SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 19, Honorable Theodore C. Zayner Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2310

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department19@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

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LAW AND MOTION TENTATIVE RULINGS
DATE: AUGUST 14, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	19CV357498	Gines v. Lucile Packard Childrens Hosp. (Lead Case; Consolidated with 21CV386232, 22CV397838, 22CV397839) (Class Action/PAGA)	See Line 1 for tentative ruling.
LINE 2	21CV390701	Aguilar v. Seaside Dining Group, Inc.	See Line 2 for tentative ruling.
LINE 3	19CV344971	Alorica Inc. v. Fortinet, Inc.	See Line 3 for tentative ruling.
LINE 4	21CV391973	Maboudi v. The Neiman Marcus Group, LLC (PAGA)	See Line 4 for tentative ruling.
LINE 5	21CV383976	Goodman v. Boba Guys, Inc. (Class Action)	See Line 5 for tentative ruling.
LINE 6			
LINE 7			
LINE 8			

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LAW AND MOTION TENTATIVE RULINGS

LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: Gines v. Lucile Packard Childrens Hosp. (Lead Case; Consolidated with 21CV386232, 22CV397838, 22CV397839) (Class Action/PAGA)
Case No.: 19CV357498

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on August 14, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a consolidated class and representative action arising out of alleged wage and hour violations brought by plaintiffs Randy Gines ("Gines"), Patricia Rios ("Rios"), and Karen Roldan ("Roldan") (collectively, "Plaintiffs") against defendant Lucile Packard Children's Hospital at Stanford ("Defendant").

On October 28, 2019, Gines commenced this action by filing his Class Action Complaint against Defendant, designated as Santa Clara County Superior Court Case No. 19CV357498 (the "*Gines* Action"). [1] Gines subsequently filed a First Amended Class Action complaint on August 18, 2021.

On August 26, 2021, Rios filed a Class Action Complaint against Defendant, designated as Santa Clara County Superior Court Case No. 21CV386232 (the "*Rios* Action").

On November 15, 2021, the court entered an order on the parties' Stipulation to Consolidate the *Gines* Action and the *Rios* Action (the "*Gines* Consolidated Action"). On April 15, 2022, Gines and Rios filed a motion for leave to file an amended consolidated complaint, which the court granted on May 18, 2022.

On May 10, 2022, Roldan filed two complaints against Defendant in Santa Clara County Superior Court: a class action complaint (Case No. 22CV397838); and a representative complaint under the Private Attorneys General Act ("PAGA") (Case No. 22CV397839). On February 2, 2023, the court entered an order consolidating Roldan's two actions (the "*Roldan* Consolidated Action").

[1] This introduction summarizes the procedural history as set forth in the Stipulation and Order to Consolidate Cases and Leave to File Second Amended Consolidated Complaint, entered as an order and filed on July 17, 2024.

On July 17, 2024, the court entered an order consolidating the *Gines* Consolidated Action and *Roldan* Consolidated Action into the *Gines* Consolidated Action. The court also granted leave for the parties to file the operative Second Amended Consolidated Class and Representative Action Complaint ("SACC"), deemed filed on July 17, 2024.

The SACC sets forth the following causes of action:

(1) Violations of California Labor Code, §§ 226(a), 1174(d), and 1198 (failure to provide accurate itemized wage statements, maintain accurate and complete payroll records, and maintain accurate and complete timekeeping records);
(2) Violations of California Labor Code, §§ 233, 246, 248.1, 248.2, and 248.5 (failure to provide sick pay);
(3) Violations of California Labor Code, §§ 510, 558, 1194, 1197.1, and 1198 (failure to pay overtime wages);
(4) Violations of California Labor Code, §§ 1182.12, 1194, 1197, 1197.1, and 1198 (failure to pay minimum wages);
(5) Violations of California Labor Code, §§ 226.7, 512(a), and 1198 (failure to provide and record meal periods);
(6) Violations of California Labor Code, §§ 226.7 and 1198 (failure to provide rest periods);
(7) Violations of California Labor Code, § 204 (failure to timely pay wages during employment);
(8) Violations of California Labor Code, §§ 201, 202, 203 (failure to pay wages upon termination);
(9) Violations of California Labor Code, §§ 1194, 1197, and 1198 (failure to pay reporting time pay);
(10) Violations of California Labor Code, § 223 (secret underpayment of wages);
(11) Violations of California Labor Code, §§ 2800 and 2802 (failure to reimburse necessary business expenses);
(12) Violations of California Labor Code, §§ 2698, *et seq*. (civil penalties pursuant to PAGA); and
(13) Violations of California Business and Professions Code, §§ 17200, *et seq.* (unfair or unlawful business practices).

The parties have reached a settlement. Plaintiffs now move for preliminary approval of the settlement. The motion is unopposed.

II. Legal Standard

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v.*

Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement."

(*Wershba*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement 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." (*Ibid*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77.) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77.)

III. Discussion

A. Provisions of the Settlement

This case has been settled on behalf of the following class:

> [A]ll current and former non-exempt employees who worked for Defendant in California at any time during the Class Release Period [from and including May 10, 2018 through June 8, 2024].

(Joint Stipulation of Class Action and PAGA Settlement and Release of Claims ("Agreement"), §§ I.H, I.I.) The settlement is also made on of behalf of a PAGA Class of aggrieved employees ("Aggrieved Employees") who are defined as "all current and former non-exempt employees who worked for Defendant in California at any time during the PAGA Release Period [from and including May 10, 2018 through June 8, 2024]." (Agreement, §§ I.C, I.BB.)

According to the terms of the settlement, Defendant will pay a gross settlement amount of $9,700,000. (Agreement, § III.A.) The Agreement provides that the gross settlement amount may be increased proportionately if the actual number of pay periods is determined to be incorrect by more than ten percent. (Agreement, § III.L.2.a(3).) The gross settlement amount includes attorney fees up to 1/3 of the gross settlement amount (currently estimated to be $3,233,333.33), litigation costs not to exceed $75,000, a PAGA allocation of $970,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to Aggrieved Employees as individual PAGA payments), class representative enhancement awards in the total amount of $60,000 ($20,000 each), and settlement administration costs not to exceed $30,000. (Agreement, §§ III.L.3 – III.L.6.) The net settlement amount will be distributed to participating class members on pro rata basis according to the number of workweeks they were employed by Defendant. (Agreement, § III.L.2.a(1).)

The court approves ILYM Group, Inc., as settlement administrator. (See Agreement, §§ I.QQ.)

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed equally to the following *cy pres* recipients: Legal Aid at Work; WorkSafe, Inc.; and California Rural Legal Assistance. (Agreement, § III.L.2.e).) The court approves the designated *cy pres* recipients.[2]

[2] Code of Civil Procedure section 384 requires that the unpaid residue or abandoned class member funds be paid to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the

In exchange for the settlement, the class members agree to release Defendant (and related entities and persons) from all claims that were or could have been asserted in the SACC based on the facts pleaded in the SACC occurring during the Class Release Period. (Agreement, §§ I.MM, I.NN, III.B.) Aggrieved Employees agree to release Defendant (and related entities and persons) from all claims for PAGA civil penalties that were or could have been alleged based on facts pleaded in the SACC or the notice letters sent to the LWDA. (Agreement, §§ I.CC, I.NN, III.D.) The Plaintiffs also agree to a comprehensive general release. (Agreement, § III.C.)

B. Fairness of the Settlement

Plaintiffs assert that the proposed settlement is fair, adequate, and reasonable. (Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; Memorandum of Points and Authorities ("Mot."), p. 16:22; see also supporting declaration from Plaintiffs' attorneys Dennis S. Hyun, William L. Marder, Seth Weisburst, and Mark Yablonovich.) Plaintiffs state the settlement was reached through private mediation with Tripper Ortman. (Mot. at p. 12:24-13:5.) Prior to mediation, the parties engaged in formal discovery, including written discovery and the deposition of Defendant's person most knowledgeable. (*Id.* at pp. 11:20-23, 12:19-23.) Plaintiffs represent that "[e]ach side has apprised the other of their respective factual contentions and legal theories, and each side has considered the other's contentions and theories." (*Id.* at p. 17:21-22.)

