SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

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

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

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

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- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
- Members of the public who wish to observe can do so through Microsoft Teams (using the link discussed above) or in person. Please make sure to turn your camera off and mute yourself if you are observing the proceedings remotely.
- As a reminder, state and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while in the courtroom and while on Microsoft Teams.

LAW AND MOTION TENTATIVE RULINGS
DATE: JULY 11, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV399448	Vides v. Alexander's Steakhouse, Inc. (Class Action/PAGA)	See Line 1 for Tentative Ruling.
LINE 2	20CV369344	Luna, et al. v. Escuela Popular Del Pueblo (Class Action)	See Line 2 for Tentative Ruling.
LINE 3	21CV385965	Frayle v. Barrita Corporation (Class Action)	This matter was previously continued by stipulation and order.
LINE 4	22CV405334	Hecker v. Mathew Enterprise, Inc. (Class Action)	See Line 4 for Tentative Ruling.
LINE 5	19CV352557	Csupo, et al. v. Alphabet, Inc. (Class Action)	Tentative Ruling provided directly to the parties.

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	18CV328915	Uzair v. Google, LLC	Tentative Ruling provided directly to the parties.
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Mauricio Vides v. Alexander's Steakhouse, Inc.*
Case No.: 22CV399448

This is a wage and hour putative class action and a Private Attorneys General Act ("PAGA") representative action. Plaintiff Mauricio Vides alleges that Defendant Alexander's Steakhouse, Inc. ("Defendant") committed various Labor Code violations. Before the Court is Plaintiff's motion for preliminary approval of settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

According to the allegations of the operative First Amended Complaint ("FAC"), Plaintiff was employed by Defendant as a non-exempt, hourly-paid employee from October 2021 to January 7, 2022. He alleges that Defendant failed to pay him and putative class members all wages due to them based on, at least in part, Defendant's requiring employees to work during meal breaks and to undergo covid-19 screen or mandatory drug testing. (FAC, ¶ 8.) Defendant also allegedly engaged in a practice of rounding the actual time worked and recorded by Plaintiff and putative class members such that during the course of employment these individuals were paid less than they would have been paid for actual recorded time. (*Ibid*.)

Plaintiff further alleges that when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to him and putative class members, Defendant failed to include non-discretionary incentive compensation as part of the calculation as required by law. (FAC, ¶ 10.) Employees were also regularly deprived of the meal breaks and rest periods to which they were entitled, and Defendant failed to remit to them gratuities paid by customers as mandated. (*Id*., ¶¶ 11-18.) Defendant also failed to timely pay employees within seven days of the close of the close of payroll and underpaid the amount of sick wages owed. (*Id*., ¶¶ 19-21.) Finally, Plaintiff and putative class members were not reimbursed for required business expenses incurred by them as a consequence of discharging their duties. (*Id.*, ¶ 26.)

Plaintiff filed the FAC on June 24, 2022, asserting the following causes of action: (1) unfair business practices; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide required meal periods; (5) failure to provide required rest periods; (6) failure to provide accurate itemized wage statements; (7) failure to reimburse employees for required expenses; (8) failure to pay wags when due; (9) failure to provide gratuities; and (10) PAGA penalties.

Plaintiff now moves for an order: (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for settlement purposes only, conditionally certifying the Class; (3) provisionally appointing Plaintiff as the representatives of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche, and Trevor G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class counsel; (5) approving the form and method for providing notice to the Class of the proposed settlement; (6) directing that notice of the proposed settlement be given to the Class; (7) appointing ILYM Group ("ILYM")

as the Administrator; and (8) scheduling a final approval hearing date for December 5, 2024 to consider the Plaintiff's motion for final approval of the settlement and for approval of attorneys' fees, expenses and the service award.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

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

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

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

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

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation*

Los Angeles, LLC (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.)

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

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

III. SETTLEMENT PROCESS

Over the course of this action, Plaintiff's counsel thoroughly investigated the facts relating to the class and PAGA claims alleged in this lawsuit and engaged in a thorough study of the applicable legal principles. Through the exchange of informal discovery in anticipation of mediation, Defendant provided to Plaintiff: (1) data concerning the composition of the Class; (2) payroll data for the Class and time punch data for the Class which covered 152,648 shifts and 38,794 work weeks; (3) Defendant's wage and hour policies and job descriptions; (4) the employment file for the Plaintiff; and, (5) samples of wage statements. This information allowed Plaintiff's retained expert to prepare valuations of the claims asserted by the putative class and then his counsel, in turn, performed an analysis of the merits of these claims (including the viability of Defendant's potential defenses) in order to both determine the likelihood of success in this action and prepare to negotiate a possible settlement.

On July 7, 2023, the parties participated in private mediation with the Hon. Brian C. Walsh (Ret.), a respected jurist and experienced mediator of wage and hour class actions, and were able to reach the settlement that is now before the Court.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement amount is $1,070,000. Attorney's fees of up to one-third of the settlement ($356,666), litigation costs of up to $21,000, and up to $20,000 in administrative costs will be paid from the gross settlement. $30,000 will be allocated to PAGA penalties, 75% of which ($22,500) will be paid to the LWDA, with the remaining 25% ($7,500) paid to "Aggrieved Employees," who are defined as "all individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the PAGA Period [March 10, 2021 through November 18, 2023]." The "Class" is defined as "all individuals who were employed by Defendant in California and classified as a

non-exempt employee at any time during the Class Period [June 24, 2018 through November 18, 2023]." Plaintiff will seek a service payment of no more than $12,500.

