SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

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

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department7@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

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

LAW AND MOTION TENTATIVE RULINGS
DATE: MAY 23, 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	19CV354617	Berumen, et al. v. Allied Construction Management, Inc. et al. (Class Action/PAGA)	See Line 1 for tentative ruling.
LINE 2	21CV380823	Eliazo v. Northern California Retina Vitreous Associates Medical Group, Inc. (Class Action)	See Line 2 for tentative ruling. Plaintiff's counsel must appear at the hearing to discuss the timeframe by which a supplemental declaration will be submitted.
LINE 3	21CV386281	Roper v. Golden State Urgent Care Providers, et al.	See Line 3 for tentative ruling.
LINE 4	19CV345042	Phan v. All About Parking, Inc. (Class Action)	This hearing was previously vacated by stipulation and order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 5	19CV345042	Phan v. All About Parking, Inc. (Class Action)	This hearing was previously vacated by stipulation and order.
LINE 6	22CV399097	Yotopoulos v. Mach49, LLC, et al.	The unopposed motion to appear as counsel pro hac vice is GRANTED. The Court will sign the proposed order. No appearance is necessary.
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Pablo Berumen, et al. v. Allied Construction Management, Inc., et al.*
Case Nos.: 19CV354617

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Pablo Berumen, Jorge Sanchez,[1] Daniel Ortiz Ahumada and Manuel Feria Silva (collectively, "Plaintiffs") allege that defendant and cross-complainant Allied Construction Management, Inc. dba Allied Group Renovation Experts ("Allied"), a contractor licensed in California, hires unlicensed contractors who pay their workers with a daily lump sum, all of which violates of California law.

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

I. BACKGROUND

Plaintiffs allege that Allied is a New Jersey-based company that remodels hotels throughout the United States, including in California. It does so by recruiting unlicensed subcontractors who in turn recruit workers to travel- frequently from outside California- to live and work at the hotel while it is being remodeled. (Third Amended Complaint ("TAC") at 11:2-9.) As a contractor licensed with the California Contractor's State Licensing Board ("CSLB"), Allied thus improperly contracts with unlicensed contractors, who in turn contract with construction workers who are paid lump sum daily amounts as independent contractors. (*Id*. at 2:18-21.)

Plaintiffs allege that Allied contracted with Defendant DM&G Construction Co., LLC ("DM&G"), a Louisiana entity, to provide services such as framing and painting. (TAC at 4:22-24.) DM&G, in turn, employed Plaintiffs and other workers. (*Ibid*.) Plaintiffs name Defendant Danny Gilreath as DM&G's alter ego. (*Id*. at 5:4-6.) In addition, they allege that Defendant Richard C. Warren, and his alter ego Defendant Warren Painting and Drywall, LLC, is "a joint employer of DM&G and/or jointly liable for any liability of DM&G." (*Id*. at 5:24-26.)

According to the TAC, Defendants employed Plaintiffs and other individuals to perform construction work on renovations of multiple hotels in California, including the Sonesta Hotel in Milpitas. (TAC at 11:3-5.) Defendants recruited these employees to travel to California from afar, including Florida and Texas, to provide construction services. (*Id.* at 11:6-8.) Defendants told employees they would be paid a fixed daily salary of $150-$250 to work ten-hour days. (*Id*. at 11:18-20)

Plaintiffs and other employees worked ten-hour workdays, six to seven days per week; were not permitted to take rest breaks; and were provided with only one meal period, after the fifth hour of work. (TAC at 11:26-12:7.) They were also required to purchase their own tools to perform their job duties. (*Id*. at 12:8-9.) After approximately a month of work, and repeated

[1] Mr. Sanchez is deceased and his personal representative, Sonia Pavia Sanchez, has substituted into the lawsuit in his place.

requests for payment that were unheeded, Plaintiff, Class Members and other aggrieved employees were evicted from their quarters. (*Id*. at 11:21-25.)

