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.)

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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- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
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LAW AND MOTION TENTATIVE RULINGS
DATE: APRIL 25, 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	21CV385899	Quijada v. Extra Space Management, Inc. (PAGA)	See Line 1 for tentative ruling.
LINE 2	20CV367408	Saldivar v. Stanford Federal Credit Union (Class Action)	See Line 2 for tentative ruling.
LINE 3	21CV386229	Estrada v. Monterey Mushrooms, Inc.	See Line 3 for tentative ruling.
LINE 4	21CV391403	Gillogly v. Monterey Mushrooms, Inc.	See Line 3 for tentative ruling.
LINE 5	23CV417807	Cadence Design Systems, Inc. v. TCL Industrial Holdings, Co., Ltd., et al.	The unopposed motion to appear as counsel pro hac vice is GRANTED. The Court will sign the proposed order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	21CV375422	Temujin Labs Inc. v. Fu	See Line 6 for tentative ruling.
LINE 7	21CV375422	Temujin Labs Inc. v. Fu	See Line 6 for tentative ruling.
LINE 8	20CV372622	Temujin Labs Inc. v. Abittan, et al.	See Line 6 for tentative ruling.
LINE 9	20CV372622	Temujin Labs Inc. v. Abittan, et al.	See Line 6 for tentative ruling.
LINE 10	19CV352557	Csupo, et al. v. Alphabet, Inc. (Class Action)	See Line 10 for tentative ruling.
LINE 11	19CV352557	Csupo, et al. v. Alphabet, Inc. (Class Action)	The unopposed motions to appear as counsel pro hac vice are GRANTED. The Court will sign the proposed orders.

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LAW AND MOTION TENTATIVE RULINGS

LINE 12	23CV414401	Lazard v. County of Santa Clara (Class Action/PAGA)	See Line 12 for tentative ruling.
LINE 13	23CV413573	Rocke v. Pink Chicku LLC (Class Action/PAGA)	See Line 13 for tentative ruling.

Calendar Line 1

Case Name: *Rachel Quijada v. Extra Space Management, Inc.*
Case Nos.: 21CV385899

This is a representative action under the Private Attorneys General Act ("PAGA"). Plaintiffs Rachel Quijada and Sasan Azar (collectively, "Plaintiffs") alleged that Defendant Extra Space Management, Inc., who provides contracting services, failed to pay overtime and minimum wages, failed to provide compliant meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

Before the Court is Plaintiffs' motion for approval of PAGA settlement, which is unopposed. As discussed below, the Court GRANTS Plaintiffs' motion.

I. BACKGROUND

According to the allegations of the operative First Amended Complaint ("FAC"), Ms. Quijada was employed by Defendant from February 22, 2021 to April 19, 2021 as an Assistant Manager, a non-exempt, hourly position, while Mr. Azar was employed in the same role from January or February of 2020 to approximately February 18, 2021. Plaintiffs allege that, due to lack of staffing, Defendant failed in its affirmative obligation to ensure that Aggrieved Employees had the opportunity to take and were provided with off-duty 10-minute rest periods and a thirty minute uninterrupted duty-free meal period within five hours of the beginning of their shift. They further allege that Defendant underpaid overtime and meal/rest period premium compensation to Aggrieved Employees. For the purpose of calculating overtime and premium compensation, Defendant failed to include non-discretionary incentive pay, such as "Gift/Awards" and "Monthly Field Incentives," in the calculation of the regular rate. The base rate did not take into account additional items of nondiscretionary remuneration, thus resulting in the underpayment of overtime and meal/rest period premium compensation.

On August 17, 2021, Ms. Quijada filed a Representative Action Complaint (the "*Quijada* Action") in this court asserting single claim for penalties under PAGA. On October 17, 2022, pursuant to an agreement to arbitrate, the Court compelled arbitration of the individual component of Ms. Quijada's PAGA claim. The remaining representative PAGA claim was stayed.

On September 28, 2021, Mr. Azar filed a Representative Action Complaint (the "*Azar* Action") in Orange County Superior Court asserting a single claim for penalties under PAGA, and then filed an amended pleading after erroneously naming Defendant as "Extra Space Storage." On December 2, 2022, the court granted Defendant's motion to compel arbitration as to Mr. Azar's individual PAGA claim, and stayed the representative PAGA claim pending completion of that arbitration.

As a condition of the settlement reached between the parties that is now before the Court, the parties agreed to amendment of the Representative Action in the *Quijada* Action. On November 6, 2023, Plaintiffs filed the FAC, which adds Mr. Azar as a named plaintiff. Accordingly, Mr. Azar filed a request for dismissal of his complaint in Orange County.

II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.) 75 percent of any penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended "to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id.* at p. 383.) A judgment in a PAGA action binds all those,

including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

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.) "[C]lass certification is not required" in this context as in a class action. (*Haralson v. U.S. Aviation Servs. Corp*. (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 (*Haralson*).)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77 (*Moniz*).) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77; see also *Haralson, supra,* 383 F. Supp. 3d at p. 971 ["when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

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. PLAINTIFF'S INVESTIGATION, SETTLEMENT PROCESS, AND THE PARTIES' AGREEMENT

Following the submission of Ms. Quijada's individual claim to arbitration, her counsel and Defendant met and conferred to discuss the factual allegations and merits of their respective claims and defenses. In lieu of formal discovery, Defendant produced to Plaintiffs: a ten percent sampling of time and payroll records for employees during the period of June 13, 2020 and March 26, 2023; data points regarding the total number of pay periods worked by non-exempt employees between June 13, 2020 and March 26, 2023 in which a shift of 3.5 hours or more was worked; data points regarding the total number of pay periods worked by non-exempt employees between June 13, 2020 and March 26, 2023 in which a shift of 5 hours or more was worked; the total number of non-exempt employees employed by Defendant at any time between June 13, 2020 and March 26, 2023; the relevant policies, including those pertaining to meal and rest periods, the payment of meal/rest period premium compensation, the calculation of overtime wages, and mileage and travel time reimbursement; and the arbitration agreements signed by employees. Plaintiffs' counsel retained Berger Consulting Group to analyze the foregoing time and payroll records and assist Plaintiffs in preparing a penalties analysis as to the value of the PAGA claims. Additionally, Plaintiffs' counsel investigated the applicable law as applied to the facts regarding Plaintiffs' claims and potential defenses thereto.

In April 2023, Plaintiffs and Defendant agreed to participate in a global mediation of the *Quijada* and *Azar* Actions and, on August 3, 2023, engaged in a full-day session with Steven R. Denton. The parties reached a global settlement in principle and thereafter negotiated the specific terms of the agreement that is now before the Court.

Pursuant to the parties' agreement, Defendant will pay a non-reversionary gross settlement amount of $350,000, from which $116,655 in attorney's fees (one-third of the gross settlement amount), $13,624.86 in litigation costs, and $9,600 in administration costs will be paid. The resulting net settlement of $190,120.14 will be distributed 75 percent ($142,590.10) to the LWDA and 25 percent ($47,530.04) to "Aggrieved Employees," who are defined as "all current and former hourly, non-[exempt] employees who work or who have worked for [Defendant] in the State of California" at any time between June 13, 2020 and July 19, 2023, on a pro rata basis based on the number of pay periods worked by each employee during the foregoing period. It is estimated that there are approximately 38,285 pay periods within the relevant period; however, in the event that the number of pay periods at issue exceeds this amount by more than 10% (i.e., 42,114) as of the date that the Court enters its order approving the settlement, Defendant may either (1) increase the gross settlement amount on a pro rata basis according to the number of additional compensable pay periods over 42,114 pay periods; or (2) elect to close the settlement period before the date the pay periods exceed the 42,114 pay period limit.

In exchange for settlement, Aggrieved Employees will release:

> All claims for penalties under the California Private Attorneys General Act, including interest, costs and attorneys' fees related thereto, predicated upon Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194 and 2802 and any other Labor Code sections and/or duplicative or similar provisions arising under the Wage Orders of the California Industrial Welfare Commission that were alleged or that could have been alleged based on the factual allegations in the Quijada Complaint and/or PAGA Letters. The Released Claims include all claims for penalties recoverable under PAGA concerning: failure to pay minimum wages, straight time compensation and overtime compensation; failure to pay for all hours worked; the calculation of the regular rate of pay; failure to pay overtime compensation at the regular rate of pay; failure to provide meal and/or rest periods; failure to pay proper meal or rest period penalties; failure to provide accurate itemized wage statements; failure to timely pay wages during employment; failure to timely pay wages at separation of employment; payment for all hours worked; waiting time penalties; and off-the-clock work, and any other PAGA penalty claims whatsoever alleged in the Quijada Complaint and/or PAGA Letters, whether known or unknown, during the Settlement Period.

The release is appropriately tailored to the allegations at issue, and does not release any claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra,* 72 Cal.App.5th at p. 82 [release of "all known and unknown claims under PAGA … that were or could have been pled based on the allegations of the Complaint" was appropriately approved].) Nor does it affect a waiver of claims by Aggrieved Employees (excluding Plaintiffs) against the released parties for any individual wage and hour claims.

IV. DISCUSSION

A. Potential Verdict Value

Based on the data provided by Defendant, Plaintiff and its retained expert estimated the maximum exposure of the PAGA claims to be $3,828,500 without "stacking" and $8,756,550 with "stacking." Several factors reduced these amounts, including but not limited to the following: the potential that the Court would award less penalties based on the employer lacking knowledge of any violations; the lack of willfulness on the part of Defendant; the risk that Plaintiffs may recover nothing; manageability issues; issues of individualized proof; and Defendant's denial on the merits and related defenses (e.g., employee choice in taking breaks or working off-the-clock). In consideration of these facts, the history of various similar PAGA decisions that significantly reduce maximum penalties amounts (e.g., 90% reduction) and the risk that Plaintiff may recover nothing, the Court finds that the proposed settlement is fair to those affected and is genuine, meaningful, and reasonable in light of the statute's purposes.

B. Attorney's Fees

While the PAGA statute does not expressly require judicial review of claimed attorney fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties associated with PAGA settlements without also considering attorney fees. The Court thus finds that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is consistent with the observation of many courts that PAGA claims are analogous to "*qui tam*" suits like those under the federal False Claims Act: when reviewing settlements of *qui tam* claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v. Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be considered by the trial court as part of its review of the "entire settlement arrangement"].)

As set of forth above, Plaintiffs seek a fee award of $116,655, one-third of the gross settlement, which is not an uncommon contingency fee allocation in a wage and hour/PAGA action. Plaintiffs also submit a lodestar figure of $184,000 based on 238.50 hours spent on this case by counsel billing at rates of $750 to $800 per hour. This amount exceeds the fees requested by Plaintiffs here, resulting in a negative multiplier. Accordingly, the lodestar cross check supports the percentage fee actually requested and this amount is approved. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1 Cal.5th 480, 488, 503-504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

C. Other Costs and Awards

Counsel's request for litigation costs of $13,624.86 appears reasonable based on the supporting declarations provided which establishe that counsel actually incurred costs in this amount and is approved. The Court also approves settlement costs of $9,600. Both Plaintiffs request a service award in the amount of $10,000 for the time and effort expended by each in bringing these actions, which Defendant does not oppose. These requests are supported by declarations submitted by both Plaintiffs and are approved.

V. ADMINISTRATION PROCESS

The parties have selected Phoenix Settlement Administrators ("Phoenix") as the administrator of the settlement. The parties have agreed that no later than 30 days following the "Effective Date,"[1] Defendant will provide Phoenix with a list of all Aggrieved Employees with the relevant identifying information (including the last known home address) and the number of pay periods worked. Phoenix will cross-reference all addresses provided with the U.S. Postal Service NCOA databased to obtain current address information. Within 15 days following receipt of the gross settlement amount from Defendant (the deposit is required to take place no later than 30 days following the Effective Date), Phoenix will pay the various amounts approved by the Court to Plaintiff's counsel, the LWDA, and each Aggrieved Employee. Each Aggrieved Employee will be sent a check in the appropriate amount with undeliverable amounts returned to Defendant. Any checks that remain uncashed after 180 days will be transmitted to the State of California Unclaimed Property Fund in the name of the Aggrieved Employee whose check went uncashed. These administrative procedures are appropriate and are approved.

VI. ORDER AND JUDGMENT

Plaintiffs' motion for approval of the parties' PAGA settlement is GRANTED. "Aggrieved Employees" are defined as: all current and former hourly, non-[exempt] employees who work or who have worked for [Defendant] in the State of California at any time between June 13, 2020 and July 19, 2023.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiffs and the PAGA members shall take from the PAGA claim in their FAC only the relief set forth in the parties' settlement agreement and this order and judgment. The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **December 19, 2024 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, Plaintiffs' 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 the State's Unclaimed Property Fund; 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.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

[1] This phrase is defined as the last of the following to occur: (a) the 61st day after service of notice of entry of the order granting approval of the settlement; or (b) if an appeal, review or writ is sought from the order, the day after the order is affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further judicial review.

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.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 2

Case Name: *Saldivar v. Stanford Federal Credit Union*
Case No.: 20CV367408

This is a putative class action against defendant Stanford Federal Credit Union ("Stanford") alleging various claims for wrongfully charging Plaintiffs Claudine Saldivar and Omar Montes (collectively "Plaintiffs,") and class members fees relating to their checking accounts.

