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. 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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LAW AND MOTION TENTATIVE RULINGS
DATE: JULY 3, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV395000	Thompson v. Fastaff, LLC (PAGA) (Lead Case; Consolidated with 22CV408861)	See Line 1 for tentative ruling.
LINE 2	22CV402958	Vides v. Flights Restaurant Group, Inc., et al. (PAGA)	See Line 2 for tentative ruling.
LINE 3	23CV417146	Uribe v. Auto Driveaway Franchise Systems, LLC (Class Action/PAGA)	See Line 3 for tentative ruling.
LINE 4	21CV387218	Soliman v. Satellite Healthcare, Inc. (Class Action)	See Line 4 for tentative ruling.
LINE 5	22CV400968	Bustamante v. Marriott Hotel Services, Inc. (PAGA)	See Line 5 for tentative ruling.
LINE 6	21CV386656	Alvarez-King v. Bill Brown Construction Company (Class Action/PAGA)	See Line 6 for tentative ruling.
LINE 7	23CV410792	Andrews, et al. v. Fortinet, Inc. (Class Action/PAGA)	See Line 7 for tentative ruling.
LINE 8			

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LAW AND MOTION TENTATIVE RULINGS

LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: Thompson v. Fastaff, LLC (PAGA) (Lead Case; Consolidated with 22CV408861)
Case No.: 22CV395000

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 3, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This consolidated action is comprised of two cases: (*Angela Thompson v. Fastaff, LLC* (Santa Clara County Superior Court, Case No 22CV395000) ("First Action"); and (2) *Penelope Pankey v. Fastaff, LLC* (Santa Clara County Superior Court, Case No. 22CV408861) ("Second Action").

In the First Action, plaintiff Angela Thompson filed a Representative Action Complaint on March 4, 2022, setting forth a single cause of action for Civil Penalties Pursuant to Labor Code section 2699, *et seq.*, based on underlying wage and hour violations.

In the Second Action, plaintiff Penelope Pankey filed a Representative Action Complaint on December 23, 2022, setting forth a single cause of action for Civil Penalties pursuant to Labor Code section 2699, *et seq.*, based on underlying wage and hour violations.

On March 14, 2023, the court entered a stipulation and order consolidating the First and Second Actions and granting leave to amend.

On March 24, 2023, plaintiffs Angela Thompson and Penelope Pankey (collectively, "Plaintiffs") filed a First Amended Consolidated Representative Action Complaint ("FAC"), setting forth a single cause of action against defendant Fastaff, LLC ("Defendant") for Civil Penalties Pursuant to Labor Code section 2699, *et seq.* ("PAGA"), for violation of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).

According to allegations of the FAC, Plaintiffs bring this representative action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by Defendant in California as classified as non-exempt employees

("Aggrieved Employees") during the time period from October 22, 2020 until a date as determined by the court. (FAC, ¶ 8.) Defendant is California Corporation that provides travel and temporary nurses. (FAC, ¶¶ 4-5.)

Defendant employed plaintiff Thompson as a "Registered Nurse" from August 2021 to October 2021, and plaintiff Thompson worked for Defendant at Good Samaritan Hospital. (FAC, ¶ 6.) Defendant employed plaintiff Pankey as an "RN Tele Nurse" from September 2021 to December 2021, and plaintiff Pankey worked for Defendant at various locations in Southern California. (FAC, ¶ 7.)

Plaintiffs allege, among other things, that Defendant: failed to provide accurate itemized wage statements; failed to properly record and provide legally required meal and rest periods; failed to pay minimum wages; failed to pay overtime and sick wages; failed for reimburse for required expenses; and failed to pay wages when due. (FAC, ¶¶ 11-26, 34.)

The parties have reached a settlement. Now before the court is Plaintiffs' motion for approval of the PAGA settlement. The motion is unopposed.

II. LEGAL STANDARD

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

A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699, subd. (l)(2).) 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.) The proposed settlement must be submitted to the LWDA at the same time it is submitted to the court. (*Ibid*.)

As discussed by one court:

> PAGA does not establish a clear standard for evaluating PAGA settlements.
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> …
>
> Accordingly, certain courts have been willing to approve PAGA settlements only if (1) the statutory requirements set forth by PAGA have been satisfied, and (2) the settlement agreement is fair, reasonable, and adequate in view of PAGA's public policy goals.

(*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061 at *2.)

As part of this analysis, courts have evaluated proposed PAGA settlements under the relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel v. Nike Retail Services, Inc.*, *supra*, 2019 WL 2029061 at *2.) "Of the *Hanlon* factors, the following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and views of counsel. (*Ibid*.)

"[W]hen a PAGA claim is settled, the relief provided … [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …." (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at *13.) The settlement must be reasonable in light of the potential verdict value. (See *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 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. DISCUSSION

A. Provisions of the Settlement

The proposed settlement has been made with regard to "PAGA Settlement Employees," defined as, "all individuals who are or previously were employed by Defendant and who worked in California at a client or clients of Defendant, including through a managed service provider, in a position classified as a non-exempt employee at any time during the PAGA

Period." (Declaration of Kyle Nordrehaug in Support of Motion to Approve PAGA Settlement ("Nordrehaug Dec."), Ex. 1 ("Settlement Agreement"), ¶ 1.21.) The term "Defendant" is defined in the settlement agreement as Fastaff, LLC. (Settlement Agreement, ¶ 1.6.) The "PAGA Period" is defined as the period of time from December 29, 2020 to August 6, 2023. (Settlement Agreement, ¶ 1.20.)

Pursuant to the terms of the settlement, Defendant will pay a gross maximum sum of $450,000.00. (Settlement Agreement, ¶¶ 1.9, 3.1.) This amount includes attorney fees of not more than $149,999.00 (1/3 of the maximum settlement amount), litigation costs not to exceed $25,000, and settlement administration costs not to exceed $14,000. (Settlement Agreement, ¶¶ 3.1, 3.2, 3.2.1.) Of the remaining net settlement amount, 75 percent will be paid to the LWDA and 25 percent will be paid to PAGA Settlement Employees based on the pro rata number of pay periods worked by each aggrieved employee during the PAGA Period. (Settlement Agreement, ¶¶ 1.18, 1.19, 3.2.3.) Funds from checks that are not cashed within 180 days from the date of mailing will be sent to the State of California's Unclaimed Property Fund. (Settlement Agreement, ¶ 4.4, 4.4.1-4.4.3.)

In exchange for the settlement, the PAGA Settlement Employees agree to release Fastaff, LLC and "Released Parties" from:

> all claims for civil penalties, attorney's fees, and costs recoverable under PAGA that were alleged, or reasonably could have been alleged, based on the facts stated in the operative First Amended Consolidated Complaint, and/or the PAGA Notice letters submitted by Plaintiffs to the LWDA, including any amendments thereto, during the PAGA Period for alleged violations of the California Labor Code and applicable Wage Order(s), including for (a) failure to pay minimum wage, (b) failure to pay overtime wages, including at the correct regular rate of pay, (c) failure to provide meal periods and associated premium pay, (d) failure to provide rest periods and associated premium pay, (e) failure to provide accurate itemized wage statements, (f) failure to timely pay wages during employment, (g) failure to timely pay wages upon separation of employment, (h) failure to pay sick pay wages at the regular rate of pay, (i) unlawful deductions from employee wages, and (j) expense reimbursement violations.

(Settlement Agreement, ¶ 5, 5.1.) The term "Released Parties" is defined as:

> Fastaff, LLC "and any owner, parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, officers, directors, insurers, partners, investors, shareholders and attorneys thereof and all person acting as or alleged to be joint employers or client employers or acting by, through, under or in

> concert with any of them, including Defendant's clients and/or facilities where PAGA Settlement Employees worked, including through a managed service provider, as to work on an assignment while employed by Defendant.

(Settlement Agreement, ¶ 1.26.)

The Plaintiffs have also entered into separate confidential individual settlement agreements with Defendant.[1] (Settlement Agreement, ¶ 2.5)

B. Fairness of the Settlement

Plaintiffs contend the PAGA settlement is fair and reasonable. (Nordrehaug Dec., ¶ 6; Notice of Motion and Motion to Approve PAGA Settlement; and Memorandum of Points and Authorities [] ("MPA"), p. 14:16.) The parties participated in a full-day mediation with Jeffrey Krivis on June 6, 2023. (Nordrehaug Dec., ¶ 3.) Prior to the mediation, Plaintiffs conducted significant investigation and discovery, and Defendant provided Plaintiffs with data and documents regarding the number of PAGA Settlement Employees and the number of pay periods, as well as Defendant's policies, practices, and procedures. (*Ibid.*) Defendant represented that there were approximately 19,282 pay periods from the beginning of the PAGA Period through May 11, 2023. (MPA, p. 11:11-13, Settlement Agreement, ¶ 4.1.)

Plaintiffs estimate that Defendant's maximum potential liability for the PAGA claim is $1,928,000.00. (Nordrehaug Dec., ¶ 6.) Plaintiffs explain this figure is based upon the maximum amount of statutory PAGA civil penalties based on 19,282 pay periods applicable to the aggrieved employees during the PAGA Period, without "stacking" penalties for the same conduct in a pay period. (*Id.* at ¶ 6, fn. 5.) Plaintiffs note that the number of pay periods is based information available as May 11, 2023, and expect that this number will change slightly to account for pay periods worked by aggrieved employees through the end of the PAGA Period (August 6, 2023). (*Id.* at ¶ 6, fn. 6.)

Defendants have asserted defenses as to liability and the amount of civil penalties, presenting a risk that some or all of the PAGA penalties may not be awarded. (Nordrehaug Dec., ¶ 7.) The parties participated in arms-length negotiations and were able to arrive at a settlement with the assistance of a mediator, and the LWDA has been provided with notice of

[1] Plaintiffs do not request service awards.

the motion as well as the PAGA settlement. (*Ibid.*) The settlement represents approximately 23 percent of the maximum potential value of Plaintiffs' PAGA claim.

The proposed settlement agreement regarding the PAGA claims generally appears fair and reasonable based on the information available to the court at this time. It provides for a significant recovery and eliminates the risk and expense of continued litigation.

Nevertheless, Plaintiffs advise that they have entered into separate settlement agreements with Defendant, and the court notes that the operative complaint does not allege any individual claim on Plaintiffs' behalf, other than the PAGA claim. It is unclear to the court what individual claims are being resolved by the separate settlement agreements. Furthermore, it is unclear whether Plaintiffs' counsel received payment for attorney fees and costs in connection with the individual settlement agreements and whether any such payment was for work also performed in connection with the PAGA action. Therefore, prior to the continued hearing, Plaintiffs shall provide the individual settlement agreements to the court for an *in camera* review.