Plaintiffs initiated this action with the filing of the complaint on September 9, 2019, asserting eight causes of action, including a representative claim under PAGA. A first amended complaint was filed on November 8, 2019, followed by a second amended complaint on August 3, 2020. On June 3, 2023, in its order granting preliminary approval of the Class action and PAGA settlement, the Court granted Plaintiffs leave to file the operative TAC, which asserts the following causes of action: (1) failure to pay for all hours worked and failure to pay legal minimum wage; (2) failure to pay overtime wages; (3) failure to provide meal and rest periods or pay meal and rest period premiums; (4) failure to provide accurate itemized wage statements; (5) failure to pay all wages due upon termination; (6) failure to reimburse expenses; (7) misrepresentation to cause employee to change locations for purpose of performing labor (Labor Code § 970 et seq.); (8) unfair business practices; and (9) penalties under PAGA.

Mr. Gilreath and DM&G have been non-responsive during litigation; accordingly, default was entered against them.

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, 2022 U.S. LEXIS 2940.)

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 CLASS

For settlement purposes only, Plaintiffs request the following Class be certified:

> All individuals employed by Allied Construction Management, Inc. dba Allied Group Renovation Experts, Richard C. Warren, Warren Painting and Drywall, LLC, DM&G Construction Company, LLC and Danny Gilreath for work performed within the State of California from January 1, 2019, through December 31, 2019, who were hired by and to be paid a daily wage by Defendants DM&G Construction, LLC and Danny Gilreath and were: 1) not paid a minimum wage for all hours worked; 2) not paid overtime premiums for hours worked subject to overtime premiums; 3) not provided wage statements compliant with Labor Code § 226; 4) were not provided compliant rest breaks or compensation in lieu of; 5)

not provided complaint meal periods or compensation in lieu of; 6) paid all wages upon termination.

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.)

At preliminary approval, the Court provisionally certified the above-described class, determining that Plaintiffs had demonstrated by a preponderance of the evidence (1) an ascertainable class, (2) a well-defined community of interest among the class members and (3) that a class action provides substantial benefits to both litigants and the Court. Consequently, the Court will certify the class for settlement purposes as requested.

IV. TERMS AND ADMINISTRATION OF SETTLEMENT

The non-reversionary gross settlement amount is $400,000, with $300,000 to be provided by Allied and $100,000 to be provided by Mr. Warren. Attorney's fees of up to $133,333 (one-third of the gross-settlement), litigation costs of $8,000 and $4,000 in administration costs will be paid from the gross settlement. Approximately $34,667 will be allocated to PAGA penalties, 75 percent of which ($25,000) will be paid to the LWDA, leaving the remaining 25 percent ($9,667) to "Aggrieved Employees." The four named plaintiffs seek incentive awards of $5,000 each, for a total of $20,000. The net settlement amount of $209,167 will be allocated to the 17 participating Class Member (i.e., those who have timely submitted a Claim Form to the administrator Phoenix Settlement Administrators ("Phoenix")) on a pro rata basis based on their pay periods worked during the Class period.

The highest individual settlement payment to be paid is approximately $23,529.41, the lowest $1,069.52, and the average $11,764.71. The highest individual PAGA payment is approximately $955.80, the lowest $43.45, and the average $458.35. For tax purposes, Class Members' payments will be allocated 25 percent to wages and 75 percent to penalties and interest, while other payments will be allocated one-hundred percent to penalties and interest. Employer-side payroll taxes will be paid separately from and in addition to the settlement. Funds associated with checks uncashed after 180 days will be paid to the California Controller's Unclaimed Property Fund in the name of the class member. To the extent there are any leftover funds after payments to the Class, including redistribution to the Class and payment under PAGA, those funds, "to the extent that they are under $1,000," shall be paid as cy pres to the Katharine and George Alexander Community Law Center "to be earmarked for their worker right's legal counseling clinics[.]" If these funds are over $1,000, they are to be added to the PAGA payment.

In exchange for settlement, Class Members who do not opt out will release "all claims, charges complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that each Class Member had, now has, or may hereafter claim to have against the Released Parties as plead and tied to the allegations in the Third Amended Complaint." As the Court determined in its order preliminarily approving the settlement, the release is appropriately tailored to the factual claims at issue. (See *Amara v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) Consistent with the statute, Aggrieved Employees will not be able to opt out of the PAGA portion of the settlement.

