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

In the voicemail message, please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling.
(See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

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

- **Parties can appear either in person or remotely.** All remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.
- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
- Members of the public who wish to observe can do so through Microsoft Teams (using the link discussed above) or in person. Please make sure to turn your camera off and mute yourself if you are observing the proceedings remotely.
- As a reminder, state and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while in the courtroom and while on Microsoft Teams.

DATE: NOVEMBER 7, 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	24CV429231	Shadkam v. 3566 Stevens Creek Holdings of California, LLC, et al. (Class Action)	See Line 1 for tentative ruling.
LINE 2	23CV415661	Lombera v. Creekside Auto Group (Class Action/PAGA)	See Line 2 for tentative ruling.
LINE 3	22CV403171	Keitz v. Apex Security Group, Inc. (Class Action)	See Line 3 for tentative ruling.
LINE 4	22CV398848	Lane, et al. v. Universal Protection Service, LP, et al. (Consolidated INTO Lead Case No. 22CV399095)	Given the issues of privilege raised in these motions, the court invites argument from the parties. A tentative

LAW AND MOTION TENTATIVE RULINGS

LINE 5	22CV398848	Lane, et al. v. Universal Protection Service, LP, et al. (Consolidated INTO Lead Case No. 22CV399095)	ruling is not provided.
LINE 6	22CV398848	Lane, et al. v. Universal Protection Service, LP, et al. (Consolidated INTO Lead Case No. 22CV399095)	
LINE 7	21CV380268	Calles v. Barracuda Networks, Inc. (Class Action)	The court was notified that this action has settled. As such, the hearing on Plaintiff's motion for class certification is VACATED and no appearance is necessary. Counsel are instructed to file a Notice of Settlement forthwith, which will facilitate the removal of future motions from the court's calendar. The Case Management Conference is RESCHEDULED to **December 19, 2024 at 2:30 p.m.**, at which time the parties should inform the court of the plan to finalize this action.
LINE 8	21CV380268	Calles v. Barracuda Networks, Inc. (Class Action)	
LINE 9	23CV415661	Lombera v. Creekside Auto Group (Class Action/PAGA)	The Case Management Conference is VACATED in light of the Court's ruing on Plaintiff's motion for preliminary approval.
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Ahmed Reza Shadkam v. 3566 Stevens Creek Holdings of California, LLC, et al.*
Case No.: 24CV429231

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Ahmed Reza Shadkam alleges that Defendants 3566 Stevens Creek Holdings of California, LLC and Sunnyvale Chrysler-Jeep-Dodge, LLC (collectively, "Defendants") committed various wage and hour violations. Before the Court is Defendants' motion to compel arbitration, which is opposed by Plaintiff. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

According to the operative First Amended Class Action Complaint ("FAC"), Plaintiff was formerly employed by Defendants as a non-exempt, hourly-paid employee. He alleges that Defendants failed to: pay all wages owed (including minimum and overtime wages); provide lawful meal periods and rest breaks or compensation in lieu thereof: provide accurate, itemized wage statements; timely pay wages during employment; and pay all wages due upon separation of employment. (FAC, ¶ 4.)

Based on the foregoing, Plaintiff filed the FAC on March 27, 2024, asserting the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to pay wages for non-productive time; (6) unlawful deductions; (7) failure to provide accurate itemized wage statements; (8) failure to pay all waged due upon separation of employment; (9) violation of Business & Professions Code § 17200, *et seq.*; and (10) PAGA penalties.

II. DEFENDANTS' MOTION TO COMPEL ARBITRATION AND TO STAY ACTION

With their motion, Defendants move for an order: compelling arbitration of Plaintiff's individual claims; dismissing all class claims in this action; and staying this action with the remaining representative PAGA claim. Defendants move to compel arbitration of Plaintiff's individual claims based on four arbitration agreements purportedly executed on October 13, 2020; December 8, 2020; April 2, 2022; and January 28, 2023.

A. Legal Standard

In ruling on a motion to compel arbitration, the Court must inquire as to (1) whether there is a valid agreement to arbitrate, and (2) if so, whether the scope of the agreement covers the claims alleged. (See *Howsan v. Dean Witter Reynolds* (2002) 537 U.S. 79, 84.) "Under both federal and state law, the threshold question presented by a petition to compel arbitration is whether there is an agreement to arbitrate. [Citations.] The threshold question requires a response because if such an agreement exists, then the court is statutorily required to order the matter to arbitration." (*Fleming v. Oliphant Financial, LLC* (2023) 88 Cal.App.5th 13, 19, internal quotation marks omitted.)

