SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 19, Honorable Theodore C. Zayner Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2310

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department19@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Thank you.

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

DATE: SEPTEMBER 13, 2023 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	22CV407571	Martinez v. Peak Technology International, Inc., et al. (PAGA)	See Line 1 for tentative ruling.
LINE 2	21CV386894	Nunez v. CA FGB Operation, LLC, et al.	See Line 2 for tentative ruling.
LINE 3	18CV322077	Shuff, et al. v. Stevens Creek Quarry, Inc., et al. (Class Action)	See Line 3 for tentative ruling.
LINE 4	16CV292208	Corinthian International Wage and Hour Cases (JCCP4886) - Included Actions: (1) Mykale Rocquemore v. Corinthian International Parking Services, Inc., et al., Superior Court of California, County of ALAMEDA, Case No. RG16801065; (2) Adrian Turner v. Corinthian International Parking Services, Inc., Superior Court of California, County of SANTA CLARA, Case No. 16CV292208.	See Line 4 for tentative ruling.

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LINE 5	23CV410973	Stoner, et al. v. Contract Sweeping Services, LLC, et al. (Class Action)	See Line 5 for tentative ruling.
LINE 6	21CV386656	Alvarez-King v. Bill Brown Construction Company (Class Action/PAGA)	See Line 6 for tentative ruling.
LINE 7	21CV382019	Teresita Bernardo et al vs Jaime Marcial et al	See Line 7 for tentative ruling.
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: Martinez v. Peak Technology International, Inc., et al. (PAGA)
Case No.: 22CV407571

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on September 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

On November 16, 2022, plaintiff Daniel Martinez ("Plaintiff") filed a Complaint against defendants Peak Technology International, Inc. and Zamudio Nguyen (collectively, "Defendants"), which sets forth the following causes of action: (1) Failure to Pay All Wages Owed; (2) Failure to Provide Meal and Rest Periods; (3) Failure to Pay Wages on Separation; (4) Failure to Maintain Accurate Time Records; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Recovery Under Private Attorneys General Act (PAGA); and (7) Unfair Competition Law.

Defendants demurred to each and every cause of action of the Complaint on the ground of failure to allege sufficient facts to state a cause of action. (See Code Civ. Proc., § 430.10, subd. (e).) Plaintiff opposed the demurrer.

On July 28, 2023, the court entered an order continuing the demurrer to September 13, 2023. The court determined that Defendants failed to adequately meet and confer prior to filing their demurrer, and the demurrer was untimely filed. The court explained that it was generally inclined to overlook the untimely filing of the demurrer so long as the parties further met and conferred regarding Defendants' objections to the Complaint. Consequently, the court ordered the parties to further meet and confer, in person or telephonically regarding the demurrer. Defendants were further ordered to file a declaration updating the court regarding the parties' meet and confer efforts.

On August 30, 2023, Defendants' counsel filed a declaration outlining the parties' further meet and confer efforts and explaining that they were unable to reach an informal resolution.

II. PROCEDURAL ISSUES

As noted in the court's prior order, Plaintiff initially argues that Defendants failed to adequately meet and confer in good faith prior to filing their demurrer and the demurrer is untimely.

Given the Defendants' additional meet and confer efforts following entry of the July 28, 2023 order, the court finds that Defendants have adequately met and conferred regarding the issues raised in the demurrer.

Furthermore, although the demurrer was untimely filed, the court in its discretion will consider the demurrer because resolutions on the merits are favored. (See *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 280-282; see also *Jackson v. Doe* (2011) 69 Cal.App.3d 747, 753.)

III. LEGAL STANDARD

The function of a demurrer is to test the legal sufficiency of a pleading. (*Trs. Of Capital Wholesale Elec. Etc. Fund v. Shearson Lehman Bros.* (1990) 221 Cal.App.3d 617, 621.) Consequently, " '[a] demurrer reaches only to the contents of the pleading and such matters as may be considered under the doctrine of judicial notice' [citation]." (*Hilltop Properties, Inc. v. State* (1965) 233 Cal.App.2d 349, 353; see Code Civ. Proc., § 430.30, subd. (a).) " 'It is not the ordinary function of a demurrer to test the truth of the … allegations [in the challenged pleading] or the accuracy with which [the plaintiff] describes the defendant's conduct. … .' [Citation.] Thus, … 'the facts alleged in the pleading are deemed to be true, however improbable they may be. [Citation.]' [Citations.]" (*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 958.)

IV. DISCUSSION

A. First Cause of Action

Defendants argue the first cause of action for failure to pay all wages owed fails to allege facts sufficient to support a cause of action for nonpayment of overtime compensation. Defendants note that paragraphs 14-16 and 24-28 contain factual allegations relevant to this claim, but assert that further specificity is needed. In particular, Defendants assert that Plaintiff

does not allege sufficient facts showing that Defendant had any knowledge that Plaintiff was working overtime.

As Plaintiff persuasively argues, Defendants' demurrer is improperly directed to a portion of the first cause of action. A demurrer cannot be sustained to part of a cause of action. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1047; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682 ["A demurrer does not lie to a portion of a cause of action."].) Here, Defendants attack only the nonpayment of overtime wages. However, the first cause of action is also predicated on the alleged failure to pay minimum wages. Consequently, the demurrer to the first cause of action fails as it does not dispose of the first cause of action in its entirety.

Furthermore, the Complaint alleges that Defendants employed Plaintiff as a non-exempt employee from September 18, 2017 through January 13, 2022, Defendants paid Plaintiff hourly wages, Plaintiff often worked more than 8 hours in a workday and 40 hours in a work week during his employment, Defendants refused or failed to compensate Plaintiff for all minimum and overtime wages, Defendants required Plaintiff to be present and under Defendants' control beyond paid hours to perform assigned duties, Defendants failed to pay Plaintiff for all time spent under Defendants' control and performing work, Defendant's conduct violated the applicable Wage Order and Labor Code provisions, and Plaintiff suffered lost earnings. (Complaint, ¶¶ 14, 15, 24-28.) These allegations address each of the elements of Plaintiff's claim. (See *Jong v. Kaiser Foundation Health Plan, Inc*. (2014) 226 Cal.App.4th 391, 395 [addressing the elements of a claim for lost wages under Labor Code section 1194].)

Accordingly, the demurrer to the first cause of action is OVERRULED.

B. Second Cause of Action

Defendants argue the second cause of action for failure to provide meal and rest periods fails to allege facts sufficient to establish the claim. Defendants urge that Plaintiff alleges only legal theories and not facts concerning these violations.

Defendants' argument is not well-taken. "To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (*C.A. v. William S. Hart Union High*

School Dist. (2012) 53 Cal.4th 861, 872 [identities of allegedly negligent employees need not be provided to state a claim against school district].) With limited exceptions not applicable here, the rules of pleading require no more than "general allegation[s] of ultimate fact." (*Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540, 1548 [allegation that asserted nuisance "affect[s] a substantial number of people at the same time" suffices to state a claim although it mirrors the element of the claim].) "The pleading is adequate so long as it apprises the defendant of the factual basis for the claim." (*Id.* at p. 1549.)

