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10 Classes and Collective

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 HAROLD JONES, et al.,
 14 Plaintiffs,
 15 vs.
 16 CERTIFIEDSAFETY, INC.
 17 Defendants.
 18

Lead Case No. 3:17-cv-02229-EMC
 Consolidated with 3:17-cv-03892-EMC (*Crummie*)
 Related to: 3:18-cv-04379-EMC (*Ross*)
 3:19-cv-01338-EMC (*Jones II*)
 3:19-cv-01380-EMC (*Jones III*)
 3:19-cv-01381-EMC (*Jones IV*)
 3:19-cv-01427-EMC (*East*)
 3:19-cv-01428-EMC (*Jones V*)

19 **PLAINTIFFS’ NOTICE OF MOTION AND**
 20 **MOTION FOR FINAL APPROVAL OF CLASS**
 21 **AND COLLECTIVE ACTION SETTLEMENT**

22 Date: May 28, 2020
 23 Time: 1:30 p.m.
 24 Courtroom: 5 (17th Floor)
 25 Judge: Honorable Edward M. Chen

26 *Jones* Complaint filed: April 21, 2017

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Attorneys for Plaintiffs and the Settlement Classes and Collective

1 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that on May 28, 2020, at 1:30 p.m. in Courtroom 5 before
 3 Hon. Edward M. Chen of the United States District Court, Northern District of California, Plaintiffs
 4 Harold Jones, Terre Crummie, Genea Knight, Sandra Turner, George Azevedo, Jr., Marcellous
 5 Ross, and Michael East (“Plaintiffs”) move the Court for final approval of the Stipulation of Class,
 6 Collective, and Representative Action Settlement, as amended (the “Settlement Agreement” or the
 7 “Settlement”), in these consolidated and related actions.¹ The Settlement globally resolves all of the
 8 claims in these actions on a class and collective basis. In particular, Plaintiffs move for orders:

- 9 (1) Granting final approval of the Settlement Agreement as to the California,
 10 Washington, Minnesota, Illinois, Ohio, and Alaska Classes;
- 11 (2) Certifying the California, Washington, Minnesota, Illinois, Ohio, and Alaska Classes
 12 for settlement purposes;
- 13 (3) Finally approving Plaintiffs Jones, Crummie, Ross, and East as Class
 14 Representatives for the California Class; Plaintiffs Jones and Knight as Class Representatives for
 15 the Washington Class; Plaintiff Jones as Class Representative for the Minnesota Class; Plaintiff
 16 Jones as Class Representative for the Illinois Class; Plaintiff Turner as Class Representative for the
 17 Ohio Class; and Plaintiff Azevedo as Class Representative for the Alaska Class; and all Plaintiffs as
 18 Collective Representatives;
- 19 (4) Finally approving Schneider Wallace Cottrell Konecky LLP as Class and Collective
 20 Counsel;
- 21 (5) Finally approving payment of \$70,000 from the Settlement to the Settlement
 22 Administrator, Heffler Claims Group, as compensation for administering the Settlement;
- 23 (6) Finally approving the following implementation schedule; and

Effective Date	The latest of: (i) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the judgment (<i>i.e.</i> , 30 days from the entry of judgment); (ii) if there is an appeal of the Court’s judgment,
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28 ¹ The Settlement was previously filed at ECF 206-2, and was modified by the Amendment filed at ECF 215-2. The Settlement was already preliminarily approved by this Court on January 22, 2020. See ECF 216.

	the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the United States Supreme Court; or (iii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date the judgment is affirmed pursuant to such petition.
Deadline for Heffler Claims Group to calculate the employer share of taxes and provide CertifiedSafety with the total amount of CertifiedSafety's Payroll Taxes	Within 7 days after Effective Date
Deadline for CertifiedSafety to pay the Gross Settlement Amount into the Qualified Settlement Account	Within 14 days after Effective Date
Deadline for CertifiedSafety to deposit the amount of CertifiedSafety's Payroll Taxes	Within 14 days after Effective Date
Deadline for Heffler Claims Group to make payments under the Settlement to Participating Individuals, the LWDA, Class Representatives, Plaintiffs' counsel, and itself	Within 30 days after the Effective Date
Check-cashing deadline	180 days after issuance
Deadline for Heffler Claims Group to report to counsel for all Parties the number of and amount of uncashed checks	14 days after check-cashing deadline
Deadline for redistribution of uncashed check funds to those Class Members who cashed their Individual Settlement Payment checks, or transfer to the <i>cy pres</i> recipient	21 days after report from Heffler Claims Group regarding uncashed checks
Deadline for Heffler Claims Group to provide written certification of completion of administration of the Settlement to counsel for all Parties and the Court	As soon as practicable after redistribution of uncashed check funds to those Class Members who cashed their Individual Settlement Payment checks, or transfer to the <i>cy pres</i> recipient

(7) Entering a final judgment with the terms of the Settlement.

Plaintiffs bring this Motion pursuant to Federal Rule of Civil Procedure 23(e). The Motion is based on this notice, the following Memorandum of Points and Authorities, the Declaration of Carolyn Hunt Cottrell, and all other records, pleadings, and papers on file in this action and such other evidence or argument as may be presented to the Court at the hearing on this Motion. Plaintiffs will also submit a Proposed Order Granting Final Approval of Settlement and a Proposed Judgment with their moving papers.

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Date: April 23, 2020

Respectfully submitted,

/s/ Carolyn Hunt Cottrell
Carolyn Hunt Cottrell
David C. Leimbach
Michelle S. Lim
Scott L. Gordon
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

Attorneys for Plaintiffs and the Settlement Classes and
Collective

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1 **I. INTRODUCTION**

2 Plaintiffs seek final approval of the Settlement¹ in these class and collective actions (the
3 “Actions”) brought on behalf of current and former Safety Attendants and Safety Foremen for
4 Defendant CertifiedSafety, Inc. (“Defendant” or “CertifiedSafety”). Plaintiffs allege that
5 CertifiedSafety and certain of its oil refinery clients violated federal, California, Washington,
6 Minnesota, Illinois, Ohio, and Alaska labor laws by failing to pay Safety Attendants and Safety
7 Foremen for all of their work, failing to provide them meal and rest periods, and failing to
8 reimburse them for work-related expenses. The Settlement provides an exceptional recovery to
9 resolve these workers’ claims and brings closure to three years of intensive litigation, including
10 pleading challenges, numerous amendments to the complaints, conditional certification, the filing of
11 a series of related actions to allege additional state law and joint employer claims against
12 Defendant’s oil refinery clients, two separate mediations, and extensive arm’s-length negotiations
13 between counsel.

14 The Settlement provides for a non-reversionary Gross Settlement Amount of \$6,000,000 to
15 settle the wage and hour claims for approximately 2,481 Class Members.² In resolving the claims
16 for six Rule 23 Classes and an FLSA Collective comprised of 429 Opt In Plaintiffs, the Settlement
17 provides an excellent recovery for numerous wage and hour claims unlikely to have been
18 prosecuted as individual actions. In particular, the average recovery for each of the 2,481 Class
19 Members is approximately \$1,514.35 per Class Member—an exceptional amount considering that
20 the typical Class Member worked a relatively short tenure.³ As the Class Members’ Individual

21 ¹ The “Settlement” or Settlement Agreement” refers to the Stipulation of Class, Collective, and
22 Representative Action Settlement, as amended, filed at ECF 206-2 (Amendment filed at ECF 215-
23 2).

24 ² Plaintiffs and members of the Classes and Collective are referred to hereafter as “Class Members”
25 or “Safety Attendants” for ease of reading.

26 ³ This amount divides the *net* recovery by the total number of discrete Class Members. The total
27 number of Class Members was reported as 3,050 in Plaintiffs’ motion for preliminary approval.
28 That figure simply added together the numbers of Class Members in each of the six Rule 23 Classes
and the number of Collective Members who were not part of any Rule 23 Class, and incorporated a
projected amount of additional Class Members to account for the period from the second mediation
(when the Class data was provided) to the date of filing of the preliminary approval motion. As the
Class Members work assignments for CertifiedSafety all over the country, numerous Class
Members are part of more than one Rule 23 Class, and these persons were double counted in the

1 Settlement Shares are based on their number of Workweeks, long-term Safety Attendants will
2 receive larger recoveries under the Settlement. 68 Class Members will receive in excess of \$10,000,
3 six Class Members will receive over \$20,000, and the largest recovery is an impressive \$26,205.20.
4 Class Members are paid \$40.97 for each FLSA-Only Workweek under the Settlement. With the
5 weighting factors discussed herein, Class Members are paid, *inter alia*, twice that (\$81.94) for each
6 Washington Workweek, and three times that (\$122.91) for each California Workweek.⁴ Thus, the
7 Settlement provides well over \$1,000 to a Class Member with just nine Workweeks in California.

8 The Court granted preliminary approval of the Settlement as to the California, Washington,
9 Minnesota, Illinois, Ohio, and Alaska Classes and approval of the Settlement as to the Collective on
10 January 22, 2020. *See* ECF 216. Following the Court's approval, notice of the Settlement was sent
11 to the Class Members via U.S. Mail, email, and text message on February 19, 2020. At this time, no
12 objections have been filed and no Class Members have opted out of the Settlement. Four Class
13 Members submitted disputes regarding their number of Workweeks.

14 Given the strong recovery and that the Settlement will provide significant monetary
15 payments to laborers with modest incomes in the midst of an economic downturn, Class Counsel
16 respectfully submits that the Court should approve the Settlement forthwith. By any measure, the
17 Settlement provides a great benefit to the Classes and Collective and an efficient outcome in the
18 face of expanding litigation. It is fair, reasonable, and adequate in all respects. Accordingly, as set
19 forth herein, Plaintiffs respectfully submit that the Settlement should be finally approved.⁵

20 II. FACTUAL BACKGROUND

21 CertifiedSafety serves the oil refinery industry, providing its clients with personnel who
22 specialize in planning, implementing, and executing safety protocols at refinery operations. Cottrell

23 initial estimate of 3,050. With the benefit of the comprehensive Class information provided by
24 Defendant for settlement administration, the final tally of discrete Class Members is 2,481.