Now before the Court is Plaintiffs' motion to compel further responses to requests for production of documents ("RFP"), Set Two, No. 1. Specifically, Plaintiffs request the production of sample class transaction data relevant to Plaintiffs' "Authorize Positive, Post Negative"[1] (the "APPN Data") claim against Stanford. (Plaintiffs' Motion to Compel Further Reponses ("MTC,") p. 5.) Plaintiffs also seek monetary sanctions. Stanford has opposed the motion and Plaintiffs have filed a reply.

For the reasons discussed below, the Court DENIES Plaintiffs' motion to compel. Consequently, the Court will not impose monetary sanctions against Stanford and its counsel. Given that Stanford's failure to provide Plaintiffs' requested APPN data was justified, the Court sustains its undue burden objection.

I. PLAINTIFFS' MOTION TO COMPEL

Plaintiffs move to compel further responses to RFP, set two, No 1.

Stanford opposes Plaintiff's motion on various grounds: 1) Stanford does not charge APPN fees, and, as such, the APPN Data requested by Plaintiffs does not exist, 2) Stanford has demonstrated it does not charge APPN fees, and 3) it would be unduly burdensome to compile data demonstrating an absence of APPN Data or charges.

A. Legal Standard

A party propounding a request for production may move for an order compelling a further response if it deems that a statement of compliance is incomplete, a representation of inability to comply is inadequate, or an objection is without merit. (Code Civ. Proc., § 2031.310, subd. (a).) The motion must set forth "specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310, subd. (b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98 (*Kirkland*).) Good cause is established simply by a fact-specific showing of relevance. (*Kirkland, supra*, 95 Cal.App.4th at p. 98.) If good cause is shown, the burden shifts to the responding party to justify any objections. (*Ibid*.)

[1] Financial institutions, similar to Stanford, use an "approve positive – post negative" method of assessing fees against consumer accounts. (First Amended Complaint ("FAC,") ¶ 21.) According to the FAC, once a debit card transaction is authorized on an account with positive funds, Stanford, or its ilk, immediately places a hold on the purchase amount from the consumer's account, with said account immediately reflecting a reduced "available balance," even though the charge has not yet posted to the account. (*Ibid.*)

C. RFP, Set Two, No. 1 – APPN Data

RFP, Set Two, No. 1 seeks "Class Data in its original form for all of your members (including Plaintiff) who incurred at least one OD[2] Fee or NSF[3] Fee during the Class Period, including but not limited to:"

(a) the date and time at which the transaction was pre-authorized;
(b) the date and time at which the transaction settled or posted to the account;
(c) the amount of the transaction;
(d) transaction type;
(e) any description of the transaction;
(f) the Posting Order Number for the transaction;
(g) whether the transaction is for a recurring or non-recurring transaction;
(h) the transaction code;
(i) the Balance at the time the transaction was pre-authorized and when it posted;
(j) the Available Balance at the time the transaction was pre-authorized and when it posted;
(k) the Collected Balance at the time the transaction was pre-authorized and when it posted;
(l) any and all credit holds and/or deposit holds at the time the transaction was pre-authorized and when it posted;
(m) any and all debit holds at the time the transaction was pre-authorized and when it posted;
(n) the Transaction Code Table for the transaction;
(o) an identifier for the individual who entered the transaction; and
(p) a dummy account number such that each transaction can be correlated with a particular account while retaining the accountholder's anonymity.

(See Plaintiffs' Separate Statement in Support of Motion to Compel ("Sep. Stat."), pp. 3-4.)

In its initial response, Stanford objected on the following grounds: 1) Plaintiffs' request seeks impermissible discovery related to "pending and potential future motions to compel arbitration," 2) the request is "compound, overbroad, burdensome, and oppressive," 3) the request is premature as class certification has not occurred, 4) the request calls for the disclosure of confidential information of third parties, and 5) the request seeks disclosure of Stanford's financial information and trade secrets. (Sep. Stat., p. 4:4-12.) In its supplemental response, Stanford alleged it had already produced "all of the account data" for all credit union members for four sample months[4]. (Sep. Stat., p. 4:13-24.) It further argued that RFP, Set Two,

[2] "Overdraft"

[3] "Non-sufficient funds"

[4] On August 31, 2023, Parties met and conferred via Zoom, and Plaintiffs' counsel agreed to limit the request for APPN Data to four months of account data during the class period, namely, August 2016, March 2018, February 2019, and May 2021, and to Plaintiffs'

No. 1 requires Stanford to compile the account data from various sources and from information "that does not exist." (*Ibid.*)

i. Good Cause

Plaintiffs contend the APPN Data is relevant and discoverable for the determination of whether a given overdraft fee qualifies as APPN under Plaintiffs' liability theory. Plaintiffs request the following data fields, in "raw data" format: 1) authorization date and time, and 2) available balance at the time of authorization. (MTC, p. 9:11-22.) Plaintiffs contend the requested data fields can be used to identify APPN fees because they indicate whether any given debit card transaction was authorized by the customer when the "available balance" was sufficient to cover the transaction. (*Ibid.*) Plaintiffs further argue that Stanford's denial of APPN fee assessments, puts the requested data squarely at issue, and the data will confirm whether overdraft fees were assessed. (MTC, p. 9:23-28.)

Discovery is allowed for any matters not privileged that are either relevant to the subject matter involved in the action or reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc., § 2017.010.) Information is relevant to the subject matter if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating settlement. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.) "Admissibility is *not* the test and information, unless privileged, is discoverable if it might reasonably *lead* to admissible evidence." (*Ibid*., original in italics.) Courts liberally construe the relevance standard, and any doubts as to whether a request seeks information within the scope of discovery are generally resolved in favor of discovery. (*Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790.) As discussed above, good cause is established simply by a fact-specific showing of relevance. (*Kirkland, supra*, 95 Cal.App.4th at p. 98; see also Code Civ. Proc., § 2031.310, subd. (a) [The requesting party must set forth specific facts, not mere conclusions, "showing good cause justifying the discovery sought by the demand"].)

Plaintiffs persuasively demonstrate good cause for the information sought because it directly relates to their claim that Stanford improperly assessed both overdraft and APPN fees. Stanford does not contest the relevancy and good cause issue in opposition. Because Plaintiffs have demonstrated good cause, the Court will evaluate the adequacy of the response and consider Stanford's objections.

i. Stanford's Objections to RFP, Set Two, No. 1

a. Inability to Comply

Plaintiffs argue Stanford's objections in the separate statement lack merit because it fails to justify the objections with a reasoned explanation pursuant to Code of Civil Procedure section 2031.230. (MTC, p. 10:14-28.)

A party responding to an inspection demand must respond by stating one of the following: (1) an agreement to comply; (2) a representation of inability to comply; or (3)

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debit card transactions. (MTC, p. 6:3-10; Declaration of Tyler Dosaj in Support of MTC ("Dosaj Decl.,") ¶¶ 2, 9.)

objections. (Code Civ. Proc., § 2031.210, subd. (a).) "A representation of inability to comply with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." (Code Civ. Proc., § 2031.230.)

Plaintiffs argue that Stanford's response "does none of these things" listed in the above-mentioned statute pertaining to "statement of an inability to comply." (MTC, p. 10: 14-28.) Plaintiffs further contend that Stanford's inadequate reasoning prevents them from assessing the costs Stanford would incur in producing APPN data or to evaluate Stanford's contention. (*Ibid.*)

Stanford maintains that it does not charge APPN fees, and consequently, the data on these fees do not exist. (See Opp., pp. 5-10; see also Declaration of Paul Jockisch in Support of Opp. to Plaintiffs' MTC ("Jockisch Decl.,") ¶ 8).) Specifically, Stanford contends it has never and does not now charge any fee "for a negative account balance" on "nonrecurring signature-based transactions." (Opp., p. 6: 1-5.) Instead, Stanford claims it only charges "overdraft fees" on "recurring" debit card transactions when there are insufficient funds "at the exact same time the merchant or its financial institution requests payment" and the consumer elects to opt into overdraft protection. (*Ibid.*)

Stanford argues its core data processing system was not set up to collect, and never has collected APPN data. Thus, Stanford asserts that it cannot comply with Plaintiffs' request for "raw data" because Stanford does not have "a query or sub-program that allows it to pull such data" for all of the credit union's customers for even one day, let alone a month, or more. (Opp., p. 6:18-25; Jockisch Decl., ¶¶ 10-11.) Instead, Stanford contends its personnel can access data related to available balance and authorization date and time only on a transaction-by-transaction basis. (Opp., p. 6:26-27.) Stanford contends that it has already provided Plaintiffs with a sample hypothetical report that includes everything that a financial institution could charge for nonrecurring signature-based debit card transactions. (Opp., p. 7; Jockisch Decl., ¶ 12.)

Plaintiffs maintain that Stanford's "admissions" in its opposition that APPN data exists and can be produced directly contradict its objections that the data does not exist. (Plaintiff's Reply in Support of MTC ("Reply,") p. 3:7-16; Opp., pp. 6:23, 8:13-18.) Plaintiffs specifically highlight Stanford's assertion that its personnel "are able to access data related to available balance and authorization date and time only one particular transaction at a time." (*Ibid.*) Plaintiffs further contend that Stanford's software vendor, FiServ, could create a query and Stanford employees could collect individual screenshots. (Reply, p. 3:7-16; Opp., pp. 6:23, 8:13-18.)

Stanford contends it has already explained to Plaintiffs' counsel on multiple occasions that any debit card transaction-related fees did not include data for APPN-type fees because it does not qualify as such "under Plaintiffs' definition." (Opp., p. 6:12-17; see also Jockisch Decl., ¶¶ 4-5, 9.) Stanford also argues that a "non-recurring signature-based debit card

transaction," is not a "point of sale" transaction as Plaintiffs term it, but rather, a one-time transaction at the time of sale. (Opp. to Sep. Stat., p. 9:8-22.) Plaintiffs argue that Stanford attempts "to deliberately misinterpret Plaintiffs' discovery request," and is engaging in "gamesmanship." (Reply, pp. 5:26-28-6:1-7.) Specifically, Plaintiffs assert Stanford's attempt to characterize the debit transactions, in question, as "recurring," is pretextual. (Reply, p. 6:19-26.)

This is not a case where Stanford is unable to comply and the Court is not persuaded by Stanford's objection on that ground. Stanford concedes that it has two, albeit challenging, options to compile Plaintiffs' requested data, namely by requesting that its software vendor create a query for the data and/or asking its employees to collect screen shots showing the data. (Jockisch Decl., ¶ 17.) Consequently, the Court will determine whether Plaintiff's RFP, Set Two, No. 1 is unduly burdensome.

b. Unduly Burdensome

Stanford argues it would be unduly burdensome for it to compile data showing the absence of APPN charges through the capture and production of individual screenshots for each transaction and for every consumer, even for a four-month period. (Opp., p. 7:24-28; Jockisch Decl., ¶ 14.) "A trial court 'shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.' [Citation.] However, as with other objections in response to interrogatories, the party opposing discovery has an obligation to support the basis for this determination." (*Willliams v. Super. Ct.* (2017) 3 Cal.5th 531, 549 (*Williams*).) Indeed, because "some burden is inherent in all demands for discovery," a party asserting that responding to discovery will be unduly burdensome must make a particularized showing of facts demonstrating hardship, including evidence showing the quantum of work required to respond. (*West Pico Furniture Co. v. Super. Ct.* (1961) 56 Cal.2d 407, 417-418.)

Stanford claims that it would incur costs likely over $100,000 for FiServ to create a query to provide information regarding available balance or date and time authorization. (Opp., p. 8:13-18; Jockisch Decl., ¶ 17.) Alternatively, Stanford claims it could possibly gather data by having its employees "manually pull up and screen capture an individual screenshot for each and every transaction made by every [Stanford] member incurring an overdraft fee within that four-month sample period." (Opp., p. 8:19-28; Jockisch Decl., ¶ 18.) However, Stanford contends creating "this collection of screenshots" would likely require "months of staff hours and generate hundreds of thousands if not millions of separate screenshots," and each screenshot would need to be redacted to protect consumer privacy rights. (*Ibid.*)

Plaintiffs cite *Vasquez v. California School of Culinary Arts, Inc.* (2014) 230 Cal.App.4th 35, 42 (*Vasquez*) and *Gonzales v. Google, Inc.* (N.D.Cal. 2006) 234 F.R.D. 674, 683 (*Gonzales*) for the proposition that the fact that the responding party may have to manipulate relevant data is not sufficient grounds for refusing to produce said data. (MTC, p. 12: 7-25.) However, as Stanford correctly notes, *Vasquez* and *Gonzales* are distinguishable given that the defendants already maintained, retained, or stored, the requested information in their database, in one form, and, they simply had to produce the data in a different form than how it was stored. (Opp., p. 9:21-28; *Gonzales*, *supra*, at p. 683.) That is

not the case at bar. Here, Stanford represents that it does not actually "maintain the data that Plaintiffs seeks," and it must compile and collect data at great expense. (Opp., p. 10:1-6.)