Plaintiffs' counsel seeks attorney fees of $149,000.00 (1/3 of the maximum settlement amount). (Nordrehaug Dec., ¶ 8.) Plaintiffs' counsel states that the total combined lodestar is $195,496.25 for more than 280 hours of work, and does not include time incurred after the billing was finalized and the time spent managing the completion of the settlement. (*Ibid.*) As this results in a negative multiplier, the court finds that the fees requested are generally reasonable as a percentage of the total recovery.

However, the court wants to determine whether counsel has already received any payment for this work in connection with Plaintiffs' individual settlements. Therefore, prior to the continued hearing, Plaintiffs' counsel shall submit a supplemental declaration addressing whether payment was received for attorney fees in connection with Plaintiffs' individual settlements and whether any such payment covered any fees incurred in connection with the PAGA action.

Plaintiffs' counsel also requests litigation costs of $25,000.00, the maximum amount provided for in the Settlement Agreement. (Nordrehaug Dec., ¶ 9.) Plaintiffs' counsel contends that the actual expenses incurred are currently $25,585.71, and that all these expenses

were reasonably necessary to the litigation. (*Ibid.*) The court is inclined to approve the lower amount of $25,000.00 as indicated in the Settlement Agreement. (Settlement Agreement, ¶ 3.2.1.) However, it is unclear whether Plaintiffs' counsel received any payment for these costs in connection with Plaintiffs' individual settlements. As Plaintiffs are to provide copies of the individual settlements agreements to the court prior to the continued hearing, the court will wait until the continued hearing to determine the reasonableness of the litigation costs.

Plaintiffs also ask for settlement administration costs. The proposed Settlement Agreement provides for settlement administration costs up to $14,000.00. (Settlement Agreement, ¶ 3.2.2.) Plaintiff provides a declaration from the settlement administrator demonstrating that costs associated with settlement administration will not exceed $12,250.00. (Declaration of Lisa Mullins, ¶ 7.) Consequently, the court approves settlement administration costs in the lesser amount of $12,250.00.

Accordingly, the motion for approval of PAGA settlement is CONTINUED to August 21, 2024, at 1:30 p.m. in Department 19. Plaintiffs' counsel shall file a supplemental declaration with the information requested by the court no later than August 5, 2024. No additional filings are permitted.

Plaintiff shall prepare the order.

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Calendar Line 2

Case Name: Vides v. Flights Restaurant Group, Inc., et al. (PAGA)
Case No.: 22CV402958

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 3, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

On September 9, 2022, plaintiff Mauricio Vides ("Plaintiff") filed a Representative Action Complaint ("Complaint") against Defendant,[2] setting forth a single cause of action for Civil Penalties Pursuant to Labor Code section 2699, *et seq.* ("PAGA"), for violation of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, subdivision 5(A)-(B), and the applicable Wage Order(s).

According to allegations of the Complaint, Defendant is corporation that owns and operates restaurants in California. (Complaint, ¶¶ 5-6.) Defendant employed Plaintiff in California from May 2021 to July 15, 2021 and was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis and entitled to legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. (Complaint, ¶ 7.)

Plaintiff brings this representative action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by Defendant in California as classified as non-exempt employees ("Aggrieved Employees") during the time period from June 21, 2021 until a date as determined by the court. (Complaint, ¶ 8.)

Plaintiff allege, among other things, that Defendant: failed to provide accurate itemized wage statements; failed to properly record and provide legally required meal and rest periods; failed to pay minimum wages; failed to pay overtime and sick wages; failed for reimburse for

[2] As used herein, the term "Defendant" collectively refers to following defendants in this action: Flights Restaurant Group, Inc.; Flights Restaurant Burlingame, Inc.; Flights Restaurant Campbell, Inc.; Flights Restaurant Los Gatos, Inc. Plaintiff alleges that these entities were the joint employers of Plaintiff. (See Complaint, ¶ 2.)

required expenses; and failed to pay wages when due. (Complaint, ¶¶ 11-27, 34.) On June 21, 2022, Plaintiff written notice to the Labor and Workforce Development Agency ("LWDA"), and the statutory waiting period expired prior to Plaintiff filing his Complaint. (Complaint, ¶ 33.)

The parties have reached a settlement. Now before the court is Plaintiff' motion for approval of the PAGA settlement. The motion is unopposed.

II. LEGAL STANDARD

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

A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699, subd. (l)(2).) 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.) The proposed settlement must be submitted to the LWDA at the same time it is submitted to the court. (*Ibid*.)

As discussed by one court:

> PAGA does not establish a clear standard for evaluating PAGA settlements.
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> Accordingly, certain courts have been willing to approve PAGA settlements only if (1) the statutory requirements set forth by PAGA have been satisfied, and (2) the settlement agreement is fair, reasonable, and adequate in view of PAGA's public policy goals.

(*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061 at *2.)

As part of this analysis, courts have evaluated proposed PAGA settlements under the relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel v.*

Nike Retail Services, Inc., supra, 2019 WL 2029061 at *2.) "Of the *Hanlon* factors, the following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and views of counsel. (*Ibid*.)

"[W]hen a PAGA claim is settled, the relief provided … [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …." (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at *13.) The settlement must be reasonable in light of the potential verdict value. (See *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 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. DISCUSSION

A. Provisions of the Settlement

The proposed settlement has been made with regard to "Aggrieved Employees," defined as, "all individuals who are or previously were employed by Defendant and who worked in California and classified as a non-exempt employee at any time during the PAGA Period." (Declaration of Kyle Nordrehaug in Support of Motion to Approve PAGA Settlement ("Nordrehaug Dec."), Ex. 1 ("Settlement Agreement"), ¶ 1.4.) The term "Defendant" is defined in the settlement agreement as "named defendants Flights Restaurant Group, Inc., Flights Burlingame, Inc., Flights Campbell, Inc., and Flights Los Gatos, Inc." (Settlement Agreement, ¶ 1.9.) The "PAGA Period" is defined as the period of time from June 21, 2021 to September 20, 2023. (Settlement Agreement, ¶ 1.20.)

Pursuant to the terms of the settlement, Defendant will pay a "Gross PAGA settlement Amount" of $265,000.00. (Settlement Agreement, ¶¶ 1.12, 3.1, 8.) The settlement agreement

provides that the Gross PAGA Settlement Amount may be increased proportionately if the actual number of pay periods during the PAGA Period is determined to be incorrect by more ten percent. (*Ibid*). This amount includes attorney fees of not more than 1/3 of the maximum settlement amount (currently estimated to be $88,333.00), litigation costs not to exceed $25,000, a service award to Plaintiff of $12,500.00, and settlement administration costs not to exceed $6,000, except upon a showing a good cause and as approved by the court. (Settlement Agreement, ¶¶ 1.12, 3.2.1, 3.2.2.) Of the remaining net settlement amount, 75 percent will be paid to the LWDA and 25 percent will be paid to Aggrieved Employees based on the pro rata number of pay periods worked by each aggrieved employee during the PAGA Period. (Settlement Agreement, ¶¶ 1.12, 1.16, 1.21, 3.2.3.) Funds from checks that are not cashed within 180 days from the date of mailing will be sent to the State Controller Unclaimed Property Fund in the name of the individual who failed to cash their check. (Settlement Agreement, ¶ 4.4, 4.4.1-4.4.3.)

In exchange for the settlement, the Aggrieved Employees agree to release the "Released Parties" from:

> any and all claims, debts, restitution, liabilities, demands, action, or causes of action for civil penalties that were alleged or which could have been alleged based on the factual allegations in the operative complaint, as amended, in the Action ("Operative Complaint") that occurred during the PAGA Period, including all claims for civil penalties against defendants Flights Restaurant Group, Inc., Flights Burlingame, Inc., Flights Campbell, Inc., and Flights Los Gatos, Inc., based on the facts of the Operative Complaint for failure to pay all wages due, including overtime wages and regular wages; failure to pay overtime compensation at the proper rate of pay; failure to include additional renumeration, including shift differentials, in the regular rate of pay for purposes of paying overtime; failure to provide meal and/or rest periods, failure to pay proper meal or rest period penalties; failure to maintain accurate time records; failure to provide and maintain accurate itemized wage statements; failure to maintain accurate employee payroll records; failure to timely pay wages due during at separate of employment; waiting time penalties; and claims based on the facts of the Operative Complaint for violations of California Labor Code Sections 201-204, 210, 218.6, 221, 223, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and 2699 and applicable California Industrial Welfare Commission ("IWC") Wage Orders, including IWC Wage Order No. 1 (Cal. Code Regs., tit. 8, § 11010) and IWC Wage Order No. 4 (Cal. Code Regs., tit. 8, § 11040) during the PAGA Period, against the Released Parties.

(Settlement Agreement, ¶ 5, 5.2.) The term "Released Parties" is defined as:

> Defendants Flights Restaurant Group, Inc., Flights Burlingame, Inc., Flights Campbell, Inc., and Flights Los Gatos, Inc., and each of them, and each of their past, present, and future affiliates agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parent, subsidiaries, equity sponsors, related companies/corporations and /or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliates organizations, and all of their respective past, present, and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns, and each of them (collectively, the "Released Parties").";

(Settlement Agreement, ¶ 1.26.)

Plaintiff will separately agree to a comprehensive general release. (Settlement Agreement, ¶ 5.1)

B. Fairness of the Settlement

Plaintiff contends the PAGA settlement is fair and reasonable. (Nordrehaug Dec., ¶ 6; Notice of Motion and Motion to Approve PAGA Settlement; and Memorandum of Points and Authorities in Support of the Motion ("MPA"), p. 13:4.) The parties participated in a full-day mediation with Hon. Brian C. Walsh (Ret.) on September 19, 2023. (Nordrehaug Dec., ¶ 3.) Prior to the mediation, the parties conducted significant investigation and discovery, and Defendant provided Plaintiff with data and documents regarding the number of PAGA Settlement Employees and the number of pay periods, as well as Defendant's policies, practices, and procedures. (*Ibid.*) Based on a review if its records, Defendant estimates that there are approximately 272 Aggrieved Employees who worked a total of 7,550 pay periods during the PAGA Period (MPA, p. 11:8-10, Settlement Agreement, ¶ 4.1; Nordrehaug Dec., ¶ 4.)