Here, Plaintiff alleges the ultimate facts in support of his claim. (See *Rojas-Cifuentes v. Superior Court* (2020) 58 Cal.App.5th 1051, 1059 (*Rojas*) ["Rojas's allegations here thus included an ultimate fact (American Modular provided workers with wage statements that inaccurately listed hours worked, wages earned, and applicable hourly or piece rates) and supportive evidentiary facts (American Modular's inaccurate wage statements resulted from [its] failure to pay workers for all hours worked and rest and meal periods missed—and this failure to pay, in turn, resulted from [its] failure to compensate for, among other things, time spent 'donning and doffing' "].). Specifically, Plaintiff alleges that Defendants employed Plaintiff as a non-exempt employee from September 18, 2017 through January 13, 2022, Defendants required Plaintiff to work without receiving timely meal periods and rest breaks to which Plaintiff was entitled, Defendants required Plaintiff to work shifts in excess of five hours without an opportunity for Plaintiff to receive meal periods, Defendants required Plaintiff to work shifts in excess of four hours without authorization or permission to take rest periods, Defendants instructed Plaintiff to work the shifts without rest or meal periods, Defendants failed to schedule relief for shifts worked by Plaintiff, Defendants failed to schedule additional employees for shifts worked by Plaintiff, Defendants prohibited Plaintiff from closing the business or stop working to take rest periods, Defendants prohibited Plaintiff from not performing his job duties to take meal periods, and Defendants failed to compensate Plaintiff for the time he was required to work without receiving timely meal or rest periods. (Complaint, ¶¶ 14, 15, 34-37.)

Accordingly, the demurrer to the second cause of action is OVERRULED.

C. Third Cause of Action

Defendants argue the third cause of action for failure to pay wages upon separation fails to allege facts sufficient to establish the claim. Defendants assert that Plaintiff has not alleged facts showing that they willfully failed to pay all wages due upon separation.

Here, Plaintiff has alleged the ultimate facts. (See *Rojas, supra*, 58 Cal.App.5th at p. 1059; see also *Nishiki v. Danko Meredith, P.C.* (2018) 25 Cal.App.5th 883, 891 [as used in Labor Code section 203, "willful" merely means that the employer intentionally failed or refused to perform an act which was required to be done; "It amounts to nothing more than this: That the person knows what he is doing, intends to do what he is doing, and is a free agent."]; *People v. Rogers* (2013) 57 Cal.4th 296, 338 [stating that a defendant's knowledge or intent is an "ultimate fact"].) Specifically, Plaintiff alleges that his employment ended approximately on January 13, 2022, Defendants failed to pay him minimum and overtime wages, Defendants failed to pay him premium wages for missed meal and rest periods, Defendants have not paid all wages due and owing to date, and Defendant's refusal to pay wages was willful. (Complaint, ¶¶ 14, 24-28, 34-37, 41, 42.)

Accordingly, the demurrer to the third cause of action is OVERRULED.

D. Fourth Cause of Action

Defendants argue the fourth cause of action for failure to maintain accurate time records fails because Plaintiff's allegations are conclusory and do not contain sufficient detail.

Defendants' argument is not well-taken. In the fourth cause of action, Plaintiff alleges that Defendants often failed to maintain accurate time records of all house worked by Plaintiff, Defendants intentionally failed to maintain accurate time records for Plaintiff, and as a result of Defendants' conduct Plaintiff could not determine the amount of wages earned or whether all wages due had been paid. (Complaint, ¶¶ 47-50.) Defendants do not identify any additional details that they believe are required or cite any legal authority supporting their contention that further specificity is needed.

Accordingly, the demurrer to the fourth cause of action is OVERRULED.

E. Fifth Cause of Action

Defendants argue the fifth cause of action for failure to provide accurate itemized wage statements fails because Plaintiff does not specify which wage statements were inaccurate or how they were inaccurate.

Defendants' argument lacks merit. In the fifth cause of action, Plaintiff alleges that Defendants intentionally failed to furnish accurate itemized statements in writing to Plaintiff on regular pay days; Defendants failed to provide timely and accurate itemized wage statements; any statements provided by Defendants failed to accurately reflect the lawful hourly rates applicable training time, work hours in excess of 8 hours in a work day and/or 40 hours in a workweek, and sick leave; Plaintiff suffered injury from Defendants' failure to provide accurate itemized statements in writing on regular paydays because Plaintiff could not determine the amount of wages earned or whether all waged due had been paid; and Plaintiff was forced to reconstruct all time and pay records to make computations to analyze the amounts of wages due. (Complaint, ¶¶ 56-58.) Defendants do not identify case law which supports their contention that further specificity is needed.

Accordingly, the demurrer to the fifth cause of action is OVERRULED.

F. Sixth Cause of Action

Defendants argue the sixth cause of action for PAGA penalties fails because it is derivative of the first through fifth and seventh causes of action, and those claims fail. Additionally, Defendants contend that Plaintiff has not alleged sufficient facts showing that he complied with the notice requirement pursuant to Labor Code section 2699.3.

Defendants initial argument fails because the first through fifth and seventh causes of action survive the instant demurrer.

However, Defendants' second argument is well-taken. "To plead compliance with PAGA's administrative exhaustion requirements, a plaintiff should identify when he notified the LWDA about the alleged violations, (2) what, if any, response was received from the LWDA, and (3) how long he waited prior to filing a civil action." (*Villali v. Chep Servs., LLC* (E.D.Cal. Aug. 12, 2022, No. 1:20-cv-1537 JLT BAK (SAB)) 2022 U.S.Dist.LEXIS 144964, at *30; *Varsam v. Lab. Corp. of Am*. (S.D.Cal. 2015) 120 F. Supp. 3d 1173, 1182-1183.) Plaintiff failed to provide any of this information. Instead, Plaintiff merely alleges that he sent

notice to the LWDA of the specific provisions of the Labor Code that have been violated, including the facts and theories to support the violations, he sent a copy of the notice to Defendants via certified mail, and the LWDA had given no notice it would investigate the claims as of the filing of the Complaint. (Complaint, ¶ 61.) These allegations are insufficient to establish that Plaintiff complied with the administrative exhaustion requirements.

Accordingly, the demurrer to the sixth cause of action is SUSTAINED, with 10 days' leave to amend.

G. Seventh Cause of Action

Defendants argue the seventh cause of action for unfair competition fails because Plaintiff does not identify the unlawful and unfair business practices that Defendants' alleged engaged in.

Defendants' argument lacks merit because the seventh cause of action incorporates by reference the preceding claims, all of which allege unlawful conduct (i.e., violations of various Labor Code provisions). (Complaint, ¶¶ 66-68.) Thus, the Complaint adequately apprises Defendants of the unlawful conduct that forms the basis of the seventh cause of action.

Accordingly, the demurrer to the seventh cause of action is OVERRULED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 2

Case Name: Nunez v. CA FGB Operation, LLC, et al.
Case No.: 21CV386894

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on September 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

II. INTRODUCTION

This is an action for civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA"). On September 22, 2021, plaintiff Ebony Nunez ("Plaintiff") filed the operative complaint against defendants CA FGB Operation, LLC and CA FGB Sunnyvale, LLC (collectively, "Defendants") on behalf of any and all persons who are or were hourly, non-exempt employees who worked in Defendants' restaurant locations in California. (Complaint, ¶ 2.) Plaintiff alleges that Defendants implemented policies and practices that resulted in the failure to pay minimum wages, failure to provide lawful meal periods, failure to timely pay wages during employment, failure to timely pay wages owed upon separation from employment, knowing and intentional failure to comply with itemized wage statement provisions, and violation of the unfair competition law. (*Id.* at ¶ 3.) Based on the foregoing allegations, the complaint sets forth a single cause of action for civil penalties under PAGA. (*Id.* at ¶¶ 4, 18-96.)