The notice period has now been completed. According to the declaration of case manager Taylor Mitzner with settlement administrator Phoenix submitted in support of the instant motion (the "Mitzner Declaration"), on August 30, 2023, Phoenix received from Allied's counsel the names, last known telephone numbers and number of days worked during the Class period for each of the twenty individuals identified as Class Members. Several weeks later, Phoenix received, from Allied's counsel, a supplemental data file that contained the last known mailing address for sixteen Class Members. Phoenix attempted to contact the four members without a mailing address at the telephone numbers provided. As of the date of the case manager's declaration- January 18, 2024- Phoenix has not obtained addresses for these four members. Phoenix processed the addresses it had against the National Change of Address database to confirm and update this information and then mailed the notice packet to Class Members, in both English and Spanish, on October 4, 2023 via first class mail.

The deadline to submit a request for exclusion, a challenge to the amount of workweeks listed, or an objection to the settlement was January 2, 2024. As of the date of the Mitzner Declaration, Phoenix has received seventeen claims forms[2] from Class Members, but no requests for exclusion, objections to the settlement, or workweek disputes.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiffs' claims, and that the PAGA settlement is genuine, meaningful, and fair to those affected. It finds no reason to depart from these findings now,

[2] While only 16 notice packets were sent by Phoenix, Plaintiffs' counsel explains that Phoenix was able to obtain a Claim Form from a seventeenth Class Member based on outreach conducted with participating Class Members.

especially considering that there are no objections. Therefore, the Court finds that the settlement is fair and reasonable for the purposes of final approval.

V. ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS

As articulated above, Plaintiffs' counsel seeks a fee award of $133,333, or one-third of the gross settlement amount, which is not an uncommon contingency fee allocation in a wage and hour class action. This award is facially reasonable under the "common fund" doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiffs also provide a lodestar figure of $320,800, based on 527 hours at billing rates of $550 to $650, resulting in a negative multiplier.

"While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable by refining the choice of a percentage or by checking the percentage result against a lodestar- multiplier calculation." (*Laffitte, supra*, 1 Cal.5th 480, 494-495.) Applying this latter approach,

> [T]he percentage-based fee will typically be larger than the lodestar based fee. Assuming that one expects rough parity between the results of the percentage method and the lodestar method, the difference between the two computed fees will be attributable solely to a multiplier that has yet to be applied. Stated another way, the ratio of the percentage-based fee to the lodestar-based fee implies a multiplier, and that implied multiplier can be evaluated for reasonableness. If the implied multiplier is reasonable, then the cross-check confirms the reasonableness of the percentage-based fee; if the implied multiplier is unreasonable, the court should revisit its assumptions.

(*Laffitte, supra*, 1 Cal.5th at p. 496, quoting Walker & Horwich, *The Ethical Imperative of a Lodestar Cross-check: Judicial Misgivings About "Reasonable Percentage" Fees in Common Fund Cases* (2005) 18 Geo. J. Legal Ethics 1453, 1463.) As described by the California Supreme Court, "[i]f the multiplier calculated by means of a lodestar crosscheck is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Laffitte, supra*, 1 Cal.5th at 505.)

Here, the multiplier sought by Plaintiffs' counsel is negative and the amount requested is supported by a percentage cross-check. As such, the Court finds counsel's requested fee award is reasonable.

Plaintiffs' counsel also seeks $8,000 in litigation costs, which is the maximum permitted by the settlement agreement. This amount is reasonable and therefore approved. The $4,000 in administrative costs are below the limit provided by the agreement ($12,000) and are also approved.

Finally, Plaintiffs request incentive awards of $5,000 each. To support these requests, Plaintiffs submit declarations describing their efforts on the cases. The Court finds that the class representatives are entitled to enhancement awards and the amounts requested are reasonable and approved.

VI. CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Plaintiffs' motion for final approval is GRANTED. The following class is certified for settlement purposes only:

> All individuals employed by Allied Construction Management, Inc. dba Allied Group Renovation Experts, Richard C. Warren, Warren Painting and Drywall, LLC, DM&G Construction Company, LLC and Danny Gilreath for work performed within the State of California from January 1, 2019, through December 31, 2019, who were hired by and to be paid a daily wage by Defendants DM&G Construction, LLC and Danny Gilreath and were: 1) not paid a minimum wage for all hours worked; 2) not paid overtime premiums for hours worked subject to overtime premiums; 3) not provided wage statements compliant with Labor Code § 226; 4) were not provided compliant rest breaks or compensation in lieu of; 5) not provided complaint meal periods or compensation in lieu of; 6) paid all wages upon termination.

Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiffs and the members of the class will take from their complaint only the relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court will retain jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment.