Plaintiffs estimate that Defendant's maximum potential liability for the PAGA civil penalties is $755,000.00. (Nordrehaug Dec., ¶ 6.) Plaintiffs explain this figure is based upon the maximum amount of statutory PAGA civil penalties based on 7,550 pay periods applicable to the aggrieved employees during the PAGA Period. (*Ibid.* at ¶ 6.) Defendants have asserted defenses as to liability and the amount of civil penalties, presenting a risk that some or all of the PAGA penalties may not be awarded. (Nordrehaug Dec., ¶ 7.) The parties participated in arms-length negotiations and were able to arrive at a settlement with the assistance of a mediator, and the LWDA has been provided with notice of the motion as well as the PAGA

settlement. (*Ibid.*)_The settlement represents approximately 35 percent of the maximum potential value of Plaintiffs' PAGA claim.

The proposed settlement agreement regarding the PAGA claims generally appears to be fair and reasonable. It provides for a significant recovery and eliminates the risk and expense of continued litigation.

As part of the settlement, Plaintiff seeks a service award in the amount of $12,500.00. (Settlement Agreement, § 3.2.4.) Although service awards are common in class actions, there is less authority regarding the propriety of service awards in PAGA cases. Nevertheless, a PAGA case is a representative action like a class action and it has been recognized that an individual's willingness to act as a private attorney general may merit a service award. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959.)

Plaintiff has submitted a declaration describing his participation in this litigation, including communicating with his attorneys, providing documents, and answering questions. (Declaration of Mauricio Vides ("Vides Dec."), ¶¶ 5-6.) Plaintiff estimates that he has spent approximately 30 to 40 hours working on the case. (Vides Dec., ¶ 7.) Plaintiff asserts that he undertook risks in acting as a representative for the Aggrieved Employees, and he has agreed to a broader release. (Vides Dec., ¶ 10.)

In light of the time Plaintiff spent on this litigation, the reputational risk he undertook in acting as representative, as well as his agreement to a broader release, the court finds that a service award is merited. However, the amount requested is higher than the court typically awards for the amount of time Plaintiff spent in connection with this action (i.e., approximately 30-40 hours of work). In light of the foregoing, the court finds that a service award in the amount of $5,000.00 is reasonable and approves the award in that lesser amount.

Plaintiffs' counsel seeks attorney fees of $88,333.00 (1/3 of the Gross Settlement Amount). (Nordrehaug Dec., ¶ 8.) Plaintiffs' counsel states that the total combined lodestar is $71,225 for more than 112 hours of work and does not include time incurred after the billing was finalized and the time spent managing the completion of the settlement. (*Ibid.*) This results in a multiplier of 1.2. The court finds that the fees requested are reasonable as a percentage of the total recovery. Therefore, the fees are approved.

Plaintiffs' counsel also requests litigation costs of $14,786.87.00 and provides evidence of incurred costs in that amount. (Nordrehaug Dec., ¶ 9, Ex. 2.) The court finds costs in the amount of $14,786.87.00 to be reasonable and approves that amount.

Plaintiffs also ask for settlement administration costs. The proposed Settlement Agreement provides for settlement administration costs up to $6,000.00. (Settlement Agreement, ¶ 3.2.2.) Plaintiff provides a declaration from the settlement administrator demonstrating that costs associated with settlement administration will not exceed $4,700.00. (Declaration of Anthony Rogers, ¶ 7.) Consequently, the court approves settlement administration costs in the lesser amount of $4,700.00.

Accordingly, the motion for approval of PAGA settlement 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: Uribe v. Auto Driveaway Franchise Systems, LLC (Class Action/PAGA)
Case No.: 23CV417146

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 3, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

IV. INTRODUCTION

This is a class and representative action arising out of alleged wage and hour violations. The operative First Amended Class Action Complaint for Damages ("FAC"), filed on October 9, 2023, sets forth the following causes of action: (1) Minimum Wage Violations (Labor Code, §§ 1182.12, 1194, 1194.2, 1197); (2) Failure to Pay All Overtime Wages (Labor Code, §§ 204, 510, 558, 1194, 1198); (3) Meal Period Violations (Labor Code, §§ 226.6 & 512); (4) Rest Period Violations (Labor Code, §§ 227.6, 516); (5) Wage Statement Violations (Labor Code, § 226, *et seq.*); (6) Waiting Time Penalties (Labor Code, §§ 201-203); (7) Unfair Competition (Bus. & Prof. Code, § 17200, *et seq.*); (8) Failure to Reimburse for Necessary Business Expenses (Labor Code, § 2802); and (9) Civil Penalties Under the Private Attorney General Act (Labor Code, § 2698, *et seq.*).

The parties have reached a settlement. Plaintiff Jessica Uribe ("Plaintiff") now moves for preliminary approval of the settlement. The motion is unopposed.

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.)

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.)

VI. DISCUSSION

A. Provisions of the Settlement

This case has been settled on behalf of the following class:

> All current and former non-exempt employees of Defendant Auto Driveway Franchise Systems, LLC ["Defendant"] who worked for Defendant ("Class Members") at any time during the period of June 9, 2022 through January 11, 2024 (the "Class Period").

(Declaration of Daniel J. Brown in Support of Plaintiffs' Motion for Preliminary Approval of Settlement ("Brown Dec."), Ex. 2 ("Settlement Agreement"), ¶ 1.)

The settlement also includes a subset PAGA Class of aggrieved employees [hereinafter "PAGA Employees"] who are defined as "[a]ll current and former non-exempt employees of Defendant Auto Driveway Franchise Systems, LLC who worked for Defendant at any time during the period of June 9, 2022 through January 11, 2024. (Settlement Agreement, ¶ 2.)

According to the terms of the settlement, Defendant will pay a gross settlement amount of $230,000. (Settlement Agreement, ¶ 4.) The gross settlement amount includes attorney fees up to $75,900 (1/3 of the gross settlement amount), litigation costs not to exceed $20,000, a PAGA allocation of $5,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments), a service award up to $5,000, and settlement administration costs not to exceed $5,990. (Settlement Agreement, ¶¶ 4, 4(B)(ii)-4(B)(v).) The net settlement amount will be distributed to participating class members on pro rata basis according to the number of workweeks they were employed by Defendant. (Settlement Agreement, ¶ 5, 5(A)(ii).) Funds from uncashed payments will be transferred to Truckers Against Trafficking as the designated *cy pres*. (Settlement Agreement, ¶ 5(C).) The court approves the designated *cy pres* recipient.[3]

In exchange for the settlement, the class members agree to release Defendant from all claims that were alleged based on the facts pleaded in the FAC occurring during the Class Period. (Settlement Agreement, ¶ 3(C).) PAGA Employees agree to release Defendant, and related entities and persons, from all claims for PAGA civil penalties that were alleged based on facts pleaded in the FAC and/or the notice Plaintiff sent to the LWDA. (Settlement Agreement, ¶ 3(D).)

B. Fairness of the Settlement

Plaintiff states that the settlement was reached through discovery, analysis, and mediation with David Lowe, Esq. (Brown Dec., ¶¶ 10-11.) In anticipation of mediation, the

[3] Code of Civil Procedure section 384 requires that the unpaid residue or abandoned class member funds be paid to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent."

parties conducted significant investigation of the facts through informal discovery, and Defendant produced a class list, time and pay records, class data points, and related documents and information. (Brown Dec., ¶ 10.) Plaintiff conducted a detailed review of the payroll records, time records, and other information provided by Defendant. (*Ibid.*) Defendant represented that there are approximately 133 Class Members who worked approximately 6,921 workweeks within the Class Period. (Brown Dec. ¶ 12; Settlement Agreement, ¶ 4(D).)

Plaintiff does not clearly indicate an amount for Defendant's estimated total maximum exposure. Nevertheless, Plaintiff provide amounts for Defendant's estimated exposure in relation to particular claims, as follows: meal period violations ($127,360.00); rest period violations ($352,230.00); overtime pay violations ($21,545.49); reimbursement violations ($138,800.00); wage statement violations ($109,600.00); and waiting time violations ($298,022.40). (Settlement Agreement, ¶¶ 15-19.) The sum of these figures is $1,047,557.89.

Based on this sum, the gross settlement amount represents approximately 22% of the potential maximum recovery. Thus, the proposed settlement is within the range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D.Cal., Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201, at *41-42 [citing cases listing range of five to 25-35 percent of the maximum total exposure].)

Therefore, the court finds the terms of the settlement to be fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

C. Incentive Award, Fees, and Costs

Plaintiff requests an enhancement award in the amount of $5,000 for the class representative.

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

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

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

Plaintiff filed a declaration generally describing her participation in the lawsuit. Plaintiff states that she gathered various documents, communicated with her attorneys regarding various aspects of this litigation, and reviewed and analyzed documents related to this litigation. (Declaration of Jessica Uribe in Support of Approval of Class Action Settlement ("Uribe Dec."), ¶ 4.) Plaintiff estimates that she spent approximately 17 hours of her time in connection with this litigation. (*Ibid.*)

Moreover, Plaintiff undertook risk by putting her name on the case because it might impact her future employment. (Uribe Dec., ¶ 5; see also *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].)

For the forgoing reasons, the court finds that a service award to Plaintiff is appropriate. However, the requested amount of $5,000 is more than the court typically awards for the amount of time Plaintiff spent in connection with this action. Therefore, the court approves an enhancement award in the total amount of $2,500.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees up to $75,000 (1/3 of the gross settlement amount) and litigation costs not to exceed $20,000. Plaintiffs' counsel shall submit lodestar information (including hourly rate and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiffs' counsel shall also submit evidence of actual costs incurred as well as evidence of any settlement administration costs.

D. Conditional Certification of Class

Plaintiff requests that the class be conditionally certified for purposes of the settlement. Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order

approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court …." As interpreted by the California Supreme Court, section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*).)

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

As explained by the California Supreme Court,

> The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

(*Sav-On, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff states that there are approximately 133 class members that can be determined from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

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

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

However, the final paragraph beginning on page 1 and the section entitled "What is the next step?" on page 5 must be amended to include the following language regarding the final approval hearing:

> Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

The parties are ordered to submit the amended class notice to the court for approval prior to mailing.

VII. CONCLUSION

The motion for preliminary approval of the class and representative action settlement is GRANTED, subject to the court's approval of the amended class notice. The final approval hearing is set for January 8, 2025.

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: Soliman v. Satellite Healthcare, Inc. (Class Action)
Case No.: 21CV387218

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 3, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VIII. INTRODUCTION

This class and representative action arises out of various alleged wage and hour violations. As relevant here, plaintiff Tiffany Soliman ("Soliman") filed her original Class Action Complaint against defendant Satellite Healthcare, Inc. ("Defendant") on September 30, 2021.