The net settlement amount will be allocated to Class members on a pro rata basis based on the number of weeks worked during the Class Period, and the average net settlement amount is currently estimated to be $373.34 per member. For tax purposes, 20% of the payment to each Class member will be allocated to wages, with the remaining 80% allocated to interest and penalties. The employer-side payroll taxes will be paid by Defendant separately from the gross settlement amount. 100% of the PAGA payment to Aggrieved Employees will be allocated to penalties. Funds associated with checks uncashed after 180 days will be transmitted to the California State Controller's Unclaimed Property Fund in the name of the Class member.

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

> [A]ll claims that were alleged, or reasonably could have been alleged, based facts stated in the Operative Complaint, which occurred during the Class Period, including but not limited to claims for unpaid service charges and/or gratuities, failure to pay overtime compensation, failure to provide meal periods, failure to provide rest periods, failure to pay meal and/or rest period premiums, failure to include bonuses or incentive wages in calculating the regular rate of pay, failure to pay wages for off-the-clock work including time spent studying food and menu items and time spent donning and doffing, failure to reimburse business expenses including but not limited to expenses for cell phone usage and use of personal computers, failure to furnish accurate wage statements, failure to timely pay all earned wages, waiting time penalties, and violations of California & Professions Code § 17200, et seq. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, and Class claims based on facts occurring outside the Class Period.

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

> [A]ll claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period, including but not limited to claims for unpaid service charges and/or gratuities, failure to pay overtime compensation, failure to provide meal periods, failure to provide rest periods, failure to pay meal and/or rest period premiums, failure to include bonuses or incentive wages in calculating the regular rate of pay, failure to pay wages for off-the-clock work including time spent studying food and menu items and time spent donning and doffing, failure to reimburse business expenses including but not limited to expenses for cell phone usage and use of personal computers, failure to furnish accurate wage statements, failure to timely pay all earned wages, waiting time penalties, and civil penalties pursuant to PAGA.. The Released PAGA Claims do not include other PAGA claims, claims for vested benefits, wrongful termination, discrimination, unemployment insurance, disability, social

security, and worker's compensation, and PAGA claims outside of the PAGA Period.

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

V. FAIRNESS OF SETTLEMENT

Based on the data provided by Defendant through informal discovery and the analysis provided by Plaintiff's expert, Berger Consulting, Plaintiff's counsel estimated Defendant's maximum total exposure in this action to be $11,734,061 based on the following amounts: $1,776,662 (unpaid wages due to off-the-clock work); $1,024,609 (meal period violations); $1,098,559 (rest period violations); $90,085 (failure to reimburse business expenses); $5,162,796 (waiting time penalties); and $2,581,350 (wage statement penalties). Plaintiff's counsel discounted the foregoing amounts due to numerous factors, including but not limited to: the possibility that Plaintiff would not be able to obtain certification of the Class; Defendant's knowledge of the violations and the difficulty of establishing the willfulness of its actions (which effects the amount of penalties incurred); and issues with common proof and proving the merits of each claim given Defendant's insistence that breaks were made available to Plaintiff and Class members and its labor practices otherwise complied with the law.

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

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

VI. PROPOSED SETTLEMENT CLASS

Plaintiff requests that the following settlement class be provisionally certified:

All individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the Class Period", which is June 24, 2018 through November 18, 2023.

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

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

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

A. Ascertainable Class

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

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

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

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

Here, the estimated 1,687 Class members are readily identifiable based on Defendant's records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable and appropriately defined.

B. Community of Interest

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

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

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

As for the second factor,

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

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

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

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

supra, 91 Cal.App.4th at p. 238.) "Differences in individual class members' proof of damages [are] not fatal to class certification. Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Ibid*., internal citations and quotation marks omitted.)

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

C. Substantial Benefits of Class Certification

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

Here, there are an estimated 1,687 Class members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

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

The parties have selected ILYM as the settlement administrator. Within 30 days of the Court granting preliminary approval of the parties' settlement, Defendant will provide a list of all Class members along with pertinent identifying information (including last known address) to the administrator. Within an additional 14 days, after updating members' addresses using the National Change of Address database, ILYM will mail the notice packet to each Class members' last known address.

Here, the notice, will be provided in both English and Spanish, describes the lawsuit, explains the settlement, and instructs Class members that they may opt out of the settlement (except the PAGA component) or object. The gross settlement amount and estimated deductions are provided. Class Members are informed of their qualifying pay periods as

reflected in Defendant's records and are instructed how to dispute this information. Class members are given 45 days after the notice is mailed to request exclusion from the class, submit a written objection to the settlement, or dispute the qualified pay periods listed. Returned notices will be re-mailed to any forwarded or updated address located after an address search within 7days of return, and these Class members have an additional 14 days to respond to the re-mailed notice.

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

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

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

VIII. CONCLUSION

Plaintiff's motion for preliminary approval is GRANTED.