However, the Court observes that this order and judgment does not resolve all claims against all defendants listed in the TAC. Accordingly, the Court schedules a Case Management Conference for **September 12, 2024, at 2:30 P.M.** in Department 7.

In addition, the Court sets a compliance hearing for **January 16, 2025 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

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 2

Case Name: *Christine Eliazo v. Northern California Retina Vitreous Associates Medical Group, Inc.*
Case Nos.: 21CV380821

This is a wage and hour putative class action.[1] Plaintiff Christine Eliazo alleges that Defendant Northern California Retina Vitreous Associates Medical Group, Inc. ("Defendant"), who treats retina, macula, and vitreous conditions such as age-related macular degeneration, diabetic retinopathy, retinal vein occlusion, flashers and floaters, and retinal tears or detachment through various treatments and surgical procedures, committed various Labor Code violations.

Before the Court is Plaintiff's motion for preliminary approval of settlement, which is unopposed. As discussed below, Plaintiff's counsel must provide a supplemental declaration to the Court with the requested information to enable it to make a ruling on this motion.

I. BACKGROUND

According to the allegations of the operative class complaint ("Class Complaint"), Plaintiff was employed by Defendant as an hourly-paid, non-exempt employee from August 2019 to July 2020. (Complaint, ¶ 18.) Plaintiff alleges that Defendant failed to: pay all overtime and minimum wages; provide compliant meal and rest periods and associated premium pay; timely pay wages due during employment and upon termination of employment; provide compliant wage statements; maintain required payroll records; and reimburse necessary business expenses incurred by Plaintiff and Class Members.

Plaintiff initiated this action by filing the Class Complaint on April 28, 2021, asserting the following causes of action: (1) unpaid overtime; (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) unpaid minimum wages; (5) final wages not timely paid; (6) wages not timely paid during employment; (7) non-compliant wage statements; (8) failure to keep requisite pay records; (9) unreimbursed business expenses; and (9) violation of Business & Professions Code § 17200, et seq.

Plaintiff now seeks an order: granting leave to file the proposed First Amended Consolidated Complaint for Damages and Enforcement Under PAGA; preliminarily approving the proposed settlement; conditionally certifying the proposed Class for settlement purposes only; appointing Plaintiff as Class representative; appointing Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Yasmin Hosseini of Lawyers for Justice, PC as Class counsel; approving the form and plan for distribution of the Class Notice; appointing Simpluris, Inc. as the Settlement Administrator and it to send Notice of the Settlement to Class Members; and setting a final approval hearing date.

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[1] According to Plaintiff, the parties have agreed that she will seek leave to file her First Amended Consolidated Complaint for Damages and Enforcement Under PAGA consolidating the instant action with Plaintiff's Complaint for Enforcement Under PAGA (Case No. 21CV382772), which was filed on July 7, 2021. This request, which is included in the motion for preliminary approval, is GRANTED.

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, Plaintiff's counsel conducted significant investigation and the parties engaged in informal discovery through which Plaintiff obtained, among other things: employment records of Plaintiff; Employee Handbook; job description; new hire checklist; earning statements; employment agreement; and company policy acknowledgements (Acknowledgement of Employee Handbook). In conjunction with a thorough investigation of the factual allegations, Plaintiff's counsel also investigated the applicable law regarding the claims and defenses asserted in this litigation, as well as the veracity, strength and scope of Plaintiff's claims.

The parties engaged in extensive settlement negotiations and participated in formal mediation with experienced complex labor and employment mediator Lynn S. Frank, Esq. and were, while adversarial in nature with each side prepared to litigate their position through trial, ultimately able to reach the settlement that is now before the Court.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement amount is $605,000. Attorney's fees of up to thirty-five percent of the gross settlement ($211,750), litigation costs of up to $28,000, and administration costs not to exceed $15,000 will be paid from the gross settlement. $125,000 will be allocated to PAGA penalties, 75% of which will be paid to the LWDA ($93,750), with the remaining 25% ($31,250) paid to "PAGA Group Members," who are defined as "all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California on at least one day during the PAGA Period [i.e., April 1, 2020 through September 20, 2022]."

The net settlement will be allocated to Class Members based on the following calculation:

a. The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Workweeks of all Settlement Class Members ("Estimated Workweek Value").
b. Each Settlement Class Member's individual Workweeks will be multiplied by the Estimated Workweek Value to arrive at his or her Individual Settlement Share.