Soliman then filed a First Amended Class Action Complaint ("FAC") on January 25, 2022, which set forth causes of action for: (1) Failure to Pay Lawful Wages; (2) Failure Provide Lawful Meal Periods or Compensation in Lieu Thereof; (3) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof; (4) Failure to Reimburse Employee Expenses; (5) Failure to Pay Correct Sick Pay Wages; (6) Failure to Timely Pay Wages During Employment; (7) Failure to Timely Pay Wages at Termination; (8) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (9) Violations of the Unfair Competition Law ("UCL"); and (10) Private Attorney General Act Violation (Lab. Code, § 2699).

Defendant demurred to the fifth and ninth causes of action of the FAC. Defendant also moved to strike portions of the FAC, specifically: (1) references to sick pay violations in Soliman's waiting time claims; and (2) the UCL claim the extent it is based on alleged meal and rest period violations, waiting time violations, wage statement violations, and sick pay violations.

On June 10, 2022, the court entered an order sustaining the demurrer as to the fifth cause of action without leave to amend, overruling the demurrer as to the ninth cause of action, and granting the motion to strike the references to sick pay without leave to amend, and granting the motion to strike portions of the UCL claim with ten days' leave to amend.

Notably, Defendant withdrew its motion to the extent it sought to strike references to meal and rest period violations in Plaintiff's waiting time claim and wage statement claim.

On June 17, 2022, Soliman filed a Second Amended Class Action Complaint ("SAC"), which sets forth causes of action for: (1) Failure to Pay Lawful Wages; (2) Failure Provide Lawful Meal Periods or Compensation in Lieu Thereof; (3) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof; (4) Failure to Reimburse Employee Expenses; (5) Failure to Timely Pay Wages During Employment; (6) Failure to Timely Pay Wages at Termination; (7) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (8) Violations of the UCL; and (9) Private Attorney General Act Violation (Lab. Code, § 2699).

Defendant moved to strike portions of the SAC, specifically: (1) the UCL claim to the extent it is based on waiting time violations; and (2) the UCL claim to the extent it is based on wage statement violations. On October 19, 2022, Soliman filed a Notice of Non-Opposition to Defendant's Motion to Strike Portions of the Second Amended Complaint.

On November 2, 2022, the court entered an order granting the motion to strike the UCL claim, without leave to amend, to the extent it was predicated on alleged waiting time and wage statement violations.

On December 15, 2023, Soliman and plaintiffs Maria Carralez ("Carralez") and Eugene Bautista ("Bautista") (collectively, "Plaintiffs") filed the operative Third Amended Class Action Complaint ("TAC"), which alleges the following causes of action: (1) Failure to Pay Lawful Wages; (2) Failure to Pay Overtime; (3) Failure Provide Lawful Meal Periods or Compensation in Lieu Thereof; (4) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof; (5) Failure to Reimburse Employee Expenses; (6) Failure to Timely Pay Wages During Employment; (7) Failure to Timely Pay Wages at Termination; (8) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (9) Violations of the UCL; and (10) Private Attorney General Act (Lab. Code, § 2699).

The parties have reached a settlement. Plaintiffs moved for preliminary approval of the settlement, and the motion was unopposed.

On May 1, 2024, the court continued the motion for preliminary approval of the settlement to July 3, 2024. The court identified several issues with the proposed settlement, including the lack of a specific procedure for handling uncashed checks, the scope of the release, the need for lodestar information and evidence of actual costs; and defects related to the class notice. The court directed Plaintiffs to file a supplemental declaration addressing these issues. In its tentative ruling, the court also directed Plaintiffs to file supplemental declarations in support of the request for enhancement awards prior to the final approval hearing.

On June 18, 2024, counsel for Plaintiffs filed a supplemental declaration in support of the motion for preliminary approval of settlement.

IX. LEGAL STANDARD

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

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

(*Wershba*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as

a whole, is fair, reasonable and adequate to all concerned." (*Ibid*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

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

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

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.)

X. DISCUSSION

A. Provisions of the Settlement

This case has been settled on behalf of the following class:

> [A]ll current and former non-exempt employees of Defendant who worked for During the Class Period.

(Declaration of Robert J. Wasserman in Support of Motion for Preliminary Approval of Class Action Settlement, filed on December 29, 2023 ("Wasserman Dec."), Ex. 1 ("Settlement Agreement"), ¶ 6.) The Class Period is defined as the period from April 21, 2020 through September 6, 2023. (Settlement Agreement, ¶ 7.)

In its May 1, 2024 tentative ruling, the court requested an explanation for the decision to use April 21, 2020 as the start date for the Class Period. Plaintiffs' counsel has submitted a supplemental declaration explaining that "there was a prior class action settlement [in *Pascual, et al. v. Satellite Healthcare, Inc.* (Santa Clara County Superior Court, Case No. 12CV345211)] whose release ran through April [20], 2020, and covered the Class' claims in this matter" and that "any potential injuries prior to that date have already been redressed," also

attaching the settlement agreement and the court's order granting final approval of the settlement. (Declaration of Robert J. Wasserman in Support of Motion for Preliminary Approval of Class Action Settlement, filed on June 18, 2024 ("Wasserman Supp. Dec."), ¶ 3, Exs. 1 & 2.) Therefore, the court accepts Plaintiffs' explanation for the start date of April 21, 2020 for the Class Period used for Settlement Agreement in this action. The settlement defines the PAGA Period as the period of time from September 29, 2020 through September 6, 2023. (Settlement Agreement, ¶ 22.)

According to the terms of the settlement, Defendant will pay a maximum, non-reversionary settlement amount of $2,425,000. (Settlement Agreement, ¶¶ 12, 36.) The gross settlement amount includes attorney fees up to $808,333.33 (1/3 of the gross settlement amount), litigation costs not to exceed $35,000, a PAGA allocation of $50,000 (75 percent (i.e., $37,500) to be paid to the LWDA and the remaining 25 percent (i.e., $12,500) to be paid to class members who worked during the PAGA Period), enhancement awards in the total amount of $30,000 (up to $10,000 for each class representative), and settlement administration costs not to exceed $25,000. (Settlement Agreement, ¶ 43.) The court approves Addicus Administration LLC as administrator and actual costs not to exceed $25,000. Similarly, all class members who were employed during the PAGA Period will receive a pro rata share of the $12,500 portion of the PAGA allocation. (*Ibid.*)

In its May 1 tentative ruling, the court noted that the agreement did not set forth a specific procedure for handling uncashed checks. Plaintiffs' counsel has since submitted a supplemental declaration stating that the parties have agreed to an addendum providing that the funds from checks that are not cashed within 180 days shall be distributed to Court Appointed Special Advocates for Children, Child Advocates of Silicon Valley. (Wasserman Supp. Dec., ¶ 4(a), Ex. 3, Addendum to Joint Stipulation for Class and PAGA Representative Action Settlement and Release ("Addendum"), ¶ 1.) The court approves this procedure and the *cy pres* recipient.

In the settlement agreement, Plaintiffs agree to a comprehensive general release. (Settlement Agreement, ¶¶ 29, 70.) The settlement agreement defines "Released Parties" as

Defendant and related persons and entities. (Settlement Agreement, ¶ 29.) The settlement defines "Released Claims" as:

> all claims, rights, demands, liabilities, and causes of action, for, failure to pay all minimum wage and overtime, to provide meal and rest breaks and to provide meal and rest break premiums at the correct rates of pay, to reimburse business expenses, to compensate for all paid sick leave at the correct rate of pay, to provide accurate itemized wage statements, and waiting time penalties, arising under Labor Code sections 201-203, 204, 226, 226.7, 246, 510, 510, 512, 558, 1182.12 *et seq.*, 1194, 1194, 1197, 1198, 1199, 2698 *et seq.*, and 2802 and the applicable California wage orders, as well as any and all corresponding claims that could have been brought under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. section 201, *et seq.* based on the facts alleged in the complaint and in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*, 899 F.3d 1106, 1110-11 (9th Cir. 2018) (holding opt-out release of California state law claims was *res judicata* against FLSA claims "which were direct federal law counterparts to the state law claims settled"), as well as unfair business practices and imposition of PAGA civil penalties during the PAGA Period based upon the same, and any claims that were alleged in the pleadings or the LWDA letters or that could have been alleged based on the facts asserted in the pleadings or the LWDA letters during the Release Period (April 21, 2020, through September 6, 2023)

(Settlement Agreement, ¶ 27.) The settlement defines "Released PAGA Claims' as:

> all claims, rights, demands, liabilities, and causes of action, for civil penalties based upon the failure to pay all minimum wage and overtime, to provide meal and rest breaks and to provide meal and rest break premiums at the correct rate of pay, to reimburse business expenses, to compensate for all paid sick leave at the correct rate of pay, to provide accurate itemized wage statements, and waiting time penalties, arising under Labor Code section 201-203, 204, 210, 226, 226.7, 246.5, 510, 512, 558, 1182.12 *et seq.*, 1194, 1197, 1198, 1199, 2698 *et seq.*, and 2802 and the applicable California wage orders, and any claims that were alleged in the pleadings or the LWDA letters or that could have been alleged based on the facts asserted in the pleadings or LWDA letters during the PAGA Period (September 29, 2020 through September 6, 2023).

(Settlement Agreement, ¶ 28.)

In its May 1 tentative ruling, the court noted that the agreement did not contain specific provisions whereby class members would actually release class claims or class members who worked for Defendant during the PAGA period would actually release PAGA claims. Plaintiffs' counsel has since submitted a supplemental declaration stating that the parties have agreed to an addendum with provisions specifically addressing the releases. (Wasserman Supp. Dec., ¶¶ 4(b)-4(d); Addendum at ¶¶ 2-4.)

As modified by the Addendum, the Settlement Agreement now provides that "[u]pon the Effective Date and full funding of the Gross Settlement Amount, Defendant and the Released Parties shall receive a release of the Released Claims and Released PAGA Claims from the Participating Class Members, the LWDA, and the Aggrieved Employees." (Addendum at ¶ 3.)

"Aggrieved Employees" as "all current and former non-exempt California who worked during the PAGA Period." (Addendum at ¶ 2.) The Addendum further states that "[t]he Parties agree that the Released PAGA Claims do not include any non-PAGA claims (e.g., underlying wage and hour claims seeking relief other than civil penalties) including, but not limited to, claims for vested health insurance benefits, wrongful termination, unemployment insurance, disability insurance, social security, worker's compensation, and claims outside of the PAGA Period. (Addendum at ¶ 4.)