The agreements at issue in this case are governed by the Federal Arbitration Act (FAA). "The FAA, which includes both procedural and substantive provisions, governs [arbitration] agreements involving interstate commerce." (*Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 840.) However, "[t]he procedural aspects of the FAA do not apply in state court absent an express provision in the arbitration agreement." (*Ibid*.) Here, agreements expressly provide they "shall be interpreted and enforced in accordance with the [FAA]," and thus federal procedural and substantive law apply. (See *Rodriguez v. American Technologies, Inc*. (2006) 136 Cal.App.4th 1110, 1122 ["[t]he phrase 'pursuant to the FAA' is broad and unconditional," and unambiguously adopts both the procedural and substantive aspects of the FAA].)

Under the FAA, the Court must grant a motion to compel arbitration if any suit is brought upon "any issue referable to arbitration under an agreement for such arbitration" (9 U.S.C. § 3), subject to "such grounds as exist at law or in equity for the revocation of any contract…" (9 U.S.C. § 2). The moving party must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. (See *Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396 [under both federal and state law, "the threshold question presented by a petition to compel arbitration is whether there is an agreement to arbitrate"]; *Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413 (*Rosenthal*) [moving party's burden is a preponderance of evidence].) The burden then shifts to the resisting party to prove a ground for denial. (*Rosenthal, supra,* 14 Cal.4th at p. 413.)

"In determining the rights of parties to enforce an arbitration agreement within the FAA's scope, courts apply state contract law while giving due regard to the federal policy favoring arbitration." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.)

> But the FAA's policy favoring arbitration … is merely an acknowledgment of the FAA's commitment to overrule the judiciary's longstanding refusal to enforce agreements to arbitrate and to place such agreements upon the same footing as other contracts. Or in another formulation: The policy is to make arbitration agreements as enforceable as other contracts, but not more so. Accordingly, a court must hold a party to its arbitration contract just as the court would to any other kind.

(*Morgan v. Sundance, Inc*. (2022) 596 U.S. 411 (*Morgan*), internal citations and quotation marks omitted.)

B. Discussion

As one Court of Appeal summarized,

> [T]he moving party bears the burden of producing "prima facie evidence of a written agreement to arbitrate the controversy." (*Rosenthal, supra*, 14 Cal.4th at p. 413.) The moving party "can meet its initial burden by attaching to the [motion or] petition a copy of the arbitration agreement purporting to bear the [opposing party's] signature." (*Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 543–544 (*Bannister*).) Alternatively, the moving party can

> meet its burden by setting forth the agreement's provisions in the motion. (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219 (*Condee*); see also Cal. Rules of Court, rule 3.1330 ["The provisions must be stated verbatim or a copy must be physically or electronically attached to the petition and incorporated by reference."].) For this step, "it is not necessary to follow the normal procedures of document authentication." (*Condee*, at p. 218.) If the moving party meets its initial prima facie burden and the opposing party does not dispute the existence of the arbitration agreement, then nothing more is required for the moving party to meet its burden of persuasion.

(*Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 165–166.)

To establish that Plaintiff consented to arbitrate all of his individual claims and waived his right to assert claims on behalf of a class of individuals, Defendants submit the declaration of Tina Starr, counsel for Defendants, who states that Plaintiff was employed by Defendants from October 2020 to August 2023 as a Finance Salesperson. She continues that as part of his employment, on October 13, 2020, Plaintiff and Defendants entered into a Vehicle Salesperson Compensation Program, which included a Binding Arbitration Agreement (the "October 2020 Agreement"). (See Declaration of Tina M. Starr in Support of Motion to Compel Arbitration ("Starr Decl."), ¶ 3, Exhibit A.) According to Ms. Starr, Plaintiff subsequently entered into identical Vehicle Salesperson Compensation Program Agreements, which contained an identical Binding Arbitration Agreement, with Defendants on December 8, 2020; April 2, 2022; and January 28, 2023. (Starr Decl., ¶ 4, Exhibits B, C and D.) The latter three agreements are purportedly identical to the October 2020 Agreement, and Plaintiff refers to all four collectively as the "Agreements." The copies of the Agreements submitted with Ms. Starr's declaration all bear Plaintiff's signature. Defendants cite the following portions of the Agreements as the basis for their motion:

> [B]y signing my name below and/or accepting and/or continuing employment with the Company, I agree to pursue *any claims* I might have against the Company that currently exist or that may arise in the future *exclusively through binding arbitration*; similarly, the Company agrees to pursue any claims it might have against me that currently exist or that may arise in the future exclusively through binding arbitration.