25 ⁴ The majority of the Workweeks covered by the Settlement are California Workweeks. The
26 weighting factors recognize that the stronger wage and hour laws of certain states would result in
27 enhanced recoveries compared to states with no wage and hour protections beyond the FLSA.

28 ⁵ In a separate motion filed on April 23, 2020, Plaintiffs seek approval of an award of attorneys'
fees, costs, and service awards for the Named Plaintiffs. Pursuant to the Northern District of
California's Procedural Guidance for Class Action Settlements, this brief does not repeat that
request nor the corresponding background information set forth in the fee, cost, and service award
motion.

1 Decl. ¶ 8. Its clients are oil refinery operators in the United States, including but not limited to
 2 Chevron, Andeavor/Tesoro, Phillips 66, Citgo, United Refining, and Shell.⁶ *Id.* CertifiedSafety’s
 3 Safety Attendants and Safety Foremen, who are classified as non-exempt employees, carry out
 4 these safety duties at refinery operations throughout the United States, including in California,
 5 Washington, Minnesota, Illinois, Ohio, Alaska, and numerous other states. *Id.* ¶ 9. They provide
 6 support for the refinery companies’ operations and protocols, including identifying, mitigating, and
 7 reporting potential safety hazards at their assigned worksites. *Id.*

8 Plaintiffs allege that Class Members—who work long and difficult hours, often far away
 9 from their homes—experience wage and hour violations in their work with CertifiedSafety, and
 10 with the refineries as alleged joint employers. *Id.* ¶ 10. In particular, Plaintiffs allege that the Class
 11 Members experience significant amounts of pre- and post-shift off-the-clock work, that the Class
 12 Members cannot take timely, full, off-duty meal and rest periods, and that they are not adequately
 13 reimbursed for travel, lodging, and other expenses. *Id.* ¶ 11. As a result of these alleged violations,
 14 Plaintiffs allege that Defendants systematically violate the Fair Labor Standards Act, as well as
 15 California, Washington, Minnesota, Illinois, Ohio, Alaska labor law, by: (1) not paying Class
 16 Members proper minimum and overtime wages for work performed off-the-clock on a daily basis,
 17 as well as uncompensated training days; (2) failing to provide Class Members with a reasonable
 18 opportunity to take meal and rest periods, and failing to compensate Class Members when such
 19 meal and rest periods are not taken; (3) failing to reimburse necessarily-incurred expenses; and (4)
 20 failing to issue accurate, itemized wage statements.

21 Plaintiffs allege that, as joint employers, CertifiedSafety and the refinery Defendants are
 22 jointly liable for the violations at issue. Defendants have at all times denied, and continue to deny,
 23 all of these allegations, including Plaintiffs’ theory that CertifiedSafety and the refinery Defendants
 24 are joint employers, and deny any and all liability for Plaintiffs’ claims. Defendants further deny
 25 that Plaintiffs’ allegations are appropriate for class/collective and/or representative treatment for
 26 any purpose other than for settlement purposes only.

27
 28 ⁶ Each of these refinery operators has been named as a Defendant on a joint employer basis in the
 Actions. CertifiedSafety and these refinery operators are collectively referred to as “Defendants.”

III. PROCEDURAL HISTORY

A. Plaintiffs' Claims

Plaintiff Harold Jones filed the first lawsuit in the Actions against CertifiedSafety on April 1, 2017. ECF 1.⁷ In his initial complaint, Plaintiff Jones alleged that CertifiedSafety violated the Fair Labor Standards Act ("FLSA") and the wage and hour laws of California by failing to pay non-exempt employees their earned wages, failing to provide legally compliant meal and rest periods, and failing to reimburse for work-related expenditures. On this basis, Plaintiff Jones brought claims against CertifiedSafety on behalf of a putative FLSA collective and a putative California class, and for civil penalties under the California Labor Code Private Attorneys General Act ("PAGA").

Plaintiff Tierre Crummie filed *Crummie* in the Superior Court of California, County of Alameda, on April 24, 2017. Plaintiff Crummie brought similar claims against CertifiedSafety under the wage and hour laws of California on behalf of a putative California class and for civil penalties under the PAGA. CertifiedSafety removed *Crummie* to the United States District Court for the Northern District of California on July 10, 2017. *Crummie* ECF 1.

Plaintiff Jones filed his First Amended Complaint ("FAC") in *Jones* on June 26, 2017, which added Plaintiff Genea Knight as an additional representative plaintiff. ECF 23. Plaintiff Knight brought similar claims against CertifiedSafety, under the wage and hour laws of Washington on behalf of a putative Washington class, in addition to FLSA claims. *Id.* Defendant moved to dismiss Plaintiffs' FAC on July 24, 2017, primarily on *Iqbal/Twombly* grounds. ECF 31. That motion was denied in large part, and Defendant filed its Answer on September 18, 2017. ECF 39, 42.

On February 8, 2018, pursuant to the parties' stipulation, Plaintiffs Jones and Knight filed their Second Amended Complaint to assert additional claims under the California Labor Code, reassert a California waiting time penalty claim, and to proffer additional factual allegations relating to CertifiedSafety's mandatory training. ECF 100. On July 18, 2018, Plaintiff Marcellous Ross filed *Ross* against CertifiedSafety, Chevron, Valero Energy Corporation, and Valero Refining Company-California. Plaintiff Ross alleged similar wage and hour claims against these Defendants, on behalf

⁷ Unless otherwise indicated, ECF docket designations refer to docket entries in Lead Case No. 3:17-cv-02229-EMC.

1 of a putative FLSA collective and a putative California class. *Ross*, ECF 1. Plaintiff Ross agreed to
2 voluntarily dismiss Valero Energy Corporation and Valero Refining Company-California via
3 stipulation on September 12, 2018. *See Ross* ECF 30.

4 In late-2018, Plaintiffs filed a motion for leave to file a Third Amended Consolidated
5 Complaint in *Jones*, and a motion for leave to file a First Amended Complaint in *Ross*. ECF 164;
6 *Ross* ECF 58, 64. The proposed amendments would have significantly expanded both the *Jones* and
7 *Ross* actions, by adding Michael East and George Azevedo, Jr., as additional Named Plaintiffs and
8 Class Representatives; joint employer allegations against CertifiedSafety's oil refinery clients
9 including but not limited to Shell, Andeavor, Phillips 66, and Citgo; and additional Rule 23 classes
10 and state law causes of action under Alaska, Illinois, and Minnesota law.⁸ *Id.* The Court granted the
11 motions in part on February 20, 2019, declining to permit the addition of the refinery defendants
12 and the additional state law claims, but permitting smaller-scale amendments. ECF 172; *Ross* ECF
13 87.

14 Plaintiffs filed their Third Amended Consolidated Complaint ("TAC") in *Jones* and their
15 operative First Amended Complaint in *Ross* (*Ross* FAC) on March 6, 2019. ECF 176; *Ross* ECF 91.
16 CertifiedSafety answered the TAC and the *Ross* FAC on March 20, 2019. ECF 177; *Ross* ECF 87.
17 Chevron filed a motion to dismiss the *Ross* FAC on March 20, 2019, which was fully briefed at the
18 time the Parties reached an agreement to settle the case.⁹ *See Ross* ECF 93, 95, 97, 101.

19 Plaintiffs then proceeded to file new actions to bring the wage and hour claims, including
20 those under Illinois and Minnesota law, against CertifiedSafety and refineries on a joint employer
21 basis:

- 22 • Plaintiff Jones filed *Jones II* (Case No. No. 3:19-cv-01338-EMC) on March 12, 2019, which
23 alleges similar wage and hour claims under the FLSA, California, Washington, and Minnesota
24 law against CertifiedSafety and Andeavor/Tesoro on behalf a putative FLSA collective and

25
26 ⁸ Plaintiffs had previously noticed a motion in *Jones* on May 15, 2018 to obtain leave for these
27 proposed amendments via filing of a Third Amended Complaint, but the Court denied the motion
28 without prejudice on October 26, 2019 in order for the Parties to delineate lead plaintiff and lead
counsel responsibilities. *See* ECF 129, 149.

⁹ The Parties agreed to continue the hearing on Chevron's motion to dismiss pending the settlement
process. *See Ross* ECF 101.

1 putative California, Washington, and Minnesota classes.

- 2 • Plaintiff Jones filed *Jones III* (Case No. 3:19-cv-01380-EMC) on March 14, 2019, which
3 alleges similar wage and hour claims under the FLSA, California, and Washington law against
4 CertifiedSafety and Phillips 66 on behalf a putative FLSA collective and putative California,
5 and Washington classes.
- 6 • Plaintiff Jones filed *Jones IV* (Case No. 3:19-cv-01381-EMC) on March 14, 2019, which
7 alleges similar wage and hour claims under the FLSA, California, and Illinois law against
8 CertifiedSafety and Citgo on behalf a putative FLSA collective and putative California and
9 Washington classes.
- 10 • Plaintiff Michael East filed *East* (Case No. 3:19-cv-01427-EMC) on March 18, 2019, which
11 alleges similar wage and hour claims under the FLSA and California law against
12 CertifiedSafety and United Refining on behalf a putative FLSA collective and a putative
13 California class.
- 14 • Plaintiff Jones filed *Jones V* (Case No. 3:19-cv-01428-EMC) on March 18, 2019, which
15 alleges similar wage and hour claims under the FLSA, California, and Washington law against
16 CertifiedSafety and Shell on behalf a putative FLSA collective and putative California, and
17 Washington classes.

18 At the time of mediation, Plaintiffs and Class Counsel intended to file additional actions to
19 bring wage and hour claims under Ohio and Alaska law on behalf of putative Ohio and Alaska
20 classes. Cottrell Decl. ¶ 14. As a result of the Settlement, the Parties agreed that Plaintiffs would
21 amend the operative complaint in *Jones* to add (1) Sandra Turner and George Azevedo, Jr. as
22 Named Plaintiffs and Class Representatives, and (2) Ohio and Alaska law wage and hour claims,
23 brought by Turner and Azevedo, respectively, individually and on behalf of putative Rule 23 Ohio
24 and Alaska classes. *See* Settlement Agreement, ¶¶ 3.20, 5.1.1. The Ohio and Alaska Classes
25 incorporate class periods that extend back three years from the April 23, 2019 mediation. *See*
26 Settlement Agreement, ¶¶ 2.46. The resulting Fourth Amended Complaint was filed on January 24,
2020. ECF 218.

