UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 18-9224-MWF-SSx **Date: May 11, 2020**
Title: Michelle Kendig, et al. v. ExxonMobil Oil Corp., et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER RE: PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT [32]

Before the Court is Plaintiffs Michelle Kendig and Jim Kendig's Motion for Preliminary Approval of Settlement Agreement (the "Motion"), filed on March 16, 2020 (Docket No. 32). On March 19, 2020, Defendants ExxonMobil Oil Corporation and ExxonMobil Pipeline Company (collectively "Exxon") filed a Non-Opposition. (Docket No. 33). On March 26, 2020, Defendants PBF Energy Limited ("PBF") and Torrance Refining Company, LLC ("Torrance") (collectively "TORC") filed a Notice of Non-Opposition. (Docket No. 34).

The Motion was noticed to be heard on April 13, 2020. The Court read and considered the papers on the Motion and deemed the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); Local Rule 7-15. Vacating the hearing was further required by the Continuity of Operations Plan arising from the COVID-19 emergency. The hearing was therefore **VACATED** and removed from the Court's calendar.

For the reasons discussed below, the Motion is **GRANTED**. Preliminarily, the proposed settlement is procedurally and substantively fair. The proposed class also appears to meet the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3). The proposed notices and dissemination procedure also appear effective, and meet the requirements of Federal Rule of Civil Procedure 23(c).

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I. BACKGROUND

A. Factual and Procedural Background

On September 18, 2018, Plaintiffs Michelle Kendig and Jim Kendig commenced their class action in the Los Angeles County Superior Court. (*See* Notice of Removal ("NoR") (Docket No. 1), Ex. A (Complaint) (Docket No. 1-1)). Defendants PBF and Torrance removed the action on October 26, 2018. (*See generally* NoR).

The Complaint contains the following allegations:

Plaintiff Michelle Kendig works as a Head Operator in the tank farm/oil movement at the Torrance refinery. (Complaint ¶ 31). She has worked at the refinery for approximately 21 years and typically works 12-hour shifts on a rotating schedule. (*Id.*). Plaintiff Jim Kendig works as an Operator in the hydrotreater at the Torrance refinery. (*Id.* ¶ 32). He has worked at the refinery for approximately 25 years, and he typically works 12-hour shifts on a rotating shift schedule. (*Id.* ¶ 32).

Exxon Defendants operated the Torrance Refinery from September 18, 2014 until about July 1, 2016. (*Id.* ¶ 9). TORC Defendants acquired the Torrance Refinery from Exxon and have operated the facility since July 1, 2016. (*Id.* ¶ 10).

Plaintiffs bring this action on behalf of themselves and all current and former hourly employees of Exxon, PBF, and Torrance, who worked a 12-hour rotating shift at the Torrance refinery, distribution, and pipeline facilities since September 18, 2014. (*Id.* ¶ 4).

Oil refining, distribution, and production process requires constant monitoring, and therefore, operators work a continuous rotating shift during which time they are never fully relieved from duty. (*Id.* ¶ 13). Plaintiffs and the other operators are scheduled for and work 12-hour shifts, during the entirety of which Defendants required them to remain on duty. (*Id.* ¶ 14). Throughout their shifts, Plaintiffs and other operators were required to monitor the refining process, respond to upsets and critical events, and maintain the safe and stable operation of their units. (*Id.* ¶ 15). In

order to do so, Plaintiffs and other operators are required to remain attentive, carry radios, and be reachable at all times during their shifts. (*Id.*). Plaintiffs are also required to remain in contact with supervisors and other employees working in their unit throughout their shifts. (*Id.*). As a result, Plaintiffs never receive off-duty breaks. (*Id.*).

Because operators are responsible for their units throughout their shifts and are not given designated rest breaks or relief, Defendants have not authorized or permitted Plaintiffs to take off-duty rest breaks for every four-hour work period or major fraction thereof, as required by law. (*Id.* ¶ 16). Defendants also do not have a policy or system for providing relief to Plaintiffs to allow them to take off-duty rest breaks. (*Id.* ¶ 17). Defendants have not paid Plaintiffs an extra hour of wages for each work day during which they are not provided the off-duty rest breaks to which they are entitled under California law. (*Id.* ¶ 18). Defendants have also routinely failed to maintain complete and accurate payroll records for Plaintiffs showing the gross and net wages earned, including wages for missed rest breaks. (*Id.* ¶ 19).

Based on the above allegations, the Complaint alleges four claims for relief: (1) failure to authorize and permit rest periods; (2) failure to furnish accurate wage statements; (3) civil penalties pursuant to the Private Attorney General Act, Labor Code section 2698, *et seq.*; and (4) violation of California's Unfair Business Practice and Unfair Competition, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (*Id.* ¶¶ 33-59). The Complaint seeks various relief, including unpaid wages, statutory penalties, restitution, attorneys' fees and costs, interest, and injunctive and declaratory relief. (*Id.* at 13 ("Prayer for Relief")).

