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.)

Court Reporters are not provided. Please consult our Court's website, www.scscourt.org, for the rules, policies, and required forms for appointment by stipulation of privately-retained court reporters.

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- As a reminder, state and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while in the courtroom and while on Microsoft Teams.

LAW AND MOTION TENTATIVE RULINGS
DATE: MAY 8, 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	21CV387958	Beltran v. George Chiala Farms, Inc.	Rescheduled to June 12, 2024 at 1:30 p.m.
LINE 2	21CV382938	Adami v. Prime Now LLC (Class Action/PAGA)	See Line 2 for tentative ruling.
LINE 3	21CV376845	Showalter v. Northern California Chair Corporation (Class Action/PAGA)	See Line 3 for tentative ruling.
LINE 4	22CV396328	Garcia v. San Jose Water Company (Class Action/PAGA)	See Line 4 for tentative ruling.
LINE 5	22CV400968	Bustamante v. Marriott Hotel Services, Inc. (PAGA)	See Line 5 for tentative ruling.
LINE 6	22CV394401	Nguyen v. Port Plastics, Inc. (PAGA Representative Action) (Lead Case; Consolidated with 22CV394403/Class Action)	See Line 6 for tentative ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 7	18CV335538	Evans v. Dolgen California, LLC (Class Action/PAGA)	Unopposed application for admission pro hac vice is GRANTED. Court will sign proposed order. No appearance necessary.
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name:
Case No.:

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Calendar Line 2

Case Name: Adami v. Prime Now LLC (Class Action/PAGA)
Case No.: 21CV382938

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on May 8, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

On June 11, 2021, plaintiff Sima Adami ("Plaintiff") filed a complaint against defendant Prime Now LLC("Defendant"), which set forth a single cause of action for civil penalties pursuant to the Private Attorneys General Act of 2004 (Labor Code §§ 2698, et seq.) ("PAGA").

On June 7, 2023, the court entered a Stipulation to Permit Filing of Consolidated Complaint; Order ("Stipulation"), which granted Plaintiff leave to file a consolidated complaint. The Stipulation states that Plaintiff filed a putative wage and hour class action, *Sima Adami v. Prime Now LLC* (Santa Clara County Superior Court, Case No. 21CV379287), in addition to her PAGA representative action. The putative class action was removed to federal court on May 19, 2021. The Stipulation represents that the parties participated in a global mediation of both cases on April 27, 2023, which resulted in a settlement. Thereafter, the federal court stayed the class action pending final approval of the settlement agreement. The Stipulation advises that Plaintiff wishes to file a consolidated complaint in the PAGA representative action in order to include her class claims.

On June 14, 2023, Plaintiff filed a Consolidated Class and Representative Action Complaint, sets forth causes of action for: (1) Failure to Timely Pay Minimum Regular and/or Overtime Wages (Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, and 1198); (2) Failure to Timely Pay All Wages Due and Owing Upon Separation of Employment (Labor Code §§ 201-203 and 210); (3) Failure to Furnish Accurate Itemized Wage Statements (Labor Code §§ 226 and 226.3); (4) Failure to Maintain Accurate Employment Records (Labor Code §§ 226, 1174, and 1174.5); (5) Violation of California's Unfair Competition Law (Business &

Professions Code §§ 17200, et seq.); and (6) Violation of the Private Attorneys General Act of 2004 ("PAGA") (Labor Code §§ 2698, et seq.).

Plaintiff moved for preliminary approval of the parties' settlement. The motion was unopposed.

On November 1, 2023, the court granted the motion for preliminary approval of settlement subject to approval of an amended class notice.

On November 7, 2023, the court approved the amended class notice and entered a formal order granting preliminary approval of the settlement.

Now before the court is Plaintiff's motion for final approval of the class and representative action 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.)

III. DISCUSSION

> The case has been settled on behalf of the following class:
> [A]ll current and former non-exempt employees of [Defendant] in California during the Class Period who underwent one or more COVID-19 temperature screenings.

The Class Period is defined as the period from March 18, 2020, through and including July 5, 2021. The class includes a Waiting Time Sub-Class, which is defined as "former non-exempt employees of [Defendant] in California during the Class Period who underwent one or more COVID-19 temperature screenings." The class also contains a subset of PAGA Members who are defined as "all non-exempt employees of [Defendant] in California during the PAGA Period who underwent one or more COVID-19 temperature screenings." The PAGA Period is defined as the period from April 7, 2020, through July 5, 2021.

As discussed in connection with preliminary approval of the settlement, Defendant will pay a gross, non-reversionary amount of $4,300,000. The gross settlement amount includes attorney fees of $1,433,333.33 (1/3 of the gross settlement amount), litigation costs not to exceed $25,000, a service award for the class representative not to exceed $10,000, settlement administration costs not to exceed $130,000, and a PAGA allocation of $215,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to the PAGA Members).

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. Waiting Time Sub-Class members will be credited with an additional six workweeks towards the calculation of their total workweeks worked. Similarly, PAGA Members will receive a pro rata share of the 25

percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period.

The settlement agreement originally provided that checks remaining uncashed more than 180 days after mailing would be void and the funds from those checks would be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law. (Settlement Agreement, ¶ 65.)

In connection with preliminary approval, the court directed the parties to identify a new *cy pres* in compliance with Code of Civil Procedure section 384 prior to the final approval hearing. Plaintiff's counsel has now submitted a declaration stating that the parties have agreed to distribute any unclaimed settlement funds to Feeding America, a 501(c)(3) non-profit hunger-relief organization. (Declaration of Graham S.P. Hollis in Support of Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement and Request for Award of Attorneys' Fees, Costs, and Enhancement Payment, ¶ 25.)

