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 a tentative ruling, you must call (408) 808-6856 before 4:00 P.M. and leave a voicemail message containing the information described below.
PLEASE NOTE: Sending an email to the department or Complex Coordinator will no longer suffice to constitute notice to the Court of the need for a hearing regarding a tentative ruling.

In the voicemail message, 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.

- **Parties can appear either in person or remotely.** All 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.
- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
- Members of the public who wish to observe can do so through Microsoft Teams (using the link discussed above) or in person. Please make sure to turn your camera off and mute yourself if you are observing the proceedings remotely.
- 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: JULY 25, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

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 a tentative ruling, you must call (408) 808-6856 before 4:00 P.M. and leave a voicemail message containing the information described below.
PLEASE NOTE: Sending an email to the department or Complex Coordinator will no longer suffice to constitute notice to the Court of the need for a hearing regarding a tentative ruling.

In the voicemail message, 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.

- **Parties can appear either in person or remotely.** All 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.
- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
- Members of the public who wish to observe can do so through Microsoft Teams (using the link discussed above) or in person. Please make sure to turn your camera off and mute yourself if you are observing the proceedings remotely.
- 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

LINE #	CASE #	CASE TITLE	RULING
LINE 1	21CV375173	Jimenez v. M.D.E. Electric Company, Inc., et al. (Class Action)	See Line 1 for Tentative Ruling.
LINE 2	21CV392049	Cantu v. Google LLC, et al. (PAGA)	Previously continued by stipulation and order to December 19, 2024 at 1:30 p.m.
LINE 3	20CV367327	Abernathy v. Deacon Construction, LLC (Class Action)	See Line 3 for Tentative Ruling.
LINE 4	22CV398848	Lane, et al. v. Universal Protection Service, LP, et al.	See Line 4 for Tentative Ruling.

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 a tentative ruling, you must call (408) 808-6856 before 4:00 P.M. and leave a voicemail message containing the information described below.
PLEASE NOTE: Sending an email to the department or Complex Coordinator will no longer suffice to constitute notice to the Court of the need for a hearing regarding a tentative ruling.

In the voicemail message, 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.

- **Parties can appear either in person or remotely.** All 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.
- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
- Members of the public who wish to observe can do so through Microsoft Teams (using the link discussed above) or in person. Please make sure to turn your camera off and mute yourself if you are observing the proceedings remotely.
- 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

LINE 5	22CV399418	Davallou, et al. v. Universal Protection L.P.	See Line 4 for Tentative Ruling.
LINE 6	23CV413374	Balleza, et al. v. Universal Protection Service L.P., et al.	See Line 4 for Tentative Ruling.
LINE 7	22CV399095	Fritch, et al. v. Universal Protection L.P.	See Line 4 for Tentative Ruling.
LINE 8	22CV399096	Megia, et al. v. Universal Protection Service, LP, et al.	See Line 4 for Tentative Ruling.
LINE 9	22CV400206	Gil v. Universal Protection L.P., et al.	See Line 4 for Tentative Ruling.
LINE 10			
LINE 11			
LINE 12			

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 a tentative ruling, you must call (408) 808-6856 before 4:00 P.M. and leave a voicemail message containing the information described below.
PLEASE NOTE: Sending an email to the department or Complex Coordinator will no longer suffice to constitute notice to the Court of the need for a hearing regarding a tentative ruling.

In the voicemail message, 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.

- **Parties can appear either in person or remotely.** All 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.
- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
- Members of the public who wish to observe can do so through Microsoft Teams (using the link discussed above) or in person. Please make sure to turn your camera off and mute yourself if you are observing the proceedings remotely.
- 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

LINE 13			

Calendar Line 1

Case Name: *Alberto Conchas Jimenez v. The Castine Group*
Case No.: 21CV375173

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Alberto Conchas Jimenez alleges that Defendant The Castine Group ("Defendant"), which provides electrical construction work to clients throughout Northern California, committed various wage and hour violations. Before the Court is Plaintiff's motion for preliminary approval of settlement, which is unopposed. For the reasons 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 an hourly-paid, non-exempt employee from approximately August 2019 to July 2020. (FAC, ¶ 8.) Plaintiff alleges that Defendant failed to: pay for all hours worked (including minimum wage, straight time and overtime wages); provide meal periods; authorize and permit employees to take rest periods; timely pay all final wages due upon termination; reimburse expenses incurred by employees in the discharge of their duties; and furnish accurate wage statements. (*Id.*, ¶¶ 14-19.)

Based on the foregoing allegations, Plaintiff initiated this action on January 12, 2021, and filed the operative FAC on April 26, 2024, 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 rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) unfair business practices; and (8) penalties under PAGA.