B. Discovery and Mediation

In a declaration filed with the Motion, Plaintiffs assert that they conducted extensive investigation of Defendants' wage and hour practices at the Torrance Refinery, particularly in regard to the provision of rest breaks. (Declaration of Randy Renick ("Renick Decl.") ¶ 6 (Docket No. 32-1)). Plaintiffs interviewed operators at the refinery, reviewed thousands of written materials, including employee handbooks,

training materials, and emergency protocol materials. (*Id.*). In addition, Plaintiffs reviewed Defendants' payroll and timecard data containing all of the shifts worked by each class members during the class period. (*Id.*). Based on this investigation and discovery, Plaintiffs were able to evaluate liability and determine damages. (*Id.*).

On August 23, 2019, the parties participated in a full day mediation session with T. Warren Jackson in San Francisco, California. (*Id.* ¶ 5; Motion at 2). As a result of the mediation, the parties reached a partial settlement, which was subsequently finalized over the next several months. (Renick Decl. ¶ 5).

C. The Settlement

The proposed settlement agreement (the "Settlement Agreement" or "Agreement") is attached to Renick's Declaration as Exhibit 1. (Renick Decl., Ex. 1 (Docket No. 32-2)).

On May 4, 2020, the Court issued an order instructing Plaintiffs to file a supplemental declaration providing additional details regarding the settlement. (Docket No. 41). On May 11, 2020, Plaintiffs' counsel Randy Renick filed a supplemental declaration ("Renick Supp. Decl."). (Docket No. 42).

The Agreement contains the following key class definition, relief, notice, and release provisions:

- "Class" or "Class Members" is defined as: "[a]ll current and former non-exempt hourly employees holding an Operator position while employed by ExxonMobil Oil Corporation, ExxonMobil Pipeline Company, PBF Energy Limited, and/or Torrance Refining Company LLC, or any of their affiliates, working at the Torrance refinery, distribution and pipeline facilities in the state of California, County of Los Angeles, at any time during the time period beginning September 18, 2014 and ending on the date of Preliminary Approval." (Agreement ¶ 28);

- "Class Period" is defined as "the period beginning September 18, 2014 and ending on the date of Preliminary Approval." (Agreement ¶ 13).

- "Participating Class Members" is defined as "putative Class Members who do not timely exercise their right to opt of the class." (Agreement ¶ 29).

- "Named Plaintiffs" is defined as Michelle Kendig and Jim Kendig. (Agreement ¶ 23).

- "Release Parties" includes TORC Defendants, Exxon Defendants, and each of their past and present successors, subsidiaries, parents, holding companies, sister and affiliated companies, divisions and other related entities. (Agreement ¶ 26).

- "Qualifying Shift" is defined as: (i) a shift of at least twelve continuous hours worked as an Operator by a Class Member; or (ii) a shift scheduled for at least 12 continuous hours, worked as an Operator by a Class Member for a period of at least three and one-half (3 ½) hours, and for which the employee has not previously been paid an hour of premium pay for a missed or interrupted rest period for the subject workday. (Agreement ¶ 31).

- Exxon Defendants agree to pay $1,491,372 and the TORC Defendants agree to pay $2,900,585, for a total of $4,391,585 (the "Settlement Fund"). (Agreement ¶¶ 30, 33). The Settlement Fund is the maximum total amount Defendants are required to pay for any and all purposes under this Settlement Agreement, except that Defendants will pay the employer's share of any payroll taxes (FICA and FUDA) for wages it pays pursuant to the Agreement. (*Id.*).

- This is a non-reversionary settlement in which Defendants are required to pay the entire gross settlement amount. No portion of the Settlement Fund will revert to any Defendant. (*Id.* ¶ 34).

- The Settlement Fund will be used for the following: (i) payments to Participating Class Members; (ii) payments to the State of California Labor and Workforce Development Agency "LWDA") under PAGA; (iii) Service Awards paid to the Named Plaintiffs ($7,500 each) (*Id.* ¶ 36); (iv) Class Counsel's Attorney's Fees and Costs; and (v) Administrative Costs. (*Id.* ¶ 30).

- $50,000 of the Settlement Fund has been allocated to PAGA penalties with 75% of the penalties ($37,500) being paid to the LWDA and 25% of the penalties ($12,500) being paid to Settlement Class Members who do not opt out. (Agreement ¶ 49).

- The two Named Plaintiffs will apply for Service Awards for an amount not to exceed $7,500 for each. (Agreement ¶ 36).

- Class counsel may request a reasonable award of Attorneys' Fees and Costs. (Agreement ¶ 42). Class Counsel will submit an application for Attorneys' Fees and Costs prior to the date of the Final Approval Hearing. (*Id.* ¶ 43). The amount awarded to Class Counsel shall be left to the discretion of the Court. (*Id.*).

- CAC Services, Inc. ("CAC" or "Administrator") will serve as the Claims Administrator for the purpose of administering the settlement and claims process. (Agreement ¶ 35). The Administrative Costs are estimated to be $30,000. (*Id.* ¶ 48).