Stanford argues Plaintiffs unreasonably seek to require it to "prove a negative by demonstrating that the fees it assessed on recurring debit card transactions" did not fall within Plaintiffs' definition of an APPN fee. (Opp., pp. 7:24-28-8:1-4; Jockisch Decl., ¶¶ 14-15.) Stanford claims that requiring it to perform the monumental tasks outlined above would still not provide Plaintiffs with the "time and available balance" data for APPN fees because Stanford has never charged APPN fees. (Opp., p. 9:1-8.) In support, Stanford relies on two, nonbinding, federal district court cases and one, nonbinding, federal court of appeals case[5]. (Opp., p. 13:7-15.) Although the Court is not typically bound by federal court decisions, (see *Hargrove v. Legacy Healthcare, Inc.* (2022) 80 Cal.App.5th 782, 789, fn. 4), it does find the cited authority instructive on the "unduly burdensome" inquiry. The cases cited by Stanford indicate that courts should be hesitant to force a party to create and produce new evidence for the benefit of its adversary. (See, e.g., *Paramount Pictures Corp. v. Replay TV*, (C.D. Cal May 30, 2002, CV 01-9358 (FMC) (Ex)) [2002 U.S. Dist. LEXIS 28126, 2002 WL 32151632, at *2-3] [company not required to produce customer-use data that had never been collected].) Here, the requested data, in question, may not be entirely "missing," but, it appears unduly onerous to produce as Stanford must create new queries to pull up such data, not typically stored.

Plaintiffs argue Stanford's discovery response fails to mention "the burden of producing the APPN Data at all" and that it cannot now "insert" an objection based on burden after the motion to compel has been filed. (Reply, p. 4:7-13.) Contrary to Plaintiffs' conclusion, Stanford sufficiently alleged, in its discovery response, an objection to producing APPN Data based on undue burden. (Sep. Stat., p. 4:4-24.) Stanford's argument that producing this data would be burdensome is supported by a detailed explanation and evidence, in the form of declarations made by Stanford employees. (Opp., pp. 8-10; Jockisch Decl., ¶¶ 14-19; see also *Williams, supra*, 3 Cal.5th at pp. 549-550 [an objection based upon burden must be supported by evidence showing the quantum of work required].)

Plaintiffs also argue that Stanford's objections should be overruled given its speculative or exaggerated cost estimate to produce the requested data. (Reply, p. 5:1-13; see also Declaration of Arthur Olsen in Support of Plaintiffs' Reply ("Reply Olsen Decl.,") ¶ 5.) Plaintiffs contend the estimated cost is improperly based on Stanford's supposed "past experience" with FiServ rather than from an estimate or quote from FiServ. (Reply, p. 5:19-25; Reply Olsen Decl., ¶ 7.) Further, it asserts that the number of necessary screenshots would not be in the hundreds of thousands or millions as asserted by Stanford because the sampling of data produced included only four to five thousand fees per sample month. (Reply, p. 5:14-18.) The Court has considered these points. However, the Court has not been informed that Plaintiffs are willing to pay or contribute to the cost of creating a search query and the Court has no reason to doubt either Stanford's cost estimation based on its past dealings with FiServ, or the fact that collecting and compiling data short of an automated query would represent a major effort and expense, even if the number of screenshots is in the tens of thousands. Given

[5] These are *Paramount Pictures Corp. v. Replay TV* (C.D.Cal. May 30, 2002, CV No. 01-9358-FMC (Ex)) [2002 U.S.Dist. Lexis 28126], *Butler v. Portland General Electric Co.* (D.Or. Jan. 24, 1990, CV No. 88-455-FR) [1990 U.S.Dist. Lexis 1407], and *CFTC v. White Pine Trust Corp.* (9th Cir. 2009) 574 F.3d 1219.

that Plaintiffs have already been provided the raw data from Stanford's data processing system, the burden and expense of the exercise contemplated by this particular discovery request clearly outweighs the likelihood that the information sought will lead to the discovery of any additional admissible evidence.

Although good cause supports Plaintiffs' request for discovery about their APPN claims, or alternatively, their request for data regarding account balances, Stanford's undue burden objection is meritorious and is SUSTAINED. Stanford has adequately demonstrated it cannot collect and produce the requested information through *simple* database queries. The process of creating data queries, from scratch, or the compilation of of thousands of screenshots would be time-consuming and burdensome. (See *Butler v. Portland General Electric Co.* (D.Or. Jan. 24, 1990, CV No. 88-455-FR at *2) [1990 U.S.Dist. Lexis 1407]; see also *CFTC v. White Pine Trust Corp.* (9th Cir. 2009) 574 F.3d 1219, 1222)

The motion to compel is DENIED.

II. PLAINTIFFS' REQUEST FOR MONETARY SANCTIONS

Plaintiffs make code-complaint requests for monetary sanctions against Stanford in the total amount of $18,995, pursuant to Code of Civil Procedure sections 2023.010, 2023.030, and 2031.310, subdivision (h). Specifically, Plaintiffs make a request for $14,120 in their motion to compel, and an additional amount of $ 4,875 in their reply.

Code of Civil Procedure section 2031.310, subdivision (h), provides, "[e]xcept as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2031.310, subd. (h).)

Here, the motion is denied. Accordingly, Plaintiffs' request for sanctions is DENIED.

III. CONCLUSION

Plaintiffs' motion to compel further responses is DENIED. Plaintiffs' request for sanctions is also DENIED.

The Court will prepare the final 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.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 3
(including Calendar Line 4)

Case Name: *Guadalupe Estrada v. Monterey Mushrooms, Inc., et al.*
Case Nos.: 21CV386229 (consolidated with Case No. 21CV391403)

This is a wage and hour putative class action and a Private Attorneys General Act ("PAGA") representative action. Plaintiffs Guadalupe Estrada and Brian Gillogly (collectively, "Plaintiffs") allege that Defendants Monterey Mushrooms, Inc. and Monterey Mushroom LLC (collectively, "Defendants"), who specialize in the production, packaging, and distribution of mushrooms throughout North America with multiple large-scale farms located in California, committed various wage and hour violations.

Before the Court is Plaintiffs' motion for preliminary approval of settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

Plaintiffs allege that Defendant's payroll, timekeeping, and wage and hour practices resulted in numerous Labor Code violations. More specifically, Plaintiffs allege that Defendants: failed to pay for all hours worked; failed to provide employees with legally compliant meal and rest periods; and failed to reimburse all business expenses incurred by employees. Ms. Estrada was employed from March 28, 2020 through July 9, 2020, as a farm laborer picking and pinching mushrooms, a non-exempt, hourly-paid position. Mr. Gillogly worked for Defendants from approximately 1999 to December 4, 2020 in a non-exempt, hourly paid position.

On August 26, 2021, Ms. Estrada filed a PAGA representative action against Monterey Mushrooms, Inc. asserting a single claim for penalties under PAGA (the "*Estrada* Action"). On December 3, 2021, Mr. Gillogly filed a class action complaint against Monterey Mushrooms, Inc. asserting the following causes of action: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit meal periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditure; and (8) unfair business practices (the "*Gillogly* Action"). On February 7, 2022, Mr. Gillogly filed a First Amended Class and Representative Action Complaint which added a claim for penalties under PAGA.

On July 31, 2023, the Court consolidated the *Estrada* and *Gillogly* Actions. Plaintiffs filed a doe amendment naming Monterey Mushrooms LLC as Doe 1 in both actions.

Plaintiffs now seek an order: preliminarily approving the proposed settlement; certifying the proposed class for settlement purposes only; appointing Brian Gillogly and Guadalupe Estrada as class representatives; appointing Justin F. Marquez and Benjamin H. Haber of Wilshire Law Firm, PLC, Jake D. Finkel of the Finkel Firm, and Mehrdad Bokhour of the Bokhour law Group, P.C., as class counsel; approving the form and plan for distribution of the Notice; appointing CPT Group LLC ("CPT Group") as the Settlement Administrator and authorizing CPT Group 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 reaching settlement, the parties engaged in informal discovery through which Plaintiffs obtained a sample of class member timekeeping and payroll records, Defendants' policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and the provision all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members. In conjunction with an extensive investigation of the factual allegations, Plaintiffs' counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. The materials obtained from Defendants enabled Plaintiff's counsel to evaluate the probability of class certification, success on the merits, and Defendants' maximum monetary exposure for all claims.

On August 15, 2022, the parties participated in private mediation with experienced class action mediator Hon. Howard Broadman (Ret.) and were, while adversarial in nature with each side prepared to litigate their position through trial, able to reach the settlement that is now before the Court.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement amount is $2,150,000. Attorne's fees of up to one-third of the gross settlement ($716,565), litigation costs up to $25,000, and $21,500 in administration costs will be paid from the gross settlement. $50,000 will be allocated to PAGA penalties, 75% of which ($37,500) will be paid to the LWDA, with the remaining 25% ($12,500) paid to "PAGA Employees," who are defined as "all persons who are Class Members who were employed at any time during [June 8 through the date of preliminary approval of the settlement]." "Class Members," in turn, are defined as:

> All current and former non-exempt hourly paid/hourly employees and all current and former non-exempt salaried employees of Defendant who work or worked

> for Defendant at any of its facilities in California at any time during the Class Period; and all current and former non-exempt hourly-paid / hourly workers who work or worked for Defendant at any of its facilities in California at any time during the Class Period via, through or under the employment of a farm labor contractor, temporary services employer or other third party that furnished workers to Defendant.

The "Class Period" is the time period from June 8, 2014 to June 24, 2023, or if later, the date on which the workweek count reached 295,625. Plaintiffs will also each seek an enhancement payment of $12,500.

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, settlement payments will be allocated 30% to wages and 70% to penalties. The employer side payroll taxes will be paid by Defendants separately from the gross settlement amount. 100% of the PAGA payment to PAGA Employees will be allocated to penalties. Funds associated with checks uncashed after 180 days will be transmitted to the State of California's Unclaimed Wages Fund.

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

> All claims pleaded in the Action and which could have been alleged under the facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failure to act allegations and/or claims pleaded in the Action (including in both the Estrada Lawsuit and Gillogly Lawsuit), against the Released Parties (as defined in Paragraph 24 above), for work performed during the Class Period ….

Plaintiffs and the PAGA Employees will release:

> All PAGA claims predicated on the facts and/or claims alleged in the Action and/or any PAGA letter sent to the LWDA by any named plaintiff, Settlement Class Member or PAGA Employee in the Action or in any way premised in whole or in part on any of the Class Claims set forth above in Paragraph 64 that arose at any time during the PAGA Period (collectively, "the PAGA Claims"). The PAGA Employees will be issued a check for their share of the PAGA Payment, Individual PAGA Payment, and will not have the opportunity to opt out of, or object to, the PAGA Payment and release of the PAGA Claims set forth in this Paragraph. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their Individual PAGA Payment.

V. FAIRNESS OF SETTLEMENT

Plaintiffs' counsel, with the assistance of a statistics 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, Plaintiffs' counsel estimated Defendants' maximum exposure for each claim to be as follows: $6,145,690.32 (unpaid off-the-clock work); $2,112,713.86 (unlawful rounding practice); $9,760,738.01 (meal period claim); $4,225,427.71 (rest period claim); $1,293,285 (failure to reimburse business expenses); and $19,128,415 (PAGA penalties). Counsel discounted the foregoing amounts by 70% to

90% based on a numerous factors, including but not limited to: the risk of class certification being denied; Defendants' knowledge of the violations and the difficulty of establishing the willfulness of their actions; issues with common proof and proving the merits of each claim; the possibility of Class Members voluntarily foregoing rest periods; the lack of necessity for the business expenses claimed to have been incurred; and the discretionary nature of PAGA penalties. Using the reduced amounts, Plaintiffs predicted that the realistic maximum recovery for all claims would be $3,732,749.02, meaning that the $2,732,749.02 settlement figure represents 58% of this amount, a significant result for the class.

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 Plaintiffs would have had to overcome to prevail on their 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

Plaintiffs request that the following settlement class be provisionally certified:

> All current and former non-exempt hourly paid/hourly employees and all current and former non-exempt salaried employees of Defendant who work or worked for Defendant at any of its facilities in California at any time from June 8, 2017 to June 24, 2023, or if later, the date on which the workweek count reached 295,625; and all current and former non-exempt hourly-paid/hourly workers who work or worked for Defendant at any of its facilities in California at any time during the Class Period via, through or under the employment of a farm labor contractor, temporary services employer or other third party that furnished workers to Defendant from June 8, 2017 to June 24, 2023, or if later, the date on which the workweek count reached 295,625.

A. 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.)

B. 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 2,200 class members are readily identifiable based on Defendants' 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.

C. 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. Plaintiffs' claims all arise from Defendants' 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, Plaintiffs were employed by Defendants as part of their staff and allege that they experienced the violations at issue. The anticipated defenses are not unique to
Plaintiffs, and there is no indication that Plaintiffs' 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.)

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

D. 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 2,200 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 CPT Group as the settlement administrator. Within 30 calendar days of preliminary approval, Defendants will provide a list of all Class Members along with pertinent identifying information (including last known address) to the administrator. Within an additional twenty calendar days, CPT Group 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 or submit a written objection to the settlement. Returned notices will be re-mailed to any forwarded address provided or an updated address located though a skip trace within five 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

Plaintiffs' motion for preliminary approval is GRANTED.