Plaintiff now seeks an order: preliminarily approving the Class Action and PAGA Settlement Agreement; certifying the Class for settlement purposes; approving the notice and the plan for its distribution; appointing Plaintiff as Class representative for settlement purposes; appointing Justin F. Marquez, Benjamin H. Haber, Daniel J. Kramer of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes; appointing ILYM Group, Inc. ("ILYM") as the settlement administrator; and scheduling a final approval hearing.

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

Following the initiation of this action, the parties engaged in informal discovery, with Defendant producing samples of time and pay records for class members, documents of its wage and hour policies and practices during the Class period, and information regarding the total number of current and former employees. In June 2022, Plaintiff was deposed by Defendant, and several months later, Plaintiff deposed numerous individuals employed by Defendant. The information obtained by Plaintiff through the foregoing efforts enabled his counsel, with the assistance of an expert who prepared a damages analysis, to evaluate the probability of class certification, success on the merits, and Defendant's maximum exposure. Plaintiff's counsel also investigated the applicable law regarding the claims and defenses asserted in this action.

On December 6, 2021, the parties participated in private mediation with Lisa Klerman, Esq., an experiences class action mediator; however, the parties were unable to resolve their dispute. In September 1, 2022, then-defendant M.D.E. Electric Company ("M.D.E.") filed a motion for summary judgment. On December 1, 2022, the Court denied M.D.E.'s motion.[1]

On April 27, 2023, the parties participated in a remote mediation session with experienced class action mediator Jason Marsili, Esq. After extensive negotiations the parties, who were prepared to litigate their positions through trial and appeal if no settlement was reached, were able to reach the settlement that is now before the Court.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement is $485,000. Attorney's fees of up to $161,666.67 (one-third of the gross settlement), litigation costs not to exceed $50,000 and administration costs not to exceed $15,000 will be paid from the gross settlement. $25,000 will be allocated to PAGA penalties, 75% of which ($18,750) will be paid to the LWDA, with the remaining 25% ($6,250) distributed, on a pro rata basis, to "Aggrieved Employees," who are defined as "all current or former non-exempt employees who worked for the Castine Group in the State of California from January 13, 2020, through the date of preliminary approval of the parties' settlement agreement by the Court." Plaintiff will seek an service payment of not more than $10,000.

The estimated net settlement of approximately $223,333 will be allocated, on a pro rata basis based on the number of weeks worked during the Class period, to members of the "Class," which is defined as including "all current and former non-exempt employees of the Castine Group who worked in California any time or times between January 12, 2017, through the date of preliminary approval of the Parties' settlement agreement by the Court … excluding persons who are currently represented by counsel and have a civil action pending, and … any persons who opt-out of the class." For tax purposes, settlement payments will be allocated 23% to wages, 10% to interest and 67% to penalties. Payments to the Aggrieved Employees

[1] M.D.E. is no longer a party to the FAC.

will be allocated 100% to penalties. Defendants will pay employer side payroll taxes separately from the gross settlement amount. Funds associated with checks uncashed after 180 days will be transmitted to *cy pres* beneficiary Legal Aid at Work.

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

> all claims that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Released Claims specifically include, but are not limited to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1174, 1194, 1194.2, and 1197 and the related IWC Wage Order No. 16-2001 and Business & Professions Code §§ 17200, et seq., and include claims based on alleged violations of these Labor Code and Wage Order provisions) and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1) failure to timely pay employees upon separation or discharge; (2) failure to pay all wages due and owing for time worked; (3) failure to provide meal or rest periods of compensation in lieu thereof, (4) failure to provide accurate itemized wage statements, (5) all related violations of the applicable Wage Orders; (6) all related violations of California's unfair competition law; and (7) interest, fees, and costs ("Released Claims"). The enumeration of these specific statutes shall neither enlarge or narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and circumstances alleged in any Complaint on file in the Action. Plaintiff's Release does not extend to any claims and causes of actions related to the case entitled *Alberto Jimenez v. M.D.E. Electric Company, Inc., et al.*, case number 21CV385485.

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

> all claims for PAGA penalties that were asserted in the Action and PAGA Notice, or that arose from or could have been asserted based on the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act alleged in the Operative Complaint and PAGA Notice, and ascertained in the course of the Action. The Released PAGA Claims specifically include, but are not limited to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 351, 510, 512, 1174, 1194, 1194.2, 1197, 2698, and 2802, and the related Industrial Welfare Commission Wage Orders, and include claims for PAGA penalties based on alleged violations of these Labor Code and Wage Order provisions and all other claims for PAGA penalties, such as those under the California Labor Code, Industrial Welfare Commission Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1) failure to pay all wages due and owing for time worked; (2) failure to pay overtime; (3) failure to provide meal or rest periods of compensation in lieu thereof; (4) failure to provide accurate

itemized wage statements; (5) failure to timely pay employees upon separation or discharge; (6) all related violations of the applicable Wage Orders; and (7) interest, fees, and costs.