27 **B. FLSA Conditional Certification**

28 The Parties stipulated to conditional certification of the FLSA Collective in *Jones*, which

1 was granted on October 24, 2017. ECF 47. CertifiedSafety brought a motion to strike untimely and
 2 deficient opt-in forms on March 14, 2018, which Plaintiffs opposed. ECF 113, 116, 119. The Court
 3 granted the motion with respect to opt-in forms filed after the initial January 23, 2018 mediation,
 4 and with respect to unsigned opt-in forms, but otherwise denied the motion. *See* ECF 128. Safety
 5 Attendants have also filed opt-in forms in the *Ross* action. Cottrell Decl. ¶ 15. In the final tally, 429
 6 Individuals, including the Named Plaintiffs, opted in to *Jones*, *Ross*, or both. *Id.*

7 C. Consolidation and Relation of Actions

8 On February 16, 2018, CertifiedSafety moved to have the *Jones* action consolidated with
 9 *Crummie*, or in the alternative, to stay *Crummie*. ECF 103. Plaintiffs Jones and Knight opposed this
 10 motion, primarily on first-filing grounds and the status of *Jones* as involving a conditionally-
 11 certified FLSA collective in addition to a putative California Class. *See* ECF 106. Plaintiffs Jones
 12 and Knight filed a motion to appoint their attorneys, Schneider Wallace Cottrell Konecky LLP, as
 13 interim lead counsel on March 21, 2018. ECF 115.

14 On May 15, 2018, the Court issued an order consolidating *Jones* with *Crummie*. ECF 128.
 15 This order also denied without prejudice the motion to appoint interim lead counsel on prematurity
 16 grounds, as the actions has not yet been consolidated. *Id.* On November 5, 2018, following the
 17 Court's order directing the Parties to delineate lead counsel responsibilities, Plaintiffs in *Jones* and
 18 *Crummie* stipulated to appoint Schneider Wallace Cottrell Konecky Wotkyns LLP as lead counsel
 19 on behalf of the Plaintiffs and putative Class and Collective Members in *Jones* and *Crummie*.¹⁰ ECF
 20 149, 152.

21 On October 30, 2018, Plaintiffs filed a notice of related cases and administrative motion to
 22 relate the *Ross* action to the consolidated *Jones/Crummie* action. ECF 150. The Court issued a
 23 related case order, finding the actions related, on November 16, 2018. ECF 157. On May 10, 2019,
 24 Plaintiffs filed a notice of related cases and administrative motion to relate the *Jones II*, *Jones III*,
 25 *Jones IV*, *East*, and *Jones V* actions to the consolidated *Jones/Crummie* action. ECF 186. The Court
 26 issued related case orders, finding the actions related, on May 15 and May 17, 2019. ECF 192, 195.
 27 All of the Actions are currently pending before the Honorable Edward M. Chen.

28 ¹⁰ Lawyers for Justice, PC remains actively involved in the litigation of the Actions.

D. Discovery

1 **D. Discovery**
2 The Parties have engaged in extensive discovery, including written discovery and
3 depositions. On January 10, 2018, Plaintiffs deposed CertifiedSafety's Rule 30(b)(6) designee, Vice
4 President of Human Resources Steve Hines. Cottrell Decl. ¶ 18. The deposition addressed topics
5 including Defendant's corporate organization and decision-making responsibilities; its policies,
6 practices, procedures, and systems for wage and hour issues, compensation, timekeeping, and
7 scheduling; relevant investigations and reports; and the Class Members' job duties and
8 responsibilities, the tools, equipment and gear that they use, and any work that they perform outside
9 of their scheduled shifts. *Id.* The deposition also covered topics relating to Plaintiffs' joint employer
10 claims; Plaintiffs proffered excerpts along this line in support of their motion for preliminary
11 approval. *Id.*; see ECF 211-2. Defendant took the depositions of Plaintiff Jones and Plaintiff Knight
12 on January 15, 2018, and Plaintiff Crummie on January 11, 2018. *Id.* ¶ 19.

13 Plaintiffs' counsel have additionally completed extensive outreach with Class Members,
14 including over 240 in-depth intakes. *Id.* ¶ 20. The intakes covered topics including dates and
15 locations of work, hours of work, pre-shift and post-shift off-the-clock work, meal and rest breaks,
16 and reimbursement of work-related expenses. *Id.* Through the outreach process, Plaintiffs garnered
17 substantial factual background regarding the alleged violations and the joint employer claims,
18 which Plaintiffs' counsel utilized to build their case and proffer detailed allegations in the operative
19 complaints. *Id.* ¶ 21; see e.g. ECF 218. Multiple Class Members that completed intakes provided
20 additional documents to Plaintiffs' counsel. *Id.*

21 CertifiedSafety has additionally produced over 1,400 documents, including its general
22 policies as well as time records, payroll records, and job assignment documents applicable to
23 Plaintiffs Jones, Knight, and Crummie. *Id.* ¶ 22. CertifiedSafety also provided classwide figures,
24 including the total number of class members, number of shifts worked, average hourly rates, and
25 additional data points, ahead of each mediation, to enable Plaintiffs' counsel to evaluate damages
26 on a Class and Collective basis. *Id.* This discovery was produced on an informal basis to facilitate
27 mediation, and updated ahead of each mediation. *Id.*

E. Mediation

1
2 Plaintiffs and CertifiedSafety first mediated this dispute on January 23, 2018 before Jeff
3 Ross, a respected and experienced wage and hour mediator. Cottrell Decl. ¶ 23. This initial
4 mediation was unsuccessful, and litigation continued in the ordinary course, including the filing of
5 the later actions and service of formal discovery requests. *Id.* On April 23, 2019, the Plaintiffs and
6 CertifiedSafety participated in a second mediation session with Paul Grossman, another highly
7 respected and experienced wage and hour mediator. *Id.* ¶ 24. The session lasted some 10 hours; at
8 the end of the night, Mr. Grossman issued a mediator's proposal, which contained the essential
9 terms of the instant Settlement. *Id.* All Parties accepted the proposal on that date. *Id.*

10 Throughout the mediation process, the Parties engaged in serious and arm's-length
11 negotiations, culminating in the mediator's proposal. *Id.* ¶ 25. After the mediation, counsel for the
12 Parties worked to finalize the proposed long-form Settlement and corresponding notice documents,
13 subject to the Court's approval. *Id.* As the Settlement is complex, involving hybrid Rule 23 and
14 FLSA claims, numerous Defendants, and the resolution of eight separate actions as well as two
15 additional potential actions, the drafting process was lengthy. After an initial draft was completed,
16 six sets of subsequent edits were required to arrive at an agreement that was acceptable to all Parties
17 and counsel, along with a separate drafting and revision process for the Class, Collective, and
18 Class/Collective Notices. *Id.* ¶ 26. Counsel for the Parties advised the Court of the status of the
19 drafting process, culminating in a stipulation that set finalized deadlines for the completion of the
20 Settlement Agreement and filing the instant motion. *See* ECF 197, 199, 201, 202, 203. The
21 Settlement Agreement was fully executed on November 21, 2019.

F. Preliminary Approval

22 Plaintiffs filed their preliminary approval motion on November 22, 2019. *See* ECF 206. The
23 Parties also filed a stipulation on that date for leave to file the proposed Fourth Amended
24 Consolidated Class and Collective Action Complaint, which added the Ohio and Alaska law claims
25 brought by Plaintiffs Turner and Azevedo, respectively, individually and on behalf of putative Ohio
26 and Alaska classes. *See* ECF 204. Thereafter, the Court issued an Order on December 12, 2019
27
28

1 directing Plaintiffs to file supplemental briefing on several issues.¹¹ See ECF 210. Plaintiffs filed
 2 the supplemental briefing and evidence on December 19, 2019, including revised Notices of
 3 Settlement that incorporated the Court’s recommended changes. ECF 211. The Court also directed
 4 the Parties to be prepared to address the Ninth Circuit’s decision in *Roe v. SFBSC Mgmt., LLC*, No.
 5 17-17079, 2019 U.S. App. LEXIS 36638 (9th Cir. Dec. 11, 2019) at the preliminary approval
 6 hearing. See ECF 212.

7 At the preliminary approval hearing on January 8, 2020, the Court discussed the Settlement
 8 with Class Counsel and Defendant’s counsel, with emphasis on the damages analysis, the manner in
 9 which notice would be disseminated to Class Members, and the treatment of uncashed check funds.
 10 See ECF 213, 214. The Parties agreed to incorporate notice via text message, in addition to notice
 11 via U.S. Mail and email, and to modify the handling of uncashed check funds so that any such
 12 monies would be redistributed to those Class Members who cashed their checks. *Id.* The Court
 13 issued an order conditionally granting preliminary approval, provided that the Parties made these
 14 changes to the Settlement, on January 13, 2020. See ECF 214. The Parties executed the Amendment
 15 to the Settlement on January 20, 2020, and filed it with the Court on that date. See ECF 215, 215-2.
 16 The Court issued its Order as Modified Granting Plaintiffs’ Motion for Preliminary Approval of
 17 Class and Collective Action Settlement on January 22, 2020. ECF 216.

18 **G. Notice of Settlement and Response of Class Members**

19 Heffler Claims Group (“Heffler”) is responsible for distributing the Notices of Settlement,
 20 calculating individual settlement payments, calculating all applicable payroll taxes, withholdings
 21 and deductions, preparing and issuing all disbursements to be paid to Class Members, the Class
 22 Representatives, Class Counsel, the LWDA, any applicable local, state, and federal tax authorities,
 23 and handling inquiries and/or disputes from Class Members. Cottrell Decl. ¶ 31. Heffler is also
 24 responsible for the timely preparation and filing of all tax returns, and making the timely and
 25 accurate payment of all necessary taxes and withholdings. *Id.* Heffler established a case website,

26 ¹¹ These issues included the damages analysis for the California PAGA claim; the inclusion in the
 27 California class of Safety Attendants who completed pre-employment training in California; the
 28 distribution of uncashed check funds to state unclaimed property departments, as originally
 proposed by the Parties; the discovery taken as to refineries; the estimated lodestar of Class
 Counsel; and recommended changes to the Notices of Settlement.