The final approval hearing shall take place on **October 17, 2024** at 1:30 in Dept. 7. The following class is preliminarily certified for settlement purposes:

> All current and former non-exempt hourly paid/hourly employees and all current and former non-exempt salaried employees of Defendant who work or worked for Defendant at any of its facilities in California at any time during [June 8, 2017 to June 24, 2023, of if later, the date on which the workweek count reached 295,625]; and all current and former non-exempt hourly-paid / hourly workers who work or worked for Defendant at any of its facilities in California at any time during the [June 8, 2017 to June 24, 2023, of if later, the date on which the workweek count reached 295,625] via, through or under the employment of a farm labor contractor, temporary services employer or other third party that furnished workers to Defendant.

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 5

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Calendar Line 6
(Including Calendar Lines 7, 8 & 9)

Case Name: *Temujin Labs, Inc., et al. v. Abittan, et al.*
Case No.: 20CV372622

Case Name: *Temujin Labs, Inc. v. Franklin Fu*
Case No.: 21CV375422

These related actions arise from the business dealings of: (1) Temujin Labs Inc., a Delaware corporation ("Temujin"); (2) a related Cayman Islands corporation; and (3) Temujin's co-founders, who go by the aliases of Lily Chao and Damien Ding.[1] These business dealings involve the development of Temujin as a financial technology company operating under the name "Findora."

In Case No. 20CV372622 ("*Abittan*"), Temujin alleges that Defendants and Cross-Complainants Ariel Abittan, Benjamin Fisch, and Charles Lu conspired to: (a) assert a false claim of ownership of its business; (b) misappropriate its trade secrets; (c) usurp and interfere with control over its assets, such as social media accounts; and (d) interfere with its relationships with investors and business partners. Mr. Abittan, a former business partner of Ms. Chao and Mr. Ding, filed a cross-complaint alleging, among other things, that Ms. Chao and Mr. Ding stole from and defamed him. Mr. Fisch and Mr. Lu filed a separate cross-complaint, asserting that Ms. Chao and Mr. Ding misrepresented a host of important facts about their business and activities to induce Mr. Fisch and Mr. Lu to work for Temujin.

In Case No. 21CV375422 ("*Fu*"), Temujin alleges that its former consultant, Defendant and Cross-Complainant Franklin Fu, demanded additional under-the-table payments for himself and secret payments to certain investors rather than performing his duties in good faith. In a cross-complaint, Mr. Fu alleges that Ms. Chao and Mr. Ding repeatedly lied to him about a range of subjects, including Temujin's technology and even their own identities.

Ms. Chao and Mr. Ding received terminating sanctions for concealing their identities after several rounds of discovery motion practice and Temujin, Ms. Chao and Mr. Ding received issue and evidentiary sanctions for discovery misconduct arising from noncompliance with Court orders. A prove-up hearing was conducted by the Court on January 8, 2024, with default judgments subsequently entered in favor of Mr. Abittan and Messrs. Lu and Fisch on their Cross-Complaints against Ms. Chao and Mr. Ding.

Now before the Court are the following motions: (1) SAC Attorneys LLP ("SAC") and James Cai's motion to be relieved as counsel for Lily Chao (*Fu*); (2) SAC Attorneys LLP and James Cai's motion to be relieved as counsel for (*Fu*); (3) Ye & Associates, P.C.'s ("Ye") motion to be relieved as counsel for Lily Chao and Damien Ding (*Fu*); (4) SAC Attorneys LLP and James Cai's motion to be relieved as counsel for Lily Chao (*Abittan*); (5) SAC Attorneys LLP and James Cai's motion to be relieved as counsel for Damien Ding (*Abittan*); and (6) Ye & Associates, P.C.'s motion to be relieved as counsel for Lily Chao and Damien Ding

[1] The Temujin entities, a related entity called Discreet Labs Ltd., Ms. Chao, and Mr. Ding are referred to collectively herein as the "Temujin Parties."

(*Abittan*). These motions are opposed by Messrs. Fisch, Lu, Fu and Abittan.[2] As discussed below, the motions are GRANTED.

I. MOTIONS TO WITHDRAW AS COUNSEL

Motions to be relieved as counsel are technical and governed by Rules of Court, rule 3.1362 ("Rule 3.1362"). Notice and motion must be directed to the client on Judicial Council Form MC-051. No memorandum is required. (Rule 3.1362(a) & (b)). Counsel must provide a declaration on Judicial Council Form MC-052 stating "in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1)."[1] (Rule 3.1362(c)).

The notice of motion and motion, the declaration, and the proposed order must be served on the client and all parties "by personal service, electronic service, or mail." (Rule 3.1362(d)).

> If the notice is served on the client by mail under Code of Civil Procedure section 1013, it must be accompanied by a declaration stating facts showing that either:
> (A) The service address is the current residence or business address of the client; or
> (B) The service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved.

(Rule 3.1362(d).)

> The proposed order relieving counsel must be prepared on the Order Granting Attorney's Motion to Be Relieved as Counsel—Civil (form MC-053) and must be lodged with the court with the moving papers. The order must specify all hearing dates scheduled in the action or proceeding, including the date of trial, if known. If no hearing date is presently scheduled, the court may set one and specify the date in the order. After the order is signed, a copy of the signed order must be served on the client and on all parties that have appeared in the case. The court may delay the effective date of the order relieving counsel until proof of service of a copy of the signed order on the client has been filed with the court.

(Rule 3.1362(e).)

Here, Mr. Cai and SAC explain that they desire to withdraw as the attorney of record for Ms. Chao and Mr. Ding because they have failed to pay attorney fees as agreed, and both have refused to adequately cooperate. According to Mr. Cai's supporting declarations, Ms. Chao and Mr. Ding have refused to provide their direction, approval and input when needed, often failing to provide *any* response to counsel's overtures for information about their assets

[2] Mr. Abittan joins the oppositions filed by Messrs. Fisch and Lu.

and other items which have inhibited his and SAC's ability to continue to represent them including, most recently, in preparing responses to post-judgment discovery requests. Mr. Cai explains that Ms. Chao and Mr. Ding's last payments are now substantially short of satisfying their full balances, which are long overdue, and as SAC is a small firm, it cannot work indefinitely for free and continue to incur comparatively significant costs by continuing this representation as far as it has.

As for Ms. Ye, she was admitted to this Court pro hac vice in this case. California Rules of Court, rule 9.40(a) states that an out-of-state attorney may be admitted to the courts pro hac vice "provided that an active licensee of the State Bar of California is associated as attorney of record." As Ms. Ye is associated with SAC and Mr. Cai, and they have moved to be relieved as counsel, if their motion is granted, Ms. Ye will no longer be eligible to continue representing Ms. Chao and Mr. Ding in these matters.

Ms. Ye and Mr. Cai have provided the court with the required form motion and declaration. A proof of service indicates that the notices of motion and motions, supporting declarations and proposed orders have all been served on Ms. Chao and Mr. Ding at their last known addresses via mail. In their declarations, counsel explain that they have been unable to confirm that the foregoing addresses are current or locate a more current address after (1) mailing the motion papers to the last known address, with return receipt requested, (2) calling Ms. Chao and Mr. Ding at their last known telephone numbers and (3) using email, certified mail and multiple phone calls to obtain responses from them.

Counsel have provided proposed orders on the correct judicial counsel form (MC-053). The proposed order does not indicate any future hearing dates. Currently, orders of exam for Ms. Chao, Mr. Ding and Temujin are set to take place on May 5, 2024.

Messrs. Fisch, Fu, Lu and Abittan oppose these motions, arguing that there is no good cause nor exigency requiring withdrawal at this time, and maintain that counsel seeking to withdraw are assisting Ms. Chao and Mr. Ding in obfuscating their location. They continue that serial substitutions of counsel in this case have obstructed its progress, current counsel has aided Ms. Chao and Ding in thwarting efforts to have Jianwrong Wang, the individual they claim controls Temujin, deposed, and ongoing efforts made on Ms. Chao and Mr. Ding's behalf (filing appellate documents, asserting blanket objections to discovery, obstructing their judgment debtor exams and "delays and misconduct in meet and confers) suggest that counsel and their clients "all remain in cahoots." The materials submitted by counsel, Messrs. Fu, Fisch, Lu and Abittan argue, do not establish circumstances that support mandatory or permissive withdrawal under the California Rules of Professional Conduct. (See Cal. Rules of Prof. Conduct, Rule 1.16(a) and (b).) The Court does not find any of the foregoing arguments persuasive.

First of all, as SAC and Mr. Cai respond in their reply, it is questionable whether the opposing parties even have standing to oppose the instant motions as the Court agrees with counsel that the steps necessary to terminate an attorney-client relationship are meant to protect *clients*, and not opposing litigants. Second, they provide further substantiation in support of their assertion that their relationships with Ms. Chao and Mr. Ding have broken down to the point where it would be "unreasonably difficult for [them] to carry out the representation effectively" and that both clients have "breache[d] a material term of [the] agreement[s] with … [counse[]relating to the representation …" (Cal. Rules of Prof. Conduct, Rule 1.16(b)(4)

and (5).) According to Mr. Cai, SAC often received no response *at* all when seeking cooperation or input from its clients, and this has materially inhibited counsel's ability to continue to represent them. Moreover, he continues, Ms. Chao and Mr. Ding long ago ceased making payments on their legal bills, and he and SAC erred on the side of fulfilling their professional duties and preventing prejudice by continuing to perform various actions pursuant to the representation, e.g., filing paper work to preserve their rights on appeal.

Mr. Cai and SAC have established several reasons why they should be permitted to withdraw from representing Ms. Chao and Mr. Ding and they have shown that they have protected the rights of their clients to the extent they are able to in light of the fact that they have been unable to obtain their consistent cooperation in this case. As explained in *Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 915, there "no authority prevent[s] an attorney from withdrawing from a case when withdrawal can be accomplished without undue prejudice to the *client's* interests…. Implicit in (the applicable rules of professional conduct and Code of Civil Procedure] is the conclusion that an attorney is entitled to withdraw, either with the consent of his or her client, or without that consent if withdrawal is approved by the court." The determination whether to grant or deny a motion to withdraw as counsel lies within the sound discretion of the court (see *People v. Brown* (1988) 203 Cal.App.3d 1335, 1340) and this discretion must be exercised reasonably (see *Mandell v. Superior Court* (1977) 67 Cal.App.3d 1, 4). Here, the Court does not find a basis upon which to decline to grant Mr. Cai, Ms. Ye and SAC's request for withdrawal and does not believe that Ms. Chao and Mr. Ding's interests will be prejudiced if these motions are granted. The Court will not force counsel to continue to work for free for clients who are largely unreachable and whose on-and-off again efforts have frustrated their ability to adequately represent them.

Accordingly, the motions to withdraw as counsel are GRANTED.

II. CONCLUSION

The motions to withdraw as counsel are GRANTED.

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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Case Name: *Attila Csupo, et al. v. Alphabet, Inc.*
Case No.: 19CV352557

This is a putative class action for conversion and quantum meruit, alleging that defendant Alphabet, Inc.'s ("Google") Android operating system and mobile phone applications passively transfer data using class members' cellular data allowances without their consent.

Before the Court is Plaintiffs' motion to compel production of discovery. Defendant Google opposes. For the reasons discussed below, the Court DENIES the motion.

As a preliminary matter, Google filed a motion to seal some of its papers file in opposition to Plaintiffs' motion to compel. The parties represent that they are meeting and conferring regarding issues related to Google's motion to seal. The parties have stipulated, and the court has ordered that Google shall file its motion to seal Plaintiff's moving papers by June 13, 2024 and Plaintiff may oppose Google's motion to seal its opposition papers and its motion to seal Plaintiff's papers by June 27, 2024. Therefore, Google's motion to seal shall go off calendar without prejudice to be heard in October as contemplated by the parties' stipulation.

I. BACKGROUND

In their Fourth Amended Complaint ("4AC"), Plaintiffs allege that Google owns and programs the Android operating system, the most popular mobile platform in the world. (4AC, ¶ 17.) Android works on a variety of mobile devices, including smartphones and tablets. (*Ibid.*) Many of the most popular mobile device manufacturers sell devices preinstalled with the Android operating system and a suite of Google's mobile apps. (*Id.*, ¶ 22.)

Plaintiffs are California residents who purchased Android mobile devices that they use with monthly cellular data plans from different carriers. (4AC, ¶¶ 8-10.) They purchased devices that were preloaded with Google's Android operating system as well as apps and widgets. (*Id.*, ¶ 23.) Cellular data plan customers pay the carrier each month for cellular data allowances. (*Id.*, ¶ 26.) Even under "unlimited" data plans, users are typically subject to quotas that can affect their connection speeds. (*Ibid.*)

Plaintiffs allege that they have property interests in their cellular data allowances. (4AC, ¶ 27.) Users can grant others access to their data allowances and sell unused data allowances to others. (*Id.*, ¶ 28.) Under some circumstances, mobile devices users impliedly consent to the use of their cellular data allowances, such as by engaging with applications that require internet access while connect only by their cellular plan. (*Id.*, ¶ 29.) Plaintiffs allege that Google has misappropriated their cellular data allowances through passive transfers, that is, data transfers occurring in the background and not as the result of Plaintiffs' direct engagement with Google products. (*Id.*, ¶ 31.)