The final approval hearing shall take place on **December 5, 2024** at 1:30 in Dept. 7. The following class is preliminarily certified for settlement purposes:

> All individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the Class Period", which is June 24, 2018 through November 18, 2023.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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Calendar Line 2

Case Name: *Susana Luna, et al. v. Escuela Popular Del Pueblo*
Case No.: 20CV369344

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Susan Luna, Claudia Uchicua and Laura Padilla allege that Defendant Escuela popular Del Pueblo ("Escuela Popular" or "Defendant"), a family learning center located in East San Jose, failed to pay overtime and minimum wages, failed to provide meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

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

I. BACKGROUND

A. Factual

According to the allegations of the operative Second Amended Class and Representative Class Action Complaint ("SAC"), Escuela Popular is a charter school that operates four different educational academies: (1) Childcare Academy; (2) TK-8th Dual Language Academy; (3) High School Youth Bilingual Academy; and (4) High School Adults Bilingual Academy and Vocational Training. (SAC, ¶ 46.) All of these academies are operated independently from the local school districts and are geared to serve the community of East San Jose. (*Ibid*.) Plaintiffs were employed as full-time and/or part-time members of its teaching staff in the positions of Instructors, Teachers, and/or Special Education Paraprofessionals. (*Id*., ¶ 45.) The teaching staff hired by Defendant was not required to have teaching credentials nor a bachelor's degree. (*Id*., ¶ 47.)

Plaintiffs allege that Escuela Popular failed to compensate them for hours worked in excess of eight hours per day and forty hours per week based on having misclassified them and class members as exempt. (SAC, ¶ 61.) Defendant also failed to provide Plaintiffs with code-compliant meal and rest periods or the legally-mandated premiums for doing so. (*Id*. at ¶¶ 65, 69.) Defendant additionally failed to timely pay Plaintiffs all wages due to them during their employment and upon separation of that employment, and failed to provide them with accurate and itemized wage statements in accordance with California law. (*Id*. at ¶¶ 70-72.) Finally, Escuela Popular failed to reimburse Plaintiffs for all business-related expenses as required, including expenses associated with driving their personal vehicles. (*Id*., ¶ 73.)

B. Procedural

Plaintiffs initiated this action on August 14, 2020, and filed the operative SAC on July 19, 2022, asserting the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide off-duty meal periods; (4) failure to provide off-duty meal rest periods; (5) failure to provide accurate itemized wage statements; (6) failure to provide accurate itemized wages due at termination; (7) failure to indemnify for necessary expenditures; (8) unfair competition; and (9) civil penalties under PAGA.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

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

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

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

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

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 2022 U.S. LEXIS 2940.)

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

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

III. SETTLEMENT CLASS

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

All current and former members of Defendant's teaching staff who worked for Defendant in California, excluding Instructional Leaders, from August 14, 2016, through September 27, 2023.

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

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

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

class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

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

IV. TERMS AND ADMINISTATION OF SETTLEMENT

The non-reversionary gross settlement amount is $825,000. Attorney fees of up to one-third of the gross settlement ($275,000), litigation costs of $15,448.71, and $7,750 in administration costs will be paid from the gross settlement. $82,500 will be allocated to PAGA penalties, 75% of which ($61,875) will be paid to the LWDA, with the remaining 25% ($20,625) allocated to Class Members. The three named Plaintiffs seek enhancement awards of $10,000 each, totaling $30,000. The net settlement amount of $434,926.29 will be allocated to the 128 participating class members (i.e., those who did not submit a request for exclusion) on a pro rata basis based on weeks worked during the Class Period.

The highest individual settlement amount to be paid is approximately $7,729.34, the lowest is $42.24, and the average is $3,236.73. For tax purposes, settlement payments will be allocated 30% to wages and 70% to penalties and interest. The employer side payroll taxes on the settlement payments will be paid by Defendant separately from, and in addition to, the gross settlement amount. 100% of the PAGA settlement to "Aggrieved Employees" will be allocated to penalties. Funds associated with checks uncashed after 180 days will be donated to The Law Foundation of Silicon Valley, the designated *cy pres* recipient.

In exchange for settlement, the participating Class Members will release:

> [A]ll claims that they may have under the California Labor Code, Wage Orders regulations, and/or any other provisions of state and federal law against Defendant and East Side Union High School District, their present and former parent companies, affiliates and their present owners, former owners, subsidiaries, shareholders, officers, directors, employees, agents, attorneys, insurers, reinsurers, successors, and assigns and any individual or entity which could be jointly liable with any of them (collectively, the "Released Parties") as alleged in the Second Amended Complaint and PAGA Notice, or which could have been alleged, based upon the same factual predicate as the claims raised in the Second Amended Complaint and PAGA Notice, including, but not limited to, claims for unpaid wages, overtime pay, minimum wage, regular wages, noncompliant and/or missed meal period pay, noncompliant and/or missed rest period pay, unreimbursed expenses, claims for interest, attorneys' fees, costs, penalties, waiting time penalties, wage statement penalties, premium pay, Business & Professions Code Section 17200 et seq., and penalties under PAGA (Private Attorney General's Act).

"Aggrieved Employees" will also release "all claims that arise under PAGA during the PAGA Period as alleged in Plaintiffs' August 14, 2020, PAGA notice to the LWDA and to Defendant,

to the extent such claims were pled, or could arise out of the facts pled in the operative Second Amended Complaint filed" in this action. Consistent with the statute, Aggrieved Employees will not be able to opt out of the PAGA portion of the settlement.

As the Court determined in its order preliminarily approving the settlement, the release is appropriately tailored to the factual claims at issue. (See *Amara v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) Consistent with the statute, Aggrieved Employees will not be able to opt out of the PAGA portion of the settlement.

