SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2170

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

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

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LAW AND MOTION TENTATIVE RULINGS

DATE: SEPTEMBER 19, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	19CV343871	Langlands, et al. v. Leland Stanford Junior University (Class Action/PAGA)	See Line 1 for tentative ruling.
LINE 2	19CV342636	Juarez v. Palo Alto Community Child Care (Class Action)	See Line 2 for tentative ruling.
LINE 3	20CV367092	Hamilton v. Hewlett Packard Enterprise Company, et al. (Class Action/PAGA)	See Line 3 for tentative ruling.
LINE 4	22CV402583	Niemann v. LVNV Funding, LLC (Class Action)	See Line 4 for tentative ruling.
LINE 5	20CV373138	Envirodigm, Inc. v. Apple, Inc.	Tentative ruling provided directly to the parties.

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	23CV425686	Goldsberry v. Magnum Management Corporation, Inc., et al. (Class Action/PAGA)	See Line 6 for tentative ruling.
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Sara Langlands, et al. v. Leland Stanford Junior University*
Case No.: 19CV343871

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Sara Langlands, Leighland Hooks and Marisol Hernandez (collectively, "Plaintiffs") allege that Defendant Leland Stanford Junior University ("Defendant" or "Stanford") failed to pay overtime and minimum wages, failed to provide meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations. Before the Court are Plaintiffs' motion for final approval of settlement and motion for fees and class representative service awards, both of which are unopposed. As discussed below, the Court GRANTS both motions.

I. BACKGROUND

According to the allegations of the operative Third Amended Complaint ("TAC"), Plaintiffs worked in different positions as non-exempt, non-unionized employees of Stanford in California. Sara Langlands worked for Stanford's Department of Music and Stanford Live for over five years as a part-time Administrative Assistant and as a Project Manager and Production Coordinator. (*Ibid*.) Leighland Hooks also worked in Stanford's Department of Music and Stanford Live. For approximately three years, his job duties involved setting up and operating sound and lighting equipment. (*Ibid*.) Marisol Hernandez worked as a Public Safety Officer for Stanford for over seven years.

Plaintiffs allege that Stanford failed to compensate them for hours worked in excess of eight hours per day and forty hours per week. (TAC, ¶¶ 12-17.) Defendant also failed to provide Plaintiffs with code-compliant meal and rest periods or the legally-mandated premiums for not doing so. (*Id*. at ¶¶ 18-22.) Defendant additionally failed to pay Plaintiffs for travel time between job locations and mandatory meetings, reimburse them for expenses incurred for such travel, and failed to provide them with accurate and itemized wage statements in accordance with California law. (*Id*. at ¶¶ 23-26.) Finally, Stanford failed to reimburse Plaintiffs for all business-related expenses as required, including expenses associated with work-related cell phone usage. (*Id*., ¶ 25.)

Based on the foregoing allegations, Plaintiffs assert the following causes of action: (1) failure to pay all overtime earned for hours worked; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to pay wages for all hours worked; (5) violation of Labor Code §§ 204 and 210; (6) failure to provide accurate wage statements; (7) violation of Business & Professions Code § 17200, et seq.; (8) expense reimbursement; (9) failure to produce records; (10) penalties under PAGA.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

Generally, "questions whether a [class action] settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad

discretion." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

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

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

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

B. PAGA

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

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

statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

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

III. SETTLEMENT CLASS

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

(1) all current and former non-exempt employees, defined as full and part time non-exempt employees whether paid on a salary or hourly basis who were included in pay groups NX1, NXH, HR2 and NX2, excluding enrolled students and bargaining unit members, who worked in California between March 6, 2015, and the earlier of December 31, 2023, or the date of preliminary approval of the parties' settlement agreement by the Court; and
(2) all current or former Contingent (non-exempt employees hired on a Casual or Temporary basis) non-exempt employees who worked in Stanford's Department of Public Safety, Department of Music, Bing Concert Hall, Music Library, Stanford Video, and CCRMA-Computer Music Lab, and Stanford Live, excluding students and bargaining unit members, who worked in California between March 6, 2015, and the earlier of December 31, 2023, or the date or preliminary approval of the parties' settlement agreement by the Court.