Google could program Android to allow users to enable passive transfers only when they are on Wi-Fi connections, but Google has instead chosen to take advantage of Plaintiffs' cellular data allowances. (4AC, ¶ 40.) Google's policies do not disclose that it accesses cellular data allowance for passive transfers, nor do its agreements obtain users' consent for

such transfers. (*Id.*, ¶ 32-37.) Nevertheless, Google designed its operating system and apps to extract large volumes of information using Plaintiffs' own cellular data allowances, and the information transmitted through this practice supports Google's product development and lucrative advertising business. (*Id.*, ¶¶ 7, 38.)

Based on these allegations, Plaintiffs assert in the operative 4AC claims for: (1) conversion; and (2) quantum meruit. Among other things, Plaintiffs seek the following relief: (1) the fair market value of the cellular data allowances converted by Google; (2) the reasonable value of the cellular data allowances used by Google to provide information that benefited Google; and (3) injunctive relief directing Google to stop using cellular data allowances purchased by consumers without their consent. (4AC, ¶ 74.)

On October 26, 2023, the court (Hon. Kulkarni) granted Plaintiffs' motion for class certification. ("Class Certification Order.") The court found that "the types of data transfers focused on by Plaintiffs affect all or virtually all Android users because they are triggered by the same software present on all or virtually all Android devices … and [w]hether putative class members experienced these transfers to the same degree is not dispositive." (Class Certification Order, p. 12, lns. 6-11.) "The transfers that are at issue here are Clearcut transfers, CheckIn transfers, and NLP/GLS uploads." (*Id.*, p. 12, lns. 12-13.) In granting Plaintiffs' motion for class certification, the court referred to these three kinds of transfers as the "exemplar data transfers." (*Id.* at p. 13, lns. 15, 12, 25.)

At the November 2, 2023 case management conference ("CMC"), the court ordered each counsel to submit a brief regarding the scope of remaining discovery. At the November 16 CMC, the parties and court discussed various issues arising from the order granting class certification, and the court ordered briefing of these issues. The parties filed their briefs on December 1.

On December 11, 2023, the court (Hon. Kulkarni) made several rulings, including the following: "Plaintiffs are entitled to seek discovery from Google as to passive data transfers that were not part of the 'exemplar' set that was discussed in the [Class Certification] Order." (December 11, 2023 Order, p. 1, lns. 26-27.) On February 8, 2024, the court (Hon. Kulkarni) ruled on a case schedule, including setting the following discovery deadlines: April 1, 2024 deadline for substantial completion of document production and deadline for data production; and April 19, 2024 deadline for substantial completion of fact discovery. (February 8, 2024 Order, Ex. A.)

On March 8, 2024, the parties participated in an informal discovery conference ("IDC"). On March 27, Plaintiffs filed the motion now before the court, a motion to compel production of discovery.

II. MOTION TO COMPEL

This dispute requires the court to address Google's compliance with the December 11 Order allowing discovery of transfers outside of the "exemplar" set relied upon for class certification. More specifically, the parties are at an impasse on two overarching issues with respect to Plaintiffs' post-certification requests for production of documents and data: (1) whether Plaintiffs are entitled to all documents and data associated with the named Plaintiffs; and (2) whether Google is required to produce responsive documents and data without

removing information identifying specific users—in other words—without redaction or hashing. (See Plaintiffs' Motion to Compel Production of Discovery ("Motion"), p. 5, ln. 5; see also Google's Opposition to Motion to Compel ("Opposition"), p. 4, lns. 8-9 and 23-24.)

A. Legal Standard

A party propounding a request for production may move for an order compelling a further response if it deems that a statement of compliance is incomplete, a representation of inability to comply is inadequate, or an objection is without merit. (Code Civ. Proc., § 2031.310, subd. (a).) The motion must set forth "specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310, subd. (b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) Good cause is established simply by a fact-specific showing of relevance. (*Id.* at 98.) If good cause is shown, the burden shifts to the responding party to justify any objections. (*Ibid*.)

"The statutory scheme vests trial courts with 'wide discretion' to allow or prohibit discovery. [Citation.]" (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 540 (*Williams*).) Trial courts issuing discovery orders "should do so with the prodiscovery policies of the statutory scheme firmly in mind." (*Ibid.*) The applicable discovery statutes "must be construed liberally in favor of disclosure unless the request is clearly improper by virtue of well-established causes for denial." (*Id.*, p. 541 [quoting and citing *Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 378].)

B. Discussion

After the court granted Plaintiffs' motion for class certification on October 26, 2023, Plaintiffs initiated "Phase 2" of fact discovery by issuing their second set of RFPs on November 22, seeking further production regarding the "exemplar" network transfers that were the subject of class certification. (Motion, p. 5, lns. 11-14.) After the court's December 11 ruling that Plaintiffs could seek discovery as to passive transfers that were not part of the "exemplar" set, Plaintiffs issued their third set of RFPs on December 15. (*Id.*, p. 5, lns. 14-18.)

The parties were unable to reach an agreement as to three issues addressed at the March 8, 2024 IDC, one being whether Google will produce source code and associated materials. (Motion, p. 5, lns. 1-5, fn. 1.) Google has since agreed to make its source code available for a reasonable review. (*Ibid.*) Therefore, the parties' briefing for the instant motion focuses on the following two issues: (1) the production of the named-Plaintiffs' data; and (2) the hashing and redaction of data.

1. Production of Named Plaintiffs' Data

Plaintiffs' motion does not refer to specific RFPs or detail how Google's responses to specific RFPs falls short. Plaintiffs acknowledge that Google produced 742 documents in response to its second and third sets of RFPs, but Plaintiffs contend this is too little, too late. (Motion, pp. 5, ln. 20 – 6, ln. 4.) Google highlights RFP 17 as a "clear example of discovery gone too far." (Opposition, p. 11, ln. 3.) Plaintiffs' RFP Set 3, No. 17, requests production of the following:

17. All Documents and data in Your possession associated with any of the named Plaintiffs in this case or their devices.

(Declaration of Marc A. Wallenstein in Support of Plaintiffs' Motion to Compel Production of Discovery ("Wallenstein Dec."), ¶ 5, Ex. D, p. 5.)

Plaintiffs identify six arguments in support of their position that the named Plaintiffs' data is relevant and discoverable. (Motion, pp. 6-9.) First, Plaintiffs say the named Plaintiffs' data is necessary to identify additional types of actionable transfers, as allowed under the court's December 11, 2023 order. Second, Plaintiffs say their data is necessary to facilitate efficient expert examination of source code. Third, Plaintiffs say their individual data is relevant to their individual claims. Fourth, Plaintiffs say the named Plaintiffs' data is critical for rebutting Google's consent defense. Fifth, Plaintiffs say the named Plaintiffs' data will allow the jury to see what network transfer occurred in light of the specific settings that each named Plaintiff selected. Sixth, Plaintiffs say the named Plaintiffs' user data is relevant because it will contain the logs that the named Plaintiffs' devices sent to Google. Plaintiffs further assert that a court has previously ordered Google to produce named plaintiffs' data, citing *Brown v. Google LLC* (N.D. Cal. 2022) No. 4:20-cv-03664. (*Id.*, p. 14, lns. 8-24.)

Plaintiffs have also filed a Supplemental Statement of Facts ("Supplemental Statement"). According to Plaintiffs, the email attached to this supplemental filing counters any undue burden argument by Google because it demonstrates that Google has the ability to routinely grant permissions to search databases within an hour. (Supplemental Statement, p. 2, lns. 20-22.) This is not new argument by Plaintiffs and Google is aware of this email because it recently provided it to Plaintiffs. Therefore, the court has considered Plaintiffs' Supplemental Statement despite the date it was filed.

In opposition, Google contends that RFP 17 is massively overbroad and seeks irrelevant information. (Opposition, pp. 11-13.) Google argues Plaintiffs' demands violate established standard for the production of data in litigation. (*Id.*, pp. 11, ln. 25 – 12, ln. 5, citing *Sedona Conference Database Principles Addressing the Preservation and Production of Databases and Database Information in Civil Ltg.* (2014) 15 Sedona Conf. J. 171, 176 ["Absent a specific showing of need, a requesting party is entitled only to database fields that contain relevant information, and give context to such information, and not to the entire database in which the information resides or the underlying database application or database engine"].)

Google directs the court's attention to the federal magistrate's decision in the case of *In re Google RTB* (N.D. Cal.) Case No. 21-cv-02155-YGR.[1] (Opposition, p. 12, lns. 6-18.) There, the court "considered and rejected an approach to discovery that requires Google to produce all information it collects about the named plaintiffs…." (See Wallenstein Dec., ¶ 13, Ex. L ("RTB Order"), p. 4, lns. 4-6.) The magistrate found that "Plaintiffs have not shown that wholesale production of all data fields … is relevant or proportional to the needs of this case." (RTB Order, p. 4, lns. 8-10.) However, the court also found that "Google must produce documents sufficient to show for each named plaintiff the 'verticals' data fields it shared with RTB participants during the class period." (*Id.*, p. 5, lns. 7-9.)

[1] "RTB" refers to Google's digital ad auction system called Google Real-Time Bidding (RTB).

Google further argues that Plaintiffs' demand would pose an intolerable burden. (Opposition, pp. 13-14.) Google has produced evidence in its declarations in support of the opposition, filed under seal, regarding the undertaking that would be required to produce the data. In an effort to protect the information Google believes is sensitive, the court will not refer to it explicitly. (*Id.*, p. 13, lns. 15-17, 22; see also Declaration of Ben Kornacki in Support of Google LLC's Opposition to Plaintiffs' Motion to Compel, ¶¶ 2, 8; Declaration of Patrick Quaid in Support of Google LLC's Opposition to Plaintiffs' Motion to Compel, ¶ 9; Declaration of Shireesh Agrawal in Support of Google LLC's Opposition to Plaintiffs' Motion to Compel, ¶ 9.)

Here, the court agrees with Google that Plaintiffs' requests for production, such as RFP 17, are overbroad and do not appear reasonably related to a legitimate discovery need. As Google points out, it is Plaintiffs' burden, as the party moving to compel discovery, to "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310, subd. (b)(1).) Further, "[a]lthough the scope of discovery is broad, it is not limitless … the burden rests upon the party seeking the discovery to provide *evidence* from which the court may determine" if the matter requested "either is itself admissible in evidence or appears reasonable calculated to lead to the discovery of admissible evidence." (*Calcor Space Facility v. Superior Court* (1997) 53 Cal.App.4th 216, 223-224 (*Calcor*).)

In this case, Plaintiffs' motion does not reference the scope of any specific RFPs. Further, the arguments Plaintiffs offer in support are insufficiently specific to justify a request as expansive as RFP 17. (See *Calcor*, *supra*¸53 Cal.App.4th at p. 224 ["There is an absence of specific facts relating to each category of materials sought to be produced; the justifications offered for the production are mere generalities."].) Given the nature of Plaintiffs' claims, the court would expect their inspection demands to be reasonably related to Google's use of Plaintiffs' cellular data allowances. Like the plaintiffs referenced in the RTB Order cited by both parties, the Plaintiffs here have not shown that all documents and data associated with any of the named Plaintiffs, or their devices, is relevant or proportional to the needs of the case.

While the court may be persuaded that Google's documents and data relating to the named Plaintiffs is discoverable in some measure, Plaintiffs have not defined a reasonable scope for their demands. Plaintiff's motion will be denied on that basis.

2. Hashing or Redaction of Data

While the determination of the preceding section is dispositive of the specific discovery request at issue for this motion, the court provides the following comments to guide the parties for future discussions on this topic.

The parties dispute whether Google should be required to produce responses without data fields identifying the users. Google argues in favor of using "hashing," which it describes as "replacing each user ID in a data set with a substitute." (Opposition, p. 14, ln. 23.) Plaintiffs point out that there is already a protective order in place. (Motion, p. 14, ln. 14, referencing court's March 11, 2021 Stipulated Protective Order for Litigation Involving Patents, Highly Sensitive Confidential Information and/or Trade Secrets.) Plaintiffs further argue that courts in similar contexts have declined to use "hashing" because of the utility of using the requested information as it is typically stored and to prevent additional discovery

disputes. (Motion, p. 14, lns. 5-11, quoting and citing *U.S. EEOC v. Dolgencorp, LLC* (N.D. Ill., May 5, 2015) No. 13-cv-04307, 2015 U.S. LEXIS 58994, 2015 WL 2148394.)

In opposition, Google asserts that the protective order is no guarantee against a data breach or misuse. (Opposition, p. 17, lns. 4-6, fn. 15.) Google further emphasizes that hashing data is a standard practice that is required by government entities in various contexts and is even used when access is limited to researchers. (*Id.*, pp. 15, lns. 5-17, 17, lns. 1-3.) According to Google, the hashing of data has no downside and that the dispute over including user IDs in the data is premature. (*Id.*, p. 16, lns. 17-26.)

Here, the court is not persuaded by Google's arguments. While Google asserts that hashing is a standard practice required in some contexts, it presents no authority that hashing is required in the context of this litigation, or that it represents a standard practice in similar litigation contexts. As Plaintiffs contend, identifying the named Plaintiffs' documents and data could be particularly probative of their damages claim. (Motion, pp. 15, ln. 20 – 16, ln. 1.) Further, Google presents no authority for its apparent position that the protective order does not sufficiently protect disclosure of the information in question. Thus, the production of data without removal of user IDs, whether by hashing or redaction, could be appropriate in this case with respect to a reasonably tailored and supported demand.

