SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2170

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department7@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: JUNE 6, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV398619	Nava v. Channing House (Class Action/PAGA)	See Line 1 for tentative ruling.
LINE 2	22CV408856	Almaraz v. Ramon Luna Company (Class Action/PAGA)	See Line 2 for tentative ruling.
LINE 3	22CV407272	Garcia v. Fresno Plumbing & Heating, Inc. (Class Action/PAGA)	See Line 3 for tentative ruling.
LINE 4	18CV328915	Uzair v. Google, LLC	On the Court's own motion, this matter is continued to July 11, 2024, at 1:30 p.m.
LINE 5	19CV352557	Csupo, et al. v. Alphabet, Inc. (Class Action)	See Line 5 for tentative ruling.
LINE 6	20CV373138	Envirodigm, Inc. v. Apple, Inc.	Tentative ruling provided directly to the parties.

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LAW AND MOTION TENTATIVE RULINGS

LINE 7	20CV373138	Envirodigm, Inc. v. Apple, Inc.	Tentative ruling provided directly to the parties.
LINE 8	21CV378464	Cativo v. ATMHS, LLC, et al.	Order of Examination: the parties must appear.
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Joy Nava v. Channing House*
Case Nos.: 22CV398619

This is a wage and hour putative class action and a Private Attorneys General Act ("PAGA") representative action. Plaintiff Joy Nava alleges that Defendant Channing House ("Defendant"), which operates a retirement community in Palo Alto, committed various Labor Code violations. Before the Court is Plaintiff's motion for preliminary approval of settlement, which is unopposed. As discussed below, the Court GRANTS Plaintiff's motion.

I. BACKGROUND

According to the allegations of the Complaint, Plaintiff was employed by Defendant as a non-exempt, hourly-paid charge nurse at its facility in Palo Alto from June 1992 to February 16, 2022. (Complaint, ¶ 2.) Plaintiff alleges that Defendant failed to pay her and putative class members and aggrieved employees sick pay and meal and rest period premium wages at the correct, higher regular rate of pay and failed to provide accurate itemized wage statements. (*Id*., ¶ 20.) More specifically, Defendant failed to pay the correct wages to which Plaintiff and others were entitled by not including all non-discretionary remuneration into the regular rate. (*Id*., ¶ 20.) Whenever meal and/or rest periods were denied to Plaintiff and class members, Defendant was required to pay meal and rest period premium wages based on the regular rate of pay by factoring in all non-discretionary pay, including without limitation, shift differentials. (*Ibid.*) Defendant was also required to pay sick pay wages at the regular rate of pay. Defendant did not include all non-discretionary pay, including without limitation, all shift differentials/shift premiums called RN Night/OT and RN Night/Reg, into the meal and rest period premium and sick pay wages and instead paid these wages based on the base rate of pay. (*Ibid*.)

Based on the foregoing, Plaintiff initiated this action with the filing of the Complaint on May 26, 2022, asserting the following causes of action: (1) failure to provide accurate itemized wage statements; (2) failure to timely pay all wages due upon separation of employment (sick leave); (3) failure to timely pay all wages due upon separation of employment (meal period); (4) failure to timely pay all wages due upon separation of employment (rest period); (5) violation of PAGA; and (6) unfair or unlawful business practices.

Plaintiff now seeks an order: preliminarily approving the proposed settlement; certifying the proposed classes for settlement purposes only; appointing Joy Nava as class representative; appointing William L. Marder of Polaris Law Group and Dennis Hyun of Hyun Legal, APC, as class counsel; approving the form and plan for distribution of the Notice; appointing ILYM Group, Inc. as the Settlement Administrator and authorizing it to send notice of the Settlement to class members; and setting a final approval hearing date.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

Generally, "questions whether a [class action] 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*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

> 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, internal citations and quotations omitted.)

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The trial 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.*, citation and internal quotation marks omitted.) The trial court also must independently confirm that "the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar*, *supra*, 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be "provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Id.* at pp. 130, 133.)

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. 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.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.)

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; see also *Haralson v. U.S. Aviation Servs. Corp*. (N.D. Cal. 2019) 383 F. Supp. 3d 959, 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*).)

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 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, at *8–9.)

III. SETTLEMENT PROCESS

Prior to the settlement of this action, the parties thoroughly investigated the facts relating to the class and PAGA claims alleged in this lawsuit and engaged in a thorough study of the legal principles applicable to the claims asserted against Defendant. Through the exchange of informal discovery in connection with mediation, Defendant provided data pertaining to the number of putative class members and pay periods at issue, as well as a sampling of payroll records. The information provided by Defendant allowed Plaintiff to review and analyze its liability and potential exposure.

On June 22, 2023, the parties participated in private mediation with mediator Todd Smith and were able to reach the settlement that is now before the Court.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement amount is $195,000. Attorney's fees of up to one-third of the gross settlement ($65,000), litigation costs of up to $30,000, and up to $8,250 in administrative costs will be paid from the gross settlement. $19,500 will be allocated to PAGA penalties, 75% of which ($14,625) will be paid to the LWDA, with the remaining 25% ($4,875) paid to "Aggrieved Employees," who are defined as "individuals who fall within any of the three [classes defined within the settlement agreement] during the PAGA Period, i.e., April 7, 2021, through June 22, 2023." "Class Members" are defined as:

(a) All of Defendant's current and former non-exempt employees in the state of California who were paid sick pay in the same workweek in which they earned any nondiscretionary remuneration, including without limitation, shift differentials and shift premiums during the Class Period (the "Sick Pay Class").
(b) All of Defendant's current and former non-exempt employees in the State of California who were paid any meal period premium payments in the same workweek in which they earned any non-discretionary remuneration, including without limitation, shift differentials and shift premiums, covering the same period that meal period premiums were paid, during the Class Period (the "Meal Period Premium Class").
(c) All of Defendant's current and former non-exempt employees in the State of California who were paid any rest period premium payments in the same workweek in which they earned any non-discretionary remuneration, including without limitation, shift differentials and shift premiums, covering

> the same period that rest period premiums were paid, during the Class Period (the "Rest Period Premium Class").