B. Fairness of the Settlement

Plaintiffs state that the settlement was reached through discovery, analysis, and mediation with the Hon. Ronald Sabraw (Ret.) (Wasserman Dec., ¶¶ 3-24.) Plaintiffs' counsel conducted formal discovery, which included propounding requests for admission, special interrogatories, and requests for production of documents. (Wasserman Dec., ¶ 16.) Plaintiffs' counsel also conducted informal discovery, which included obtaining Plaintiffs' personnel files, payroll records, and time records; reviewing payroll and time records for the entire class; reviewing policy documents; retaining an expert to analyze the time and payroll data; and creating damages models. (*Id.* at ¶ 15.) From the information provided, Plaintiffs determined that there were approximately 2,485 class members who worked 216,787 workweeks. (*Id.* at ¶ 30.) Plaintiffs estimate that Defendant's maximum potential liability for all the claims is approximately $19,297,671.40 (i.e., $13,122,671.40 for the class claims and $6,175,000 for the PAGA claim). (*Id.* at ¶¶ 27-69.) Plaintiffs provides a breakdown of this amount by claim. (*Ibid.*) Plaintiffs discounted the value of the claims given Defendant's defenses, the possibility that the court could substantially reduce any PAGA penalties, and the risks and costs associated with class certification. (*Ibid*.) The average gross recovery per class member is

$987.84. (*Id.* at ¶ 33.) The average net payment to class members will be $594.23. (*Id.* at ¶ 34.)

The gross settlement amount represents approximately 12.5 percent of the potential maximum recovery. The proposed settlement amount is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavasos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

As discussed above, the court previously expressed concern regarding the release provisions, including the provisions for the actual release of claims, the scope of the releases, and discrepancies between the class notice and the settlement agreement itself. The court also stated that the definition of "Released PAGA Claims" was overbroad because it was not limited to claims for civil penalties brought pursuant to PAGA. The court has reviewed the supplemental declaration and Addendum provided by Plaintiffs' counsel, and is satisfied that the Settlement Agreement, as now modified by the Addendum, adequately addresses the concerns previously identified by the court.

Therefore, the court finds the terms of the settlement to be fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

C. Incentive Award, Fees, and Costs

Plaintiffs request enhancement awards in the total amount of $30,000 ($10,000 for each class representative).

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

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

The court notes that the amounts sought for the enhancement awards are higher than the court typically awards in these types of cases. Prior to the final approval hearing, Plaintiffs shall file declarations specifically describing their participation in the action as well as an estimate of time spent.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees up to $808,333.33 (1/3 of the gross settlement amount) and litigation costs not to exceed $35,000. Plaintiffs' counsel shall submit lodestar information (including hourly rate and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiffs' counsel shall also submit evidence of actual costs incurred as well as evidence of any settlement administration costs.

D. Conditional Certification of Class

Plaintiff requests that the class be conditionally certified for purposes of the settlement. Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . ." As interpreted by the California Supreme Court, section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*).)

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, supra*, 34 Cal.4th at p. 326.) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total

recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

As explained by the California Supreme Court,

> The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

(*Sav-On, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff states that there are approximately 2,485 class members, who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

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

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

In its May 1, 2024 tentative ruling, the court instructed the parties to amend the class notice to accurately reflect the terms of any releases included in the settlement, and to include specific language regarding attendance at the final approval hearing. Plaintiffs' counsel has since submitted an amended proposed class notice. (Wasserman Supp. Dec., Exs. 4 (with changes tracked) & 5 (clean version).) The court is satisfied that the changes to the class notice sufficiently address the previously identified defects, and the court approves the amended class notice.

XI. CONCLUSION

The motion for preliminary approval of the class and representative action settlement is GRANTED. The final approval hearing is set for January 8, 2025, at 1:30 p.m. in Department 19. No later than December 23, 2024, plaintiffs Soliman, Carralez, and Bautista shall each submit a declaration detailing the extent of their participation in this litigation, including an estimate of the amount of time spent. Plaintiffs' counsel shall submit lodestar information so the Court can compare the lodestar information with the requested fees, as well as a breakdown of actual litigation costs and administration costs. No further filings are permitted.

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

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Calendar Line 5

Case Name: Bustamante v. Marriott Hotel Services, Inc. (PAGA)
Case No.: 22CV400968

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 3, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This putative class and representative action arises out of alleged wage-and-hour violations. Plaintiff Gabriela Bustamente ("Plaintiff") filed her original complaint against defendant Marriott Hotel Services, Inc. ("Defendant") on July 21, 2022. The complaint alleged a single cause of action under the Private Attorneys General Act of 2004 ("PAGA").

Several months later, on November 17, 2022, Plaintiff filed a first amended complaint adding several class claims.

Defendant removed the action to federal court on December 16, 2022.

On September 14, 2023, Plaintiff filed the operative second amended complaint ("SAC"), which alleges the following causes of action: (1) Failure to Pay All Wages Due (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order 5-2001); (2) Failure to Provide Rest Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7; IWC Wage Order 5-2001); (3) Failure to Provide Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order 5-2001); (4) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions (Labor Code §§ 226(a), (e); (5) Failure to Pay Wages Due at Separation of Employment (Labor Code §§ 201-203); (6) Violation of Business and Professions Code § 17200; and (7) Penalties Pursuant to Labor Code §§ 2699(f) for Violations of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, and 1194 and Pursuant to Labor Code § 2699(a) for Violations of Labor Code §§ 226.3 and 558.

The same day, the federal court remanded the case to this court.

The parties have reached a settlement, and Plaintiff has moved for preliminary approval of the settlement. The motion was unopposed.

On May 8, 2024, the court continued the motion for preliminary approval to July 3, 2024. In its tentative ruling, the court directed Plaintiff to file a supplemental declaration identifying a new *cy pres* recipient and addressing the court's concern regarding the lack of a clear end date for the class and PAGA periods and explaining in greater detail the factual basis and rationale behind the discount applied to each of her claims.

On June 17, 2024, Plaintiff's counsel filed a supplemental declaration in support of the motion for preliminary approval of the settlement.

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.)

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.)

III. DISCUSSION

A. Provisions of the Settlement

This case has been settled on behalf of the following class:

> [a]ll individuals who are or who have been directly employed by Defendant in California at the Monterey Marriott as a non-exempt employee during any portion of the Class Period.

(Declaration of Daniel F. Gaines in Support of Unopposed Motion for Preliminary Approval of Class and Representative Action Settlement ("Gaines Dec."), Ex. B ("Settlement Agreement"), ¶ 1.6.) The number of workweeks is not well-defined in the settlement agreement, nor is the end date for the Class Period apparent on the face of the agreement. Paragraph 10.9 of the settlement, entitled "Escalator Clause," provides:

> In connection with Mediation, Defendant estimated that as of May 11, 2023, there were approximately 33,000 weeks worked by Class Members. Mediation took place on July 26, 2023. The Parties agree that if, as of the end date of the pay period covering July 26, 2023, the number of workweeks worked by Class Members was 37,950 weeks or more (i.e., if the number of weeks worked by Class Members as of the end date of the pay period covering July 26, 2023 is fifteen percent (15%) or more greater than 33,000 weeks worked), Defendant shall have the option to (i) pay a pro rata increase on the Settlement Amount to compensate for the overage; or (ii) end the Class Period and PAGA Period on the date that is one day before the date the total number of weeks worked by Class Members exceeds 37,950 weeks worked.

(Settlement Agreement, ¶ 10.9)

This class also includes a subset of PAGA Members, who are defined as all individuals who are or who have been employed by Defendant in California at the Monterey Marriott as a non-exempt employee during any portion of the PAGA Period. (Settlement Agreement, ¶ 1.17.) The PAGA Period is defined as "the time from July 21, 2021 through the date on which the [c]ourt issue the Preliminary Approval Order, or an earlier date as Defendant may elect pursuant to Paragraph 10.9. (Settlement Agreement, ¶ 1.19.)

According to the terms of settlement, Defendant will pay a non-reversionary, gross settlement amount of $290,000. (Settlement Agreement, ¶ 1.27.) The gross settlement amount includes attorney fees of $101,500 (35 percent of the gross settlement amount), litigation costs not to exceed $20,000, a service award for the class representative not to exceed $10,000, settlement administration costs not to exceed $10,000, and a PAGA allocation of $25,000 (75

percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Members). (Settlement Agreement, ¶¶ 1.16, 1.18, 1.27, 10.3, 10.4, 10.5, 10.6.)

The net settlement amount will distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. (Settlement Agreement, ¶ 10.2) Similarly, PAGA Members will receive a pro rata share of the 25 percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period. (Settlement Agreement, ¶¶ 1.12, 1.18, 10.4.)

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the California State Controllers' Office in accordance with California Unclaimed Property Law. (Settlement Agreement, ¶ 10.2.)

In its May 8, 2024 tentative ruling, the court stated that the parties' proposal to send funds from uncashed checks issued to class member to the State of California Unclaimed Property Fund does not comply with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class members funds be given to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." The court directed Plaintiff to provide a new *cy pres* recipient in compliance Code of Civil Procedure section 384.

Plaintiff has since submitted a supplemental declaration stating that the parties have agreed to designate UNICEF USA as the *cy pres* recipient. (Supplemental Declaration of Daniel F. Gaines in Support of Unopposed Motion for Preliminary Approval of Class and Representative Action Settlement ("Gaines Supp. Dec."), ¶ 4.) The court approves this designation for the *cy pres* recipient.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from claims that were asserted, or could have been asserted, in the operative SAC based on the facts alleged in the SAC. (Settlement Agreement, ¶ 6.1.) PAGA Members agree to release Defendant, and related persons and entities, from PAGA claims seeking civil penalties that were asserted, or could have been asserted, in the operative SAC

based on the facts alleged in the SAC. (Settlement Agreement, ¶ 6.4.) Plaintiff also agrees to a general release of claims. (Settlement Agreement, ¶ 6.2)

B. Fairness of the Settlement

Plaintiff asserts that the settlement is fair, reasonable, and adequate. Plaintiff indicates that the settlement resolves claims on behalf of approximately 400 class members. (Gaines Dec., ¶¶ 26-27.) Prior to mediation, Plaintiff obtained informal discovery including a 25 percent data sample. (*Id.* at ¶ 11.) Plaintiff's counsel reviewed a representative sampling and engaged an expert to create a damages analysis. (*Id.* at ¶¶ 11-16.) The parties participated in private mediation with the Hon. Theirry Colaw (Ret.) on July 26, 2023, and reached a settlement. (*Id.* at ¶ 12.)

In its May 8, 2024 tentative ruling, the court identified several concerns regarding the fairness of the settlement. First, the court explained that the proposed settlement amount is below the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavasos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201 (*Cavasos*), at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

In his initial declaration in support of the motion for approval of the settlement, Plaintiff's counsel did not provide a total amount for Defendant's estimated maximum potential exposure. Therefore, the court reviewed the figures provided with respect to each cause of action and arrived at a sum of $7,939,594 for Defendant's maximum potential exposure. Given the gross settlement amount of $290,000, the court concluded that the settlement represented approximately 3.6 percent of the maximum potential value of Plaintiff's claims. This percentage is clearly lower than the acceptable range as described in *Cavasos* (i.e., 5-35%).