"Class Members" are defined as "all current and formerly hourly-paid or non-exempt employees who worked for Defendant within the state of California during [April 28, 2017 through September 20, 2022]." PAGA payments will be allocated in a similar fashion, except subject to the PAGA period. Plaintiff will seek an enhancement payment of $10,000.

For tax purposes, settlement payments will be allocated 20% to wages and 80% to penalties and interest. 100% of the PAGA payment to PAGA Group Members will be allocated to penalties. The employer-side payroll taxes will be paid by Defendant separately from the gross settlement amount. Funds associated with checks uncashed after 180 days will be paid to Legal Aid at Work.

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

> [A]ll claims under state, federal, or local law, alleged in the Operative Complaint or that could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, including but not limited to claims for violations of California Labor Code sections 201-204, 221-224, 226 et seq., 226.7, 351, 510, 512, 551, 552, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, Industrial Welfare Commission Wage Orders, including inter alia, Wage Orders 4-2001 and 5-2001, California Business and Professions Code section 17200, et seq., regulations, and/or other provisions of law for failure to pay overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse necessary business expenses, and violation of California's unfair competition law.

Plaintiff and PAGA Group Members will release:

> [A]ll claims for civil penalties under the Private Attorneys General Act (California Labor Code section 2698, et seq.), arising out of the facts alleged in Plaintiff's LWDA Letter, arising during the PAGA Period, for violations of California Labor Code sections 201-204, 221-224, 226 et seq., 226.7, 351, 510, 512, 551, 552, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802 and Industrial Welfare Commission Wage Orders, including inter alia, Wage Orders 4-2001 and 5-2001, for failure to pay overtime wages, failure to provide compliant meal period and associated premiums, failure to provide compliant rest periods and associated premiums, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, failure to provide compliant wage statements, failure to keep requisite payroll records, failure to reimburse necessary business expenses.

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

V. FAIRNESS OF SETTLEMENT

Plaintiff has not provided sufficient information for the Court to evaluate the fairness of the settlement. She explains that her counsel developed and utilized a valuation model based on information and discovery obtained from Defendant in order to evaluate the potential value and merits of her claims, as well as the effect of Defendant's potential defenses, in order to arrive at the settlement amount. The Court has no specific information pertaining to this valuation and thus does not have the necessary context to determine whether the $605,000 gross settlement amount is fair and reasonable to the Class, and whether the PAGA allocation is genuine, meaningful and reasonable in light of the statute's purpose. The Court therefore requires that Plaintiff's counsel submit a supplemental declaration that provides sufficient detailed information to enable the Court to determine the fairness of the parties' settlement.

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

VI. PROPOSED SETTLEMENT CLASS

Plaintiff requests that the following settlement class be provisionally certified:

> [A]ll current and former hourly-paid or non- exempt employees who worked for Defendant within the State of California at any time during [April 28, 2017 through September 20, 2022].

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, Plaintiff fails to offer any information regarding the approximate size of the putative class and therefore the Court does not have enough information to determine whether class is sufficiently numerous. The Class appears to be readily ascertainable, however, because it is defined by objective characteristics and is easily identifiable based on Defendant's records. The Court requests that Counsel provide, in the supplemental declaration requested above, information clarifying the approximate size of the putative class.

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. Plaintiff's claims all arise from Defendant's wage and hour practices (and others) applied to the similarly-situated class members.

As for the second factor,

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

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

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

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

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

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, because Plaintiff has not articulated the approximate size of the putative class, the Court does not have sufficient information to evaluate the benefits of class certification.

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 Simpluris, Inc. ("Simpluris") as the settlement administrator. Within 21 calendar days of preliminary approval, Defendant will provide a list of all Class Members along with pertinent identifying information (including last known address) to the administrator. Within an additional ten calendar days, Simpluris 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 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 or a workweek dispute. Returned notices will be re-mailed to any forwarded address provided or an updated address located though a skip trace within three 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 (e.g., last four

digits of social security). Counsel must also indicate, in the supplemental declaration requested by the Court, whether the notice will be provided in any languages beyond English.

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

As explained in the preceding discussion, the disposition of this motion is dependent on additional information provided by Plaintiff's counsel. Thus, the Court's ruling is DEFERRED. Plaintiff's counsel must appear at the hearing to discuss the timeframe by which a supplemental declaration will be submitted.