- The "Net Settlement Proceeds" shall equal the Settlement Fund minus the court-approved attorneys' fees, costs, Service Awards, Administrative Costs, and Payment to LWDA for PAGA penalties. (Agreement ¶ 54). The net settlement will be distributed among the class based on number of Credits. (*Id.* ¶ 55). A Credit will be given to each Qualifying Shift worked by a member of the Settlement Class during the Class Period. (*Id.*). Any Class Members who has at least one Qualifying Shift but no more than 25 Qualifying Shifts shall receive 25 Credits. (*Id.*). The monetary value of each Credit ("Credit Value") will equal the Net Settlement Proceeds divided by the total number of Credits for all Class Members. (*Id.*).

- A portion of the Participating Class Member's Individual Settlement Award will be allocated to unpaid wage. (Agreement ¶ 57). The wage component of Each Individual Settlement Award will be reported on Form W-2 and Defendants,

Plaintiffs, and Participating Class Members will be responsible for their own tax obligations. (*Id.* ¶ 58).

- In exchange for the payments by Defendants, the Class and each Participating Class Member shall release and discharge Defendants and Released Parties from "any and all claims, judgment, liens, losses, debts, liabilities, demands, obligations, guarantees, penalties, costs, expenses, attorneys' fees, damages, indemnities, actions, causes of action, and obligations of every kind and nature in law, equity or otherwise, known or unknown, . . . occurring up to the execution of this Settlement Agreement and arising out of the dispute which is the subject of the Class Action or which could have been asserted in the Class Action based on the facts alleged." (Agreement ¶ 60).

- "The Parties intend that this Agreement shall be binding on all Participating Class Members, whether or not they actually receive a payment pursuant to this Settlement Agreement." (Agreement ¶ 61).

- Within 10 business days after the Preliminary Approval Order, Defendants will provide a "class list" and information about the Class Member, including their name, last known address and number of Qualifying Shifts worked, to the Claims Administrator and Class Counsel. (Agreement ¶ 76).

- Within 14 calendar days after Defendants provide the Claims Administrator the class list referenced above, the Claims Administrator shall send a Notice of Settlement to all Class Members by regular U.S. Mail, postage prepaid and supplement with e-mail notice if feasible. (Agreement ¶ 78(a)). Any Notice of Settlement returned as undelivered shall be sent to the forwarding address affixed thereto, if any. (*Id.*). If no forwarding address is provided, the Claims Administrator will use a reliable computer search method to locate a current address. (*Id.*). If no current address is located, the Notice of Settlement for that individual will be deemed undeliverable. (*Id.*).

- The Notice of Settlement shall, at a minimum, include the number of Qualifying Shifts worked by the Class Member up to the Preliminary Approval Date, a preliminary calculation of the amount the class member can expect to receive based on the number of Qualifying Shifts she or he worked, the contact information for Class Counsel and Defense Counsel, information informing Class Members of their right to opt out, and a statement that the Settlement Agreement may have preclusive effect. (Agreement ¶ 78(b)).

- Class Members may opt out of the Class and be excluded from receiving any benefits under the Agreement by completing and mailing a written opt-out request to the Claims Administrator on or before the Notice Response Deadline, which is defined as 45 days of the initial date of mailing the Notice Packet to Class Members. (Agreement ¶¶ 25, 78(c)).

- Within 35 business days of preliminary approval, the Notice Packet will be sent via first class mail to class members. The Notice will inform potential class members of, among others, the terms of the Settlement Agreement and their right to opt out of the class. (Agreement ¶ 21).

- If a Class Member disagrees with the number of Qualifying Shifts on the Notice of Settlement, he or she must complete and send a notice of dispute to the Claims Administrator with any supporting written documentation. (Agreement ¶ 79). To be considered, the notice of dispute and supporting written documentation must be received by the Claims Administrator no later than thirty calendar days after the postmark date of the Notice of Settlement. (*Id.*). The Claims Administrator shall make the final determination regarding the dispute based on the written documentation submitted by the Class Member and any materials submitted by Class Counsel and Defense Counsel within 10 calendar days of receipt of the notice of dispute and supporting written documentation and no later than 40 calendar days after postmark date of the Notice of Settlement. (*Id.*). The Claims Administrator shall inform each Class Member of the final determination by a telephone call, followed by an email or regular U.S. Mail if no email address is available. (*Id.*).

- The Claims Administrator shall create and maintain a website, which will include links to the Class Notice, Motions for Preliminary and Final Approval, and Motion for Attorneys' Fees as they become available, until the Effective Date. (Agreement ¶ 81).

- At least 21 calendar days before the Final Approval Hearing, the Claims Administrator shall prepare a declaration of due diligence and proof of mailing with regard to the mailing of the Notice of Settlement and email (if email was deemed feasible), and any attempts by the Claims Administrator to locate the Class Members ("Due Diligence Declaration"), and provide it to Class Counsel and Defense Counsel for preparation to the Court. (Agreement ¶ 82). The Claims Administrator will attach to the Due Diligence Declaration a report showing the name of each individual who submitted a timely and valid opt-out. (*Id.*).

- Uncashed settlement checks will be awarded cy pres to Loyola Law School Workers' Rights Clinic. (*Id.* ¶ 93).

- At the sole discretion of either the Exxon or TORC Defendants, if more than 5% of the Class submits timely and valid requests for exclusion, this entire Settlement Agreement shall become voidable and unenforceable. (Agreement ¶ 97).