Next, the court found that the definitions of the class and PAGA members were unreasonable because, as drafted, the Class Period and the PAGA Period continue "through the date on which the Court issues the Preliminary Approval Order, or an earlier date as Defendant may elect pursuant to Paragraph 10.9." (Settlement Agreement, ¶¶ 1.6, 1.19.) Paragraph 10.9 is the escalator clause in the settlement agreement and provides that Defendant has the option

to either increase the settlement amount or change the Class Period or PAGA Period end date depending on the number of workweeks worked as of the end date of the pay period covering July 26, 2023.

Thus, the court stated the settlement agreement as drafted does not provide for a clear end for the Class Period and PAGA Period. This could result in class members being told that they are in class, and later being told that they are not in the class, and the court stated it would not give preliminary approval under such circumstances. The court stated that the parties want to keep the adjusted end date, they will have to determine if the escalator clause applies before sending out the class notices so that it is not sent to non-participants.

The court also expressed concern regarding whether the Plaintiff's discounts of her claims were fair and reasonable. The court noted that Plaintiff's counsel did not explain what discovery Plaintiff made and what specific information she received from Defendant. Plaintiff also did not provide an estimate of the average payment to be received by class members and PAGA members. The court noted that Plaintiff did not explain why a 50 percent violation rate was used for the second cause of action (i.e., rest period violations), and that Plaintiff provided no analysis for the sixth cause of action (i.e., the "UCL" claim). Lastly, the court stated it was unclear whether the valuation of the PAGA claim included stacking penalties and whether it was based on initial or subsequent violations.

The supplemental declaration filed by Plaintiff's counsel on June 17, 2023 discusses the court's concerns regarding the fairness of the settlement. Plaintiff now states that estimated maximum potential recovery of its claims is $6,196,794. (Gaines Supp. Dec., ¶ 30.) Plaintiff provides a breakdown of this sum by claim. (*Id.* at ¶¶ 18-30.) Using Plaintiff's estimate, the settlement represents approximately 4.7 percent of the maximum potential value of Plaintiff's claim. If rounded, the settlement falls just within the low end of the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavasos*, *supra*, 2022 U.S.Dist.LEXIS 30201 (*Cavasos*), at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

However, it is not clear to the court how the estimated numbers for Defendant's maximum exposure changed so significantly between the first and second declarations in

support from Plaintiff's counsel. The court previously calculated, using Plaintiff's numbers, that the Defendant's maximum exposure was $7,939,594. Now, Plaintiff indicates Defendant's maximum exposure is $6,196,794. This change is significant, as moves the settlement's relevant percentage-recovery figure from 3.6 percent to 4.7 percent. Accordingly, prior to the continued hearing, Plaintiff's counsel shall submit a declaration explaining this discrepancy.

Plaintiff also provides additional explanation and details pertaining to the settlement amount. Plaintiff now states that the settlement provides for an average payment of approximately $378.09 for each of the class members. (Gaines Dec. at ¶ 32.) Plaintiff states that Defendant informally provided its employee handbook and personnel records. (*Id.* at ¶ 12.) Plaintiff further explains that a 50 percent violation rate was used for calculations for the second cause of action "[b]ased on the likelihood that Plaintiff would be able to demonstrate some, but not all, rest breaks were not properly provided[.]" (*Id.* at ¶ 18.) Plaintiff's counsel asserts that "it would be difficult, if not impossible, through a survey process, to demonstrate a 100% violation rate for rest breaks particularly where, as here, Defendant argues that rest breaks were indeed offered and the written policies complied with California law." (*Ibid.*) Plaintiff's counsel also clarified that the valuation of the PAGA claim does not include "stacking" penalties and is based on one penalty per pay period. (*Id.* at ¶¶ 26-27.)

Thus, the supplemental declaration filed by Plaintiff addresses some of the concerns identified by the court in its prior tentative ruling concerning the fairness of the settlement. It also states that the parties have reduced the attorney's fees provision from 35 percent to the more typical 33 and 1/3 percent, and that the parties revised the class notice in accordance with the court's instructions. (Gaines Supp. Dec., ¶¶ 9-10.)

However, the court continues to have concerns with regard to the end date of the Class Period and the PAGA Periods. Plaintiff states that the parties negotiated for the provisions calling for these dates to be tracked to the date of the court's preliminary approval (unless the escalator clause applies). (Gaines Supp. Dec., ¶¶ 5, 8.) According to Plaintiff, "Defendant has determined that as of July 26, 2023, the workweek count did not exceed 37,950." (*Id.* at ¶ 7.) Therefore, as the court understands it, Plaintiff argues that the conditions of the escalator

clause have not been met, and Defendant does not have the option to adjust the end date. (*Id.* at ¶¶ 5-8.)

Nevertheless, the court remains concerned that the only settlement agreement signed by the parties and provided to the court leaves open the possibility for an indefinite end date for both the Class Period and the PAGA Period. Thus, under the settlement as currently drafted, if it turns out that Defendant later determines that the workweek count as of July 26, 2023 does in fact exceed 37,950, Defendant could still exercise its right to alter the end dates. If new information concerning the workweeks were made available after the class notices were mailed, then it is possible someone could be told that they were a class member, and then later told that they were not. As the court previously indicated, it will not grant preliminary approval to settlement that could result in such a scenario.

The court is also concerned that the estimated number of class members appears to have changed without explanation. Plaintiff's counsel previously stated that the class includes approximately 400 members. (Gaines Dec., ¶¶ 26-27.) Plaintiff's counsel now states that the settlement provides for an average payment of approximately $378.09 for each of the class members, based on an estimated 354 class members. (Gaines Supp. Dec. at ¶ 32.)

The parties have made progress in addressing the court's concerns but have not addressed them fully. The court will grant Plaintiff one more opportunity to support her motion for preliminary approval. As Plaintiff has represented that the escalator clause at paragraph 10.9 does not apply, the parties are instructed to meet and confer with the objective of entering into an amended settlement agreement in which the end dates for the Class Period and PAGA Period are clearly specified. Prior to the continued hearing, Plaintiff's counsel shall file a supplemental declaration advising the court of these meet-and-confer efforts and, if appropriate, include any amended settlement agreement reached by the parties. The supplemental declaration shall also explain why the estimated number of class members has changed and why there is a discrepancy (between the initial and supplemental declarations from Plaintiff's counsel) for the numbers provided for Defendant's maximum exposure.

C. Incentive Award, Fees, and Costs

Plaintiff requests an enhancement award in the amount of $10,000.

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

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

Plaintiff filed a declaration specifically detailing her participation in the action. Plaintiff declares that she spent approximately 25 hours in connection with this action, including discussing the case with class counsel, providing class counsel information about Defendant's policies and procedures, gathering information and documents, and attending mediation. (Declaration of Gabriela Bustamante in Support of Unopposed Motion for Preliminary Approval Class and Representative Action Settlement, ¶¶ 6-9.)

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

However, the requested incentive award in the amount of $10,000 appears to be excessive. The amount requested is substantially higher than the court typically awards for the amount of time Plaintiff spent in connection with this action (i.e., approximately 25 hours). In light of the forgoing, the court finds a service award of $4,500 to be reasonable and approves the award in that lesser amount.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will seek attorney fees of $96,666.67 (33 1/3 percent of the gross settlement amount). Plaintiff's counsel shall submit lodestar information (including hourly rates and hours worked)

prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiff's counsel shall also submit evidence of actual costs incurred.

D. Conditional Certification of Class

Plaintiff requests that the class be conditionally certified for purposes of the settlement. Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . ." As interpreted by the California Supreme Court, section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*).)

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

As explained by the California Supreme Court,

> The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

(*Sav-On, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff has stated that there are approximately 400 class members that can be determined from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

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

The notice generally complies with the requirements for class notice. (Settlement Agreement, Ex. 1.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion. As discussed above, the parties have amended the class notice in accordance with the court's prior instructions. However, should the parties reach any further agreements with respect to terms of the proposed settlement, the class notice must be amended to reflect any such changes.

IV. CONCLUSION

Accordingly, the motion for preliminary approval of the class and representative action settlement is CONTINUED to August 21, 2024, in Department 19 at 1:30 p.m. No later than August 5, 2024, Plaintiff's counsel shall file a supplemental declaration with the information requested by the court. No further filings are permitted.

Plaintiff shall prepare the order.

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Calendar Line 6

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

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 3, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. 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 Complaint ("FAC"), filed on December 14, 2021, sets forth causes of action: (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 (9) 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 to 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 amendment 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.

On November 8, 2023, the court granted the motion for preliminary approval of the settlement subject to approval of the second amended class notice. On November 20, 2023, the court entered a formal order granting preliminary approval of the settlement and approving the amended class notice.

Plaintiff moved for final approval of the settlement. The motion was unopposed.

On May 15, 2024, the court continued the motion for final approval to July 3, 2024. In its tentative ruling, the court expressed concerns regarding the adequacy of the class notice and the manner in which the parties applied the settlement agreement's escalator clause. The court directed the parties to submit supplemental declarations addressing why their prior estimates regarding the number of class members and workweeks differ from the numbers provided in connection with the motion for final approval of the settlement.

On June 17, 2024, the parties submitted supplemental declarations in support of the motion for final approval.

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

The case has been settled on behalf of the following class:

> [A]ll persons who worked for Defendant [Bill Brown Construction Company ("Defendant")] in California as an hourly paid, non-exempt at any time between September 13, 2017 to August 8, 2023.

The class also contains a subset of PAGA Members that are defined as "all persons who worked for Defendant in California as an hourly paid, non-exempt employee at any time between September 13, 2020 to August 8, 2023.

According to the terms of the settlement, Defendants will pay a gross, non-reversionary settlement amount of $600,000. The gross settlement amount includes attorney fees of $199,980 (33 1/3 percent of the gross settlement amount), litigation costs not to exceed $25,000, a service award for the class representative not to exceed $10,000, settlement administration costs (estimated to be $7,950), and a PAGA allocation of $50,000 (75 percent of which will be paid to the LWDA and 25 of which will be paid to PAGA Members.).

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

The settlement agreement originally provided that checks remaining uncashed more than 180 days after mailing would be void and the funds from those checks would be distributed to the Unclaimed Property Fund of the State Controller's Office. The parties subsequently executed an Amended Settlement Agreement, identifying Legal Aid at Work as the *cy pres* recipient. The court approved the *cy pres* recipient.