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 3

Case Name: *Coral Roper v. Golden State Urgent Providers, et al.*
Case Nos.: 21CV386281

This is a putative class and representative action under the Private Attorneys General Act ("PAGA"). Plaintiff Coral Roper alleges that Defendants Golden State Urgent Care Providers, HCA-California Urgent Care Holdings, LLC and HCA Healthcare, Inc. (collectively, "Defendants"), who provide urgent care services throughout the State of California dba CareNow Urgent Care clinics, committed various Labor Code violations.

Before the Court is Plaintiff's motion for preliminary approval of class and representative action settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

According to the allegations of the operative First Amended Complaint ("FAC"), Plaintiff was employed by Defendants as a Nurse Practitioner at a CareNow Urgent Care in Milpitas from June 2020 to July 2021. (FAC, ¶ 12.) She alleges that Defendants failed to: pay proper overtime and double time wages at the contract rate of pay and compensation for missed meal and rest periods; reimburse for business—related expenses; issue adequate wage statements; and pay waiting time penalties upon separation from employment, in order to systematically deprive her and class/subclass members of the benefits and protections applicable to employees under California law.

Based on the foregoing, Plaintiff initiated this action on August 27, 2021 with the filing of the original complaint, and filed the FAC on November 10, 2021, asserting the following causes of action: (1) failure to pay overtime; (2) breach of contract; (3) failure to authorize and permit meal periods; (4) failure to authorize rest periods; (5) failure to reimburse business expenses; (6) failure to furnish adequate wage statements; (7) waiting time penalties; (8) unlawful business practices; and (9) penalties under PAGA.

Plaintiff now seeks an order: preliminarily approving the proposed settlement; certifying the proposed Class and Subclass for settlement purposes only; appointing Coral Roper as class representative; appointing Hunter Pyle and Katie Fietser of Hunter Pyle Law as class counsel; approving the form and plan for distribution of the Class Notice; appointing Phoenix Settlement Administrators ("Phoenix") as the Settlement Administrator and authorizing it to send notice of the Settlement to class and subclass members; staying all proceedings in this action, except those to effectuate the settlement, pending the final approval hearing; setting a final approval hearing date; and that the preliminary approval of the Settlement, conditional certification of the Wage Statement Settlement Class and Nurse Practitioner Subclass, and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement is disapproved in whole or in part by the Court, or any appellate court and/or other court of review in which event the Settlement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

B. Class Action

Generally, "questions whether a [class action] settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

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

(*Wershba, supra,* 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra,* 91 Cal.App.4th at p. 245.) The trial court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, citation and internal quotation marks omitted.) The trial court also must independently confirm that "the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar, supra,* 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be "provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Id.* at pp. 130, 133.)

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77.) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp*. (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 ["when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

III. SETTLEMENT PROCESS

Plaintiff's counsel conducted a thorough investigation into the facts relevant to the action and the parties engaged in informal discovery, through which Defendants produced, and Plaintiff's counsel reviewed and analyzed, the dates of employment for each putative Class and Subclass Members, the location of facilities in which they worked, exemplars of wage statements, Defendants' employment policies and procedures (including those concerning meal and rest breaks and overtime), and time and pay records. The foregoing materials enabled Plaintiff's counsel to conduct a comprehensive damages analysis to calculate the violation rates and potential exposure of the claims alleged in the FAC, which was provided to the mediator.

On July 19, 2023, the parties participated in mediation with mediator Jeffrey Kravis and were ultimately able to reach the settlement that is now before the Court.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement is $250,000. Attorney's fees of up to one-third of the gross settlement ($83,333.33), litigation costs of up to $20,000 and an estimated $6,500 in administration costs will be paid from the gross settlement. $10,500 will be allocated to PAGA penalties, 75% of which ($7,875) will be paid to the LWDA, with the remaining 25% ($2,625) to Wage Statement and Nurse Practitioner Aggrieved Employees.[1] Consistent with the statute, Aggrieved Employees will not be able to opt out of the PAGA portion of the settlement. The "Wage Statement Settlement Class" means "all current and former employees who were employed by Defendants at CareNow Urgent Care clinics throughout the state of

[1] "Wage Statement Aggrieved Employees" are defined as "all current and former employees who were employed by Defendants at CareNow Urgent Care clinics throughout the state of California during [August 27, 2020 to the date of preliminary approval], while "Nurse Practitioner Aggrieved Employees" are defined as "all current and former employees whom Defendants employed to work as a Nurse Practitioner at CareNow Urgent Care clinics in California during [August 27, 2020 to the date of preliminary approval]."