The "Class Period" refers to the time period from May 25, 2018 through June 22, 2023. Plaintiff will also seek a service award of $10,000.

The net settlement will be allocated to Class Members on a pro rata basis based on the number of pay periods worked during the Class Period. For tax purposes, 10% will be allocated to wages, 45% to interest and 45% to penalties. 100% of the PAGA payment to Aggrieved Employees will be allocated to penalties. The employer side payroll taxes will be paid by Defendant separately from the gross settlement amount. Funds associated with checks uncashed after 180 days will be transmitted to the California State Controller in the name of the Class Member.

In exchange for settlement, Class Members who do not opt-out will release:

> [A]ll claims, demands, liabilities, damages, attorneys' fees, costs, and penalties against Released Parties, relating to any and all facts and claims asserted in the Action or any other claims that could have been asserted in the Action based on the facts alleged, including but not limited to claims arising from alleged unpaid sick pay wages; meal and rest period violations during employment; wage statement violations based on unpaid sick pay wages, meal and rest period violations; timely pay wages based on unpaid sick pay wages, meal and rest period violations upon separation of employment.

Aggrieved Employees, who consistent with the statute will not be able to opt out of the PAGA portion of the settlement, will release:

> [A]ny and all PAGA penalties based on unpaid sick pay wages, meal and rest period violations during the PAGA Period. Regardless of whether Class Members opt-out of the Class Settlement, Aggrieved Employees and the State of California shall release all PAGA claims as alleged on behalf of all Aggrieved Employees, as detailed herein.

The foregoing releases are both appropriately tailored to the allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

V. FAIRNESS OF SETTLEMENT

Based on the class data provided by Defendant, Plaintiff estimated Defendant's maximum exposure to be $2.27 million based on the maximum exposure for each claim estimated as follows: $28,539.78 (sick pay); $28,539.78 (meal and rest period); $884,150 (failure to provide accurate itemized wage statements); $998,049.60 (failure to timely pay wages owed at separation from employment); and $333,0000 (PAGA penalties). Counsel discounted the foregoing amounts based on numerous factors, including but not limited to: the possibility that Plaintiff would not be able to obtain certification of the Classes; Defendant's knowledge of the violations and the difficulty of establishing the willfulness of its actions; issues with common proof and proving the merits of each claim given Defendant's insistence that breaks were made available to Plaintiff and Class Members; the risk of appeal; and the

discretionary nature of PAGA penalties, which are frequently reduced by courts by percentages in excess of 85%.

Considering the portion of the case's value attributable to uncertain penalties, claims that could be difficult to certify for class treatment, and the multiple, dependent contingencies that Plaintiff would have had to overcome to prevail on her claims, the settlement achieves a good result for the class. For purposes of preliminary approval, the Court finds that the settlement is fair and reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable in light of the statute's purposes.

Of course, the Court retains an independent right and responsibility to review the requested attorney fees and award only so much as it determines to be reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.) Counsel shall submit lodestar information prior to the final approval hearing in this matter so the Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee through a lodestar calculation].)

VI. PROPOSED SETTLEMENT CLASS

Plaintiff requests that the following settlement classes be provisionally certified:

(a) All of Defendant's current and former non-exempt employees in the state of California who were paid sick pay in the same workweek in which they earned any nondiscretionary remuneration, including without limitation, shift differentials and shift premiums during the Class Period (the "Sick Pay Class").

(b) All of Defendant's current and former non-exempt employees in the State of California who were paid any meal period premium payments in the same workweek in which they earned any non-discretionary remuneration, including without limitation, shift differentials and shift premiums, covering the same period that meal period premiums were paid, during the Class Period (the "Meal Period Premium Class").

(c) All of Defendant's current and former non-exempt employees in the State of California who were paid any rest period premium payments in the same workweek in which they earned any non-discretionary remuneration, including without limitation, shift differentials and shift premiums, covering the same period that rest period premiums were paid, during the Class Period (the "Rest Period Premium Class").

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 …."

Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence: (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, 332 (*Sav-On Drug Stores*).) "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.)

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the ascertainable class determination need not be confronted, and the court's review is more lenient in this respect. (*Id.* at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

A. Ascertainable Class

A class is ascertainable "when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980 (*Noel*).) A class definition satisfying these requirements

> puts members of the class on notice that their rights may be adjudicated in the proceeding, so they must decide whether to intervene, opt out, or do nothing and live with the consequences. This kind of class definition also advances due process by supplying a concrete basis for determining who will and will not be bound by (or benefit from) any judgment.

(*Noel, supra,* 7 Cal.5th at p. 980, citation omitted.)

"As a rule, a representative plaintiff in a class action need not introduce evidence establishing how notice of the action will be communicated to individual class members in order to show an ascertainable class." (*Noel, supra,* 7 Cal.5th at p. 984.) Still, it has long been held that "[c]lass members are 'ascertainable' where they may be readily identified … by reference to official records." (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on another ground by *Noel, supra,* 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966, 975-976 ["The defined class of all HD Package subscribers is precise, with objective characteristics and transactional parameters, and can be determined by DIRECTV's own account records. No more is needed."].)

Here, the estimated 341 Class Members are readily identifiable based on Defendant's records, and the settlement classes are appropriately defined based on objective characteristics. The Court finds that the settlement classes are numerous, ascertainable and appropriately defined.

B. Community of Interest

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 Drug Stores, supra,* 34 Cal.4th at pp. 326, 332.)