Now before the court are the following matters: (1) the motion by Plaintiff to seal her Confidential Settlement Agreement and Release of All Claims ("Settlement") with Defendants; and (2) the motion by Plaintiff for an order dismissing her individual claims against Defendants with prejudice and dismissing her representative PAGA claim without prejudice. The motions are unopposed.

II. MOTION TO SEAL

A. Legal Standard

"The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial

probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." (Cal. Rules of Court, rule 2.550(d).) Pleadings, in particular, should be open to public inspection "as a general rule," although they may be filed under seal in appropriate circumstances. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 104, fn. 35.)

"Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute overriding interests." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn. 3 (*Providian*).) "[A] binding contractual agreement not to disclose" may suffice. (*Huffy Corp. v. Superior Court* (2003) 112 Cal.App.4th 97, 107.) In addition, confidential matters relating to the business operations of a party may be sealed where public revelation of the information would interfere with the party's ability to effectively compete in the marketplace. (See *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1285–1286.)

Where some material within a document warrants sealing, but other material does not, the document should be edited or redacted if possible, to accommodate both the moving party's overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court, rule 2.550(d)(4), (5).) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*Providian, supra*, 96 Cal.App.4th at p. 309.)

B. Discussion

Plaintiff seeks to seal her Settlement, which she lodged with the court in connection with her motion to dismiss. Plaintiff asserts that sealing is warranted because the Settlement is a private document, the Settlement contains a confidentiality provision which requires that the Settlement be kept confidential, and the Settlement only releases Plaintiff's individual claims against Defendants. Plaintiff asserts that no public policy interest would be served by making the Settlement public, and the parties wish to keep the settlement under seal because it refers to "sensitive information that they have agreed not to disclose to the public."

Plaintiff fails to establish that sealing is warranted here. The parties' agreement to seal a document, such as the Settlement, is clearly not enough to warrant a sealing order. (See *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1283-1284.) As explained in *McNair v. National Collegiate Athletic Assn.* (2015) 234 Cal.App.4th 25 (*McNair*):

> *Universal* concluded, however, that "more than a mere agreement of the parties to seal documents filed in a public courtroom" is needed. (*Universal, supra*, 110 Cal.App.4th at p. 1281.) There must be "a specific showing of serious injury. [Citations.]" (*Id.* at p. 1282.) "'[S]pecificity is essential. [Citation.] Broad allegations of harm, bereft of specific examples or articulated reasoning, are insufficient.' [Citation.] We have been unable to find any appellate court decision which construes *Publicker* to permit sealing of court documents merely upon the agreement of the parties without a specific showing of serious injury." (*Ibid.*; accord, *Huffy Corp. v. Superior Court* (2003) 112 Cal.App.4th 97, 106 [4 Cal. Rptr. 3d 823].) Rules of Court, rule 8.46(d)(1) expressly states that a record "must not be filed under seal solely by stipulation or agreement of the parties." Thus, the mere agreement of the parties alone is insufficient to constitute an overriding interest to justify sealing the documents.

(*McNair, supra,* 234 Cal.App.4th at pp. 35-36; Cal. Rules of Court, rule 2.551(a) ["[t]he court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties"].)

Here, Plaintiff has not made a specific showing that any party would suffer serious injury if the Settlement and its terms were not filed under seal. The Declaration of Christina M. Lucio in Support of Plaintiff Ebony Nunez's Motion for Dismissal of Individual Claims with Prejudice and Motion for Dismissal of Representative PAGA Action Without Prejudice ("Lucio Dec.") asserts that the Settlement resolves Plaintiff's non-PAGA claims, "refers to sensitive information that the Parties do not want disclosed to the public does not impact the rights of any individual other than Plaintiff, and contains a confidentiality provision which requires the Settlement to be kept confidential. (Lucio Dec., ¶¶ 3-4.) These statements do not demonstrate any potential injury from the disclosure of the Settlement. The declaration further states that "[d]isclosure of this material would result in distress for the Plaintiff […]." (Lucio Dec., ¶ 5.) But there is no explanation as to why disclosure of the Settlement would cause Plaintiff distress. (See *McNair, supra*, 234 Cal.App.4th at pp. 35-36 ["Broad allegations of harm, bereft of specific examples or articulated reasoning, are insufficient."].) Furthermore, Plaintiff does not explain how the purported harm to her would outweigh the public's interest

in the right to access civil proceedings. (See *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1210, 1212, 1217 [holding that the First Amendment provides a right of access to ordinary civil trial and proceedings; the public has an interest, in all civil cases, in observing and assessing the performance of its public judicial system; and there is a presumption of openness in civil court proceedings].)

Accordingly, the motion to seal is DENIED.

III. MOTION TO DISMISS

Plaintiff moves for an order dismissing her individual claims against Defendants with prejudice and dismissing her representative PAGA claim without prejudice. Plaintiff acknowledges that the Complaint alleges PAGA claims on behalf of herself and other aggrieved employees based on alleged wage and hour violations. Plaintiff states that the parties engaged in informal discovery and Defendants argued that Plaintiff lacked standing to bring the PAGA claims. Plaintiff further states that the parties participated in mediation. At mediation, Plaintiff raised new allegations that she was subjected to discrimination, retaliation, hostile work environment, wrongful termination in violation of public policy in connection with her employment with Defendants. Plaintiff represents that following mediation, she entered into the Settlement to resolve her newly-raised discrimination, retaliation, hostile work environment, wrongful termination in violation of public policy, and other individual claims. In connection with the Settlement, Plaintiff has agreed to dismiss all of her individual claims against Defendants with prejudice and seek dismissal of the representative PAGA claim.

The court declines to enter the requested dismissal order at this time. Upon review of the Settlement, it is readily apparent that the Settlement purports to resolve Plaintiff's individual PAGA claim. Under the terms of the Settlement, Plaintiff is to receive a settlement payment in the amount of $77,000, which "represents Plaintiff's claimed and disputed damages and penalties with respect to Plaintiff's Individual Claims […]." The Settlement expressly defines Plaintiff's Individual Claims to include Plaintiff's individual PAGA claim as alleged in this action. In exchange for the settlement payment, Plaintiff agrees to, among other things, dismiss her individual PAGA claim with prejudice. Plaintiff also "represents, warrants and confirms that she is not an aggrieved employee for purposes of acting as a Private Attorney

General under the PAGA, and specifically that she did not suffer any violation that would form the basis for her to pursue a claim under the PAGA."

As the Settlement purports to resolve Plaintiff's individual PAGA claim, Plaintiff was required to seek approval of the settlement. (See *Smith v. H.F.D. No. 55, Inc*. (E.D.Cal. Apr. 19, 2018, No. 2:15-cv-01293-KJM-KJN) 2018 U.S.Dist.LEXIS 67192, at *1-5 [parties were required to, and did, request approval of a settlement that provided for a $100 PAGA payment (which represented the settlement of the plaintiff's individual PAGA claim) in connection with their request for dismissal with prejudice of the plaintiff's individual claims in the suit, including the plaintiff's individual PAGA claim, and dismissal without prejudice of the representative PAGA claim as to any aggrieved employee other than plaintiff]; see also *Wanderer v. Kiewit Infrastructure West Co*. (E.D.Cal. Aug. 28, 2020, No. 2:18-cv-02898 WBS-DB) 2020 U.S.Dist.LEXIS 158189, at *1-10 [requiring approval of, and actually approving, a settlement of the Plaintiff's individual PAGA claim in the amount of zero dollars]) However, Plaintiff has not filed a motion for approval of PAGA settlement. Consequently, the court declines to enter the requested dismissal order at this time.

