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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DATE: NOVEMBER 8, 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	22CV407007	Daniels v. Barton, et al. (Netflix, Inc.) (Securities Litigation) (LEAD Case; Consolidated With Case No. 22CV000029)	See Line 1 for tentative ruling.
LINE 2	21CV392732	Valdez v. Christopher Ranch, LLC (Class Action/PAGA)	See Line 2 for tentative ruling.
LINE 3	23CV410002	McElrath v. Aya Healthcare Services, Inc., et al. (Class Action/PAGA)	See Line 3 for tentative ruling.
LINE 4	16CV292208	Corinthian International Wage and Hour Cases (JCCP4886)	See Line 4 for tentative ruling.
LINE 5	21CV386656	Alvarez-King v. Bill Brown Construction Company (Class Action/PAGA)	See Line 5 for tentative ruling.
LINE 6	20CV363254	Altamirano v. Huong, et al.	See Line 6 for tentative ruling.

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LINE 7	19CV359262	Hightower v. Compass Group USA, Inc., et al. ("Hightower I")	See Line 7 for tentative ruling.
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: Daniels v. Barton, et al. (Netflix, Inc.) (Securities Litigation) (LEAD Case; Consolidated With Case No. 22CV000029)
Case No.: 22CV407007

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 8, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This is a consolidated shareholder derivative suit by shareholders of nominal defendant Netflix, Inc. ("Netflix"). The consolidated cases are *Martin Daniels v. Richard Barton, et al.* (Santa Clara County Superior Court, Case No. 22CV4070007) ("Daniels Action") and *Jessica Perry v. Richard Barton, et al.* (Santa Clara County Superior Court, Case No. 22CV000029) ("Perry Action").

On November 7, 2022, plaintiff Martin Daniels ("Daniels") filed a Stockholder Derivative Complaint for Breach of Fiduciary Duty, Unjust Enrichment, and Waste of Corporate Assets ("Daniels Complaint") against Netflix and certain directors and officers of Netflix.[1] Daniels alleged that the individual defendants caused Netflix to issue materially false and misleading statements in quarterly financial results announcements, its Form 8-K filing, and earnings calls from January through October 2021. (Daniels Complaint, ¶¶ 46-55.) In addition, in January 2022, the individual defendants caused Netflix to make materially misleading statements in a letter announcing quarterly financial results, a conference call, and its Form 10-K filing. (*Id.* at ¶¶ 58-59, 61-62, 68.) Daniels alleged that the subject statements were misleading because they did not disclose that Netflix was experiencing difficulty retaining customers, Netflix's growth was decelerating, and Netflix's financial results were being adversely affected. (*Id.* at ¶¶ 46-69.) The truth about Netflix's financial condition gradually emerged in 2022. (*Id.* at ¶¶ 58-65.) Daniels further alleged that as a result of the false and misleading statements and failures to disclose, Netflix insiders were able to sell stock at artificially inflated share prices not truly reflective of the company's value. (*Id.* at ¶¶ 70-72.)

[1] The fifteen individual defendants are Richard Barton, Rodolphe Belmer, Mathias Dopfner, Timothy Haley, Reed Hastings, David Hyman, Jay Hoag, Leslie Kilgore, Strive Masiyiwa, Ann Mather, Spencer Neumann, Gary Peters, Ted Sarandos, Brad Smith, and Anne Sweeney (collectively, "Individual Defendants").

On December 30, 2022, plaintiff Jessica Perry ("Perry") filed a Verified Shareholder Derivative Complaint ("Perry Complaint") against Netflix and the Individual Defendants. Perry alleged that the individual defendants caused Netflix to make materially misleading statements in quarterly financial results announcements, earnings calls, its Proxy Statement, and its Form 10-Q filing from January through October 2021. (Perry Complaint, ¶¶ 3, 53-74.) Perry alleged that the subject statements were misleading because they did not disclose that Netflix was experiencing difficulty retaining customers, Netflix's growth was decelerating, Netflix was losing subscribers, and Netflix's financial results were being adversely affected. (*Id.* at ¶ 74.) Perry further alleged that as a result of the false and misleading statements and failures to disclose, Netflix insiders were able to sell stock at artificially inflated share prices not truly reflective of the company's value. (*Id.* at ¶¶ 75-77.)

On December 1, 2022, Daniels filed a Notice of Related Case, notifying the court of the existence of a related consolidated federal shareholder class action, *In re Netflix, Inc. Securities Litigation* (United States District Court, Northern District of California, Case No. 4:22-cv-02672-JST) ("Federal Securities Class Action"). In his Notice of Related Case, Daniels asserts that the Federal Securities Class Action involves the same parties and is based on the same or similar claims and arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.

On January 19, 2023, Daniels filed a Notice of Related Case, notifying the court of the existence of a related consolidated federal shareholder derivative action, *In re Netflix, In Stockholder Derivative Litigation* (United States District Court, Northern District of California, Lead Case No. 22-cv-04134-JST) ("Federal Derivative Action"). In his Notice of Related Case, Daniels asserts that the Federal Derivative Action involves the same parties and is based on the same or similar claims and arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.

On April 4, 2023, the court consolidated the Daniels Action and the Perry Action for all purposes.

On July 31, 2023, Daniels and Perry (collectively, "Plaintiffs") filed a Consolidated Verified Shareholder Derivative Complaint for Breach of Fiduciary Duty, Unjust Enrichment, Waste of Corporate Assets, Indemnification, Aiding and Abetting, and Gross Mismanagement ("Consolidated Complaint") against Netflix and the Individual Defendants (collectively, "Defendants").

Defendants now move to stay this case pending resolution of the Federal Securities Class Action and the Federal Derivative Action. Plaintiffs oppose the motion.

