ninth Circuit or
7 a California Court of Appeal might disagree.

8 Also, the delay and expense that would be incurred if the case is litigated rather
9 than settled would be substantial, and a classwide recovery would be highly uncertain.
10 Delta has aggressively litigated virtually every issue in this case to date, and can be
11 expected to continue to do so if the case is not settled. The Court’s issue-only certification
12 of the regular rate overtime claim makes it likely that the damages on that claim would
13 have to be resolved at trial, and that individualized evidence could be required. It would
14 likely take years before Plaintiffs could challenge the limits of the Court’s class
15 certification order on appeal, and even if Plaintiffs were successful, further litigation on
16 Plaintiffs’ other claims on remand could take years. The proposed Settlement, by
17 contrast, provides a substantial and immediate benefit to the class which is “preferable to
18 lengthy and expensive litigation with uncertain results.” *Nat’l Rural Telecomm. Coop. v.*
19 *DirecTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (citation omitted).

20 Finally, the proposed Settlement is likely to benefit more Delta employees than this
21 litigation could. Although Plaintiffs initially brought this action for a statewide class, the
22 Court early on limited the scope of this case to non-exempt employees in Departments
23 120 and 125 at LAX. *See* Dkt. 29, 39. The Settlement provides relief to non-exempt
24 employees throughout California, a result that otherwise could not have been obtained
25 except after a successful appeal and further extensive litigation in the District Court, or
26 by filing another case with all the attendant delay and expense.

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1 **2. The Overall Recovery Is Substantial**

2 The gross settlement amount of \$4.25 million is a substantial amount both as an
3 absolute number and for the expected class size of 3,400 employees. Individual class
4 members are estimated to recover, on average, approximately \$728.00 each. As discussed
5 above, the Settlement fully compensates class members for their anticipated recoveries
6 on the regular rate overtime claim, and provides additional consideration for other claims
7 that were not certified.

8 **3. The Extent of Discovery and the Stage of the Proceedings**

9 The extent of discovery and investigation and the stage of the litigation further
10 support the Settlement. As discussed above, the parties completed more than 20
11 depositions, including depositions of Delta’s Rule 30(b)(6) designees, the class
12 representatives and other plaintiffs, and other Delta supervisors and rank-and-file
13 employees; engaged in substantial written discovery; and analyzed a sample of payroll
14 data and took expert discovery regarding that analysis. Delta has not disputed that the
15 written policies challenged by Plaintiffs in this action applied statewide, making the
16 discovery obtained regarding those company policies equally relevant to the expanded
17 statewide class as to the LAX-only class.

18 Also, by the time a Settlement was reached, the parties had fully litigated class
19 certification and fully briefed Plaintiffs’ motion for summary judgment as to Delta’s
20 liability on the regular rate overtime claim. Given the advanced stage of the proceedings,
21 the parties were well aware of the risks and benefits associated with settlement or further
22 litigation, and the range of possible outcomes. This factor weighs strongly in favor of
23 Settlement.

24 **4. Highly Experienced Class Counsel Support the Settlement**

25 Class Counsel are very experienced in class litigation, particularly in wage and hour
26 and other employment cases, and have been repeatedly recognized for their zealous
27 representation. Matern Decl. ¶¶42-48. Class Counsel’s endorsement of the Settlement
28 as fair, reasonable, and adequate in light of the risks of further litigation and

1 recommendation that it be approved (*see* Matern Decl. ¶35) “is entitled to significant
2 weight, and weighs in favor of settlement.” *See, e.g., Ambriz*, 2015 WL 12683823 at *6;
3 *Morales v. Stevco, Inc.*, 2011 WL 5511767 at *11 (E.D. Cal. Nov. 10, 2011).