(Agreements at ¶ 1, p. 4, emphasis added.)

> I understand that this agreement requires me to pursue all claims I bring against the Company … through binding arbitration, and requires that the Company submit any claims it has against me to binding arbitration (except for those claims specifically excluded by this agreement.) Our agreement to arbitrate *includes any and all claims which arise out of the employment context* or any other interaction/relationship we had, have or may have in the future ….

(Agreements at ¶ 2, p. 4, emphasis added.)

> I acknowledge that the Company's business and the nature of my employment in that business affect interstate commerce. Thus, I agree that this agreement and my employment are governed by the Federal Arbitration Act (FAA) (9

> United States Code § 1, et seq). The binding arbitration proceedings shall be governed by the rules listed herein or as supplemented by the [FAA] and/or the procedures of the California Arbitration Act (California Code of Civil Procedure § 1280 et seq., including § 1283.05 and all of the Act's other mandatory and permissive rights to discovery). The California Arbitration Act shall only control the arbitration proceedings to the extent it is consistent with this agreement and/or the [FAA].

(Agreements at ¶ 4, p. 5.)

> I agree that the arbitrator only has the authority to hear and adjudicate my individual claims and that the arbitrator does not have the authority to make the arbitration proceeding a class or collective action, or to award monetary relief to a group of employees in one proceeding. … Under current applicable law, an employee's right to bring a representative claim pursuant to the California Private Attorneys General Act ("PAGA") is unwaivable, and notwithstanding anything else in this agreement, this agreement does not purport to create any waiver of such right. Both the Company and I agree that any arbitration proceeding must move forward under the FAA … even though the claims brought in court or otherwise may name, involve and/or relate to persons/entities who are not parties to the arbitration agreement and/or claims that are not subject to arbitration (such as PAGA). Thus, the court may not refuse to enforce this arbitration agreement and may not stay the arbitration proceeding despite the provisions of the Code of Civil Procedure § 1281.2(c), and shall sever and stay the non-arbitrable claims pending the final adjudication of the arbitrable claims.

(Agreements at ¶ 7, p. 6.)

By producing signed copies of the Agreements, Defendants have established the existence of agreements to arbitrate between themselves and Plaintiff. As for the scope of these Agreements, Defendants maintain that the express language makes clear that *any* claims arising out of Plaintiff's employment, barring a *representative* PAGA claim, must be arbitrated, and they cite to *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 1924 (*Viking River*) for the proposition that "PAGA actions cannot be precluded from division into individual and non-individual claims through an agreement to arbitrate."

In his opposition, Plaintiff does not deny signing the Agreements, but asserts that the Court must deny Defendants' motion as to the PAGA claim, in its *entirety*, because there was never an agreement to arbitrate that claim. Plaintiff asserts that the controlling agreement is the October 2020 Agreement given the language in the latter three that they would only supersede the prior agreement "to the extent that they differ from the foregoing" (see Starr Decl., Exhibits A, B, C and D at ¶ 12), and because they do *not* differ, the October 2023 Agreement remains the operative agreement. The language of the October 2020 Agreement, Plaintiff continues, does not purport to create any waiver of Plaintiff's right to bring a PAGA claim, and this was consistent with the law at the time, i.e., *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*).

The Court does not find the foregoing persuasive. Plaintiff's argument overlooks the import of the California Supreme Court's decision in *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 (*Adolph*), as well as the *entirety* of the PAGA waiver in the Agreements, which recognizes the severability of individual and representative claims.

The disposition of Defendants' motion depends primarily on the holdings *Viking River*, *Adolph* and *Iskanian*, as well as the language of the Agreements. In *Iskanian*, the California Supreme Court reached two conclusions about PAGA actions that are relevant here: first, it held that "an employee's right to bring a PAGA action is unwaivable," and second, it "rejected the employer's argument that the particular waiver it drafted should be upheld because it only waived nonindividual PAGA claims and preserved the employee's right to arbitrate individual ones." (*Iskanian*, 59 Cal.4th at pp. 383-384.) Appellate courts have interpreted the latter conclusion as "prohibiting splitting PAGA claims into individual and nonindividual components to permit arbitration of the individual claims." (*Nickson v. Shemran, Inc.* (2023) 90 Cal.App.5th 121, 128.)