1 <http://www.certifiedsafetysettlement.com/>, which provides Settlement documents and information
2 and allows for the submission of electronic inquiries. *Id.* ¶ 32. Heffler also established a toll-free
3 call center to field questions, address updates, and other inquiries from Class Members. *Id.*

4 Following the Court's order, Heffler received the Class List from CertifiedSafety on
5 February 5, 2020. Cottrell Decl. ¶ 33. The data contained the names, last known mailing addresses,
6 last known personal email addresses, Workweeks in each of the various jurisdictions, and other
7 personal information for 2,481 Safety Attendants. Heffler sent the Notices of Settlement to these
8 workers on February 19, 2020 via U.S. Mail, and via email and text message to all email addresses
9 and telephone numbers available for the Safety Attendants. As emails were sent to over 2,515 email
10 addresses and text messages were sent to 3,890 phone numbers, robust electronic notice was
11 disseminated in addition to hard copy notice.¹² *Id.*

12 In order to include such information on the Notices, Heffler first calculated the Individual
13 Settlement Shares for every Safety Attendant using the Workweek data provided by
14 CertifiedSafety. Cottrell Decl. ¶ 34. The Notices informed the Class Members of: the Settlement
15 terms; their expected share; the April 20, 2020 deadline to submit objections, requests for
16 exclusions, or disputes; the May 28, 2020 final approval hearing; and that Plaintiffs would seek
17 attorneys' fees, costs, and service awards and the corresponding amounts. *Id.*; see also ECF 215-2.
18 Heffler included the URL for the case website, the toll-free call center number, and the names and
19 contact information for Class Counsel in the Notices of Settlement. *Id.*

20 As of April 17, 2020, 287 hard-copy Notices have been returned to Heffler as undeliverable.
21 *Id.* ¶ 35. Heffler performed skip-tracing and other techniques to identify current addresses, and 206
22 Notices were successfully re-mailed. *Id.* Out of 2,515 email Notices sent, 166 were undeliverable,
23 and out of 3,890 text message Notices sent, 580 were undeliverable. 81 hard-copy notices remain
24 undelivered after re-mailing. *Id.* The deadline for Class Members to opt-out, object, and dispute their
25 reported Workweeks expired April 20, 2020.¹³ *Id.*

26 ¹² CertifiedSafety had multiple email addresses and multiple phone numbers for certain Safety
27 Attendants.

28 ¹³ Three days prior to the end of the notice period, on April 17, 2020, Defendant's counsel informed
Class Counsel of an error in the Class List data that it provided to Heffler. *Id.* ¶ 36. Specifically, the

1 To date, with the notice period complete, not a single objection has been filed and not a
 2 single Class Member has opted out of the Settlement. *Id.* ¶ 37. Moreover, only four Class Members
 3 have disputed the Workweek figures reported in their Notices.¹⁴ *Id.* None of the disputes allege that
 4 the Workweeks were improperly credited to the respective Rule 23 states. *Id.* Plaintiffs will file a
 5 declaration from Heffler regarding notice administration in advance of the final approval hearing.
 6 Following final approval of the Settlement, Heffler will issue checks to the Class Members. *Id.*

7 **H. Final Approval of the Settlement**

8 The Final Approval Hearing is currently scheduled for May 28, 2020. With this Motion,
 9 Plaintiffs ask the Court to grant final approval of this Settlement as to the California, Washington,
 10 Illinois, Minnesota, Alaska, and Ohio Classes. The Court should grant final approval at that time
 11 given the substantial recovery realized by all Class and Collective members, and the globally
 12 positive reaction of these Safety Attendants. Following an order by the Court on this Motion, the
 13 Parties and the Settlement Administrator will execute the final steps of the settlement process,
 14 including sending individual checks to all participating Class Members for their Individual
 15 Settlement Shares.

16 **IV. TERMS OF THE SETTLEMENT**

17 **A. Basic Terms and Value of the Settlement**

18 CertifiedSafety has agreed to pay a non-reversionary Gross Settlement Amount of
 19 \$6,000,000 to settle all aspects of the case. Cottrell Decl. ¶ 40. The Net Settlement Amount, which
 20 is the amount available to pay settlement awards to the Class Members, is defined as the Gross

21
 22 Class List incorrectly stated the number of Workweeks for FLSA Opt In Plaintiffs who were also
 23 Rule 23 Class Members. *Id.* For these persons, the Class List stated that all of their Workweeks
 24 were FLSA-Only Workweeks. *Id.* As a result, the Class Members' estimated recoveries have been
 25 modified, with some Class Members receiving more than initially stated, and others receiving less.
 26 In no event will a Class Member's recovery decrease by more than 11.9% from the estimated
 27 recovery provided in the Notice of Settlement. Importantly, the Notices of Settlement state that the
 28 reported Individual Settlement Payment amount "is an estimated amount, and your final Settlement
 payment is expected to differ from this amount (i.e., it could be higher or lower) and will be
 calculated as set forth above."

¹⁴ The disputes have been resolved following the gathering of additional data and information by
 Defendant for each dispute and meet and confer. *Id.* ¶ 38. All of the disputes have been rejected. *Id.*
 Notably, two disputes were rejected because the union Safety Attendant position, which is subject
 to a collective bargaining agreement, is not within the purview of the Settlement. *Id.*

1 Settlement Amount less: the payment made to the California Labor & Workforce Development
 2 Agency (“LWDA”) pursuant to PAGA (\$50,000)¹⁵; any enhancement payments awarded to the
 3 Class Representatives (up to \$15,000 for Plaintiffs Jones, Knight, and Crummie; up to \$10,000 for
 4 Plaintiffs Ross and East; and up to \$5,000 for Plaintiffs Azevedo and Turner); the Settlement
 5 Administrator’s fees and costs (\$70,000)¹⁶; and any attorneys’ fees and costs awarded to Plaintiffs’
 6 counsel (fees of one-third of the Gross Settlement Amount, or \$2,000,000, plus costs in the amount
 7 of \$60,397.73)¹⁷. *Id.*

8 The negotiated non-reversionary Gross Settlement Amount of \$6,000,000 represents more
 9 than 53% of the approximately \$11.3 million that Plaintiffs calculated for the core unpaid wages
 10 claims. *Id.* ¶ 42. When adding meal and rest break, derivative claims, and potential penalties, the
 11 \$6,000,000 million settlement amount represents approximately 13.3% of Defendants’ total
 12 potential exposure of \$45.2 million. *Id.* The cash-in-hand recoveries that Class Members will
 13 receive compare favorably to these theoretical maximums. *Id.* ¶ 43. The average recovery is
 14 \$1,514.35 per each of the 2,481 Class Members (this amount divides the *net* recovery by total
 15 number of Class Members). *Id.* 68 Class Members will receive in excess of \$10,000, six Class
 16 Members will receive over \$20,000, and the largest recovery is an impressive \$26,205.20. *Id.* Class
 17 Members are paid \$40.97 for each FLSA-Only Workweek under the Settlement; with the weighting
 18 factors, Class Members are paid, *inter alia*, twice that (\$81.94) for each Washington Workweek,
 19 and three times that (\$122.91) for each California Workweek.¹⁸ *Id.*

20 **B. Class and Collective Definitions**

21 An individual is eligible to share in the proposed Settlement if he or she belongs to any of
 22

23 ¹⁵ The Parties agree to allocate \$50,000.00 of the Gross Settlement Amount to the settlement of the
 24 PAGA claims, which the Parties believe in good faith is a fair and reasonable apportionment. *Id.*
 25 The Settlement Administrator shall pay 75%, or \$37,500.00, of this amount to the LWDA, and
 26 25%, or \$12,500.00, shall remain as part of the Net Settlement Amount. *Id.*

26 ¹⁶ Heffler’s finalized costs are \$70,000 for this complex and intricate settlement administration
 27 project. This increased slightly from the \$66,000 estimate provided in Plaintiff’s preliminary
 28 approval motion. *Id.*

¹⁷ The finalized attorneys’ costs are \$60,397.73, a decrease from the \$70,000 estimate provided in
 Plaintiff’s preliminary approval motion. *Id.*

¹⁸ Again, the majority of the Workweeks covered by the Settlement are California Workweeks.

1 the following¹⁹:

- 2 ■ The “**California Rule 23 Class**” means all current or former Safety Attendants and Safety
3 Foremen employed by CertifiedSafety, or who attended pre-employment training conducted by
4 CertifiedSafety, in the State of California at any time from April 21, 2013 to the date of
5 Preliminary Approval.
- 6 ■ The “**Washington Rule 23 Class**” means all current or former Safety Attendants and Safety
7 Foremen employed by CertifiedSafety in the State of Washington at any time from April 21, 2014
8 to the date of Preliminary Approval.
- 9 ■ The “**Minnesota Rule 23 Class**” means all current or former Safety Attendants and Safety
10 Foremen employed by CertifiedSafety in the State of Minnesota at any time from March 12, 2016
11 to the date of Preliminary Approval.
- 12 ■ The “**Illinois Rule 23 Class**” means all current or former Safety Attendants and Safety Foremen
13 employed by CertifiedSafety in the State of Illinois at any time from March 14, 2016 to the date of
14 Preliminary Approval.
- 15 ■ The “**Ohio Rule 23 Class**” means all current or former Safety Attendants and Safety Foremen
16 employed by CertifiedSafety in the State of Ohio at any time from April 23, 2016 to the date of
17 Preliminary Approval.
- 18 ■ The “**Alaska Rule 23 Class**” means all current or former Safety Attendants and Safety Foremen
19 employed by CertifiedSafety in the State of Alaska at any time from April 23, 2016 to the date of
20 Preliminary Approval.
- 21 ■ **Opt-In Plaintiffs** are all Safety Attendants and Safety Foremen on whose behalf Plaintiffs’
22 counsel has filed a consent to join the FLSA collective in any of the Actions, before the date of
23 Preliminary Approval.