In exchange for the settlement class members agree to release Defendant, and related entities and persons, from all claims, rights, demands, liabilities, and causes of action that were or could have been pleaded based on, arising from, or related to the factual allegations set forth in the FAC and Plaintiff's notice to the LWDA. PAGA group members agree to release Defendant and related entities and persons from PAGA claims that were alleged or could have been alleged based on the facts alleged in this action. Plaintiff further agrees to a general release.

On January 31, 2024, the settlement administrator mailed notices to 187 class members. (Declaration of Lluvia Islas in Support of Plaintiff's Motion for Final Approval of Class and

PAGA Action Settlement ("Islas Dec."), ¶¶ 3-5.) Ultimately, five notices were deemed undeliverable. (*Id.* at ¶¶ 8-9.)

The settlement administrator declared that the total number of workweeks exceeded 17,600 such that the escalator clause, which is set forth in paragraph 34 of the settlement agreement, was triggered. (Islas Dec., ¶ 11; Declaration of Kane Moon in Support of Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement ("Moon Dec."), Ex. 1, ¶ 34.) The settlement administrator states that "Defendant decided to cut off the Class Period on May 2, 2021." (Islas Dec., ¶ 11.) The settlement administrator also stated that the 187 class members worked a total of 17,528.71 workweeks during the class period. (*Id.* at ¶ 13.)

The highest individual settlement share to be paid is approximately $3,420.75, the lowest individual settlement share to be paid is approximately $12.89, and the average individual settlement share to be paid is approximately $1,691.44. (Islas Dec., ¶ 13.)

In its May 15 tentative ruling, the court expressed concerns regarding the adequacy of the notice and the manner in which the parties applied the escalator clause. Plaintiff previously advised the court in connection with the motion for preliminary approval of settlement that there were approximately 212 class members who worked a total of 16,000 as of the date of mediation (i.e., 6/8/23). However, in connection with the motion for final approval, the settlement administrator stated that notice packets were only mailed to 187 class members. Additionally, the settlement administrator represented that Defendant had elected to cut off the Class Period as of May 2, 2021, pursuant to the terms of the escalator clause, and the 187 class members worked a total of 17,528.71 workweeks during the Class Period.

It was unclear to the court how the parties determined that a Class Period end date of May 2, 2021 was appropriate. The escalator clause provides that Defendant "has the unilateral right to" cutoff the Class-Period to end on the date that the total workweeks reaches 17,600. (Moon Dec., Ex. 1, ¶ 34.) According to the settlement administrator, the total workweeks as of May 2, 2021 are 17,528.71, not 17,600 as required by the settlement agreement. Notably, Plaintiff does not address this discrepancy in his moving papers and there is no statement from

Defendant regarding its purported decision to change the Class Period end date. The court required the parties to submit supplemental declarations addressing this issue.

The court also expressed concern that the parties previously represented that there were 212 class member who worked a total of 16,000 workweeks as of the date of mediation (i.e., 6/8/23), but they later represented that the class size and Class Period had to be significantly reduced as 187 class members worked 17,528.71 workweeks as May 2, 2021. The court required the parties to submit supplemental declarations addressing why their prior estimate differed so substantially from the numbers that they provided to the court in connection with the motion for final approval.

On June 17, 2024, the parties submitted three declarations. Plaintiff's counsel, Kane Moon, submitted a declaration acknowledging the court's concerns. (Supplemental Declaration of Kane Moon in Support of Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement ("Moon Supp. Dec."), ¶ 4.) Mr. Moon explained that the parties engaged in formal and informal discovery prior to the mediation in June 2023. (*Id.* at ¶ 5.) Plaintiff served special interrogatories requesting the Class Member count during the Class Period, and Defendant's responses indicated that there were a total of 212 Class Members. (*Ibid.*) Defendant did not refute this number at mediation, and the parties estimated that there were approximately 16,000 workweeks during the Class Period. (*Ibid.*) Mr. Moon asserts that the he provided these figures to the court in connection with the motion for preliminary approval in good faith based on formal and informal discovery conducted prior to the mediation. (*Id.* at ¶ 6.)

Mr. Moon asserts that after the court granted preliminary approval, the settlement administrator received class data from Defendant. (Moon Supp. Dec., ¶ 7.) Mr. Moon states he was not provided with the class data. (*Ibid.*) The settlement administrator informed Mr. Moon that the settlement agreement's escalator clause was triggered, and that Defendant chose to cut off the class period on May 2, 2021. (*Ibid.*) Mr. Moon was not involved in the decision to cut off the end of the class period, but accepted and approved Defendant's decision to do so and approved the notices that were mailed reflecting a Class Period end date of May 2, 2021. (*Ibid.*)

Defense counsel, Frank Zeccola, also submitted a declaration addressing the court's concerns. (Supplemental Declaration of Frank Zeccola, Esq., in Support of Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement ("Zeccola Dec."), ¶ 4.) Mr. Zeccola states that on January 24, 2023, he received an email from the settlement administrator stating that the escalator clause had been triggered and that Defendant had the unilateral right to decide between either a pro rata increase in the gross settlement amount or "a cut-off of the Class Period to end on the date that total workweeks reaches 17,600." (*Id.* at ¶ 5.) Mr. Zeccola responded later that day, stating that Defendant would exercise its rights to the second option. (*Id.* ¶ 6.)

Mr. Zeccola also addressed the discrepancy in numbers identified by the court in its May 15, 2024 tentative ruling, stating: "It appears that some employees of Defendant that worked outside of the Class Period were mistakenly included in the data set sent to Plaintiff before mediation. As confirmed in the Settlement Administrator's Supplement Declaration, the Settlement Administrator removed these individuals from the Class List." (Zeccola Dec., ¶ 7.)

The settlement administrator, Lluvia Islas of Phoenix Settlement Administrators ("Phoenix"), also submitted a supplemental declaration in response to the court's May 15th tentative ruling. (See Supplemental Declaration of Lluvia Islas in Support of Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement ("Islas Supp. Dec.").)

According to Ms. Islas, Phoenix received a data file from defense counsel on December 21, 2023. (Islas Supp. Dec., ¶ 3.)

> The initial data file contained two hundred ninety-five (295) unique individuals with thirty thousand two hundred ninety-six (30,296.86) workweeks that fall under the original Class Period [of] September 13, 2017, to August 8, 2023. Based on the data file provided by Defendant[,] Phoenix calculated workweeks using the start and term dates provided.

(*Ibid.*)

Ms. Islas referenced the escalator clause found in paragraph 34 of the Settlement Agreement, stating that "[s]ince the total number of Workweeks did exceed 17,600, the Escalator Clause was triggered, and Defendant decided to cut off the Class Period on May 02, 2021." (Islas Supp. Dec., ¶ 11.) Regarding the cutoff date, Ms. Islas states that May 2, 2021

"was chosen because the workweeks as of May 2, 2021 did not go over 17,600 workweeks." (*Id.* at ¶ 7.)

Ms. Islas further states:

> One hundred eight (108) individuals were removed from the Class List as they were out of the Class Period. These individuals were not sent a notice as they were not included in the Class List, and fell outside of the of the cut off of the Class Period[.] [¶] After removing the One hundred eight (108) individuals from the data provided by the Defendant, the remaining one hundred eighty-seven (187) Class Members were sent a class notice with the updated Class Period ending on May 2, 2021.

(*Id.* at ¶ 5.)

After careful consideration of the supplemental declarations submitted since the May 15, 2024 hearing, the court is satisfied that manner in which the parties applied the escalator clause is fair and reasonable, and that the discrepancy in numbers can reasonably be attributed to an error in Defendant's initial discovery responses. Thus, the court finds that the settlement is fair and reasonable.

Plaintiff requests an incentive award of $10,000 for the class representative. In connection with preliminary approval, Plaintiff submitted a declaration detailing his participation in the action and the court approved the incentive award. The court continues to approve the incentive award for purposes of final approval.

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 of $199,980 (33 1/3 percent of the gross settlement amount). Plaintiff's counsel provides evidence demonstrating a total lodestar of $111,872.50, based on 200.47 hours of work by attorneys billing an hourly rate of $325 to $750. (Moon Dec., ¶ 42.) The results in a multiplier of 1.78. The court finds the attorney fees reasonable as a percentage of the common fund and they are approved.

Plaintiff's counsel also requests costs in the amount of $15,770.60. Plaintiff's counsel provides evidence of incurred costs in that amount and the costs are approved. (Moon Dec., ¶ 42.) The settlement administration costs are also approved in the amount of $7,950. (Islas Dec., ¶ 15, Ex. B.)

IV. CONCLUSION

The motion for final approval of the class and representative PAGA action 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 7

Case Name: Andrews, et al. v. Fortinet, Inc. (Class Action/PAGA)
Case No.: 23CV410792

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 3, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This class and representative action arises out of various alleged wages and hour violations. As is relevant here, plaintiff Lauren Andrews ("Lauren") filed her original Class Action Complaint ("Complaint") against defendant Fortinet, Inc. ("Defendant") on February 3, 2023. The Complaint alleged class for violations of the Labor Code and Unfair Competition Law ("UCL").

On February 27, 2023, plaintiff Lucas Andrews ("Lucas") filed a First Amended Complaint ("FAC") in this action, which alleged class claims for violations of the Labor Code and the UCL.

On September 26, 2023, Lauren and Lucas (collectively, "Plaintiffs") filed a Second Amended Class and PAGA Action Complaint ("SAC"), which sets forth the following causes of action: (1) Failure to Pay All Minimum Wages; (2) Failure to Pay All Overtime Wages; (3) Meal Period Violations; (4) Rest Period Violations; (5) Failure to Pay All Sick Time; (6) Wage Statement Violations; (7) Waiting Time Penalties; (8) Failure to Reimburse Necessary Business Expenses; (9) Unfair Competition; and (10) PAGA Penalties.

The parties have reached a settlement. On April 23, 2024, Plaintiffs moved for preliminary approval of the class and representative action settlement. The motion was unopposed.

On May 15, 2024, the court continued the motion for preliminary approval of the settlement to July 3, 2024. While the court found the proposed settlement amount to be reasonable, it identified issues requiring further attention, including the scope of the releases and the corresponding language in the class notice. The court directed Plaintiffs to file a supplemental declaration addressing these issues prior to the continued hearing. The court also

directed Plaintiffs to file supplemental declarations in support of the request for enhancement awards prior to the final approval hearing. The court also directed Plaintiff's counsel to submit further information regarding attorney fees and costs prior to the final approval hearing.

On June 4, 2024, Plaintiffs' counsel filed a supplemental declaration in support of the motion for preliminary approval of the settlement.