II. PRELIMINARY APPROVAL OF SETTLEMENT

"Approval of a class action settlement requires a two-step process — a preliminary approval followed by a later final approval." *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016). The standard of review differs at each stage. At the preliminary approval stage, the Court need only "evaluate the terms of the settlement to determine whether they are within a range of possible judicial approval." *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 472 (E.D. Cal. 2009).

"[P]reliminary approval of a settlement has both a procedural and a substantive component." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). Procedurally, the Ninth Circuit emphasizes that the parties should have engaged in an adversarial process to arrive at the settlement. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution, and have never prescribed a particular formula by which that outcome must be tested.") (citations omitted). "A presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery." *Spann*, 314 F.R.D. at 324 (quoting *In re Heritage Bond Litig.*, 2005 WL 1594403, *9 (C.D. Cal. June 10, 2005)).

Substantively, the Court should look to "whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys." *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008) (quoting *West v. Circle K Stores, Inc.*, No. 04-cv-0438-WBS, 2006 WL 1652598, at *11 (E.D. Cal. June 13, 2006)).

A. Procedural Component

The proposed settlement appears to be procedurally fair to Settlement Class Members.

Plaintiff's Counsel have many years of experience in class action and wage and hour law. (*See* Renick Decl. ¶¶ 29-30; Declaration of Joshua Young ("Young Decl.") ¶¶ 3-7 (Docket No. 32-3)).

The Court is familiar with the action and is confident that it was vigorously litigated on both sides. Plaintiffs conducted extensive investigation of Defendants' wage and hour practices at the Torrance Refinery, including interviewing operators and reviewing employee handbooks, training materials, emergency protocol materials, payroll data, and timecard data. (Motion at 7). Given the parties' vigorous litigation

of this case, the Court has no doubt that the settlement is "the product of an arms-length, non-collusive, negotiated resolution[.]" *Rodriguez*, 563 F.3d at 965.

Additionally, the parties also engaged in a full-day mediation session with T. Warren Jackson and continued to negotiate for over six months. (Motion at 2, 15). The fact that the parties utilized an experienced mediator to reach the settlement agreement supports the notion that it was the product of an arms-length negotiation. *See Alberto*, 252 F.R.D. at 666-67 (noting the parties' enlistment of "a prominent mediator with a specialty in [the subject of the litigation] to assist the negotiation of their settlement agreement" as an indicator of non-collusiveness) (citing *Parker v. Foster*, No. 05-cv-0748-AWI, 2006 WL 2085152, at *1 (E.D. Cal. July 26, 2006)); *Glass v. UBS Fin. Servs., Inc.*, No. 06-cv-4068-MMC, 2007 WL 221862, at *5 (N.D. Cal. Jan. 26, 2007)).

The Court concludes that the proposed class is represented by experienced counsel who engaged in meaningful discovery while pursuing arms-length settlement negotiations. The procedural component of the inquiry is met.

B. Substantive Component

The Court determines that the proposed settlement appears to be generally reasonable and fair to Settlement Class Members.

As discussed above, pursuant to the Agreement, Defendants have agreed to create a non-reversionary settlement fund in the amount of $4,391,585. (Mot. at 14). If the Court were to ultimately approve Class Counsel's 25% fee request, after deduction of fees ($1,095,896), costs ($30,000), administrative expenses ($30,000), PAGA payment to the State of California ($37,500), and service awards to the Named Plaintiffs ($15,000), there would be approximately $3,168,689 to be distributed to the Participating Class Members based on their Qualifying Shifts in addition to $12,500 for PAGA penalties. Plaintiffs' counsel Renick asserts that all Class Members have at least one Qualifying Shift, and therefore, will be eligible for some amount of recovery from the settlement. (Renick Supp. Decl. ¶ 6). Renick further estimates that there are

approximately 275 members in the Class, and that the average recovery per Class Member will be approximately $11,500. (Renick Decl. ¶¶ 12, 16).

Plaintiffs' counsel do not indicate any specific risks that they foresee in continuing to pursue their action. Nonetheless, there is always an inherent risk in proceeding with litigation, which will likely result in litigation costs, attorneys' fees, and delayed recovery. Moreover, according to Plaintiffs' counsel, the total settlement amount of $4,391,585 represents 56% of the damages incurred up to the time of mediation based on their assessment of timecard and payroll data. (Motion at 14; Renick Decl. ¶ 28). The Court determines that the total settlement amount and the recovery of approximately $11,500 for the Participating Class Members is a reasonable level of compensation. *See, e.g.*, *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (emphasizing the requirement that courts "consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation") (citation omitted).

1. Attorneys' Fees and Costs

In the Ninth Circuit, there are two primary methods to calculate attorneys' fees: the lodestar method and the percentage-of-recovery method. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 949 (citation omitted).