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

Based on available data, and the damages analysis prepared by its expert, Plaintiff's counsel estimated Defendant's maximum exposure for each claim thusly: $57,604.50 (off-the clock violations); $432,928.80 (unpaid overtime); $848,534.16 (meal period violations); $857,211.16 (rest period violations); $61,200 (unreimbursed business expenses); $329,931.36 (waiting time penalties); $174,850 (penalties for inaccurate wage statements); $390,000 (PAGA penalties). Counsel then calculated realistic damages, which totaled $760,330.92, by reducing the foregoing amounts by percentages ranging from 50% to 80% to account for: the difficulty of obtaining class certification; the potential success of Defendant's arguments on the merits; the difficulty of establishing the willfulness of Defendant's actions and proving the merits of each claim; and the risk of losing at trial or on appeal.

Considering the portion of the case's value attributable to uncertain penalties, claims that could be difficult to certify for class treatment, and the multiple, dependent contingencies that Plaintiff would have had to overcome to prevail on his claims, the settlement, which represents approximately 64% of the realistic maximum recovery 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 settlement class be provisionally certified:

> [A]ll current and former non-exempt employees of the Castine Group who worked in California any time or times between January 12, 2017, through the date of preliminary approval of the Parties' settlement agreement by the Court, and excluding persons who are currently represented by counsel and have a civil action pending, and also excluding any persons who opt-out of the class.

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 72 class members are readily identifiable based on Defendant's records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

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 a non-exempt, hourly-paid employee and alleges that he experienced the violations at issue. The anticipated defenses are not unique to Plaintiff, and there is no indication that Plaintiff's interests are otherwise in conflict with those of the class.

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

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

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 72 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).)

Here, the notice, which will be provided in both 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, and Class members are informed of their qualifying workweeks as reflected in Defendant's records and are instructed how to dispute this

information. Class members are given 45 days to request exclusion from the class or submit a written objection to the settlement. Regarding appearances at the final fairness hearing, the notice shall be further modified to instruct class members as follows:

> Although class members may appear in person, 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.

Turning to the notice procedure, as articulated above, the parties have selected ILYM as the settlement administrator. The administrator will mail the notice packet within 14 days of receiving relevant identifying information pertaining to all Class members from Defendant; this information is to be provided within 30 days of preliminary approval of the settlement. Any returned notices will be re-mailed to any forwarding address provided or better address located through a member address search. Class members who receive a re-mailed notice will have an additional 14 days to respond. These notice procedures are appropriate and are approved.

VIII. CONCLUSION

Plaintiff's motion for preliminary approval is GRANTED. The final approval hearing shall take place on **January 16, 2025** at 1:30 in Dept. 7. The following class is preliminarily certified for settlement purposes:

> [A]ll current and former non-exempt employees of the Castine Group who worked in California any time or times between January 12, 2017, through the date of preliminary approval of the Parties' settlement agreement by the Court, and excluding persons who are currently represented by counsel and have a civil action pending, and also excluding any persons who opt-out of the class.

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.

- oo0oo -

Calendar Line 2

Case Name:
Case No.:

- oo0oo -

Calendar Line 3

Case Name: *James Abernathy v. Deacon Construction, LLC*
Case No.: 20CV367327

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff James Abernathy alleges that Defendant Deacon Construction, LLC ("Defendant") committed various wage and hour violations. Before the Court is Plaintiff's motion for preliminary approval of settlement, which is unopposed. For the reasons discussed below, assuming satisfactory clarification is provided as to the language in which the notice to class members will be provided, the Court will GRANT Plaintiff's motion.

I. BACKGROUND

According to the allegations of the operative Complaint, Plaintiff was employed by Defendant as a construction worker from December 2019 to April 7, 2020, an hourly-paid, non-exempt position. (Complaint, ¶ 7.) He alleges that Defendant failed to: provide timely off-duty meal breaks (and premiums when such breaks were not provided); reimburse employees for expenses incurred in the discharge of their duties; provide accurate, itemized wage statements; and maintain accurate payroll records.

Based on the foregoing allegations, Plaintiff initiated this action with the filing of the Complaint on June 17, 2020, asserting the following causes of action: (1) violation of Labor Code § 226.7; (2) violation of Labor Code § 2802; (3) violation of Labor Code § 226; (4) violation of Business & Professions Code § 17200; and (5) PAGA penalties.