Accordingly, the motion to dismiss is DENIED without prejudice to a subsequent request for dismissal made in connection with a motion for approval of PAGA settlement.

The prevailing party shall prepare the order and judgment in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 3

Case Name: Shuff, et al. v. Stevens Creek Quarry, Inc., et al. (Class Action)
Case No.: 18CV322077

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on September 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

III. INTRODUCTION

This is a putative class action arising out of various alleged Labor Code violations. On January 19, 2018, plaintiff William Shuff ("Shuff") filed a putative class and representative wage and hour action against defendants Stevens Creek Quarry, Inc. and Richard A. Voss (collectively, "Defendants").

On March 29, 2018, Shuff filed a First Amended Complaint, adding John Howland ("Howland") as a plaintiff and potential class representative. Howland and Shuff were dismissed as plaintiffs on April 24, 2019 and November 1, 2019, respectively.

On November 6, 2019, the Second Amended Complaint was filed, adding Christopher Bryan ("Bryan") as a plaintiff.

On March 25, 2021, Bryan filed the operative Third Amended Complaint ("TAC"), which added Nick Hernandez ("Hernandez") as a plaintiff. The TAC sets forth the following causes of action: (1) Failure to Provide Required Meal Periods; (2) Failure to Provide Required Rest Periods; (3) Failure to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay all Wages Due to Discharged and Quitting Employees; (6) Failure to Furnish Accurate Itemized Wage Statements; (7) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; and (8) Unfair and Unlawful Business Practices.

The court certified the class on June 30, 2021, and appointed Plaintiffs' counsel as class counsel.

On December 14, 2021, the court granted Defendants' motion for summary adjudication as to the first, third, and seventh causes of action.

On December 15, 2022, the court held a Phase I bench trial on Defendants' ninth affirmative defense as to the applicability of Plaintiff's collective bargaining agreement to the

rest-break claims. On December 20, 2022, the court issued its decision finding in Defendants' favor. The remainder of the case was then set for trial on May 22, 2023.

The parties have reached a settlement. Bryan and Hernandez (collectively, "Plaintiffs") now move for preliminary approval of the settlement. The motion is unopposed.

IV. LEGAL STANDARD

Generally, "questions whether a 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*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> 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, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The 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*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

V. DISCUSSION

A. Provisions of the Settlement

> The case has been settled on behalf of the following class:
> [A]ll current and former hourly, non-exempt employees who worked for Defendants in California at any time between January 19, 2014 and June 30, 2021.

(Declaration of Joshua D. Boxer in Support of Motion for Preliminary Approval of Class Action Settlement ("Boxer Dec."), Ex. 1 ("Settlement Agreement"), ¶ 1.3.)

According to the terms of settlement, Defendants will pay a gross, non-reversionary amount of $575,000. (Settlement Agreement, ¶ 1.16.) The gross settlement amount includes attorney fees of $191,666.67 (1/3 of the gross settlement amount), litigation costs not to exceed $300,000, a total service award of $20,000 ($10,000 for each class representative), and reasonable settlement administration costs. (Settlement Agreement, ¶¶ 1.16, 1.19, 5.1, 5.2, 5.3, 5.4.)

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. (Settlement Agreement, ¶ 5.5.) Funds from undeliverable or uncashed checks will be distributed to Safe Place for Youth. (Settlement Agreement, ¶ 5.8.2.) The *cy pres* recipient is approved.

In exchange for the settlement, class members agree to release Defendants, and related entities and persons, from claims during the class period that were raised or could have been raised based on the factual allegations made in the Complaint. (Settlement Agreement, ¶¶ 1.26, 1.27, 6.1.) Plaintiffs further agree to a general release. (*Id*. at ¶ 6.2.)

B. Fairness of the Settlement

Plaintiffs assert that the settlement is fair, reasonable, and adequate, given the strength of their remaining claims, the inherent risks of litigation, and the costs of pursuing litigation. Plaintiffs actively litigated this case. The parties conducted substantial formal discovery and the court heard several dispositive motions and a bench trial. The parties then attended three mediation sessions with the Honorable Bonnie Sabraw (Ret.), which resulted in the settlement agreement. Plaintiffs estimate that Defendants faced a maximum potential liability of

$5,650,462 for the remaining claims. (Boxer Dec., ¶¶ 24-30.) Plaintiffs provide a detailed breakdown of this amount by claim. (*Ibid.*)

The settlement represents approximately 10 percent of the maximum potential value of Plaintiffs' remaining claims. The proposed settlement amount is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc*. (E.D.Ca|. Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201, at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

Overall, the court finds the settlement is fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

B. Incentive Award, Fees, and Costs

Plaintiffs request service awards in the total amount of $20,000 ($10,000 for each class representative).

> The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Prior to the final approval hearing, the class representatives shall file declarations specifically detailing their participation in the action and an estimate of time spent. The court will make a determination at that time.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees of $191,666.67 (1/3 of the gross settlement fund). Plaintiffs' counsel

shall submit lodestar information (including hourly rates and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiffs' counsel shall also submit evidence of actual costs incurred as well as settlement administration costs.

C. Conditional Certification of Class

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 . . . ." As interpreted by the California Supreme Court, Section 382 requires: (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.)

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, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) "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.)

> As explained by the California Supreme Court,
> The certification question 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, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Here, the court has already certified the class, named Plaintiffs as class representatives, and Plaintiffs' counsel as class counsel. Thus, the elements of class certification are met for purposes of the settlement.

D. Class Notice

The content of a class notice is subject to court approval. "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).)

The notice generally complies with the requirements for class notice. (Boxer Dec., Ex. A.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion.

However, the "You May Object" box on page 1, states that class members must submit their objections in writing to be valid, and must provide notice of their intent to appear if they wish to be heard at the final approval hearing. This section must be amended to provide that class members may appear at the final approval hearing to object to the settlement without submitting a written objection or notice of intent to appear.

Additionally, the notice shall be modified to include the following language regarding the final approval hearing:

> Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). 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 who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

The amended notice shall be provided to the court for approval prior to mailing.

VI. CONCLUSION

The motion for preliminary approval of the class action settlement is GRANTED, subject to approval of the amended class notice. The final approval hearing is set for April 3, 2024, at 1:30 p.m. in Department 19.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 4

Case Name: Corinthian International Wage and Hour Cases (JCCP4886) - Included Actions: (1) Mykale Rocquemore v. Corinthian International Parking Services, Inc., et al., Superior Court of California, County of ALAMEDA, Case No. RG16801065; (2) Adrian Turner v. Corinthian International Parking Services, Inc., Superior Court of California, County of SANTA CLARA, Case No. 16CV292208.

Case No.: 16CV292208

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on September 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

These are two coordinated cases arising out of alleged Labor Code violations. On June 11, 2015, plaintiff Adrian Turner ("Turner") filed a putative class action against her former employer, defendant Corinthian International Parking Services, Inc. ("Defendant"), alleging various Labor Code violations in 2015 ("*Turner* Action").

On January 21, 2016, plaintiff Mykale Rocquemore ("Rocquemore") filed a representative action against Defendant asserting a single claim for civil penalties under the Private Attorneys General Act of 2004 ("PAGA") ("*Rocquemore* Action"). The PAGA claim is predicated on allegations that Defendant failed to compensate Rocquemore and the other aggrieved employees for all hours worked, missed meal periods and rest breaks, and necessary business expenses.

On October 28, 2016, the court granted Defendant's petition for coordination of the *Turner* Action and the *Rocquemore* Aciton.