4 **VI. THE PROPOSED NOTICE SHOULD BE APPROVED**

5 Federal Rule of Civil Procedure 23(c)(2)(B) requires that absent class members
6 receive the “best notice that is practicable under the circumstances.” For a Rule 23(b)(3)
7 class, the notice must clearly and concisely state: (i) the nature of the action; (ii) the
8 definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class
9 member may enter an appearance through an attorney if the member so desires; (v) that
10 the court will exclude from the class any member who requests exclusion; (vi) the time
11 and manner for requesting exclusion; and (vii) the binding effect of a class judgment on
12 members under Rule 23(c)(3). Fed. R. Civ. P. 23(c)(2)(B). “Notice is satisfactory if it
13 generally describes the terms of the settlement in sufficient detail to alert those with
14 adverse viewpoints to investigate and to come forward and be heard.” *Churchill Vill.,*
15 *LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (internal quotations marks and
16 citations omitted). Such notice is reasonable if mailed to each member of a settlement
17 class “who can be identified through reasonable effort.” *Eisen v. Carlisle & Jacquelin*,
18 417 U.S. 156, 176 (1974).

19 The proposed Notice meets all of the requirements of a notice to Rule 23(b)(3) class
20 members. The Notice explains in plain and easily understood language what the case is
21 about; the class definition and claims; the settlement amount and approximate individual
22 amount each Class Member will receive; the requested amounts to be paid to Class
23 Counsel and as incentive awards to the Class Representatives; the rights of Class
24 Members to appear through attorneys; the rights of Class Members to opt-out or object to
25 the Settlement’s terms and the process by which they can do so; the binding effect of the
26 Settlement on those who do not request exclusion, including a description of the Claims
27 being released; and the particulars of the final fairness hearing. Class Members will have
28

1 45 days to decide whether to opt out or object to the Settlement. *See* Settlement, Ex. A
2 (Class Notice).

3 The parties' proposed plan for directing notice to the Classes set forth in the
4 Settlement is also "the best notice that is practicable under the circumstances." Using
5 last-known addresses provided by Defendant, the Settlement Administrator will send the
6 Notice by First Class U.S. Mail to all Class Members. Settlement ¶6.2.3. Further, the
7 Settlement Administrator will perform skip traces to obtain the correct address of any
8 Class Members for whom the Notice is returned as undeliverable, and shall attempt re-
9 mailings where new addresses are ascertained. Settlement ¶6.2.6.

10 Plaintiffs are not aware of any additional method of distribution that would be
11 reasonably likely to result in the receipt of notice by Class Members who might otherwise
12 not receive notice pursuant to the proposed distribution plan. For these reasons, the
13 Settlement's plan for directing notice to class members satisfies Rule 23(c)(2)(B). *See,*
14 *e.g., Wright v. Linkus Enter., Inc.*, 259 F.R.D. 468, 475 (E.D. Cal. 2009); *Misra v.*
15 *Decision One Mortg. Co.*, No. 07-0994 DOC, 2009 WL 4581276, *9 (C.D. Cal. Apr. 13,
16 2009).

17 VII. SCHEDULE FOR FINAL APPROVAL

18 Because the case meets the requirements for certification of a settlement class and
19 the Settlement meets the requirements for preliminary approval, the Court should direct
20 notice to issue and set a final fairness hearing to decide whether to grant final approval to
21 the Settlement, as well as whether to grant the Class Representatives' application for an
22 award of service payments and Class Counsel's motion for attorney's fees and costs. *See*
23 Fed. R. Civ. P. 23(e)(2).

24 Plaintiffs request that the Court set the Fairness Hearing for October 30, 2017, or
25 the earliest available date thereafter. As reflected in the proposed order submitted
26 herewith, Plaintiffs further request that the Court order the following briefing schedule:

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1 2	Plaintiffs' motion for attorneys' fees and costs	14 days before the deadline for Class Members to submit objections to the settlement
3 4	Plaintiffs' motion for final approval of the settlement and for Class Representative service payments	28 days before the Final Approval Hearing
5 6	Defendant's Counsel shall file with the Court a declaration attesting that CAFA Notice has properly been served pursuant to 28 U.S.C. §1715	14 days before the Final Approval hearing
7 8	Reply briefs, if any	14 days before the Final Approval Hearing

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VIII. CONCLUSION

For the foregoing reasons, the Court should grant preliminary approval of the Stipulation of Settlement, approve the proposed Notice to class members, and set a Final Approval hearing.

DATED: June 9, 2017

Respectfully submitted,

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