California during [August 27, 2020 to the date of preliminary approval]" and the "Nurse Practitioner Subclass" is defined as "all current and former employees whom Defendants employed to work as a Nurse Practitioner at CareNow Urgent Care clinics in California [during August 27, 2017 to the date of preliminary approval]." Plaintiff will seek an enhancement award in the amount of $10,000.

The net settlement will be allocated to the Wage Statement Class and Nurse Practitioner Subclass Members based on the following calculations:

(a) Of the Net Settlement Amount, $20,000 will be allocated to Wage Statement Settlement Class Members on a pro-rata basis as follows: (i) the number of Pay Periods worked during the Wage Statement Class Period divided by (ii) the total number of Pay Periods worked by all Wage Statement Settlement Class Members during the Wage Statement Class Period.
(b) Of the remaining Net Settlement Amount, a payment of $500 will be paid to any Nurse Practitioner Subclass Member who received a severance payment, meal period and/or rest period premium lump sum retroactive payment, or signed a release of liability.
(c) Of the remaining Net Settlement Amount, settlement payments will be allocated to Nurse Practitioner Subclass Members who did not receive a severance payment, meal period and/or rest period premium lump sum retroactive payment, or sign a release of liability on a pro-rata basis as follows: (i) the number of Pay Periods worked during the Nurse Practitioner Subclass Period divided by (ii) the total number of Pay Periods worked by all Nurse Practitioner Subclass Members during the Nurse Practitioner Subclass Period.

The Wage Statement and Nurse Practitioner Aggrieved Employees will receive a pro-rata share of the 25% of the PAGA payment based on pay periods worked during the PAGA period.

For tax purposes, settlement payments will be allocated 33% to wages and 67% to interest and penalties. The employer-side payroll taxes will be paid by Defendants separately from and in addition to the gross settlement amount. 100% of the PAGA payment to the Wage Statement and Nurse Practitioner Aggrieved Employees will be allocated to penalties. Funds associated with checks uncashed after 180 days will be transmitted to the California Controller's Unclaimed Property fund in the name of the Wage Statement Class Member or Nurse Practitioner Subclass Member.

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

> [A]ll claims asserted in the Action by Wage Statement Settlement Class Members, and all claims arising from or related to the facts and claims alleged in the Action or LWDA Letter by Wage Statement Settlement Class Members, or that could have been raised in the Action or LWDA Letter based on the facts and claims alleged by Wage Statement Settlement Class Members, as amended, regardless of whether such claims arise under federal (including FLSA 29 U.S.C. § 201 et seq.), state and/or local law, statute, ordinance, regulation, common law, or other source of law….

Participating Nurse Practitioner Subclass Members will release:

> [A]ll claims alleged, arising from or related to the facts and claims alleged in the Action or LWDA Letter by Nurse Practitioner Subclass Members, or that could have been raised in the Action or LWDA Letter based on the facts and claims alleged by Nurse Practitioner Subclass Members, as amended regardless of whether such claims arise under federal (including FLSA 29 U.S.C. § 201 et seq.), state and/or local law, statute, ordinance, regulation, common law, or other source of law….

Wage Statement Aggrieved Employees will release:

> [A]ll claims arising from or related to the facts and claims alleged in the Action or LWDA Letter by Wage Statement Aggrieved Employees, or that could have been raised in the Action or LWDA Letter based on the facts and claims alleged by Wage Statement Aggrieved Employees, as amended. Wage Statement Aggrieved Employees Released PAGA Claims include violations of PAGA (Labor Code § 2698, et seq., for violations of Labor Code § 226 and Attorneys' fees pursuant to Labor Code § 2699(g)(1)) ….

And Nurse Practitioner Aggrieved Employees will release:

> [A]ll claims arising from or related to the facts and claims alleged in the Action or LWDA Letter by Nurse Practitioner Aggrieved Employees, or that could have been raised in the Action or LWDA Letter based on the facts and claims alleged by Nurse Practitioner Aggrieved Employees, as amended. Nurse Practitioner Aggrieved Employees PAGA Claims include violations of PAGA (Labor Code § 2698, et seq., for violations of Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1194, 2800, 2802 and attorneys' fees pursuant to Labor Code § 2699(g)(1)) ….