Defendant produced time records and payroll data for a sampling of the putative class, and Plaintiffs conducted a review of these records to assess the full value of the class claims. (*Id.* at p. 17:23-25.) Defendant represented that there are approximately 7,000 Class Members approximately 550,000 pay periods at issue. (Agreement, § III.L.2.a(3).)

Plaintiffs provide an analysis indicating that Defendant's maximum exposure for Plaintiffs' claims is approximately $57,988,654. (Mot., p. 25:11-12; Declaration of Dennis S. Hyun in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Hyun Dec.") ¶ 17, Ex. A.) Plaintiff provides a breakdown for this amount by claim. (Mot.,

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objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent."

pp. 18:7-25:12.; Hyun Dec., Ex. A (table entitled "Compilation of the *Kullar* and *Moniz* Analysis by Claim.") As the court understands the table and corresponding analysis provided by Plaintiffs, the per-claim "maximum exposure" numbers (in the table's fourth column) are initially discounted by 50-75% from the estimated maximum potential liability. (*Ibid.*) These figures are discounted again by 70-85% to arrive at their stated settled value, found in table's sixth column. (*Ibid.*)

Even so, the court finds that Plaintiffs have sufficiently explained their reasoning with respect to the settlement amounts for the various claims, including analysis of Defendant's arguments and defenses, the possibility that court could substantially reduce any PAGA penalties, and the risks and costs associated with class certification. (Mot., pp. 18:7-25:12.) The average net payment to class members will be $796.31. (Mot., p. 28:1-2.)

The gross settlement amount represents approximately 16.7% of the potential maximum recovery. The proposed settlement amount is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

Therefore, the court finds the terms of the settlement to be fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

C. Incentive Award, Fees and Costs

Plaintiffs request enhancement awards in the total amount of $60,000 ($20,000 each).

> The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Plaintiffs Gines, Rios, and Roldan have each submitted declarations describing their participation in this consolidated action.

Plaintiff Randy Gines worked for Defendant from 2011 to 2019. (Declaration of Plaintiff Randy Gines in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ¶ 2.) Plaintiff Gines states that his participation in this action has included providing information and documents to his counsel, discussing his claims with counsel, and answering questions. (*Id.* at ¶ 3.) Plaintiff Gines estimates that he has spent approximately 40 hours in the prosecution of this action. (*Ibid.*)

Plaintiff Patricia Rios worked for Defendant from 2020 to 2021. (Declaration of Plaintiff Patricia Rios in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ¶ 2.) Plaintiff Rios states that her participation in this action has included providing information and documents to her counsel, discussing her claims with counsel, and answering questions. (*Id.* at ¶ 3.) Plaintiff Rios estimates that she has spent approximately 40 hours in the prosecution of this action. (*Ibid.*)

Plaintiff Karen Roldan states that she worked for Defendant from 2015 to 2021. (Declaration of Plaintiff Karen Roldan in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ¶ 5.) Plaintiff Roldan states that her participation in this action has included gathering documents regarding her employment, reviewing documents with her attorneys, and answering questions and providing information regarding the duties of other employees. (*Id.* at ¶ 12.) Plaintiff Roldan estimates that she has spent approximately 40 hours in the prosecution of this action. (*Ibid.*)

Each of the Plaintiffs each spent time in connection with this litigation and additionally took risk by attaching their names to this case because it might impact their future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].).

For the forgoing reasons, the court will approve service awards to Plaintiffs. However, the court notes that the amount sought for the service awards, in relation to the time spent on the litigation, is higher than the court typically awards in these kinds of cases. Therefore, the court approves service awards of $5,000 each to Plaintiffs Gines, Rios, and Roldan, for a total amount of $15,000 in approved service awards.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees up to 1/3 of the gross settlement amount (currently estimated to be $3,233,333.33) and litigation costs not to exceed $75,000. Plaintiffs' counsel shall submit lodestar information (including hourly rate and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. As it appears that more than one firm is involved in this case, Plaintiffs' counsel shall submit any fee sharing agreement. Plaintiffs' counsel shall also submit evidence of actual costs incurred as well as evidence of any settlement administration costs.

D. Conditional Certification of Class

Plaintiffs request that the class be conditionally certified for purposes of the settlement. Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . ." As interpreted by the California Supreme Court, section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*).)

The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class representatives who can adequately represent the class. (*Sav-On, supra*, 34 Cal.4th at p. 326.) "Other relevant considerations include the probability that each class

member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

As explained by the California Supreme Court,

> The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

(*Sav-On, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiffs state that there are approximately 7,000 class members, who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

The content of a class notice is subject to court approval. "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).)

Here, the notice generally complies with the requirements for class notice. (Agreement, Ex. 1.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion. Prior to mailing, the class notice shall be revised to reflect the enhancement award amounts approved by the court, as set forth above. Otherwise, the court approves the class notice.

IV. Conclusion

Accordingly, the motion for preliminary approval of the class and representative action settlement is GRANTED. The final approval hearing is scheduled for February 26, 2025 at

1:30 p.m. in Department 19. Plaintiffs' counsel shall file supplemental declaration(s) no later than February 10, 2025, containing the information requested by the court.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 2

Case Name: Aguilar v. Seaside Dining Group, Inc.
Case No.: 21CV390701

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on August 14, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a representative action arising out of alleged wage and hour violations brought by plaintiff Norma Aguilar ("Plaintiff") against defendant Seaside Dining Group, Inc. ("Defendant"). Plaintiff filed the operative complaint on November 22, 2021, stating a single cause of action for violations of the Private Attorneys General Act ("PAGA"), Labor Code sections 2698, *et seq.*

The parties have reached a settlement. Plaintiff filed a motion for approval of the PAGA settlement, and the motion is unopposed. At the initial hearing on February 7, 2024, the court continued the motion to allow Plaintiff to file supplemental declarations addressing several identified issues. (See February 7, 2024 Minute Order, pp. 3-4 ("February 7 Minute Order").) Plaintiff filed supplemental declarations on February 26, 2024.

At the hearing on March 13, 2024, the court continued the motion once more, instructing Plaintiff to file a supplemental declaration. (March 13, 2024 Minute Order, pp. 4-5 ("March 13 Minute Order").) Specifically, the court directed Plaintiff to address the language of the release provisions and to provide further explanation regarding the settlement amount. (*Id.* at p. 4.) On April 10, 2024, Plaintiff filed a supplemental declaration. As explained below, the court now finds that Plaintiff has sufficiently addressed the identified issues and therefore GRANTS the motion for approval of PAGA settlement.

II. Legal Standard

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S.___ [2022 U.S. LEXIS

2940].) Seventy-five percent of any penalties recovered go to the Labor and Workforce Development Agency ("LWDA"), leaving the remaining 25 percent for the employees. (*Ibid*.) PAGA is intended "to augment the limited enforcement capability of [the LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id*. at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699, subd. (l)(2).) The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) The proposed settlement must be submitted to the LWDA at the same time it is submitted to the court. (*Ibid*.)

> As discussed by one court:
> PAGA does not establish a clear standard for evaluating PAGA settlements. …
> [¶]
> Accordingly, certain courts have been willing to approve PAGA settlements only if (1) the statutory requirements set forth by PAGA have been satisfied, and (2) the settlement agreement is fair, reasonable, and adequate in view of PAGA's public policy goals.

(*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061, 2019 U.S. Dist. LEXIS 77988 (*Patel*), at *5.)