"The lodestar method requires 'multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.'" *Id.* (citation omitted). "Under the percentage-of-recovery method, the attorneys' fees equal some percentage of the common settlement fund; in this circuit, the benchmark percentage is 25%." *Id.* (citation omitted). However, the "benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

"The Ninth Circuit has identified a number of factors that may be relevant in determining if the award is reasonable: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases." *Martin v. Ameripride Services, Inc.*, No. 08-cv-440–MMA, 2011 WL 2313604, at *8 (S.D. Cal. June 9, 2011) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002)). The choice of "the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case." *Vizcaino*, 290 F.3d at 1048.

The Agreement does not specify the amount of fees that Class Counsel will seek. However, in a declaration, Plaintiff's counsel Randy Renick asserts that Class Counsel will seek an award of attorneys' fees of 25% of the settlement of $1,097,896. (Renick Decl. ¶ 19). The declaration further states that Class Counsel will likely seek approximately $30,000 in litigation costs. (*Id.*). Renick further asserts that counsel will provide a full detailing of the time spent on this case in Plaintiff's Motion for an Award of Attorney's Fees and Costs, which will be posted by the Claims Administrator on its website to allow class members at least 14 days to review the Motion before the deadline in which to opt-out or object the Settlement. (*Id.*; Agreement ¶ 43). Further, the Agreement provides that "[i]n the event that the Court denies, modifies, or reduces Class Counsel's request for Attorneys' Fees and Costs, then Plaintiffs, Class Counsel, and the Participating Class Members may not seek to modify, revoke, cancel, terminate, or void this Settlement Agreement, and will not seek, request, or demand an increase in the Settlement Amount." (Agreement ¶ 45).

2. Service Award

According to the Agreement, Class Counsel and Named Plaintiffs intend to apply for Service Award of no more than $7,500 per person. (Agreement ¶ 36). This amount does not appear to be unreasonable, as incentive awards typically range between $2,000 and $10,000. *See Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267 (N.D. Cal. 2015) (collecting cases). Furthermore, the total $15,000 payment to the two Named Plaintiffs would constitute less than 1% of the gross settlement

amount. And to the extent the Court awards an amount different from what is sought, "Named Plaintiffs, Class Counsel, and the Participating Class Members may not seek to modify, revoke, cancel, terminate, or void this Settlement Agreement, and will not seek, request, or demand an increase in the Settlement Amount." (Agreement ¶ 39).

The Court finds the Agreement to be procedurally fair. The Court also finds the Agreement to be substantively fair. The Motion is therefore **GRANTED** insofar as the Agreement is preliminarily **APPROVED**.

III. CLASS CERTIFICATION

Plaintiffs seeks certification of a class for settlement purposes only pursuant to Federal Rule of Civil Procedure 23(b)(3). A court may certify a class for settlement purposes only. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 942. In *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), the Supreme Court explained the differences between approving a class for settlement and for litigation purposes:

> Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial. But other specifications of the Rule — those designed to protect absentees by blocking unwarranted or overbroad class definitions — demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Id. at 620.

As discussed above, the proposed Settlement Class is defined in the Stipulation as: "all Policyowners of Class Policies and, where all Policyowners and insureds of a Class Policy are also deceased, then also any designated beneficiary(ies) of that Class Policy at time of final lapse." (Stipulation §§ II.zz, V.D.)

Federal Rule of Civil Procedure 23(a) requires the putative class to meet four threshold requirements: numerosity, commonality, typicality, and adequacy of representation. *Id.*; *see also Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 512 (9th Cir. 2013). In addition, the proposed class must satisfy Rule 23(b)(3), which requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Considering these requirements, the Court concludes that class certification is appropriate.

A. Numerosity

Under Rule 23(a)(1), a class must be "so numerous that joinder of all members is impracticable . . . ." *Id.* The Settlement Class encompasses approximately 275 Class Members. (Renick Decl. ¶ 12). This is more than enough to satisfy Rule 23(a)(1)'s numerosity requirement.

B. Commonality

Rule 23(a)(2) requires that the case present "questions of law or fact common to the class." *Id.* The Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), clarified that to demonstrate commonality, the putative class must show that their claims "depend upon a common contention . . . that it is capable of classwide resolution — which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350. That requirement is met here, as (if this case were to proceed to trial) each member of the Settlement Class would seek resolution of the same legal and factual issues: whether Defendants failed to authorize and permit Class Members to take rest

periods in accordance with applicable California law. (Motion at 20). The commonality requirement is satisfied.

C. Typicality

Rule 23(a)(3) requires the putative class to show that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." *Id.* The claims of the representative parties need not be identical to those of the other putative class members; "[i]t is enough if their situations share a 'common issue of law or fact,' and are 'sufficiently parallel to insure a vigorous and full presentation of all claims for relief.'" *California Rural Legal Assistance, Inc. v. Legal Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990) (internal citations omitted). Here, the Named Plaintiffs' claims are premised on exactly the same practice as those of the absent settlement class members: Defendants' failure to authorize and permit the class members to take required rest periods. (Motion at 20). The typicality requirement is satisfied.