While Feeding America is an admirable organization, it does not meet the requirements of 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." Plaintiff asserts that Feeding America is a nonprofit organization that will benefit the class or similarly situated persons. But this assertion is not well-taken. Feeding America works with local food programs to provide food assistance to people facing hunger. This a wage-and-hour case involving current and former grocery workers, and there is no indication that any of the class members utilize the food programs supported by Feeding America. Consequently, the parties are ordered to appear at the final approval hearing, or submit a further declaration prior to the hearing, and designate a new *cy pres* recipient that complies with Code of Civil Procedure section 384.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from all claims that are based on the facts and legal theories asserted in

the operative complaint, or which relate to the primary rights asserted in the operative complaint. PAGA Members agree to release Defendant, and related persons and entities, from all claims for civil penalties pursuant to PAGA based on the facts and legal theories alleged in the operative complaint, or which relate to the primary rights asserted in the operative complaint. Plaintiff further agrees to a general release.

On December 22, 2023, the settlement administrator mailed notice packets to 44,190 class members. (Declaration of Jennifer Forst Re Settlement Administration and Class Notice ("Forst Dec."), ¶¶ 6-9.) Ultimately, 282 notice packets were deemed undeliverable. (*Id*. at ¶¶ 10-11.) As of March 19, 2024, there were no objections and 18 requests for exclusion from the following individuals: Yancy Ame Castro, Songkran Chimkit, Julie Figueroa, Matthew A. Gavlak, Evangeline L. Jordan, Isabella A. Lee, Gavin Leising, Julie M. Leyva, Emma Luman, Vaishnavi Muthangi, Tomasz Nalezinski, Deborah L. Peters, Jaime Ramirez, Hector Rodas, Kevin Sobie, Vladimir Vrublevskiy, Joseph Wescoat, and Deidre R. Whitfield. (*Id*. at ¶¶ 13-14.)

The estimated average payment is $57.66, the estimated highest payment is $198.37, and the estimated lowest payment is $2.58. (Forst Dec., ¶ 18.) The court previously found the proposed settlement is fair and the court continues to make that finding for purposes of final approval.

> Plaintiff requests an enhancement award of $2,500 for the class representative. 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.)

As discussed in connection with preliminary approval, Plaintiff submitted a declaration detailing her participation in this action. Plaintiff declared that she spent approximately 40 hours in connection with this lawsuit, including providing documents and information to class counsel, discussing the case with class counsel, responding to written discovery, and reviewed settlement documents. (Declaration of Sima Adami in Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement, ¶¶ 12-19.)

Moreover, Plaintiff undertook risk by putting her name on the case because it might impact her 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].)

Consequently, the court determined an enhancement award in the amount of $2,500 was appropriate and it continues to approve that amount.

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.) Plaintiff's counsel seeks attorney fees of $1,433,333.33 (1/3 of the gross settlement fund). Plaintiff's counsel provides evidence demonstrating a total lodestar of $545,402.50, based on 851.9 hours spent on the case by counsel and staff billing between $200 to $1,100 per hour. (Declaration of Graham S.P. Hollis in Support of Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement and Request for Award of Attorneys' Fees, Costs, and Enhancement Payment ("Hollis Dec."), ¶¶ 46-51.) This results in a multiplier of 2.65. The court finds the attorney fees are reasonable as a percentage of the common fund and are approved.

Plaintiff's counsel also requests litigation costs in the amount of $18,068.53, and provides evidence of incurred costs in that amount. (Hollis Dec., ¶¶ 57-58 & Ex. 2.) Consequently, the litigation costs are reasonable and approved. The settlement administration costs of $133,000 are also approved. (Forst Dec., ¶ 19.)

Accordingly, the motion for final approval of the class and representative action settlement is GRANTED subject to the parties' appearance at the final approval hearing to identify a *cy pres* recipient in compliance with Code of Civil Procedure section 384.

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

The court will set a compliance hearing for December 11, 2024, at 2:30 p.m. in Department 19. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant, the status of any unresolved issues, and any other matters appropriate to bring to the court's attention. Counsel may appear at the compliance hearing remotely.

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Calendar Line 3

Case Name: Showalter v. Northern California Chair Corporation (Class Action/PAGA)
Case No.: 21CV376845

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on May 8, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

IV. INTRODUCTION

This is a putative class and representative action arising out of various alleged wage and hour violations. The operative Class Action Complaint ("Complaint"), filed on March 2, 2021, sets forth causes of action for: (1) Violation of Labor Code §§ 510, 558, and 1194; (2) Violation of Labor Code §§ 226.7 and 512; (3) Violation of Labor Code § 2802; (4) Violation of Labor Code § 226; (5) Violation of Business and Professions Code §§ 17200, et seq.; and (6) Violation of Labor Code §§ 2698, et seq. ("PAGA").

The parties reached a settlement. Plaintiff Marie Rebelo Showalter ("Plaintiff") moved for preliminary approval of the settlement. The motion was unopposed.

On November 1, 2023, the court granted preliminary approval of the settlement subject to approval of an amended class notice. Plaintiff's counsel submitted an amended class notice on November 9, 2023. On November 30, 2023, the court approved the amended class notice and entered a formal order granting preliminary approval of the settlement.

Now before the court is Plaintiff's motion for final approval of settlement. The motion is unopposed.

V. 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.)

VI. DISCUSSION

> The case has been settled on behalf of the following class:
> [A]ll current and former non-exempt sales employees who worked for Defendant [Northern California Chair Corporation ("Defendant")] in California any time between May 1, 2019 and July 11, 2023, inclusive.

The class also contains a subset of aggrieved employees that are defined as "all current and former non-exempt sales employees who worked for Defendant in California during the PAGA Period." The PAGA Period is defined as the period from February 12, 2020 through July 11, 2023.