Plaintiff now seeks an order: preliminarily approving the Joint Stipulation of Class and PAGA Settlement agreement; certifying the classes for settlement purposes; approving the notice and the plan for its distribution; appointing Plaintiff as Class representative for settlement purposes; appointing
Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C. as Class Counsel for settlement purposes; appointing Phoenix Settlement Administrators ("Phoenix") as the settlement administrator; and scheduling a final approval hearing.

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

After the initiation of this action, the parties met and conferred and agreed to participate in private mediation. In connection with and in anticipation of the mediation, the parties engaged in informal discovery, with Defendant providing Plaintiff's counsel with data relating to the number of Class members and wage statements issued to each Class member, as well as Plaintiff's personnel file, employee handbook, meal period policies, and copies of wage statements to putative Class members.

On June 2, 2021, the parties engaged in a full day mediation with the Hon. Richard M. Silver (Ret.), but were unable to resolve their dispute. Subsequent to this, the parties engaged in formal discovery, including the depositions of Plaintiff and various Persons Most Qualified for both sides. The parties also negotiated the distribution of a *Belaire-West* notice.

On September 26, 2022, Plaintiff filed a motion for class certification. On December 16, 2022, the Court certified a Meal Period class and a Wage Statement class, but declined to certify Plaintiff's reimbursement theory of liability.

After additional discovery and distribution of the class notice, the parties agreed to engage in a second mediation and did so on December 18, 2023, with the Honorable Ronald M. Sabraw (Ret.). The parties were able to reach the settlement that is now before the Court.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement is $650,000. Attorney's fees of up to $216,666.67 (one-third of the gross settlement), litigation costs up to $35,000 and administration costs not to exceed $8,250 will be paid from the gross settlement. $60,000 will be allocated to PAGA penalties, 75% of which ($45,000) will be paid to the LWDA, with the remaining 25% ($15,000) distributed, on a pro rata basis, to "PAGA Members," who are defined as "all current and former non-exempt employees of Defendants who were employed in the State of California at any time during [during April 6, 2019 to December 18, 2023] and who worked more than five hours in any shift" and "Exempt PAGA Members," who are defined as "all current and former exempt employees of Defendants who were employed in the State of California at any time between April 6, 2019, through June 21, 2020." Plaintiff will seek an incentive payment of up to $10,000.

The net settlement amount of approximately $320,083.33 will be allocated (on a pro rata basis based on the number of weeks worked during the relevant periods) 95% to members of the "Class," defined as "all current and former non-exempt employees of Defendants who were employed in the State of California at any time during [April 6, 2016 to December 18, 2023]" and 5% to members of the "Exempt Class," which is defined as "all current and former exempt employees of Defendants who
were employed in the State of California at any time between April 6, 2019, through June 21, 2020." Assuming an even distribution of workweeks, the raw average payment to each Class member will be $1,831.80 and to each Exempt Class member $158.46.

For tax purposes, settlement payments will be allocated 20% to wages and 80% to penalties and interest. All PAGA payments will be allocated 100% to penalties. Defendant will pay employer side taxes on the wage portion of the settlement separately from the gross settlement amount. Funds associated with checks uncashed after 180 days will be transmitted to the California State Controller's Unclaimed Property Fund in the names of the individuals to whom the funds were issued.

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

> all claims pled or which could have reasonably been pled based on the factual allegations contained in the operative complaint or any amendments thereto, including claims for: (i) violation of Labor Code §§ 226.7 and 512; (ii) violation of Labor Code §§ 201, 202, 203; (iii) violation of Labor Code § 226; (iv) violation of Labor Code § 2802; and (vi) violation of Business & Professions Code §§ 17200, which are premised on the violations described above, that accrued during the Class Period.

Exempt Class members will release:

> all claims pled or which could have reasonably been pled based on the factual allegations contained in the operative complaint or any amendments thereto, including claims for: (i) violation of Labor Code § 226, that accrued during the period of April 6, 2019, through June 21, 2020.

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

> all claims pled or which could have reasonably been pled based on the factual allegations contained in the operative complaint or any amendments thereto, for civil penalties under the PAGA including claims premised on alleged violations of Labor Code §§ 201, 202, 203, 226.7, 512, 1174, 1198, 1199, and 2802, that accrued during the PAGA Period.

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

> all claims pled or which could have reasonably been pled based on the factual allegations contained in the operative complaint or any amendments thereto, for civil penalties under the PAGA including claims premised on alleged violations of Labor Code §§ 226, 226.3, that accrued during the period of April 6, 2019, through June 21, 2020.