III. CONCLUSION

Plaintiffs' motion to compel is DENIED.

Google's motion to seal shall go off calendar without prejudice.

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.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 11

Case Name:
Case No.:

- oo0oo -

Calendar Line 12

Case Name: *Zuri Lazard v. County of Santa Clara*
Case No.: 23CV414401

This is a putative class[1] and Private Attorneys General Act ("PAGA") action. Plaintiff Zuri Lazard alleges that Defendant County of Santa Clara (the "County" or "Defendant") failed to pay all wages due and failed to provide all legally-mandated meal and rest periods.

Before the Court is the County's demurrer to the First Amended Complaint ("FAC") and motion to strike, which is opposed by Plaintiff. As discussed below, the Court SUSTAINS the demurrer WITH LEAVE TO AMEND and deems the motion to strike MOOT.

I. BACKGROUND

According to the allegations of the operative FAC, Ms. Lazard worked as a per diem clinical nurse at O'Connor Hospital in San Jose from March 2019 to September 2022. (FAC, ¶ 6.) Plaintiff alleges that County's engages in practices that result in her and class members not being compensated for all work performed, including: paying employees based on rounded time, which was rounded downward, rather than actual time under their control; automatically deducting 30 minutes of time in shifts of five hours or more, whether a meal period was provided or not; and not providing rest periods. (*Id*., ¶¶ 1, 31, 34, 37.)

Based on the foregoing allegations, the FAC asserts the following causes of action: (1) failure to pay all wages (Lab. Code, §§ 1194, 1197, 1197.1 and IWC wage orders); (2) failure to provide all meal periods (Lab. Code, §§ 226.7 and 512.1 and IWC wage orders); (3) failure to provide all rest periods (Lab. Code, §§ 226.7 and 512.1 and IWC wage orders); (4) PAGA civil penalties for failure to pay all wages; (5) PAGA civil penalties for failure to pay all meal periods; and (6) PAGA civil penalties for failure to provide all rest periods.

II. THE COUNTY'S REQUESTs FOR JUDICIAL NOTICE

In support of its demurrer, the County requests that the Court take judicial notice of the following:

(1) The County's Charter (Exhibit A);
(2) County Ordinance Code, Title A, Divisions A2 & A25 (Exhibit B);

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[1] Plaintiff seeks to represent a class defined as:

> All persons employed by Defendants as non-exempt employees, at any time starting four years from the filing of this Complaint.

Plaintiff also seeks to represent a subclass defined as:

> Class Members providing direct patient care or supporting direct patient care in general acute hospital, clinic, or public health settings.

(3) The County's Memorandum of Agreement ("MOA") between itself and the Registered Nurses Professional Association ("RNPA"), January 27, 2020 through October 29, 2023 (Exhibit C);
(4) The County's MOA with Service Employees International Union ("SEIU"), August 14, 2023 through June 21, 2026 (Exhibit E);
(5) California Senate Bill No. 1334 (2021-2022) (Exhibit F);
(6) Senate Committee on Labor, Public Employment and Retirement, Hearing date April 4, 2022 (Exhibit G);
(7) Santa Clara Valley Medical Center, Nursing Standards Manual, Volume I-Standards of Governance, Kronos Timekeeping Procedures (Exhibit H);
(8) Santa Clara Valley Medical Center, Hospitals and Clinics Administration, O'Connor Hospital, "Kronos Timekeeping," September 27, 2021 (Exhibit I).

In support of its reply, the County also requests that the Court take judicial notice of: the County's MOA with the RNPA, November 10, 2024 through October 20, 2019 (Exhibit J). All of these items are proper subjects of judicial notice under various provisions of Evidence Code section 452. (See Evid. Code, § 452, subds. (b) and (h); see *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 647, fn. 13.) Accordingly, the County's requests for judicial notice are GRANTED.

III. DEMURRER

The County demurs to each of the six causes of action asserted in the FAC on the ground of failure to state facts sufficient to constitute a cause of action and also demurs to the first, second and third causes of action on the ground of uncertainty. (Code Civ. Proc., § 430.10, subds. (e) and (f).)

A. Legal Standard

In ruling on a demurrer, a court treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff" s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.)

B. Discussion

In demurring to the claims asserted in the FAC, the County makes the following arguments: (1) Plaintiff failed to exhaust her administrative remedies; (2) Plaintiff's claims all rely on state law that is inapplicable to the County; (3) the first and fourth causes of action are uncertain and fail to state sufficient facts against the County; (4) the second, third, fifth and sixth causes of action are uncertain and fail to statement a claim against the County because (a) Labor Code §§ 512.1 and 226.7 do not apply to Charter counties, and (b) statutes that conflict will local rules do not apply to Charter counties unless they address a matter of statewide

concern and the statutes at issue do not; and (5) the PAGA claims fail because they are dependent on the defective preceding three claims.

1. *Exhaustion of Remedies*

The County first contends that its demurrer should be sustained because Plaintiff has not exhausted her administrative remedies, asserting that there are internal grievance procedures applicable to each and every cause of actin asserted in her FAC.

Generally, "a party must exhaust administrative remedies before resorting to the courts." (*Coachella Valley Mosquito & Vector Control Dist. v. Cal. Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080.) This exhaustion doctrine "is principally grounded on concerns favoring administrative autonomy (i.e., courts should not interfere with an agency determination until the agency has reached a final decision) and judicial efficiency (i.e., overworked courts should decline to intervene in an administrative dispute unless absolutely necessary)." (*Ibid*., internal citations and quotations omitted.) "The failure to arbitrate in accordance with the grievance procedures in a collective bargaining agreement is analogous to the failure to exhaust administrative remedies." (*Assn. for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2019) 42 Cal.App.5th 918, 927 ("*ALADS*"), internal citation and quotations omitted.) However, the exhaustion doctrine does not apply "when the available administrative remedy is inadequate or when it is clear that pursuing that remedy would be futile." (*Id*. at 928.)

As shown the materials of which the Court has taken judicial notice, the County is a chartered county whose charter requires the County Board of Supervisors (the "Board") to "[a]dopt an administrative code by ordinance which shall prescribe the powers and duties of appointive departments and officers and the procedures and rules of operation of all departments and officers of the county" (County's Request for Judicial Notice ("RJN"), Exhibit A (County Charter), § 301, subd. (d)) and also to "[p]rovide for the number and compensation of all officers and employees" (County Charter, § 301, subd. (e).) In accordance with this, the Board has adopted an Ordinance Code (the "Ordinance Code") that regulates employee compensation, including for overtime work and meal periods. (RJN, Ex. B, § A25-660, et seq.) The Ordinance Code further defers to MOAs between the County and its recognized employee organizations (unions) when an MOA contains a provision relating to the *same* subject as a personnel ordinance. (Ordinance Code, §§ A25-600 ["This chapter, or a portion of it, shall not apply to employees covered by a [MOA] between the County and a recognized organization when such agreement contains a provision relating to the same subject matter."] and A25-393.) In other words, an MOA that provides for meal periods and overtime applies to employees covered by the MOA, while the Ordinance Code applies to employees who are not.

According to the County, non-exempt employees who provide direct patient care or support direct patient care in general acute care hospital, clinic or public health settings are generally covered by MOAs between the County and the RNPA union or SEIU. The former represents the County's clinical nursing staff, nurse practitioners and per diem nurses, among others (RJN, Ex. Ex. C, Art. 1), while the latter represents County public health nurses, licensed vocational nurses, therapists, and others who provide care to patients in County hospital and correctional facilities (RJN, Exs. D & A, Art. 1, Appendix A.)

Under the County's MOA with the RPNA, nurses are provided specified meal periods after a set amount of consecutive hours of work, and are reimbursed for the cost of meals when they work longer periods. (RJN, Ex. C, § 8.3, subd. (b).) They are also provided with a specified rest period after a set amount of hours of work, with this period "considered as time worked for pay purposes." (*Id*.) If a nurse is not offered a rest periods, the missed break is reported using a specified form and process outlined by the MOA. (*Id*.) The SEIU MOA operates similarly, setting forth the specific meal periods and rest breaks to which employees are entitled, and the compensation/reimbursement they will receive if such periods are not provided. (RJN, Ex. D, §§ 8.4, subds. (a) and 8.5, Ex. E, §§ 8.4, subds. (b) and (e) and § 8.5.)

The County continues that it and its represented employees maintain procedures by which employees may grieve issues involving wages, hours, and other conditions of employment- including claims that policy is unfair, has been misapplied, or deviated from. (RJN, Ex. B, §§ A25-398, A25-500 et seq.; Ex. C, Art. 16; Ex. E, Art. 19.)

With the foregoing in mind, the County argues that Plaintiff has not exhausted her administrative remedies because she has not alleged that she initiated or exhausted any of the grievance procedures contained in the applicable Ordinance Code and RNPA or SEIU MOAs. Plaintiff counters that she had no remedies to "exhaust" because the portion of the Ordinance Code the County cites to expressly excludes her from its terms:

> Sec. A25-502- "Employee" defined.
>
> As used in this chapter, "employee" means any County employee in the classified service regardless of status **except an employee included in a representation unit** and the recognized employee organization of that unit has signed a written memorandum of understanding with County management which provides for a grievance procedure and such memorandum has been approved by the Board of Supervisors and is in effect.
>
> (Ord. No. NS-304.74, § 2, 9-5-72)

The County responds that Plaintiff is still subject to the grievance procedures contained in the applicable MOA, with the Ordinance Code itself deferring to its terms. Plaintiff counters that she was not required to exhaust her remedies under the MOA because with this action she is seeking to enforce nonwaivable statutory rights rather than prove violations of a MOA. She continues that her claims are not a "grievance" for which contractual remedies must be exhausted because they are not a "dispute … involving the interpretation, application, or enforcement of the express terms of this Contract." (Opp. at 4:5-7.) Finally, she argues, given that she is seeking relief on behalf of a class, there is no adequate remedy available to her through the internal MOA grievance procedures, which are individual in nature or, if not so limited, certainly not equivalent to class procedure.

The Court rejects Plaintiff's contention that she is not required to exhaust her administrative remedies because she is seeking to enforce nonwaivable statutory rights rather than prove violations of a MOA. The case she cites in support of this proposition, *Zavala v. Scott Brothers Dairy, Inc.* (2006) 143 Cal.App.4th 585, is wholly distinguishable, as that case involved a motion to compel arbitration and whether the plaintiff's union could waive their ability to protect their statutory right to rest breaks and wage stub itemization in a judicial

forum. The answer was no. Here, the County is *not* arguing that Plaintiff lacks the ability to pursue these claims because she possesses no right to have them adjudicated in a judicial forum. Rather, it is simply making the unremarkable argument that she has administrative procedures available to her that she must exhaust before she can pursue her claims in this Court. The Court also does not find persuasive Plaintiff's argument that she need not exhaust her administrative remedies because her claims are not a "grievance." Neither of the cases she cites for this proposition[2] in fact provide as much.

Plaintiff's remaining argument that the grievance procedures in the applicable MOAs do not provide for adequate classwide relief is without merit. In cases where courts have accepted such an argument, it has been clear that classwide relief is not available through the grievance procedures at issue. As such, the prosecution of numerous individual grievances to achieve large-scale results would require "an onerous and time-consuming process" that is wholly inadequate. (See *ALADS, supra*, 42 Cal.App.5th at 930; see also *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 935.) Here, however, the MOAs applicable to her employment *do* appear to provide such relief, specifying that a grievance "may be presented by a *group of workers*, by the Union, or by the County." (RJN, Ex. C, Art. 19, § 19.2, emphasis added.) To the extent that the relevant MOAs do not specify an applicable grievance procedure, Ordinance Code section A25-398 also provides for "individual and group grievances." Thus, the administrative procedures appear to provide for classwide relief and consequently Plaintiff's contention that the MOAs do not provide for adequate relief is without merit.

Where classwide relief is available administratively, "than at least one plaintiff must exhaust them before litigation may proceed." (*Tarkington v. California Unemployment Ins. Appeals Bd.* (2009) 172 Cal.App.4th 1494, 1510.) Here, because there is no allegation that Plaintiff exhausted such procedures, the Court agrees with the County that her claims must fail as pled and the demurrer to the FAC on the ground of failure to state facts sufficient to constitute a cause of action is SUSTAINED WITH LEAVE TO AMEND. Despite this, in the interests of being thorough, the Court will address the County's remaining arguments.

2. Applicability of Subject Labor Code Sections to the County

The County next argues that Plaintiff's second, third, fifth and sixth causes of action fail as a matter of law because (1) Labor Code sections 512.1 ("Section 512.1") and 226.7 ("Section 226.7") do not apply to charter counties such as itself and (2) the foregoing statutes and the unspecified IWC wage orders cited by Plaintiff do not apply to the County due to the "home rule doctrine." The County further argues that the first cause of action fails because the claim implicates its home rule authority to regulate matters of employee compensation.

a. Sections 512.1 and 226.7

Section 512.1 pertains to the meal an rest periods that are to be provided to specified public health employees, while Section 226.7 provides a "premium wage intended to compensate employees" for the failure to provide meal and rest periods. The County argues

[2] Plaintiff cites *Azpeitia v. Tesoro Ref. & Mktg. Co. LLC* (N.D. 2017) 2017 U.S. Dist. LEXIS 114210, *1 and *Parker v. Cherne Contracting Corp*. (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 14235, *13.

that neither of these statutes apply to charter counties such as itself because in defining the "employer" to whom they apply, Section 512.1 refers only to "counties" generally, and not specifically "charter counties." (See Lab. Code, § 512.1, subd. (e)(2) [defining "employer" as used in this section as "the state, political subdivisions of the state, counties, municipalities, and the Regents of the University of California."].)