As discussed in connection with preliminary approval, at the time of the original settlement, Defendant represented there were approximately 240 putative class members who worked a total of 6,172 pay periods. Based on this understanding, the settlement agreement provided that Defendant would pay a gross, non-reversionary amount of $500,000. The gross

settlement amount included attorney fees of $166,667 (1/3 of the gross settlement amount), litigation costs not to exceed $25,000, a service award for the class representative not to exceed $10,000, settlement administration costs not to exceed $8,250, and a PAGA allocation of $50,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to the aggrieved employees).

The total settlement amount and some of the included amounts have increased since the time of preliminary approval. Plaintiff explains that after preliminary approval, information for 240 class members was provided to the settlement administrator and it was determined that the class members worked a total of 6,546 pay periods. (Declaration of Yami Burns With Respect to Notice and Settlement Administration ("Burns Dec."), ¶¶ 3, 11-12.) This triggered the escalator clause of the settlement agreement, which provides that if the number of total pay periods worked by class members exceeds 6,172, then the gross settlement amount shall be increased proportionally based on the percentage amount over 6,172. (Declaration of Max W. Gavron in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, Ex. A, ¶ 1.22; Burns Dec., ¶¶ 11-12.)

In light of the foregoing, the total amount of the settlement is now $530,300. (Burns Dec., ¶ 12.) This amount includes attorney fees of $176,765.99 (1/3 of the gross settlement amount), litigation costs not to exceed $25,000, a service award for the class representative not to exceed $10,000, settlement administration costs not to exceed $8,250, and a PAGA allocation of $50,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to the aggrieved employees).

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. Similarly, aggrieved employees will receive a pro rata share of the 25 percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period.

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to Legal Aid at Work.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from all claims that were or could have been asserted in this action

reasonably based on the facts alleged in this action. The aggrieved employees agree to release Defendant, and related persons and entities, from claims for civil penalties sought under PAGA reasonably based on the facts alleged in the Complaint. Plaintiff further agrees to a general release.

On January 30, 2024, the settlement administrator mailed notice packets to 240 class members. (Burns Dec., ¶ 5.) Ultimately, all of the notice packets were deliverable. (*Id.* at ¶ 7.) As of April 15, 2024, there were no objections or requests for exclusion. (*Id.* at ¶¶ 8-9.)

The highest individual settlement payment to be paid is approximately $4,652.95, the lowest individual settlement payment to be paid is approximately $42.30, and the average individual settlement payment to be paid is approximately $1,158.55. (Burns Dec., ¶ 14.) The court previously found the proposed settlement is fair and the court continues to make that finding for purposes of final approval.

> Plaintiff requests an incentive award of $10,000 for the class representative. 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.)

Plaintiff submitted a declaration in support of the request, detailing her participation in the action. Plaintiff declares that she spent approximately 25-30 hours in connection with this lawsuit, including meeting with class counsel, providing documents and information to class counsel, reviewing pleadings, and reviewing the settlement agreement. (Declaration of Marie Rebelo Showalter in Support of Plaintiff's Motion for Final Approval of Class Action Settlement, ¶ 7.)

Moreover, Plaintiff undertook risk by putting her name on the case because it might impact her 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].)

However, the requested incentive award in the amount of $10,000 is excessive. The amount requested is substantially higher than the court typically awards for the amount of Plaintiff time spent in connection with this action (i.e., approximately 25-30 hours). In light of the foregoing, the court finds that a service award in the amount of $4,500 is reasonable and it approves the award in that lesser amount.

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.) Plaintiff's counsel seeks attorney fees of $176,765.99 (1/3 of the gross settlement fund). Plaintiff's counsel provides evidence demonstrating a total combined lodestar of $121,515 (based on fees actually incurred). (Declaration of Max W. Gavron in Support of Plaintiff's Motion for Final Approval of Class Action Settlement ("Gavron Dec."), ¶¶ 16-19 & Ex. A; Declaration of Larry W. Lee in Support of Plaintiff's Motion for Final Approval of Class Action Settlement, ¶¶ 10-14 & Ex. A.) This results in a multiplier of 1.46. The court finds the attorney fees are reasonable as a percentage of the common fund and are approved.

Plaintiff's counsel also requests litigation costs in the amount of $8,390.98, and provides evidence of incurred costs in that amount. (Gavron Dec., ¶ 20& Ex. B.) Consequently, the litigation costs are reasonable and approved. The settlement administration costs of $8,250 are also approved. (Burns Dec., ¶ 17 & Ex. B.)

Accordingly, the motion for final approval of the class and representative action settlement is GRANTED.

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

The court will set a compliance hearing for December 11, 2024, at 2:30 p.m. in Department 19. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant, the status of any unresolved issues, and any other matters appropriate to bring to the court's attention. Counsel may appear at the compliance hearing remotely.

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Calendar Line 4

Case Name: Garcia v. San Jose Water Company (Class Action/PAGA)
Case No.: 22CV396328

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on May 8, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VII. INTRODUCTION

This is a putative class and representative action arising out of various alleged wage and hour violations. The operative First Amended Complaint ("FAC"), filed on May 18, 2022, sets forth causes of action for: (1) Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code § 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and (9) Civil Penalties Under PAGA [Cal. Lab. Code §§ 2699, et seq.].

The parties reached a settlement. Plaintiff Cesar Garcia ("Plaintiff") moved for preliminary approval of the settlement.

On August 30, 2023, the court continued the motion for preliminary approval of settlement to November 1, 2023. As an initial matter, the court noted that the settlement agreement did not appear to provide for what happens to amounts not approved or actually spent for settlement administration costs and encouraged the parties to meet and confer on this issue. Next, the court opined that the release might be too broad as it encompassed at least one set of facts and theory not alleged in the FAC but included in the Labor and Workforce Development Agency ("LWDA") Letter relating to the failure to pay all accrued vacation wages at termination in violation of Labor Code section 227.3. The court directed the parties to provide supplemental briefing explaining why including the LWDA Letter in the release is fair and reasonable. The court otherwise found the settlement to be fair and reasonable.