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

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

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the ascertainable class

determination need not be confronted, and the court's review is more lenient in this respect. (*Id.* at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

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

IV. TERMS AND ADMINISTATION OF SETTLEMENT

The non-revisionary gross settlement amount is $6,000,000. Attorney fees of up to one-third of the gross settlement ($2,000,000), litigation costs not to exceed $75,000, and administration expenses not to exceed $100,000 will be paid from the gross settlement. $300,000 will be allocated to PAGA penalties, 75% of which ($225,000) will be paid to the LWDA. Plaintiffs will seek enhancement awards of $20,000 for Ms. Langlands, $20,000 for Mr. Hooks and $7,500 for Ms. Hernandez.

The net settlement will be allocated to Class Members on a pro rata basis based on the number of weeks worked during the Class period. For tax purposes, settlement payments will be allocated 20% to wages, 60% to penalties and 20% to interest. The employer side payroll taxes on the settlement payments will be paid by Defendant separately from, and in addition to, the gross settlement amount.–100% of the PAGA settlement to "Aggrieved Employees" will be allocated to penalties. Funds associated with checks uncashed after 180 days will be donated to The Law Foundation of Silicon Valley, the designated *cy pres* recipient.

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

> [A]ll all claims, charges, complaints, liens, demands, causes of action, obligations, damages, and liabilities, from March 6, 2015, through the earlier of December 31, 2023, or the date of preliminary approval of the Parties' Settlement Agreement by the Court (the Class Period), known or unknown, suspected or unsuspected, that each participating Class Member had, now has, or may hereafter claim to have during the Class Period against Defendant The Board of Trustees of the Leland Stanford Junior University, its agents, trustees, officers, employees, directors, owners, subsidiaries, DBA's, affiliates, and predecessors and successors (the Released Parties), and that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act alleged in Plaintiffs' Third Amended Complaint and Notice to the LWDA, regardless of whether such claims arise under federal, state, and/or local law, statute, ordinance, regulation, common law, or other source of law ….

"Aggrieved Employees" will also release "any claim for civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.* that arose during the PAGA Period, as asserted in the Action, or that could have been asserted

based on the facts, claims, causes of action, and legal theories that were asserted in the Action and identified in the Notices to the LWDA dated March 7, 2019 and April 19, 2022." As the Court concluded in its order preliminarily approving the settlement, the releases are appropriately tailored to the factual allegations at issue. (See *Amara v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) Consistent with the statute, Aggrieved Employees will not be able to opt out of the PAGA portion of the settlement.

The notice period has now been completed. According to the declaration of case manager Nathalie Hernandez with settlement administrator ILYM Group, Inc. ("ILYM") submitted in support of the instant motion, on April 23, 2024, ILYM received from Defendant's counsel the data files containing the names, social security numbers, last known mailing addresses, and the total number of relevant workweeks worked for each of the 11,926 individuals contained in the Class list. ILYM processed the addresses it had against the National Change of Address database to confirm and update this information and then mailed the notice packet to Class members on May 6, 2024 via first class mail. As of the date of Ms. Hernandez's declaration, August 9, 2024, ILYM has received 894 returned notice packets as undeliverable. Of these 894 notices, 5 were returned with a forwarding address to which a notice packet was promptly re-mailed. ILYM conducted a skip trace and located 746 updated addresses on the remaining 889 returned notices, to which notice packets were re-mailed. At present, 148 notice packets have been deemed undeliverable as no updated addresses have been located.