On July 1, 2019, Turner filed the operative Second Amended Class Action Complaint for Damages ("SAC"), which sets forth the following causes of action: (1) Violation of California Labor Code sections 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code sections 226.7 and 512, subdivision (a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code section 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code sections 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code sections 201 and 202 (Final Wages Not Timely Paid; (6) Violation of California Labor Code section 2802 (Unreimbursed Business

Expenses); and (7) Violation of California Business & Professions Code section 17200, et seq. (Unfair Competition/Unfair Business Practices).

Defendant filed an Answer to Plaintiff's SAC on August 2, 2019.

Thereafter, the court granted Plaintiff's motion to certify the class.

The parties have reached a settlement. Turner and Rocquemore (collectively, "Plaintiffs") now move for preliminary approval of class action settlement. The motion is unopposed.

II. LEGAL STANDARD

Generally, "questions whether a 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*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> 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, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The 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*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and

> discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

III. DISCUSSION

A. Provisions of the Settlement

> The case has been settled on behalf of the following class:
> [A]ll current and former hourly-paid or non-exempt individuals who were employed by Defendant within the State of in California at any time during the Class Period.

(Declaration of Carolyn H. Cottrell in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Cottrell Dec."), Ex. A ("Settlement Agreement"), ¶ I.C.) The Class Period is defined as the period of time from June 11, 2011 to the date of preliminary approval of the settlement. (Settlement Agreement, ¶ I.K.)

According to the terms of settlement, Defendants will pay a gross, non-reversionary amount of $1,050,000. (Settlement Agreement, ¶¶ I.T, III.A.) The gross settlement amount includes attorney fees of $350,000 (1/3 of the gross settlement amount), actual litigation costs, a total service award of $30,000 ($15,000 for each class representative), a PAGA Payment of $50,000 (75 percent of which is to be paid to the LWDA and the remaining 25 percent is to be allocated to the net settlement amount to be distributed to participating class members), and settlement administration costs not to exceed $100,000. (Settlement Agreement, ¶¶ I.E, I.F, I.L, I.T, I.V, I.W, I.X, I.GG, III.A, III.B.)

The net settlement amount will be distributed to the participating class members on a pro rata basis based on the number of workweeks worked during the Class Period. (Settlement Agreement, ¶ III.C.) Participating class members have 180 days from the date of mailing to cash their checks; if the total amount of uncashed checks equals or exceeds $100,000, the funds will be redistributed using the same formula for the initial distribution; if the total amount of uncashed checks is less than $100,000, the funds will be paid to California Rural Legal Assistance. (Settlement Agreement, ¶ III.F.11.) The *cy pres* recipient is approved.

In exchange for the settlement, class members agree to release Defendant, and related entities and persons, from all claims that were or could have been asserted based on the facts

alleged in the SAC by Plaintiffs. (Settlement Agreement, ¶¶ I.CC, I.DD, III.G.) Additionally, class members employed during the PAGA Period (defined as the period between January 21, 2015 through the date of preliminary approval of the settlement) agree to release Defendant, and related entities and persons, from all claims arising under PAGA during the PAGA Period that were or could have been asserted based on the facts alleged in the SAC by Plaintiffs. (Settlement Agreement, ¶¶ I.AA, III.H.) Plaintiffs further agree to a general release. (Settlement Agreement, ¶ III.J.)

B. Fairness of the Settlement

Plaintiffs assert that the settlement is fair, reasonable, and adequate, given the strength of their remaining claims, the inherent risks of litigation, and the costs of pursuing litigation. Plaintiffs actively litigated this case. The parties conducted substantial discovery and the court heard several dispositive motions. The parties then participated in two private mediation sessions with the Honorable Ronald M. Sabraw (Ret.). Following the court order denying Defendant's renewed motion to compel arbitration, Defendant represented that it lacked the financial ability to pay a judgment reflective of the potential value of the claims at issue in this case. Plaintiffs then requested Defendant's financial records and worked with a forensic accountant, Kenneth Creal, to determine an amount Defendant was capable of paying while remaining financially solvent. After conducting this additional discovery, the parties were engaged in further discussions which resulted in the settlement agreement. Plaintiffs estimate that Defendant faced a maximum potential liability of approximately $22,600,000 for the claims alleged in this action. (Cottrell Dec., ¶¶ 67-82.) Plaintiffs provide a detailed breakdown of this amount by claim. (*Ibid.*) Plaintiffs estimate each of the 3,825 class members will receive an average estimated recovery of $274.50.

The settlement represents approximately 5 percent of the maximum potential value of Plaintiffs' claims. The proposed settlement amount is within the general range (albeit on the lower end) of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc*. (E.D.Ca|. Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022

U.S.Dist.LEXIS 30201, at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

However, there is a problem with the structure of the payment calculations. The settlement agreement does not separately calculate payments to be made from the settlement of the class action and settlement of the PAGA action, as a settlement which includes both a class action and a PAGA action must. Instead, the settlement agreement includes the PAGA payment due to aggrieved employees in the net settlement fund along with the class action payment, and then contemplates just one calculation per individual to arrive at the amount of individual payments. This method will create problems if any class member requests exclusion from the settlement. While the class member seeking exclusion will not be entitled to payment from the class settlement, that individual will still be entitled to participate in the settlement of the PAGA claim. Furthermore, the PAGA Period is shorter than the Class Period and it is possible that some class members are not also aggrieved employees. Those class members that did not work for Defendant during the PAGA Period are not entitle to a portion of the PAGA Payment allocated to aggrieved employees. Consequently, the parties must modify the settlement agreement to provide for two separate calculations and payments: one for payments related to the settlement of the class claims; and one for payments related to the settlement of the PAGA claim.

Otherwise, the court generally finds that the settlement is fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

B. Incentive Award, Fees, and Costs

Plaintiffs request service awards in the total amount of $30,000 ($15,000 for each class representative).

> The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

> These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

The court notes that the requested amount for the service awards is higher than normally awarded. Prior to the final approval hearing, the class representatives shall file declarations specifically detailing their participation in the action and an estimate of time spent. The court will make a determination at that time.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees of $350,000 (1/3 of the gross settlement fund). Plaintiffs' counsel shall submit lodestar information (including hourly rates and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiffs' counsel shall also submit evidence of actual costs incurred as well as settlement administration costs.

C. Conditional Certification of Class

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 . . . ." As interpreted by the California Supreme Court, Section 382 requires: (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.)

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, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326.) "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.)

> As explained by the California Supreme Court,
> The certification question 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*, *supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Here, the court has already certified the class, named Plaintiffs as class representatives, and Plaintiffs' counsel as class counsel. Thus, the elements of class certification are met for purposes of the settlement.

D. Class Notice

The content of a class notice is subject to court approval. "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).)

The notice generally complies with the requirements for class notice. (Cottrell Dec., Ex. B.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion.

However, the notice will need to be amended to reflect the changes made to the settlement agreement regarding the structure of the payment calculations.

Next, page 5 of the class notice states that class members who wish to object to the settlement must submit a written objection. The notice further states that class members must provide written notice of their intent to appear at the final approval hearing. The notice must be amended to clarify that class members may appear at the final approval hearing to object to

the settlement regardless of whether they submitted a written objection or notice of intent to appear.

Additionally, the notice shall be modified to include the following language regarding the final approval hearing:

> Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). 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 who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

The amended notice shall be provided to the court for approval prior to mailing.