As part of this analysis, these courts have evaluated proposed PAGA settlements under the relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel*, *supra*, 2019 U.S. Dist. LEXIS 77988 at *5-6.) "Of the *Hanlon* factors, the following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and views of counsel." (*Ibid*.)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77 (*Moniz*).) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize

enforcement of state labor laws." (*Id.* at p. 77; see also *Haralson, supra,* 383 F. Supp. 3d at p. 971 ["when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

"[W]hen a PAGA claim is settled, the relief provided … [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …." (*O'Connor*, *supra* at p. 1133.) The settlement must be reasonable in light of the potential verdict value. (*Id.* at 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc*. (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759 at *8-9.)

III. Discussion

A. Provisions of the Settlement

Plaintiff moves for approval of a proposed settlement made on behalf of:

> [A]ll persons who, during the Representative Period [from September 15, 2020 through February 26, 2023], have previously been or currently are employed by Defendant [Seaside Dining Group, Inc.], as a non-exempt employee.

(Supplemental Declaration of Raul Perez in Support of Motion for Court Approval of the Parties' PAGA Settlement ("Perez Supp. Dec."), Ex. 1 (Amended Joint Stipulation of Representative PAGA Action Settlement and Release of Claims ("Agreement"), ¶¶ 2, 18.)

According to the terms of the settlement, Defendant will pay a non-revisionary maximum settlement amount of $775,000. (Agreement, ¶¶ 11, 48.) This amount includes attorney fees in the amount of $258,333.33 (1/3 of the maximum settlement amount), litigation costs not to exceed $25,000, a service award up to $10,000 for Plaintiff, reasonable settlement administration costs (estimated to be $10,000), and other unspecified fees and expenses. (*Id.* at ¶¶ 13, 15, 16, 19, 21, 49.)

Of the remaining net settlement amount, 75 percent will be paid to the LWDA and 25 percent will be distributed to aggrieved employees based on the pro rata number of pay periods

worked by each aggrieved employee during the Representative Period. (Agreement, ¶¶ 4, 5, 8, 10, 13, 17, 18, 46, 49.) Funds from checks that not cashed within 180 days from the date of mailing will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law. (*Id.* at ¶¶ 42, 43.)

In exchange for the settlement, the aggrieved employees agree to release the "Released Parties" from all claims that were or reasonably could have been alleged in the complaint based on the facts and matter contained in the complaint and/or the LWDA letter. (Agreement, ¶ 53.) Plaintiff also agrees to a comprehensive general release. (*Id.* at ¶¶ 51, 52.)

The court previously continued the instant motion, in part because the settlement agreement's release provisions were overbroad. More specifically, paragraph 54 of the agreement stated: " 'Released Parties' ***includes*** Defendant and their past, present and/or future, direct and/or indirect, officers, directors, members …." (See Declaration of Raul Perez in Support of Motion for Court Approval of the Parties' PAGA Settlement ("Perez Dec."), Ex. 1, ¶ 54.) In its prior minute orders concerning the instant motion, the court said that the list of persons and entities that comprises the "Released Parties" was not exhaustive. (March 13 Minute Order, p. 3.)

Plaintiff's counsel has now filed a supplemental declaration indicating that the parties have revised the definition of "Released Parties." (Perez Supp. Dec., ¶ 2.) As amended, paragraph 54 of the Agreement now states: " 'Released Parties' ***are*** Defendant and their past, present and/or future, direct and/or indirect, officers, directors, members …." (*Id.* at ¶ 3; Agreement, ¶ 54.) The court finds that the parties' revision to paragraph 54 of the amended Agreement sufficiently cures the overbreadth defect previously identified by the court.

B. Fairness of the Settlement

Plaintiff contends that the PAGA settlement is fair and reasonable. (Notice of Motion and Motion [] ("Mot."), p. 11:3-4.) Plaintiff states the settlement resolves PAGA claims on behalf of 2,300 aggrieved employees. (*Id.* at p. 11:15.) The parties participated in mediation with Louis Marlin, Esq., on December 20, 2022. (*Id.* at p. 9:11-15.) Prior to mediation, Plaintiff's counsel investigated the claims, which included interviews, evaluation of potential claims and estimating Defendant's liability for purposes of settlement, researching similar

PAGA actions and settlements, analyzing aggrieve employee's time records, reviewing Defendant's policies and manuals, drafting a mediation brief, and participating in mediation. (*Id.* at p. 10:18-25.)

In the initial moving papers, Plaintiff indicated that Defendant's maximum exposure is $24,016,100, providing a breakdown of this amount by claim. (Mot., pp. 14:21-15:7.) Plaintiff discounted the exposure for settlement purposes to account for the risks associated with continued litigation and asserted that the settlement amount $775,000 was warranted by the circumstances of the case. (*Id.* at p. 15:8-14.) In his memorandum of points and authorities, Plaintiff asserted that the settlement amount is fair because courts have wide latitude to reduce the amounts of civil penalties based on the facts and circumstances of a particular case. (*Id.* at p. 15:15-16.) In support, Plaintiff cited several authorities, including: Labor Code, § 2699, subd. (h); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528; *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F. Supp. 3d 1030, 1037; *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011, No. ED CV10-01487 RGK (OPx)) 2011 U.S.Dist.LEXIS 154590; and *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112, 1135-1136. (See Mot., pp. 15:15-16:24.)

In its prior minute orders concerning this motion, the court observed that the settlement amount represents approximately 3.2 percent of the maximum potential value of the PAGA claims. As the court explained previously, this percentage recovery is below the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases indicating that a general range of 5 to 35 percent of the maximum potential exposure is reasonable].)

In its February 7, 2024 minute order, the court instructed Plaintiff to submit a supplemental declaration explaining in greater detail the basis for the discount applied to the PAGA claim. (February 7 Minute Order, p. 4.) Plaintiff did not file a such a declaration prior to the next hearing. (March 13 Minute Order, p. 4.) Therefore, the court gave Plaintiff a final opportunity to do so. (*Ibid.*)

As mentioned previously, Plaintiff's counsel has since filed a supplemental declaration. (See Perez Supp. Dec., filed on April 10, 2024.) In this supplemental declaration, Plaintiff's counsel explains in greater detail the nature of the alleged violations and Defendant's maximum exposure for PAGA penalties. (*Id.* at ¶¶ 6-21.) Counsel also sets forth and explains the factors he contends support a reduction in total penalties based on the anticipated trial result, weight of evidence, controlling law, and defendant's defenses. (*Id.* at ¶¶ 22-48.) Plaintiff's counsel asserts that, based on the aforementioned factors, Defendant's total *realistic* exposure at trial is $4,584,825, and he provides a breakdown of this amount by claim. (*Id.* at ¶ 44.) Based on this amount, the gross settlement amount of $775,000 represents a recovery of 16.9 percent of Defendant's *realistic* exposure at trial.

The court has reviewed the supplemental materials provided by Plaintiff in response to the court's expressed concerns. Although the court continues to observe that the settlement amount is low, it now finds that Plaintiff has sufficiently explained the rationale for the settlement amount. Therefore, the court finds the terms of the settlement to be fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

C. Incentive Award, Fees and Costs

As part of the settlement, Plaintiff seeks a service award in the amount of $10,000. Although service awards are common in class actions, there is less authority regarding the propriety of service awards in PAGA cases. Nevertheless, a PAGA case is a representative action like a class action, and court's have recognized that an individual's willingness to act as a private attorney general may merit a service award. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959.)

Plaintiff has submitted a declaration detailing her participation in the action. She states that she spent approximately 71.5 hours on this case, including discussing the case with counsel, reviewing the complaint, gathering facts and documents for counsel, preparing and being available for mediation, and reviewing settlement documents. (Declaration of Norma Aguilar in Support of Motion for Court Approval of the Parties' PAGA Settlement, ¶¶ 4-13.)

Plaintiff acted as a representative for the aggrieved employees and has agreed to a broader release.