Generally, "unless Labor Code provisions are specifically made applicable to public employers, they only apply to employers in the private sector." (*Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729, 733.) "Traditionally, absent express words to the contrary, government agencies are not included within the general words of a statute. The Legislature has acknowledged that this rule applies to the Labor Code." (*Id*. at 736, internal citations and quotations omitted.) As the County points out, the Legislature is also "usually quite specific when it intends … to include charter [entities].)[3] (*City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 912-913.) "Likewise, the Supreme Court and Courts of Appeal have often demanded a clearer indication than the use of a general term, be it 'a political subdivision' or 'a city,' before concluding a statute is intended to apply to charter [entities]." (*Id*. at 913; see, e.g., *State Building & Construction Trade Council of California v. City of Vista* (2012) 54 Cal.4th 547, 544 (*City of Vista*).) Because there is no "clear indication" that Sections 512.1 and 226.7 apply to charter counties, the County argues, Plaintiff cannot states claims based on purported violations of them.

In opposition, Plaintiff quotes *Marquez v. City of Long Beach* (2019) 32 Cal.App.5th 552 (*Marquez*) wherein the court was tasked with determining whether the minimum wage provisions of specified wage orders applied to the respondent charter city and determined that the use of terms therein making those orders applicable to "any city" "necessarily include[ed] both charter and general law cities." *Marquez* involved Wage Order No. 4, and though Plaintiff does not specify the wage orders implicated by her claims in the FAC (she generally alleges that the County violated "IWC Wage Orders"), based on what is argued in their papers, both parties appear to understand that this is the wage order that Plaintiff is referring to. In its reply, the County responds that *Marquez* is distinguishable because analyzes the minimum wage against constitutional provisions applicable to charter *cities*, as opposed to charter *counties*.

Given that California courts generally apply interchangeably the reasoning from cases involving one type of charter entity to cases involving the other in the context of the constitutional delegation of issues of employee compensation, the Court finds no merit in the County's assertion that *Marquez* is not instructive because it does not discuss charter counties. However, there are other reasons why *Marquez* is distinguishable, and those reasons implicate the County's second argument that the statute and IWC orders at issue do not apply to it under the home rule doctrine. As a consequence, the Court does not believe that it need answer the question of whether the provisions of the Labor Code at issue apply to the County based on their express terms and will turn to merits of the County's second argument.

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[3] While this case specifically discussed charter *cities* and not counties, California courts generally apply interchangeably the reasoning from cases involving one type of charter entity to cases involving the other in the context of the constitutional delegation of issues of employee compensation. (See *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 643.)

b. The Home Rule Doctrine and State Regulation of Charter County Wages and Other Employment Relations

As a general matter, the California specifically reserves to counties (not just charter counties) to provide for the compensation of their employees. (Cal. Const., art. XI, § 1, subd. (b); see also art. XI, §§ 3, 4.) Under this reservation, more broadly referred to as the "home rule doctrine," county charter provisions concerning the compensation (as well as number, tenure and appointment) of employees typically "trump conflicting state laws." (*Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 640 (*Curcini*); see also *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 285 (*County of Riverside*).) "However, a charter city's [or county's] authority to enact legislation is not unlimited" (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 795) and "the Legislature may regulate as to matters of statewide concern even if the regulation impinges to a limited extent on powers the Constitution specifically reserves to counties ([Cal. Const., art. XI,] § 1) or charter cities ([Cal. Const., art. XI,] § 5)" (*County of Riverside*, 30 Cal.4th at 287).

"[T]he question whether in a particular case the home rule provisions of the California Constitution bar the application of state law to charter cities [or counties] turns ultimately on the meaning and scope of the state law in question and the relevant state constitutional provisions. Interpreting that law and those provisions presents a legal question, not a factual one." (*City of Vista, supra*, 54 Cal.4th at 558.) In *California Fed. Savings*, the California Supreme Court set forth a four-part analytical framework for resolving the question of whether or not a matter falls within the home rule authority of charter cities (or counties). Under this framework:

> First, a court must determine whether the city ordinance at issue regulates an activity that can be characterized as a "municipal affair." Second, the court must satisfy itself that the case presents an actual conflict between [local and state law]." Third, the court must decide whether the state law addresses a matter of "statewide concern." Finally, the court must determine whether the law is "reasonably related to … resolution of that concern and "narrowly tailored" to avoid unnecessary interference in local governance.

(*City of Vista, supra*, 54 Cal.4th at 556, quoting portions of *California Fed. Savings* at 16, 17, 24; see *Marquez v. City of Long Beach* (2019) 32 Cal.App.5th 552, 562-563 ["In areas considered 'municipal affairs,' the general law of the state prevails over local law only where the general law is 'reasonably related' and 'narrowly tailored" to resolution of an issue of statewide concern."].) "If … the court is persuaded that the subject of the state statute is of statewide concern and that the statute is reasonably related to its resolution [and not unduly broad in its sweep], then the conflicting charter city measure ceases to be a 'municipal affair' pro tanto and the Legislature is not prohibited by [the home rule provisions of the State Constitution] from addressing the statewide dimension by its own tailored enactments." (*Id.*)

In arguing that Labor Code sections 512.1 and 226.7 do not apply to it due to its home rule authority, the County chiefly relies on two decisions, *Curcini, supra*, 164 Cal.App.4th 629 and *Dimon v. County of Los Angeles* (2008) 166 Cal.App.4th 1276 (*Dimon*), which are among the most prominent decisions to address the issue of whether various sections of the Labor Code apply to charter counties under the home rule doctrine.

In *Curcini*, the court concluded that Labor Code provisions on overtime (Lab. Code, §§ 510, subd. (a) and 1194), meal periods (Lab. Code, § 512, subd. (a)), and payment of a premium wage to compensate for missed meal and rest periods (Lab. Code, § 226.7) were "matters of compensation within the county's exclusive constitutional purview …" and thus, pursuant to the home rule doctrine, did not apply to the plaintiff county employees. (*Curcini,* 164 Cal.App.4th at 645.) Consequently, the trial court's ruling sustaining the county's demurrers to claims for violations of those provisions was affirmed. In reaching this conclusion, the court rejected the plaintiffs' contention that the Labor Code sections in their complaint addressed issues of working conditions rather than compensation, noting the Supreme Court's observation that, although overtime pay "serves secondary function of shaping employer conduct," "*its central purpose is to compensate employees for their time …,*" as well as its explanation that the "compensatory purpose of the remedy" provided in Labor Code section 226.7 for violations of meal and rest period regulations, "compel[s] the conclusion that the additional hour of pay is a premium wage intended to compensate employees." (*Id*. at 643-645, emphasis added.) The court also found unpersuasive the plaintiffs' argument that, even presuming there was a void, the Labor Code sections at issue would apply to fill a void in a charter county's compensation scheme.

In *Dimon*, the court similarly held that "the County has exclusive authority, as a charter county, to provide for the compensation and conditions of employment of its employees, and has done so with respect to probation officers through a collective bargaining agreement adopted by resolution. It is thus exempt from state statutes and regulations governing meal breaks." (*Dimon*, 166 Cal.App.4th at 1279.) As the County had entered into a memorandum of understanding with the plaintiffs that specifically covered meal periods, there was also no void in the county's compensation scheme to be filled by Labor Code sections 226.7 and 512. (1284-1286.)

The County maintains that Sections 512.1 and 226.7 clearly involve matters of employee compensation and thus infringe on its home rule power to govern over them. While the foregoing cases do not speak specifically to Section 512.1, the County argues that the analysis of Labor Code section 512 ("Section 512") applies with equal force. The Court finds some merit in this argument and notes that, while it is true that in enacting Section 512.1 the Legislature declared that "[w]orker health and safety and high-quality patient care are matters of state-wide concern and are the basis of numerous laws and regulations" (2022 Cal. Legis. Serv. Ch. 845 (S.B. No. 1334, § 1), as explained in *Curcini*, "the question is not what was the Legislature's intent, but what is the scope of the constitutional grant of power to the county." (*Curcini,* 164 Cal.App.4th at 642, fn. 11.)

Plaintiff's response to the foregoing is to argue that her allegations of failing to receive the pay to which she is entitled based on the County's timekeeping practices implicate the state's minimum wage statutes and wage orders and because courts have limited the home rule doctrine in this regard, it has stated claims against the County. In making this argument, Plaintiff cites *Marquez, supra,* 32 Cal.App.5th 552, in which workers employed by a charter city filed suit based on the city's alleged failure to pay wages at or above the statewide minimum wage. In order to determine whether the state's minimum wage law could be applied to the defendant city, the court applied the four-part analysis set forth in *City of Vista*, and concluded that while the compensation of local employees is a municipal affair, the IWC minimum wage orders at issue applied to public employees, there was a conflict between the state's minimum wage requirements and the defendant's enactment setting subminimum

wages, and minimum wages for California workers is a matter of state-wide concern that "justif[ies] that state's interference in what would otherwise be a merely local affair." (*City of Vista*, *supra*, 32 Cal.App.5th at 560.) Based on this conclusion, the trial court's order sustaining the respondent county's demurrer was reversed. *Marquez* distinguished *Curcini* and *Dimon*, the authorities cited by the trial court in its order, explaining that neither of those decisions considered the statewide interest in a living wage addressed by a state minimum wage law.

It is notable to the Court that Plaintiff neglects to discuss *Gomez v. Regents of University of California* (2021) 63 Cal.App.5th 386 (*Gomez*), a case that has facts that are somewhat analogous to those alleged in the FAC, which determined that *Martinez* was *not* instructive. In *Gomez*, a former employee of the Regents of the University of California (the "Regents"), filed suit alleging that the Regents failed to pay her the requires minimum wages for all hours she worked based on their practices of rounding and automatic deduction of 30 minute meal breaks. The court rejected the plaintiff's request to expand the holding of *Marquez*, in part because unlike in that case, the plaintiff had not alleged that the Regents set her hourly pay below the minimum wage; instead, she challenged certain *timekeeping procedures* utilized by the Regents. The court reviewed various decisions in which California courts had deferred to the Regents in terms of the setting of wages and benefits for employees based on the authority granted to them in the California Constitution to govern their own internal affairs (see Cal. Const., art. IX, § 9), immune from legislative regulation, and stated that, "in light of [this] consistent deference," the lower court did not err in sustaining the Regent's demurrer.

Here, Plaintiff is similarly challenging the *timekeeping procedures* employed by the County, and does not assert that the County pays her and similarly situated employees below the set minimum hourly wage. Moreover, while the specific Constitutional provision involved in *Gomez* is not the same one at issue here, both that provision and the one which provides for the County's home rule over employee compensation are similar. While the author of the Senate Bill enacting Section 512.1 explained that it would "explicitly include public sector workers who provide direct patient care" in an effort to address the *Gomez* court's determination that the wage order at issue in that case did not apply to the University of California (see County's RJN, Exhibit G), the bill did not overturn *Gomez* or its holding thatinternal timekeeping procedures were an internal affair, and thus immune from legislative regulation.

All of this to say that the Court is persuaded that Plaintiff cannot state claims for meal (second cause of action) and rest (third cause of action) period violations against the County given its home rule authority to set compensation for its employees as held in *Curcini* and *Dimon* and, based on *Gomez*, also cannot state a claim for failing to pay all minimum wages due. Consequently, even if the Court were to agree with Plaintiff that she need not plead exhaustion of administrative remedies, her claims would fail for other reasons, as would her causes of action for penalties under PAGA, which are dependent on the predicate violations.

3. *Uncertainty*

The County asserts that the first and fourth causes of action are uncertain because Plaintiff has not specified which wage orders apply to her Complaint, nor pleaded any specific facts in support of her allegations of rounding or deducting time. Many, if not all, wages

orders contain exceptions that likely apply to it, the County maintains, but in the absence of allegations identifying the specific wage orders at issue, it cannot determine if such an exception is implicated here. The County continues that Plaintiff's claims are comprised of "improper boilerplate assertions" that it has violated unspecified minimum wage laws without any factual allegations in support of such a conclusion.

The County's arguments do not support sustaining a demurrer based on uncertainty. A demurrer on this ground is disfavored, and will be sustained only where the pleading is so bad that the defendant cannot reasonably respond, i.e., he or she cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. (*Khoury v. Maly's of Calif., Inc*. (1993) 14 Cal.App.4th 612, 616.) "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Id*.) While these claims may not contain the level of detail that the County seeks, that does not make them uncertain within the meaning of the statute. Given the County's arguments, it is clear that it understands what it is being accused of doing. Thus, the demurrer will not be sustained on this basis.

IV. MOTION TO STRIKE

A. Legal Standard

Pursuant to Code of Civil Procedure section 436, a court may strike out "any irrelevant, false, or improper matter inserted in any pleading" or any portion of a pleading "not drawn or filed in conformity with the law[] …, a court rule, or an order of the court." (Code Civ. Proc., § 436.) The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assuming the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc*. (2010) 191 Cal.App.4th 53, 63, citing, *Clauson v. Super. Ct*. (1998) 67 Cal.App.4th 1253, 1255.)