IV. CONCLUSION

The motion for preliminary approval of the class action settlement is CONTINUED to November 8, 2023, at 1:30 p.m. in Department 19. Plaintiffs' counsel shall file a supplemental declaration with the requested information no later than October 27, 2023. No additional filings are permitted.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 5

Case Name: Stoner, et al. v. Contract Sweeping Services, LLC, et al. (Class Action)
Case No.: 23CV410973

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on September 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VII. INTRODUCTION

This is a putative class and representative action arising out of alleged wage and hour violations. The operative First Amended Complaint, filed by plaintiffs Darcel Stoner ("Stoner") and Peter White ("White") (collectively, "Plaintiffs") on June 28, 2023, sets forth causes of action for: (1) Failure to Pay Prevailing Wages, Lab. Code § 1720 et seq.; (2) Unfair Competition, Business & Professions Code §§ 17200-09; and (3) Violations of the Labor Code Private Attorneys General Act of 2004, Lab. Code §§ 2698 et seq.

On August 28, 2023, the court granted Plaintiffs' request for dismissal of White's claims without prejudice.

Now before the court is the motion by defendant SCA of CA, LLC ("SCA") for an order compelling Plaintiffs to arbitrate their individual claims, dismissing the class claims, and staying the representative PAGA claims. Defendant WSSH CSS, LLC f/k/a Contract Sweeping Services, LLC ("CSS") joins in SCA's motion. Plaintiff opposes the motion.

II. REQUEST FOR JUDICIAL NOTICE

In connection with its moving papers, SCA requests judicial notice of the AAA Employment Arbitration Rules and Mediation Procedures ("AAA Rules").

The AAA Rules are a proper subject of judicial notice. (See *Chavarria v. Ralphs Grocer Co.* (C.D.Cal. 2011) 812 F.Supp.2d 1079, 1087, fn. 8 [taking judicial notice of the AAA Rules]; *Espinoza v. Superior Court* (2022) 83 Cal.App.5th 761, 787, fn. 8 [same].)

Accordingly, the request for judicial notice is GRANTED.

III. LEGAL STANDARD

"The FAA [Federal Arbitration Act], 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.) Here, there is no dispute that the FAA applies. However, "[t]he procedural aspects of the FAA do not apply in state court absent an express provision in the arbitration agreement." (*Ibid*.)

The California Arbitration Act provides that a court must grant a petition to compel arbitration "if it determines that an agreement to arbitrate … exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement," among other exceptions. (Code Civ. Proc., § 1281.2.)

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 the 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.)

IV. DISCUSSION

A. Motion as to White

In light of the dismissal of White's claims on August 28, 2023, the motion to compel White to arbitrate his individual claims is deemed MOOT.

B. Motion as to Stoner

SCA moves to compel Stoner to pursue his claims in arbitration on an individual basis, and asks the court to dismiss Stoner's class claims and stay Stoner's representative PAGA claims. SCA states that Stoner was hired by CSS on November 9, 2017. In February 2022, SCA acquired CSS's assets and agreed to employ various CSS employees. SCA asserts that Stoner electronically signed an arbitration agreement with Sweeping Corporation of America, LLC ("Sweeping Corporation") on February 23, 2022, in connection with his new

employment. SCA is contends that although it is a nonsignatory, it is an intended beneficiary of the arbitration agreement because it is an affiliate of Sweeping Corporation. SCA argues that under the terms of the arbitration agreement, Stoner agreed to arbitrate all claims relating to his employment on an individual basis. For these reasons, SCA maintains the court should compel arbitration of Stoner's individual claims, dismiss the class claims, and stay the representative PAGA claims.

CSS joins in SCA's motion. Although it is a nonsignatory, CSS asserts that it can enforce the arbitration agreement because Stoner alleges that CSS is a joint employer with and/or an agent of SCA. CSS further argues that Stoner is obligated to arbitrate all claims against CSS because those claims are intertwined with other claims subject to the arbitration agreement.

In opposition, Stoner argues that SCA fails to establish that he agreed to the arbitration agreement. Stoner points out that the arbitration agreement itself does not bear his signature. Rather, SCA offers an acknowledgment form, on which he purportedly checked a box acknowledging the company policy regarding dispute resolution. Stoner contends that the language of the arbitration agreement require that the agreement be signed by the employee to be valid. Additionally, Stoner asserts that checking the box on the acknowledgement form did not constitute assent to the arbitration agreement; rather, it merely affirms the employees understanding of and acceptance of the company policy regarding dispute resolution. Stoner also raises additional arguments should the court conclude that he agreed to be bound by the arbitration agreement.

Stoner's argument that SCA failed to establish that he agreed to arbitrate his claims is dispositive.

> The burden of persuasion is always on the moving party to prove the existence of an arbitration agreement with the opposing party by a preponderance of the evidence: "Because the existence of the agreement is a statutory prerequisite to granting the [motion or] petition, the [party seeking arbitration] bears the burden of proving its existence by a preponderance of the evidence." [Citation.]
>
> However, the burden of production may shift in a three-step process.
>
> First, the moving party bears the burden of producing "prima facie evidence of a written agreement to arbitrate the controversy." [Citation.] 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." [Citation.] Alternatively, the moving party can meet its burden by setting forth the agreement's provisions in the motion. [Citation.] For this step, "it is not

> necessary to follow the normal procedures of document authentication." [Citation.] 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.
>
> If the moving party meets its initial prima facie burden and the opposing party disputes the agreement, then in the second step, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement. [Citation.] The opposing party can do this in several ways. For example, the opposing party may testify under oath or declare under penalty of perjury that the party never saw or does not remember seeing the agreement, or that the party never signed or does not remember signing the agreement. [Citations.]
>
> If the opposing party meets its burden of producing evidence, then in the third step, the moving party must establish with admissible evidence a valid arbitration agreement between the parties. The burden of proving the agreement by a preponderance of the evidence remains with the moving party. [Citation.]
>
> Although "[p]ublic policy favors contractual arbitration as a means of resolving disputes … that policy ' " 'does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration.' " ' " [Citation.]

(*Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 164-166; *Iyere v. Wise Auto Group* (2023) 87 Cal.App.5th 747, 755.)

With its moving papers, SCA submitted a copy of the arbitration agreement purportedly signed by Stoner. (Declaration of Georgina Santelises in Support of Defendant SCA of CA, LLC's Motion to Compel Arbitration and Stay All Proceedings ("Santelises"), ¶ 13 & Ex. 4.)

As is relevant here, the Mutual Arbitration Agreement states,

> Signing this Agreement is optional and not a condition of employment or employment related benefits. Employee's decision to agree or not agree to arbitration will not affect Employee's employment status or any employment-related benefits, and Employee will not be threatened, discriminated against, or retaliated against in any way for agreeing or not agreeing to arbitration. Employee may request additional time to consider this Agreement if needed. By signing this Agreement, Employee affirms that Employee has been provided sufficient time to read, consider, and ask questions about this Agreement, and that Employee did not sign under any coercion or duress.
>
> THIS CONTRACT IS A BINDING ARBITRATION AGREEMENT WHICH MAY BE ENFORCED BY THE PARTIES.
>
> BY SIGNING BELOW, I ACKNOWLEDGE THAT I HAVE RECEIVED AND READ, OR HAVE HAD THE OPPORTUNITY TO READ, THIS ARBITRATION AGREEMENT. I AGREE TO THIS ARBITRATION AGREEMENT AND I UNDERSTAND THAT THIS ARBITRATION AGREEMENT REQUIRES THAT DISPUTES THAT INVOLVE THE MATTERS SUBJECT TO THE AGREEMENT BE SUBMITTED TO ARBITRATION PURSUANT TO THIS ARBITRATION AGREEMENT RATHER THAN TO A JUDGE AND JURY IN COURT.