24 **C. Allocation and Awards**

25 The Net Settlement Amount to be paid to Class Members is approximately \$3,757,102.27.
26 Cottrell Decl. ¶ 45. Class Members will each receive a settlement award check without the need to
27

28 ¹⁹ The Rule 23 Classes mirror the class definitions in the operative complaints. They are to be certified for settlement purposes only under Federal Rule of Civil Procedure 23.

1 submit a claim form.²⁰ *Id.* ¶ 46. Each Class Member's settlement share will be determined based
 2 on the total number of weeks that the respective Class Member worked for Defendants during the
 3 applicable limitations period(s). *Id.* ¶ 41. Specifically, each Class Member will be credited for the
 4 number of weeks that he or she worked for CertifiedSafety at any time (1) from April 21, 2013 to
 5 the date of Preliminary Approval for California Class Members; (2) from April 21, 2014 to the
 6 date of Preliminary Approval for Washington Class Members; (3) from March 12, 2016 to the date
 7 of Preliminary Approval for Minnesota Class Members; (4) from March 14, 2016 to the date of
 8 Preliminary Approval for Illinois Class Members; (5) from April 23, 2016 (i.e., the mediation date)
 9 to the date of Preliminary Approval for Ohio Class Members; (6) from April 23, 2016 (i.e., the
 10 mediation date) to the date of Preliminary Approval for Alaska Class Members; and (7) if the
 11 Participating Individual is an Opt In Plaintiff, in all states other than California, Washington,
 12 Minnesota, Illinois, Alaska, and Ohio, from the three years preceding the date that Plaintiffs'
 13 counsel filed a Consent to Join form on behalf of the Opt In Plaintiff to the date of Preliminary
 14 Approval. Settlement Agreement, ¶ 4.13.2.1.

15 Each Workweek will be equal to one settlement share, but to reflect the increased value of
 16 state law claims and differing average rates of pay by state, Workweeks during which work was
 17 performed in California, Washington, Minnesota, Illinois, Ohio, and Alaska will be weighted more
 18 heavily. Specifically, Workweeks during which work was performed in California (including
 19 Workweeks in which a Participating Individual attended pre-employment training conducted by
 20 CertifiedSafety in California) will be equal to three settlement shares; Workweeks during which
 21 work was performed in Washington or Alaska will be equal to two settlement shares; Workweeks
 22 during which work was performed in Minnesota will be equal to 1.7 settlement shares; Workweeks
 23 during which work was performed in Illinois will be equal to 1.3 settlement shares; Workweeks
 24

25
 26 ²⁰ Class Members are not required to submit an Opt-In Form to receive payment under the
 27 Settlement for their work in California, Washington, Minnesota, Illinois, Ohio, and Alaska during
 28 the relevant time periods. However, only Opt In Plaintiffs will be credited for work in other states,
 as the damages for work in those states are attributable to FLSA claims only. Class Members may
 opt out of the Rule 23 component of the Settlement, but those who are Opt-In Plaintiffs may not opt
 out of the FLSA component of the Settlement. Settlement Agreement, ¶ 4.9.2.

1 during which work was performed in Ohio will be equal to 1.1 settlement shares; and Workweeks
 2 during which an Opt In Plaintiff performed work in any state other than California, Washington,
 3 Alaska, Minnesota, Illinois, and Ohio will be equal to one settlement share.²¹ Settlement
 4 Agreement, ¶ 4.13.2.2.

5 The total number of settlement shares (as weighted) for all Participating Individuals will be
 6 added together and the Net Settlement Amount will be divided by that total to reach a per share
 7 dollar figure. Settlement Agreement, ¶ 4.13.2.4. The resulting per share dollar figure will then be
 8 multiplied by each Participating Individual's number of settlement shares (as weighted) to
 9 determine his or her Individual Settlement Payment. *Id.* The Class, Collective, and
 10 Class/Collective Notices provided the estimated Individual Settlement Payment and number of
 11 Workweeks for each Class Member, assuming full participation in the Settlement. Settlement
 12 Agreement, Exhs. A-C. Settlement Award and eligibility determinations are based on employee
 13 workweek information that CertifiedSafety provided to the Settlement Administrator; however,
 14 Class Members are able to dispute their workweeks by submitting evidence that they worked more
 15 workweeks than shown by CertifiedSafety's records. Settlement Agreement, ¶ 4.11.

16 Settlement Awards will be paid to Class Members by the Settlement Administrator within
 17 30 days after the occurrence of the "Effective Date." Settlement Agreement, ¶ 4.16. Settlement
 18 Award checks will remain valid for 180 days from the date of their issuance. Settlement
 19 Agreement, ¶ 4.17, as amended. Any funds from checks that are not cashed by the deadline will be
 20 redistributed on a *pro rata* basis to Class Members who cash their Individual Settlement Payment
 21 checks. *Id.* In the event of a redistribution of uncashed check funds, the additional settlement
 22 administration costs related to the redistribution will be deducted from the total amount of
 23 uncashed checks prior to the redistribution. *Id.* If the average net recovery from the redistribution
 24

25
 26 ²¹ Plaintiffs performed an in-depth analysis of Workweek weightings and the underlying state law
 27 provisions to develop the weightings. Additionally, Judge Vince Chhabria recently granted final
 28 approval of a hybrid FLSA/Rule 23 wage and hour settlement that incorporated a workweek
 weighting of three for California state law claims and a workweek weighting of two for Washington
 state law claims, relative to FLSA-only Workweeks. *See Soto, et al. v. O.C. Communications, Inc., et al.*, Case No. 3:17-cv-00251-VC, ECF 299 at 10:11-14, 305 (N.D. Cal. Oct. 23, 2019).

1 is less than \$10 per Participating Individual, or if there are uncashed check funds remaining after
 2 the redistribution as described herein, then the amount will revert to Legal Aid at Work as the *cy*
 3 *pres* recipient. *Id.* Upon completion of administration of the Settlement, the Settlement
 4 Administrator will provide a Post-Distribution Accounting in accordance with the Northern
 5 District's Procedural Guidance. Settlement Agreement, ¶ 4.18, as amended.

6 **D. Scope of Release and Final Judgment**

7 The releases contemplated by the Settlement are dependent upon whether the Participating
 8 Individual is an Opt In Plaintiff and/or a Rule 23 Class Member, and are tethered to the factual
 9 allegations. Opt In Plaintiffs will release any and all claims under the FLSA based on or arising out
 10 of the same factual predicates of the Actions. Settlement Agreement, ¶ 4.19.1. Rule 23 Class
 11 Members will release any and all claims under the applicable state law, based on or arising out of
 12 the same factual predicates of the Actions, the Complaints, and/or the allegations in the Complaints,
 13 including all claims that were or could have been raised in the Actions and any other wage and hour
 14 claims for damages, premiums, penalties, interest, attorneys' fees, and equitable relief. Settlement
 15 Agreement, ¶¶ 4.19.2-4.19.7. As to Rule 23 Class Members who are not Opt In Plaintiffs, those
 16 who negotiate their Rule 23 Settlement Checks will also release any and all claims under the FLSA
 17 arising from or related to their work for CertifiedSafety in the applicable Rule 23 state(s), based on
 18 these same factual predicates. *Id.* If such a Rule 23 Class Member does not deposit his or her check,
 19 he or she will not release any claims under the FLSA. *Id.*

20 The releases are effective upon final approval of the Settlement and issuance of all payments
 21 as provided for under the Settlement. Settlement Agreement, ¶ 4.19. The release timing extends
 22 through the date of preliminary approval, and the Released Parties are Defendants and their related
 23 persons and entities. Settlement Agreement, ¶¶ 4.19.8, 2.37. By its express terms, the release only
 24 encompasses claims arising from the refinery's alleged joint employment of a Participating
 25 Individual with CertifiedSafety, and does not extend to any claims that may arise from the
 26 Participating Individual's direct employment with a refinery Defendant. Settlement Agreement, ¶
 27 2.37. The Class Representatives also agree to a general release. Settlement Agreement, ¶ 4.21.
 28

V. ARGUMENT

A. Ninth Circuit Precedent Favors and Encourages Class Settlements

A certified class action may not be settled without Court approval. *See* Fed.R.Civ.P. 23(e). Approval of a class action settlement requires three steps: (1) preliminary approval of the proposed settlement upon a written motion; (2) dissemination of notice of the settlement to all class members; and (3) a final settlement approval hearing at which objecting class members may be heard, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. Manual for Complex Litigation, *Judicial Role in Reviewing a Proposed Class Action Settlement*, § 21.61 (4th ed. 2004). The decision to approve or reject a proposed settlement is committed to the sound discretion of the court. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Rule 23 requires that all class action settlements satisfy two primary prerequisites before a court may grant certification for purposes of preliminary approval: (1) that the settlement class meets the requirements for class certification if it has not yet been certified; and (2) that the settlement is fair, reasonable, and adequate. Fed.R.Civ.P. 23(a), (e)(2); *Hanlon*, 150 F.3d at 1020.

Federal law strongly favors and encourages settlements, especially in class actions. *See Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) (“[T]here is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits.”). Moreover, when reviewing a motion for approval of a class settlement, the Court should give due regard to “what is otherwise a private consensual agreement negotiated between the parties,” and must therefore limit the inquiry “to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). The Court of Appeals will rarely overturn approval of a class action settlement unless “the terms of the agreement contain convincing indications that the incentives favoring pursuit of self-interest rather than the class’s interests in fact influenced the outcome of the negotiations and that the district court was wrong in concluding otherwise.” *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003).

