SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2170

To contest a tentative ruling, you must:

1. Call (408) 808-6856 before 4:00 P.M. and leave a voicemail message containing the information described below, and
2. Notify the other side before 4:00 P.M. that you will appear at the hearing to content the 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 NOTE:

- If you do not notify the Court and/or opposing side as required by California Rule of Court, rule 3.1308(a)(1) and Civil Local Rule 8(E), the Court will not hear argument and the tentative ruling will be adopted even if all parties appear at the hearing.
- Sending an email to the department or to the Complex Clerk will no longer suffice to constitute notice to the Court of the need for a hearing regarding a tentative ruling.

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.
- 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.

DATE: NOVEMBER 21, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV397353	Barajas Maya v. United Facilities Group, Inc. (Class Action)	See Line 1 for tentative ruling.
LINE 2	22CV401148	Barajas Maya v. United Facilities Group, Inc. (PAGA)	
LINE 3	23CV416772	Singleton v. Valet Living, LLC, et al. (Class Action/PAGA)	See Line 3 for tentative ruling.

LAW AND MOTION TENTATIVE RULINGS

LINE 4	22CV395980	Longoria v. Albeco, Inc. (Class Action/PAGA)	This action is on calendar for a hearing on an Order to Show Cause issued after the Court was notified that Plaintiff had passed away. As it appears the action still lacks a current or prospective plaintiff, the Court intends to dismiss the action without prejudice.
LINE 5	19CV342788	Mohammed v. American Airlines, Inc. (Lead Case; Consolidated Action)	See Line 5 for tentative ruling.
LINE 6	19CV342788	Mohammed v. American Airlines, Inc. (Lead Case; Consolidated Action)	
LINE 7	22CV405866	Sarinana v. HPI Federal LLC (Class Action/PAGA)	Plaintiff's motion for preliminary approval of the class action and PAGA settlement is GRANTED. The Court will sign the proposed order and schedule the Final Approval Hearing for July 17, 2025 at 1:30 p.m.
LINE 8	2015-1-CV-285065	Santos, et al. v. El Guapos Tacos, LLC, et al. (PAGA)	See Line 8 for tentative ruling.
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1 (including Calendar Line 2)

Case Name: *Barajas v. United Facilities Group, Inc.*
Case Nos.: 22CV397353 (class action)
22CV401148 (PAGA action)

These cases involve a putative class action and a Private Attorneys General Act ("PAGA") representative action. Plaintiff Iliana Lizbeth Barajas Maya alleges that defendant United Facilities Group, Inc. ("Defendant" or "UFG"), a maintenance and janitorial service provider for businesses and schools throughout Santa Clara and the surrounding area, failed to pay overtime and minimum wages, failed to provide meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

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

I. BACKGROUND

According to the allegations of the operative class action complaint ("Class Complaint"), Plaintiff was employed by Defendant as an hourly-paid, exempt employee from approximately June 2018 to August 2021. (Class Complaint, ¶¶ 7, 13.) Plaintiff alleges that throughout her employment, Defendant failed to compensate her for all hours worked (including minimum, straight time and overtime wages), failed to provide her with legally compliant meal and rest periods, failed to timely pay all wages due to her when her employment was terminated, failed to provide her accurate wage statements, and failed to indemnify her for business-related expenditures. (*Id.*, ¶ 14.) Plaintiff and class members, who are defined as:

> All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years and 178 days before the filing of the initial complaint in this action and ending when notice to the Class is sent

were required to work "off-the-clock" and regularly denied permission to take their mandatory meal and rest periods. (*Id.*, ¶¶ 15-17, 24.) Plaintiff and class members regularly paid out-of-pocket for necessary employment-related expenses for which they were not reimbursed, including for personal protective equipment, work attire, and personal cell phone use. (*Id.*, ¶ 20.)

Based on the foregoing allegations, Plaintiff initiated this action with the filing of the Class Complaint on April 28, 2022, asserting the following causes of action: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit meal periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; and (8) unfair business practices.

On July 25, 2022, Plaintiff filed a representative action against Defendants asserting a single cause of action for penalties under PAGA. This cause of action is based on the same Labor Code violations alleged in the Class Complaint.

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, Plaintiff requests the following Class be conditionally certified:

> All persons employed by Defendant in California and classified as hourly non-exempt employees who worked for Defendant during the period from April 28, 2018 to May 28, 2023.

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 Plaintiff 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 ADMINISTATION OF SETTLEMENT

The non-reversionary gross settlement amount is $293,265. Attorney fees of one-third of the gross settlement ($97,775), litigation costs not to exceed $15,000, and administration expenses not to exceed $15,000 will be paid from the gross settlement. $20,000 will be allocated to PAGA penalties, 75% of which ($15,000) will be paid to the LWDA, with the remaining 25% ($5,000) paid to "Aggrieved Employees," who are defined as individuals "employed by UFG in California and classified as an hourly non-exempt employee who worked for UFG during the PAGA Period" from May 9, 2021 to May 28, 2023. Plaintiff seeks a service award in the amount of $10,000.

The net settlement will be allocated to class members on a pro rata basis based on the number of weeks worked during the class period, which is defined in the settlement as the period from April 28, 2018 to May 28, 2023. For tax purposes, settlement payments will be allocated 25% to wages and 75% to penalties and interest. The employer side payroll taxes on the settlement payments will be paid by Defendants separately from the gross settlement amount. 100% of the PAGA settlement to 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 class member.

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

> [A]ll claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint of the Class Action including, but not limited to, claims that: (1) UFG failed to pay wages and overtime compensation in violation of California Labor Code sections 510, 1194, 1194.2 and the applicable Industrial Welfare Commission Wage Order; (2) UFG failed to provide meal periods, or compensation in lieu thereof, including but not limited to any violation of California Labor Code sections 226.7 and 512 and the applicable Industrial Welfare Commission Wage Order; (3) UFG failed to authorize and permit rest periods, or compensation in lieu thereof, including but not limited to any violation of California Labor Code section 226.7 and the applicable Industrial Welfare Commission Wage Order; (4) UFG failed to provide itemized employee wage statements, including but not limited to any violation of California Labor Code sections 226, 1174, and 1175 and the applicable Industrial Welfare Commission Wage Order; (6) UFG

> failed to timely pay wages due at termination, including but not limited to any violation of California Labor Code sections 201-203 and 205; (6) UFG engaged in unlawful business practices in violation of California Business and Professions Code section 17200, et seq; (7) Class Members are entitled to restitutionary damages under California Business & Professions Code sections 17200, et seq.; (8) UFG is liable for attorneys' fees and/or costs incurred to prosecute this action on behalf of Class Members, including fees incurred for the services of Class Counsel; and (9) UFG failed to reimburse work-related expenses.

Aggrieved Employees will release:

> [A]ll claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint of the PAGA Action, and the PAGA Notice including, e.g., '(a) any and all claims for violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1198, 1197.1, 2802, and 2699, and the applicable Industrial Welfare Commission Wage Order.

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.)

The notice period has now been completed. According to the declaration of case manager Veronica Olivares with settlement administrator CPT Group, Inc. ("CPT") submitted in support of the instant motion, on April 25, 2024, CPT received from Defendant class data files containing the names, social security numbers, last known mailing addresses, and the total number of relevant workweeks worked for each of the 411 settlement Class members. CPT 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 on May 8, 2024 via first class mail. As of the date or Ms. Olivares' declaration, October 31, 2024, 23 notices have been returned to CPT as undeliverable, three of which included a forwarding address. CPT performed a skip trace to locate a current mailing address for the remaining 20 notices and located nine updated addresses. Notices were promptly re-mailed to the forwarding and/or newly located addresses. At present, 11 Class notices are considered undeliverable.

The deadline to submit a request for exclusion, a challenge to the amount of work weeks listed, or an objection to the settlement was June 24, 2024. As of the date of Ms. Olivares' declaration, CPT has received two requests for exclusion[1] and no objections. Consequently, there are 409 participating settlement class members. Based on this number, Class members will receive will receive an average estimated net payment of $667.51, with the estimated highest payment being $2,097.51.

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

[1] CPT actually received three requests for exclusion, but one of them was a duplicate response from the same class member and thus it was invalidated.

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 set forth above, Plaintiff's counsel seeks a fee award of $97,755, or one-third of the gross settlement amount, which is not an uncommon contingency fee allocation in a wage and hour class action. Plaintiff also provides a lodestar figure of $93,775, which is based on 103 hours of work at billing rates of $625 to $1,500 per hour, resulting in a multiplier of 1.04. This is far less than the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra,* 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

"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, as the multiplier sought by Plaintiff's counsel is relatively small, far less than the range of modifiers typically approved by courts and is supported by the percentage cross-check, the Court finds counsel's requested fee award is reasonable.

Plaintiff's counsel also seeks $14,606.94 in litigation costs, which is less than the maximum amount ($15,000) permitted under the settlement agreement. Based on the

information contained in the declaration of Plaintiff's counsel, this amount is reasonable and is therefore approved. The $11,000 in administrative costs are also approved.

Finally, Plaintiff requests an enhancement award of $10,000. To support this request, Plaintiff submitted a declaration in support of the preceding motion for preliminary approval in which she described her efforts in this action. The Courts finds that she is entitled to an enhancement award and the amounts requested are reasonable and are therefore approved.

VI. CONCLUSION

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

Plaintiff's motion for final approval and for fees and costs is GRANTED. The following class is certified for settlement purposes only:

> All persons employed by Defendant in California and classified as hourly non-exempt employees who worked for Defendant during the period from April 28, 2018 to May 28, 2023.

Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff and the members of the Class/Aggrieved Employees will take from the Class and PAGA complaints, respectively, 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.

The Court sets a compliance hearing for **July 17, 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:
Case Nos.:

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Calendar Line 3

Case Name: *Joey Singleton v. Valet Living, LLC, et al.*
Case No.: 23CV416772

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Joey Singleton alleges that Defendants Valet Living, LLC ("Defendant") and Valet Living Turns LLC, who provide doorstep waste collection and other amenity services such as housekeeping, dog walking, and dry cleaning for the multifamily housing industry, committed various wage and hour violations.

Before the Court is Plaintiff's motion for preliminary approval of settlement with Defendant, which is unopposed. As discussed below, if satisfactory clarification is provided concerning whether the notice will be provided in languages other than English, the Court is inclined to GRANT the motion.

I. BACKGROUND

According to the allegations of the operative Second Amended Complaint ("SAC"), Plaintiff was employed by Defendant as a Service Valet - Non Driver and Service Valet in Training - Non Driver, hourly-paid, non-exempt positions, from July 2022 to September 2022. (SAC, ¶ 4.) Plaintiff alleges that Defendant failed to: pay all wages owed for hours worked (including minimum and overtime wages); provide meal periods or compensation in lieu thereof; permit rest breaks or provide compensation in lieu thereof; provide accurate, itemized wage statements; maintain accurate payroll records; pay wages owed upon separation of employment; timely pay wages during employment; provide written notice of paid sick leave; and reimburse employees for necessary business expenses incurred by them.

Based on the foregoing, the SAC asserts the following causes of action: (1) unpaid minimum wages; (2) failure to authorize and permit rest periods; (3) non-compliant wage statements and failure to maintain payroll records; (4) wages not timely paid upon termination; (5) failure to timely pay wages during employment; (6) unreimbursed business expenses; (7) civil penalties under PAGA; (8) violation of Business & Professions Code § 17200 (unlawful business practices); and (9) violation of Business & Professions Code § 17200 (unfair business practices).

Plaintiff now seeks an order: preliminarily approving the parties' class action settlement; conditionally certifying the Class for settlement purposes; ordering the proposed Class notice be sent to the settlement Class; appointing CPT Group, Inc. ("CPT") as the settlement administrator; appointing Plaintiff as Class representative; appointing Capstone Law APC as Class counsel; 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, 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 PROCESS

Plaintiff initiated this action on May 31, 2023. Prior to doing so, Plaintiff's counsel conducted a preliminary investigation into the factual bases for Plaintiff's claims, including examining his employment records. The parties engaged in informal discovery, through which Plaintiff obtained from Defendant employee demographic data, a sample of Class Members' time and pay records, and Defendant's California labor policies and procedures documents and handbooks which covered a broad range of topics including, inter alia, employee clock-in policies and procedures, attendance policies, meal periods/rest periods, etc.

On March 13, 2024, the parties participated in a mediation session with Jeffrey Ross, Esq., an experienced mediator of wage and hour class actions. With Mr. Ross' assistance, the parties were able to negotiate a complete settlement of Plaintiff's claims; the terms of this settlement are now before the Court for approval.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement is $850,000. Attorney's fees of up to $283,333 (or one-third of the gross settlement), litigations costs of up to $20,000 and administration costs not to exceed $21,000 will be paid from the gross settlement. $85,000 will be allocated to PAGA penalties, 75% of which ($63,750) will be paid to the LWDA, with the remaining 25% ($21,250) dispensed, on a pro rata basis, to "PAGA Members," who are defined as "all persons employed by Defendant in California as a non-exempt employee from August 1, 2022 through June 13, 2024." Plaintiff will seek an enhancement payment of up to $10,000.

The net settlement amount- estimated to be $430,667- will be allocated to "Class Members," who are defined as all persons employed by Defendant in California as a non-exempt employee from June 23, 2021 through June 13, 2024,"[1] on a pro rata basis based on the

[1] Individuals who previously settled or released any of the claims covered by the settlement, or any person who previously was paid or received awards through civil or

number of weeks worked during the foregoing period. For tax purposes, settlement payments will be allocated one-third to wages and two-thirds to non-wages (i.e., penalties and interest). The employer-side payroll taxes will be paid by Defendant separate from, and in addition to, the gross settlement amount. 100% of the payment to PAGA Members will be allocated to penalties. Funds associated with checks uncashed after 180 days will be transmitted as follows: 50% to The Justice Gap Fund maintained by the State Bar of California pursuant to Code of Civil Procedure section 384; and 50% to Koinonia Family Services, a non-profit 501(c)(3) organization, to be used solely for child advocacy programs in the state of California pursuant to Code of Civil Procedure section 384, subdivision (b).

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

> [A]llvclaims under state, federal and local law that were or could have been asserted based on the facts and matters alleged in the Action, the Complaint and any amendments thereto, as to the Class Members, including without limitation: California Labor Code sections 201, 202, 203, 204, 210, 221, 223, 224, 225.5, 226, 226.3, 226.7, 245.5, 246, 246.5, 247, 247.5, 248.5, 248.6, 249, 256, 510, 512, 516, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2810.5; the corresponding sections of California Industrial Commission Wage Orders, California Code of Regulations, Title. 8, section 11040, et seq., Business and Professions Code sections 17200 et seq., California Code of Civil Procedure section 1021.5; and including all claims for unpaid wages, minimum wages, hours worked, overtime or double time wages, regular rate of pay, bonus and incentive pay, timely payment of wages during employment, timely payment of wages at separation, wage statements, payroll records and recordkeeping, unreimbursed business expenses, meal periods and meal period premiums, rest breaks and rest break premiums, waiting time penalties; and claims for unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, declaratory relief, penalties (excluding PAGA civil penalties), interest, fees, and costs, all based on the facts and matters alleged in the Action, the Complaint, and any amendments thereto, from June 23, 2021 through June 13, 2024. Expressly excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability, workers compensation, and claims outside the Released Class Claims.

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

> [A]ll claims arising during the PAGA Period seeking civil penalties under PAGA, that Plaintiff as proxy for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of Plaintiff and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the LWDA letter, including but not limited to all claims arising under the California Labor Code sections 201, 202, 203, 204, 210, 221, 223, 224, 225.5, 226, 226.3, 226.7, 245.5, 246, 246.5, 247, 247.5, 258.5, 248.6, 249, 256, 510, 512, 516, 551, 552, 558, 1174, 1174.5,

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administrative actions for the claims covered by the settlement are expressly excluded from the Class.

1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., 2802, and 2810.5 as alleged in the Action, and the corresponding sections of the California Industrial Welfare Commission, based the facts alleged in the LWDA letter.

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 provided by Defendant, Plaintiff's counsel estimated Defendant's maximum exposure for each claim (totaling $5,755,144.41) to be as follows: $305,926.34 (off-the-clock-claim); $1,223,705.34 (meal period claim); $458,971.79 (overtime claim); $1,223,705.34 (rest period claim); $329,130 (business expense reimbursement claim); $1,250,000 (wage statement claim); and $963,705.60 (final pay claim). Counsel also estimated Defendant's maximum exposure for PAGA penalties to be $2,500,000.

Plaintiff's counsel then determined an appropriate range of recovery for settlement purposes by offsetting Defendant's maximum theoretical liability by: the strength of the defenses to the merits of Plaintiff's claims; the risk of class certification being denied; the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated all or some of Plaintiff's claims, or barred evidence/testimony in support of the claims; the risk of losing at trial; the chances of a favorable verdict being reversed on appeal; the difficulties attendant to collecting on a judgment; and the strong likelihood that, in line with relevant appellate authority, the amount of PAGA penalties would be substantially (e.g., 80%-90%) reduced.

Taking the foregoing into account, Plaintiff's counsel determined that it would be reasonable to settle for 15% of Defendant's maximum exposure; this is essentially the product of the probability of (i) certification being granted on all claims (≈ 60%); (ii) prevailing on summary judgment/motions in limine/renewed motions to deny certification on all claims (≈ 50%); and (iii) prevailing at trial on all of Plaintiff's claims (≈ 50%); i.e., 60% × 50% × 50%.

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

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

VI. PROPOSED SETTLEMENT CLASS

Plaintiff requests that the following settlement class be provisionally certified:

> [A]ll persons employed by Defendant in California as a non-exempt employee from June 23, 2021 through June 13, 2024.

A. Legal Standard for Certifying a Class for Settlement Purposes

Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court …."

Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence: (1) an ascertainable class and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On Drug Stores*).) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

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

B. Ascertainable Class

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

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

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

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

Here, the estimated 2,400 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, they have 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 2,400 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 describes the lawsuit, explains the settlement, and instructs Class Members that they may opt out of the settlement (except for 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 dispute the amount of qualifying workweeks, request exclusion from the class or submit a written objection to the settlement.

Plaintiff does not indicate whether the notice will be provided in any languages other than English and whether such translation would be reasonably necessary for the class members to understand the notice. ***The Court requests that class counsel be prepared to discuss, at the hearing on this matter, whether notice should be provided in languages other than English and why or why not.***

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

Regarding appearances at the final fairness hearing, the notice shall be 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 CPT as the settlement administrator. No later than thirty (30) days after preliminary approval, Defendant will deliver the Class data (i.e., Class list and related qualifying workweeks and contact information) to CPT. CPT, in turn, will mail the notice packet within fifteen (15) days after receiving the Class data, subsequent to updating Class members' addresses using the National Change of Address Database. Any returned notices will be re-mailed to any forwarding address provided or a better address located through a skip trace or other search. 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 concerning the languages in which class notice will be provided, Plaintiff's motion for preliminary approval is GRANTED.