Finally, the court requested the parties modify language in the class notice regarding the final approval hearing and submit an amended notice to the court for its approval.

On October 18, 2023, Plaintiff's counsel filed a supplemental declaration, which included an amended settlement agreement and amended class notice.

On November 1, 2023, the court granted preliminary approval of the settlement and approved the amended class notice. The court entered a formal order memorializing its prior order on November 20, 2023.

Now before the court is the motion by Plaintiff for final approval of the settlement. The motion is unopposed.

VIII. 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.)

III. DISCUSSION

> The case has been settled on behalf of the following class:
> [A]ll current and former California non-exempt employees of Defendant [San Jose Water Company ("Defendant")] during the Class Settlement Period [from March 22, 2018, through the Preliminary Approval Date, subject to section 3.2.2.].

The class also includes a subset of PAGA Members, who are defined as all current and former California non-exempt employees of Defendant during the PAGA Settlement Period from March 12, 2021, through the preliminary approval date.

As discussed in connection with preliminary approval, the settlement agreement provides that Defendant will pay a gross, non-reversionary amount of $1,200,000. The gross settlement amount includes attorney fees not to exceed $400,000 (1/3 of the gross settlement amount), litigation costs up to $20,000, an incentive award up to $10,000 for the class representative, reasonable costs of settlement administration up to $10,000, and a PAGA allocation of $100,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Members).

The net settlement amount will be distributed pro rata to Participating Class Members based on the eligible workweeks each Participating Class Member worked during the Class Settlement Period and to PAGA Members based on the number of eligible pay periods each PAGA Member worked during the PAGA Settlement Period.

The settlement agreement states that funds from checks that remained uncashed 180 days after issuance will be sent to the California State Controller s Office's Unclaimed

Property Division to be held as unclaimed funds in the name of the Participating Class Member or PAGA Member.

The parties' proposal to send funds from uncashed checks issued to class members to the California State Controller s Office's Unclaimed Property Division 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." Prior to the continued hearing, the parties shall meet and confer regarding this issue and, thereafter, Plaintiff shall file a supplemental declaration identifying a new *cy pres* recipient in compliance with Code of Civil Procedure section 384.

In exchange for the settlement, class members who do not opt out will release all federal, state and local law claims, rights, demands, liabilities, and causes of action, asserted in any of the complaints filed in the action, and all claims that could have been asserted in the action arising from the same alleged facts. PAGA Members will release all claims for civil penalties under PAGA asserted in any of the complaints filed in the action, and all claims that could have been asserted in the Action based on the same alleged facts. Plaintiff also agrees to a general release of claims.

On January 3, 2024, the settlement administrator mailed notice packets to 489 class members. (Declaration of Lluvia Islas on Behalf of Phoenix Settlement Administrators Regarding Notice and Administration ("Islas Dec."), ¶ 5.) Ultimately, all of the notice packets were deliverable. (*Id.* at ¶ 7.) As of April 3, 2024, there were no objections or requests for exclusion. (*Id.* at ¶¶ 8-9.)

The highest individual settlement payment to be paid is approximately $2,712.17, the lowest individual settlement payment to be paid is approximately $1.31, and the average individual settlement payment to be paid is approximately $1,351.53. (Islas Dec., ¶ 13.) The court previously found the proposed settlement is fair and the court continues to make that finding for purposes of final approval.

The court has concerns regarding the adequacy of the notice. Plaintiff previously advised the court in connection with the motion for preliminary approval of settlement that there were approximately 595 class members. But notice packets were only mailed to 489 class members. Plaintiff does not explain this discrepancy. It is unclear whether there are only 489 class members or whether notice was not provided to the 106 additional class members. In light of the foregoing, a brief continuance of this matter is warranted. Plaintiff is directed to provide a supplemental declaration clarifying why notice packets were only mailed to 489 class members.

Plaintiff requests an incentive award of $10,000 for the class representative. The court previously approved this award in connection with preliminary approval, and it remains approved.

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.) Plaintiff's counsel seeks attorney fees in the amount of $$400,000 (1/3 of the gross settlement amount). Plaintiff's counsel provides evidence demonstrating a total lodestar of $101,842.50, based on 167.1 hours worked by counsel billing at hourly rates between $375 and $725. (Declaration of Kane Moon in Support of Motion for Final Approval of Class and PAGA Representative Action Settlement ("Moon Dec."), ¶¶ 53-58.) This results in a multiplier of 3.93. While this multiplier is on the high side, the attorney fees requested are reasonable as a percentage of the common fund. Thus, the attorney fees are approved.

Plaintiff's counsel requests litigation costs in the amount of $19,099.68 and provides evidence of incurred costs in that amount. (Moon Dec., ¶ 16 & Ex. 4.) Therefore, the litigation costs are approved.

The settlement administration costs of $10,000 are also approved. (Islas Dec., ¶ 15.)

Accordingly, the motion for final approval of the class action settlement is CONTINUED to June 12, 2024. Plaintiff shall file a supplemental declaration with the additional information requested by the court no later than May 28, 2024. No additional filings are permitted.

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

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Calendar Line 5

Case Name: Bustamante v. Marriott Hotel Services, Inc. (PAGA)
Case No.: 22CV400968

The above-entitled actions come on for hearing before the Honorable Theodore C. Zayner on May 8, 2024, at 9:00 a.m. in Department 19. The court now issues its tentative ruling as follows:

IX. INTRODUCTION

This putative class and representative action arises out of alleged wage-and-hour violations. Plaintiff Gabriela Bustamante ("Plaintiff") filed her original complaint against defendant Marriott Hotel Services, Inc. ("Defendant") on July 21, 2022. The complaint alleged a single cause of action under the Private Attorneys General Act of 2004 ("PAGA").

Several months later, on November 17, 2022, Plaintiff filed a first amended complaint adding several class claims.

Defendant removed the action to federal court on December 16, 2022.