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

Based on the data provided by Defendant, Plaintiff's counsel estimated Defendant's maximum total exposure to be $7,390,000, with each claim valued thusly: $2,500,000 (meal

period); $1,380,000 (Labor Code § 203); $85,450 (Labor Code § 2802); $1,360,000 (Labor Code § 226); $909,050 (direct violation of Labor Code § 226); and $1,370,000 (PAGA). Counsel then reduced the foregoing to determine potential settlement amounts to account for: the possibility of a successful motion for decertification by Defendant; the potential success of Defendant's arguments on the merits (e.g., employees were not required to use their cell phones for work-related tasks); the difficulty of establishing the willfulness of Defendant's actions (good faith defense) and proving the merits of each claim; the Court's likely reluctance to "stack" PAGA penalties and its election to significantly reduce (e.g., up to 90%) the amount of such penalties; and the risk of losing at trial or on appeal.

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

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

VI. PROPOSED SETTLEMENT CLASS

Plaintiff requests that the following settlement classes be provisionally certified:

> All current and former non-exempt employees of Defendants who were employed in the State of California at any time during the Class Period and who worked more than five hours in any shift (the "Class");
>
> All current and former exempt employees of Defendants who were employed in the State of California at any time between April 6, 2019, through June 21, 2020 (the "Exempt Class").

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 166 Class members and 101 Exempt Class members are readily identifiable based on Defendant's records, and the settlement classes are appropriately defined based on objective characteristics. The Court finds that the settlement classes are numerous, ascertainable, and appropriately defined.

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 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 a non-exempt, hourly-paid employee and alleges that he experienced the violations at issue. The anticipated defenses are not unique to Plaintiff, and there is no indication that Plaintiff's interests are otherwise in conflict with those of the class.

Finally, adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class representative does not necessarily have to incur all of the damages suffered by each different class member in order to provide adequate representation to the class. (*Wershba, supra,* 91 Cal.App.4th at p. 238.) "Differences in individual class members' proof of damages

[are] not fatal to class certification. Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Ibid*., internal citations and quotation marks omitted.)

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

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 267 individuals between the Class and the Exempt Class. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each Class and Exempt Class member. Further, it would be cost prohibitive for each 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).)

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 Court requests clarification as to whether the notice will be provided in any languages other than English. The gross settlement amount and estimated deductions are provided, and Class/Exempt Class members are informed of their qualifying workweeks as reflected in Defendant's records and are instructed how to dispute this information. Class/Exempt Class members are given 45 days to request exclusion from the class or submit a written objection to the settlement. Regarding appearances at the final fairness hearing, the notice shall be further modified to instruct class members as follows:

> Although class members may appear in person, 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.

Turning to the notice procedure, as articulated above, the parties have selected Phoenix as the settlement administrator. The administrator will mail the notice packet within 10 days of receiving relevant identifying information pertaining to all Class/Exempt Class members from Defendant; this information is to be provided within 15 days of preliminary approval of the settlement. Any returned notices will be re-mailed to any forwarding address provided or better address located through a skip-trace or other comparable search. Class/Exempt Class members who receive a re-mailed notice will have an additional 15 days to respond. These notice procedures are appropriate and are approved.

VIII. CONCLUSION

Assuming satisfactory clarification is provided as to whether the notice will be provided in any languages other than English, Plaintiff's motion for preliminary approval is GRANTED. The final approval hearing shall take place on **January 16, 2025** at 1:30 in Dept. 7. The following classes are preliminarily certified for settlement purposes:

> All current and former non-exempt employees of Defendants who were employed in the State of California at any time during the Class Period and who worked more than five hours in any shift (the "Class");
>
> All current and former exempt employees of Defendants who were employed in the State of California at any time between April 6, 2019, through June 21, 2020 (the "Exempt Class").
>
> 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.

- oo0oo -

Calendar Lines 4, 5, 6, 7, 8 and 9

Case Name: *Vickie Lane, et al. v. Universal Protection Service, LP, et al.*
Case No.: 22CV398848

Case Name: *Firoozeh Davallou, et al. v. Universal Protection Service, LP, et al.*
Case No.: 22CV399418

Case Name: *Heather Balleza, et al. v. Universal Protection Service, LP, et al.*
Case No.: 23CV413374

Case Name: *Terra Fritch, et al. v. Universal Protection Service, LP, et al.*
Case No.: 22CV399095

Case Name: *Avery Megia, et al. v. Universal Protection Service, LP, et al.*
Case No.: 22CV399096

On May 26, 2021, then-Valley Transportation Authority ("VTA") employee Samuel Cassidy shot and killed nine coworkers at a VTA facility in San Jose. Many of the decedents' heirs and estates, as well as individuals who survived the shooting, have sued VTA, Santa Clara County ("the County"), and various security companies.

Before the Court is Defendant Universal Protection Services, LP's ("Universal" or "Defendant") motion to consolidate the above-captioned cases,[1] which is opposed by each plaintiff. The VTA joins in Universal's motion. As discussed below, the Court GRANTS Universal's motion.