The final approval hearing shall take place on **May 22, 2025** at 1:30 in Dept. 7. The following class is preliminarily certified for settlement purposes:

> [A]ll persons employed by Defendant in California as a non-exempt employee from June 23, 2021 through June 13, 2024.

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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Calendar Line 4

Case Name:
Case No.:

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Calendar Line 5 (including Calendar Line 6)

Case Name: *Hasim Mohammed v. American Airlines, Inc.*
Case No.: 19CV342788 (consolidated with Case No. 19CV346743 for discovery and case management purposes only)

This is putative class action on behalf of employees of Defendant American Airlines, Inc. ("Defendant" or "American") alleging meal and rest period violations and failure to provide employees with an option to receive paper wage statements.

Before the Court are the following motions: (1) Defendant's motion to decertify the "Meal Break Class"; (2) Plaintiff Hasim A. Mohammed's ("Plaintiff's) motion for summary judgment, or in the alternative, summary adjudication; and (3) Defendant's motion for summary judgment. These motions are all opposed.[3] As discussed below, the Court DENIES the motion to decertify, GRANTS IN PART and DENIES IN PART American's motion for summary judgment, and DENIES Plaintiff's motion for summary judgment, or in the alternative, summary adjudication.

I. BACKGROUND

A. Factual

According to the operative complaint ("Complaint"), Plaintiff worked for Defendant as non-exempt, hourly employee from January 17, 2000 through February 28, 2018. (Complaint, ¶ 19.) Plaintiff and other putative class members were frequently not provided with compliant meal and rest periods due to American's policies of (1) not scheduling breaks as part of each work shift, (2) chronically understaffing each shift, (3) imposing too much work on employees for them to take breaks, and (4) failing to maintain formal meal and rest period policies to encourage employees to take breaks. (*Id*., ¶¶ 20, 24.)

When a plane arrived, Plaintiff and other employees were required to interrupt their breaks to immediately perform their job duties. (Complaint, ¶¶ 21, 25.) Plaintiff and the putative class were not instructed or required to clock out for meal periods; rather, Defendant automatically deducted one hour[4] from their hours worked. (*Id*., ¶ 22.) This allowed Defendant to avoid paying overtime, as Plaintiff and the putative class were seldom, if ever, provided with one-hour, uninterrupted, duty-free meal period. (*Ibid*.) As result of these meal and rest period

[3] The first opposing brief filed by Plaintiff in response to American's motion for summary judgment exceeded the page limit provided by California Rules of Court, rule 3.1113(d), which provides that in a summary judgment/adjudication motion, the responding brief may not exceed 20 pages. Eight days after the deadline to file his opposition, Plaintiff filed a notice of errata attaching a page-compliant brief, explaining that the non-complaint opposition was mistakenly filed. American urges the Court to exercise its discretion to not consider *either* brief, the first because of its length and the second because it is untimely. In the interest of resolving this case on the merits, the Court will consider the *second*, rule-compliant opposition filed by Plaintiff and disregards the first.

[4] The allegation in the Complaint to one-hour meal period appears to be incorrect, as the evidence shows that the automatically deducted meal periods were one-half hour long.

violations, American failed to provide employees with accurate itemized wage statements reflecting all hours worked and any premiums owed. (*Id*., 27-29.) Defendant also failed to provide employees who received electronic wage statements with the ability to easily access the associated information and convert the electronic statements into hard copies at no expense. (*Id*., 82-83.)

B. Procedural

Based on the foregoing allegations, Plaintiff filed the Complaint on February 19, 2019, asserting putative class claims for (1) failure to provide meal periods, (2) failure to provide rest periods, (3) failure to pay hourly and overtime wages, (4) failure to provide accurate written wage statements, (5) failure to timely pay all final wages, and (6) unfair competition.

In January 2023, Plaintiff moved to certify several classes of employees who allegedly suffered the violations alleged in the Complaint, which American opposed. In its order issued on January 17, 2023, the Court granted the motion as to the following proposed classes:

> **Meal Period Class**
>
> All non-exempt, hourly California employees of American Airlines who worked shift in excess of five hours for the time period beginning February 19, 2015 through the date of final judgment, and who had half-hour of meal period time deducted from their pay on each such shift.
>
> **Electronic Wage Statement Class**
>
> All non-exempt, hourly California employees to whom Defendant did not issue paper wage statements for the time period beginning February 19, 2015 through the date of final judgment.

The motion was otherwise denied.[5]

II. DEFENDANT'S MOTION TO DECERTIFY MEAL BREAK CLASS

A. Legal Standard

Whether a class should be certified "is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*), internal quotation marks, ellipses, and citations omitted.)

"After certification, a trial court retains flexibility to manage the class action, including to decertify a class if the court subsequently discovers that a class action is not appropriate."

[5] Plaintiff additionally sought to certify two meal period sub-classes, a rest break class and an off-the-clock class.

(*Kight v. CashCall, Inc.* (2014) 231 Cal.App.4th 112, 125-126, internal quotation marks, ellipses, and citations omitted (*Kight*).) A party moving for decertification generally has the burden to show that certification is no longer warranted. (*Id.* at p. 126.)

To prevail on a decertification motion, a party typically must show new law or newly discovered evidence that makes continued class action treatment improper. (*Kight, supra,* 231 Ca1.App.4th at p. 125.) "A motion for decertification is not an opportunity for a disgruntled class defendant to seek a do-over of its previously unsuccessful opposition to certification." (*Ibid*.)

Trial courts have broad discretion in ruling on a decertification motion, since they "are ideally situated to evaluate the efficiencies and practicalities of permitting group action and therefore are afforded great discretion in evaluating the relevant factors." (*Kight, supra,* 231 Ca1.App.4th at p. 126, citation and internal quotation marks omitted.) However, decertification resting on improper legal criteria or incorrect assumptions is an abuse of discretion. (*Ibid*.)

B. Discussion

Defendant moves to decertify the meal break class for the following reasons: (1) the question of whether class members experience meal break violations cannot be determined on a class-wide basis; (2) if the rebuttable presumption of *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58 (*Donohue*) applies, determining whether American has rebutted that presumption cannot be established on a class-wide basis through common proof; and (3) Plaintiff is an inadequate class representative and has raised individualized issues that make his claims atypical of class members.

1. *Ability to Determine Meal Break Violations on a Class-Wide Basis and Rebut Donohue Presumption*

When the Court initially considered whether to certify a meal break class, American's opposition was based, at least in part, on its contention that Plaintiff could not establish the illegal effect of its policies by common proof. As the Court explained,

> In the wage and hour context, courts routinely have found suitable for class treatment a claim alleging an employer consistently applied a uniform policy that harmed an identifiable class of employees when the policy *and the harm it caused* are subject to common proof for all class members. To obtain certification of such a class, the class proponent must "present substantial evidence[6] that proving *both* the existence of [the employer's] uniform policies

[6] "Substantial evidence is evidence that 'is not "qualified, tentative and conclusionary" [citation] but, rather, " 'of ponderable legal significance … reasonable in nature, credible, and of solid value.' " ' (*Sav-On, supra*, 34 Cal.4th at p. 329.)" (*Dailey v. Sears, Roebuck & Co*. (2013) 214 Cal.App.4th 974, 996 [noting that evidence "consist[ing] principally of sworn declarations and deposition testimony" satisfied this standard].) In affirming class certification, the *Sav-On* court found the plaintiffs' introduction of policy documents, deposition testimony by defendant's "person most knowledgeable" designee, interrogatory responses, and a handful of employee declarations sufficed. (*Sav-On, supra,* 34 Cal.4th at pp. 328–329.)

> and practices *and* the alleged illegal effects of [the employer's] conduct could be accomplished efficiently and manageably within a class setting."

(Court's Order Concerning Motion for Class Certification ("Order Re: Class Cert.) at 7, quoting at *Kizer v. Tristar Risk Management* (2017) 13 Cal.App.5th 830, 842, italics original, citations omitted [class certification properly denied in misclassification case where there was no evidence that employees other than the named plaintiffs worked any overtime at all].)

While there was no dispute amongst the parties with regard to the certification motion that American has a common policy of automatically deducting meal periods from employees' time worked without regard to when or whether a meal period was actually taken (i.e., failing to record the actual time and duration of employees' meal periods) and at the same time, putting the onus on employees to fill out an "exception" for any missed, late, or interrupted meal or rest periods, American's position was that Plaintiff could not show that the illegal effect of its policies—denying employees pay and premiums for missed or noncompliant breaks—was susceptible to common proof.

In addressing this question, the Court emphasized that it need not wade into the merits and was only required to evaluate whether "the plaintiff's theory of recovery focuse[s] on uniform policies and practices…" (Court's Order Concerning Motion for Class Certification ("Order Re: Class Cert."), at 10:6-7, quoting *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 309 (*ABM*).) It then summarized various cases it deemed instructive, including *ABM, Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286 and *Donohue,* and concluded that common issues arising from American's automatic deduction policy outweighed individual issues. The Court discussed the holding of *Donohue* which recognized the existence of a rebuttable presumption of liability with respect to meal break claims when, on their face, the employer's time records "show missed, shortened, or delayed meal periods with no indication" that premium pay was provided. (*Donohue, supra,* 11 Cal.5th at p. 77.) The presumption goes to the question of liability (see *Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 724) and, if it applies, the burden shifts to the defendant to counter and establish that the plaintiffs were provided with compliant meal periods but chose to work instead (*Donohue*, *supra*, 11 Cal.5th at p. 78). The Court noted the *Donohue* court's reasoning that

> [t]he presumption derives from an employer's duty to maintain accurate records of meal periods. It is appropriate to place the burden on the employer to plead and prove, as an affirmative defense, that it genuinely relieved employees from duty during meal periods. To place the burden elsewhere would offer an employer an incentive to avoid its recording duty and potential windfall from the failure to record meal periods. Where the employer has failed to keep records required by statute, the consequences for such failure should fall on the employer, not the employee.