Plaintiff also submitted a supplemental declaration stating that she also filed a wrongful termination complaint against Defendant in Los Angeles County Superior Court (*Norma Aguilar v. Seaside Dining Group., Inc.*, Case No. 23STCV0786). (Supplemental Declaration of Norma Aguilar in Support of Motion for Court Approval of the Parties' PAGA Settlement, ¶¶ 4-5, Ex. A.) Plaintiff states that as a condition of the settlement of the PAGA action, Defendant required her to generally release all claims arising out of her employment, and she filed a request for dismissal of her wrongful termination claims, which the court entered on August 31, 2023. (*Id.* at ¶¶ 6-7, Ex. B.)

For the foregoing reasons, the court approves a service award in the amount of $10,000 to Plaintiff.

Plaintiff's counsel seeks attorney fees of $258,333.33 (1/2 of the maximum settlement amount). Plaintiff's counsel provides evidence demonstrating a lodestar of $261,800. (Perez Dec., ¶¶ 20-23.) This results in a negative multiplier. The court finds the requested fees to be reasonable as a percentage of the total recovery, and the fees are approved in the in the amount of $258,333.33.

Plaintiff's counsel also requests litigation costs in the total amount of $12,717,84 and provides evidence of incurred costs in that amount. (Perez Dec., ¶ 24.) Therefore, the court finds cost in the amount of $12,717.84 to be reasonable and approves that amount.

Plaintiff also asks for settlement administration costs in the amount of $10,000. Plaintiff provides a declaration from the settlement administrator demonstrating that costs associated with settlement administration do not exceed $9,000. (Declaration of Jule Green on Behalf of CPT Group, Inc., ¶ 11, Ex. B.) Therefore, the court approves settlement administration costs in the amount of $9,000.

IV. Conclusion

Accordingly, the motion for approval of PAGA settlement is GRANTED.

The parties shall return for a compliance hearing to occur in Department 19 on: _____.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 3

Case Name: Alorica Inc. v. Fortinet, Inc.
Case No.: 19CV344971

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on August 14, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

The relevant factual and procedural background is detailed in the court's prior orders (including the Order Re: Motions for Sanctions; Motion to Quash; Motions to Seal, signed and filed on July 8, 2024, and the Order Re: Motion for Summary Judgment and/or Adjudication; Motions to Strike; Motions to Seal, signed and filed on January 12, 2024) and need not be repeated herein.

In brief, this action arises from plaintiff Alorica Inc.'s ("Plaintiff") agreement to purchase computer networking products and services from defendant Fortinet, Inc. ("Defendant"). Plaintiff initiated this action by filing its initial complaint against Defendant on March 31, 2019, and Plaintiff's operative pleading is its Second Amended Complaint ("SAC"), filed on November 8, 2021. Defendant filed a cross-complaint against Alorica on May 31, 2019, and Defendant's operative pleading is its First Amended Cross-Complaint, filed on June 25, 2019.

In general terms, Plaintiff alleges that Defendant misrepresented its ability to solve Plaintiff's networking problems and breached the parties' agreements, and Defendant alleges that Plaintiff misrepresented the state of its computer network and failed to properly deploy Defendant's products. Discovery in this action closed on June 2, 2024, and the court initially set a trial date of October 16, 2023. The court vacated the original trial date, and a jury trial is now scheduled to begin on September 9, 2024.

Now before the court is Plaintiff's motion to reopen discovery. As explained below, the court DENIES the motion.

II. Plaintiff's Motion to Reopen Discovery

Plaintiff seeks an order reopening discovery for the limited purpose of conducting discovery on Defendant's destruction of evidence. (Plaintiff's Notice of Motion and Motion to Reopen Discovery [] ("Plaintiff's Motion to Reopen Discovery"), p. 1:2-6.) Plaintiff filed the instant motion on June 24, 2024 along with an *ex parte* application to shorten time for briefing and hearing on the motion ("Plaintiff's *Ex Parte* Application"). The court denied Plaintiff's *Ex Parte* Application on July 3, 2024.

A. Legal Standard

As a general matter, discovery proceedings must be completed 30 days before, and discovery motion heard no later than 15 days before, the date initially set for trial. (Code Civ. Proc., § 2024.020. subd. (a).)

However, on motion of any party, the court may grant leave to complete discovery proceedings closer to the initial trial date or to reopen discovery when a new trial date has been set. (Code Civ. Proc., § 2024.050, subd. (a).) In exercising its discretion to grant or deny such a motion, the court shall take into consideration any matter relevant to the leave requested, including: (1) the necessity and the reasons for the discovery; (2) the diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier; (3) any likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party; and (4) the length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action. (*Id.* at subd. (b).)

"Discovery can be reopened on motion by any party for good reasons when it is necessary, the party seeking further discovery has been diligent, and there will be neither prejudice to the opponent nor impact on the scheduled trial date. [Citation]." (*McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 97; see also *Cottini v. Enloe Medical Center* (2014) 226 Cal.App.4th 401, 420 (*Cottini*) [same].)

The postponement of a trial date does not operate to reopen discovery proceedings. (*Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th

1568, 1588 (*Pelton-Shepherd*).) The trial court's discretion to grant a motion to reopen discovery is not "unfettered" and must be exercised only upon taking into consideration any matter relevant to the leave requested, including, but not limited to, the factors listed in Code of Civil Procedure section 2024.050, subdivision (b). (*Ibid.*) In *Pelton-Shepherd*, the Court of Appeal held that the trial court abused its discretion by hearing a motion to compel discovery without first deciding, based upon the relevant factors under the statute, whether discovery should be reopened for that purpose. (*Ibid.*)

In *Cottini*, the trial court did not abuse its discretion in concluding that no exceptional circumstances justified plaintiff Cottini's motion to allow late submission of expert witness information after the close of discovery. (*Cottini*, *supra*, 226 Cal.App.4th at p. 420-421.) The appellate court reasoned: "Cottini's attorney made a strategic decision to forgo expert witness discovery in favor of pursuing a meritless disqualification motion. Diligence would have required Cottini to disclose his expert witnesses while this motion was pending." (*Id.* at p. 421.) "Gambling on the outcome of a renewed disqualification motion and appeal of the trial court's denial of the motion is not a good reason to fail to complete discovery during the statutory period for its completion. Based on the factors listed in section 2024.050, subdivision (b), the trial court was more than justified in denying Cottini leave to reopen discovery." (*Ibid.*)

B. Discussion

Plaintiff initially contends there is good cause to reopen discovery because it needs the evidence sought to establish that Defendant intentionally destroyed evidence. (Plaintiff's Motion to Reopen Discovery, p. 12:2-3.) Plaintiff asserts that the factors listed Code of Civil Procedure section 2024.050, subdivision (b) easily favor granting the motion. (*Id.* at p. 12:8-9.) Plaintiff seeks discovery regarding the destruction of Defendant's FortiChat data. (*Id.* at p. 12:19-26.) Plaintiffs seeks years of communications regarding FortiChat, requests for admission, and the depositions of Defendant's CTO and Senior Director of IT. (*Ibid.*)

Plaintiff maintains that it has acted diligently and that the discovery requests will not prejudice Defendant or interfere with the trial date. (Plaintiff's Motion to Reopen Discovery, p. 13:6-8.) Plaintiff states: "From the time the Court granted Alorica's motion for spoliation on August 14, 2023 through the motion in limine hearing on April 18, 2024, Alorica had a good

faith belief that the court had already determined that Fortinet's destruction of evidence was willful, and therefore was intentional." (*Id.* at p. 13:11-14.) According to Plaintiff, "evidence of Fortinet's intentionality has taken on a renewed, and much greater importance since the [April 18, 2024] hearing on motions in limine." (*Id.* at p. 13:22-24.) Plaintiff further contends that, in addition to reopening discovery, the court should order Defendant to "produce all communications and unredacted communications regarding FortiChat," asserting that no privilege for such communication applies. (*Id.* at p. 14:12-13, citing Evid. Code, § 956, subd. (a) ["There is no privilege under this article if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud."].)