The deadline to submit a request for exclusion, a challenge to the amount of work weeks listed, or an objection to the settlement was July 5, 2024. As of the date of Ms. Hernandez's declaration, ILYM has received 15 requests for exclusion and no objections, resulting in 11,911 participating Class members, representing 99.87% of the settlement Class.[1] Based on this number, participating Class members will receive an estimated average gross payment of $29.93, with an estimated highest gross payment of $1,307.82 and the lowest $2.99.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiffs' claims, and that the PAGA settlement is genuine,

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[1] On September 16, 2024, the parties filed a joint notice regarding a late request to opt of the settlement. Attached to that notice was an email dated September 13, 2024, from Samaher Radwan requesting the Court permit a late request for exclusion. However, aside from some information about potential personal claims against Stanford, Radwan only vaguely describes why the opt out was submitted more than two months late: that the notice "was not made available . . . until well after the response deadline." However, that explanation is not enough, even under the federal authority Radwan cites in her email. "To establish excusable neglect . . . a movant must show good faith and a reasonable basis for noncompliance." (*In re PaineWebber Limited Partnerships Litigation* (1998) 147 F.3d 132, 135 (*PaineWebber*).) Even assuming that Radwan is acting in good faith, a satisfactory showing on the second element—a reasonable basis for noncompliance—is missing absent additional details. But such a showing is critically important because, as *PaineWebber* teaches, "orders establishing opt-out procedures and deadlines should be given full effect in order to foster the strong judicial policy in favor of settlements, particularly in the class action context." (*Id*. at p. 138.) Radwan has not overcome that "strong judicial policy," and the request to permit the late opt out is DENIED.

meaningful, and fair to those affected. It finds no reason to depart from these findings now, especially considering that there are no objections. Therefore, the Court finds that the settlement is fair and reasonable for the purposes of final approval.

V. ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS

As set forth above, Plaintiffs' counsel seeks a fee award of $2,000,000, or one-third of the gross settlement amount, which is not an uncommon contingency fee allocation in a wage and hour class action. Plaintiffs also provide a lodestar figure of $1,418,605.50 which is based on 1021.7 hours of work by Hunter Pyle Law at billing rates of $225 to $975 per hour, 48.1 hours of work by Cohelan Khoury & Singer at billing rates of $175 to $995 per hour, 143.9 hours of work by Kingsley & Kingsley, APC at billing rates of $800 to $1,100 per hour and 879.08 hours of work by Kletter Law at billing rates of $149.23 to $850 per hour. This results in a relatively modest multiplier of 1.41. This is well within the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra,* 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

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

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

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

Here, as the multiplier sought by Plaintiffs' counsel is relatively modest, well within the range of modifiers typically approved by courts and is supported by the percentage cross-check, the Court finds counsel's requested fee award is reasonable and thus is approved.

Plaintiffs' counsel also seeks $60,078.93 in litigation costs, which is well within the maximum amount ($75,000) permitted under the parties' settlement agreement. Based on the information contained in the declarations of Plaintiffs' counsel, this amount is reasonable and is therefore approved.
Plaintiff also requests settlement administration costs in the amount of $48,250, which are within the maximum amount ($100,000) permitted under the parties' agreement and are approved.

Finally, Plaintiffs seek enhancement awards of $20,000 for Ms. Langlands, $20,000 for Mr. Hooks and $7,500 for Ms. Hernandez. To support these requests, Plaintiffs submit declarations describing their efforts in this action. The Courts finds that Plaintiffs are entitled to enhancement awards and the amounts requested are reasonable and are therefore approved.

VI. CONCLUSION

In accordance with the above, assuming satisfactory clarification is provided as to the number of participating class members, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

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

1) all current and former non-exempt employees, defined as full and part time non-exempt employees whether paid on a salary or hourly basis who were included in pay groups NX1, NXH, HR2 and NX2, excluding enrolled students and bargaining unit members, who worked in California between March 6, 2015, and the earlier of December 31, 2023, or the date of preliminary approval of the parties' settlement agreement by the Court; and
2) all current or former Contingent (non-exempt employees hired on a Casual or Temporary basis) non-exempt employees who worked in Stanford's Department of Public Safety, Department of Music, Bing Concert Hall, Music Library, Stanford Video, and CCRMA-Computer Music Lab, and Stanford Live, excluding students and bargaining unit members, who worked in California between March 6, 2015, and the earlier of December 31, 2023, or the date or preliminary approval of the parties' settlement agreement by the Court.