D. Adequacy

Finally, Rule 23(a)(4) requires the representative parties to "fairly and adequately protect the interests of the class." *Id.* "In making this determination, courts must consider two questions: '(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). Additionally, "the honesty and credibility of a class representative is a relevant consideration when performing the adequacy inquiry because an untrustworthy plaintiff could reduce the likelihood of prevailing on the class claims." *Harris v. Vector Mktg. Corp.*, 753 F. Supp. 2d 996, 1015 (N.D. Cal. 2010) (citation omitted).

As to the first prong, the Court perceives no obvious conflicts between Plaintiffs and their counsel on the one hand and the absent Settlement Class Members on the other. As to the second prong, as discussed above, Plaintiffs and their counsel have vigorously prosecuted this action, Plaintiffs' counsel have substantial experience

litigating similar types of class actions, and there is no reason to believe that Plaintiffs and their counsel would not vigorously pursue this action on behalf of the Settlement Class. The adequacy requirement is satisfied.

The requirements imposed by Rule 23(a) are thus satisfied. The Court next considers whether the additional requirements of Rule 23(b)(3) are met.

E. Predominance

"The Rule 23(b)(3) predominance inquiry asks the court to make a global determination of whether common questions prevail over individualized ones." *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016). That is, "an individual question is one where members of a proposed class will need to present evidence that varies from member to member, while a common question is one where the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof." *Id.* (quoting *Tyson Foods v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)).

Here, all claims turn on Defendants' lack of a rest break policy or practice that authorizes and permits duty-free rest breaks, which Plaintiffs argue violates California law. (Motion at 22). Although the focus of the action is the legality of Defendants' rest break policy and practices, some individualized determination. But the existence of individualized damage assessments does not detract from the action's suitability for class certification. *See Yokoyama v. Midland Nat. Life Ins. Co.*, 594 F.3d 1087, 1089 (9th Cir. 2010) (noting that the "amount of damages is invariably an individual question and does not defeat class action treatment"). Accordingly, the predominance requirement is also satisfied.

F. Superiority

Rule 23(b)(3)'s superiority requirement is also met. Rule 23(b)(3) sets out four factors that together indicate that a class action is "superior to other available methods for the fair and efficient adjudication of the controversy":

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). "The purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting Charles Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure*, § 1779 at 174 (3d ed. 2005)).

When deciding whether to certify a settlement class, the fourth superiority factor need not be considered. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . ."). The three relevant factors favor certifying the proposed settlement class:

First, individual Class Members would likely have little interest in prosecuting separate actions. Each putative class member's claim is likely too small to justify the cost or risk of litigation. Thus, a class action is a more efficient means for each individual class member to pursue his or her claims. *See Wolin*, 617 F.3d at 1175 ("Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification."). Moreover, because the claims of all putative class members are virtually identical, there is no reason that any given class member should need to pursue his or her claims individually. *See Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 240

(C.D. Cal. 2003) ("Here, no one member of the Class has an interest in controlling the prosecution of the action because the claims of all members of the Class are virtually identical.").

Second, there does not appear to be any other litigation currently or previously pending concerning similar claims to those at issue in this action.

Third, Plaintiffs, as residents of California, have alleged that Defendants' practices at Torrance Refinery violate California law. Therefore, this District Court is a proper forum for resolution of the action. *Negrete v. Allianz Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 495 (C.D. Cal. 2006) ("[B]ecause plaintiffs have alleged an overarching fraudulent scheme and include a California sub-class, it is desirable to consolidate the claims in this forum.").

Accordingly, the Motion is **GRANTED** insofar as the proposed class is **CERTIFIED** for purposes of settlement.

IV. NOTICE AND SETTLEMENT ADMINISTRATION

After the Court certifies a class under Rule 23(b)(3), it must direct to class members the best notice practicable under the circumstances. Fed. R. Civ. P. 23(c)(2)(B).

> The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance though an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Id. Class notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to

present their objections." *Mullane v. Central Hanover Trust*, 339 U.S. 306, 314 (1950).

The Agreement sets forth a detailed notice regime involving, in short, the Settlement Administrator acquiring the mailing addresses and email addresses for the Settlement Class Members from Defendants' records and then disseminating a Notice of Settlement via U.S. Mail and e-mail, if feasible. (Agreement ¶¶ 76-78). The Notice of Settlement shall include the number of Qualifying Shifts worked by the Class Member up to the Preliminary Approval Date, a preliminary calculation of the amount the class member can expect to receive based on the number of Qualifying Shifts she or he worked, the contact information for Class Counsel and Defense Counsel, information informing Class Members of their right to opt out, and a statement that the Settlement Agreement may have preclusive effect. (Agreement ¶ 78(b)). The Court has reviewed the contemplated notice regime and the form and substance of the proposed notices, and concludes that the proposed class notice satisfies the requirements set forth in Rule 23(c)(2)(B).

Accordingly, the proposed notices and plan of dissemination are **APPROVED**.

V. CONCLUSION

For the reasons discussed above, the Motion is **GRANTED** insofar as the proposed settlement agreement is preliminarily **APPROVED**; the class is provisionally **CERTIFIED** for purposes of settlement only; the notices and plan of dissemination are **APPROVED**; and the appointment of Class Counsel is **APPROVED**.