In opposition, Defendant contends that Plaintiff was not diligent in pursuing the discovery it now seeks. (Fortinet, Inc.'s Opposition to Alorica Inc's Motion to Reopen Discovery ("Plaintiff's Opposition"), p. 13:12.) Defendant argues that Plaintiff could have sought to reopen discovery a year ago, when Defendant opposed Plaintiff's spoliation motion. (*Id.* at p. 14:1-5.) But instead, Defendant argues, Plaintiff made the strategic decision to move in *in limine* to preclude Defendant from showing that the FortiChat deletion was unintentional based on Plaintiff's "incorrect assumption that the issue of intentionality has been resolved when the Court ruled on its spoliation motion." (*Id.* at p. 14:5-9.)

Defendant further contends that Plaintiff has not established the necessity of the discovery it seeks and that permitting the discovery will jeopardize the trial date and prejudice Defendant. (Plaintiff's Opposition, pp. 15:1, 15:21.) Defendant argues that Plaintiff is using this motion as a way to obtain information, including information unrelated to the deletion of FortiChat data, that Plaintiff could have sought since the beginning of litigation in 2019. (*Id.* at p. 15:9-17.) Defendant argues it is unrealistic to believe that the discovery Plaintiff seeks can be completed before the September 9, 2024 trial date. (*Id.* at pp. 15:25-16:8.) Therefore, Defendant argues, granting Plaintiff's instant motion will result in a fourth trial continuance. (*Id.* at p. 16:24.) Finally, Defendant asserts that Plaintiff's request for an order compelling production of communications regarding FortiChat, invoking the crime-fraud privilege exception, is procedurally improper and substantively meritless. (*Id.* at pp. 17:7-24.)

Here, while Plaintiff asserts that it has easily established good cause to reopen discovery based on the factors set forth in Code of Civil Procedure section 2024.050, it fails to support to this assertion. Plaintiff contends that the court should afford it some latitude because the discovery sought relates to the destruction of evidence. (Plaintiff's Motion to Reopen Discovery, p. 13:1-5.) Nevertheless, Plaintiff offers no persuasive explanation for why it has not sought the discovery in question until a matter of weeks before the third-continued trial date. If the discovery in question is as necessary as Plaintiff contends it is, then Plaintiff cannot reasonably establish its own diligence. (See *Johnson v. Alameda County Medical Center* (2012) 205 Cal.App.4th 521, 531 ["Plaintiff had years to conduct discovery and failed to act diligently…. The trial court did not abuse its discretion in denying the motion to reopen discovery because plaintiff had not 'demonstrated good cause for the relief requested.'"].)

Plaintiff's position regarding its own diligence hinges on its interpretation of this court's order from one year ago. (See Order Re: Motions to Seal; Discovery Motions, signed and filed on August 14, 2023.) There, the court granted Plaintiff's request for non-monetary sanctions in the form of an adverse inference jury instruction. (*Id.* at p. 18:14-18 ["[T]he court finds that the following jury instructions are sufficient to protect Plaintiff's interests: (1) an instruction providing that Defendant destroyed the backup FortiChat server after receiving notice to preserve the communications and notice of lawsuit; and (2) an instruction that the jury may infer that the destroyed communications were unfavorable to Defendant."]) As part of its analysis, the court stated that "the jury ***may*** find, that the destruction of the communications was intentional." (*Id.* at p. 16:8-9, emphasis added.)

On September 18, 2023, Plaintiff filed its motion *in limine* number 5, seeking an order "to exclude testimony, evidence, and argument by [Defendant] attempting dispute this Court's finding on a full record that Fortinet's destruction of FortiChat documents Alorica requested was intentional – i.e., done with a culpable state of mind." The court denied Plaintiff's motion *in limine* number 5 at the hearing on April 18, 2024, stating that "the court has made no such finding" and that "the factual question of whether the concealment or destruction was intentional by defendant is reserved to the jury as the finder of fact…." (April 18, 2024 Minute Order, p. 2.)

The court is not persuaded by Plaintiff's position that it had a good faith belief that the court made a finding of fact as to the intentionality of Fortinet's destruction of the FortiChat data. As set forth above, the court indicated that the jury *may* find that the Defendant intentionally destroyed the communications in question, not that it *must* make such finding. Plaintiff has had ample opportunity to seek further discovery about FortiChat, both before and after the close of discovery. Plaintiff's asserted "good faith belief" in the success of its motion *in limine* is simply insufficient to establish that the discovery sought is necessary and that Plaintiff has been diligent in pursuing it. (See *Cottini*, *supra*, 226 Cal.App.4th at p. 421 ["Gambling on the outcome [of a motion and appeal] is not a good reason to fail to complete discovery during the statutory period for its completion."] Furthermore, Plaintiff offers no factual support for its unrealistic assertions that the discovery it seeks will not interfere with the trial date or prejudice Defendant. After considering the parties' written submissions along with the factors set forth in Code of Civil Procedure section 2024.050, the court finds that Plaintiff has not established good cause for the leave requested.

Accordingly, Plaintiff's motion to reopen discovery is DENIED.

III. Defendant's Motion to Seal

Defendant moves to seal portions of Plaintiff's moving papers.

A. Legal Standard

"The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exists to achieve the overriding interest." (Cal. Rules of Court, rule 2.550(d).) Pleadings, in particular, should be open to public inspection "as a general rule," although they may be filed under seal in appropriate circumstances. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 104, fn. 35.)

"Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute

overriding interests." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn. 3 (*Providian*).) "[A] binding contractual agreement not to disclose" may suffice. (*Huffy Corp. v. Superior Court* (2003) 112 Cal.App.4th 97, 107.) In addition, confidential matters relating to the business operations of a party may be sealed where public revelation of the information would interfere with the party's ability to effectively compete in the marketplace. (See *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1285-1286 (*Universal*).)

Where some material within a document warrants sealing, but other material does not, the document should be edited or redacted, if possible, to accommodate both the moving party's overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court, rule 2.550(d)(4), (d)(5).) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*Providian*, *supra*, 96 Cal.App.4th at p. 309.)

B. Discussion

Defendant moves to seal portions of: (1) Plaintiff's *ex parte* application to shorten time for briefing and hearing on its motion to reopen discovery ("Plaintiff's *Ex Parte* Application"); and (2) Plaintiff's Motion to Reopen Discovery; (3) the declaration of Kevin M. Yopp in support of Plaintiff's Motion to Reopen Discovery ("Yopp Declaration"); (4) the declaration of Leo J. Presiado is support of Plaintiff's Motion to Reopen Discovery ("Presiado Declaration"). (Defendant's Notice of Motion and Motion to Seal [] ("Defendant's Motion to Seal"), p. 2:2-10.)

More specifically, Defendant seeks to seal the following portions of these documents:

Document	**Redactions**
(1) Alorica's *Ex Parte* Application	3:5-4:12
(2) Alorica's Motion to Reopen Discovery	i:6-13; 2:16-3:15; 4:9-18; 4:20-5:7; 5:18-24; 5 (fn. 2); 6:7-13; 6:23-27; 7:1-10; 7:19-24; 7 (fn. 3); 8:1-4; 8:6-8; 8:10-9:11; 9:19-21; 9 (fn. 4); 10:1-18; 11:11-19; 12:19-25; 13:25-26
(3) Yopp Declaration	1:12-22; 3:2-19; Exhibit 1 (entire document)
(4) Presiado Declaration	Exhibits A-D (entire documents); Exhibit E (portions previous ordered sealed)

(Defendant's Motion to Seal, pp. 2:14-5:16.)

Defendant asserts that the materials at issue contain its confidential and proprietary financial business information, technical information, employee information, and third-party confidential business and technical information. (Declaration of Scott Atkinson in Support of Motion to Seal [], ¶ 3.) This information is not publicly available, and its disclosure could harm Defendant and invade the privacy rights of third parties. (*Ibid.*) The proposed sealing appears to be narrowly tailored to the confidential information.

Therefore, the court finds that Defendant has established an overriding interest that justifies sealing these materials, and the other factors set forth in rule 2.550 are satisfied. (See *Universal*, *supra*, 110 Cal.App.4th 1273 at p.1286 [information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party].)