For the first community of interest factor, "[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 215.) The ultimate question is 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 good for the judicial process and to the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105 (*Lockheed Martin*).) "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks, supra,* 89 Cal.App.4th at p. 916.)

Here, common legal and factual issues predominate. Plaintiff's claims all arise from Defendant's wage and hour practices (and others) applied to the similarly-situated class members.

As for the second factor,

> The typicality requirement is meant to ensure that the class representative is able to adequately represent the class and focus on common issues. It is only when a defense unique to the class representative will be a major focus of the litigation, or when the class representative's interests are antagonistic to or in conflict with the objectives of those she purports to represent that denial of class certification is appropriate. But even then, the court should determine if it would be feasible to divide the class into subclasses to eliminate the conflict and allow the class action to be maintained.

(*Medrazo v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations, brackets, and quotation marks omitted.)

Like other members of the class, Plaintiff was employed by Defendant as part of its staff and alleges that she experienced the violations at issue. The anticipated defenses are not unique to
Plaintiff, and there is no indication that Plaintiff's interests are otherwise in conflict with those of the class.

Finally, adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class representative does not necessarily have to incur all of the damages suffered by each

different class member in order to provide adequate representation to the class. (*Wershba, supra,* 91 Cal.App.4th at p. 238.) "Differences in individual class members' proof of damages [are] not fatal to class certification. Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Ibid*., internal citations and quotation marks omitted.)

Plaintiff has the same interest in maintaining this action as any class member would have. Further, she has hired experienced counsel. Plaintiff has sufficiently demonstrated adequacy of representation.

C. Substantial Benefits of Class Certification

"[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid.)* "Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action." (*Id*. at pp. 120–121, internal quotation marks omitted.)

Here, there are an estimated 341 Class Members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

The content of a class notice is subject to court approval. (Cal. Rules of Court, rule 3.769(f).) "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (*Ibid*.) In determining the manner of the notice, the court must consider: "(1) The interests of the class; (2) The type of relief requested; (3) The stake of the individual class members; (4) The cost of notifying class members; (5) The resources of the parties; (6) The possible prejudice to class members who do not receive notice; and (7) The res judicata effect on class members." (Cal. Rules of Court, rule 3.766(e).)

The parties have selected ILYM Group, Inc. ("ILYM") as the settlement administrator. Within 30 days of Defendant's receipt of entry of preliminary approval of the parties' settlement, Defendant will provide a list of all Class Members along with pertinent identifying information (including last known address) to the administrator. Within an additional 10 days, ILYM will mail the notice packet to each Class Members' last known address.

Here, the notice describes the lawsuit, explains the settlement, and instructs Class Members that they may opt out of the settlement (except the PAGA component) or object. The gross settlement amount and estimated deductions are provided. Class Members are informed of their qualifying pay periods as reflected in Defendant's records and are instructed how to

dispute this information. Class Members are given 45 days to request exclusion from the class, submit a written objection to the settlement, or dispute the qualified pay periods listed. Returned notices will be re-mailed to any forwarded or updated address located after a skip trace within 45 days of return and a Class Member has an additional 15 days to respond to the re-mailed notice.

The form of notice is generally adequate, but must be modified to instruct class members that they may opt out of or object to the settlement simply by providing their name, without the need to provide their phone number or other personal information.

Regarding appearances at the final fairness hearing, the notice shall be further modified to instruct class members as follows:

> The judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 7 (Afternoon Session) or by calling the toll free conference call number for Department 7. Any class member who wishes to appear in person should check in at Court Services (1st floor, Downtown Superior Courthouse, 191 N. 1st St., San Jose) and wait for a sheriff's deputy to escort him or her to the courtroom for the hearing.

VIII. CONCLUSION

Plaintiff's motion for preliminary approval is GRANTED.

The final approval hearing shall take place on **November 28, 2024** at 1:30 in Dept. 7. The following classes are preliminarily certified for settlement purposes:

(a) All of Defendant's current and former non-exempt employees in the state of California who were paid sick pay in the same workweek in which they earned any nondiscretionary remuneration, including without limitation, shift differentials and shift premiums during the Class Period (the "Sick Pay Class").

(b) All of Defendant's current and former non-exempt employees in the State of California who were paid any meal period premium payments in the same workweek in which they earned any non-discretionary remuneration, including without limitation, shift differentials and shift premiums, covering the same period that meal period premiums were paid, during the Class Period (the "Meal Period Premium Class").

(c) All of Defendant's current and former non-exempt employees in the State of California who were paid any rest period premium payments in the same workweek in which they earned any non-discretionary remuneration, including without limitation, shift differentials and shift premiums, covering

the same period that rest period premiums were paid, during the Class Period (the "Rest Period Premium Class").

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

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Calendar Line 2

Case Name: *Lisandro Monjaraz Almaraz v. Ramon Luna Company*
Case Nos.: 22CV408856

This is a wage and hour putative class action and a Private Attorneys General Act ("PAGA") representative action. Plaintiff Lisandro Monjaraz Almaraz alleges that Defendant Ramon Luna Company ("Defendant"), the owner and operator of grocery markets in Northern California, committed various wage and hour violations. Before the Court is Plaintiff's motion for preliminary approval of settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

According to the allegations of the operative complaint ("Complaint"), Plaintiff was formerly employed by Defendant in the produce department of one of its markets in Mountain View, a non-exempt, hourly-paid position. (Complaint, ¶ 9.) Plaintiff alleges that Defendant committed numerous violations of the Labor Code against him, the putative class members and aggrieved employees, including: failing to provide legally compliant meal and rest breaks and to provide proper compensation for missed and otherwise unlawful meal and rest breaks; failing to pay wages owed by wrongfully calculating regular and overtime compensation; failing to pay minimum wages; failing to pay all wages earned; failing to pay all wages due to discharged or quitting non-exempt employees; failing to maintain required records; failing to provide accurate itemized wage statements; failing to comply with California Labor Code § 246; failing to provide California COVID-19 supplemental paid sick leave; failing to provide suitable resting facilities; and failing to provide suitable seating. (*Id*., ¶ 10.)