I. BACKGROUND[2]

A. Factual

As alleged in the Second Amended Complaint in *Fritch*, VTA is a public transportation agency that operates bus and light rail services throughout Santa Clara County and employs about 2,000 workers. (Second Amended Complaint ("SAC"), ¶ 1.) On May 26, 2021, Cassidy perpetrated a mass shooting and killed a total of nine fellow employees. (*Ibid*.) The shooting took place at VTA's Guadalupe Division facility which is located in the Civic Center neighborhood of San Jose. (*Ibid*.) Among the victims were the loved ones of the plaintiffs in these related cases.

[1] Universal did not include *Bertolet v. Universal Protection, LP, et al.* in its motion because it is no longer a party in that case and thus was unclear as to whether it had standing to move for consolidation of that action with the six at issue here. However, the Court has the discretion to consolidate cases on its own motion and, assuming it is inclined to consolidate the six cases explicitly at issue, would also consider consolidating *Bertolet*.

[2] For ease of reference, the Court will focus on the allegations in the second amended complaint in *Fritch*, as the allegations concerning Universal in the other cases are similar. In *Bertolet*, the plaintiff alleges that the VTA, through its failure to discipline, censure, criticize, or discharge Mr. Cassidy before the shooting, authorized, adopted, and ratified his conduct.

According to dispatch audio, at 6:33 a.m. on the day of the shooting, the San Jose Fire Department received a call to respond to the Guadalupe facility, though the caller did not mention anything about an active shooter. (SAC, ¶ 2.) About a minute later, Santa Clara County authorities received 911 calls about shots being fired at the facility. (*Ibid*.) Sheriff's deputies and police officers responded from their nearby offices. (*Ibid*.) When they arrived at about 6:35 a.m., they found multiple people shot. (*Ibid*.) The shooting occurred in two separate buildings at the busiest time of the day; during a shift change of employees from the overnight and morning shifts. (*Ibid*.) According to the Sheriff, over 100 people were at the facility at the time of the shooting. (*Ibid*.)

The shooting began in a conference room in Building B on the western side of the yard during a power crew meeting with the local Amalgamated Transit Union president. (SAC, ¶ 2.) The gunman then walked over to Building A on the eastern side of the facility where he continued firing. (*Ibid*.) At about 6:43 a.m., officers closed in on the gunman as he killed himself on the third floor of Building A between administrative offices and the operations control room. (*Ibid*.) The Sheriff's office established that the gunman fired a total of 39 rounds from three semiautomatic handguns equipped with 32 high-capacity magazines. (*Ibid*.) This was the deadliest mass shooting in the history of the Bay Area. (*Ibid*.)

The gunman had a pattern of insubordination, had verbal altercations with coworkers on at least four separate occasions that were known to VTA management, and previously made death threats to coworkers. (SAC, ¶ 2.) This information was allegedly readily available to each of the defendants by virtue of their relationship with VTA. (*Ibid*.)

The SAC alleges that, in order to provide first rate comprehensive security and risk advisory services to prevent mass shootings, VTA entered into a contract with various Universal Protection entities (collectively "Universal") and the County of Santa Clara (through the Sheriff's Office) for security and protective services (the "Contract"). (SAC, ¶ 3.) The total compensation VTA agreed to pay exceeds $50,000,000. (*Ibid*.) Through this contract, Universal and the County agreed to provide security to the facilities where the shooting occurred, and they assumed "the duty to provide security to protect VTA employees" including the *Fritch* decedents. (Id., ¶¶ 4-10.) The *Fritch* plaintiffs allege that "had Defendants carried out proper security screening, proper surveillance, proper risk mitigating measures and complied with security standards and practices including but not limited to the use of weapons detector systems that they were obligated to maintain[,] Defendants would have been able to prevent the shooter" from killing the *Fritch* decedents. (SAC, ¶¶ 13-14.)

B. Procedural

Based on the foregoing allegations, the *Fritch*, *Davallou*, *Megia*, and *Lane* Plaintiffs initially asserted claims against VTA, Universal, and the County for wrongful death and other claims.[3]

In *Fritch*, *Davallou*, and *Lane*, the County successfully demurred to the wrongful death claim in March 2023. Plaintiffs in those cases were granted leave to amend that claim; they

[3] VTA settled with the *Fritch*, *Davallou*, *Megia*, and *Balleza* plaintiffs and is no longer a defendant in those cases. VTA is a defendant in the *Lane*, *Bertolet* and *Gil* cases.

eventually filed amended complaints that amended that claim but also added claims for breach of contract (one against the County and one against Universal).

In *Balleza*, Plaintiffs initially asserted a wrongful death claim against Universal Protection and breach of contract claims similar to those asserted in the other cases. In *Megia*, Plaintiffs initially asserted a wrongful death claim against both the County and Universal and similar breach of contract claims.