1 Applying this standard of review to other federal and California wage and hour class
 2 actions, this Court and others in this District have previously approved settlements similar to that
 3 reached in this case. *See O'Connor v. Uber Techs., Inc.*, No. 13-cv-03826-EMC, 2019 U.S. Dist.
 4 LEXIS 157070, at *12 (N.D. Cal. Sep. 13, 2019) (granting final approval of a settlement that
 5 included both FLSA and California Labor Code claims); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-
 6 02198-EMC, 2017 U.S. Dist. LEXIS 23220, at *2 (N.D. Cal. Feb. 17, 2017) (same); *Soto, et al. v.*
 7 *O.C. Communications, Inc., et al.*, Case No. 3:17-cv-00251-VC, ECF 299 at 10:11-14, 305 (N.D.
 8 Cal. Oct. 23, 2019) (Chhabria, J.) (same; included both California and Washington Rule 23 Classes,
 9 with workweek weighting); *Guilbaud v. Sprint Nextel Corp.*, No. 3:13-CV-04357-VC, 2016 WL
 10 7826649, at *1 (N.D. Cal. Apr. 15, 2016). Likewise, in its January 22, 2020 order, the Court already
 11 finally approved the Settlement with respect the Collective Members. *See* ECF 216. This Court also
 12 conditionally certified the California, Washington, Minnesota, Illinois, Ohio, and Alaska Classes
 13 and preliminarily approved the Settlement with respect to these Class Members.²² *Id.* Accordingly,
 14 the only step that remains is final approval of the Settlement as to the California, Washington,
 15 Minnesota, Illinois, Ohio, and Alaska Classes. Consistent with the precedent of this Circuit and this
 16 Court's own decisions, the Settlement should be finally approved.

17 **B. The Court Should Finally Approve the Settlement**

18 In deciding whether to approve a proposed class action settlement, the Court must find that
 19 the proposed settlement is "fair, reasonable, and adequate." Fed.R.Civ.P. 23(e)(2); *Officers for*
 20 *Justice*, 688 F.2d at 625. Included in this analysis are considerations of: (1) the strength of the
 21 plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the
 22 risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5)
 23 the extent of discovery completed and the stage of the proceedings; (6) the experience and views of
 24 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to
 25 the proposed settlement. *Churchill Village, LLC. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

26
 27 ²² Plaintiffs acknowledge that, in the event that the Settlement is not approved by the Court, class
 28 and collective certification would be contested by Defendants, and Defendants fully reserve and do
 not waive any arguments and challenges regarding the propriety of class and collective action
 certification.

1 Importantly, courts apply a presumption of fairness “if the settlement is recommended by class
 2 counsel after arm’s-length bargaining.” *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS,
 3 2011 WL 1230826, at *6 (N.D. Cal. Apr. 1, 2011). There is also “a strong judicial policy that favors
 4 settlements, particularly where complex class action litigation is concerned.” *In re Syncor ERISA*
 5 *Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). In light of these factors, the Court should find that the
 6 Settlement is fair, reasonable, and adequate, and finally approve it as to the California, Washington,
 7 Minnesota, Illinois, Ohio, and Alaska Classes.

8 **1. The best practicable notice was provided to the Class Members in**
 9 **accordance with the process approved by the Court.**

10 Pursuant to the Court’s January 22, 2020 preliminary approval order, Heffler sent the Court-
 11 approved Notices of Settlement to the Class Members in accordance with the terms of the
 12 Settlement. Cottrell Decl. ¶ 33. The Notices were sent via U.S. Mail, email, and text message, and
 13 the Parties created a case website where Class Members can view the Settlement and accompanying
 14 court filings. *Id.*

15 Notice of a class action settlement is adequate where the notice is given in a “form and
 16 manner that does not systematically leave an identifiable group without notice.” *Mandujano v.*
 17 *Basic Vegetable Products, Inc.*, 541 F.2d 832, 835 (9th Cir. 1976). The notice should be the best
 18 “practicable under the circumstances including individual notice to all members who can be
 19 identified through reasonable effort.” *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374 (9th
 20 Cir. 1993). Sending individual notices to settlement class members’ last-known addresses
 21 constitutes the requisite effort. *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 121 (8th Cir.
 22 1975); *Langford v. Devitt*, 127 F.R.D. 41, 45 (S.D.N.Y. 1989) (“[N]otice mailed by first class mail
 23 has been approved repeatedly as sufficient notice of a proposed settlement.”).

24 The Settlement Administrator followed all of the procedures set forth in the Court-approved
 25 notice plan. Reasonable steps have been taken to ensure that all Class Members receive the Notice.
 26 *See supra* Section III.G. Ultimately, of the 2,481 notices distributed via U.S. Mail, 81 notices
 27 (3.26%) are undeliverable following skip-tracing and other techniques. Cottrell Decl. ¶ 35.
 28 Moreover, the dissemination of notice via email and text message in addition to U.S. Mail increases

1 the likelihood that Class Members successfully receive the notice. *Id.* The Notices provided
 2 reasonable estimates of Class Members’ recovery. Accordingly, the notice process satisfies the
 3 “best practicable notice” standard.

4 **2. The terms of the Settlement are fair, reasonable, and adequate.**

5 In evaluating the fairness of a proposed settlement, courts compare the settlement amount
 6 with the estimated maximum damages recoverable in a successful litigation. *In re Mego Fin. Corp.*
 7 *Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). Courts routinely approve settlements that provide a
 8 fraction of the maximum potential recovery. *See, e.g., Officers for Justice*, 688 F.2d at 623; *Vikram*
 9 *v. First Student Mgmt., LLC*, No. 17-CV-04656-KAW, 2019 WL 1084169, at *5 (N.D. Cal. Mar. 7,
 10 2019) (approving gross settlement amount that represents “30.6% of the California labor law
 11 violations and PAGA penalties”); *Viceral*, 2016 WL 5907869, at *7 (Chen, J.) (approving wage and
 12 hour settlement which represented 8.1% of the total verdict value).²³ “Even a small percentage of
 13 the maximum possible recovery can be a reasonable settlement. Dollar amounts are judged not in
 14 comparison with possible recovery in the best of all possible worlds, but rather in light of the
 15 strengths and weaknesses of plaintiffs’ case.” *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D.
 16 231, 258 (D. Del. 2002).

17 Thus, it is well-settled that a proposed settlement is not to be measured against a
 18 hypothetical ideal result that might have been achieved. *See, e.g., 7-Eleven Owners for Fair*
 19 *Franchising*, 85 Cal.App.4th 1135, 1150 (2000) (citing *Linney v. Cellular Alaska P’ship*, 151 F.3d
 20 1234, 1242 (9th Cir. 1998) with approval). “Notably, [a court must consider whether] a substantial
 21 portion of Defendant’s total potential liability exposure would not translate into awards to class
 22 members at all. . . . [For example, where] the estimated potential liability is comprised of PAGA
 23 penalties, [] these large penalties do not necessarily translate into take-home awards for members of
 24

25
 26 ²³ *See also Stovall-Gusman v. W.W. Granger, Inc.*, 2015 WL 3776765, at *4 (N.D. Cal. June 17,
 27 2015) (“10% gross and 7.3% net figures are ‘within the range of reasonableness’”); *Balderas v.*
 28 *Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (gross
 settlement amount of 8% of maximum recovery and net settlement amount of 5%); *Ma v. Covidien*
Holding, Inc., 2014 WL 360196, at *4-5 (C.D. Cal. Jan. 31, 2014) (9.1% of “the total value of the
 action” is within the range of reasonableness).

1 the class....” *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015).

2 Moreover, the Court may consider the defendant’s financial resources and ability to pay a larger
 3 settlement when deciding whether to approve a class settlement. *See, e.g., Rinky Dink Inc. v. Elec.*
 4 *Merch. Sys. Inc.*, No. C13-1347 JCC, 2015 WL 11234156, at *4 (W.D. Wash. Dec. 11, 2015)
 5 (considering defendants’ ability to pay a larger settlement); *In re Washington Pub. Power Supply*
 6 *Sys. Sec. Litig.*, 720 F. Supp. 1379, 1387 (D. Ariz. 1989), *aff’d sub nom. Class Plaintiffs v. City of*
 7 *Seattle*, 955 F.2d 1268 (9th Cir. 1992) (analyzing defendant’s ability to pay a judgment larger than
 8 the amount provided by the proposed settlement in settlement approval context).

9 A review of the Settlement reveals the fairness, reasonableness, and adequacy of its terms.
 10 Cottrell Decl. ¶ 60. The Gross Settlement Amount of \$6,000,000, resulting in a Net Settlement
 11 Amount of approximately \$3,757,102.27, will result in fair and just relief to the Class Members. *Id.*
 12 The Gross Settlement Amount represents more than 53% of the approximately \$11.3 million that
 13 Class Counsel have calculated for the core unpaid wage claims. *Id.* ¶ 61. Moreover, the \$6,000,000
 14 settlement amount represents approximately 13.3% of Defendants’ total potential exposure of \$45.2
 15 million. *Id.*

16 The Settlement provides for an impressive average recovery of \$1,514.35 per each of the
 17 2,481 Class Members (this amount divides the *net* recovery by total number of Class Members),
 18 reflecting an *unweighted* share of \$40.97 for Workweek under the Settlement. *Id.* ¶ 62. 68 Class
 19 Members will receive in excess of \$10,000.00, six Class Members will receive over \$20,000, and
 20 the largest recovery is \$26,205.20. *Id.* These results are well within the reasonable standard when
 21 considering the difficulty and risks presented by pursuing further litigation. *Id.* The final settlement
 22 amount takes into account the substantial risks inherent in any class action wage-and hour case, as
 23 well as the procedural posture of the Actions and the specific defenses asserted by Defendants,
 24 many of which are unique to this case. *Id.* ¶ 63; *See Officers for Justice*, 688 F.2d at 623.

25 **3. The Parties have agreed to distribute settlement proceeds tailored to**
 26 **the Classes and Collective and their respective claims.**

27 In an effort to ensure fairness, the Parties have agreed to allocate the settlement proceeds
 28 amongst Class Members in a manner that recognizes that amount of time that the particular Class

1 Member worked for Defendants in the applicable limitations period. The allocation method, which
 2 is based on the number of Workweeks, will ensure that longer-tenured workers receive a greater
 3 recovery. Moreover, the allocation tracks the differences in substantive law and penalty claims by
 4 weighting the Workweek shares more heavily for work performed in California, Washington,
 5 Minnesota, Illinois, Ohio, and Alaska. Cottrell Decl. ¶ 64. The allocation was made based on Class
 6 Counsel’s assessment to ensure that employees are compensated accordingly and in the most
 7 equitable manner. *Id.* To the extent that any Class Member is *both* a FLSA Opt In Plaintiff and a
 8 member of a Rule 23 Class, these workers will only receive a recovery based on their workweeks as
 9 a Rule 23 Class Member for their work in California, Washington, Minnesota, Illinois, Ohio, and
 10 Alaska. *Id.* ¶ 65. Such workers will not receive a “double recovery.”