In June 2022, the United States Supreme Court issued its decision in *Viking River* in which it considered whether the FAA preempted the *Iskanian* rules against waiver and splitting of PAGA claims. The court held that *Iskanian's* prohibition on the waiver of PAGA claims was *not* preempted by the FAA, but reached the contrary conclusion with respect to *Iskanian's* secondary rule prohibiting the splitting of PAGA claims, explaining that such a ruling "circumscribe[d] the freedom of parties to determine the issues subject to arbitration and the rules by which they will arbitrate[.]" (*Viking River, supra*, 596 U.S. at p. 659, internal quotations omitted.) The court then turned to the specific arbitration agreement at issue and concluded that the waiver of PAGA claims was unenforceable "if construed as a wholesale waiver of PAGA claims." (*Id*. at p. 662.) However, because there was a severability clause in the agreement which provided that if the waiver provision was invalid in some respect, any portion that remained valid must still be enforced in arbitration, the court held that Viking River Cruises was entitled to compel arbitration of the plaintiff's *individual* PAGA claim. (*Ibid*.) Finally, the court concluded that the non-individual PAGA claims that remained should be dismissed for lack of statutory standing. (*Id.* at p. 663.)

This final conclusion from *Viking River* that was at issue in *Adolph*, with the California Supreme Court concluding that a PAGA plaintiff who is compelled to arbitrate his or her individual PAGA claims *maintains* standing to assert the remaining non-individual PAGA (i.e., representative) claims in court. (*Adolph*, 14 Cal.5th at 1123.) Consequently, dismissal of non-individual PAGA claims is not required when arbitration of individual PAGA claims is compelled, and "the trial court may exercise its discretion to stay the non-individual claims pending the outcome of the arbitration pursuant to section 1281.4 of the Code of Civil Procedure." (*Ibid*.)

With the foregoing in mind, the Court turns to the language of the October 2020 Agreement, as instructed by *Viking River*. Contrary to what Plaintiff argues, the October 2023 Agreement (1) recognizes the severability of individual and representative claims and the requirement to stay non-arbitrable claims by stating that it is not purporting to create a waiver of the "right to bring a *representative* claim pursuant to [PAGA]," (2) states that by signing the agreement, Plaintiff is agreeing to arbitrate *all* claims he has against Defendants, and (3) that the court "may not refuse to enforce this arbitration agreement and may not stay the arbitration …, and shall instead sever and stay the non-arbitrable claims pending the final adjudication of

the arbitrable claims." By qualifying the PAGA claim with the word "representative," the October 2020 Agreement contemplates both individual and non-individual claims under PAGA. As Plaintiff agreed to arbitrate *all* claims against Defendants, his individual PAGA claim must also be arbitrated. Given the agreements' provisions for waiver of class claims, those claims must be dismissed (see Epic Systems Corp. v. Lewis (2018) 584 U.S. 497, 502 [in the FAA, "Congress has instructed federal courts to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings"]; *Evenskaas v. California Transit, Inc.* (2022) 81 Cal.App.5th 285, 297-298), and the remaining representative PAGA claim must be stayed pending the resolution of the arbitration.

Accordingly, Defendants' motion to compel arbitration is GRANTED.

III. CONCLUSION

Defendants' motion to compel arbitration is GRANTED. The class claims are dismissed and the remaining representative PAGA claim is stayed pending resolution of the arbitration.

The Case Management Conference scheduled for November 7, 2024, is RESCHEDULED to **May 8, 2025, at 2:30 p.m.**

The Court will prepare the order.

****

LAW AND MOTION HEARING PROCEDURES

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

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

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

- oo0oo -

Calendar Line 2

Case Name: *Cristal Lombera v. Creekside Auto Group*
Case No.: 23CV415661 (Consolidated with Case Nos. 23CV418331 and 24CV428865)

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Cristal Lombera and Jesus Cabrera allege that Defendant Creekside Auto Group committed various wage and hour violations. Before the Court is Plaintiff's motion for preliminary approval of settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

According to the allegations of the operative First Amended and Consolidated Class and Representative Action Complaint ("FAC"), Plaintiffs were formerly employed by Defendant as non-exempt, hourly-paid employees. (FAC, ¶ 17.) They allege that Defendant failed to: pay employees for all hours worked, including overtime and minimum wages; properly calculate and pay sick leave; provide uninterrupted and timely meal and rest periods or compensation in lieu thereof; pay employees all wages owed upon termination; provide accurate, itemized wage statements; and failed to reimburse employees for all necessary business expenses incurred by them. (*Id*., ¶¶ 24-42.)