B. Discussion

Given the Court's ruling on the County's demurrer, the motion to strike is MOOT. Nevertheless, the Court will address the merits of the argument pertaining to Plaintiff's standing to assert certain claims.

The County moves to strike: allegations pertaining to Section 512.1 based on its contention that Plaintiff was not employed by the County when it became effective; the second, third, fifth and sixth causes of action as to Plaintiff and putative class members covered by MOAs meeting statutory exceptions; and PAGA penalties because the County is not subject to them. Because a motion to strike is not the proper instrument to challenge the validity of an entire cause of action (see *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528), the Court will not evaluate the merits of the County's second argument.

As the County explains, a statute enacted during a regular session of the Legislature takes effect January 1 following a 90-day period from the date of its enactment. (Gov. Code, § 9600, subd. (a).) Legislation enacting Section 512.1 was approved by the Governor and

chaptered by the Secretary of State on September 29, 2022 (Sen. Bill No. 1334 (2021-2022 Regular Session)); accordingly, it first went into effect on January 1, 2023. Enacted statutes apply *prospectively* only unless the Legislature "plainly has directed otherwise by means of express language of retroactivity or … other sources [that] provide a clear and unavoidable implication that the Legislature intended retroactive application." (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 955, internal citations and quotations omitted.) Here, there is no indication that Section 512.1 is to be applied retroactively. In the FAC, Plaintiff states that her employment with the County was terminated in September 2022 (FAC, ¶ 6), well before Section 512.1 went into effect. The County therefore argues that because this Section does not apply to Plaintiff's employment, she cannot assert claims based on this section on behalf of herself or other similarly situated employees.

In her opposition, citing to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 761, Plaintiff insists that she has standing to assert this claim as a class or PAGA representative because she was affected by the other Labor Code violations alleged in the FAC. In *Huff*, an employee brought a representative action under PAGA based on various Labor Code violations, including failures to immediately pay wages upon termination and to pay temporary service employees on a weekly basis. The defendant employer argued that the plaintiff did not have standing to pursue penalties under PAGA based on its failure to pay temporary service employees on a weekly basis because he was not such an employee and thus was not affected by that violation. The court rejected this argument, holding that PAGA penalties are recoverable by an employee affected by *at least one* of the violations alleged in a complaint, even for violations affecting other employees that the representative plaintiff was *not* affected by.

In the FAC, Plaintiff alleges that she suffered from violations of various provisions of the Labor Code including, *but not limited to*, Section 512.1. Consequently, even though Plaintiff cannot have been personally affected by violations of Section 512.1 because it was not in effect during her employment and has no retroactive application, she still has standing to pursue PAGA penalties based on those violations given on her allegations that she was affected by the County's alleged failure to comply with other portions of the Labor Code. Thus, the County's argument does not provide a basis to strike allegations pertaining to Section 512.1 from the FAC.

V. CONCLUSION

The County's demurrer to the FAC on the ground of failure to state facts sufficient to constitute a cause of action is SUSTAINED WITH 20 DAYS LEAVE TO AMEND. The demurrer on the ground of uncertainty is OVERRULED. Consequently, the County's motion to strike is MOOT.

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.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 13

Case Name: *Markel Rocke v. Pink Chicku LLC*
Case Nos.: 23CV413573

This is a representative action under the Private Attorneys General Act ("PAGA"). Plaintiff Markel Rocke alleges that Defendant Pink Chicku LLC, which provides assisted living services in patients' residences, hospitals and nursing facilities in California, failed to pay overtime and minimum wages, failed to provide compliant meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

Before the Court is Plaintiff's motion for approval of PAGA settlement, which is unopposed. As discussed below, the Court GRANTS Plaintiff's motion.

I. BACKGROUND

According to the allegations of the operative First Amended Complaint ("FAC"), Plaintiff was employed by Defendant as a client care coordinator, a non-exempt, hourly-paid position, from July 2020 to May 16, 2022. (FAC, ¶ 11.) Plaintiff alleges that Defendants systematically failed and refused to pay her and other Aggrieved Employees all wages due, and failed to pay those wages twice a month, in that they were not paid all wages for meal and rest periods not provided/authorized. (*Id*., ¶¶ 24, 30-34.) Defendant also regularly used a system of time rounding in a manner that resulting in it failing to compensate Plaintiff and Aggrieved Employees for all of the time they actually worked. (*Id*., ¶ 29.) Plaintiff and Aggrieved Employees were also required to perform "off-the-clock" work for which they were not compensated, and were not reimbursed by Defendant for business-related expenses incurred by them. (*Id*., ¶¶ 29, 35.)

Based on the foregoing, on April 5, 2023, Plaintiff initiated this action by filing a class action complaint asserting the following causes of action: (1) failure to pay all wages and sick pay; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to keep accurate itemized wage statements; (5) failure to pay wages upon termination of employment and accrued vacation upon termination of employment; (6) failure to reimburse for necessary expenditures; and (7) unfair business practices. On June 12, 2023, Plaintiff filed the FAC adding a claim for civil penalties under PAGA. Due to arbitration agreements signed by class members, Plaintiff subsequently requested and obtained dismissal of the first through seventh causes of action, leaving only the PAGA claim.

II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.) 75 percent of any penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended "to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id.* at p. 383.) A judgment in a PAGA action binds all those,

including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

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.) "[C]lass certification is not required" in this context as in a class action. (*Haralson v. U.S. Aviation Servs. Corp*. (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 (*Haralson*).)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77 (*Moniz*).) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77; see also *Haralson, supra,* 383 F. Supp. 3d at p. 971 ["when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

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. PLAINTIFF'S INVESTIGATION, SETTLEMENT PROCESS, AND THE PARTIES' AGREEMENT

After the commencement of this action, the parties engaged in informal discovery, with Plaintiff obtaining a large volume of documents and data from Defendant that included the following: Plaintiff and Aggrieved Employees' employment records; a detailed sampling of Aggrieved Employees' time and pay data; Defendant's Employee Handbook; arbitration agreements signed by non-exempt employees; employment practices, procedures, and policies including, but not limited to Defendant's expenses policy, meal and rest periods policy, work time policy, overtime policy, pay periods and pay days policy. These materials enabled the parties to engage in discussions regarding their evaluations of the case and various aspects of it, including but not limited to, the risks and delays of further litigation, the risks to the parties of proceeding with representative adjudication, the law relating to off-the-clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things. Plaintiff's counsel also invested time in researching and her claims and damages, and Defendant's defenses thereto, as well as facts discovered.

The parties agreed to participate in mediation before the Hon. Amy D. Hogue (Ret.), Esq., a neutral with extensive experience as a former complex department judgment litigating

and mediating wage and hour representative actions, and did so on November 9, 2023. The parties were able to reach a settlement at the full-day session, and then negotiated and memorialized the details of the settlement in the weeks after that which is now before the Court.

Pursuant to the Agreement, Defendant will pay a non-reversionary gross settlement amount of $105,000, which is comprised of $35,000 in attorney's fees (one third of the gross settlement amount), $13,294.63 in litigation costs and administration fees not to exceed $3,950. The net settlement of approximately $42,755.37 will be distributed 75 percent ($32,066.53) to the LWDA and 25 percent ($10,688.84) to "Aggrieved Employees," defined as "[a]ll non-exempt employees who worked for Defendant in California during [the period of April 5, 2022 through the date of entry of the court order approving settlement]," on a pro rata basis based on the number of pay periods each employee worked during the relevant period.

It is estimated that there are approximately 4,815 pay periods within the PAGA Period of April 5, 2022 though the date of entry of the court order approving settlement, however, if the actual number of pay periods exceeds this amount by more than 10%, the parties' settlement agreement provides that Defendant must increase the net settlement amount on a pro rata dollar value equal to the number of pay periods in excess of 5,296 pay periods. If this escalator clause is triggered, Defendant may alternatively choose to end the PAGA Period on the date that the increase would otherwise be triggered.

In exchange for settlement, Aggrieved Employees (and the State of California and the LWDA) will release "PAGA claims for civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, et. seq. ("PAGA") based upon the allegations of Defendant's conduct set forth in Plaintiff's pre-filing PAGA notice letter filed with the LWDA …." The release is appropriately tailored to the allegations at issue, and does not release any claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra,* 72 Cal.App.5th at p. 82 [release of "all known and unknown claims under PAGA … that were or could have been pled based on the allegations of the Complaint" was appropriately approved].)

In exchange for settlement, Plaintiff executed a general release which releases Defendant from "all charges, complaints, claims and liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected (hereinafter "claims") which Plaintiff at any time had or claimed to have or which Plaintiff may claim to have regarding events that have occurred as of the date Plaintiff signs this Agreement, including, without limitations, any and all claims related or in any manner incidental to Plaintiff's employment with Defendant or her separation therefrom."

IV. DISCUSSION

D. Potential Verdict Value

Plaintiff explains that using the most straightforward formulation of applying the "catch-all" $100 penalty specified in Labor Code section 2699, subdivision (f)(2), to each pay period per employee, for all of the estimated 4,815 pay periods through mediation, the maximum single penalty plausible exposure under that direct approach is $481,500.00. The settlement represents approximately 21.8% of this amount. Plaintiff's counsel also calculated

estimated the risk-adjusted penalty recovery for each claim, separately, resulting in a maximum plausible risk-adjusted exposure of $540,435.

Several factors reduced the foregoing maximum exposure amounts, including the potential for a significant reduction by the Court based on a lack of willfulness on the part of Defendant to evade applicable wage and hour laws, the Court's potential unwillingness to stack penalties and its overall discretion in calculating penalties, the difficulties Plaintiff would encounter in proving liability for roughly 230 Aggrieved Employees working in different departments, disputes over which Wage Order applied to Aggrieved Employees, employee choice as a barrier to proving claims, potential manageability issues and Defendant's ability to assert viable legal defenses. In consideration of these facts, the history of various similar PAGA decisions and the risk that Plaintiff may recover nothing, the Court finds that the proposed settlement is fair to those affected and is genuine, meaningful, and reasonable in light of the statute's purposes.

E. Attorneys' Fees

While the PAGA statute does not expressly require judicial review of claimed attorney fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties associated with PAGA settlements without also considering attorney fees. The Court thus finds that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is consistent with the observation of many courts that PAGA claims are analogous to "*qui tam*" suits like those under the federal False Claims Act: when reviewing settlements of *qui tam* claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v. Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be considered by the trial court as part of its review of the "entire settlement arrangement"].)

As set forth above, Plaintiff seeks a fee award of $35,000, one-third of the gross settlement, which is not an uncommon contingency fee allocation in a wage and hour/PAGA action. Plaintiff also submits a lodestar figure of $60,370 (not including at least $2,250 in estimated future work) based on 134.9 hours spent on this case by counsel billing at rates of $400-450 per hour. This amount far exceeds the fees requested by Plaintiff here, resulting in a negative multiplier. Accordingly, the lodestar cross check supports the percentage fee actually requested and this amount is approved. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1 Cal.5th 480, 488, 503-504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

F. Other Costs and Awards

Counsel's request for litigation costs of $ $13,294.63 appears reasonable (and is below the $17,000 maximum provided by the parties' agreement) based on the supporting declaration provided which establishes that counsel actually incurred costs in this amount and is approved. Also approved is Plaintiff's receipt of $10,000 as consideration for general release of her individual wage and hour claims.

V. ADMINISTRATION PROCESS

The parties have selected ILYM Group, Inc. ("ILYM Group") as the settlement administrator. The parties have agreed that no later than 14 days after the "Effective Date,"[1] Defendants will provide ILYM Group with a list of all Aggrieved Employees and the relevant identifying information (including last known mailing address). Within 14 days from when the gross settlement amount has been deposited with the administrator by Defendant, ILYM Group will pay the various amounts approved by the Court to Plaintiff's counsel, the LWDA, and each Aggrieved Employee. Each Aggrieved Employee will be sent a check in the appropriate amount, and if such payment is returned to the administrator as undeliverable, it will search for a more current addresses (through a skip-trace and other similar means) and re-mail payment within ten days after the payment was returned. Any checks that remain uncashed after 180 days will be transmitted to the California State Controller's Unclaimed Property division. These administrative procedures are appropriate and are approved.

VI. ORDER AND JUDGMENT

Plaintiff's motion for approval of the parties' PAGA settlement is GRANTED. The Aggrieved Employees are: All non-exempt employees who worked for Defendant in California during the period of April 5, 2022 through the date of entry of this order approving settlement.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff and the Aggrieved Employees shall take from the PAGA claim in their FAC only the relief set forth in the parties' settlement agreement and this order and judgment. The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **December 19, 2024 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, Plaintiff's 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 the California State Controller; 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.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

[1] This term is defined by the agreement as the date by when both of the following have occurred: (a) the Court enters a judgment on its order granting approval of the settlement; and (b) the judgment is final. The judgment is final as of the latest of the following occurrences: (a) if no Aggrieved Employee objects to the settlement, the day the Court enters Judgment; (b) if one or more Aggrieved Employees objects to the settlement, the day after the deadline for filing a notice of appeal the judgment; or if a timely appeal from the judgment is filed, the day after the appellate court affirms the judgment and issues a remittitur.

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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