On September 14, 2023, Plaintiff filed the operative second amended complaint ("SAC"), which alleges the following causes of action: (1) Failure to Pay All Wages Due (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order 5-2001); (2) Failure to Provide Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7; IWC Wage Order 5-2001); (3) Failure to Provide Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order 5-2001); (4) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions (Labor Code § 226(a), (e)); (5) Failure to Pay Wages Due at Separation of Employment (Labor Code §§ 201-203); (6) Violation of Business and Professions Code § 17200; and (7) Penalties Pursuant to Labor Code § 2699(f) for Violations of Labor Code§§ 201, 202, 226(a), 226.7, 510, 512, and 1194 and Pursuant to Labor Code § 2699(a) for Violations of Labor Code §§ 226.3 and 558.

The same day, the federal court remanded the case to this court.

The parties have reached a settlement.

Plaintiff now moves for preliminary approval of the settlement. The motion is unopposed.

X. 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.)

III. DISCUSSION

A. Provisions of the Settlement

> This case has been settled on behalf of the following class:
> [a]ll individuals who are or who have been directly employed by Defendant in California at the Monterey Marriott as a non-exempt employee during any portion of the Class Period.

(Declaration of Daniel F. Gaines in Support of Unopposed Motion for Preliminary Approval of Class and Representative Action Settlement ("Gaines Dec."), Ex. B ("Settlement Agreement"), ¶ 1.3.) The "Class Period" is defined as "the time from July 21, 2018 through the date on which the [c]ourt issues

the Preliminary Approval Order, or an earlier date as Defendant may elect pursuant to Paragraph 10.9. (Settlement Agreement, ¶ 1.6.) Paragraph 10.9 of the settlement, entitled "Escalator Clause," provides:

> In connection with Mediation, Defendant estimated that as of May 11, 2023, there were approximately 33,000 weeks worked by Class Members. Mediation took place on July 26, 2023. The Parties agree that if, as of the end date of the pay period covering July 26, 2023, the number of weeks worked by Class Members was 37,950 weeks or more (i.e., if the number of weeks worked by Class Members as of the end date of the pay period covering July 26, 2023 is fifteen percent (15%) or more greater than 33,000 weeks worked), Defendant shall have the option to (i) pay a pro rata increase on the Settlement Amount to compensate for the overage; or (ii) end the Class Period and PAGA Period on the date that is one day before the date the total number of weeks worked by Class Members exceeds 37,950 weeks worked.

(Settlement Agreement, ¶ 10.9.)

The class also includes a subset of PAGA Members, who are defined as "all individuals who are or who have been employed by Defendant in California at the Monterey Marriott as a non-exempt employee during any portion of the PAGA Period." (Settlement Agreement, ¶ 1.17.) The "PAGA Period" is defined as "the time from July 21, 2021 through the date on which the [c]ourt issue the Preliminary Approval Order, or an earlier date as Defendant may elect pursuant to Paragraph 10.9." (Settlement Agreement, ¶ 1.19.)

According to the terms of settlement, Defendant will pay a non-reversionary, gross settlement amount of $290,000. (Settlement Agreement, ¶¶ 1.27.) The gross settlement amount includes attorney fees of $101,500 (35 percent of the gross settlement amount), litigation costs not to exceed $20,000, a service award for the class representative not to exceed $10,000, settlement administration costs not to exceed $10,000, and a PAGA allocation of $25,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Members). (Settlement Agreement, ¶¶ 1.16, 1.18, 1.27, 10.3, 10.4, 10.5, 10.6.)

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. (Settlement Agreement, ¶ 10.2.) Similarly, PAGA Members will receive a pro rata share of the 25 percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period. (Settlement Agreement, ¶¶ 1.12, 1.18, 10.4.)

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the California State Controller's Office in accordance with California Unclaimed Property Law. (Settlement Agreement, ¶ 10.2.)

The parties' proposal to send funds from uncashed checks issued to class members 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." Plaintiff is directed to provide a new *cy pres* recipient in compliance with Code of Civil Procedure section 384 prior to the continued hearing date.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from claims that were asserted, or could have been asserted, in the operative SAC based on the facts alleged in the SAC. (Settlement Agreement, ¶ 6.1.) PAGA Members agree to release Defendant, and related persons and entities, from PAGA claims seeking civil penalties that were asserted, or could have been asserted, in the operative SAC based on the facts alleged in the SAC . (Settlement Agreement, ¶ 6.4.) Plaintiff also agrees to a general release of claims. (Settlement Agreement, ¶ 6.2.)

B. Fairness of the Settlement

Plaintiff asserts that the settlement is fair, reasonable, and adequate. Plaintiff indicates that the settlement resolves claims on behalf of approximately 400 class members. (Gaines Dec., ¶¶ 26-27.) Prior to mediation, Plaintiff obtained informal discovery including a 25 percent data sample. (*Id.* at ¶ 11.) Plaintiff's counsel reviewed a representative sampling and engaged an expert to create a damages analysis. (*Id.* at ¶¶ 11-16.) The parties participated in private mediation with the Hon. Thierry Colaw (Ret.) on July 26, 2023, and reached a settlement. (*Id.* at ¶ 12.)