Based on the foregoing, the operative FAC was filed on April 2, 2024, and asserts the following causes of action: (1) unpaid overtime; (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) unpaid minimum wages; (5) wages not timely paid during employment and at termination; (6) non-compliant wage statements; (7) unreimbursed business expenses; (8) PAGA penalties; and (9) violation of Business & Professions Code § 17200, *et seq.*

Plaintiffs now seek an order: preliminarily approving the parties' class action settlement; certifying the Class for settlement purposes; ordering the proposed Class notice be sent to the settlement Class; appointing ILYM Group, Inc. ("ILYM") as the settlement administrator; preliminarily appointing Plaintiffs as Class representatives; appointing Justice Law Corporation and Wilshire Law Firm 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

Ms. Lombera initiated this action on May 10, 2023 as a representative action under PAGA. On May 24, 2023, Mr. Cabrera, represented by different counsel then Ms. Lombera, filed a wage-and-hour class action against Defendant in this Court asserting eight causes of action (Case No. 23CV418331). On January 10, 2024, Mr. Cabrera filed a separate representative PAGA action in this Court (Case No. 24CV428865).

The parties engaged in informal discovery, resulting in the production, by Defendant, of documents relating to its policies, practices, and procedures, as well as time records, wage statements, and information relating to the size and scope of the Class. Plaintiffs also located and interviewed putative Class members. The parties agreed to mediate their dispute, and participated, remotely, in an all-day mediation session on March 14, 2024 with experienced wage and hour mediator Lynn Frank. During the mediation, the parties discussed the risks of continued litigation, the likelihood of certification, and the merits of the claims and defenses versus the benefits of settlement. With the assistance of the mediator, the parties reached a global settlement, the terms of which were memorialized in the Settlement Agreement that is now before the Court for approval.

The operative FAC was filed on April 2, 2024 which: (1) added wage-and-hour class action causes of action; (2) adjusted the "class" definition; (3) adjusted the "aggrieved employees" definition; and (4) designated Case No. 23CV415661 as the lead case.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement is $2,500,000. Attorney's fees of up to $833,333.33 (or one-third of the gross settlement), litigation costs of up to $35,000 and administrative costs not to exceed $15,000 will be paid from the gross settlement. $150,000 will be allocated to PAGA penalties, 75% of which ($112,500) will be paid to the LWDA, with the remaining 25% ($37,500) dispensed, on a pro rata basis, to "Aggrieved Employees," who are defined as "all current and former employees employed by Defendant as hourly-paid or non-exempt employees in the State of California during [February 16, 2022 through June 12, 2024]." Plaintiffs will each seek a service payment of $10,000 (totaling $20,000).

The net settlement- estimated to be $1,446,666.67- will allocated to "Class Members," who are defined as "all current and former employees employed by Defendant as hourly-paid or non-exempt employees in the State of California during [May 10, 2019 through June 12, 2024]," on a pro rata basis based on the number of weeks worked during the foregoing period. For tax purposes, settlement payments will be allocated 20% to wages and 80% to 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 Aggrieved Employees will be allocated to penalties. Funds associated with checks uncashed after 180 days will be transmitted to Controller of the State of California to be held in trust for such class members pursuant to California unclaimed property law.

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

> [A]ll claims that were asserted, related, or could have been asserted based on the allegations in the Operative Complaint arising at any time during the Class Period, whether known or unknown, contingent, or vested, of any kind whatsoever, in law or in equity. This includes, but is not limited to, claims for: (a) failure to pay overtime and minimum wages; (b) failure to pay all regular rate wages due (including sick leave pay); (c) failure provide meal and rest periods and associated premium payments; (d) untimely pay of wages during employment and upon termination; (e) inaccurate wage statements; (f) failure to maintain complete and accurate payroll records; (g) failure to provide one day of rest; (h) failure to keep payroll records in a central location; (i) failure to reimburse for necessary business expense; and (j) unfair business practices stemming from these alleged Labor Code violations.

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

> [A]ll claims identified, pleaded, related, or otherwise set out in or that could have been brought based on the facts alleged in Plaintiffs' letters to the LWDA and/or the Operative Complaint that occurred the PAGA Period. This includes, but is not limited to, claims for: (a) unpaid overtime; (b) unpaid meal and rest break premiums; (c) unpaid minimum wages; (d) penalties for non-compliant wage statements; (e) waiting time penalties; (f) failure to pay final wages in a timely manner; (g) unreimbursed business expenses; (h) failure to provide and properly pay sick leave; (i) failure to provide one day of rest; (j) failure to keep payroll records in a central location; (k); failure to timely pay wages during employment; and (l) penalties under PAGA.