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

The Court sets a compliance hearing for **May 8, 2025 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to

Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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

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

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Calendar Line 2

Case Name: *Liliana Juarez v. Palo Alto Community Child Care*
Case No.: 19CV342636

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Liliana Juarez alleges that Defendant Palo Alto Community Child Care failed to pay overtime and minimum wages, failed to provide meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

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

I. BACKGROUND

A. Factual

According to the allegations of the operative complaint ("Complaint"), Plaintiff was employed by Defendant, who provides childhood care and education, from approximately October 2014 through May 2018 as a Substitute Teacher, an hourly-paid, non-exempt position. (Complaint, ¶¶ 17-19.) She alleges that Defendant engaged in a uniform policy and systematic scheme of wage abuse against its employees by, among other things, requiring them to work off-the-clock without compensation, which resulted in failing to pay them for all hours worked, including minimum and overtime wages. (*Id*., ¶ 22.) Defendant also did not permit employees to take their meal and rest periods (and failed to pay premiums for those missed periods), and failed to reimburse them for all necessary business-related expenses. (*Id*.) Defendant further failed to keep accurate payroll records or provide Plaintiff, class members and aggrieved employees with code-compliant wage statements. (*Id*., ¶¶ 35-36.)

B. Procedural

Based on the foregoing allegations, Plaintiff filed the Complaint on February 14, 2019, asserting the following causes of action: (1) unpaid overtime (Labor Code §§ 510 and 1198); (2) unpaid meal period premiums (Labor Code §§ 226.7 and 512, subd. (a)); (3) unpaid rest period premiums (Labor Code § 226.7); (4) unpaid minimum wages (Labor Code §§ 1194, 1197 and 1197.1); (5) final wages not timely paid (Labor Code §§ 201, 202 and 203); (6) wages not timely paid during employment (Labor Code § 204); (7) failure to provide accurate wage statements (Labor Code § 226, subd. (a)); (8) failure to keep accurate payroll records (Labor Code § 1174, subd. (d)); (9) failure to reimburse expenses (Labor Code §§ 2800 and 2802); (10) violation of Business & Professions Code § 17200, et seq.; and (11) PAGA (Labor Code § 2699, et seq.).

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

Generally, "questions whether a [class action] settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad

discretion." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

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

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

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

B. PAGA

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

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

statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

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

III. SETTLEMENT CLASS

For settlement purposes only, Plaintiff requests the following class be certified:

> All current and former non-exempt employees of Defendant employed in the state of California at any time from February 14, 2015 through July 24, 2023.

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

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

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

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

IV. TERMS AND ADMINISTATION OF SETTLEMENT

The non-revisionary gross settlement amount is $1,000,000. Attorney fees of up to 35% of the settlement ($350,000), litigation costs not to exceed $40,000, and an estimated $12,650 in administration costs will be paid from the gross settlement. $40,000 will be allocated to PAGA penalties, 75% of which ($30,000) will be paid to the LWDA. Plaintiff seeks a service award of $7,500.

The net settlement amount of $560,955.43 will be allocated to Class Members on a pro rata basis based on the number of weeks worked during the Class Period, which is defined as February 14, 2015 to July 24, 2023. For tax purposes, settlement payments will be allocated 10% to wages, 30% to interest and 60% to penalties. The employer side payroll taxes on the settlement payments will be paid by Defendant separately from, and in addition to, the gross settlement amount. 100% of the PAGA settlement to "Aggrieved Employees" will be allocated to penalties. Funds associated with checks uncashed after 180 days will be distributed to the Controller of the State of California to be held pursuant to Unclaimed Property Law.