Based on the foregoing, Plaintiff initiated this action with the filing of the Complaint on December 22, 2022, asserting the following causes of action: (1) failure to provide meal periods; (2) failure to provide rest breaks; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay timely wages; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain required records; (8) failure to furnish accurate itemized wage statements; (9) failure to provide and properly calculate mandatory sick leave; (10) failure to indemnify employees for necessary expenditures incurred in discharge of duties; and (11) unfair and unlawful business practices.

Plaintiff now seeks an order: preliminarily approving the proposed settlement; certifying the proposed class for settlement purposes only; appointing himself, Lisandro Monjaraz Almaraz, as class representative; appointing Scott Ernest Wheeler of the Law Office of Scott Ernest Wheeler and Aubry Wand, of The Wand Law Firm, P.C. as class counsel; approving the form and plan for distribution of the Notice; and setting a final approval hearing date.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

B. Class Action

Generally, "questions whether a [class action] 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*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

> 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, internal citations and quotations omitted.)

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The trial 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.*, citation and internal quotation marks omitted.) The trial court also must independently confirm that "the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar*, *supra*, 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be "provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Id.* at pp. 130, 133.)

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. 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.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.)

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; see also *Haralson v. U.S. Aviation Servs. Corp*. (N.D. Cal. 2019) 383 F. Supp. 3d 959, 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*).)

The settlement must be reasonable in light of the potential verdict value. (See *O’Connor, supra,* 201 F.Supp.3d at p. 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, at *8–9.)

III. SETTLEMENT PROCESS

Prior to reaching settlement, the parties engaged in informal discovery through which Plaintiff obtained from Defendant payroll information, sample wage statements and time records, and policies and procedures regarding Class members, in addition to an Employee Handbook. Plaintiff utilized these materials to research Defendant’s meal and rest period policies, and retained an expert to analyze the time and payroll records in order to calculate Defendant’s maximum exposure if this case were to proceed through class certification and trial. Plaintiff’s counsel also analyzed the likelihood of obtaining class certification, as well as the merits of Plaintiff’s claims and the defenses asserted by Defendant.

On September 27, 2023, the parties participated in mediation with experience mediator Judge Amy D. Hogue (Ret.) and were, while adversarial during the proceeding, able to reach the settlement that is now before the Court.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement amount is $175,000. Attorney’s fees of up to one-third of the gross settlement ($59,000), litigation costs up to $14,500, and $8,950 in administration costs will be paid from the gross settlement. $20,000 will be allocated to PAGA penalties, 75% of which ($15,000) will be paid to the LWDA, with the remaining 25% ($5,000) paid to “PAGA Aggrieved Employees,” who are defined as all hourly, non-exempt employees employed by Defendant in California at any time during [October 18, 2021 through September 27, 2023].” The net settlement amount will be allocated to members of the “Class,” defined as “[a]ll nonexempt hourly employees who worked at any time for Defendant in the state of California from December 22, 2018 through September 27, 2023,” on a pro rata basis based on the number of pay periods worked during the aforementioned period. Plaintiff will seek a service award in the amount of $6,000.

For tax purposes, settlement payments will be allocated 20% to wages and 80% to penalties and interest. The employer side payroll taxes will be paid by Defendant separately from the gross settlement amount. 100% of the PAGA payment to Aggrieved Employees will be allocated to penalties. Funds associated with checks uncashed after 180 days will be transmitted to the State of California Controller’s Unclaimed Property division in the name of the Aggrieved Employee/Class Member.

In exchange from settlement, Class Members who do not opt out will release:

> [A]ny and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action, as alleged in the Operative Complaint for: (1) failure to provide meal periods pursuant to Labor Code Sections 226.7, 510, 512, 1194, 1197 and Industrial Welfare Order 7-2001, Section 11; (2) failure to provide rest periods pursuant to Labor Code Section 226.7, 512 and Industrial Welfare Order 7-2001, Section 12; (3) failure to pay overtime wages pursuant to Labor Code Sections 510, 1194, 1198, Industrial Welfare Order 7-2001, Section 3; (4) failure to pay minimum wages pursuant to Labor Code Section 1194, 1197 and Industrial Welfare Order 7-2001, Section 4; (5) failure to pay timely wages in violation of Labor Code Sections 204 and 210; (6) failure to pay all wages owed and due at termination of employment in violation of Labor Code Sections 201, 202 and 203; (7) failure to maintain required records in violation of Labor Code section 226, 1174 and Industrial Welfare Order 7-2001, Section 7; (8) failure to provide accurate itemized wage statements in violation of Labor Code section 226 and Industrial Welfare Order 7-2001, Section 7; (9) failure to provide and properly calculate mandatory California sick leave pursuant to Labor Code Sections 246; (10) failure to provide supplemental COVID-19 sick leave pursuant to Labor Code Sections 248.1 and 248.6; (11) failure to indemnify and reimburse for necessary business expenses pursuant to Labor Code Sections 2802; (12) failure to provide suitable resting facilities pursuant to Industrial Welfare Order 7-2001, Section 13; (13) failure to provide suitable seating pursuant to Industrial Welfare Order 7-2001, Section 14(A) (14) violation of the California Unfair Competition Law in violation of Business and Professions Code Section 17200; and (15) and violation of the California Private Attorneys' General Act ("PAGA"), Labor Code Sections 2698, 2699 and 2699.5, predicated on the violations of the California Labor Code and IWC Wage Order 7-2001 as alleged in the Operative Complaint a the LWDA Notice dated September 13, 2022 …