(Santelises Dec., Ex. 4, pp. 4-5.) Beneath this language are lines for the employee to print their name, sign, and date the agreement. The Mutual Arbitration Agreement is unsigned.

SCA also submits computer screenshots that demonstrate what an employee sees when presented with the Mutual Arbitration Agreement on the Dayforce website. (Santelises Dec., ¶¶ 6-11 & Ex. 2, p. 5.) The relevant screen bears the heading "CA – L – Voluntary Mutual Arbitration Agreement." Below the heading is the following paragraph:

> SCA of CA, LLC ("Company") believes that most work-related concerns can be addressed with the employees' manager or Human Resources. Thus, employees are encouraged, but not required, to speak with their manager or Human Resources to resolve any work-related problem before initiating the procedure set forth in this Mutual Arbitration Agreement ("Agreement" or "Arbitration Agreement"). Where resolution cannot be achieved through the Company's internal resources, the undersigned employee (including his/her heirs, executors, administrators, successors, and assigns) (collectively, "Employee") and the company agree, by signing this Agreement, to use the arbitration procedures in this Agreement instead of a trial in court before a judge or jury. Arbitration is the process by which a neutral third party makes a binding decision relating to a dispute.

(Santelises Dec., Ex. 2, p. 5.) Underneath this paragraph, is a hyperlink that employees can click to download the Mutual Arbitration Agreement. Finally, beneath the hyperlink is a box next to the statement "I accept and acknowledge the company policy above." SCA presents an additional screenshot bearing Stoner's name and employee number, which purportedly shows that Stoner check the box next to the statement "I accept and acknowledge the company policy above" on February 23, 2022. (Santelises Dec., Ex. 4, p. 6.)

Assuming for the sake of argument that Stoner checked the box, that action does not establish that he assented to the terms of the Mutual Arbitration Agreement. By checking the box, Stoner merely accepted and acknowledged SCA's policy regarding dispute resolution. In other words, Stoner accepted and acknowledged (1) SCA's belief that most work related disputes can be addressed informally, (2) that employees are encouraged to seek informal resolution of issues before initiating procedures in the Mutual Arbitration Agreement, and (3) that where informal resolution is not successful, that he and SCA agree by signing the Mutual Arbitration Agreement to use the arbitration procedures in the Mutual Arbitration Agreement. Thus, the checked box is simply an acknowledgment that the parties agree to be bound by the Mutual Arbitration Agreement if it is signed by Stoner. (See *Mitri v. Arnel Management Co.* (2007) 157 Cal.App.4th 1164, 1171-1172 ["[T]he core issue in this case, as

framed by the motion to compel arbitration, is whether the documents prepared by Arnel show an express bilateral contract was entered into through which the parties agreed to arbitrate. As discussed ante, the documents do not. … [D]efendants argued plaintiffs accepted a unilateral contract to arbitrate by continuing to work for Arnel after their receipt of the employee handbook. But, as discussed ante, the *employee handbooks arbitration provision only placed plaintiffs on notice that they would be called upon to sign a separate binding arbitration agreement*, thereby contradicting defendants' argument the provision in the handbook and subsequent performance constituted a unilateral contract of binding arbitration."], italics added.) As the Mutual Arbitration Agreement itself is unsigned, SCA and CSS cannot enforce the agreement against Stoner.

Accordingly, SCA's motion to compel arbitration is DENIED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 6

Case Name: Alvarez-King v. Bill Brown Construction Company (Class Action/PAGA)
Case No.: 21CV386656

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on September 13, 2023, at 9:00 a.m. in Department 19. The court now issues its tentative ruling as follows:

VIII. INTRODUCTION

This is a putative class and representative action arising out of various alleged wage and hour violations. The operative First Amended Class and Representative Action Complaint ("FAC"), filed on December 14, 2021, sets forth causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Compensation; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Breaks; (5) Failure to Indemnify Necessary Business Expenses; (6) Failure to Timely Pay Final Wages at Termination; (7) Failure to Provide Accurate Itemized Wage Statements; (8) Unfair Business Practices; and (8) Civil Penalties Under PAGA.

The parties have reached a settlement. Plaintiff Joshua Alvarez-King ("Plaintiff") now moves for preliminary approval of the settlement. The motion is unopposed.

IX. LEGAL STANDARD

Generally, "questions whether a 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*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> 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, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The 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*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

X. DISCUSSION

E. Provisions of the Settlement

> The case has been settled on behalf of the following class:
> [A]ll persons who worked for Defendant [Bill Brown Construction Company ("Defendant")] in California as an hourly paid, non-exempt employee at any time between September 13, 2017 to August 8, 2023.

(Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement ("Moon Dec."), Ex. 1 ("Settlement Agreement"), ¶¶ 3, 13.) The class also contains a subset of PAGA Members that are defined as "all persons who worked for Defendant in California as an hourly paid, non-exempt employee at any time between September 13, 2020 to August 8, 2023." (Settlement Agreement, ¶ 22.)

According to the terms of settlement, Defendants will pay a gross, non-reversionary settlement amount of $600,000. (Settlement Agreement, ¶ 16.) The gross settlement amount includes attorney fees of $199,980 (33 1/3 percent of the gross settlement amount), litigation

costs not to exceed $25,000, a service award for the class representative not to exceed $10,000, settlement administration costs (estimated to be $7,950), and a PAGA allocation of $50,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Members). (Settlement Agreement, ¶¶ 5, 7, 15, 16, 22, 23, 35-38.)

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. (Settlement Agreement, ¶ 40.) Similarly, PAGA Members will receive a pro rata share of the 25 percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period. (*Ibid*.)

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the Unclaimed Property Fund of the State Controller's Office. (Settlement Agreement, ¶ 52.)

The parties' proposal to send funds from uncashed checks to the Controller of the State of California does not comply with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class member funds be given to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." Plaintiff is directed to provide a new *cy pres* in compliance with Code of Civil Procedure section 384 prior to the continued hearing date.

In exchange for the settlement, class members agree to release Defendant, and related entities and persons, from all claims, rights, demands, liabilities, and causes of action that were or could have been pleaded based on, arising from, or related to the factual allegations set forth in the FAC and Plaintiff's notice to the LWDA. (Settlement Agreement, ¶¶ 28, 29, 49, 59.) PAGA Members agree to Defendant, and related entities and persons, from "Released PAGA Claims" for the entire "Released PAGA Period." (Settlement Agreement, ¶ 60.) Plaintiff further agrees to a general release. (Settlement Agreement, ¶ 61.)

F. Fairness of the Settlement

Plaintiff asserts that the settlement is fair, reasonable, and adequate, given the strength of his claims, the inherent risks of litigation, including substantial risks relative to class certification and the merits of the claims, and the costs of pursuing litigation. Plaintiff conducted extensive discovery, which included applicable policies and procedures, all payroll and timekeeping records for the statutory period, and information regarding the size of the class. (Moon Dec., ¶ 8.) Plaintiff retained an expert who formulated a damage analysis based on the records provided. (*Id.* at ¶ 9.) The parties then attended mediation with Lynn Frank, Esq., which resulted in the settlement agreement. (*Id*. at ¶ 10.) Plaintiff estimates that Defendant faced a maximum potential liability of $8,541,910.40 for all claims, but the realistic maximum recovery is $746,286.54 for all claims. (*Id*. at ¶¶ 16-25.) Plaintiff provides a detailed breakdown of these amounts by claim. (*Ibid.*) Plaintiff asserts that for the approximately 212 class members, the average payment is approximately $1,507.40 per class member.