11 A class action settlement need not benefit all class members equally. *Holmes v. Continental*
 12 *Can Co.*, 706 F.2d 1144, 1148 (11th Cir. 1983); *In re AT & T Mobility Wireless Data Services Sales*
 13 *Tax Litigation*, 789 F.Supp.2d 935, 979–80, 2011 WL 2204584 at *42 (N.D. Ill. 2011). Rather,
 14 although disparities in the treatment of class and collective members may raise an inference of
 15 unfairness and/or inadequate representation, this inference can be rebutted by showing that the
 16 unequal allocations are based on legitimate considerations. *Holmes*, 706 F.2d at 1148; *In re AT & T*,
 17 789 F.Supp.2d at 979–80, 2011 WL 2204584 at *42. Plaintiffs provide rational and legitimate bases
 18 for the allocation method here, and the Parties submit that it should be approved by the Court.

19 **4. The extensive discovery enabled the Parties to make informed**
 20 **decisions regarding settlement.**

21 The amount of discovery completed prior to reaching a settlement is important because it
 22 bears on whether the Parties and the Court have sufficient information before them to assess the
 23 merits of the claims. *See, e.g., Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617, 625 (N.D. Cal. 1979);
 24 *Lewis v. Starbucks Corp.*, No. 2:07-cv-00490-MCE-DAD, 2008 WL 4196690, at *6 (E.D. Cal.
 25 Sept. 11, 2008). Informal discovery may also assist parties with “form[ing] a clear view of the
 26 strengths and weaknesses of their cases.” *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 454
 (E.D. Cal. 2013).

27 The Parties engaged in extensive informal discovery, depositions, and hundreds of class
 28 outreach interviews that have enabled both sides to assess the claims and potential defenses in this

1 action. Cottrell Decl. ¶¶ 17-22, 66. The Parties were able to accurately assess the legal and factual
 2 issues that would arise if the cases proceeded to trial(s). *Id.* ¶ 66. In addition, in reaching this
 3 Settlement, Plaintiffs’ counsel relied on their substantial litigation experience in similar wage and
 4 hour class and collective actions. Cottrell Decl. ¶¶ 5-7, 67; Plaintiffs’ counsel’s liability and
 5 damages evaluation was premised on a careful and extensive analysis of the effects of Defendants’
 6 compensation policies and practices on Class Members’ pay. *Id.* ¶ 68. Ultimately, facilitated by
 7 mediator Paul Grossman, the Parties used this information and discovery to fairly resolve the
 8 litigation. *Id.* ¶ 69.

9 **5. While Plaintiffs recognize the strength of their claims, there are**
 10 **substantial risks in proceeding with the litigation.**

11 “Settlement avoids the complexity, delay, risk and expense of continuing with the litigation
 12 and will produce a prompt, certain, and substantial recovery for the Plaintiff class.” *Eddings v.*
 13 *Health Net, Inc.*, No. CV 10-1744-JST RZX, 2013 WL 3013867, at *3 (C.D. Cal. June 13, 2013).
 14 The monetary value of the proposed Settlement represents a fair compromise given the risks and
 15 uncertainties posed by continued litigation. Cottrell Decl. ¶ 70. If the Actions were to go to trial(s)
 16 as class and collective actions (which Defendants would vigorously oppose if this Settlement
 17 Agreement were not approved), Class Counsel estimates that fees and costs would exceed
 18 \$5,000,000. *Id.* ¶ 71. Litigating the class and collective action claims would require substantial
 19 additional preparation and discovery. *Id.* It would require depositions of experts, the presentation of
 20 percipient and expert witnesses at trial, as well as the consideration, preparation, and presentation of
 21 voluminous documentary evidence and the preparation and analysis of expert reports. *Id.*

22 Recovery of the damages and penalties previously referenced would also require complete
 23 success and certification of all of Plaintiffs’ claims, an uncertain feat in light of developments in
 24 wage and hour and class and collective action law as well as the legal and factual grounds that
 25 Defendants have asserted to defend this action. *Id.* ¶ 72. While Plaintiffs are confident in their
 26 ability to certify and successfully litigate the alleged claims on the merits, Plaintiffs assert no less
 27 than six putative Rule 23 Classes, along with a FLSA Collective. Off-the-clock claims are difficult
 28 to certify for class treatment, given that the nature, cause, and amount of the off-the-clock work

1 may vary based on the individualized circumstances of the worker. *See, e.g., In re AutoZone, Inc.,*
 2 *Wage & Hour Employment Practices Litig.*, 289 F.R.D. 526, 539 (N.D. Cal. 2012), *aff'd*, No. 17-
 3 17533, 2019 WL 4898684 (9th Cir. Oct. 4, 2019); *Kilbourne v. Coca-Cola Co.*, No. 14CV984-
 4 MMA BGS, 2015 WL 5117080, at *14 (S.D. Cal. July 29, 2015); *York v. Starbucks Corp.*, No. CV
 5 08-07919 GAF PJWX, 2011 WL 8199987, at *30 (C.D. Cal. Nov. 23, 2011).

6 Moreover, Plaintiffs considered the risk that the Court would, in the end, decline to find the
 7 refinery Defendants liable as a joint employer. *Id.*, ¶ 75. Though CertifiedSafety would still be
 8 liable in the event of a favorable outcome for Plaintiffs, a finding that the refinery Defendants are
 9 joint employers would ensure that the Class Members would be able to obtain full recovery,
 10 particularly in the event of a large award.²⁴ *Id.* Though Plaintiffs have filed pleadings alleging
 11 claims of liability against refinery Defendants on a joint employer basis, the issue would be heavily
 12 contested at summary judgment and/or trial(s). *Id.* If refinery Defendants are found not to be a joint
 13 employer, the value of the case would be lessened, and Plaintiffs had to consider this risk. *Id.*

14 In contrast to litigating this suit, resolving this case by means of the Settlement will yield a
 15 prompt, certain, and very substantial recovery for the Class Members. Cottrell Decl. ¶ 76. Such a
 16 result will benefit the Parties and the court system. *Id.* It will bring finality to over three years of
 17 arduous litigation and eight separate Actions, and will foreclose the possibility of expanding
 18 litigation.

19 **6. The settlement is the product of informed, non-collusive, and arm's-
 20 length negotiations between experienced counsel.**

21 Courts routinely presume a settlement is fair where it is reached through arm's-length
 22 bargaining. *See Hanlon*, 150 F.3d at 1027; *Wren*, 2011 WL 1230826, at *14. Furthermore, where
 23 counsel are well-qualified to represent the proposed class and collective in a settlement based on
 24 their extensive class and collective action experience and familiarity with the strengths and
 25 weaknesses of the action, courts find this factor to support a finding of fairness. *Wren*, 2011 WL
 26 1230826, at *10; *Carter v. Anderson Merchandisers, LP*, No. EDCV 08-0025-VAP OPX, 2010 WL

27 ²⁴ *See, e.g., Am. Motorcycle Assn. v. Superior Court*, 20 Cal.3d 578, 590 (1978) (joint and several
 28 liability permits an injured person to obtain full recovery even when one or more of the responsible
 parties do not have the financial resources to cover their liability).

1 1946784, at *8 (C.D. Cal. May 11, 2010) (“Counsel’s opinion is accorded considerable weight.”).

2 Here, the settlement was a product of non-collusive, arm’s-length negotiations. Cottrell
 3 Decl. ¶ 77. The Parties participated in two mediations. The second mediation before Paul
 4 Grossman, who is a skilled mediator with many years of experience mediating employment matters,
 5 was a lengthy session that lasted well into the night. *Id.* The Parties then spent several months
 6 negotiating the long form settlement agreement, with several rounds of meet and confer and
 7 correspondence related to the terms and details of the Settlement. *Id.* ¶ 78. Plaintiffs are represented
 8 by experienced and respected litigators of representative wage and hour actions, and these attorneys
 9 feel strongly that the proposed Settlement achieves an exceptional result for the Class Members. *Id.*
 10 ¶ 79.

11 **7. Class Members approve of the Settlement.**

12 The Ninth Circuit and other federal courts have made clear that the number or percentage of
 13 class members who object to or opt out of the settlement is a factor of great significance. *See*
 14 *Mandujano*, 541 F.2d at 837; *see also In re Am. Bank Note Holographics, Inc.*, 127 F.Supp.2d 418,
 15 425 (S.D.N.Y. 2001) (“It is well settled that the reaction of the class to the settlement is perhaps the
 16 most significant factor to be weighed in considering its adequacy.”). Courts have found that a
 17 relatively low percentage of objectors or opt outs is a very strong sign of fairness that factors heavily
 18 in favor of approval. *See, e.g., Cody v. Hillard*, 88 F.Supp.2d 1049, 1059-60 (D.S.D. 2000) (approving
 19 the settlement in large part because only 3% of the apparent class had objected to the settlement).

20 To date, no Class Members have objected to the Settlement, and no Class Members have
 21 opted out of the Settlement. *See Cottrell Decl.* ¶ 80. In addition, all seven Class Representatives
 22 support the terms of the Settlement. *Id.*; *see also* Declarations of Plaintiffs in Support of Service
 23 Awards. This shows widespread support for the Settlement among Class Members, and gives rise to
 24 a presumption of fairness.