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, Plaintiffs' counsel estimated Defendant's maximum exposure for each claim (totaling $6,002,973.75 to $6,333,873.75) to be as follows: $1,050,395.85 (rest break premiums); $2,143,701 (meal break premiums); $661,500 to $992,400 (overtime/minimum wage: off-the-clock work); $42,036.96 (regular rate); $128,409.94 (alternative work schedule); $276,930 (unreimbursed business expenses); $773,900 (wage statement penalties); $926,100 (waiting time penalties); and $784,800[1] (PAGA penalties).

Plaintiffs' counsel then discounted the foregoing figures by percentages ranging from 20% to 75% to calculate Defendant's *realistic* exposure for each claim as follows (totaling $1,558,962.10 to $1,611,078.85): $91,909.64 (rest break premiums); $262,603.37 (meal break

[1] This amount was not included in the total by Plaintiffs due to its discretionary nature and the strong likelihood that PAGA penalties, should they be awarded, would be substantially reduced (e.g., 90%) by the Court.

premiums); $104,186.37 to $156,303 (overtime/minimum wage: off-the-clock work); $13,662.01 (regular rate); $41,733.23 (alternative workweek schedule); $88,617.60 (unreimbursed business expenses); $435,318.75 (wage statement penalties); and $520,931.25 (waiting time penalties). These reductions accounted for the difficulty of obtaining certification due to individualized issues and the risk of not succeeding on the merits of each claim due to the possible success of the defenses asserted by Defendant and the difficulty of proving violations. These defenses included Defendant's assertions that: all meal and rest breaks were provided in compliance with the law; all wages were properly calculated and paid; all wages were timely paid; wage statements were provided and kept in compliance with the law; it provided one day of rest in compliance with the law; all business expenses were reimbursed or covered by Defendant; and any mistakes made (which it denies) were honest rather than willful. The gross settlement amount is approximately 39.47% of the maximum potential exposure and well above the maximum realistic exposure at trial.

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

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

VI. PROPOSED SETTLEMENT CLASS

Plaintiffs request that the following settlement class be provisionally certified:

> [A]ll current and former employees employed by Defendant as hourly-paid or non-exempt employees in the State of California during [May 10, 2019 through June 12, 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 408 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. Plaintiffs' 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, Plaintiffs were employed by Defendant as non-exempt, hourly-paid employees and allege that they experienced the violations at issue. The anticipated defenses are not unique to Plaintiffs, and there is no indication that Plaintiffs' interests are otherwise in conflict with those of the class.

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

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

D. Substantial Benefits of Class Certification

"[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid.)* "Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action." (*Id*. at pp. 120–121, internal quotation marks omitted.)

Here, there are an estimated 408 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 60 days to request exclusion from the class or submit a written objection to the settlement.

The notice, which will be provided in both English and Spanish, is generally adequate. 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 ILYM 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 ILYM. ILYM, in turn, will mail the notice packet within fourteen (14) 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 14 days to respond. These notice procedures are appropriate and are approved.

VIII. CONCLUSION

Plaintiffs' motion for preliminary approval is GRANTED.

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

> [A]ll current and former non-exempt employees who were employed by Defendant in California during [September 15, 2018 to preliminary approval].

The Court will prepare the order.

****

LAW AND MOTION HEARING PROCEDURES

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

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

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

- oo0oo -

Calendar Line 3

Case Name: *Brian Keitz v. Apex Security Group, Inc.*
Case No.: 22CV403171

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Brian Keitz alleges that Defendant Apex Security Group, Inc. ("Apex" or "Defendant") committed various wage and hour violations. Before the Court is Plaintiff's motion for preliminary approval of settlement, which his unopposed. As discussed below, the Court GRANTS the motion subject to modifications that must be made to the proposed class notice.

I. BACKGROUND

According to the allegations of the operative First Amended Class Action Complaint ("FAC"), Plaintiff was employed by Apex from August 2013 through April 15, 2022 as a security guard, a non-exempt, hourly-paid position. (FAC, ¶ 7.) Plaintiff alleges that he and other employees were not paid for all hours worked as a result of Defendant: deducting time for meal periods even when the meal period was not taken, the meal period was less than 30 minutes, or the meal period was on duty; defining "workday" in manner that single work shift was split across two separate workdays; failing to pay shift differentials; using unauthorized alternative workweek schedules without proper payment of overtime; failing to calculate the regular rate of pay; and modifying timesheets when employees worked overtime. (*Id*., ¶ 10.) He further alleges that Defendant additionally failed to: provide compliant meal or rest periods or compensation in lieu thereof; reimburse employees for all necessary business expenses incurred by them, including those incurred for cleaning their work-issued uniforms; and provide accurate wage statements.