Accordingly, Defendant's Motion to Seal is GRANTED.

IV. Conclusion

Accordingly, Plaintiff's Motion to Reopen Discovery is DENIED.

Defendant's Motion to Seal is GRANTED.

Defendant shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 4

Case Name: Maboudi v. The Neiman Marcus Group, LLC (PAGA)
Case No.: 21CV391973

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on August 14, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

On December 15, 2021, plaintiff Parastoo Maboudi ("Maboudi") filed a Representative Action Complaint against The Neiman Marcus Group LLC ("Defendant"), setting forth a single cause of action for Civil Penalties Pursuant to Private Attorneys General Act ("PAGA"), Labor Code section 2698, et seq. On January 16, 2024, plaintiffs Maboudi and Francesco Masiello (collectively, "Plaintiffs") filed their first amended representative action complaint ("FAC"), setting forth a set forth a single cause of action for civil penalties pursuant to PAGA.

Thereafter, the parties reached an agreement. Now before the court is Plaintiffs' unopposed motion for approval of the PAGA settlement. At the initial hearing on this motion on June 26, 2024, the court continued the matter to August 14, 2024. (See June 26, 2024 Minute Order ("June 26 Minute Order"), p. 8.) After reviewing the proposed settlement, the court asked the Plaintiffs to address several issues in further detail. (*Id.* at p. 6.)

On July 29, 2024, Plaintiffs' counsel filed a supplemental declaration addressing the issues identified by the court. Plaintiffs also submitted a stipulation for leave to file an amended complaint, which the court entered as an order on July 31. Thus, Plaintiffs' operative Second Amended Representative Action Complaint ("SAC"), deemed filed on July 31, 2024, sets forth a single cause of action for PAGA violations.

II. Legal Standard

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S.___ [2022 U.S. LEXIS 2940].) Seventy-five percent of any penalties recovered go to the Labor and Workforce

Development Agency ("LWDA"), leaving the remaining 25 percent for the employees. (*Ibid*.) PAGA is intended "to augment the limited enforcement capability of [the LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id*. at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699, subd. (l)(2).) The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) The proposed settlement must be submitted to the LWDA at the same time it is submitted to the court. (*Ibid*.)

As discussed by one court:

> PAGA does not establish a clear standard for evaluating PAGA settlements. … [¶]
> Accordingly, certain courts have been willing to approve PAGA settlements only if (1) the statutory requirements set forth by PAGA have been satisfied, and (2) the settlement agreement is fair, reasonable, and adequate in view of PAGA's public policy goals.

(*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061, 2019 U.S. Dist. LEXIS 77988 (*Patel*), at *5.)

As part of this analysis, courts have evaluated proposed PAGA settlements under the relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel, supra*, 2019 U.S. Dist. LEXIS 77988 at *5-6.) "Of the *Hanlon* factors, the following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and views of counsel." (*Ibid*.)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77 (*Moniz*).) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize

enforcement of state labor laws." (*Id.* at p. 77; see also *Haralson, supra,* 383 F. Supp. 3d at p. 971 ["when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

"[W]hen a PAGA claim is settled, the relief provided … [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …." (*O'Connor*, *supra* 201 F.Supp.3d at p. 1133.) The settlement must be reasonable in light of the potential verdict value. (*Id.* at 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759 at *8-9.)

III. Discussion

A. Provisions of the Settlement

The proposed settlement has been on behalf of "Aggrieved Employees," defined as "all persons who were employed in an hourly-paid, non-exempt role by Defendant at any time from October 8, 2020 through October 30, 2023." (Declaration of Jean-Claude Lapuyade, Esq. in Support of Plaintiffs' Motion to Approve PAGA Action Settlement ("Lapuyade Dec."), Ex. 1 ("Agreement"), ¶ 1.) Likewise, the "Settlement Period" is defined as the period from October 8, 2020 through October 30, 2023. (Agreement, ¶ 2.)

Under the settlement, Defendant will pay a total maximum sum of $1,750,000. (Agreement, ¶¶ 3, 6.) This amount includes attorney fees of not more than $583,333.33 (1/3 of the maximum settlement amount), litigation costs not to exceed $35,000, and settlement administration costs not to exceed $13,500. (Agreement, ¶¶ 30(a)-30(c).) Of the remaining net settlement amount, 75 percent will be paid to the LWDA and 25 percent will be paid to aggrieved employees based on the pro rata number of pay periods worked by each aggrieved employee during the Settlement Period. (Agreement, ¶¶ 30(d), 33.) Funds from checks that are

not cashed within 180 days from the date of mailing will be sent to the California Controller's Unclaimed Property Fund. (Agreement, ¶ 38.)

In exchange for the settlement, the aggrieved employees agree to release The Neiman Marcus Group LLC and "Released Parties" from all claims that were, or reasonably could have been, alleged in this action based on the facts alleged in this action and/or notice provided to the LWDA. (Settlement Agreement, ¶ 12, 46.) The court noted in its minute order that the Agreement's definition of "Released Parties," found at paragraph 13 and containing the phrase "including but not limited to," was not exhaustive. (June 26 Minute Order, p. 7.) The parties have since stipulated to an amendment of paragraph 13 of the Agreement, removing the aforementioned phrase. (Supplemental Declaration of Jean-Claude Lapuyade, Esq. in Support of Plaintiffs' Motion to Approve PAGA Action Settlement ("Lapuyade Supp. Dec."), ¶ 5 and Ex. B.) The court finds that the parties' stipulated amendment to the Agreement sufficiently cures the defect previously identified concerning the Agreement's definition of "Released Parties."

As previously noted by the court, the Agreement indicates that plaintiff Maboudi agreed to a general release as part of a separate settlement agreement. (June 26 Minute Order, p. 6; Agreement, ¶ 6.)

B. Fairness of the Settlement

Plaintiffs contend the PAGA settlement is fair and reasonable. (Lapuyade Dec., ¶ 18; Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Approval of PAGA Action Settlement ("MPA"), p. 7:10.) In their moving papers, Plaintiffs indicate that the settlement resolves PAGA claims on behalf of approximately 2,663 aggrieved employees who collectively worked approximately 88,000 pay periods during the Settlement Period. (MPA, p. 4:24-26.) The parties participated in a full-day mediation with Jeffrey Ross on August 1, 2023. (Lapuyade Dec., ¶ 14.) Prior to the mediation, Defendant provided Plaintiffs with data and documents including the total number of aggrieved employees and pay periods, the written wage and hour policies, employee handbooks, and time and payroll records for aggrieved employees. (*Ibid.*)

Plaintiffs estimate that Defendant's maximum potential liability for the PAGA claim is $7,229,478.15. (Lapuyade Dec., ¶ 18.) Plaintiffs provide an explanation for how they arrived at this figure, beginning with their contention that Defendant pay sales associates and other employees via a compensation structure that pays them either an hourly wage or their commission, whichever is greater. (*Id.* at ¶ 19.) Plaintiffs assert that under such a pay structure, the employer must separately compensate employees for non-selling time. (*Id.* at ¶ 20.) Plaintiffs explain that several factors justify a discounted valuation, including Defendant's defenses, obstacles to proving the allegations with respect to the group of Aggrieved Employees, and a court's discretion to reduce PAGA penalty awards. (*Id.* at ¶¶ 22-25, 30, 34.) The settlement amount of $1,750,000 is 24 percent of Plaintiffs' estimate of Defendant's maximum potential liability of the PAGA claim.

In its prior minute order, the court expressed approval of the settlement amount but requested Plaintiffs to provide supplemental information. More specifically, the court issues relating to the settlement period, the liability calculations, the release language, plaintiff Maboudi's separate settlement agreement, attorney fees, and litigation costs. (June 26 Minute Order, pp. 6-8.) Plaintiffs' counsel has since provided a supplemental declaration addressing each of these issues. (Lapuyade Supp. Dec., ¶¶ 2-8.)