25 **C. The Class Representative Service Awards are Reasonable**

26 In approving the Settlement, the Court must determine whether “the settlement, taken as a
 27 whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice*, 688 F.2d at 625. In
 28 addition to the terms and details of the Settlement discussed above, the Settlement also establishes

1 service awards of up to \$15,000 for Plaintiffs Jones, Knight, and Crummie; up to \$10,000 for
 2 Plaintiffs Ross and East; and up to \$5,000 for Plaintiffs Azevedo and Turner. Plaintiffs set forth
 3 their arguments in support of the service awards in full in their accompanying Motion for an Award
 4 of Attorneys' Fees and Costs and for Service Awards. Plaintiffs do not repeat those arguments here.
 5 The Court should grant final approval to the requested service awards as reasonable.

6 **D. The Requested Attorneys' Fees and Costs are Reasonable**

7 Likewise in evaluating the Settlement, the Court should evaluate Plaintiffs' request for
 8 attorneys' fees and costs pursuant to the terms of the Settlement. In their fee motion, Class Counsel
 9 request one-third of the Gross Settlement Amount, for a total of \$2,000,000, plus reimbursement of
 10 litigation costs of \$60,397.73. Cottrell Decl. ¶ 40. Plaintiffs set forth their arguments in support of
 11 the fee and costs request in full in their accompanying Motion for an Award of Attorneys' Fees and
 12 Costs and for Service Awards. Plaintiffs do not repeat those arguments here. The Court should grant
 13 final approval to the requested fees and costs as reasonable.

14 **E. The Court Should Finally Certify the California, Washington, Illinois,
 15 Minnesota, Alaska, and Ohio Classes²⁵**

16 In its January 22, 2020 Preliminary Approval Order, the Court granted conditional
 17 certification of the provisional California and Washington Classes. ECF 296. Now that notice has
 18 been effectuated, the Court should finally certify these classes in its Final Approval Order. The
 19

20 ²⁵ With regards to the Collective, this Court has already granted "Approval of the terms and
 21 conditions contained in the Amended Settlement as to the Collective of Opt In Plaintiffs" and found
 22 that "the terms of the Settlement are within the range of possible approval, pursuant to the Fair
 23 Labor Standards Act and applicable law." ECF 216, ¶ 4. In its prior October 24, 2017 Order, the
 24 Court found that Plaintiffs have satisfied their burden of making substantial allegations that Safety
 25 Attendants were subject to a common practice or policy that violated the FLSA. ECF 48. In final
 26 certification of an FLSA collective, the court makes a determination about whether the plaintiffs are
 27 similarly situated by weighing such factors as "(1) the disparate factual and employment settings of
 28 the individual plaintiffs, (2) the various defenses available to the defendant which appeared to be
 individual to each plaintiff, and (3) fairness and procedural considerations. *See Murillo v. Pacific
 Gas & Elec. Co.*, 266 F.R.D. 468 (E.D. Cal. 2010) The same rationale for approving the Collective
 at preliminary approval applies here, including, as set forth in Section E, that Class Members are all
 Safety Attendants with common issues, that defenses are not individualized, and that the purposes
 of the FLSA are carried out by providing Collective Members with certain settlement awards for
 unpaid wages alleged to be owed. To the extent not already granted, the Court should confirm final
 certification of the Collective.

1 California and Washington Classes meet all of the requirements for final approval as set forth below

2 **1. The Classes are numerous and ascertainable.**

3 First, the numerosity prerequisite demands that a class be large enough that joinder of all
 4 members would be impracticable. Fed.R.Civ.P. 23(a)(1). While there is no exact numerical cut-off,
 5 courts have routinely found numerosity satisfied with classes of at least forty members. *See, e.g.,*
 6 *Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 262 (S.D. Cal. 1988); *Romero v. Producers Dairy*
 7 *Foods, Inc.*, 235 F.R.D. 474, 485 (E.D. Cal. 2006). The approximately 1,896 members of the
 8 California Class, 706 members of the Washington Class, 257 members of the Minnesota Class, 96
 9 members of the Illinois class, 220 members of the Ohio class, and 58 members of the Alaska class
 10 render each class so large as to make joinder impracticable. Cottrell Decl. ¶ 81.

11 **2. Plaintiffs' claims raise common issues of fact or law.**

12 The commonality requirement of Rule 23(a)(2) “is met if there is at least one common
 13 question or law or fact.” *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 467 (E.D. Pa. 2000).
 14 Plaintiffs “need not show that every question in the case, or even a preponderance of questions, is
 15 capable of classwide resolution.” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 544 (9th Cir.
 16 2013). “[E]ven a single common question” can satisfy the commonality requirement of Rule
 17 23(a)(2). *Id.*

18 Plaintiffs contend that common questions of law and fact predominate here, satisfying
 19 paragraphs (a)(2) and (b)(3) of Rule 23, as alleged in the operative complaints. Cottrell Decl. ¶ 82.
 20 Defendants have uniform policies applicable to all Safety Attendants. *Id.* ¶ 83. Specifically,
 21 Plaintiffs allege that Safety Attendants all perform essentially the same job duties—performing
 22 safety duties pursuant to Defendants’ standards and requirements. Plaintiffs allege that the wage
 23 and hour violations are in large measure borne of CertifiedSafety’s relationship with the refineries
 24 and the standardized policies, practices, and procedures that the refineries impose, creating
 25 pervasive issues of fact and law that are amenable to resolution on a class-wide basis. In particular,
 26 Safety Attendants are subject to the same: hiring and training process; timekeeping, payroll, and
 27 compensation policies; meal and rest period policies and practices; and reimbursement policies. *Id.*
 28 Plaintiffs’ other derivative claims will rise or fall with the primary claims. *Id.* Because these

1 questions can be resolved at the same juncture, Plaintiffs contend the commonality requirement is
 2 satisfied for the Classes. *Id.*

3 **3. Plaintiffs' claims are typical of the claims of the Classes.**

4 "Rule 23(a)(3) requires that the claims of the named parties be typical of the claims of the
 5 members of the class." *Fry*, 198 F.R.D. at 468. "Under the rule's permissive standards, a
 6 representative's claims are 'typical' if they are reasonably coextensive with those of absent class
 7 members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. Here, Plaintiffs
 8 contend that their claims are typical of those of all other Class Members. Cottrell Decl. ¶ 85. They
 9 were subject to the alleged illegal policies and practices that form the basis of the claims asserted
 10 in this case. *Id.* Interviews with Class Members and review of timekeeping and payroll data
 11 confirm that the employees throughout the United States were subjected to the same alleged illegal
 12 policies and practices to which Plaintiffs were subjected. *Id.* ¶ 86. Thus, the typicality requirement
 13 is also satisfied. *Id.*

14 **4. Plaintiffs and Class Counsel will adequately represent the Classes.**

15 To meet the adequacy of representation requirement in Rule 23(a)(4), Plaintiffs must show
 16 "(1) that the putative named plaintiff has the ability and the incentive to represent the claims of the
 17 class vigorously; (2) that he or she has obtained adequate counsel, and (3) that there is no conflict
 18 between the individual's claims and those asserted on behalf of the class." *Fry*, 198 F.R.D. at 469.
 19 Plaintiffs' claims are in line with the claims of the Classes, and Plaintiffs' claims are not
 20 antagonistic to the claims of Class Members. Cottrell Decl. ¶ 87. Plaintiffs have prosecuted this
 21 case with the interests of the Class Members in mind. *Id.* Moreover, Plaintiffs' counsel has
 22 extensive experience in class action and employment litigation, including wage and hour class
 23 actions, and do not have any conflict with the Classes. *Id.* ¶¶ 5-7, 88.

24 **5. The Rule 23(b)(3) requirements for class certification are also met.**

25 Under Rule 23(b)(3), Plaintiffs must demonstrate that common questions "predominate over
 26 any questions affecting only individual members" and that a class action is "superior to other
 27 available methods for fairly and efficiently adjudicating the controversy." "The predominance
 28 analysis under Rule 23(b)(3) focuses on 'the relationship between the common and individual

1 issues’ in the case and ‘tests whether proposed classes are sufficiently cohesive to warrant
2 adjudication by representation.’” *Wang*, 737 F.3d at 545.

3 Plaintiffs contend the common questions raised in this action predominate over any
4 individualized questions concerning the Classes. Cottrell Decl. ¶ 89. The Classes are entirely
5 cohesive because resolution of Plaintiffs’ claims hinge on the uniform policies and practices of
6 Defendants, rather than the treatment the Class Members experienced on an individual level. *Id.* If
7 the Class Members proceeded on their claims as individuals, their many individual suits would
8 require duplicative discovery and duplicative litigation, and each Class Member would have to
9 personally participate in the litigation effort to an extent that would never be required in a class
10 proceeding. *Id.* Thus, Plaintiffs contend that the class action mechanism would efficiently resolve
11 numerous substantially identical claims at the same time while avoiding a waste of judicial
12 resources and eliminating the possibility of conflicting decisions from repetitious litigation and
13 arbitrations. *Id.* The class action mechanism, therefore, is a superior method of adjudication
14 compared to a multitude of individual suits. Cottrell Decl. ¶ 90.

15 The issues raised by the present case are much better handled collectively by way of a
16 settlement. *Id.* ¶ 92. Manageability is not a concern in the settlement context. *Amchem Prod., Inc. v.*
17 *Windsor*, 521 U.S. 591, 593 (1997). The Settlement presented by the Parties provides finality,
18 ensures that workers receive redress for their relatively modest claims, and avoids clogging the
19 legal system with numerous cases. Cottrell Decl. ¶ 93. Accordingly, class treatment is efficient and
20 warranted, and the Court should conditionally finally certify the California, Washington,
21 Minnesota, Illinois, Ohio, and Alaska Classes for settlement purposes.

22 **VI. CONCLUSION**

23 For the foregoing reasons, Plaintiffs respectfully request that this Court grant this Motion for
24 final approval and enter the accompanying proposed Order.

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Date: April 23, 2020

Respectfully submitted,

/s/ Carolyn Hunt Cottrell
Carolyn Hunt Cottrell
David C. Leimbach
Michelle S. Lim
Scott L. Gordon
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

Attorneys for Plaintiffs and the Settlement Classes and
Collective

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States District Court, Northern District of California, by using the Court's CM/ECF system on April 23, 2020.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

Dated: April 23, 2020

/s/ Carolyn Hunt Cottrell
Carolyn Hunt Cottrell

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