II. REQUEST FOR JUDICIAL NOTICE

In connection with their moving papers, Defendants ask the court to take judicial notice of: (1) the Amended Class Action Complaint for Violations of the Federal Securities Laws filed in the Federal Securities Class Action on December 12, 2022; (2) the Verified Consolidated Stockholder Derivative Complaint filed in the Federal Derivative Action on December 21, 2022; (3) the Order to Show Cause Why Case Should Not Be Stayed issued in the Federal Derivative Action on January 4, 2023; and (4) the Stipulation and Order Staying the Action entered in the Federal Derivative Action on January 27, 2023.

The items are proper subjects of judicial notice as they are court records relevant to the pending motion. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records]; see also *People v. Woodell* (1998) 17 Cal.4th 448, 455 [Evid. Code, § 452, subd. (d) permits the trial court to "take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact."].)

Accordingly, Defendants' request for judicial notice is GRANTED.

III. LEGAL STANDARD

Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency. (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489; *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141.) California Code of Civil Procedure section 410.30 subdivision (a) provides, "When a court upon motion of a party

or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just."

> [W]hen a federal action has been filed covering the same subject matter as is involved in a California action, the California court has the discretion but not the obligation to stay the state court action. [Citations.] [¶] 'In exercising its discretion the court should consider the importance of discouraging multiple litigation designed solely to harass an adverse party, and of avoiding unseemly conflicts with the courts of other jurisdictions. It should also consider whether the rights of the parties can best be determined by the court of the other jurisdiction because of the nature of the subject matter, the availability of witnesses, or the stage to which the proceedings in the other court have already advanced.' [Citation.] The California Supreme Court also has isolated another critical factor favoring a stay of the state court action in favor of the federal action…– the federal action is pending in California not some other state. [Citation.]

(*Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co*. (1993) 15 Cal.App.4th 800, 804.)

IV. DISCUSSION

Defendants submit that the two putative shareholder class action lawsuits which form the basis of the Federal Securities Class Action—*Pirani v. Netflix, Inc., et al.* (Case No. 4:22-cv-02672-JST) and *Cleveland Bakers and Teamsters Pension Fund v. Netflix, Inc., et al.* (Case No. 4:22-cv-03164)—were filed in the United States District Court for the Northern District of California on May 3 and 31, 2022. The cases were consolidated on October 11, 2022. The lead plaintiff in the consolidated action filed an Amended Class Action Complaint for Violations of the Federal Securities Laws on December 12, 2022. The Federal Securities Class Action is brought on behalf of "all persons and entities that purchased or otherwise acquired Netflix common stock or call options, or sold put options, between January 19, 2021 and April 19, 2021, inclusive." (RJN, Ex. 1.) According to Defendants, the lead plaintiff alleges that the defendants violated the federal securities laws by making false and misleading statements and/or failing to disclose certain information about Netflix's business and prospects, including that growth allegedly was severely hindered by account sharing non-members.

With respect to the Federal Derivative Action, Defendants submit that three of the underlying shareholder derivative actions—*Taratoot v. Barton, et al.* (Case No. 3:22-cv-04134-JST), *Ormerod v. Barton, et al.* (Case No. 4:22-cv-04700-JST), and *Lehmann v. Barton, et al.* (Case No. 5:22-cv-05269-JST)—were filed in the United States District Court for the

Northern District of California on July 14, August 16, and September 15, 2022. Those actions were consolidated and the plaintiffs filed a Verified Consolidated Stockholder Derivative Complaint on December 21, 2022. According to Defendants, the plaintiffs assert claims for alleged violations of Section 14(a) of the Securities Exchange Act, breaches of fiduciary duties insider selling, waste, gross mismanagement, unjust enrichment, and aiding and abetting against the Individual Defendants. Defendants state that the claims are based on allegations that the Individual Defendants misled investors about Netflix's business, operations, and prospects by, among other things, allegedly failing to disclose that account sharing by customers and increased competition were significant headwinds.

In response to an order to show cause issued by the federal court, the parties in the Federal Derivative Action entered into a stipulation staying the Federal Derivative Action pending final resolution of the motion to dismiss the Federal Securities Class Action.

According to Defendants, another shareholder derivative action was filed in the United States District Court for the District of Delaware on February 3, 2023, subsequently transferred to the Northern District of California, consolidated with the Federal Derivative Action, and therefore stayed. A fifth shareholder derivative action—*McNeil v. Barton, et al.* (Case No. 5:23-cv-04264-SVK)—was filed in the Northern District of California on August 22, 2023 and recently consolidated with the Federal Derivative Action. In its order, the federal court stayed the Federal Derivative Action until after the court's ruling on the motion to dismiss filed in the Federal Securities Class Action.

Defendants argue that the court should stay this action pending the outcome of the Federal Derivative Action and the Federal Securities Class Action because the federal actions involve substantially identical factual and legal issues that could lead to inconsistent findings or rulings on common issues like demand futility. Defendants contend a stay would preserve resources and avoid unnecessary costs that would be imposed on Defendants if they were forced to simultaneously litigate this action in tandem with the federal actions. Defendants further argue that a stay is necessary to prevent prejudice to Netflix because the federal actions are substantially similar and simultaneous litigation would force Netflix to prosecute the same

allegations of wrongdoing here that it is defending itself against in the Federal Securities Class Action.

In opposition, Plaintiffs argue the motion to stay should be denied because the parties, causes of action, and scope of the allegations in this action differ in material ways from the Federal Securities Class Action. Plaintiffs contend that Netflix would not suffer any real prejudice as Defendants have not shown that they would be unable to conveniently attend trial or unable to produce any witnesses or other evidence that would be available. As for the Federal Derivative Action, Plaintiffs argue that little has been accomplished in that case, and there is no risk of inconsistent rulings as the Federal Derivative Action is stayed. Plaintiffs assert that even though the Federal Derivative Action is broader than this lawsuit, the federal court may ultimately decline to exercise its supplemental jurisdiction over the state law claims alleged in the Federal Derivative Action. Plaintiffs further contend that they and Netflix would be prejudiced by a stay as witnesses will scatter, documents will be lost, and memories will inevitably fade.