Aggrieved Employees, who consistent with the statute will not be able to opt out of the PAGA portion of the settlement, will release:

> [A]ny claims for attorneys' fees, costs, or other damages that may be recoverable under the PAGA claims that are alleged in the Operative Complaint and LWDA Notice. This release shall apply to PAGA claims arising at any point during the PAGA Period

The foregoing releases are both appropriately tailored to the allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

V. FAIRNESS OF SETTLEMENT

Plaintiff's counsel, with the assistance of an expert, created a damages model in order to evaluate the realistic range of potential recovery for the class. Based on this model and the facts obtained through discovery and investigation, Plaintiff's counsel estimated Defendant's maximum exposure for each claim to be as follows: $89,063.64 (meal period claim); $310,746 (rest break claim); $3,405.99 (unpaid wages based on rounding); $279,500 (wage statement violations); $636,165 (failure to pay wages due upon separation); 704,700 (PAGA penalties). These amounts total $1,712,834.

Counsel discounted the foregoing amounts by numerous factors, including but not limited to: the risk of class certification being denied; the risks attendant to continued litigation; Defendant's knowledge of the violations and the difficulty of establishing the willfulness of its actions; issues with common proof and proving the merits of each claim; the difficulty of proving the amount of damages due to each employee because of issues with communicating with former employees and obtaining the cooperation of current employees; and the discretionary nature of PAGA penalties, the amounts of which courts frequently reduce by more than 85%.

Considering the portion of the case's value attributable to uncertain penalties, claims that could be difficult to certify for class treatment, and the multiple, dependent contingencies that Plaintiff would have had to overcome to prevail on his claims, the settlement achieves a good result for the class. For purposes of preliminary approval, the Court finds that the settlement is fair and reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable in light of the statute's purposes.

Of course, the Court retains an independent right and responsibility to review the requested attorney fees and award only so much as it determines to be reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.) Counsel shall submit lodestar information prior to the final approval hearing in this matter so the Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee through a lodestar calculation].)

VI. PROPOSED SETTLEMENT CLASS

Plaintiff requests that the following settlement class be provisionally certified:

> All nonexempt hourly employees who worked at any time for Defendant in the State of California from December 22, 2018 through September 27, 2023.

D. Legal Standard for Certifying a Class for Settlement Purposes

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 …."

Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence: (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, 332 (*Sav-On Drug Stores*).) "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.)

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the ascertainable class determination need not be confronted, and the court's review is more lenient in this respect. (*Id.* at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

E. Ascertainable Class

A class is ascertainable "when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980 (*Noel*).) A class definition satisfying these requirements

> puts members of the class on notice that their rights may be adjudicated in the proceeding, so they must decide whether to intervene, opt out, or do nothing and live with the consequences. This kind of class definition also advances due process by supplying a concrete basis for determining who will and will not be bound by (or benefit from) any judgment.

(*Noel*, *supra,* 7 Cal.5th at p. 980, citation omitted.)

"As a rule, a representative plaintiff in a class action need not introduce evidence establishing how notice of the action will be communicated to individual class members in order to show an ascertainable class." (*Noel*, *supra,* 7 Cal.5th at p. 984.) Still, it has long been held that "[c]lass members are 'ascertainable' where they may be readily identified … by reference to official records." (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on another ground by *Noel*, *supra,* 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966, 975-976 ["The defined class of all HD Package subscribers is precise, with objective characteristics and transactional parameters, and can be determined by DIRECTV's own account records. No more is needed."].)

Here, the estimated 243 Class Members are readily identifiable based on Defendant's records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable and appropriately defined.

F. Community of Interest

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 Drug Stores, supra,* 34 Cal.4th at pp. 326, 332.)

For the first community of interest factor, "[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings

and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 215.) The ultimate question is 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 good for the judicial process and to the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105 (*Lockheed Martin*).) "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks*, *supra,* 89 Cal.App.4th at p. 916.)

Here, common legal and factual issues predominate. Plaintiff's claims all arise from Defendant's wage and hour practices (and others) applied to the similarly-situated Class Members.

As for the second factor,

> The typicality requirement is meant to ensure that the class representative is able to adequately represent the class and focus on common issues. It is only when a defense unique to the class representative will be a major focus of the litigation, or when the class representative's interests are antagonistic to or in conflict with the objectives of those she purports to represent that denial of class certification is appropriate. But even then, the court should determine if it would be feasible to divide the class into subclasses to eliminate the conflict and allow the class action to be maintained.

(*Medrazo v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations, brackets, and quotation marks omitted.)

Like other members of the Class, Plaintiff was employed by Defendant as part of its staff and alleges that he experienced the violations at issue. The anticipated defenses are not unique to
Plaintiff, and there is no indication that Plaintiff's interests are otherwise in conflict with those of the Class.

Finally, adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class representative does not necessarily have to incur all of the damages suffered by each different class member in order to provide adequate representation to the class. (*Wershba, supra,* 91 Cal.App.4th at p. 238.) "Differences in individual class members' proof of damages [are] not fatal to class certification. Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Ibid*., internal citations and quotation marks omitted.)

Plaintiff has the same interest in maintaining this action as any Class Member would have. Further, he has hired experienced counsel. Plaintiff has sufficiently demonstrated adequacy of representation.

G. Substantial Benefits of Class Certification

"[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid.)* "Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action." (*Id*. at pp. 120–121, internal quotation marks omitted.)