The notice period has now been completed. According to the declaration of case manager Mayra Gonzalez with settlement administrator Phoenix submitted in support of the instant motion, on January 29, 2024, Phoenix received from counsel for Defendant the names, last known telephone numbers and number of days worked during the Class period for each of the one hundred and thirty-one individuals identified as Class Members. Phoenix processed the addresses it had against the National Change of Address database to confirm and update this information and then mailed the notice packet to Class Members, in both English and Spanish, on February 23, 2024 via first class mail.

The deadline to submit a request for exclusion, a challenge to the amount of work weeks listed, or an objection to the settlement was April 8, 2024. As of the date of Ms. Gonzalez's declaration, June 17, 2024, Phoenix has received three requests for exclusion, but no workweek disputes or objections to the settlement.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiffs' claims, and that the PAGA settlement is genuine, meaningful, and fair to those affected. It finds no reason to depart from these findings now, especially considering that there are no objections. Therefore, the Court finds that the settlement is fair and reasonable for the purposes of final approval.

V. ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS

As set forth above, Plaintiffs' counsel seeks a fee award of $275,000, or one-third of the gross settlement amount, which is not an uncommon contingency fee allocation in a wage and hour class action. Plaintiffs also provide a lodestar figure of $412,761.20, which is based on 552.30 hours of work at billing rates of $375 to $828, resulting in a negative multiplier of 1.33.

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

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

> reasonableness of the percentage-based fee; if the implied multiplier is unreasonable, the court should revisit its assumptions.

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

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

Plaintiffs' counsel also seeks $15,448.71 in litigation costs, which is well short of the maximum amount ($30,000) permitted under the settlement agreement. Based on the information contained in the declaration of Plaintiffs' counsel, this amount is reasonable and is therefore approved. The $7,750 in administrative costs are also approved.

Finally, Plaintiffs request incentive awards of $10,000 each. To support these requests, each of the named Plaintiffs submits a declaration describing their efforts in this action. The Courts finds that these individuals are entitled to an incentive award and the amounts requested are reasonable and therefore approved.

VI. CONCLUSION

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

> All current and former members of Defendant's teaching staff who worked for Defendant in California, excluding Instructional Leaders, from August 14, 2016, through September 27, 2023.

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

The Court sets a compliance hearing for **February 27, 2025 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.

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Calendar Line 3

Case Name:
Case No.:

- oo0oo -

Calendar Line 4

Case Name: *Karen Hecker v. Matthew Enterprise, Inc.*
Case No.: 22CV405334

This is a wage and hour putative class and Private Attorneys General Act ("PAGA") Action. Plaintiff Karen Hecker alleges that Defendant Matthew Enterprise, Inc. ("Defendant") which owns and operates numerous auto dealerships, committed various Labor Code violations.

Currently before the Court are Plaintiffs' motions to compel further response to Request for Production of Documents ("RPD"), Set One, and to Special Interrogatories ("SI"), Set One, and to strike all *Belaire-West* opt-out notices obtained by Defendant. The motions are opposed by Defendant. As discussed below, the Court GRANTS the motions IN PART.

I. BACKGROUND

Plaintiff alleges that she and putative class members were employed as non-exempt employees throughout California at Defendant's various California locations and that Defendant failed to pay them all wages owed (including minimum wage and overtime) for all hours worked at the correct rate and within the correct time. (First Amended Complaint ("FAC"), ¶ 29.) This includes premiums for missed meal and rest periods. (*Id.*, ¶ 30.) Plaintiff additionally alleges that Defendant failed to reimburse her and putative class members for business expenses incurred by them as a direct consequence of discharging their duties and failed to provide employees with accurate, itemized wage statements as required. (*Id.*, ¶ 33.)

Based on the foregoing allegations, Plaintiff filed the FAC on February 1, 2023 asserting the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to pay wages timely during employment; (8) failure to pay all wages due upon separation of employment; (9) violation of Business & Professions Code § 17200, et seq.; and (10) PAGA penalties.

II. MOTION TO COMPEL FURTHER RESPONSES TO RPD AND STRIKE OPT-OUT NOTICES

In this motion, Plaintiff seeks an order: (1) compelling Defendant to provide further responses to her Request for Production of Documents ("RPD"), Set One, Nos. 3, 5, 7 and 9; (2) striking any and all *Belaire-West* opt-out notices obtained by Defendant; (3) approving and requiring administration of a curative notice to all putative class members; (4) restraining any and all future communications between Defendant and the putative class other than those necessary to conduct business; and (5) requiring Defendant to pay the entire fee for the second *Belaire-West* administration.

A. Further Responses to RPD

1. *Legal Standard and Dispute*

A party propounding a request for production may move for an order compelling a further response if it deems that a statement of compliance is incomplete, a representation of inability to comply is inadequate, or an objection is without merit. (Code Civ. Proc., § 2031.310, subd. (a).) The motion must set forth "specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310, subd. (b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98 ("*Kirkland*").) Good cause is established simply by a fact-specific showing of relevance. (*Kirkland, supra*, 95 Cal.App.4th at p. 98.) If good cause is shown, the burden shifts to the responding party to justify any objections. (*Ibid*.)