First, the court noted that the FAC defines the PAGA Period as between October 8, 2020 to the present, while the Agreement defines it as between October 8, 2020 through October 30, 2023. (June 26 Minute Order, p. 6.) Plaintiffs' counsel indicates that this discrepancy was an inadvertent error. (Lapuyade Supp. Dec., ¶ 3 and Ex. A.) As stated above, Plaintiffs have since filed the SAC pursuant to the court's order granting leave to amend. The SAC reflects "the correct PAGA period, October 8, 2020 through October 30, 2023." (*Ibid.*, SAC ¶ 9.) Accordingly, Plaintiffs have sufficiently addressed the settlement period issue.

Second, the court stated it was unclear how Plaintiffs arrived at the settlement amount of $1,750,000, noting that there were different figures for group of "Aggrieved Employees" referenced throughout Plaintiffs' moving papers. (June 26 Minute Order, pp. 6-9.) Plaintiffs' counsel explains that the number of known Aggrieved Employees, as represented by Defendant, changed from 2,345 in February 2023 (when the parties secured a bid from the

settlement administrator) to 2,663 in August 2023 (when the parties participated in mediation). (Lapuyade Supp. Dec., ¶ 4.) The parties used the revised headcount to negotiate the $1,750,000 settlement, and the settlement administrator has agreed to revise the bid to reflect a headcount of 2,663, at no additional cost. (*Ibid.*) Accordingly, the court finds that Plaintiffs have sufficiently addressed the settlement calculation issue.

Third, as discussed above, the court identified a defect concerning the language used for the releases. (June 26 Minute Order, p. 7.) The parties have amended the Agreement's definition of "Released Parties" by stipulation. ("Lapuyade Supp. Dec."), ¶ 5 and Ex. B.) The court finds that the parties' stipulated amendment to the Agreement sufficiently cures the defect previously identified concerning the Agreement's definition of "Released Parties."

Fourth, the court noted that the Agreement references a separate settlement agreement and asked the Plaintiffs to provide any individual settlement agreements to the court for an *in camera* review. (June 26 Minute Order, pp. 7-8.) Plaintiffs' counsel has provided the court with copies of the Plaintiffs' separate settlement for *in camera* review. The court has reviewed the documents submitted and finds that the terms of the Plaintiffs' separate settlement agreement do not adversely affect the fairness of the PAGA settlement. Accordingly, Plaintiffs have sufficiently addressed the court's concerns related to their separate settlement agreements.

Fifth, the court asked Plaintiffs' counsel to address whether they received any payment for attorney fees in connection with any individual settlement. (June 26 Minute Order, p. 8.) In his supplemental declaration, Mr. Lapuyade states:

> "Plaintiffs' counsel has not received payment of any Attorney fees in connection with any individual settlement. The payment of Attorney's fees in connection with the individual settlement is conditioned on several factors, as noted in section 1.2 of the Individual Settlement Agreements submitted to the Court."

(Lapuyade Supp. Dec., ¶ 7.)

Sixth, the court asked Plaintiffs' counsel to address whether payment was received for costs in connection with any individual settlement agreements, and if so, whether any such payment covered costs incurred in connection with the PAGA action. (June 26 Minute Order, p. 8.) The court also noted there are multiple law firms involved and asked Plaintiffs' counsel to provide the fee sharing agreement between the firms. (*Ibid.*) In this regard, Mr. Lapuyade states the following in his supplemental declaration:

> Plaintiffs' counsel has not received any payment of any costs in connection with any individual settlement. The $18,929.71 costs [sic] referenced in the motion are associated with litigating the PAGA case only. The $18,929.71 amount does not include costs associated with handling the individual settlements. The payment of Attorney's fees and costs in connection with the individual settlements is conditioned on several factors, as noted in section 1.2 of the Individual Settlement Agreements. Plaintiffs are represented by JCL Law Firm and the Zakay Law Group with Association of Counsel/Referral Fee Split with Browne Labor Law. The Client was informed of and approved this Referral Fee Split. The fee split is as follows: 37.5% to the Zakay Law Group; 37.5% to JCL Law Firm and 25% to Browne Labor Law.

(Lapuyade Supp. Dec., ¶ 8.) The declaration includes a redacted version of Plaintiff Maboudi's Contingency Fee Agreement that contains the referral fee split, and counsel offers to submit an unredacted version of the fee agreement for an *in camera* review. (*Id.* at ¶ 8 and Ex. C.) As discussed above, the court has received and reviewed the individual settlement agreements, and the courts finds that the terms of the Plaintiffs' separate settlement agreement do not adversely affect the fairness of the PAGA settlement.

IV. Conclusion

Accordingly, the motion for approval of PAGA settlement is GRANTED.

The parties shall return for a compliance hearing to occur in Department 19 on: February 26, 2024 at 2:30 p.m.

Plaintiffs shall prepare the order.

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Calendar Line 5

Case Name: Goodman v. Boba Guys, Inc. (Class Action)
Case No.: 21CV383976

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on August 14, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a class and representative action arising out of alleged wage and hour violations brought by plaintiff Niklas Miles Goodman ("Plaintiff") against defendant Boba Guys, Inc. ("Defendant"). The operative First Amended Class Action Complaint for Damages ("FAC"), filed on October 29, 2021, sets forth the following causes of action: (1) Violation of Labor Code sections 210, 216, 1194, and 1197 (Unpaid Wages); (2) Violation of Labor Code sections 204, 510, and 1198 (Failure to Pay Overtime Wages); (3) Violation of Labor Code sections 226.7 and 512 (Failure to Provide Meal Periods); (4) Violation of Labor Code sections 226 and 1174 (Failure to Properly Report Pay); (5) Violation of Business and Professions Code section 17200, *et seq.* (Unlawful Business Acts and Practices); (6) Violation of Business and Professions Code section 17200, *et seq.* (Unfair Business Acts and Practices); (7) Violation of Labor Code section 2699, *et seq.* (Representative Action for Civil Penalties).

The parties have reached a settlement. On February 20, 2024, Plaintiff filed a motion for preliminary approval of the settlement, and the motion is unopposed. At the initial hearing on June 26, 2024, the court continued the motion to August 14, 2024. (See June 26, 2024 Minute Order ("June 26 Minute Order"), p. 7.) In its minute order, the court stated that the settlement's terms are fair. (*Id.* at p. 5.) However, the court identified certain issues requiring further attention (i.e., the designation of a *cy pres* recipient and revisions to the class notice) and asked Plaintiff to provide a supplemental declaration in support of her request for an enhancement award. (*Ibid.*)

On July 31, 2024, Plaintiff submitted supplemental declarations addressing the aforementioned issues. As explained below, the court now GRANTS the motion for preliminary approval, on the condition that the settlement agreement and class notice are

amended to reflect the *cy pres* designation and submitted to the court for review prior to the mailing of the class notice.

II. Legal Standard

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement."

(*Wershba*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement 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." (*Ibid*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77.) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77.)

III. Discussion

A. Provisions of the Settlement

This case has been settled on behalf of the following class:

> [A]ll current and former employees who worked for [defendant Boba Guys, Inc. ("Defendant")] as an hourly-paid non-exempt employee, including "Bobaristas", at any time from July 1, 2017 to the date of preliminary approval of this Settlement.

(Declaration of Katherine A. Rabago in Support of Plaintiffs' Motion for Preliminary Approval ("Rabago Dec."), Ex. 2 ("Agreement"), ¶ 5.) The Class Period is defined as the period from July 1, 2017 to the date the court enters preliminary approval of the settlement. (Agreement, ¶ 12.)

The settlement also includes a subset PAGA Class of aggrieved employees [hereinafter "PAGA Employees"] who are defined as "all current and former employees who worked for [Defendant] as an hourly paid non-exempt employee, including "Bobaristas", at any time from July 1, 2020 to the date of preliminary approval of settlement." (Agreement, ¶¶ 4, 30.) The PAGA Period means the period from July 1, 2020 to the date the court enters preliminary approval of the settlement. (Agreement, ¶ 33.)