Upon review of the declaration from Plaintiff's counsel, it appears that Defendant's maximum potential exposure for the claims is $7,939,594. (Gaines Dec., ¶¶ 13-25.) Plaintiff's counsel provides a breakdown of this amount by claim. Plaintiff's counsel assigns no value to

the first cause of action, which alleges that Defendant failed to properly compute all non-base hourly wages earned by putative class members into their regular rate of pay. (*Id.* at ¶¶ 17-18.) Plaintiff's counsel states that Plaintiff's expert concluded there was minimal, if any, underpayment of wages based on a miscalculation of the regular rate of pay and, therefore, Plaintiff was unlikely that recovery could be obtained on a group-wide basis and beyond nominal amounts per person. (*Id.* at ¶ 18.) With respect to the second cause of action, Plaintiff's counsel states that if Plaintiff could prove a 50 percent violation rate, Plaintiff could recover rest period damages of up to $2,247,000 and PAGA penalties up to $1,066,000. (*Id.* at ¶ 19.) Plaintiff's counsel estimates that the third cause of action for meal period violations would result in damages in the amount of $293,736 and civil penalties in the amount of $66,990. (*Id.* at ¶ 20.) With respect to the fourth cause of action, Plaintiff's counsel calculates the damages for the wage statement claim to be $917,950 and the civil penalties to be $2,018,600. (*Id.* at ¶ 21.) Plaintiff's counsel also concludes that the statutory penalties for the fifth cause of action are $719,508 and the civil penalties are $9,900. (*Id.* at ¶ 22.) Plaintiff's counsel does not provide any estimate for the value of the sixth cause of action, i.e., the UCL claim.

The settlement represents approximately 3.6 percent of the maximum potential value of Plaintiff's claims. The proposed settlement amount is below the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D.Ca|. 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].)

As a preliminary matter, the definitions of the class and PAGA Members are unreasonable because, as drafted, there is no clear end date for the Class Period and PAGA Period. Rather, as currently drafted, the Class Period and PAGA Period continue "through the date on which the [c]ourt issues the Preliminary Approval Order, or an earlier date as Defendant may elect pursuant to Paragraph 10.9. (Settlement Agreement, ¶¶ 1.6, 1.19.) Paragraph 10.9 is the escalator clause in the settlement agreement and provides Defendant the option to either increase the settlement amount or change the Class Period or PAGA Period end date depending upon the number of workweeks worked as of the end date of the pay period

covering July 26, 2023. Consequently, at this point in time, there is no clear end date for the Class Period and PAGA Period. Moreover, it is possible that some of the class members who would initially receive notice might no longer be included in the settlement if Defendant elects an end date prior to the date on which the court issues the preliminary approval order. This court, however, will not give preliminary approval to a settlement that results in class members being told they are in the class, but later being told they are not in the class. Thus, Defendant will have to either rely on or take another look at its workweek estimate as of July 26, 2023 (i.e., the date of mediation), select a definite end date for the Class Period and PAGA Period, or select the increased payment option. If the parties want to preserve the option calling for a reduction of the Class Period and PAGA Period, rather than just an increase in the settlement amount, they must determine if the escalator clause applies before sending out the class notice, and have the class notice include the adjusted end date, such that it is not sent to non-participants.

Furthermore, the court has concerns regarding whether Plaintiff's discount of her claims is fair and reasonable. First, Plaintiff does not explain what, if any, informal discovery she obtained from Defendant other than a random 25 percent sampling of certain data. Plaintiff does not describe the specific time and/or payroll data that was provided by Defendant. Additionally, Plaintiff does not reveal whether she reviewed any other information (such as Defendant's policies and procedures, employee files, handbooks) or conducted interviews with potential witnesses. Next, Plaintiff does not provide any estimate of the average payment to be received by class members and PAGA Members. Furthermore, with respect to the second cause of action, it is unclear why Plaintiff's analysis is based on a 50 percent or a violation rate (i.e., whether Plaintiff's investigation and discovery revealed an actual violation rate of 50 percent). Furthermore, no analysis is provided with respect to the sixth cause of action. Lastly, it is unclear whether Plaintiff's valuation of the PAGA claim includes stacking penalties and whether the valuation is based on initial or subsequent violations.

Prior to the continued hearing, Plaintiff shall submit a supplemental declaration explaining in greater detail the informal discovery conducted by Plaintiff, how the maximum

potential value of each claim was calculated, the factual basis for and the rationale behind the discount applied to each of her claims, address whether the class members suffered any harm as a result of the alleged violations, Defendant's knowledge of the alleged wage and hour violations prior to the action being filed, and whether Defendant made good faith attempts to comply with the law.

C. Incentive Award, Fees, and Costs

> Plaintiff requests a service award in the amount of $10,000.
> 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.)

Plaintiff filed a declaration specifically detailing her participation in the action. Plaintiff declares that she spent approximately 25 hours in connection with this action, including discussing the case with class counsel, providing class counsel information about Defendant's policies and procedures, gathering information and documents, and attending mediation. (Declaration of Gabriela Bustamante in Support of Unopposed Motion for Preliminary Approval of Class and Representative Action Settlement, ¶¶ 6-9.)

Moreover, Plaintiff undertook risk by putting her name on the case because it might impact her 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].)

However, the requested incentive award in the amount of $10,000 appears to be excessive. The amount requested is substantially higher than the court typically awards for the amount of Plaintiff time spent in connection with this action (i.e., approximately 25). In light

of the foregoing, the court finds that a service award in the amount of $4,500 is reasonable and it approves the award in that lesser amount.

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.) Plaintiff's counsel will seek attorney fees of $101,500 (35 percent of the gross settlement amount). The court notes that the percentage of the common fund sought by counsel is higher than the 33.33 percent typically awarded in wage and hour cases, and the increase does not appear to be warranted as the recovery achieved for the class is modest and not an unusually good result. Plaintiff's counsel shall submit lodestar information (including hourly rates and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiff's counsel shall also submit evidence of actual costs incurred.

D. Conditional Certification of 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 . . . ." 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.)

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, Inc. v. Superior Court*, *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 Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff states there are approximately 400 class members that can be ascertained from 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. In sum, 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. (Settlement Agreement, Ex. 1.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion.

However, Section 5 must be amended to include details regarding the amount provided for attorney fees, litigation costs, service award, PAGA allocation, and settlement administration costs under the terms of the settlement.