On September 8, 2023, Plaintiff propounded RPD, Set One, on Defendant, which consists of nine requests which seek production of the basic components of class action discovery including, as relevant here, putative class members' time and payroll records (Nos. 3 and 5) and Defendant's wage and hour policies and practices (Nos. 7 and 9). Defendant served its responses and related production on October 23, 2023. This production included the "Mathew Enterprises, Inc. Employee Handbook - Version: 05.2022," which lists ten auto dealerships on its cover: (1) Fremont Mazda; (2) Hayward Nissan; (3) Serramonte Kia; (4) Serramonte Subaru; (5) Serramonte Volkswagen; (6) Stevens Creek Chrysler Jeep Dodge; (7) Stevens Creek Kia; (8) Stoneridge Chrysler Jeep Dodge; (9) Sunnyvale Chrysler Jeep Dodge; (10) Team Volkswagen of Hayward.) The dealerships are collectively defined within the handbook as, "The Company;" and all policies within the handbook apply across all dealerships with the exception of a policy pertaining to the calculation of overtime "[f]or technicians at the Chrysler stores . . ."

Plaintiff believed Defendant's responses to RPD Nos. 3 and 5 to be deficient due to its refusal to provide time and payroll records for the class prior to completion of the *Belaire-West* process. The parties therefore met and conferred and agreed to split the costs of administration of such a notice by Phoenix Settlement Administrators ("Phoenix") and also agreed on a final version of the notice.

On November 7, 2023, Phoenix received the necessary class data from Defendant for 195 individuals and, after additional details were worked out between the parties, including a December 13, 2023 opt-out deadline for class members, mailed the notices on November 22, 2023.

On December 15, 2023, Phoenix sent a report to Plaintiff indicating that to date, 10 of the 195 individuals had submitted opt-out requests. Three days later, on December 18th, Defendant's counsel sent an email to Plaintiff's counsel and Phoenix stating, "Our client [Defendant] advised us that they sent about 80 opt outs via fed ex last week. Please confirm receipt." The following day, Plaintiff informed Defendant and Phoenix that she disputes the validity of the 80 opt-outs that Defendant mailed on behalf of its employees. On December 22, 2023, Phoenix sent a final report to Plaintiff indicating that 14 of the 195 individuals submitted timely opt-out requests during the November 22, 2023 through December 13, 2023 opt-out period.

In late December 2023, Plaintiff's counsel purportedly received an anonymous letter dated December 20, 2023, informing them that:

> On December 11th the manager at Serramonte Subaru texted all employees to come into the dealership, even if it was their day off. The manager made all employees who came in sign by DocuSign the card opting out of allowing Plaintiff's attorneys to contact them about this class action suit . . .

(See Declaration of Julia M. Toscano in Support of Plaintiff's Motion to Compel Further Responses to RPD, Set One ("Toscano Decl."), ¶ 17, Exhibit G.)

On January 9, 2024, the Court held an informal discovery conference ("IDC") regarding the subject discovery dispute. In the joint status report concerning the IDC submitted to the Court, Defendant expressed its contention that all discovery, i.e., RPD, Set One, Nos. 3, 5, 7 and 9, and the putative class for purposes of the same, should be limited to non-exempt employees who worked for Defendant at the "Serramonte Subaru" dealership. The Court subsequently issued an order setting a briefing schedule for the instant motions.

On March 29, 2024, Plaintiff propounded her first sets of form interrogatories ("FI") and requests for admission ("RFA") and a second set of SIs and RPDs on Defendant in order to understand its corporate structure and learn of any and all communications between Defendants and putative class members relating to the administration of the *Belaire-West* process. Defendant served its responses to the foregoing on May 13, 2024, and with these responses, affirmed that it is a corporation, incorporated on March 2, 1990 in San Jose, California, doing business under four fictitious business names, (1) "Serramonte Subaru" (from May 12, 2011 through the present); (2) "Serramonte Volkswagen" (from January 22, 2020 through the present); (3) "Stoneridge Chrysler Jeep Dodge" (from Mary 25, 2008 through the present); and (4) "Steven Creek Chrysler Jeep Dodge" (from November 3, 2006 through the present). It also responds (to FI) that

> [t]here were Serramonte Subaru employees who had received the opt-out notice that asked questions and there were other Serramonte Subaru employees who had not received the opt-out notice, but heard about it from co-workers who asked questions about the notice, which was provided to them upon request and they were given the option of signing or not.

And admits the following facts:

- Mathew Enterprise, Inc. does business as "Serramonte Subaru," "Serramonte Volkswagen," "Stoneridge Chrysler Jeep Dodge," and "Steven Creek Chrysler Jeep Dodge;"
- "[T]he dealerships under the dbas used the same timekeeping systems . . .[and] the same payroll systems;"
- "[T]he supervisors at Serramonte Subaru provided copies of the opt-out notice to employees who requested a copy;"
- "Serramonte Subaru employees that had questions about not receiving the opt-out notice were provided a copy upon request and were advised that they had the choice to sign or not;"

- "[T]he manager at Serramonte Subaru mailed out opt-out notices received from its employees."

(Toscano Decl., ¶¶ 20-21, Exhibits I and K.)

In its responses to the second set of SI, Defendant also states:

> After the opt-out notice was mailed out, some Serramonte Subaru employees contacted the management at the dealership to ask about the notice because they heard from their co-workers about the notice, but had not received it themselves. Several of these employees asked to be provided a copy of the opt-out notice since they did not receive one, so they were provided to any employee who had asked about the notice. Some of the employees were contacted via text message by their supervisor and provided the notice as a pdf attachment, but this was only done to employees who had made previous inquiries about the notice . . .
>
> The document was texted to employees in a pdf format and how they chose to sign was up to the employee.