(Order Re: Class Cert. at 16, quoting *Donohue* at 76.)

It then opined that consequently, "[i]t stands to reason that an employer should bear the same consequences from automatically recording meal periods without regard to whether they were actually taken in a compliant manner, as from failing to record them at all." (*Ibid*.)

The Court continued that the evidentiary record before it was similar to *ABM*,[7] and thus it reached an analogous conclusion, explaining:

> While there is evidence that putative class members did receive some meal period premiums, there is no dispute that American had a common policy of automatically recording meal periods without attempting to verify they were actually taken in a compliant manner, putting the onus on employees to submit exceptions. And—while the record is in conflict on this point—there is substantial evidence that missed and/or noncompliant meal breaks were common as a result of this policy and the nature of the work at an airport, which the Court credits. Due to the state of Defendant's records, any damages that may be awarded in this case will necessarily be "only approximate and based on statistical sampling." (*ABM, supra,* 19 Cal.App.5th at p. 311.)

(Order Re: Class Cert. at 17-18.)

In the instant motion, American acknowledges the foregoing analysis and conclusions made by the Court, but asserts that post-certification discovery (i.e., newly discovered evidence) has made clear that the meal break claim cannot be adjudicated based on common proof. In making this argument, American highlights the following portion of the Court's certification order:

> Still, *Donahue* is clear that "[t]he rebuttable presumption does not require employers to police meal periods. *Instead, it requires employers to give employees a mechanism for recording their meal periods and to ensure that employees use the mechanism properly*." (*Donohue, supra,* 11 Cal.5th at p. 77, italics added.) Whether that happened here is a very important issue that the record *suggests* can be resolved through common proof.

(Order Re: Class Cert. at 16, emphasis added.)

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[7] In *ABM*, the plaintiffs "alleged that ABM applied uniform payroll policy which compensated employees according to anticipated work schedules rather than for hours actually worked, leading to uncompensated time. [A]ccording to plaintiffs, the LMS, ABM'S payroll system, automatically deducted 30 minutes of worktime for meal period whenever an employee was scheduled for shift of five or more hours, without sufficient documentary evidence that those meals were actually taken." (*ABM, supra,* 19 Cal.App.5th at p. 287, italics original.) The trial court denied class certification, in part, based on a lack of commonality. The appellate court reversed, explaining that the trial court had "improperly focused on the minutiae of each individual [employee]'s personal situation." (*Id*. at p. 310.) It continued that legal issues such as the legality of ABM's uniform payroll policy (which assumed each employee worked his or her scheduled shift and took any legally required meal breaks absent some type of exclusion report) and its autodeduct policy for meal breaks (in light of the recordkeeping requirements for California employers) were amendable to classwide resolution. The *ABM* court also endorsed Plaintiff's theory of a rebuttable presumption that no meal period was taken based on Defendant's automatic deduction policy, but found that it was *unnecessary* to rule on that issue in order to grant certification, and noted that in certain circumstances, perhaps those at bar, a court can award damages even if they are only approximate and based on statistical sampling.

It then focuses on the Court's use of the word "suggests" and asserts that the evidentiary record developed since then clearly shows that resolving Plaintiff's meal break claim will require "considerable" individualized inquiries, specifically citing to the following:

- The deposition testimony of nine of the ten individuals who submitted declarations in support of Plaintiff's motion for certification which purportedly reveals "substantial variation among stations, workgroups, and individual employees with respect to meal break practices, as well as contradictions to statements made in the declarations;
- American's production of 150,000 of handwritten exception records submitted by class members at each of American's stations in California which Defendant claims reveal widespread reporting of exceptions as well as variations in exception reporting processes;
- Declarations from managers at all of American's California airports describing how meal breaks were scheduled and/or taken by employees and procedures for submitting exceptions; and
- Expert analysis of timekeeping and pay records reflecting that over the class period, 60% of class members had at least one day with a timekeeping code for a missed, late, or short meal break, reflecting widespread use of the exception process, as well as variation in the ways class members reported exceptions.

Individual inquiries will be required, American urges, not only in resolving the question of whether its policies led to "illegal effects" but also in determining whether it has successfully rebutted the *Donohue* presumption (assuming it applies) because it will have to make individual inquiries into (1) whether the class member knew how to submit an exception for missed, late, or short meal breaks and (2) whether the class member did, in fact, submit exceptions when he or she did not receive a non-compliant meal break, and if not, his or her reasons for not submitting exceptions.

The Court is not persuaded. All told, the Court sees no reason to depart from the conclusions it made in its initial certification order, including that the *Donohue* presumption applies to the meal break claim. First, as Plaintiff responds, most of the arguments asserted here by American were already made in its opposition to Plaintiff's motion for certification and rejected by the Court, including that ascertaining whether American provided employees with a mechanism for recording their meal periods could not be determined by common proof. With regard to the *Donohue* presumption in particular, the Court's position that, given the rationale behind its creation, "[i]t stands to reason that an employer should bear the same consequences from automatically recording meal periods without regard to whether they were actually taken in a compliant manner, as from failing to record them at all" (Order Re: Class Cert. at 16), has been strengthened by developments which occurred subsequent to the certification order. One such development, highlighted by Plaintiff, is the CACI jury instructions adopted in 2023 for meal break violations which provide that "[a]n employer must keep accurate records of the start and end time of each meal break" and instructs jurors that if they conclude that the employer defendant did not keep accurate time records of compliant meal breaks, they must find for the plaintiff *unless* the defendant proves that opportunities for meal breaks were provided, i.e., it rebuts the presumption. (2 CACI 2766B.)

Additionally, decisions issued since the meal class was certified not only support application of the *Donohue* presumption, but also affirm that the types of evidence American relies on to rebut the presumption—its policies and practices and statistical analysis of timekeeping and payroll records—are common to the class or should be presented to a jury to make determinations on what that evidence demonstrates and what can be extrapolated from it such that certification is still appropriate. In *Morgan v. ROHR, Inc.* (S.D. Cal. 2023) 2023 U.S. Dist. LEXIS 226952 (*Morgan*), the defendant moved to decertify, among other things, a meal period class. The court declined to do so, finding that the employer's use of a system that, like American's, did not track employee meal periods but instead automatically deducted them, triggered the *Donohue* presumption and thus satisfied the element of commonality. It further rejected the defendants' contention that decertification was warranted because determining whether they had sufficiently rebutted the presumption would require individual inquiries, holding that the evidence relied on by the defendants to rebut the presumption—primarily class-wide policies, bargaining agreements, and posted waged orders—was common to the class. In its preceding motion for summary judgment, the defendants had relied extensively upon testimony from numerous individuals, including supervisors, and argued that as to the representative capacity of such evidence, it was the jury's role to determine whether the evidence could be extrapolated to the entire class. The court agreed with this and opined that, "[i]n light of Defendants' argument at summary judgment as to the representative capacity of their evidence, …. Defendants' insistence, that rebuttal would involve 'individualized issues … [is] unpersuasive." The representative effect of defendants' evidence, the court explained, was "not a mask that Defendants may don and doff as they please. At summary judgment, representative capacity provided Defendants the means to fend off class-wide liability. At decertification, it provides the means or holistic, class-wide resolution." (*Morgan*, 2023 U.S. Dist. LEXIS 226952 at *12.)

Similarly here, in its motion for summary judgment, American relies in part on common evidence (company policy) and representative evidence (individual declarations and testimony, statistical analysis) to rebut the *Donohue* presumption. The Court agrees that, as in *Morgan*, American cannot both rely on representative evidence to rebut the presumption on one hand while also arguing on the other that such evidence establishes a lack of commonality.

As for whether American can establish that it had a mechanism for its employees to record their meal periods via its exception system and that such a method satisfies its obligations under the Labor Code through common proof, the Court is still of the opinion, as it was previously, that it can. In attempting to show that this issue cannot be so adjudicated, American cites to a chart in its motion for summary judgment which summarizes differences in the exception processes utilized amongst different airports and workgroups—e.g., paper or electronic, whether managers review the exceptions, whether the employees are able to select the manager who reviews the exception, and whether the paper log for exceptions is located near the time clock and the break room. But American fails to articulate *how* these differences affect the ultimate resolution of whether their exception policy and process is a legally-compliant mechanism for recording meal breaks, an omission that the Court previously recognized in certifying the meal break claim: "Defendant urges that the manner in which 'exceptions' are submitted differs among the various airports and job classifications at issue (for example, on paper versus electronically), but does not explain why such difference would be material to liability under Plaintiff's theory." (Order Re: Class Cert. at 8, fn. 6.)

Further, *ABM* supports the conclusion that the legality of American's meal break policy, where automatic deductions are removed only if an exception is submitted, is a legal question that can be determined by reference to facts common to all class members. *ABM* emphasized that concerns regarding the need for individualized damages inquiries—i.e., whether an employee received the opportunity to take their meal break—could turn out to be "overexaggerated, given existing precedent indicating that the burden of proof shifts to employers 'in the wage and hour context that when an employer's compensation records are so incomplete or inaccurate that an employee cannot prove his or damages.' [Citations.]" (*ABM, supra*, 19 Cal.App.5th at p. 311.) Thus, if it is determined that American's system for recording meal periods resulted in missed and/or non-compliant meal breaks, a question that can be determined by common proof, any damages in this case will necessarily be "only approximate and based on statistical sampling." (*Ibid*.) Thus, individual inquiries will *not* predominate in the manner argued by American, à la *ABM*.