The settlement represents approximately 7 percent of the maximum potential value of Plaintiff's claims and 80 percent of the realistic potential value of the claims. The proposed settlement amount is within the general range (albeit on the low end) of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc*. (E.D.Ca|. Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201, at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

However, the release of claims by PAGA Members is unclear. The settlement agreement provides that PAGA Members will release Defendant, and related entities and persons, from "Released PAGA Claims" for the entire "Released PAGA Period." (Settlement Agreement, ¶ 60.) But the terms "Released PAGA Claims" and "Released PAGA Period" are not defined anywhere in the settlement agreement. The settlement agreement must be modified to provide a definition for these terms, so the court can determine whether the scope of the PAGA release is proper. The parties are ordered to meet and confer regarding the amendment of the settlement agreement to provide definitions for the terms "Released PAGA Claims" and "Released PAGA Period." Prior to the continued hearing date, Plaintiff shall file

a supplemental declaration addressing this issue and discussing what amendments the parties made to the settlement agreement.

Otherwise, the court finds the settlement is fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

G. Incentive Award, Fees, and Costs

> Plaintiff requests an incentive award of $10,000 for the class representative. The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Plaintiff submits a declaration detailing his participation in the action. Plaintiff states that he spent approximately 50 hours on the case, including discussing the case with counsel, reviewing documents, providing information and documents to counsel, appearing for deposition, and reviewing the settlement agreement. (Declaration of Joshua Alvarez-King in Support of Class and PAGA Action Settlement, ¶¶ 6-10.)

Moreover, Plaintiff undertook risk by putting his name on the case because it might impact his future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].) Accordingly, the court finds the incentive award is warranted and it is approved.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will seek attorney fees of $199,980 (33 1/3 percent of the gross settlement fund). Plaintiff's

counsel shall submit lodestar information (including hourly rates and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiff's counsel shall also submit evidence of actual costs incurred as well as settlement administration costs.

H. Conditional Certification of Class

Plaintiff requests that the putative class be conditionally certified for purposes of the settlement. 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 . . . ." As interpreted by the California Supreme Court, Section 382 requires: (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.)

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, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326.) "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.)

As explained by the California Supreme Court,

> The certification question 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, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff states there are approximately 212 class members that can be ascertained from Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. In sum, the court finds that the proposed class should be conditionally certified for settlement purposes.

I. Class Notice

The content of a class notice is subject to court approval. "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).)

The notice generally complies with the requirements for class notice. (Settlement Agreement, Ex. A.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion.

However, the parties will need to update the notice with respect to the scope of the PAGA release.

Additionally, the "Object" box on page 2 of the notice states that class members wishing to object to the settlement must submit a written objection. The notice must be amended to clarify that class members may object in writing or by appearing at the final approval hearing.

Lastly, the notice shall be modified to include the following language regarding the final approval hearing:

> Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). 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 who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

Notably, the class notice, as currently drafted, suggests that only remote appearances are permitted. The amended notice shall be provided to the court for approval prior to mailing.

XI. CONCLUSION

The motion for preliminary approval of the class action settlement is CONTINUED to November 8, 2023, at 1:30 p.m. in Department 19. Plaintiff's counsel shall file a supplemental declaration with the requested information no later than October 27, 2023. No additional filings are permitted.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 7

Case Name: Teresita Bernardo et al vs Jaime Marcial et al
Case No.: 21CV382019

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on September 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

XII. INTRODUCTION

This action arises out of various alleged wage and hour violations. On April 27, 2021, plaintiffs Teresita Bernardo, Angelita (Helen) Cabanlit, Nilo Campos Tengson, Herminia Autajay, and Herman Tabudlong ("Tabudlong") (collectively, "Plaintiffs") filed a Complaint alleging causes of action for: (1) Failure to Pay Minimum Wage (Lab. Code § 1194 and IWC Wage Orders); (2) Failure to Pay Overtime (Lab. Code §§ 510, 1194); (3) Failure to Provide Authorized Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Orders); (4) Failure to Provide Authorized Rest Periods (Lab. Code §§ 226.7, 512, IWC Wage Orders); (5) Failure to Pay All Wages Upon Discharge (Lab. Code §§ 201-203); (6) Failure to Provide Itemized Wage Statements (Lab. Code § 226); (7) Unfair Competition (Bus. & Prof. Code, §§ 17200 et seq.); (8) Breach of Contract; and (9) Violation of Healthy Workplace Act §§ 245-249.

On January 14, 2022, Plaintiffs filed a First Amended Complaint which set forth the same causes of action.

On May 20, 2022, Plaintiffs filed a Second Amended Complaint, which dismissed the cause of action for breach of contract and added a claim for civil penalties under the Private Attorneys General Act of 2004 (Lab. Code §§ 2699 et seq.) ("PAGA").

Plaintiffs now move to have this case designated complex under California Rules of Court, rule 3.400. Defendants C3 Care LLC, Jaime Rafael Marcial, Jericho Marcial, and Mary Christine Marcial (collectively, "Defendants") oppose the motion.

XIII. LEGAL STANDARD

A "complex case" is an action that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs

reasonable, and promote effective decision making by the court, the parties, and counsel. (Cal. Rules of Court, rule 3.400(a).)

In deciding whether an action is a complex case under (a), the court must consider, among other things, whether the action is likely to involve:

(1) Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve;

(2) Management of a large number of witnesses or a substantial amount of documentary evidence;

(3) Management of a large number of separately represented parties;

(4) Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court; or

(5) Substantial postjudgment judicial supervision.

(Cal. Rules of Court, rule 3.400(b).)

XIV. DISCUSSION

Plaintiffs assert this case should be designated complex because the PAGA claim is brought on behalf of all non-exempt employees who have or continue to work for Defendants in California from February 11, 2021 to the present (i.e., approximately 40 aggrieved employees), and the case involves a large number of witnesses (at least 34 witnesses have been identified by Plaintiffs to date) and substantial documentary evidence (Defendants have produced several thousand pages of documents that relate only to the named Plaintiffs). Plaintiffs state that this action has already generated several discovery motions and will likely involve several additional motions.

In opposition, Defendants assert that the case should not be designated as complex because it does not raise difficult and time-consuming legal issues, the number of witnesses and documents involved is speculative, whether additional parties may join the action is speculative, and the litigation activity thus far has been routine.

Here, many of the relevant factors weigh in favor of designating this action as complex.

First, PAGA actions invariably involve numerous pretrial motions involving difficult legal issues, and there is no reason to believe that this action will be any different. (See Cal.

Rules of Court, rule 3.400(b)(1).) As the parties note in their papers, they have already engaged in substantial motion practice which is likely to continue.

Second, this action will require management of large numbers of both witnesses and documentary evidence. (See Cal. Rules of Court, rule 3.400(b)(2).) Plaintiffs seek to represent numerous other employees of Defendants. Each of those employees is a witness. Moreover, the evidence likely includes the timekeeping and payroll records of each employee, as well as Defendants' policies and procedures regarding timekeeping and compensation of employees.

Third, if this action results in distribution of funds, there will be need for substantial post-judgment judicial supervision to assist in fair and efficient fund distribution. (See Cal. Rules of Court, rule 3.400(b)(5).)

Accordingly, Plaintiffs' motion to designate this case complex is GRANTED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 8

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