The court finds persuasive Defendants' position that the instant consolidated action is substantially identical to both the Federal Derivative Action and the Federal Securities Class Action. All of these actions are based on alleged misrepresentations and omissions in Netflix's public documents, earnings calls, and regulatory filings beginning in January 2021. Particularly with regard to the Federal Derivative Action, there is an obvious potential for conflicting rulings between the two courts on common issues like demand futility and the duties of the Netflix Board. The limited stay of the Federal Derivative Action does not alter this analysis as it is in place only until the federal court rules on the motion to dismiss filed in the Federal Securities Class Action; notably, the motion to dismiss has been under submission for several months and a decision on that matter is likely imminent. Furthermore, Daniels has filed a Notice of Related Case on two separate occasions in which he admitted that both the Federal Derivative Action and the Federal Securities Class Action involve the same parties and are based on the same or similar claims and arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact. Finally, a "critical" *Caifa* factor that favors a stay is that the

Federal Derivative Action and the Federal Securities Class Action are both in California, not another state. Based on these factors, the court finds that the interests of justice support the requested stay of the instant consolidated action pending resolution of the Federal Derivative Action and the Federal Securities Class Action.

Accordingly, Defendants' motion to stay 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 2

Case Name: Valdez v. Christopher Ranch, LLC (Class Action/PAGA)
Case No.: 21CV392732

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 8, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

II. INTRODUCTION

This is a putative class and representative action arising out of various alleged Labor Code violations. The operative First Amended Complaint ("FAC"), filed on April 29, 2022, sets forth the following causes of action: (1) Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7 and 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code § 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and (9) Civil Penalties Under PAGA [Cal. Lab. Code §§ 2699, et seq.].

On May 20, 2022, the court entered an order dismissing the class claims without prejudice.

On November 11, 2022, Plaintiff filed a demand for arbitration with JAMS, submitting her individual claims to arbitration.

On January 12, 2023, the court entered the Stipulation to Stay Action Pending Arbitration and Order ("Stipulation and Order"), which stayed the PAGA claim pending the California Supreme Court's anticipated decision in Adolph v. Uber Technologies, Inc. (2023) 14 Cal.5th 1104 (*Adolph*).

Now before the court is the motion by defendant Christopher Ranch, LLC ("Defendant") for an order maintaining the stay of the representative PAGA claim pending

resolution of the arbitration of plaintiff Oralia Arvizu Valdez's ("Plaintiff") individual PAGA claim. Plaintiff does not oppose the motion.

II. REQUEST FOR JUDICIAL NOTICE

In connection with its moving papers, Defendant asks the court to take judicial notice of: (1) the FAC; (2) the court order entered May 20, 2022; (3) the Stipulation and Order entered on January 12, 2023; and (4) orders entered in Plaintiff's arbitration on August 28 and October 3, 2023.

The first, second, and third items are proper subjects of judicial notice as they are court records relevant to the pending motion. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records]; see also *People v. Woodell* (1998) 17 Cal.4th 448, 455 [Evid. Code, § 452, subd. (d) permits the trial court to "take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact."].)

The arbitration orders are proper subjects of judicial notice under Evidence Code section 452, subdivision (h). (See Evid. Code § 452, subd. (h) [courts may take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."].)

Accordingly, Defendant's request for judicial notice is GRANTED.

III. LEGAL STANDARD

A court ordinarily has inherent power, in its discretion, to stay proceedings when a stay will accommodate the ends of justice. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141.) "As the court in *Landis v. North American Co.* (1936) 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 explained, 'the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.' " (*Ibid.*)

Moreover, "Code of Civil Procedure section 1281.4 states that upon " 'order[ing] arbitration of a controversy which is an issue involved in an action," the court should "stay the action.' " (*Adolph, supra,* 14 Cal.5th at p. 1124.)

IV. DISCUSSION

Defendant argues the court should stay Plaintiff's representative PAGA claim pending the conclusion of the arbitration of Plaintiff's individual PAGA claim. Defendant notes that Plaintiff is currently arbitrating her individual PAGA claim and the arbitrator holds the exclusive jurisdiction to determine if Plaintiff suffered any alleged Labor Code violations. Defendant asserts that lifting the stay and permitting Plaintiff to litigate, and requiring Defendant to defend, the merits of the representative PAGA claim simultaneous to the arbitration would functionally operate as an end-run around arbitration and waste judicial resources.

Here, Plaintiff does not dispute any of the arguments raised in support of the instant motion. Furthermore, a stay of the representative PAGA claim is warranted under Code of Civil Procedure section 1281.4 as Plaintiff's individual PAGA claim is the subject of a pending arbitration.

Accordingly, Defendant's motion to stay 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 3

Case Name: McElrath v. Aya Healthcare Services, Inc., et al. (Class Action/PAGA)
Case No.: 23CV410002

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 8, 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 and representative action arising out of various alleged Labor Code violations. The operative First Amended Complaint ("FAC"), filed on March 24, 2023, sets forth the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Owed; (3) Failure to Provide Lawful Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Timely Pay Wages During Employment; (6) Failure to Timely Pay Wages Owed Upon Separation From Employment; (7) Failure to Reimburse Necessary Expenses; (8) Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions; (9) Violation of the Unfair Competition Law; and (10) Civil Penalties Pursuant to Private Attorneys' General Act, Labor Code section 2699, et seq. ("PAGA").

On May 16, 2023, the court entered an order dismissing the class claims without prejudice.

Now before the court is the motion by defendant Aya Healthcare Services, Inc. ("Aya") for an order staying the representative PAGA claim pending resolution of arbitration of plaintiff Robin Leigh McElrath's ("Plaintiff") individual PAGA claim. Plaintiff does not oppose the motion.

II. REQUEST FOR JUDICIAL NOTICE

In connection with its moving papers, Aya asks the court to take judicial notice of: (1) a California trial court order entered in an unrelated case; and (2) an order issued by an arbitrator entered in an unrelated case.