Given the foregoing, the Court will not decertify the meal break class on the ground that the claim cannot be adjudicated based on common proof.

2. *Adequacy of Plaintiff as Class Representative*

As explained in the Court's prior certification order, "[a]lthough the questions whether plaintiff has claims typical of the class and will be able to adequately represent the class members are related, they are not synonymous." (*Martinez v. Joe 'S Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375 "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." (*Ibid*., quoting *Seastrom v. Neways, Inc.* (2007) 149 Ca1.App.4th 1496, 1502.) As for the adequacy of representation, this "comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit." (*Capitol People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 696-697.) To resolve the question of adequacy, the court "will evaluate the seriousness and extent of conflicts involved compared to the importance of issues uniting the class; the alternatives to class representation available; the procedures available to limit and prevent unfairness; and any other facts bearing on the fairness with which the absent class member is represented." (*Id*. at p. 697, internal quotations and citations omitted.)

In his motion for class certification, Plaintiff presented evidence that he would adequately represent the class and that his meal period claims were typical of the class, which American did not dispute. Consequently, the Court concluded that Plaintiff was an adequate representative. American now challenges this based on its contention that post-certification discovery has raised questions as to Plaintiff's credibility and that of his individual claims. It cites to various portions of Plaintiff's deposition testimony that it maintains contradict the declaration he submitted in support of his motion for class certification, particularly whether he was aware that he could take meal breaks, whether he took them, and whether he understood what an exception report was. (See Mtn. at 15.) It further notes that when presented with multiple pages from the exception log with his name and signature on them, Plaintiff claimed the documents were forged. Given Plaintiff's testimony and unique claim of forgery, American argues, Plaintiff can no longer adequately represent the class. The Court disagrees.

When viewed in context, it appears that the testimony American cites for the proposition that Plaintiff admitted never receiving a meal break might not actually support that premise; there is at least a genuine question whether Plaintiff was referring to his ability to eat a meal and not whether he could take a 30 minute uninterrupted break. Plaintiff also testified that seeing his declaration *refreshed* his recollection as to what an exception report was. The Court does not believe that the alleged inconsistencies and/or lack of clarity highlighted by American is enough to establish that Plaintiff is antagonistic to the class such that he is an inadequate representative. Therefore, it will not decertify the meal break class on this basis.

In accordance with the foregoing, American's motion to decertify the meal break class is DENIED.

III. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

A. Legal Standard

"A defendant seeking summary judgment must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action. … The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co*. (2002) 98 Cal.App.4th 66, 72; see also Code Civ. Proc., § 437c, subd. (p)(2).)

This standard provides for a shifting burden of production; that is, the burden to make a prima facie showing of evidence sufficient to support the position of the party in question. (See *Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850-851 (*Aguilar*).) The burden of persuasion remains with the moving party and is shaped by the ultimate burden of proof at trial. (*Ibid.*) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid.*) The opposing party must produce substantial responsive evidence that would support such a finding; evidence that gives rise to no more than speculation is insufficient. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 162-163.)

The traditional method for a defendant to meet its burden on summary judgment is by "negat[ing] a necessary element of the plaintiff's case" or establishing a defense with its own evidence. (*Guz v. Bechtel Nat., Inc.* (2000) 24 Cal.4th 317, 334.) The defendant may also demonstrate that an essential element of plaintiff's claim cannot be established by "present[ing] evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence-as through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing." (*Aguilar, supra,* 25 Cal.4th at p. 855.)

On summary judgment, "the moving party's declarations must be strictly construed and the opposing party's declaration liberally construed." (*Hepp v. Lockheed-California Co*. (1978) 86 Cal.App.3d 714, 717 (*Hepp*); see also *Johnson v. American Standard, Inc*. (2008) 43 Cal.4th 56, 64 [the evidence is viewed in the light most favorable to the opposing plaintiff; the court must "liberally construe plaintiff's evidentiary submissions and strictly scrutinize defendant's own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor"].) Summary judgment may not be granted by the court based on inferences

reasonably deducible from the papers submitted, if such inferences are contradicted by other inferences which raise a triable issue of fact. (*Hepp, supra*, 86 Cal.App.3d at pp. 717-718.)

B. Discussion

American moves for summary judgment as to the two causes of action certified by the Court for class treatment: failure to provide meal periods; and failure to provide accurate written wage statements. It maintains that it is entitled to judgment because these claims fail as a matter of law for a variety of reasons, which will be addressed in detail below.

1. *Meal Period Claim*

Defendant asserts that Plaintiff's meal period claim fails as a matter of law for the following reasons: (1) its meal break policies and procedures are lawful; and (2) its auto-record practice does not create liability because (a) the *Donohue* presumption does not apply here and (b) even if this presumption applies, it has rebutted it.

As a threshold issue, and as discussed above in connection with Defendant's motion for decertification, the Court agrees with Plaintiff that the *Donohue* presumption applies to the meal break claim. (Also see Order Re: Class Cert. at 16 ["It stands to reason that an employer should bear the same consequences from automatically recording meal periods without regard to whether they were actually taken in a compliant manner, as from failing to record them at all."].) American's theory that *Donahue* only applies where an employer rounds employee time records is unpersuasive for several reasons. First, as Plaintiff responds, the *Donohue* court considered two different issues, explaining:

> In this case, we decide *two* questions of law relating to meal periods. First, we hold that employers cannot engage in the practice of rounding time punches – that is, adjusting the hours that an employee has actually worked to the nearest preset time increment – in the meal period context. The meal period provisions are designed to prevent even minor infringements on meal period requirements, and rounding is incompatible with that objective. *Second*, we hold that time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations including at the summary judgment stage.

(*Donohue, supra*, 11 Cal.5th at p. 61, emphasis added.)

While the issue of rounding was discussed with respect to the second rebuttable presumption issue, it was *only* to determine whether the employer's meal period attestations were sufficient to rebut the presumption. In contrast to American's system during the relevant period, the employer's records in *Donohue* showed the start and end time of meal periods and, where a meal period appeared non-compliant, generated a prompt that asked whether the non-compliant period was voluntary. The court agreed with the plaintiff that even though some non-compliant meal periods were flagged by the defendant's systems, not all were flagged because of the rounding. Here, American's system does not record whether any period is missed, late, or short, and thus does not flag *any* non-compliant meal periods. It therefore follows that American bears the consequences of that system (placing the onus on employees to record exceptions), i.e., it is presumed that meal period violations occurred and thus in order to avoid liability it must rebut the presumption by proving that employees were compensated for

noncompliant meal periods or that they were in fact provided complaint meal periods during which they chose to work. (*Donohue, supra*, 11 Cal.5th at p. 77.)

Further, as Plaintiff urges, the fact that *Donohue* adopted the rebuttable presumption as set forth in Justice Werdegar's concurrence in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 (*Brinker*) further demonstrates that the presumption is not limited to rounding. *Brinker* had nothing to do with rounding.

Thus, the determinative issue on American's request for summary judgment as to the meal period claim is whether it has successfully rebutted the presumption. Again, it can do so by presenting evidence that class members were compensated for noncompliant meal periods or that they were provided compliant meal periods during which they voluntarily elected to work. "Representative testimony, surveys, and statistical analysis, along with other types of evidence, are available as tools to render manageable determinations of the extent of liability." (*Donahue, supra,* 11 Cal.5th at p. 77, quoting *Brinker, supra,* 53 Cal.4th at p. 1054 (conc. opn. of Werdegar, J.), internal quotations omitted.) Importantly, "[t]he rebuttable presumption does not require employers to police meal periods. Instead, it requires employers to give employees a mechanism for recording their meal periods and to ensure that employees use the mechanism properly." (*Ibid*.)

To this end, American maintains that it has rebutted the presumption by presenting evidence that employees were compensated for non-compliant meal breaks. American first details the timekeeping practices that it has in place. Currently, American utilizes a system called Workbrain which, among other things, tracks when employees clock in and out of its systems. (American's Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment ("UMF") No. 9.) Legacy American employees utilized a system called AutoTA until it was phased out between 2015 and 2021, and legacy US Airways employees used Workbrain prior to and after that company merged with American in 2013. (UMF Nos. 9-10.) Regardless of which program is used, unionized, non-exempt employees who work on the ground clock in at the start of their shift and clock out at the end. (UMF No. 11.) If an employee is working a shift that entitles them to a meal break, that meal break is automatically recorded in the employee's time. (UMF No. 13.) Throughout the class period, American explains that it has prohibited off-the-clock work. (UMF No. 14.)

If and when a covered employee does perform work during a meal break, the employee is supposed to report an "exception" so that the change to their schedule is recorded and they receive proper compensation. (UMF No. 15.) American does not have a uniform method of reporting and recording exceptions at the California airports[8] that it operates from but presents evidence of having a formal system of some kind at each location. These historically and currently include: recording exceptions on paper forms and dropping them off in a box for management to approve and administration to enter into the timekeeping system; recording exceptions on paper forms that would be reviewed by administrative employees and entered into the timekeeping system; recording exceptions on a pen-and-paper log near the time clock

[8] These airports are: Los Angeles International Airport (LAX); Hollywood Burbank Airport (BUR); San Francisco International Airport (SFO); Oakland International Airport (OAK); San Diego International Airport (SAN); Sacramento International Airport (SMF); San Jose International Airport (SJC); Ontario International Airport (ONT); Long Beach Airport (LGB); and Santa Ana Airport (SNA).

to be approved by management and entered into the timekeeping system by administrative staff; and recording exceptions directly into Workbrain and selecting a manager to approve them. (UMF Nos. 18-24.) Currently, most of the airports utilize the system that has employees entering exceptions into Workbrain for managerial approval. (*Id*.)