In June 2023, the County and Universal each demurred to the breach of contract and wrongful death claims in *Fritch*, *Davallou*, *Megia*, and *Lane*, and Universal demurred to the breach of contract claim in *Balleza*. On August 8, the Court issued an order on the foregoing motions. In relevant part, the order:

- Sustained the County's demurrers to the wrongful death cause of action in *Fritch*, *Davallou*, *Megia*, and *Lane* with leave to amend; and
- Sustained the County and Universal's demurrers to the breach of contract cause of action in *Fritch*, *Davallou*, *Megia*, *Balleza*, and *Lane* with leave to amend.

In December 2023, the County and Universal demurred to the operative complaints in *Fritch*, *Megia*, *Lane*, *Davallou*, and *Balleza*. The County and Universal also demurred in *Gil*, as did the VTA. Finally, the VTA demurred to the operative complaint in *Bertolet*. In various orders issued in January 2024, the Court sustained the County's demurrers in *Fritch*, *Megia*, *Lane*, *Davallou* and *Gil* without leave to amend, sustained Universal's demurrers to the breach of contract claim in the foregoing cases and *Balleza* without leave to amend (except Ms. Gil was granted leave to amend to add a negligence claim against Universal), sustained the VTA's demurrer in *Gil* to the fourth cause of action (negligent hiring, retention or supervision) without leave to amend and to the remaining claims (assault, battery, false imprisonment) with leave to amend, and sustained the VTA's demurrer in *Bertolet* to the fourth (negligent hiring, retention or supervision) and fifth (loss of consortium) causes of action without leave to amend and to the remaining claims (assault, battery, false imprisonment) with leave to amend.

II. MOTION TO CONSOLIDATE

A. Legal Standard

"California procedural law is infused with a solicitude, if not an altogether outright preference, for the economies of scale achieved by consolidating related cases into a single, centrally managed proceeding." (*Petersen v. Bank of America Corp.* (2014) 232 Cal.App.4th 238, 248.) Consolidation is governed by Code of Civil Procedure section 1048, which states: "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." "Consolidation under Code of Civil Procedure section 1048 is permissive, and it is for the trial court to determine whether the consolidation is for all purposes or for trial only. [Citation.]" (*Hamilton v. Asbestos Corp., Ltd.* (2000) 22 Cal.4th 1127, 1149.)

B. Discussion

Universal maintains that the above-captioned cases should be consolidated for all purposes, including trial, because they present "common questions of fact or law." In opposition, the plaintiffs insist that their actions should not be consolidated because doing so would be prejudicial to them and would confuse the jury. The Court does not agree, and in fact, finds it likely that Universal would suffer undue prejudice if these cases are *not* consolidated.

As Universal notes, all of the claims asserted in these actions arise from the same shooting incident at the VTA Rail Yard. All plaintiffs assert claims for wrongful death, negligence and/or assault and these causes of action, if merged, would be presented as follows:

- Cause of Action 1: Wrongful Death – Negligence: *Lane* Plaintiffs v. VTA and Universal
- Cause of Action 2: Wrongful Death – Negligence: *Balleza*, *Davallou*, *Fritch*, and *Megia*
  Plaintiffs v. Universal
- Cause of Action 3: Negligence: Plaintiff Sylvia *Gil* v. Universal
- Cause of Action 4: Assault: Plaintiffs Vicki *Lane*, Sylvia *Gil*, and Kirk *Bertolet* v. VTA
- Cause of Action 5: Battery: Plaintiffs Vicki *Lane*, Sylvia *Gil*, and Kirk *Bertolet* v. VTA
- Cause of Action 6: False Imprisonment: Plaintiffs Vicki *Lane*, Sylvia *Gil*, and Kirk *Bertolet*
  v. VTA
- Cause of Action 7: Negligent Hiring, Retention, Supervision: Plaintiffs Vicki *Lane* and Sylvia *Gil* v. VTA

Thus, as Universal maintains, there are three simple, and common, questions of law and fact amongst the seven cases at issue: (1) if the Plaintiffs have such a remaining negligence claim, whether against VTA or Universal, or both, was/were negligent, such that either or both defendants should pay damages as to the plaintiff groups (wrongful death for the *Lane*, *Balleza*, *Davallou*, *Fritch* and *Megia* Plaintiffs; direct negligence for *Gil* and *Bertolet*); (2) whether VTA is liable for negligent hiring, retention, and/or supervision, such that it should pay damages to Plaintiff Vicki *Lane* (survival claim) and/or Sylvia *Gil*; and (3) whether VTA is liable for assault, battery, and/or false imprisonment, such that it should pay damages to plaintiffs Vicki *Lane*, Sylvia *Gil*, and/or Kirk *Bertolet*.