First, the California trial court order is not a proper subject of judicial notice. Unpublished California opinions "must not be cited or relied on by a court or a party in any other action." (Cal. Rules of Ct., rule 8.1115(a); see also *Schachter v. Citigroup, Inc*. (2005)

126 Cal.App.4th 726, 738 [trial court ruling has no precedential value].) The court admonishes Aya not to cite unpublished California trial court orders as persuasive authority in the future.

Next, the order issued by an arbitrator in an unrelated case is not a proper subject of judicial notice as it is irrelevant to the material issue before the court. (See *Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2 [the court may properly take judicial notice of court records if those records are deemed to be necessary and relevant to the disposition of the motion].)

Accordingly, Aya's request for judicial notice is DENIED.

III. LEGAL STANDARD

A court ordinarily has inherent power, in its discretion, to stay proceedings when a stay will accommodate the ends of justice. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141.) "As the court in *Landis v. North American Co*. (1936) 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 explained, 'the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.' " (*Ibid*.)

Moreover, "Code of Civil Procedure section 1281.4 states that upon " 'order[ing] arbitration of a controversy which is an issue involved in an action," the court should "stay the action.' " (*Adolph, supra,* 14 Cal.5th at p. 1124.)

IV. DISCUSSION

Aya argues the court should stay Plaintiff's representative PAGA claim pending the conclusion of the arbitration of Plaintiff's individual PAGA claim. Aya states that Plaintiff recently submitted a demand for arbitration to JAMS on August 24, 2023, asserting her PAGA claims. Aya asserts that permitting Plaintiff to litigate, and requiring Aya to defend, the merits of the representative PAGA claim simultaneous to the arbitration would functionally operate as an end-run around arbitration and waste judicial resources.

Here, Plaintiff filed a notice of non-opposition, stating that she does not oppose the request to stay her representative PAGA claim. Furthermore, a stay of the representative PAGA claim is warranted under Code of Civil Procedure section 1281.4 as Plaintiff's individual PAGA claim is the subject of a pending arbitration.

Accordingly, Aya's motion to stay 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 4

Case Name: Corinthian International Wage and Hour Cases (JCCP4886)
Case No.: 16CV292208

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 8, 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* Action.

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") moved for preliminary approval of class action settlement.

On September 13, 2023, the court adopted its tentative ruling continuing the motion for preliminary approval of settlement to November 8, 2023. The court explained that there was a problem with the structure of the payment calculations and the parties needed to modify the settlement agreement to provide for two separate calculations and payments (i.e., one for class claims and one for the PAGA claim). The court also asked the parties to submit an amended class notice.

On October 25, 2023, Plaintiffs' counsel filed a supplemental declaration, which contains the parties' Second Amendment to Class Action Settlement Agreement ("Second Settlement Amendment") and an amended class notice.

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

Upon review, the court finds that the Declaration of Scott L. Gordon in Support of Plaintiffs' Amended Motion for Preliminary Approval of Class Action Settlement, the Second Settlement Amendment, and the amended class notice adequately address the concerns raised in the prior court order. Specifically, the parties have now amended 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. Additionally, the amended class notice reflects the changes made to the settlement agreement regarding the structure of the payment calculations, clarifies 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, and includes the requested language regarding the final approval hearing.

Accordingly, the motion for preliminary approval of the class action settlement is GRANTED. The final approval hearing is set for May 15, 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 5

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 November 8, 2023, at 9:00 a.m. in Department 19. The court now issues its tentative ruling as follows:

IV. 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") moved for preliminary approval of the settlement.

On September 13, 2023, the court adopted its tentative ruling continuing the motion for preliminary approval of settlement to November 8, 2023. The court requested the parties identify a new *cy pres* recipient in compliance with Code of Civil Procedure section 384. The court further explained that the release of claims by PAGA Members was unclear because the terms "Released PAGA Claims" and "Released PAGA Period" were not defined in the settlement agreement. The court directed the parties to meet and confer regarding the amended of the settlement agreement to clarify the PAGA release. Lastly, the court asked the parties to make several changes to the class notice.

On October 27, 2023, Plaintiff's counsel filed a supplemental declaration, which contains the First Amended Joint Stipulation of Class Action and PAGA Action Settlement and Release ("Amended Settlement Agreement") and an amended class notice.

V. 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.)

VI. DISCUSSION

Upon review, the court finds that the Supplemental Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval ("Supp. Moon Dec."), the Amended Settlement Agreement, and the amended class notice generally address the concerns raised in

the prior court order. Specifically, the parties have now identified Legal Aid at work as the *cy pres* recipient. The court approves the *cy pres* recipient. Next, the parties have amended the settlement agreement to terms "Released PAGA Claims" and "Released PAGA Period." In light of these new definitions, PAGA group members now agree to release PAGA claims that were alleged, or could have been alleged, based on the facts alleged in this action. Additionally, the amended class notice reflects that the parties made most of the changes requested by the court.

However, the "Object" box on page 2 of the notice still states that class members wishing to object to the settlement "must" submit a written objection. (Supp. Moon Dec., Ex. 3.) The notice must be amended to delete the word "must." The second amended notice should instead state that class members *may* object in writing. In addition, the notice must 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 amended class notice, as currently drafted, suggests that only remote appearances are permitted. The amended notice does not state that in person appearances are also permitted. The second amended class notice shall be provided to the court for approval prior to mailing.

Accordingly, the motion for preliminary approval of the class action settlement is GRANTEED, subject to approval of the second amended class notice. The final approval hearing is set for May 15, 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 6

Case Name: Altamirano v. Huong, et al.
Case No.: 20CV363254

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 8, 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 Private Attorneys General Act ("PAGA") action arising out various alleged wage and hour violations. The operative complaint, filed on February 7, 2020, sets forth the following causes of action: (1) Failure to Provide Meal Periods of Pay Meal Period Premiums (Labor Code §§ 204, 223, 226.7, 512 and 1198); (2) Failure to Authorize and Permit Rest Breaks or Pay Rest Break Premiums (Labor Code §§ 204, 223, and 226.7); (3) Failure to Pay Overtime Wages (Violation of California Wage Order and Labor Code §§ 204, 223, 510, 1194, 1197 and 1198); (4) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226); (5) For Waiting Time Penalties (Labor Code §§ 201, 202, 203); (6) Recovery under PAGA (Labor Code §§ 2699); and (7) Unfair Competition (Cal. Bus. & Prof. Code §§ 17200 et seq.).