Here, there are an estimated 243 Class Members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each Class Member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

The content of a class notice is subject to court approval. (Cal. Rules of Court, rule 3.769(f).) "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (*Ibid*.) In determining the manner of the notice, the court must consider: "(1) The interests of the class; (2) The type of relief requested; (3) The stake of the individual class members; (4) The cost of notifying class members; (5) The resources of the parties; (6) The possible prejudice to class members who do not receive notice; and (7) The res judicata effect on class members." (Cal. Rules of Court, rule 3.766(e).)

The parties have selected Phoenix Settlement Administrators ("Phoenix") as the settlement administrator. Within 20 calendar days of preliminary approval, Defendant will provide a list of all Class Members along with pertinent identifying information (including last known address) to the administrator. Within an additional ten calendar days, Phoenix will mail the notice packet to Class Members after updating their addresses through a search on the National Change of Address Database.

Here, the notice, which will be provided in English and Spanish, describes the lawsuit, explains the settlement, and instructs Class Members that they may opt out of the settlement (except the PAGA component) or object. The gross settlement amount and estimated deductions are provided. Class Members are informed of their qualifying pay periods as reflected in Defendant's records and are instructed how to dispute this information. Class Members are given 45 calendar days to request exclusion from the class, submit a written objection to the settlement, or dispute their qualifying pay periods. Returned notices will be re-mailed to any forwarded address provided or an updated address located though a skip trace within seven calendar days of return.

The form of notice is generally adequate, but must be modified to instruct Class Members that they may opt out of or object to the settlement simply by providing their name, without the need to provide their phone number or other personal information.

Regarding appearances at the final fairness hearing, the notice shall be further modified to instruct class members as follows:

> The judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 7 (Afternoon Session) or by calling the toll free conference call number for Department 7. Any class member who wishes to appear in person should check in at Court Services (1st floor, Downtown Superior Courthouse, 191 N. 1st St., San Jose) and wait for a sheriff's deputy to escort him or her to the courtroom for the hearing.

VIII. CONCLUSION

Plaintiff's motion for preliminary approval is GRANTED.

The final approval hearing shall take place on **December 5, 2024** at 1:30 in Dept. 7. The following class is preliminarily certified for settlement purposes:

> All nonexempt hourly employees who worked at any time for Defendant in the state of California from December 22, 2018 through September 27, 2023.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

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Calendar Line 3

Case Name: *Pedro Perez Garcia v. Fresno Plumbing & Heating, Inc.*
Case Nos.: 22CV407272

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Pedro Perez Garcia alleges that Defendant Fresno Plumbing & Heating, Inc. ("Defendant") committed numerous Labor Code violations. Before the Court are Defendant's (1) motion to transfer venue and (2) motion to compel arbitration and for a stay, which are opposed by Plaintiff. As discussed below, the Court GRANTS Defendant's motion to transfer venue to the Fresno County Superior Court. The Court declines to rule on the motion to compel arbitration, the disposition of which is reserved for Fresno County Superior Court.

I. BACKGROUND

According to the allegations of the operative complaint ("Complaint"), Plaintiff was formerly employed by Defendant in a non-exempt, hourly-paid position and his last date of employment was March 3, 2022. (Complaint, ¶ 3.) He alleges that Defendant committed various wage and hour violations, including: failing to pay overtime premiums; failing to provide rest and meal periods; failing to properly maintain records; failing to provide accurate itemized statements for each pay period; failing to properly compensate plaintiff and class members for necessary expenditures; and requiring, permitting or suffering the employees to work off the clock, in violation of the California Labor Code and the applicable Welfare Commission Orders. (*Id*., ¶ 9.)

Based on the foregoing, Plaintiff initiated this action with the filing of the Complaint on November 28, 2022, asserting the following causes of action: (1) failure to provide required meal periods; (2) failure to provide required rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay all wages due to discharged and quitting employees; (6) failure to maintain required records; (7) failure to furnish accurate itemized wage statements; (8) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (9) unfair and unlawful business practices; and (10) penalties under PAGA.

II. MOTION TO TRANSFER VENUE

Defendant moves to transfer venue of this case from Santa Clara County to Fresno County pursuant to Code of Civil Procedure sections 396b, subdivision (a) and 395.5.[1] Defendant maintains that its motion should be granted because Fresco County is its principal place of business and Santa Clara County is an improper venue. Alternatively, it moves to transfer venue under Code of Civil Procedure section 397 on the ground that the convenience of witnesses and ends of justice would be promoted by transfer of this action to Fresno County.

A. Legal Standard

[1] Defendant requests that the Court rule on its motion to transfer venue before considering the motion to compel arbitration and, if the motion to change venue is granted, leave the disposition of the motion to compel arbitration to the Fresno County Superior Court.

Upon a defendant's motion to transfer venue, "the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court." (Code Civ. Proc., § 396b, subd. (a).) A defendant's motion "must satisfy two requirements: (1) It must be shown the action is proper in the county to which the movant seeks transfer; and (2) it must be shown the county in which the action was filed was improper under any applicable theory." (*La Mirada Community Hospital v. Superior Court (Siggers)* (1967) 249 Cal.App.2d 39, 42; see also *Black Diamond Asphalt, Inc. v. Superior Court (Cal. Ins. Guarantee Assn.)* (2003) 109 Cal.App.4th 166, 170 [defendant bears the burden on a motion to transfer venue].)

Code of Civil Procedure section 395.5 ("Section 395.5") governs venue for corporate defendants. It provides:

> A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the court to change the place of trial as in other cases.

The section "must be read in light of [its] paramount purpose …, which is to permit a wider choice of venue against corporations or associations than would be permitted in suits against individuals." (*Black Diamond Asphalt, Inc., supra,* 109 Cal.App.4th at p. 171.)