The Court does not find persuasive the various plaintiffs' assertions that there are contradictory theories of liability amongst their cases which are likely to confuse a jury. As Universal responds in its reply, the theory of liability for reckless or intentional conduct (asserted in the *Lane*, *Gil* and *Bertolet* actions) applies to the assault, battery and false imprisonment claims, which are only alleged against the VTA, and this theory of liability is *in addition, **not contradictory to,*** any theory of liability based on negligence (i.e., Universal's alleged negligent performance of its security obligations, asserted in *Fritch*, *Davallou* and *Megia* actions). As such, the plaintiffs' collective negligence claim presents the same theory of liability against the defendants.[4] Under these circumstances, the Court disagrees that a jury

[4] Notably, when evaluating the various demurrers filed in these actions, the Court has been presented with essentially the same substantive arguments in each case, which is some indiciation that common questions of law and/or fact exist among these claims, and thus further supports consolidation.

would be unable to distinguish between the different parties or causes of action at issue given that they depend on the same common nucleus of facts and evidence—the primary inquiry when considering whether consolidation is warranted.

The plaintiffs' additional argument that consolidation will potentially deprive them of attorney's fees to which they are entitled should they prevail on their claims is equally unavailing. The case the (*Lane*) plaintiffs rely on in support of this assertion, *Realty Const. & Mortg. Co. v. Superior Court* (1913) 165 Cal. 543 (*Realty Const.*), does not so hold. While the *Realty Const.* court held that there was no abuse of discretion on the part of the trial court in denying consolidation, it made clear that "the matter of attorney fees … appear[s] to be entirely *immaterial* in determining [whether] the actions should be consolidated." (*Id*. at 547, emphasis added.)

Universal (and the VTA) explains that it anticipates an immense amount of discovery across the seven actions (comprised of two categories, discovery unique to each plaintiff and discovery applicable to all actions), to wit: 30 to 50 depositions and witnesses called at trial for each individual matter; depositions of each plaintiff (28 across all six actions) by all defendants; depositions for retained experts; depositions and trial testimony of approximately 50 to 100 witnesses (Universal, Sheriff and VTA personnel, first responders, investigating officers, etc.); and depositions and trial testimony of additional witnesses with knowledge of the gunman (approximately 5 to 15 individuals). Universal estimates that in total, each individual trial will require a total of approximately 100 witnesses to testify, which includes 30 to 50 witnesses unique to each plaintiffs' action and 50 to 100 witnesses that will provide essentially the same testimony at all trials. The foregoing represents a massive undertaking, one for which the mechanism of consolidation was intended to alleviate. (See *Todd-Sternberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 979 [finding consolidation was appropriate because "[h]ad there been three separate trials the same deposition testimony would have been introduced, many of the same expert witnesses called and much of the same evidence presented"]; see also *Estate of Baker* (1982) 131 Cal.App.3d 471, 485 [" 'The purpose of consolidation is merely to promote trial convenience and economy by avoiding duplication of procedure, particularly in the proof of issues common to both actions.' "].)

Consolidation will clearly enhance trial efficiency, prevent significant disruption of the Court's resources, and avoid the danger of inconsistent adjudications. Moreover, the burden on Universal from conducting seven, essentially identical trials cannot, as Universal urges, be understated. Furthermore, consolidation would also likely save first-hand, third-party witnesses to the traumatic events of May 26, 2021 from having to testify multiple times about the same factual details over the various actions, which surely an outcome preferrable to all parties and certainly to the Court.

On balance, the relevant factors weigh in favor of consolidation. Thus, Universal's motion for consolidation of the *Lane*, *Fritch*, *Megia*, *Davallou*, *Balleza* and *Gill* cases for all purposes, including trial, is GRANTED.

III. CONCLUSION

Universal's motion to consolidate, to which VTA joins, is GRANTED.

Because the plaintiffs in the *Bertolet* case were noticed for this motion, and because the Court is raising the issue on its own motion, the Court intends to issue an order to show cause why that case should not also be consolidated. Instructions for responding to that order will be included therein.

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.

- oo0oo -

Calendar Line 5

Case Name:
Case No.:

- oo0oo -

Calendar Line 6

Case Name:
Case No.:

- oo0oo -

Calendar Line 7

Case Name:
Case No.:

- oo0oo -

Calendar Line 8

Case Name:
Case No.:

- oo0oo -

Calendar Line 9

Case Name:
Case No.:

- oo0oo -

Calendar Line 10

Case Name:
Case No.:

- oo0oo -

Calendar Line 11

Case Name:
Case No.:

- oo0oo -

Calendar Line 12

Case Name:
Case No.:

- oo0oo -

Calendar Line 13

Case Name:
Case No.:

- oo0oo -