The parties have reached a settlement. Plaintiff Jose Luis Venancio Altamirano ("Plaintiff") moved for preliminary approval of the settlement.

On May 17, 2023, the court adopted its tentative ruling, granting the motion for preliminary approval subject to approval of the amended class notice.

Subsequently, Plaintiff's counsel filed an amended class notice. The court entered an order approving the amended class notice on June 6, 2023.

Plaintiff now moves for final approval of the settlement. The motion is unopposed.

VIII. 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.)

IX. DISCUSSION

> The action has been settled on behalf of the following class:
> [A]ll individuals who worked as non-exempt or hourly employees for Com Tam Thien Huong II […] in California at any time between the Class Period.

The Class Period is defined as the period from February 7, 2016 through December 7, 2022. The class includes a subset of aggrieved employees under PAGA, who are defined class members who were employed during the PAGA Period of February 7, 2019 through December 7, 2022.

As discussed in connection with preliminary approval, defendants Com Tam Thien Huong II and Hien C. Nguyen (collectively, "Defendants") will pay a gross, non-reversionary amount of $400,000. The gross settlement amount includes attorney fees not to exceed $133,333.33 (33 1/3 period of the gross settlement amount), litigation costs up to $10,000, an incentive award not to exceed $7,500, settlement administration costs (estimated to be no more than $7,500), and a PAGA Payment of $40,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be distributed to aggrieved employees). Employer-side payroll taxes will also be deducted from the settlement.

The net settlement amount will be distributed to class members pro rata based on the number of workweeks worked during the class period. Funds from checks that remained uncashed 180 days after issuance will be sent to Legal Aid at Work as a *cy pres* recipient.

In exchange for the settlement, class members who do not opt out will release Defendants, and related persons and entities, from any and all claims of any nature and description whatsoever, that were alleged in the Complaint or could have been asserted based on the factual allegations in the action. The aggrieved employees will release Defendants, and related persons and entities, for any claims for penalties under PAGA based on claims that were alleged in the Complaint or could have been asserted based on the factual allegations in the action. Plaintiff also agrees to a general release of claims.

On June 28, 2023, the settlement administrator mailed notice packets to 166 class members. (Declaration of Kevin R. Allen in Support of Memorandum of Points and Authorities in Support of Unopposed Motion for Final Approval ("Allen Dec."), Ex. 2 Declaration of Taylor Mitzner With Respect to Notice and Settlement Administration ("Mitzner Dec."), ¶ 5.) Ultimately, one notice packet was deemed undeliverable. (*Id.* at ¶ 7.) As of October 3, 2023, there were no objections and no requests for exclusion. (*Id.* at ¶¶ 8-9.) The highest individual settlement share to be paid is approximately $6,543, the lowest individual settlement share to be paid is approximately $36.66, and the average individual settlement share to be paid is approximately $1,216.37. (*Id.* at ¶ 13.)

The court has concerns regarding the adequacy of the notice. Plaintiff previously advised the court in connection with the motion for preliminary approval of settlement that

there were approximately 168 class members. But notice packets were only mailed to 166 class members. Plaintiff does not explain this discrepancy. It is unclear whether there are only 166 class members or whether notice was not provided to the 2 additional class members. In light of the foregoing, a brief continuance of this matter is warranted. Plaintiff is directed to provide a supplemental declaration clarifying why notice packets were only mailed to 166 class members.

Plaintiff requests a service award in the amount of $7,500. The class representative has filed a declaration specifically detailing his participation in the action. Plaintiff states that he spent approximately 80 hours on the case, including communicating with class counsel, searching for and providing documents to class counsel, searching for witnesses, responding to requests for information, taking calls for former co-workers to discuss the case, and reviewing documents. (Declaration of Daniel A. Menendez in Support of Unopposed Motion for Final Approval ("Menendez Dec."), Ex. A Declaration of Jose Luis Venancio Altamirano in Support of Unopposed Motion for Final Approval, ¶¶ 6-16.)

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 seeks attorney fees not to exceed $133,333.33 (33 1/3 percent of the gross settlement amount). Plaintiff's counsel provides evidence demonstrating a total lodestar of $201,200. (Allen Dec., ¶ 18 & Ex. 3; Menendez Dec., ¶ 26 & Ex. B.) This results in a negative multiplier. The fees requested are reasonable as a percentage of the common fund and are approved.

Plaintiff's counsel also requests costs of $6,880.67, which is less than the $10,000 provided for in the settlement agreement. Plaintiff's counsel provides evidence of incurred costs in the amount of $6,880.67 and, therefore, the costs are approved. (Allen Dec., Ex. 5;

Menendez Dec., ¶ 26 & Ex. C.) The settlement administration costs of $7,250 are also approved. (Mitzner Dec., ¶ 15 & Ex. B.)

Accordingly, the motion for final approval of the class and representative action settlement is CONTINUED to December 13, 2023, at 1:30 p.m. in Department 19. Plaintiff is ordered to file a supplemental declaration no later than November 27, 2023, clarifying why notice packets were only mailed to 166 class members.