The Proposed Order Granting Motion for Preliminary Approval of Settlement Agreement (Docket No. 32-4) is adopted and incorporated into this Order, as Exhibit A. However, the Court has revised the proposed dates based on the timing of this order being issued.

The Final Approval Hearing shall be scheduled for **August 17, 2020 at 10 a.m.**

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 18-9224-MWF-SSx **Date: May 11, 2020**
Title: Michelle Kendig, et al. v. ExxonMobil Oil Corp., et al.

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 18-9224-MWF-SSx **Date: May 11, 2020**
Title: Michelle Kendig, et al. v. ExxonMobil Oil Corp., et al.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

MICHELLE KENDIG and JIM KENDIG, individually and on behalf of all similarly situated current and former employees,

Plaintiffs,

v.

EXXONMOBIL OIL CORP.; EXXONMOBIL PIPELINE COMPANY; PBF ENERGY LIMITED; TORRANCE REFINING COMPANY, LLC; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 2:18-cv-9224 MWF (SSx)

Assigned to Hon. Michael W. Fitzgerald

[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

DATE: April 13, 2020
TIME: 10:00 a.m.
PLACE: Courtroom 5A

Honorable Michael W. Fitzgerald

[PROPOSED] ORDER

On September 18, 2018, Plaintiffs filed their complaint against Defendants in *Michelle Kendig et al., v. ExxonMobil Oil Corp.; ExxonMobil Pipeline Company; PBF Energy Limited; Torrance Refining Company, LLC* in the Los Angeles Superior Court (the "Complaint" in the "Class Action"). The Complaint alleged the following causes

of action: (1) Failure to authorize and permit duty free rest periods; (2) failure to furnish accurate wage statements; (3) the California Private Attorneys General Act; and (4) unfair competition. Plaintiffs sought unpaid wages, statutory penalties, restitution, attorneys' fees and costs, interest, and injunctive and declaratory relief for the time period from September 18, 2014 to the present.

Following an extensive investigation and arm's-length and good-faith negotiations during a mediation with T. Warren Jackson, Esq., on August 23, 2019, the parties reached a tentative settlement agreement, which was subsequently reduced to writing (the Joint Stipulation of Settlement, hereinafter "Stipulation" or "Settlement") and has been filed with this Court.

The Plaintiffs move for this Court to:

1. Preliminarily approve the class action settlement for $4,391,585;
2. Preliminarily and conditionally certify the class for purposes of settlement;
3. Preliminarily appoint Plaintiffs Michelle Kendig and Jim Kendig as class representatives for purposes of settlement;
4. Preliminarily appoint Hadsell Stormer Renick & Dai LLP and Gilbert & Sackman, A Law Corporation, as class counsel for purposes of settlement;
5. Preliminarily approve the application for payment to class counsel of reasonable attorneys' fees of up to $1,097,896 (25% of the common fund) and reasonable costs up to $30,000;
6. Preliminarily approve the payment of an "incentive award" in the amount of $7,500 to each of the two class representatives;

7. Approve as to form and content the Proposed Notice of Class Action Settlement;
8. Direct that the Notice of Class Action Settlement be mailed to the Settlement Class members; and
9. Schedule a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable, and adequate as to the members of the Settlement Class.
10. That motion came on regularly for hearing before this Court on April 13, 2020, at 10:00 a.m., in Courtroom 5A of the Central District of California, First Street Courthouse.

The Court, having received and fully considered Plaintiffs' notice, motion and memorandum of points and authorities, the Settlement, the proposed Settlement Documents, and the oral argument presented to the Court, and in recognition of the Court's duty to make a preliminary determination as to the reasonableness of any proposed class-action settlement, and to conduct a fairness hearing as to the good faith, fairness, adequacy and reasonableness of any proposed settlement, HEREBY ORDERS and MAKES DETERMINATIONS as follows:

1. All defined terms contained herein shall have the same meaning as set forth in the Stipulation executed by the Parties and filed with this Court.

2. The Court finds that certification of the following class for purposes of settlement is appropriate: All current and former non-exempt hourly employees holding an Operator position while employed by ExxonMobil Oil Corporation,

ExxonMobil Pipeline Company, PBF Energy Limited, and/or Torrance Refining Company LLC, or any of their affiliates, working at the Torrance refinery, distribution and pipeline facilities in the state of California, County of Los Angeles, at any time during the time period beginning September 18, 2014 and ending on the date of Preliminary Approval.

3. The Court appoints Plaintiffs Michelle Kendig and Jim Kendig as class representatives for purposes of settlement;

4. The Court appoints Hadsell Stormer Renick & Dai, LLP and Gilbert & Sackman, A Law Corporation, as class counsel for purposes of settlement;

5. Federal Rule of Civil Procedure 23(e) requires court approval of a class action settlement. Approval is a two-step process under Rule 23(e). "[T]he Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." *Noll v. eBay, Inc.*, 309 F.R.D. 593, 602 (N.D. Cal. 2015) (internal citations omitted); *see also* Manual for Complex Litigation (Fourth) § 21.632 (courts "must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.").