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.)

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.)

III. DISCUSSION

A. Provisions of the Settlement

This case has been settled on behalf of the following class:

> [A]ll persons who are or were previously employed by Defendant in California classified as a non-exempt employee during the Class Period.

(Declaration of Mehrdad Bokhour in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Bokhour Dec."), Ex. A ("Settlement Agreement"), ¶¶ 38, 39.)

The Class Period is defined as the period from February 3, 2019 through February 28, 2024. (Settlement Agreement, ¶ 7.) The class also includes a subset of aggrieved employees, who are defined as all persons who are or were previously employed by Defendant in California classified as a non-exempt or hourly employee at any time from February 3, 2022 through February 28, 2024. (Settlement Agreement, ¶ 2.)

According to the terms of settlement, Defendant will pay a maximum, non-reversionary settlement amount of $2,026,613. (Settlement Agreement, ¶¶ 48, 49.) The gross settlement amount includes attorney fees up to $675,537.66 (1/3 of the gross settlement amount), litigation costs not to exceed $20,000, a PAGA allocation of $25,000 (75 percent to be paid to the LWDA and the remaining 25 percent to be paid to aggrieved employees), enhancement awards in the total amount of $20,000 (up to $10,000 for each class representative), and settlement administration costs not to exceed $8,000. (Settlement Agreement, ¶ 48.) The court

approves Phoenix Class Action Administration Solutions as the settlement administrator and administration costs not to exceed $8,000.

The settlement agreement states that the net settlement amount will be distributed to participating class members on a pro rata basis. (Settlement Agreement, ¶ 48.) Similarly, all aggrieved employees will receive a pro rata share of the 25 percent portion of the PAGA allocation. (*Ibid.*)

Class members have 180 days after mailing to cash their checks, and any uncashed checks will be deemed void and those funds will be distributed to the Interdisciplinary Center for Healthy Workplaces at the University of California, Berkeley. (Settlement Agreement, ¶ 74.) The *cy pres* recipient is approved.

In exchange for the settlement payments, class members agree to release Defendant and related persons and entities from "the Released Class Claims for the Class Release Period." (Settlement Agreement, ¶¶ 31, 32, 51.) The "Released Class Claims" are defined as:

> all claims that were alleged, or reasonable could have been alleged, based on the facts stated in the Complaint, including claims for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to timely pay final wages at the time of termination/end of employment; (6) failure to furnish accurate itemized wage statements; (7) failure to reimburse employees for business expenses; (8) unfair business practices; (9) failure to pay sick wages; and (10) claims for statutory penalties for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802-2804, Civil Code sections 3287 and 3289, and unfair and unlawful business practices.

(Settlement Agreement, ¶ 4.)

Additionally, in exchange for the settlement payments, aggrieved employees agree to release Defendant and related persons and entities, from "the Released PAGA Claims for the PAGA Release Period." (Settlement Agreement, ¶¶ 31, 32, 53.) The "Released PAGA Claims" are defined as:

> all claims for PAGA penalties that were alleged, or reasonably could have been alleged during the PAGA Period, based on the facts stated in the Complaint and the PAGA Notice including claims for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to timely pay final wages at the time of

> termination/end of employment; (6) failure to furnish accurate itemized wage statements; (7) failure to reimburse employees for business expenses; (8) unfair business practices; (9) failure to pay sick wages; (10) claims for penalties under the Private Attorneys General Act for violation of California Labor Code sections 201-204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1¶197, 1197.1, 1198, 1199, and 2802-2804, Civil Code sections 3287 and 3289, and 2802-2804, 2698, *et seq.*

(Settlement Agreement, ¶ 23.) The settlement agreement further provides:

> Plaintiffs and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Aggrieved Employees and the LWDA to obtain recovery based on, arising out of, and/or related to any and all of the Released PAGA Claims. The Aggrieved Employees and the LWDA shall be notified in the Notice.

(Settlement Agreement, ¶ 56.)

Plaintiffs also agree to a general release. (Settlement Agreement, ¶¶ 58, 59.)

B. Fairness of the Settlement

Plaintiffs state that the settlement was reached through discovery, analysis, and mediation with Mark Feder, Esq. (Bokhour Dec., ¶¶ 6, 14, 15, 17.) Plaintiffs' counsel conducted informal discovery, which included a sampling of payroll and time records, Defendant's policies and procedures, and interviews with putative class members. (*Id.* at ¶¶ 14, 15.) From the information provided, Plaintiffs determined that there were approximately 524 class members who worked 53,419 workweeks. (*Id.* at ¶ 10.) Plaintiffs estimate that Defendant's maximum potential liability for all the claims is approximately $7,796,912. (*Id.* at ¶¶ 27-43.) Plaintiffs provide a breakdown of this amount by claim. (*Ibid.*) Plaintiffs discounted the value of the claims given Defendant's defenses, the possibility that the court could substantially reduce any PAGA penalties, and the risks and costs associated with class certification. (*Ibid.*) The average payment to class members will be approximately $2,440. (*Id.* at ¶ 10.)

The gross settlement amount represents approximately 25.9 percent of the potential maximum recovery. The proposed settlement amount is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavasos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201, at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

In its May 15, 2024 tentative ruling, the court generally found the terms of the settlement to be fair, noting that the settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

However, the court identified concerns regarding the scope of the releases. The court noted that some portions of the class release and PAGA release were reasonable. More specifically, the court found the language in paragraphs 4, 23, 31, 32, 51 and 55 to be reasonable as it released Defendants and related persons and entities from claims that were or reasonably could have been alleged in the operate complaint and PAGA notice letter.

However, the court found that paragraphs 55 and 56 of the settlement agreement to be impermissibly overbroad. In those paragraphs of the settlement agreement originally submitted, class members agree to release "any further claim" related to any and all of the Released Class Claims, and aggrieved employees agree to release "any further claim" related to any of the Released PAGA Claims. The court said that such language impermissibly extends to claims outside the scope of the operative complaint and potentially engulfs other employment claims, such as claims for discrimination or wrongful termination. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537 [a release of claims that goes beyond the scope of the allegations in the operative complaint is impermissible]; see also *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 79-86 [PAGA claims released by aggrieved employees must be limited those PAGA claims that could have been pleaded based on the facts alleged].)

Thus, in its May 15 tentative ruling, the court directed the parties to meet and confer regarding a possible amendment to cure the overbreadth issue. The court further directed Plaintiffs to file a supplemental declaration regarding these efforts.

On June 4, 2024, Plaintiffs' counsel filed a supplemental declaration in response to the court's instructions. (See Supplemental Declaration of Mehrdad Bokhour in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Bokhour Supp. Dec."), ¶ 3.) Plaintiffs' counsel advises that the parties met and conferred and revised paragraphs 55 and 56 of the settlement agreement "to delete the word 'further' and clarify that class members and aggrieved employees are only releasing claims that were alleged, or

reasonably could have been alleged, based on the facts of the operative complaint or the PAGA notice letter." (*Id.* at ¶¶ 4-6.)

Plaintiffs have provided the amended settlement agreement with revised language at paragraphs 55 and 56. (Bokhour Supp. Dec., Ex. B ("Amended Settlement Agreement"), ¶¶ 55, 56.) As amended, paragraphs 55 and 56 of the settlement agreement have the word "further" removed. (*Ibid*.) Paragraph 55 now contains additional language providing that the participating class members release claims "based on, and/or arising out of, any and all of the Released Class Claims including, without limitation, claims that were alleged, or reasonably could have been alleged, based on the facts of the operative complaint." (Amended Settlement Agreement, ¶ 55.) Similarly, paragraph 56 provides that aggrieved employees release claims "based on, and/or arising out of, any and all of the Released PAGA Claims including, without limitation, claims that were alleged, or reasonable could have been alleged, based on the facts of the operative complaint or the PAGA notice letter. This paragraph shall not be interpreted as a release of Aggrieved Employees' individual claims." (Amended Settlement Agreement, ¶ 56.)

The court notes that paragraphs 55 and 56 in the Amended Settlement Agreement now contain the phrase "without limitation." However, these paragraphs no longer reference "further" claims, which previously extended the releases beyond claims that were or reasonably could have been alleged based on the allegations of the operative complaint and PAGA notice letter. As such, the releases as amended are now appropriately tailored to the allegations of the operative complaint and PAGA notice letter. Thus, the court finds that the Amended Settlement Agreement sufficiently cures the overbreadth issue identified in the court's May 15 tentative ruling.

Accordingly, the court is satisfied that the settlement as expressed in the Amended Settlement Agreement is fair and reasonable.

C. Incentive Award, Fees, and Costs

Plaintiffs requests an enhancement award in the amount of $20,000 ($10,000 for each class representative).

> The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in

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

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

As the court previously noted, the amounts sought for the enhancement awards are higher than the court typically awards in these types of cases. Although Plaintiffs have provided declarations in support of their request, these declarations do not provide an estimate of the time they spent in connection with this action. Therefore, prior to the final approval hearing, Plaintiffs shall file declarations specifically describing their participation in the action as well as an estimate of time spent.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees up to $675,537.66 (1/3 of the gross settlement amount) and litigation costs not to exceed $20,000. Plaintiffs' counsel shall submit lodestar information (including hourly rates and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiffs' counsel shall also submit evidence of actual costs incurred as well as evidence of any settlement administration costs.

D. Conditional Certification of Class

Plaintiff requests that the class be conditionally certified for purposes of the settlement. Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when

the parties are numerous, and it is impracticable to bring them all before the court . . . ." As interpreted by the California Supreme Court, section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*).)

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

As explained by the California Supreme Court,

> The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

(*Sav-On, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff states that there are approximately 524 class members that can be determined from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

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

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

In its May 15, 2024 tentative ruling, the court stated that, to the extent the parties modify the language of the class release and PAGA release, the notice must be updated to reflect any new or different terms. Additionally, the court stated that the notice must be amended 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.

Plaintiffs' counsel advises that the parties "have revised the Class Notice to clarify the scope of the class and PAGA release and inform Class Members that they may appear at the final approval hearing in person or remotely," and counsel has submitted the revised class notice. (Bokhour Supp. Dec., ¶¶ 7, 9, Ex. D.) Plaintiffs have submitted the revised class notice. (*Id.* at ¶ D.) The court approves the amended class notice.

IV. CONCLUSION

The motion for preliminary approval of the class and representative action settlement is GRANTED. The final fairness hearing is set for January 8, 2025, at 1:30 p.m. in Department 19. No later than December 23, 2024, Plaintiffs and Plaintiffs' counsel shall submit declarations containing the additional information requested by the court. No further filings are permitted.

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

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