With regard to a statutory claim like the ones at issue here, "a liability 'arises' where the injury occurs." (*Black Diamond Asphalt, Inc. v. Superior Court, supra,* 109 Cal.App.4th at p. 172.) Thus, in *Black Diamond*, it was held that venue in San Joaquin County was proper where an insured claimed that its insurer failed to defend it in a lawsuit filed in that county, even though the insurer's home office was in Los Angeles County. "The 'obligation or liability' provision of section 395.5 does not require that the defendant perform *any* act inside the county for venue to be proper; it merely requires that the obligation arise there." (*Id.* at p. 173, italics added.)

Venue may also be changed under Code of Civil Procedure section 397 ("Section 397") "[w]hen the convenience of witnesses and the ends of justice would be promoted by the change." (Code Civ. Proc., § 397, subd. (c).)

B. Discussion

Given the foregoing, the operative questions on this motion are whether "the obligation or liability" giving rise to Plaintiff's claims arose in Santa Clara County or Fresno County, i.e., where the injuries claimed by Plaintiff on behalf of himself and other aggrieved employees occurred, and where Defendant's principal place of business is located. (Code Civ. Proc., § 395.5.) Alternatively, Defendant may also establish that a transfer of this action to Fresno County is proper by demonstrating that the "convenience of witnesses and the ends of justice would be promoted" as a result. In his Complaint, Plaintiff alleges that venue is Santa Clara County is proper because the alleged "illegal payroll policies and practices which are the subject of this action were applied, at least in part….in the County of Santa Clara." (Complaint, ¶ 2.)

Defendant first submits that its principal place of business is located in Fresno County. For the purposes of venue, a corporation's filings with the California Secretary of State will determine the corporation's designated principal place of business. (See *Rosas v. Superior Court* (1994) 25 Cal.App.4th 671, 673-674.) Here, as established by the declaration of Debbie Kumpe, Defendant's office manager, and exhibits attached thereto, Fresno County currently is, and has always been since Defendant's incorporation in 1981, its principal place of business. (See Declaration of Debbie Kumpe in Support of Motion to Transfer Venue ("Kumpe Decl."), ¶ 3.) Defendant submits the most recent Statement of Information filed in December 2023 with the California Secretary of State which reflects its principal place of business as being 2585 N. Larkin Avenue in Fresno. (Kumpe Decl., ¶ 4, Exhibit B.) Ms. Kumpe, who has been employed by Defendant since 1978, explains that during the entirety of her tenure with the company, its principal place of business has always been in Fresno.[2]

Next, Defendant proffers evidence demonstrating that it has never had any type of office, facility, storefront, warehouse, shop, or any other form of business location in Santa Clara County, nor has it ever hired an employee in the County or entered into an agreement with an employee there. (Kumpe Decl., ¶ 6.) It also provides evidence that Plaintiff never performed *any* work on its behalf in Santa Clara County, with all of his work located near Fresno. (*Id*., ¶ 15; see Declaration of Rene Quintero in Support of Defendant's Motion to Transfer Venue ("Quintero Decl."), ¶ 16.)

The foregoing showing is sufficient to meet the requirements of Section 395.5 as it relates to Fresno County. Critically, in his opposition, Plaintiff does not dispute that Defendant's principal place of business is located in Fresno and offers *no* evidence which establishes that *any* employee performed work in Santa Clara County during the relevant time period. To establish that venue in Santa Clara County is proper, Plaintiff hangs the entirety of his argument on Defendant's purported "Travel Policy" (listed under its fictitious name, Coastal Plumbing), which he describes as stating that Defendant *frequently* performs work in multiple counties outside of Fresno, *including* Santa Clara County. Plaintiff's reliance on this document is problematic for several reasons. First, as Defendant objects, the document has not been authenticated. Second, it is dated December 1, 2017, four years before the earliest date any actionable PAGA and Labor Code claims could exist given the one-year statute of limitations for PAGA claims (see Code Civ. Proc., § 340), the three-year limitations period for the Labor Code violations (see Code Civ. Proc., § 338, subd. (a)) and the Complaint filing date of November 28, 2022. As such, its relevance its questionable. Third, and most critically, the policy does not establish that any of Defendant's employees *actually* worked in Santa Clara County during the relevant time period.

In the absence of evidence establishing that any injury allegedly suffered by Plaintiff or other aggrieved employees occurred in Santa Clara County, the Court must conclude that the proper venue for this action to be heard is Fresno County Superior Court under Section 395.5.

Even if the Court determined that Defendant had not made the showing required by Section 395.5, it finds that Fresno County is also the more appropriate venue for this case to be heard pursuant to Section 397. As demonstrated by Defendant's significant evidentiary

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[2] According to Ms. Kumpe, the Kumpe family purchased a company with the name of Fresno Plumbing in 1978 and Fresno Plumbing & Heating, Inc. was incorporated in 1981. (Kumpe Decl., ¶ 3.)

showing, all of its documentary evidence and records are located in Fresno County, Plaintiff resides in Madera, less than 25 miles from Fresno Superior Court, as opposed to 127 miles from this court, nearly all of Defendant's employees (320 out of 325), i.e., potential witnesses, reside in Fresno County, and a large amount of these individuals will likely need to be called in order to testify about company wage and hour practices given the large and fluctuating number of work crews during the relevant period. (Kumpe Decl., ¶¶ 17-22; Quintero Decl., ¶¶ 14-16, 18-24.) Undoubtedly, having this action heard in Fresno County rather than Santa Clara County would be significantly more convenient for these witnesses, and with Defendant having no facilities, worksites or employees in Santa Clara County, there is simply no basis to conclude that this case should be heard here rather than in Fresno County.

In accordance with the foregoing, Defendant's motion to transfer venue to Fresno County Superior Court is GRANTED. The Court declines to rule on the motion to compel arbitration, the disposition of which is reserved for the Fresno County Superior Court.