(Toscano Decl., ¶ 22, Exhibit M.)

In its responses to the second set of RPD, Defendant identifies text messages exchanged between it and at least 12 employees working at the Serramonte Subaru regarding the *Belaire-West* opt-out notice, and provides the *Belaire-West* notice containing highlights that it provided to its employees. In these texts, Defendant made the following statements to its employees regarding the opt-out notices:

- "I am attaching this form if you can please take the time and read it and sign it if you chose to exclude yourself from being contacted by this legal team or if you do not want your personal information released to them. I am submitting these today so if you can please provide an answer as soon as possible that would be great . . . You can sign electronically and send it back. Thank you."
- "You received a document regarding a lawsuit that required a signature. I wanted to discuss that with you."
- "I was asked to reach out to you regarding a document we need to be signed and returned. Do you have a second? . . . It's for the lawsuit. You can sign via pdf and text back to me."
- "There is a document I need to review with you for Serramonte Subaru."

(Toscano Decl., ¶¶ 23-22 Exhibits O and P.)

2. *Discussion*

In the requests at issue, Plaintiff seeks the following:

- All documents that constitute time-keeping records as described in Labor Code §§ 226, 1174 and section 7 of the applicable IWC wage order which Defendant maintained for "non-exempt employees during the relevant time period" (No. 3);

- All documents, records and/or writings stating or evidencing all wage, overtime, and/or double-time payments made to "non-exempt employees … during the relevant time period" (No. 5);
- All training materials, employment manuals, handbooks and/or policy documents related to meal periods, rest breaks, timekeeping, compensation, and expense reimbursements which Defendant provided to "non-exempt employees in connection with their employment with [Defendant] during the relevant time period" (No. 7); and
- All training materials employment manuals, handbooks and/or other policy documents related to meal periods, rest breaks, timekeeping, compensation, and expense reimbursement which Defendant provided to "supervisors of non-exempt employees in connection with their employment with [Defendant] during the relevant time period" (No. 9).

Defendant responds identically to RPD Nos. 3 and 5, objecting that they "call[] for the production of documents that contain confidential information of third parties, who have not authorized the release of their information" and then stating "Responding party agrees that it will produce the requested documents once the Belaire West Notice process is complete and all opt-outs have been accounted for." It then responds identically to RPD Nos. 7 and 9, stating "Responding party affirms that a diligent search and a reasonable inquiry has been made to locate any such documents, and that Responding Party will produce all documents responsive to this request in its custody, possession or control. See Exhibit '6' Non-Exempt Employee policy documents."

Plaintiff maintains that further responses/production to the foregoing are warranted because Defendant has improperly limited the scope of its responses/production to its Serramonte Subaru location only. Plaintiff notes that "non-exempt employee" is defined in the RPD as "individuals, other than independent contractors, who are or were employed by YOU in the state of California and classified by YOU as non-exempt as defined by California law, the California Wage Orders, or the California Code of Regulations," and thus applies to individuals *beyond* those employed at the Serramonte Subaru.

In opposition, Defendant argues that it has properly responded to the requests based on how the term "You" is defined in the requests, which is "defendant Mathew Enterprise, Inc., and its subsidiaries, divisions, predecessors, officers, directors, employees and/or agents and all other persons acting or purporting to act on behalf of it or its subsidiaries or predecessors, including all past or present employees exercising discretion in making policies or decisions." It maintains that it has no legal or corporate relationship, as defined in the preceding sentence, with six of the entities named in the motion, namely Fremont Mazda, Hayward Nissan, Serramonte Kia, Stevens Creek Kia, Sunnyvale Chrysler Jeep Dodge, and Team Volkswagen of Heyward. Defendant continues that although it operates four branches of car dealerships - Serramonte Subaru, Serramonte Volkswagen, Stoneridge Chrysler Jeep Dodge, and Steven Creek Chrysler Jeep Doge- each of them are separately owned, have separate personnel, offices and bank accounts, and therefore the information being sought from them, except Serramonte Subaru, are irrelevant to this action.

Based on its own responses to discovery propounded by Plaintiff, Defendant affirmed that it does business as "Serramonte Subaru," "Serramonte Volkswagen," "Stoneridge Chrysler Jeep Dodge," and "Steven Creek Chrysler Jeep Dodge." As such, it is clear to the Court that the term "You" as defined in the RPD (and SI) *includes* these branches of dealerships and

therefore it is Defendant is not justified in limiting its production to Serramonte Subaru. (See *The Rossdale Group, LLC v. Walton* (2017) 12 Cal.App.5th 936, 940 [explaining that the "[u]se of a fictitious business name does not create a separate legal entity."].) Per the allegations of the FAC, the putative class is "[a]ll California citizens currently or formerly employed by Defendant[] as non-exempt employees in the State of California at any time between May 1, 2018 and the date of class certification." Consequently, the materials being sought are clearly relevant. Therefore, Defendant must produce *all* responsive documents that encompass all "non-exempt employees" employed by "Matthew Enterprise, Inc." (and its subsidiaries, divisions, predecessors, officers, directors, employees and/or agents and all other persons acting or purporting to act on behalf of it or its subsidiaries or predecessors) during the relevant time period to the requests at issue, and not those limited to Serramonte Subaru.