In addition, Section 9 states that to object, a class member must submit an objection in writing. (Settlement Agreement, Ex. 1, ¶ 9 ["[i]f you wish to object, you must do so in writing …"].) The parties must amend this portion of the notice to make clear that class members need not submit a written objection and may object to the settlement by appearing at the final approval hearing.

In addition, Section 14 of the class notice must be amended to include the following language:

> Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). 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 who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

The amended notice shall be provided to the court for approval prior to the continued hearing.

IV. CONCLUSION

Accordingly, the motion for preliminary approval of the class action settlement is CONTINUED to July 3, 2024, at 1:30 p.m. in Department 19. Plaintiff shall file a supplemental declaration with the additional information requested by the court no later than June 17, 2024. No additional filings are permitted.

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Calendar Line 6

Case Name: Nguyen v. Port Plastics, Inc. (PAGA Representative Action) (Lead Case; Consolidated with 22CV394403/Class Action)
Case No.: 22CV394401

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on May 8, 2024, at 9:00 a.m. in Department 19. The court now issues its tentative ruling as follows:

XI. INTRODUCTION

This consolidated action is comprised of two cases: (1) *Kenneth Nguyen v. Port Plastics, Inc.* (Santa Clara County Superior Court, Case No. 22CV394401) ("First Action"); and (2) *Kenneth Nguyen v. Port Plastics, Inc.* (Santa Clara County Superior Court, Case No. 22CV394403) ("Second Action").

The Representative Action Complaint filed in the First Action on February 15, 2022, set forth a single cause of action for Civil Penalties Pursuant to Labor Code §§ 2699, et seq. ("PAGA") based on underlying wage and hour violations.

The Class Action Complaint filed in the Second Action on February 15, 2022, alleged causes of action for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, et seq.; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code § 510; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Reimburse Employees For Required Expenses in Violation of Cal. Lab. Code § 2802; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (9) Discrimination and Retaliation in Violation of FEHA; and (10) Wrongful Termination in Violation of Public Policy. Notably, the ninth and tenth causes of action were individual claims alleged on behalf of plaintiff Kenneth Nguyen ("Plaintiff").

On June 24, 2022, the court entered a Joint Stipulation to Consolidate Two Matters, consolidating the First and Second Actions.

On July 28, 2022, Plaintiff filed a Consolidated Class Action and Representative Complaint, which sets forth causes of action for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code

§§ 17200, et seq.; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code § 510; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Reimburse Employees For Required Expenses in Violation of Cal. Lab. Code § 2802; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (9) Discrimination and Retaliation in Violation of FEHA; (10) Wrongful Termination in Violation of Public Policy; and (11) Violation of the Private Attorneys General Act [Labor Code §§ 2698, et seq.]. The ninth and tenth causes of action are alleged by Plaintiff as an individual.

On November 16, 2022, the court entered a Joint Stipulation and Order to Stay the Case Including All Discovery Deadlines in Preparation for Private Mediation, which stayed the action through the completion of private mediation.

On January 19, 2023, the court entered an Amended Joint Stipulation and Order to Stay the Case Including All Discovery Deadlines in Preparation for Private Mediation, which extended the stay pending completion of the parties' private mediation.

The parties have reached a settlement.

Plaintiff moved for preliminary approval of the settlement. The motion was unopposed.

On March 20, 2024, the court continued the motion for preliminary approval of the settlement to May 8, 2024. In its minute order, the court directed the parties to identify a new *cy pres* recipient in compliance with Code of Civil Procedure section 384. The court also requested Plaintiff file a supplemental declaration addressing how the action was to proceed with respect to his individual claims for discrimination, retaliation, and wrongful termination. Lastly, the court asked the parties to submit an amended class notice with certain modifications.

On April 30, 2024, Plaintiff's counsel filed a supplemental declaration in support of the motion for preliminary approval of the settlement.[1]

[1] In its minute order, the court directed the parties to file the requested supplemental materials no later than April 24, 2024. The supplemental declaration from Plaintiff's counsel was filed six days late. Plaintiff's counsel is admonished to comply with all deadlines set by the court going forward.

XII. 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.)

III. DISCUSSION

B. Provisions of the Settlement

The proposed settlement provides that this consolidated action has been settled on behalf of the following class:

> all individuals who worked are employed by or previously were employed by Defendant Port Plastics, Inc. [("Defendant")] in California who were classified as non-

> exempt and/or hourly paid employees and who worked at any time during the Class Period.

(Declaration of Kyle Nordrehaug in Support of Motion for Preliminary Approval of Class Settlement ("Nordrehaug Dec."), Ex. 1 ("Settlement Agreement"), ¶ 1.5.) The "Class Period" is defined as the period of time from February 15, 2018, through the earlier of the date of an order approving Plaintiff's motion for preliminary approval, or August 1, 2023. (Settlement Agreement, ¶ 1.13.) The class includes a subset of Aggrieved Employees, who are defined as "all individuals who worked for [Defendant] in California who were classified as non-exempt and/or hourly paid employees and who worked at any time during the PAGA Period." (Settlement Agreement, ¶ 1.4.) The "PAGA Period" is defined as the period of time from December 9, 2020, through the earlier of the date of an order approving Plaintiff's motion for preliminary approval, or August 1, 2023. (Settlement Agreement, ¶ 1.31.)

According to the terms of settlement, Defendant will pay a non-reversionary, gross settlement amount of $350,000. (Settlement Agreement, ¶¶ 1.22, 3.1.) The gross settlement amount includes attorney fees of $116,666 (1/3 of the gross settlement amount), litigation costs not to exceed $21,000, a service award for the class representative not to exceed $10,000, settlement administration costs not to exceed $5,500, and a PAGA allocation of $15,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to Aggrieved Employees). (Settlement Agreement, ¶¶ 1.3, 1.7, 1.15, 1.22, 1.24, 1.27, 1.28, 1.34, 3.2.)