Since September 2017, American has promulgated a written California Meal and Rest Break Policy (the "Policy") for non-exempt employees. The policy provides that each non-exempt employee who works a shift longer than five hours is entitled to take a thirty-minute uninterrupted meal break beginning no later than the end of the fifth hour of work, and each non-exempt employee who works a shift longer than ten hours is entitled to take a second thirty-minute uninterrupted meal break beginning no later than the end of the tenth hour of work. (UMF No. 27.) If an employee does not receive a meal break in accordance with the Policy, it instructs them to "record the missed (or short, or late) meal period or rest break on the appropriate form in your department, such as an exception sheet or log." (*Id*.) The Policy further provides that regardless of the reason for the missed meal break, the employee will be paid for all of their time worked, and will be paid a premium, up to one hour per day for missed meal breaks and one hour per day for missed rest breaks. (*Id*.) Employees are reminded by the Policy that "it is very important that you communicate any missed meal or break period to your supervisors and submit the required form for your department as noted above in order to receive all earned pay." (UMF No. 15.)

The Policy is posted on American's employee intranet and in the workplace on bulletin boards where it is visible to all employees. (UMF No. 26.) According to American, prior to the promulgation of the Policy, meal break practices varied across airports and workgroups, but the expectation was that employees would take meal breaks in accordance with California law. (UMF No. 29.)

Citing to the deposition testimony and declarations of numerous class members and supervisors, American asserts that its evidence "overwhelmingly" demonstrates that its employees ordinarily receive an opportunity to take a timely thirty-minute, generally uninterrupted and duty free, meal break when working a qualifying shift. (UMF Nos. 32-36.) At some of the airports and for several workgroups, per American's evidence, meal breaks are built into employees' schedules. (UMF No. 31.) American continues that class member depositions demonstrate that across its airports and workgroups, employees knew how to use the exception process, and in fact did so to record meal break issues and receive premium pay. (UMF No. 37-38.)

American maintains that its class member time and payroll data shows that the meal break exception process is "well understood and well-used," and relies on the report of its expert, Dr. Ethan S. Singer ("Dr. Singer"), to establish as much. In his report, Dr. Singer, upon his review and analysis of the exception reports, timekeeping data (for 6,082 class members) and wage statements produced in this action, expresses the following opinions:

- All airports throughout California where class members worked had an exception process in place during the relevant class period;
- The timekeeping data show that the majority of class members (60%) used the exception process and had at least one day with a timekeeping code for a missed, late, or short meal period, with a quarter of class members (25%) having ten or more days with a timekeeping code for missed, late, or short meal period;

- Class members had timekeeping entries for missed, late, or short meal periods on the vast majority (96.5%) of days in the class period, with these timekeeping entries occurring on all but one day outside of the pandemic period of April 2020-April 2021, and this reflects "widespread" use of the exception process;
- On an average day between February 19, 2015 and October 17, 2023, less than 0.5% of class members (28) had non-compliant meal periods recorded;
- The wage statement data reveals that the majority of class members (54.3%) had at least one wage statement with a meal period entry and shows that there was substantial variation in the proportion of class members with at least one wage statement with a meal period entry across workgroups and locations;
- The analysis of the exception report data, timekeeping data, and wage statement data is consistent with employees having the ability to report and obtain compensation for missed or late meal breaks.

In its opposition, Plaintiff's initial response to the foregoing is to argue that American's use of a self-reporting exception is not sufficient to rebut the *Donohue* presumption. He explains that in *Donohue*, the court rejected the defendant's contention that it had rebutted the presumption based on biweekly certifications signed by class members attesting that there were no meal period violations and urges that similar attestations proffered here, i.e., self-reporting of non-compliant meal periods by employees, cannot rebut the presumption. But there are important factual distinctions between *Donohue* and the instant action that compelled the court to discount the defendant's showing.

In *Donohue*, employees clocked in and out for meal periods, but for the purposes of calculating worktime and compensation, the timekeeping system rounded the time punches to the nearest 10-minute increment. When an employee recorded a missed, short or delayed meal period, a drop-down menu was triggered in the timekeeping system that prompted the employee to choose one of three options to articulate the specific factual circumstances concerning the subject meal period, i.e., they voluntarily chose to forego/shorten the meal period or they were not provided an opportunity to take it. The defendant relied on the rounded time punches generated by the timekeeping system to determine whether a meal period was short or delayed. But because the drop-down menu was triggered by *rounded* punches, it failed to flag meal periods that were short or delayed based on *unrounded* as opposed to rounded time punches. Thus, employees would not have known about potentially noncompliant meal periods that the system did not flag unless they kept their own time records, an obligation that the law places solely on employers. In sum, the rounding potentially led to systematic underreporting of noncompliant meal periods and caused the certifications made by the employees via the drop-down menu to be inaccurate. Thus, it was the *rounding* that rendered the employee attestations unreliable, *not* the fact that they were the product of self-reporting. As such, *Donohue* does not stand for the proposition that the use of a self-reporting exception is not sufficient to rebut the presumption of liability at issue.

Turning to American's evidentiary showing, Plaintiff counters that the company's exception process is "deeply flawed," and cites to the report prepared by its own expert, Jeffrey S. Petersen, Ph.D ("Dr. Petersen"), to establish as much. In its reply, American objects to Mr. Petersen's declaration and survey, as well as that of Bill Davis of Davis Research, with whom Dr. Petersen worked to prepare the survey to determine the frequency and extent of meal

period violations, arguing that they must be excluded from consideration for failure to timely disclose these experts.[9]

American explains that this Court, pursuant to a stipulation filed by the parties, issued a scheduling order on July 17, 2023 that set numerous deadlines, including when the parties were to disclose the experts they would use in dispositive motion practice. It continues that on that deadline, September 22, 2023, Plaintiff served a designation of expert witnesses pursuant to Code of Civil Procedure section 2034, *et seq*. which disclosed a single expert: David M. Breshears. However, on April 22, 2024, Plaintiff filed his motion for summary judgment and included as evidence declarations from two undisclosed witnesses: Dr. Petersen and Mr. Davis. In connection with its opposition to that motion, American objects to their declarations on the ground that Plaintiff failed to timely disclose them as experts. In support of his reply, Plaintiff filed "Responses to Defendant American Airlines Inc.'s Objections to Evidence in Support of Plaintiff's Motion for Summary Judgment" in which he "requests relief to designate" Dr. Petersen and Mr. Davis under Code of Civil Procedure sections 473(a) or 2034.620 ("Section 2034.620"). American's objections in connection with the instant motion and Plaintiff's motion for summary judgment are based on Code of Civil Procedure section 2034.300 ("Section 2024.300"), which provides that expert testimony "shall be excluded" from evidence where it was not disclosed in the manner provided by Section 2034.260. Generally, a demand for expert witness information must be made no later than the 10th day after the initial trial date is set, or 70 days before that trial date, whichever is nearer to the date. The exchange itself must occur 20 days after the demand or 50 days before the initial trial date, whichever is later. (Code Civ. Proc., §§ 2034.220 and 2034.230.)

What is the effect of Code of Civil Procedure section 2034, *et seq*. on evidence submitted in connection with a *motion for summary judgment* rather than at trial? In *Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536 (*Perry*), our Supreme Court considered this very issue and, after citing the summary judgment statute's proviso that a party may not raise a triable issue of fact by relying on evidence that will not be admissible at trial (see Code Civ. Proc., § 437c, subd. (d)), held that "[w]hen the time for exchanging expert witness information has expired before a summary judgment motion is made, and a party objects to a declaration from an undisclosed expert, the admissibility of the expert's opinion can and must be determined before the summary judgment motion is resolved." (*Perry,* 2 Cal.5th at 543.) The complicating factor in this case is that the deadline to designate experts for trial has not passed yet; it is December 3, 2024. Thus, it cannot be said that the declarations of Dr. Petersen and Mr. Davis are inadmissible under Section 2034.300 because the expert disclosure deadline for trial has yet to pass. Nevertheless, Plaintiff does appear to have ignored the deadlines stipulated to and ordered by this Court as to disclosing Mr. Petersen and Mr. Davis. Is exclusion of these items warranted as a result? After consideration, the Court concludes that the answer is no. Plaintiff clarifies that American had almost 6 months to depose Dr. Petersen and Mr. Davis after receiving their reports, with his counsel even offering multiple dates for the depositions, yet elected not to do so. While the Court does not wish to make it seem as though it is condoning Plaintiff's behavior—to be clear, it does not—American does not appear to have been caught unaware of the materials prepared and conclusions made by Dr.

[9] In connection with Plaintiff's motion for summary judgment, American has also filed a sur-reply wherein it similarly objects to consideration of materials prepared by Dr. Petersen and Mr. Davis and submitted in support of Plaintiff's motion on the same grounds.

Petersen and Mr. Davis, and it is always preferable to resolve an action on the merits where possible. Thus, the Court will consider these materials proffered by Plaintiff.