B. Issues Pertaining to the Opt-Out Notices

As articulated above, Plaintiff requests that the Court strike any and all *Belaire-West* opt-out notices obtained by Defendant, approve and require administration of a curative notice to all putative class members, restrain any and all future communications between Defendant and the putative class other than those necessary to conduct business and require Defendant to pay the entire fee for the second *Belaire-West* administration. The ground for Plaintiff's request is that Defendant used coercion to "fraudulently obtain" the alleged "80 opt-outs" that it personally mailed to Phoenix. In its opposition, Defendant maintains that Plaintiff has not met the evidentiary burden for such a request.

As Plaintiff notes in its motion, courts possess significant authority (and a duty) to prevent abusive or coercive precertification communications between an employer defendant and putative employee class members, as well as the authority to address the consequences of such communications and provide whatever relief is necessary so as to safeguard the rights of class members and the fairness of the proceedings. (See, *Barriga v. 99 Cents Only Stores, LLC* (2020) 51 Cal.App.5th 299, 325-328 (*Barriga*).)[1] The potential for coercive communications is especially high where, as here, there is an ongoing business relationship between the parties. (See *Barriga*, 51 Cal.App.5th at 326, citing *Camp v. Alexander* (N.D. Cal. 2014) 300 F.R.D. 617, 621.) In such circumstances, courts are to review communications for coercion with "heightened scrutiny" (*id*., citing *Patel v. 7-Eleven, Inc.* (D.Mass. 2018) 322 F.Supp.3d 244, 251) and "with eyes open to the imbalance of power and competing interests" present in such a relationship (*Barriga*, 51 Cal.App.5th at 327, quoting *Brown v. Nucor Corp.* (4th Cir. 2015) 785 F.3d 895, 914). If, after such a review, evidence is found that certain statements were obtained through coercion or abuse, a court has "broad discretion to … strike" such statements. (*Barriga*, 51 Cal.App.5th at 323.)

Plaintiff asserts that Defendant's responses to discovery, including its production of text messages that it exchanged with putative class members, establish that it used coercion to fraudulently obtain the alleged "80 opt-outs" that it personally mailed to the administrator. These include Defendant explaining that it provided the opt-out notice to employees (at Serramonte Subaru) upon request who had not received one which they were "given the option of signing or not," and that employees who had made inquiries about the notice were contacted

[1] In *Barriga*, which involved a motion for class certification, the appellate court held that the trial court was required to closely scrutinize declarations obtained by the employer class-opponent.

via text message and provided the notice as a PDF attachment and advised how they chose to sign it was up to them. In the text messages produced (which pertained to exchanges at least 12 employees), the following statements were made by Defendants regarding the opt-out notice:

- "I am attaching this form if you can please take the time and read it and sign it if you chose to exclude yourself from being contacted by this legal team or if you do not want your personal information released to them. I am submitting these today so if you can please provide an answer as soon as possible that would be great . . . You can sign electronically and send it back. Thank you."
- "You received a document regarding a lawsuit that *required a signature*. I wanted to discuss that with you."
- "I was asked to reach out to you regarding a document *we need to be signed and returned*. Do you have a second? . . . It's for the lawsuit. You can sign via pdf and text back to me."
- "There is a document I need to review with you for Serramonte Subaru."

(See Toscano Decl., Exhibits I, K, M, P [emphasis added].)

Upon review, the Court does find some of the foregoing materials problematic. First, as Plaintiff queries in its reply, if employees contacted Defendant and informed it that they never received a *Belaire-West* notice, who are these employees, why did not they receive one of the notices mailed by Phoenix, and why did Defendant not direct these inquiries to the administrator? Second, according to the parties, Phoenix mailed 195 *Belaire-West* opt-out notices directly to employees, yet Defendant *itself* ended up being responsible for mailing over 40% of the of those notices- signed- back to Phoenix. This is a significant amount of the notices at issue and the Court is concerned with the level of involvement Defendant has had in the issuance and collection of the notices. There is a reason (in addition to safeguarding the privacy rights of putative class members) that *Belaire-West* notices are administered by a third-party and sent directly to putative class members and not through their employer class-opponent. As for the text messages, while the Court acknowledges the fact that in some of them Defendant expressly advised the employee that he or she had the *option* of signing the opt-out notice, the mere fact that Defendant played *any* role in provision and then submission of the notices is worrisome. Most concerning for the Court are the communications wherein the language utilized by Defendant (via its agents) suggested to the employee that the opt-out notice *had* to be signed, i.e., "You received a document regarding a lawsuit that ***required*** *a signature*," "I was asked to reach out to you regarding a document ***we need*** *to be signed and returned*" and the document had to be reviewed *for* the dealership.

The foregoing showing raises significant concerns as to the willingness with which the returned opt-out notices were executed by putative class members, and this is without the Court even considering the anonymous letter that Plaintiff's counsel claims to have received which suggested that employees at the Serramonte Subaru dealership were "made" to sign the opt-out notice. Defendant objects to consideration of this letter, explaining that because it is unsigned and anonymously written, it is essentially impossible for it or this Court to examine its veracity and credibility. The Court has similar concerns, and therefore does not base its conclusions on the letter. Applying the heightened level of scrutiny that it is obligated to apply, the Court believes that there is sufficient evidence—the aforementioned discovery responses in concert with imbalance of power and interests inherent in the current employee-employer

relationship—that the majority of the opt-out notices received by Phoenix are tainted by Defendant's coercive conduct, whether purposeful or not. Mindful of its critical and fundamental duty to ensure these fairness of this proceeding and safeguard the due process rights of putative class members, the Court finds that as a consequence of the foregoing, the opt-notices obtained by Defendants and transmitted to the administrator must be stricken, with both a curative notice and a second *Belaire-West* notice issued. Given that the foregoing is a consequence of Defendant's action, the Court finds that it must bear the cost of the second notice.