According to the terms of the settlement, Defendant will pay a gross settlement amount of $350,000. (Agreement, ¶ 23, 50.) This amount includes attorney fees up to $116,655 (1/3 of the gross settlement amount), litigation costs not to exceed $7,500, a PAGA allocation of $130,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments), an enhancement award up to $5,000, and

settlement administration costs not to exceed $16,995.[3] (Agreement, ¶¶ 23, 25, 27, 28, 31, 50, 51(a), 51(b), 51(c), 51(e).) The net settlement amount will be distributed to participating class members on pro rata basis according to the number of workweeks they were employed by Defendant. (Agreement, ¶ 51(a).)

According to the text of the Agreement, funds from uncashed payments will be deposited with the California Controller's Unclaimed Property Fund. (Agreement, ¶ 55(c).) However, in its minute order, the court stated:

> The parties' proposal to send funds from uncashed checks to the State of California Unclaimed Property Fund does not comply with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class member funds be given to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent."

(June 26 Minute Order, p. 4.) Therefore, the court directed Plaintiff to designate a *cy pres* recipient prior to the continued hearing date.

Plaintiff has since filed a supplemental declaration designating Legal Aid at Work as the *cy pres* recipient. (Supplemental Declaration of Shounak S. Dharap in Support of Plaintiffs' Motion for Preliminary Approval ("Dharap Supp. Dec."), ¶¶ 3-4.) Legal Aid at Work is a nonprofit organization providing civil legal services to the indigent. (*Id.* at ¶ 4.) Plaintiff's counsel represents that Defendant does not oppose the designation of Legal Aid at Work as the *cy pres* recipient. (*Id.* at ¶ 6.) Accordingly, the court approves Legal Aid at Work as the *cy pres* recipient.

However, the court notes that the parties have not amended the Agreement itself concerning the *cy pres* designation, and the class notice (even as amended since the prior hearing) indicates that funds from checks not cashed prior to the void date "will be deposited with the California Controller's Unclaimed Property Fund" in the participating class members' names. (Dharap Supp. Dec., Ex. 1, pp. 4, 10.) Therefore, prior to the mailing of the class notice, the parties shall submit an amended class notice reflecting the designation of Legal Aid

[3] The court approves Phoenix Class Action Administration as the settlement administrator. (See Agreement, ¶ 2.) Prior to the final approval hearing, Plaintiff's counsel shall submit evidence of settlement administration costs.

at Work as the designated *cy pres* recipient as well as the parties' stipulation amending paragraph 55(c) to reflect the *cy pres* designation.

In exchange for the settlement, the class members agree to release Defendant from all claims that were alleged or reasonably could have been alleged based on the facts stated in the FAC occurring during the Class Period. (Agreement, ¶¶ 56, 58.) PAGA Employees agree to release Defendant, and related entities and persons, from any and all claims for civil penalties under PAGA arising from any of the factual allegations in the FAC and Plaintiff's PAGA letter arising during the PAGA Period. (*Id.* at ¶ 59.) Plaintiff also agrees to a comprehensive general release. (*Id.* at ¶ 57.)

B. Fairness of the Settlement

Plaintiff states that the settlement was reached through discovery, analysis, and mediation with Hon. George Hernandez. (Rabago Dec., ¶¶ 10-13.) In anticipation of mediation, the parties propounded discovery and exchanged information relating to Plaintiff's work history and Defendant's employment practices. (*Id.* at ¶¶ 10, 12.) From the information provided, Plaintiff determined that there were approximately 1,540 class members. (*Id.* at ¶¶ 13(b), 21.) Plaintiff estimates that Defendant's maximum potential exposure for the claims to be $604,199. (*Id.* at ¶¶ 13 (a)-(c), 14 (a)-(b).) Plaintiff provides a breakdown of this amount by claim. (*Ibid.*) Plaintiff discounted the value of the claims to avoid double recovery, the possibility that the court could substantially reduce any PAGA penalties, and to reflect the risks of litigation and the strengths and weaknesses of Plaintiff's case. (*Id.* at ¶¶ 14(b), 15-20.)

The gross settlement amount represents approximately 58% of the potential maximum recovery. Thus, the proposed settlement is above the minimum range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201, at *41-42 [citing cases listing range of five to 25-35 percent of the maximum total exposure].)

The court finds the terms of the settlement to be fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

C. Incentive Award, Fees and Costs

Plaintiff requests an enhancement award of $5,000.

> The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Prior to the June 26, 2024 hearing, Plaintiff filed a declaration generally describing his participation in the lawsuit. Plaintiff declares that he worked closely with his attorneys, that he spent hours preparing and reviewing information related to this litigation, and that he helped coordinate communication between his attorneys and class members. (Declaration of Niklas Miles Goodman in Support of Plaintiff's Motion for Preliminary Approval, ¶ 8.) However, because Plaintiff's initial declaration did not provide an estimate of the time spent on this litigation, the court instructed Plaintiff to file a supplemental declaration containing this information. (June 26 Minute Order, p. 5.)

Plaintiff has since submitted a declaration responsive to the court's request. (See Dharap Supp. Dec., Ex. 2 (Supplemental Declaration of Niklas Miles Goodman).) Plaintiff states the has spent approximately 15 to 20 hours assisting in the litigation of this case, and he provides a breakdown of this number by category (i.e., phone and zoom calls with his attorneys; sitting for a deposition; preparing for mediation; and communication with other class members). (*Id.* at ¶¶ 3-7.)

Plaintiff spent time in connection with this litigation and undertook risk by attaching his name to this case because it might impact his future employment. (See *Covillo v. Specialty's Café* (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].). Therefore, the court finds that an enhancement award to Plaintiff is justified. However, the amount requested by Plaintiff is higher than the court normally awards

in relation to the amount of time spent on the litigation. Accordingly, the court approves an enhancement award to Plaintiff in the amount of $2,500.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees up to $116,655 (1/3 of the gross settlement amount) and litigation costs not to exceed $16,995. Plaintiff's counsel shall submit lodestar information (including hourly rate and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiffs' counsel shall also submit evidence of actual costs incurred as well as evidence of any settlement administration costs.

D. Conditional Certification of Class

Plaintiff requests that the class be conditionally certified for purposes of the settlement. Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . ." As interpreted by the California Supreme Court, section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*).)

The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class representatives who can adequately represent the class. (*Sav-On, supra*, 34 Cal.4th at p. 326.) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

As explained by the California Supreme Court,

> The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

(*Sav-On, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff states that there are approximately 1,540 class members who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

The content of a class notice is subject to court approval. "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).)

The notice generally complies with the requirements for class notice. (Dharap Supp. Dec., Ex. 1 ("Amended Class Notice").) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion.

In its prior minute order, the court instructed Plaintiff to amend the notice to clarify the recipient's options and to include information regarding the procedures for attending the final approval hearing. (June 26 Minute Order, p. 7.) Plaintiff has submitted an amended class notice with the aforementioned changes. However, as mentioned, the amended class notice does not reflect the parties' designation of Legal Aid at Work as the designated *cy pres* and still indicates that funds from voided settlement checks will be send to the state's Unclaimed Property Fund. (Amended Class Notice, pp. 5, 9.)

Accordingly, the parties are ordered to further amend the class notice to reflect the agreed-upon *cy pres* recipient and submit the amended notice to the court for approval prior to mailing.

IV. Conclusion

Accordingly, the motion for preliminary approval of the class and representative action settlement is GRANTED, subject to the parties' submission of an amended class notice and stipulated amendment to the Agreement, each reflecting the parties' designation of Legal Aid at Work as the designated *cy pres* recipient. The parties shall submit these documents to court for review prior to the mailing of the class notice.

The final approval hearing is scheduled for February 26, 2025 at 1:30 p.m. in Department 19. Plaintiff shall file supplement declarations containing the information requested by the court no later than February 10, 2025.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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