Preliminary approval of a settlement is appropriate when the settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, non-collusive negotiations; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) has no obvious

deficiencies. *In re Tableware Antitrust Litig*., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). "Closer scrutiny is reserved for the final approval hearing." *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 U.S. Dist. LEXIS 48878, at *24 (N.D. Cal. Apr. 29, 2011).

6. The Court has reviewed the Settlement and the proposed Settlement Documents, which were separately lodged and are incorporated herein by reference. The Court finds on a preliminary basis that the Agreement appears to be within the range of reasonableness of a settlement which could ultimately be given final approval by this Court. It appears to the Court on a preliminary basis that the settlement amount is fair and reasonable to all potential class members when balanced against the probable outcome of further litigation relating to liability and damages issues. Plaintiffs have asserted violations of California labor and unfair competition laws. Defendants agree to a class settlement in the interest of compromising and resolving the Action. The parties recognize the risk involved in prosecuting and defending the Action including significant delay, defenses asserted by Defendant, and further potential appellate issues.

7. It further appears that the proposed Settlement has been reached as the result of intensive, serious and non-collusive arm's-length negotiations. It further appears that extensive investigation and research has been conducted such that counsel for the Parties at this time are able to reasonably evaluate their respective positions. Class Counsel have significant experience in wage and hour class actions. The proposed Settlement was reached through extensive negotiations and with the

involvement of an experienced mediator, T. Warren Jackson, Esq., of Signature Resolution.

8. It further appears that the proposed Settlement does not improperly grant preferential treatment to class representatives and has no obvious deficiencies.

9. In connection with its preliminary approval of the Settlement, the Court preliminarily approves the application for payment to class counsel of reasonable attorneys' fees of up to $1,097,896 (25% of the common fund) and reasonable costs up to $30,000.

10. In connection with its preliminary approval of the Settlement, the Court preliminarily approves the payment of an "incentive award" in the amount of $7,500 to each of the two class representatives.

11. In connection with its preliminary approval of the Settlement, the Court appoints CAC Services Group, LLC, of Eden Prairie, Minnesota, to act as the Claims Administrator who will administer the Settlement according to the terms of the Stipulation, as approved by this Court.

APPROVAL OF DISTRIBUTION OF THE NOTICE OF SETTLEMENT

12. Rule 23(e) provides that a court "must direct notice in a reasonable manner to all class members who would be bound by" a proposed class action settlement. Fed. R. Civ. Pro. 23(e)(1). This Court finds the proposed Notice of Settlement, which is attached hereto as Exhibit 1, fairly and adequately advises the potential class members of the terms of the proposed Settlement and the claims process for the class members to obtain the benefits available thereunder, as well as the right of

class members to opt out of the class, to challenge the number of shifts reported by Defendants from their records, to file documentation in objection to the proposed Settlement, and to appear at the Final Approval Hearing to be conducted at the date set forth below. The Court further finds that Notice of Settlement and proposed distribution of such notice by first-class mail to each identified class member at his or her last known address comports with all constitutional requirements, including those of due process.

13. Accordingly, good cause appearing, the Court hereby approves the proposed Notice of Settlement and orders the Class Administrator to distribute the Settlement Documents, in the manner and pursuant to the procedures described in the Settlement.

14. If more than five percent (5%) of the Settlement Class submits timely and valid requests for exclusion pursuant to the terms and procedures of the Settlement Notice, this entire Settlement Agreement shall become voidable and unenforceable as to Plaintiffs and Defendants, at each Defendant's sole discretion. Defendant may exercise such option by giving notice, in writing, to Class Counsel and to the Court at any time prior to final approval of this Settlement Agreement by the Court.

FINAL APPROVAL HEARING AND SCHEDULE

15. The Court hereby grants the Plaintiffs' motion to set a settlement hearing for final approval of the Settlement and orders the following schedule of dates for further proceedings:

a. Mailing of Settlement Documents to the class shall be completed on or

before June 9, 2020 (10 business days plus 14 calendar days after the issuance of the Court's Order granting the Motion for Preliminary Approval of Settlement Agreement);

b. Posting of Plaintiffs' Motion for Attorney's Fees and Costs on the Claims Administrator's website by June 25, 2020 (29 days prior to the Objection/Opt-Out deadline);

c. The deadline for class members to file and serve objections and requests for exclusion shall be July 24, 2020 (45 calendar days from the mailing of the Settlement Documents).

16. The Final Approval Hearing will be held on **August 17, 2020, at 10:00 a.m.** in the Courtroom of United States District Court Judge Michael W. Fitzgerald. Members of the class who object to the proposed Settlement may appear and present such objections at the Fairness Hearing in person or by counsel. All written objections and supporting papers must be filed or postmarked no later than the deadline set forth above.

17. Plaintiffs shall file a memorandum of points and authorities in support of final approval of the Settlement two weeks prior to the hearing.

18. IT IS FURTHER ORDERED that, if for any reason the Court does not grant final approval of the Settlement, or the Settlement otherwise does not become effective in accordance with the terms of the Stipulation, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Stipulation all evidence and proceedings held in

connection with the Settlement shall be without prejudice to the status quo ante rights of the Parties to the Action as more specifically set forth in the Settlement.

IT IS SO ORDERED.