III. CONCLUSION

Defendant's motion to transfer venue is GRANTED. The Court declines to rule on the motion to compel arbitration, the disposition of which is reserved for the Fresno County Superior Court.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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Calendar Line 5

Case Name: *Attila Csupo v. Google LLC*
Case No.: 21CV386962

Presently before the Court is Plaintiff's Second Motion to Compel Discovery, through which they request that Google produce discovery regarding the benefits it obtained from the conduct alleged in the Fourth Amended Complaint (FAC). Defendant Google LLC opposes the motion because, in its words, the requested discovery "is completely disconnected from the theories [Plaintiffs] have pursued over the last four years and has no relevance at all to their claims."

Having reviewed and considered the moving, opposing and reply papers, the Court finds, concludes, and orders as follows:

1. Code of Civil Procedure section 2017.010 provides the framework for discovery in civil cases. Unless otherwise limited by court order, "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action . . . if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.010.) To that end, the applicable law "allow[s] a broad scope of discovery," including "inquir[y] concerning extraneous issues." (*State Farm Mutual Automobile Ins. Co. v. Lee* (2011) 193 Cal.App.4th 34, 40.) Indeed, "[t]he Legislature was aware that establishing a broad right to discovery might permit parties lacking any valid cause of action to engage in 'fishing expedition[s],' to a defendant's inevitable annoyance. [Citation.] It granted such a right anyway, comfortable in the conclusion that '[m]utual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.' [Citation.]" (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 551 (*Williams*).) Accordingly, "[a]ny doubts regarding relevance are generally resolved in favor of allowing the discovery." (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 98; accord *Williams, supra*, 3 Cal.5th at p. 540 [trial court must view discovery requests "with the prodiscovery policies of the statutory scheme firmly in mind," must "be mindful of the Legislature's preference for discovery over trial by surprise," and "must construe the facts before it liberally in favor of discovery"].)

2. Importantly, "[d]iscovery . . . is not confined to the actual issues framed by the pleadings." (*Anti-Defamation League of B'nai B'rith v. Superior Court* (1998) 67 Cal.App.4th 1072, 1095.) To the contrary, "the Discovery Act, by its very terms, authorizes inquiry into even irrelevant matters so long as their revelation may lead to the discovery of admissible evidence." (*Dodge, Warren & Peters Insurance Servies, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1420. Moreover, discovery is authorized if " ' "it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. …' [Citation.]" ' " (*Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 591). However, "[a]lthough the scope of civil discovery is broad, it is not limitless." *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223.)

3. Described generally, Plaintiffs seek discovery related to any benefits that Google obtained from the passive data transfers alleged in the Fourth Amended Complaint. Plaintiffs contend that this discovery is relevant to four issues: (1) the elements of quantum

meruit and/or quasi-contract; (2) the elements of conversion; (3) conversion damages; and (4) motive and plan. Plaintiff also argue that discovery on any benefits to Google is necessary to respond to Google's claim—raised at different points in this case—that Plaintiffs, rather than Google, benefit from the data transfers.

4. Google opposes the discovery on the following grounds: (1) any benefit to Google from the data transfers is irrelevant because damages for conversion and quantum meruit are limited to the value of the property or service at issue; (2) Plaintiffs have not alleged a claim for unjust enrichment or disgorgement; (3) discovery is not relevant merely to show "background" or a "scheme;" and (4) Plaintiffs' damages theory is not premised on the benefits Google received from the data transfers.

5. Considering the broad scope of permissible discovery along with the well-established directive that doubts regarding relevancy be resolved in favor of permitting discovery, Plaintiffs' argument regarding relevance is the more persuasive—at least on two points. While the Court agrees with Google that "[i]n the absence of special circumstances the appropriate measure of damages for conversion of personal property is the fair market value of that property plus interest from the date of conversion" (*Lint v. Chisholm* (1981) 121 Cal.App.3d 615, 624), it is also true that, damages aside, one element of the cause of action is "the defendant's conversion by a wrongful act or disposition of property;" that is, "an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use." (*Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 544.) Information showing a benefit that Google derived from the alleged passive data transfers is at least relevant, for discovery purposes, to demonstrate whether, and how, Google "applied the property to its own use." (*Ibid*.) Even if Google is correct that there exists a distinction between the cellular data allowances and the information received through the transfers, the evidence is still relevant for discovery purposes to show what Google did with the "property."

6. The discovery is also relevant to the equitable claim for quantum meruit. In order to prove such a claim, " 'a plaintiff must establish both that he or she was acting pursuant to either an express or implied request for such services from the defendant and that the services rendered were intended to and *did benefit the defendant*.' [Citation.]" (*Advanced Choices, Inc. v. State Dept. of Health Services* (2010) 182 Cal.App.4th 1661, 1673 [italics added]; accord *Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 450 ["The idea that one must be benefited by the goods and services bestowed is thus integral to recovery in quantum meruit; hence courts have always required that the plaintiff have bestowed some benefit on the defendant as a prerequisite to recovery"].) As such, information concerning any benefit to Google resulting from the data transfers is relevant, for discovery purposes, to that issue.

In sum, the Court finds discovery regarding the benefits Google obtained from the conduct alleged in the Fourth Amended Complaint (FAC) is relevant under the broad standard the Court must apply at this stage. Whether the information is ultimately admissible under evidentiary rules is, of course, an issue for another day. (See *Glenfed Development Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117 ["[A]dmissibility is not the test" utilized when assessing relevance for discovery].)

Plaintiff's motion is therefore GRANTED but only to the extent it seeks a ruling on the relevance of the discovery at issue. The parties are ordered to meet and confer further in light

of this ruling in a manner consistent with the general instructions included in section I(A) of the IDC order filed on June 3, 2024, and in doing so must address, inter alia, (1) Google's other objections to the discovery, and (2) the interrogatories and requests for admission referenced in Plaintiffs' motion.

The Court will prepare the order.

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