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

V. FAIRNESS OF SETTLEMENT

Plaintiff's counsel conducted a thorough damages analysis by comparing time and pay records to calculate violation rates and utilizing other data provided by Defendants. Based on this analysis, Plaintiff determined Defendants' maximum exposure to be $865,651.63 based on the following maximum values for each claim: $42,529.18 (failure to pay overtime); $22,074.42 (meal period); $46,278.58 (rest break); $2,475 (nurse practitioner reimbursement claim); $12,100 (nurse practitioner wage statement claim); $249,041.12 (nurse practitioner waiting time penalties); $193,350 (wage statement Class wage statement claim); $199,400 (PAGA penalties). Plaintiff's counsel then discounted these amounts to account for, among other factors, the possibility of success of the defenses asserted, as well as the risks attendant to obtaining and maintaining certification of the class and subclass through trial, and the likelihood that the Court would significantly reduce any penalties under PAGA, to reach an estimated total reasonable settlement value of $245,633.84, including attorney's fees and costs.

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, which exceeds the reasonable settlement value estimated by Plaintiff's counsel, achieves a good result for the class. For purposes of preliminary approval, the Court finds that the settlement is fair and reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable in light of the statute's purposes.

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

VI. PROPOSED SETTLEMENT CLASS

> Plaintiff requests that the following Wage Statement Settlement Class be provisionally certified:
>
> [A]ll current and former employees who were employed by Defendants at CareNow Urgent Care clinics throughout the state of California beginning August 27, 2020 to the date of Preliminary Approval of the Settlement.

Plaintiff also requests that the following Nurse Practitioner Subclass be provisionally certified:

> [A]ll current and former employees whom Defendants employed to work as a Nurse Practitioner at CareNow Urgent Care clinics in California beginning August 27, 2017 to the date of Preliminary Approval of the Settlement.

E. 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.)

F. 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 121 Wage Statement Class Members and 9 Nurse Practitioner Subclass Members are readily identifiable based on Defendants' records, and both the class and subclass are appropriately defined based on objective characteristics. The Court finds that the settlement class and subclass are numerous, ascertainable and appropriately defined.

G. Community of Interest

The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact, (2) class representatives with claims or defenses typical of the class, and (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra,* 34 Cal.4th at pp. 326, 332.)

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

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

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

As for the second factor,

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

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

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

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

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

H. 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 121 Wage Statement Class Members and 9 Nurse Practitioner Subclass Members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class and subclass member. Further, it would be cost prohibitive for each class and subclass member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

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

The parties have selected Phoenix as the settlement administrator. Within 30 calendar days of preliminary approval, Defendants will provide a list of all Class and Subclass Members along with all pertinent identifying information (including last known address) to the administrator. Within an additional 14 days, Phoenix will mail the notice packet to Class and Subclass Members after updating their addresses through a search on the National Change of Address Database.

Here, the notice describes the lawsuit, explains the settlement, and instructs Class and Subclass 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 and Subclass Members are given 60 calendar days to request exclusion from the class, submit a written objection to the settlement, or dispute the computation of their share. Returned notices will be re-mailed to any forwarded address provided or an updated address located though a skip trace within three calendar days of return, and those Class and Subclass Members will have an additional 14 days to request exclusion, object to the settlement, or dispute pay periods credited to them.

The form of notice is generally adequate, but the Court requests clarification as to whether the notice will be provided in any languages in addition to English.

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

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

VIII. CONCLUSION

Plaintiff's motion for preliminary approval is GRANTED.

The final approval hearing shall take place on **January 23, 2025** at 1:30 in Dept. 7. The following class and subclass are provisionally certified for settlement purposes:

> Wage Statement Settlement Class
>
> [A]ll current and former employees who were employed by Defendants at CareNow Urgent Care clinics throughout the state of California beginning August 27, 2020 to the date of Preliminary Approval of the Settlement.
>
> Nurse Practitioner Subclass
>
> [A]ll current and former employees whom Defendants employed to work as a Nurse Practitioner at CareNow Urgent Care clinics in California beginning August 27, 2017 to the date of Preliminary Approval of the Settlement.

The Court will prepare the order.

****

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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