Based on the foregoing, Plaintiff initiated this action in September 2022, and filed the operative FAC on February 14, 2023, asserting the following causes of action: (1) underpayment of hourly wages; (2) underpayment of overtime wages; (3) meal period violations; (4) rest period violations; (5) failure to reimburse necessary expenditures; (6) non-compliant wage statements; (7) failure to pay all wages owed upon termination; (8) violation of Business & Professions Code § 17200; and (9) penalties under PAGA.

Mr. Keitz now seeks an order: preliminarily approving the parties' class action settlement; certifying the Class for settlement purposes; ordering the proposed Class Notice be sent to the settlement Class; appointing Phoenix Class Action Administration Solutions ("Phoenix") as the settlement administrator; preliminarily appointing himself as Class representative; appointing George S. Azadian and Ani Azadian of Azadian Law Group, PC 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

Subsequent to the initiation of this action, the parties engaged in formal written discovery and the *Belaire-West* notice process. Plaintiff also obtained from Defendant, through informal discovery, a random sampling of time records and wage statements for approximately 248 Class members, as well as all employee handbooks that were applicable during the relevant periods of time, all written policies relating to meal and rest breaks, overtime, clocking in and out and recording of work time, and additional information relating to the scheduling of shifts.

On May 2, 2023, the parties participated in a full-day mediation session with Kelly A. Knight, Esq., an experienced mediator in wage and hour class actions, but were unable to resolve this action. However, the parties continued settlement discussions through Mr. Knight and were able to reach a settlement through accepting his proposal to resolve the case. Thereafter, the parties negotiated the long-form settlement agreement that is now before the Court for its approval.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement is $850,000. Attorney's fees of up to $283,333.33 (or one-third of the gross settlement), litigation costs of up to $25,000 and administration costs not to exceed $15,750 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) dispensed, on a pro rata basis, to "Aggrieved Employees," who are defined as individuals "employed by Defendant in California and classified as a non-exempt employee[s] who worked for Defendant during [September 15, 2021 to the date of preliminary approval]." Mr. Keitz will seek a service award of $7,500.

The net settlement- estimated to be $478,047.33- will be allocated to "Class Members," who are defined as "all current and former non-exempt employees who were employed by Defendant in California during [September 15, 2018 to preliminary approval]," on a pro rata basis based on the number of weeks worked during the foregoing period. For tax purposes, settlement payments will be allocated 20% to wages and 80% to penalties and interest. The employer-side payroll taxes will be paid by Apex separate from, and in addition to, the gross settlement amount. 100% of the payment to Aggrieved Employees will be allocated to penalties. Funds associated with checks uncashed after 180 days will be transmitted to Controller of the State of California to be held in trust for such class members pursuant to California unclaimed property law.

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

> [All] causes of action related to the allegations and all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including, but not limited to, and all claims involving any alleged: (1) failure to pay all wages; (2) failure to pay overtime wages; (3) failure to provide compliant meal periods; (4) failure to provide compliant rest periods; (5) failure to reimburse business expenses; (6) failure to provide compliant wage statements; (7) failure to pay all wages owed upon termination or resignation of employment; (8) failure to pay, appropriately accrue, and forfeiture of paid time off (vacation/PTO wages); and (9) violations of Business and Professions Code § 17200 and claims for restitution and other equitable relief, liquidated damages, or penalties; and any other benefit claimed on account of the allegations asserted in Operative Complaint.

Aggrieved employees, who consistent with the statute will not be able to opt out of the PAGA portion of the settlement, 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 and the PAGA Notice, and ascertained in the course of the Action, including: (1) underpayment of minimum wages and hourly wages in violation of California Labor Code §§ 204, 1194, 1194.2, 1197, IWC Wage Order, California Minimum Wage Order; (2) underpayment of overtime wages in violation of California Labor Code §§ 510, 1194, and IWC Wage Order; (3) failure to provide compliant meal periods in violation of California Labor Code §§ 226.7 and 512 and IWC Wage Order; (4) failure to provide compliant rest periods in violation of California Labor Code §§ 226.7 and 512 and IWC Wage Order; (5) failure to reimburse business expenses in violation of California Labor Code 2802 and IWC Wage Order; (6) non-compliant wage statements in violation of California Labor Code § 226(a); (7) failure to pay all wages upon resignation or termination in violation of California Labor Code §§ 201-203 due to the underpayment of wages and/or overtime; (8) violations of Labor Code § 227.3 for failure to pay, appropriately accrue, and forfeiture of paid time off (vacation/PTO wages); (9) failure to keep payroll records showing total hours worked and wages paid in violation of California Labor Code §§1174-1174.5 and IWC Wage Order; (10) collection of wages previously paid to employees and (11) violations of Labor Code 2698 et seq. ("PAGA") predicated on the foregoing violations.