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: Hightower v. Compass Group USA, Inc., et al. ("Hightower I")
Case No.: 19CV359262

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 8, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

X. INTRODUCTION

This putative class action—*Sherri Hightower v. Compass Group USA, Inc., et al.* (Santa Clara County Superior Court, Case No. 19CV359262) ("*Hightower I*")—is brought by plaintiff Sherri Hightower ("Hightower") against defendants Compass Group USA, Inc. and Levy Premium Foodservice Limited Partnership ("Levy"), erroneously sued as Levy Premium Foodservice, Inc., (collectively, "Defendants") and arises out various alleged wage and hour violations. The operative First Amended Complaint, filed on December 10, 2019, sets forth the following causes of action: (1) Failure to Pay All Wages Owed Including Overtime; (2) Unlawful Deductions; (3) Failure to Provide Lawful Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Timely Pay Wages Owed Upon Separation From Employment; (6) Failure to Furnish Accurate Itemized Wage Statements; and (7) Violation of the Unfair Competition Law.

On February 4, 2020, Hightower filed a related action—*Sherri Hightower v. Compass Group USA, Inc., et al.* (Santa Clara County Superior Court, Case No. 20CV362751) ("*Hightower II*")—against Defendants for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"). The representative action arises out of allegations that Defendants failed to accurately calculate and pay all wages owed, failed to provide lawful meal periods, failed to provide compensation when lawful meal periods were not provided, failed to authorize and permit lawful rest periods, failed to provide compensation when lawful rest periods were not provided, failed to timely pay all wages owed, made unlawful deductions from earned wages, failed to provide accurate itemized wage statements, and failed to keep accurate records.

Several similar actions were subsequently filed in state and federal court. On February 14, 2020, Paula Davidson ("Davidson") filed a putative class action—*Paula Davidson v. Levy Premium Foodservice Limited Partnership, et al.* (Los Angeles County Superior Court, Case No. 20STCV005751) ("*Davidson Action*")—alleging claims for failure to pay all wages in violation of Labor Code sections 204, 1194, 1194.2, 1197, and 1197.1, failure to pay all wages owed at termination in violation of Labor Code sections 201-203, failure to furnish itemized wage statements upon payment of wages in violation of Labor Code section 226, failure to reimburse expenses in violation of Labor Code section 2802, and violations of Business and Professions Code section 17200, et seq. ("UCL")

On March 20, 2020, Mitchell Berbera ("Berbera") filed a class action complaint in *Mitchell Berbera v. Levy Premium Foodservice Limited Partnership, et al.* (Los Angeles County Superior Court, Case No. 20STCV11273) ("*Berbera Action*"), alleging causes of action for failure to pay overtime wages, failure to provide rest and meal periods, failure to reimburse business expenses, failure to pay vested vacation wages, failure to timely pay wages, failure to maintain payroll records, failure to provide accurate itemized wage statements, and violation of the UCL. Berbera later filed in amended complaint, which added a PAGA claim.

On April 20, 2020, William Atkins ("Atkins") filed a putative class and representative action—*William Atkins v. Levy Restaurant Holdings, Inc., et al.* (Los Angeles County Superior Court, Case No. 20STCV15321) ("*Atkins Action*")—alleging claims for failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods in violation of Labor Code sections 226.7, 512, 558, and 1198, failure to keep accurate payroll records in violation of Labor Code section 226, failure to pay waiting time penalties in violation of Labor Code sections 203 and 558, failure to pay wages upon termination in violation of Labor Code sections 201 and 202, failure to provide rest periods in violation of Labor Code section 226.7, failure to reimburse employee expenses in violation of the UCL, and violation of PAGA.

On June 25, 2020, Sharon Peskett ("Peskett") filed *Sharon Peskett v. Levy Premium Foodservice Limited Partnership, et al.* (United States District Court of the Central District of California, Case No 2:20-cv-05394) ("*Peskett Action*"). The class and representative action complaint alleges causes of action for failure to pay all wages in violation of Labor Code

sections 204, 1194, 1194.2, 1197, and 1197.1, failure to furnish accurate itemized wage statement upon payment of wages in violation of Labor Code section 226, improper service charges in violation of the UCL, intentional interference with advantageous relations, breach of contract, unjust enrichment, violations of the UCL, civil penalties for violation of PAGA, and violations of the Fair Labor Standards Act ("FLSA").

Lastly, on or about February 5, 2021, Katherine Modica Mendoza ("Mendoza") submitted a notice to the Labor Workforce Development Agency ("LWDA") joining in the claims asserted in *Hightower I* and *Hightower II* and providing additional details regarding those claims. Mendoza also asserted several new claims under the Labor Code and applicable wage order.

Hightower, Davidson, Berbera, Atkins, Peskett, and Mendoza (collectively, "Settling Parties") reached a settlement with Defendants and moved for an order preliminarily approving the settlement. In connection with their motion, Settling Parties sought leave to file a Consolidated Class Action Complaint in *Hightower I* adding Davidson, Berbera, Atkins, Peskett, and Mendoza as plaintiffs to the action and alleging the causes of action, facts, and theories set forth in each of their individual complaints on behalf of themselves and all other similarly situated employees of Defendants. Specifically, the proposed Consolidated Class Action Complaint set forth causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Accurately Pay Overtime; (3) Unlawful Deductions; (4) Failure to Provide Lawful Meal Periods; (5) Failure to Authorize and Permit Rest Periods; (6) Failure to Timely Pay Wages During Employment; (7) Failure to Timely Pay Wages Owed Upon Separation From Employment; (8) Failure to Furnish Accurate Itemized Wage Statements; (9) Failure to Reimburse Necessary Expenses; (10) Failure to Pay Vested Vacation Wages; (11) Improper Service Charges; (12) Intentional Interference with Advantageous Relations; (13) Breach of Contract; (14) Unjust Enrichment; (15) Violations of the California Business & Professions Code §§ 17200, et seq.; (16) Civil Penalties Under the Private Attorneys General Act, Labor Code §§ 2698, et seq.; and (17) Violations of the Fair Labor Standards Act §§ 201 et seq.

On February 2, 2022, the court entered an order denying the motion for preliminary approval of class action settlement without prejudice. The court noted that the proposed

Consolidated Class Action Complaint included, and the settlement agreement released, a cause of action for violations of the FLSA. The court stated that while it would consider approving an appropriately structured hybrid FLSA/class action settlement, significant changes to the settlement would be required for the court to approve it.