As for future communications between Defendant and putative class members, the Court does not believe at present that any sort of formal restraint is necessary, although the Court expects that Defendant's counsel will communicate this result, and the reasons for it, to Defendant with this caution: the Court will strongly consider undertaking more formal action against Defendant if the second round of *Belaire-West* notices is marred by similar conduct. Defendant must be mindful of the nature of its future communications to putative class members regarding the *Belaire-West* notice.

In accordance with the foregoing, Plaintiff's motion is GRANTED IN PART.

C. Request for Sanctions

In connection with her motion, Plaintiff requests that the Court impose sanctions against Defendant and its counsel in the amount of $6,060. When a party successfully moves to compel further responses and production of documents to discovery requests, the Court is required to impose monetary sanctions unless it finds the party opposing the motion acted with substantial justification or other circumstances make the imposition of sanctions unjust. (Code Civ. Proc., § 2031.310, subd. (h).) The Court does not believe that Defendant's opposition to the instant motion, at least with respect to the portion seeking further responses and production, is justified and otherwise is not persuaded that the imposition of sanctions would be unjust. Consequently, it finds that sanctions are warranted.

In support of her request, Plaintiff submits the declaration of her counsel, who avers that she spent 10 hours preparing this motion at a rate of $600 per hour, and that Plaintiff incurred a $60 filing fee. The Court finds that counsel's hourly rate is reasonable, as is the amount of time spent on the motion. Accordingly, Plaintiff's request for sanctions is GRANTED.

III. MOTION TO COMPEL FURTHER RESPONSES TO SI AND STRIKE OPT-OUT NOTICES

In this motion, Plaintiff seeks an order: (1) compelling Defendant to provide further responses to her Special Interrogatories ("SI"), Set One, Nos. 1-3; (2) striking any and all *Belaire-West* opt-out notices obtained by Defendant; (3) approving and requiring administration of a curative notice to all putative class members; (4) restraining any and all future communications between Defendant and the putative class other than those necessary to conduct business; and (5) requiring Defendant to pay the entire fee for the second *Belaire-West* administration.

A. Further Responses to SI

A party propounding interrogatories may move for an order compelling further responses if it deems an answer is evasive or incomplete and/or an objection is without merit or too general. (Code Civ. Proc., § 2030.300, subd. (a).) The statutes do not require any showing of good cause in support of such a motion. (See *id*., § 2030.300; see also *Coy v. Superior Court* (1962) 58 Cal.2d 210, 220–221 ("*Coy*").) The burden is on the responding party to justify any objections or failure to fully answer.[2] (*Coy, supra*, 58 Cal.2d at pp. 220–221.)

The SI at issue ask Defendant to:

- List the full name, last known addresses, telephone numbers, email addresses, dates of employment, job titles, and locations of employment of each "non-exempt employee who worked for [Defendant] at any time during the relevant time period" (No. 1);
- State the total number of "non-exempt employees employed by [Defendant] during the relevant time period" (No. 2); and
- List all job titles or job positions held by "non-exempt employees during the relevant time period" (No. 3.)

In response to SI No. 1, Defendant objects that the interrogatory "calls for the disclosure of constitutionally protected confidential information of third parties and then states "Responding party agrees that it will provide the requested information once the Belaire West Notice process is completed and all opt-outs have been accounted for."

In response to SI No. 2, Defendant sets forth the number of individuals for each year from 2019 to 2023, and in response to SI No. 3, Defendant responds "[s]ales, detailer, porter, service advisor, service technician, shuttle driver, utility, DMV clerk, closer, contracts desk, receptionist, finance manager, parts counter, lube tech, assistant office manager, accounting clerk, accounts payable, parts driver, cashier."

Plaintiff asserts, as she did in her companion motion to compel further responses to RPD, that further responses to these SI are warranted because Defendant has improperly limited them to Serramonte Subaru. As discussed above, this is improper. Consequently, further responses to these SI must be provided with respect to all "non-exempt employees" employed by "Matthew Enterprises, Inc." (and its subsidiaries, divisions, predecessors, officers, directors, employees and/or agents and all other persons acting or purporting to act on behalf of it or its subsidiaries or predecessors) during the relevant time period.

The remainder of this motion is identical to the preceding motion, and Plaintiff requests the same amount of monetary sanctions be imposed. Given that this motion and the preceding motion are substantively very similar, the Court does not believe Plaintiff is entitled to the same amount of sanctions for the former. The Court will, however, award sanctions based on 2 hours of work at $600 per hour and a $60 filing fee for a total award of $1,260. Accordingly, Plaintiff's request for sanctions is GRANTED IN PART.

[2] The pertinent facts of the parties' dispute are discussed in connection with the motion to compel further responses to RPD.

IV. CONCLUSION

Consistent with the foregoing discussion, Plaintiff's motions to compel further responses to RPD and SI, Set One, are GRANTED IN PART.

Plaintiff's request for sanctions in connection with the motion to compel further responses to RPD is GRANTED and her request for sanctions in connection with the motion to compel further responses to SI is GRANTED IN PART.

Defendant must provide further responses and pay the sanctions to Plaintiff no later than 30 days from the date the order is filed.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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

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

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