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

V. FAIRNESS OF SETTLEMENT

Based on the available date provided by Defendant, Plaintiff's counsel estimated Defendant's maximum exposure for each claim (which total $9,725,929.05) to be as follows: $467,206.25 (off-the-clock wages and overtime); $1,225,949.20 (meal period violations); $1,225,949.20 (rest period violations); $147,500 (unreimbursed business expenses);

$2,150,850 (wage statement penalties); $206,774.40 (waiting time penalties); $4,301,700 (PAGA penalties).

Plaintiff's counsel then discounted the foregoing amounts by percentages ranging from 45% to 95% to calculate Defendant's *realistic* exposure for Plaintiff's claims (which total $2,188,183.35) in the following amounts: $233,603.13 (off-the-clock wages and overtime); $674,272.06 (meal period violations); $490,379.68 (rest period violations); $51,625 (unreimbursed business violations); $430,170 (wage statement penalties); $93,048.48 (waiting time penalties); $215,085 (PAGA penalties). The reduction to the maximum recovery amount for each claim accounted for, but is not limited to, the following: the difficulty of certifying each claim due to individualized issues and proving violations; Defendant's denial on the merits of each claim (e.g., denying that it asked employees to launder their uniforms in a particular way and that it engaged in rounding errors, asserting that employees were provided with reasonable opportunities to take meal and rest breaks and voluntarily elected not to take the latter); the strong likelihood that PAGA penalties would be substantially reduced by the Court in its discretion; and the risk of not prevailing at trial or on appeal.

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

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

VI. PROPOSED SETTLEMENT CLASS

Plaintiff requests that the following settlement class be provisionally certified:

> [A]ll current and former non-exempt employees who were employed by Defendant in California during [September 15, 2018 to preliminary approval].

E. Legal Standard for Certifying a Class for Settlement Purposes

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

Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence: (1) an ascertainable class and (2) a well-defined community of interest among the class

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

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

F. Ascertainable Class

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

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

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

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

Here, the estimated 1,339 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.

G. Community of Interest

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

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

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

As for the second factor,

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

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

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

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

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

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

H. Substantial Benefits of Class Certification

"[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid.)* "Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action." (*Id*. at pp. 120–121, internal quotation marks omitted.)

Here, there are an estimated 1,339 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 60 days to request exclusion from the class or submit a written objection to the settlement.

The notice, which will be provided in both English and Spanish, 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 address or other personal information. Regarding appearances at the final fairness hearing, the notice shall be further modified to instruct class members as follows:

> Although class members may appear in person, the judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 7 (Afternoon Session) or by calling the toll free conference call number for Department 7.

Turning to the notice procedure, as articulated above, the parties have selected Phoenix as the settlement administrator. No later than fifteen (15) days after preliminary approval, Defendant will deliver the Class data (i.e., Class list and related qualifying workweeks and contact information) to Phoenix. Phoenix, in turn, will mail the notice packet within fourteen (14) 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 14 days to respond. These notice procedures are appropriate and are approved.

VIII. CONCLUSION

Plaintiff's motion for preliminary approval is GRANTED.

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

> [A]ll current and former non-exempt employees who were employed by Defendant in California during [September 15, 2018 to preliminary approval].

The Court will prepare the order.

****

LAW AND MOTION HEARING PROCEDURES

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

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

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

- oo0oo -

Calendar Line 4

Case Name:
Case No.:

- oo0oo -

Calendar Line 5

Case Name:
Case No.:

- oo0oo -

Calendar Line 6

Case Name:
Case No.:

- oo0oo -

Calendar Line 7

Case Name:
Case No.:

- oo0oo -

Calendar Line 8

Case Name:
Case No.:

- oo0oo -

Calendar Line 9

Case Name:
Case No.:

- oo0oo -

Calendar Line 10

Case Name:
Case No.:

- oo0oo -

Calendar Line 11

Case Name:
Case No.:

- oo0oo -

Calendar Line 12

Case Name:
Case No.:

- oo0oo -

Calendar Line 13

Case Name:
Case No.:

- oo0oo -