Later that year, Settling Parties renewed their motion for preliminary approval of class action settlement. In their motion, Settling Parties sought approval of an amended settlement agreement (which omitted references to the FLSA) and leave to file a Consolidated Class Action Complaint.

On February 8, 2023, the court issued a tentative ruling granting the renewed motion, subject to certain changes being made to the caption on the settlement agreement and the class notice.

On February 9, 2023, Settling Parties filed a Second Amended Complaint for Damages ("SAC") against Defendants, which sets forth causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Accurately Pay Overtime; (3) Unlawful Deductions; (4) Failure to Provide Lawful Meal Periods; (5) Failure to Authorize and Permit Rest Periods; (6) Failure to Timely Pay Wages During Employment; (7) Failure to Timely Pay Wages Owed Upon Separation From Employment; (8) Failure to Furnish Accurate Itemized Wage Statements; (9) Failure to Reimburse Necessary Expenses; (10) Failure to Pay Vested Vacation Wages; (11) Improper Service Charges; (12) Intentional Interference with Advantageous Relations; (13) Breach of Contract; (14) Unjust Enrichment; (15) Violations of the California Business & Professions Code §§ 17200, et seq.; and (16) Civil Penalties Under the Private Attorneys General Act, Labor Code §§ 2698, et seq.

On March 20, 2023, the court entered a Joint Stipulation Re Preliminary Approval Order and Order Approving Amended Class Notice ("Stipulation and Order"). The Stipulation and Order reflected that the parties had made the necessary changes to the caption on the settlement agreement and the class notice.

On April 4, 2023, the court entered an Order Granting Preliminary Approval of Class Action Settlement and Release, which granted preliminary approval of the class action

settlement, approved the amended class notice., and set the final approval hearing for August 9, 2023.

On June 30, 2023, the parties filed a Joint Stipulation to Continue Hearing on Motion for Final Approval and Motion for Attorneys' Fees, Costs, and Representative Enhancement, asking the court to continue the final approval hearing to November 8, 2023.

On July 12, 2023, the court entered an Order Granting Joint Stipulation to Continue Hearing on Motion for Final Approval and Motion for Attorneys' Fees, Costs, and Representative Enhancement, which continued the final approval hearing to November 8, 2023.

Settling Parties now move for final approval of the settlement. The motion is unopposed.

XI. 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.)

XII. DISCUSSION

> The case has been settled on behalf of the following class:
> [A]ll persons who were employed by Levy as non-exempt, hourly employees in the State of California at any time from November 28, 2015 to February 2, 2022.

The class includes a subset of PAGA Group Members who are defined as "all persons who were employed by Levy as non-exempt, hourly employees in California from November 27, 2018 to February 2, 2022."

According to the terms of settlement, Defendants will pay a total non-reversionary amount of $3,600,000 in settlement of all claims, damages, or causes of action arising from or relating to the subject matter of the disputes in *Hightower I*, *Hightower II*, the *Davidson Action*, the *Berbera Action*, the *Atkins Action*, and the *Peskett Action* and allegations made in the LWDA letters sent by any of the Settling Parties. The total settlement payment includes attorney fees not to exceed $1,200,000 (1/3 of the gross settlement amount), litigation costs up to $75,000, incentive awards in the total amount of $55,000 ($10,000 for Hightower, Davidson, Berbera, and Peskett, and $7,500 for Atkins and Mendoza), reasonable settlement administration costs, and a PAGA allocation of $300,000 ($225,000 of which will be paid to the LWDA). The net settlement will be distributed to class members pro rata based on their weeks worked during the applicable class period.

Funds from checks not cashed within 180 days will be directed to Legal Aid at Work.

On July 7, 2023, the settlement administrator mailed notice packets to 18,198 class members. (Declaration of Nathalie Hernandez of ILYM Group, Inc. in Support of Motion for

Final Approval of Class Action Settlement ("Hernandez Dec."), ¶ 7.) Ultimately, 288 notice packets were deemed undeliverable. (*Id.* at ¶ 10.)

The settlement administrator represents that there were 41 requests for exclusion as of October 10, 2023.[2] (Hernandez Dec., ¶ 11 & Ex. B.) The settlement administrator states that it received one objection as of October 10, 2023. (Hernandez Dec., ¶ 13.)

However, class counsel states that four objection forms were submitted. (Declaration of James R. Hawkins in Support of Plaintiffs' Motion for Final Approval of Class and Representative Action Settlement, and Motion for Fees and Costs ("Hawkins Dec."), ¶ 16 & Exs. 10-13.) The objection forms attached to counsel's declaration were submitted by: Aisha G. Smith ("Smith"); Peter Collins ("Collins"); Carmen Sanchez ("Sanchez""); and Magdaleno Marrufo ("Marrufo").

Smith's objection form is not signed or dated, and there are no reasons stated for her objection to the settlement. (Hawkins Dec., Ex. 10.) Notably, Smith also submitted a request for exclusion form dated August 23, 2023, but she is not included in the list of individuals who opted out of the settlement. (*Ibid.*) It is unclear to the court why Smith's opt-out was deemed invalid. Prior to the continued hearing date, class counsel shall file a supplemental declaration explaining why Aisha G. Smith is not included in the list of individuals who opted out of the settlement.

Next, Collins' objection form is signed and dated, but there are no reasons stated for his objection to the settlement. (Hawkins Dec., Ex. 11.) Notably, Collins is included in the list of individuals who opted out of the settlement; thus, it appears Collins also submitted a request for exclusion form that the settlement administrator deemed valid.

Sanchez's objection form is signed and dated. (Hawkins Dec., Ex. 12.) Under "Reason(s) for Objection," Sanchez wrote, "I do not feel I have received unfair paid wages."