Dr. Petersen, in conjunction with survey expert Bill Davis of Davis Research, conducted a survey to determine the frequency and extent of meal period violations. Davis Research randomly selected 2,435 names from the class list to call and the survey was completed by 402 class members, each of whom worked at least 20 shifts. Respondents were asked (1) on what percentage of 6 to10 hour shifts they took an uninterrupted 30 minute meal period and (2) about the percentage of shifts where the meal break was taken after the first five hours of their shift. Combining the results, Dr. Petersen's survey shows an estimated 38.7% of shifts had noncompliant meal breaks. In contrast, Plaintiff explains, American's payroll data only shows that exception reports are submitted for non-compliant meal periods on at most 1.88% of shifts; consequently, on 35.52% of shifts, there is a meal period violation, but the employee did not submit an exception report. (See Declaration of David Breshears in Support of Opposition to Motion for Summary Judgment ("Breshears Decl."), ¶ 9.) Plaintiff therefore argues that the exception process is highly underutilized by employees, which suggests that it is not an effective mechanism for recording noncompliant meal periods.

Plaintiff's experts additionally challenge the methodology used by Dr. Singer and the conclusions he has drawn with respect to the data he reviewed (see, e.g., Breshears Decl. at 2-3) and urge that his report is missing a critical statistic for the trier of fact: the percentage of all shifts with a meal period during the class period where class members filled out an exception log. Dr. Petersen explains it can be inferred from Dr. Singer's report that this percentage is 0.4% to 0.5%, but Dr. Singer acknowledges in his deposition that he did not analyze this statistic. His report, Dr. Petersen opines, as well as the 54 class member declarations submitted by American, only provide a potential basis for offsets to the damages and penalties computations established by the survey responses, but otherwise have no other value because they do not assist in determining whether the exception process could be used for every non-compliant meal period experienced by class members.

As to this last point, Plaintiff cites to various declarations and deposition testimony that he argues establish that class members often do not know about the exception report systems or are deterred from using them. (See Declaration of Shaun Setareh in Support of Opposition to American's Motion for Summary Judgment ("Satareh Decl."), ¶¶ 10-16, 20, Exhibits 11 (Darcy Britton Depo.), 40:20-41:9, 43:5-44:5; Ex. 8 (Andrei Coval Depo.), 52:2-22, 54:18-55:6; Ex. 12 (Jasmine Brown Depo.), 51:12-52:1, 56:18-75:5, 63:1-13); Ex. 10 (Thomas Jones Jr. Depo.), 48:14-19; Ex. 17 (Anthony Jager Depo.), 35:25-36:1, Ex. 13 (Brittani Jenkins-Hunter Depo.) 65:10-23; Ex. 7 (Joseph Schofield Depo.), 40:20-41:2. (See also Plaintiff's Compendium of Exhibits, Exhibits 9-17.) Numerous class members have also testified they were never informed about the meal policy. (See Setareh Decl., at ¶¶ 11, 14-15, Ex. 11 (Darcy Britton Depo.), at 42:18-43:4, Ex. 8 (Andrei Coval Depo.) 45:3-16, Ex. 12 (Jasmine Brown Depo.) 41: 10-13.) Further, he maintains, the declarations of airport managers proffered by American cannot attest to the exception report practice throughout the *entire* class period, as most have only been employed as managers for two years or less.

In sum, the Court finds that the evidence submitted by the parties establishes that there are triable issues of material fact. Unless there are legal reasons to reject the opinions offered by the parties' experts (e.g., the experts are not sufficiently qualified to give their opinions, the materials are prejudicial, etc.), it is not up to the Court to decide which expert's findings are

more credible. (*Carr v. City of Newport Beach* (2023) 94 Cal.App.5th 1199, 1204 [court analyzing summary judgment motion does not make credibility determinations, weigh evidence or resolve factual disputes].) The trier of fact is also tasked with determining what to extrapolate from the representative evidence submitted by the parties, and to determine, where the testimony conflicts as it does here, who to believe. Since the evidence in the record is in conflict, the Court cannot summarily adjudicate the meal break claim in American's favor.

2. *Wage Statement Claim*

The theory underlying Plaintiff's wage statement claim is that American's policy of requiring employees to receive their pay through direct deposit or a Money Network check or pay card and not providing employees the option to elect to receive paper wage statements violates Labor Code Section 226 ("Section 226"), subdivision (a). American contends that Plaintiff's claim fails as a matter of law because (1) the electronic wage statements that it provides to its employees comply with Section 226 and (2) it provided paper copies of wage statements.

Subdivision (a) of Section 226 requires an employer to furnish "either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check of cash, an accurate itemized statement in writing" concerning the employee's wages. According to American, its California employees are paid bi-monthly and receive a wage statement concurrently with or shortly before the payment of wages. (UMF Nos. 42-43.) The wage statements, it explains, are delivered to employees electronically through its employee intranet, Jetnet, which can be accessed through any device with an internet connection. (UMF Nos. 43-44.) When a new employee starts, they receive training on how to access Jetnet, including how to access their wage statements. (UMF No. 45.) Its employees, Defendant proffers, can view and print their electronic wage statements in the following ways: on company computers available at the airports while operations are running, even when the employee is on the clock; from any computer, tablet or smart phone with an internet connection and connected to a printer. (UMF Nos. 47-49.) American submits evidence that all California airports have computers and printers on-site for employees to use. (*Id*.)

American urges that its practices, particularly the provision of electronic wage statements to employees and the ability of its employees to print those statements from computers available to them at work or any other device with internet access and a connection to a printer, comply with Section 226. It cites an opinion letter issued in 2006 by the California Department of Labor Standards Enforcement ("DLSE") (the "DLSE Opinion Letter") stating that furnishing an electronic wage statement suffices under Section 226 if certain factors are met. (See *Derum v. Saks 7 Co.* (S.D. Cal. 2015) 95 F.Supp.3d 1221, 1226 (*Derum*) ["The primary California authority on electronic wage statements appears to be the DLSE opinion letter … approv[ing] the use of electronic wage statements, but only so long as employees retain the right to elect to receive hard-copy statements."].) In the letter, the DLSE explains that because "an electronically stored wage statement which is accessible by an employee may be read on a screen or printed and read as a hard copy," it qualifies as a "statement in writing." (DLSE Op. Ltr. No. 2006.07.06.) Accordingly, American maintains, under the DLSE's interpretation, an employer that provides electronic wage statements complies with subdivision (a) of section 226 so long as employees (1) "retain[] the right to elect to receive a written paper stub or record" and (2) those who receive electronic statements "retain the ability to easily

access the information and convert [them] into hard copies at no expense to the employee." (*Derum, supra,* 95 F.Supp.3d at p. 1226; *Del Thibideau v. ADT LLC* (S.D. Cal. 2019) 2019 U.S. Dist. LEXIS 66603 (*Del Thibodeau*).) This is precisely what its policies allow, American argues, and therefore it is entitled to judgment in its favor on the wage statement claim.

In his opposition, Plaintiff insists that American's motion must fail because it does not provide papers copies of wage statement to employees and they are not given the option to elect to receive papers statements as admitted by American. He further argues that there is a factual dispute as to whether class members could view and print their wage statements at no cost and the evidence proffered by American has not demonstrated the *lack* of a triable issue in this regard. Neither of these assertions are well taken.

First, given the foregoing, Plaintiff is implicitly arguing that there is a material difference between an employee "receiving" a paper copy of a wage statement and being given the means to convert an electronic statement to paper at no cost to the employee. But courts have rejected such a contention. (See, e.g., *Apodaca v. Costco Wholesale Corp.* (2014) 2014 U.S. Dist. LEXIS 80125, *6 (*Apodaca*)["[t]he provision of an electronic wage statement in lieu of a papers statement violates Section 226(a) only if [the plaintiff] could not easily access the wage statements and easily convert the statements into hard copies."]; also see *Del Thibodeau, supra,* at *28 [citing *Apodaca*, the DLSE Opinion Letter and stating that "California law does not appear to require printed wage statements if electronic copies are readily available" in rejecting Section 226 claim where plaintiff had easy access to his electronic wage statement].) Section 226 contains *no* requirement that wage statements be "furnished" in paper; all it requires regarding the method of delivery is that statements are furnished either as a "detachable part of the check" or, reflective of the digital age, "separately." (Lab. Code § 226(a).) Nor does the DLSE Opinion Letter require as much. Here, American has proffered evidence that it provided class members their wage statements electronically through JetNet and provided them the ability to reduce those statements to hard copy at any time by making available to them company printers, computers, equipment, an internet connection and company time. (UMF Nos. 44-51.) This is sufficient to comply with Section 226, subdivision (a).

Second, Plaintiff fails to raise a triable issue of material as to whether any airport did *not* make computers and printers available to employees to enable them to view and print their wage statements. While Plaintiff insists that class members "dispute" that they can use company equipment to create hard copies of their wage statements and claim that station managers who have attested to the presence of computers and printers at the airport do not have "personal knowledge over each airport's practices throughout the class period," the station manager and class member testimony *together* establish that throughout the class period and at all California airports at issue, class members had access to company computers and printers to convert their wage statements to hard copy.

Given the foregoing, the Court finds that American is entitled to adjudication of the wage statement claim in its favor.

In accordance with the foregoing, American's motion is GRANTED as to the wage statement claim and DENIED as to the meal break claim.