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. (Settlement Agreement, ¶¶ 1.23, 1.28, 3.2.) Similarly, Aggrieved Employees will receive a pro rata share of the 25 percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period. (Settlement Agreement, ¶¶ 1.24, 1.34, 3.2.)

The settlement agreement originally provided that checks remaining uncashed more than 120 days after mailing would be void and the funds from those checks would be distributed to the California Controller's Unclaimed Property Fund. (Settlement Agreement, ¶¶ 5.2-5.4.)

Plaintiff's counsel has now submitted a supplemental declaration, stating that the parties amended the settlement agreement and designated Children's Advocacy Institute as the *cy pres* recipient in compliance with Code of Civil Procedure section 384. (Supplemental Declaration of Kyle

Nordrehaug in Support of Motion for Preliminary Approval of Class Settlement ("Supp. Nordrehaug Dec."), ¶ 3 & Ex. 1.) The court approves the *cy pres* recipient.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from "all class claims pled or which reasonably could have been pled based on the factual allegations contained in the Operative Complaint which occurred during the Class Period, expressly excluding Plaintiff's individual claims alleged in the Operative Complaint […]." (Settlement Agreement, ¶¶ 1.38, 1.40, 6.2.) Aggrieved Employees agree to release Defendant, and related persons and entities, from "all PAGA claims pled or which reasonably could have been pled based on the factual allegations contained in the Operative Complaint and Plaintiff's December 9, 2021 Letter to the Labor and Workforce Development Agency which occurred during the PAGA Period." (Settlement Agreement, ¶¶ 1.39, 1.40, 6.3.) Plaintiff also agrees to release Defendant, and related persons and entities, from all claims that were, or reasonably could have been, alleged based on the facts contained in the operative complaint and all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the operative complaint and Plaintiff's PAGA notice. (Settlement Agreement, ¶¶ 1.40, 6.1.) However, Plaintiff's release does not extend to his individual claims for discrimination, retaliation, and wrongful termination. (Settlement Agreement, ¶¶ 1.40, 6.1.)

B. Fairness of the Settlement

Plaintiff asserts that the settlement is fair, reasonable, and adequate. Plaintiff indicates that the settlement resolves claims on behalf of 69 class members, who worked a total of 10,510 workweeks. (Nordrehaug Dec., ¶ 6.) Prior to mediation, the parties engaged in informal discovery. Plaintiff's counsel reviewed payroll and employment data, information concerning the composition of the class, Defendant's wage and hour policies, Plaintiff's employment files, and samples of wage statements provided by Defendant. (*Id.* at ¶¶ 10, 14.) The parties participated in a full-day mediation with Louis Marlin on April 27, 2023, and reached a settlement. (*Id.* at ¶ 12.) The net settlement about is approximately $181,834 and the average estimated payment is $,635.27 for each class member. (*Id.* at ¶ 6.) Plaintiff estimates that Defendant's maximum potential exposure for all claims is between $2,714,742 and $2,826,792. (*Id.* at ¶¶ 6, 23-25, 33.) Plaintiff provides a detailed breakdown of this amount by claim. (*Ibid.*)

The proposed settlement represents approximately 12.3-12.8 percent of the maximum potential value of Plaintiff's claims. Thus, the proposed settlement amount is within general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D.Ca|. 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].)

Overall, the court finds the settlement is fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

Additionally, the supplemental declaration from Plaintiff's counsel adequately addresses the court's concerns regarding how the action is to proceed as to Plaintiff's individual claims. Plaintiff's counsel declares that the parties entered into a confidential individual settlement that resolves Plaintiff's claims for discrimination, retaliation, and wrongful termination, and those claims will be dismissed with prejudice. (Supp. Nordrehaug Dec., ¶ 4.)

C. Incentive Award, Fees, and Costs

> Plaintiff requests a service award in the amount of $10,000.
> 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.)

Plaintiff submits a declaration detailing his participation in the action. Specifically, Plaintiff declares that he spent approximately 30-40 hours in connection with this litigation, including discussing the case with class counsel, providing documents to class counsel, answering questions from class counsel, reviewing documents, and discussing the settlement with class counsel. (Declaration of Kenneth Nguyen in Support of Motion for Preliminary Approval of Class Settlement, ¶¶ 6, 10-12.)

Moreover, Plaintiff undertook risk by putting his name on the 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].)

However, the requested amount of $10,000 is more than the court typically awards for the amount of time Plaintiff spent in connection with this action (i.e., 30-40 hours). In light of the foregoing, the court finds that a service award in the lesser amount of $5,000 is reasonable and it is approved.

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.) Plaintiff's counsel will seek attorney fees of $116,666 (1/3 of the gross settlement amount). Plaintiff's counsel shall submit lodestar information (including hourly rates and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiff's counsel shall also submit evidence of actual costs incurred.

D. Conditional Certification of 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 . . . ." 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.)

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, Inc. v. Superior Court*, *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 Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff states there are approximately 69 class members that can be ascertained from 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. In sum, 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 parties submitted an amended notice that generally complies with the requirements for class notice. (Supp. Nordrehaug Dec., ¶ 7 & Ex. 2.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion.

Additionally, the amended notice makes most of the changes requested by the court in its minute order dated March 20, 2024. However, the second paragraph on page 2 of the class notice remains misleading as it continues to state that class members "have two basic options under the Settlement." This language must be amended to state that class members "have three basic options" to respond to the settlement, as the parties have now appropriately included objecting to the settlement as a third option for class members.

The parties shall submit a second amended class notice to the court for approval prior to mailing notice to the class.

IV. CONCLUSION

Accordingly, the motion for preliminary approval of the class action settlement is GRANTED subject to approval of the second amended class notice.

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

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Calendar Line 7

Case Name: Evans v. Dolgen California, LLC (Class Action/PAGA)
Case No.: 18CV335538

Unopposed application for admission pro hac vice is GRANTED. Court will sign proposed order. No appearance necessary.

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Calendar Line 8

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