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[2] The following individuals submitted requests for exclusion: Brandon Smith; Ramakeli Bisland; La Rae Carmichael; John Garside; Marco Ambas; Chris Toma; Jermaine Ho A Lim; Carmen Sanchez; Eric Woods; Jesus Verdugo; Maya Harel; Elke Coffey; Lyndee Luetjen; Chloe Valerio; Russell E Stoffel; David De La Paz; Tiffany Mejia; Adolfo Murguia; Norma Larios; Richard Kuegeman; Esther Cysneros; Jose Almaraz; Stephen Bishof; Rabia Nisha; Michelle Valenzuela; Peter Collins; Corina Campa; Hadas Ghebremeskel; Laura Y Gonzalez Alcala; Christine Harms; Andrea Morris; Michelle Schneider; Marvin J Martinez; Savannah Sanchez; Carmina Rodriguez; Maria Nappo; Irene Cardenas; Gregoria Navarro; Arturo Duran; Felice E Kaplan; and Carl Dukes.

(*Ibid.*) Sanchez's objection does not set forth a cogent reason for denying approval of the settlement and, therefore, it is overruled.

Lastly, Marrufo's objection form is signed and dated. (Hawkins Dec., Ex. 13.) Under "Reason(s) for Objection," Marrufo wrote, "It's unfair employees will receive less than $50 when lawyers will earn thousands." (*Ibid.*) While the court appreciates Marrufo's feedback regarding the settlement, the objection does not change the court's view that the settlement is fair and reasonable to the class. Here, the estimated average gross payment is $102.99 and the estimated highest gross payment is $1,595.46. (Hernandez Dec., ¶ 15.) The amount of attorney fees sought by class counsel in this case is one-third of the common fund, which is typically sought, and awarded, in wage and hour cases. For these reasons, Marrufo's objection is overruled.

(Declaration of James R. Hawkins in Support of Unopposed Motion for Preliminary Approval of Class and Representative Action Settlement and Release ("Hawkins Dec."), ¶ 3 & Ex. 1 ("Settlement Agreement"), ¶ 7.)

Settling Parties request incentive awards in the total amount of $55,000 ($10,000 for Hightower, Davidson, Berbera, and Peskett, and $7,500 for Atkins and Mendoza). The class representatives have filed declarations specifically detailing their participation in the action. Hightower declares that she spent over 60 hours in connection with the action, including communicating with counsel, searching for and providing documents to counsel, identifying witnesses, and reviewing documents. (Declaration of Plaintiff Sherri Hightower in Support of Plaintiffs' Motion for Order Granting Final Approval of Class and Representative Action Settlement and Entering Judgment, ¶ 7.) Davidson declares that she communicated with counsel, contacted witnesses, and reviewed documents; but she does not provide an estimate of the time she spent in connection with this action. (Declaration of Paula Davidson in Support of Motion for Final Approval of Class Action Settlement, ¶¶ 9-13.) Berbera declares that he communicated with counsel and reviewed documents; but he does not provide an estimate of the time she spent in connection with this action. (Declaration of Mitchell Berbera, ¶¶ 5-7.) Peskett declares that she communicated with counsel, contacted witnesses, and reviewed

documents; but she does not provide an estimate of the time she spent in connection with this action. (Declaration of Sharon Peskett in Support of Motion for Final Approval of Class Action Settlement, ¶¶ 11-15.) Atkins declares that he spent approximately 35 hours in connection with the action, including communicating with counsel, gathering and providing documents to counsel, reviewing documents. (Declaration of William Atkins in Support of Motion for Final Approval of Class and Representative Action Settlement and Release, ¶¶ 4-8.) Mendoza declares that she spent over 40 hours in connection with the action, including communicating with counsel, searching for and providing documents to counsel, identifying witnesses, and reviewing documents. (Declaration of Plaintiff Katherine Mendoza in Support of Plaintiffs' Motion for Order Granting Final Approval of Class and Representative Action Settlement and Entering Judgment, ¶¶ 6-7.)

Prior to the continued hearing date, Davidson, Berbera, and Peskett will submit supplemental declarations setting forth estimates of the time spent in connection with this action. The court will make a determination regarding the incentive awards 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.) Class counsel seek attorney fees in the amount of $1,200,000 (1/3 of the gross settlement amount). Class counsel provide evidence demonstrating a total combined lodestar of $740,705. (Hawkins Dec., ¶¶ 45-52; Declaration of Shadie L. Berenji in Support of Motion for Final Approval of Class Action Settlement and Application for Approval of Attorneys' Fees and Costs, Claims Administration Fees, and Class Representatives' Service Payments ("Berenji Dec."), ¶¶ 21-23; Declaration of Kiley Lynn Grombacher in Support of Motion for Final Approval of Class Action Settlement ("Grombacher Dec."), ¶¶ 18-19; Declaration of Haig B. Kazandjian in Support of Motion for Final Approval of Class and Representative Action Settlement and Release ("Kazandjian Dec."), ¶ 14 & Ex. A.) This results in a multiplier of 1.62. The fees requested are reasonable as a percentage of the common fund and are approved.

Class counsel also request costs of $43,840.99, which is less than the $75,000 provided for in the settlement agreement. Class counsel provide evidence of incurred costs in the

amount of $43,186.66 and, therefore, the costs are approved in that lesser amount. (Hawkins Dec., ¶ 54 & Ex. 9; Berenji Dec., ¶ 23 & Ex. A; Grombacher Dec., ¶ 13 & Ex. 5; Kazandjian Dec., ¶ 15 & Ex. B.) The settlement administration costs of $100,000 are also approved. (Hernandez Dec., ¶ 16.)

Accordingly, the motion for final approval of the class action settlement is CONTINUED to December 13, 2023, at 1:30 p.m. in Department 19. Class counsel, Davidson, Berbera, and Peskett are ordered to file the requisite supplemental declarations no later than November 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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Case No.:

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Calendar Line 9

Case Name:
Case No.:

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Calendar Line 10

Case Name:
Case No.:

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Calendar Line 11

Case Name:
Case No.:

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Calendar Line 12

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Calendar Line 13

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