IV. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION

A. Legal Standard

The party moving for summary judgment bears the initial burden of production to make a prima facie case showing that there are no triable issues of material fact – one sufficient to support the position of the party in question that no more is called for. (*Aguilar, supra,* 25 Cal.4th at pp. 850-851.) Plaintiffs moving for summary judgment bear the burden of persuasion that each element of the cause of action in question has been proved, and hence there is no defense thereto. (Code Civ. Proc., § 437c.) Plaintiffs, who bear the burden of proof at trial by preponderance of evidence, therefore "must present evidence that would require a reasonable trier of fact to find the underlying material fact more likely than not—otherwise he would not be entitled to judgment as a matter of law, but would have to present his evidence to a trier of fact." (*Aguilar, supra,* 25 Cal.4th at p. 851.) The defendant has no evidentiary burden until the plaintiff produces admissible and undisputed evidence on each element of a cause of action. (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2020), ¶ 10:238.) If the plaintiff meets this initial burden, it then shifts to the defendant to "show that a triable issue of one or more material facts exists as to that cause of action." (Code Civ. Proc., § 437c, subd. (p)(1).)

B. Discussion

While the instant motion is brought by Plaintiff, the exact same issues and arguments as those set forth in connection with American's motion are raised and/or made by the parties, e.g., whether the *Donohue* presumption applies, whether it has been rebutted, and whether there are triable material facts as to whether class members were given opportunities to take meal breaks and an effective mechanism to record noncompliant breaks so as to be properly compensated. As the evidence in the record as to the foregoing is in conflict, the Court cannot summarily adjudicate the meal break claim in Plaintiff's favor (or the derivative claims, i.e., the third, fifth and sixth causes of action), nor can it do so with the wage statement claim given the disposition of American's motion as to this cause of action.

Accordingly, Plaintiff's motion for summary judgment, or in the alternative, summary adjudication, is DENIED.

V. CONCLUSION

American's motion to decertify the meal break class is DENIED.

American's motion for summary judgment is GRANTED as to the wage statement claim and DENIED as to the meal period claim.

Plaintiff's motion for summary judgment, or in the alternative, summary adjudication, is DENIED.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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Calendar Line 7

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Calendar Line 8

Case Name: *Lourdes Santos, et al. v. El Guapo's Tacos, LLC, et al.*
Case No.: 1-15-CV-285065

This is a representative action under the Private Attorneys General Act ("PAGA"). Plaintiffs Lourdes Santos and Carolina Chavez-Cortez (collectively, "Plaintiffs") allege that Defendants El Guapos Tacos, LLC, Sam Ramirez, Anthony Beers, James Beers, John Conway and David Powell (collectively, "Defendants") committed various wage and hour violations and seek PAGA penalties for those violations. Before the Court is Plaintiffs' motion for approval of PAGA settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

Ms. Santos and Ms. Chavez-Cortez were formerly employed by Defendants from 2010 to 2013 and 2011 to March 2015, respectively, as non-exempt, hourly-paid employees. They allege that Defendants failed to: provide lawful meal breaks or compensation in lieu thereof; authorize or permit rest breaks; provide accurate, itemized wage statements; pay all wages due upon termination; and pay compensation for all hours worked. Based on these violations, Plaintiffs sought civil penalties under PAGA.

II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 2022 U.S. LEXIS 2940.) 75 percent of any penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended "to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id.* at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) "[C]lass certification is not required" in this context as in a class action. (*Haralson v. U.S. Aviation Servs. Corp*. (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 (*Haralson*).)

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

genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

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

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

This case has a lengthy history. Plaintiffs initiated this action on August 31, 2015, asserting six causes of action, including a claim for civil penalties under PAGA. Plaintiffs subsequently filed a first amended complaint and a second amended complaint, and the parties participated in a mediation session with the Hon. Kevin Murphy on March 30, 2017. Plaintiffs issued Code of Civil Procedure section 998 offers to Defendants that were not accepted.

In July 2018, Messrs. Anthony Beers, James Beers, Conway and Powell filed a motion for summary judgment/adjudication that was denied as to Ms. Chavez-Cortez and granted as to Ms. Lourdes on the ground that the individual defendants were not liable. In December 2018, Defendants filed a motion for judgment on the pleadings as to Ms. Chavez which was granted. The basis of the motion was a perceived defect in the notice provided to the LWDA to perfect Plaintiffs' claims under PAGA. Plaintiffs appealed and the case was stayed.

In November 2021, the Court of Appeal reversed the trial court's order, and its opinion allows Ms. Chavez to pursue her PAGA claims. In June 2022, Plaintiffs successfully moved to have this case deemed complex.

On September 7, 2023, the parties participated in a mediation session with Steve Pearl. Ten months later, on July 24, 2024, with the August 8, 2024 trial date approaching, the parties attended a mandatory settlement conference ("MSC"). Two days later, the MSC officer issued a mediator's proposal that was accepted by the parties.

Pursuant to the parties' agreement, Defendants will pay a gross settlement of $344,000, which is comprised of $125,740 in attorney's fees, $100,000 in litigation costs, and $4,950 in administration costs. The $220,740 in PAGA penalties will be distributed 75% ($84,060.91) to the LWDA and 25% ($136,679.1), on a pro rata basis, to "Aggrieved Employees," who are defined as "all current and former non-exempt staff who were employed by for El Guapos Tacos, LLP in the State of California during … July 27, 2014, through July 25, 2024." It is estimated that there are approximately 194 Aggrieved Employees who worked 7,884 pay periods during the relevant time period.

In exchange for settlement, Aggrieved Employees and the State of California will release:

> [A]ll claims for civil penalties that could have been assessed upon and collected from the Released Parties under the PAGA based on the violations alleged in the Complaint, based on the factual allegations in the Complaint, including, but not limited to, purported violations of California Labor Code sections 203, 226, 226.3, 226.7, 432, 510, 558, 1174, 1198, and Wage Order 5-2001, arising during the PAGA Period.

This release is appropriately tailored to the allegations at issue, and does not release any claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra,* 72 Cal.App.5th at p. 82 [release of "all known and unknown claims under PAGA … that were or could have been pled based on the allegations of the Complaint" was appropriately approved].)

IV. DISCUSSION

A. Potential Verdict Value

Based on the data provided by Defendants, Plaintiffs' counsel estimated the maximum exposure of the PAGA claim thusly: $788,400 (off-the-clock violations = 7,884 pay periods x $100 per pay period); $788,400 (meal period violations = 7,884 pay periods x $100 per pay period); and $788,400 (derivative wage statement violations = 7,884 pay periods x $100 per pay period). The maximum outcome of civil penalties is $2,365,200 ($788,400 x 3). The civil penalties amount in the settlement amounts to 15% of the potential award. Plaintiffs' counsel reduced the foregoing amounts to account for several factors, including but not limited to: the potential that the Court could award less penalties based on the employer's size; the lack of willfulness on the part of Defendants; the risk that Plaintiffs may recover nothing; and Defendants' denial on the merits and related defenses.

Given the history of PAGA appellate decisions that significantly reduce maximum penalty amounts (e.g., 90%) and the risk that Plaintiffs may recover nothing if they fail to succeed at trial, the Court finds that the proposed settlement is fair to those affected and is genuine, meaningful, and reasonable in light of the statute's purposes.

B. Attorney Fees

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

As articulated above, Plaintiffs seek $125,740 in attorney's fees. Plaintiffs submit a lodestar figure of $1,518,169.62 based on 2,401.08 hours of work at billing rates of $175 to $1,025 per hour, resulting in a negative multiplier of 0.08. This is well short of the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1

Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

Here, given the significant amount of work performed by Plaintiffs' counsel, and because the requested multiplier sought by them is well short of the range of multipliers regularly approved by California courts in similar actions, the Court finds counsel's requested fee award is reasonable and therefore it is approved.

C. Other Costs and Expenses

Counsel's request for litigation costs of $100,000 appears reasonable based on the supporting declarations provided which establish that counsel actually incurred costs in this amount and is approved. Administration costs of $4,950 are also approved.

V. ADMINISTRATION PROCESS

Pursuant to the terms of the Settlement Agreement, within twenty (20) days after the "Effective Date,"[10] Defendants will provide settlement administrator Apex Class Action Administration ("Apex") with a list of all Aggrieved Employees with the relevant identifying information (including the last known home address) and the number of pay periods worked. Within fifteen (15) days of the funding of the settlement, Apex will pay the various amounts approved by the Court to Plaintiffs' counsel, the LWDA, and each Aggrieved Employee. Each Aggrieved Employee will be sent a check in the appropriate amount. Any checks returned as non-deliverable will promptly be re-mailed to the forwarding address provided; if none is, Apex will attempt to locate one using a skip trace or other search method. Any checks returned as undeliverable or that remain uncashed after 180 days will be transmitted to the California State Controller's office. These administrative procedures are appropriate and are approved.

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[10] This term is defined in the settlement agreement as:

> [T]he earliest date following the granting of the Court granting approval of this settlement and entering Judgment on this Action, upon which one of the following has occurred: (a) if no objection is filed to the settlement and no objector appears at the approval hearing, ten (10) calendar days after the Court's entry of the order granting this settlement and entering Judgment in this Action; or (b) if an objection is filed to the settlement and/or an objector appears at the approval hearing, then the earlier of the following dates: (i) expiration of all potential appeal periods without a filing of a notice of appeal of the approval order; (ii) final affirmance of the approval order by an appellate court as a result of any appeal(s); or (iii) final dismissal or denial of all such appeals (including any petition for review, rehearing, certiorari) such that approval order is no longer subject to judicial review.

VI. ORDER AND JUDGMENT

Plaintiffs' motion for approval of the parties' PAGA settlement is GRANTED. The covered individuals are: all current and former non-exempt staff who were employed by for El Guapos Tacos, LLP in the State of California during July 27, 2014, through July 25, 2024.

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

The Court sets a compliance hearing for **July 17, 2025 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, Plaintiffs' counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted the California State Controller's office; the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.

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