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

> [A]ll claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that each participating class member had, now has, or may hereafter claim to have against Defendant and that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Released Class Claims specifically include, but are not limited to (1) Unpaid Overtime; (2) Failure to Pay Meal Period Premium Pay; (3) Failure to Pay Rest Break Premium Pay; (4) Unpaid Minimum Wage; (5) Waiting Time Penalties; (6) Timely Payment of Wages; (7) Inaccurate Wage Statements; (8) Recordkeeping Violations; (9) Failure to Reimburse for Business Expenses; and (10) Unfair Competition. This release shall apply to claims arising during the Class Period.

"Aggrieved Employees" will also release "all claims under [the PAGA] for civil penalties that could have been premised on the facts alleged in both the PAGA Letter to the LWDA and in the operative complaint including but not limited to civil penalties that could have been awarded pursuant to Labor Code section 2698, et seq., based on Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, and 2802 and the related IWC Wage Orders." Consistent with the statute, Aggrieved Employees will not be able to opt out the PAGA portion of the settlement.

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

The notice period has now been completed. According to the declaration of case manager Makenna Snow with settlement administrator ILYM Group, Inc. ("ILYM") submitted in support of the instant motion, on April 26, 2024, ILYM received from Defendant's counsel the data files containing the names, social security numbers, last known mailing addresses, and the total number of relevant workweeks worked for each of the 474 individuals contained in the Class list. ILYM processed the addresses it had against the National Change of Address database to confirm and update this information and then mailed the notice packet to Class members, in both English and Spanish, on May 3, 2024 via first class mail. As of the date of Ms. Snow's declaration, August 19, 2024, ILYM has received 72 returned notice packets as undeliverable. ILYM conducted a skip trace and located 46 updated addresses, to which notice packets were re-mailed. At present, 26 notice packets have been deemed undeliverable as no updated addresses have been located.

The deadline to submit a request for exclusion, a challenge to the amount of work weeks listed, or an objection to the settlement was July 2, 2024. As of the date of Ms. Snow's declaration, ILYM has received one request for exclusion, no workweek disputes and no objections. Based on a participating class of 473 individuals, or 99.79% of the Class, the average estimated gross payment to members will be $1,185.95, and the highest $5,851.58.

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

V. ATTORNEYS FEES, COSTS AND INCENTIVE AWARD

As articulated above, Plaintiff's counsel seeks a fee award of $350,000 or 35% of the gross settlement, which is slightly more than the common one-third contingency fee allocation in a wage and hour class action. This award is facially reasonable under the "common fun" doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar figure of $205,075, which is based on 315.5 hours at billing rates of $500 to $800 per hour, resulting in a relatively modest modifier of 1.7. This is well within the range of multipliers that courts typically approve in actions of this type. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra,* 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

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

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

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

Here, as the multiplier is well within the acceptable range and is supported by the percentage cross-check, the Court finds counsel's requested fee award is reasonable. Plaintiff's counsel also seeks $28,854.57 in litigation costs, which is below the $40,000 limit provided by the settlement agreement and appears reasonable. Both of the foregoing are therefore approved. The $12,650 in administrative costs are also approved.

Finally, Plaintiff requests an incentive award of $7,500. To support this request, Plaintiff submits the declaration of her counsel wherein she describes Ms. Juarez's efforts in the case. The Court finds that the class representative is entitled to an enhancement award and the amount requested is reasonable.

VI. CONCLUSION

In accordance with the above, assuming satisfactory clarification is provided as to the number of participating class members, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

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

> All current and former non-exempt employees of Defendant employed in the state of California at any time from February 14, 2015 through July 24, 2023.

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

The Court sets a compliance hearing for **May 8, 2025 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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

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

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Calendar Line 3

Case Name: *Jeffrey Hamilton v. Hewlett Packard Enterprise Company*
Case No.: 20CV367092

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Jeffrey Hamilton alleges that Defendant Hewlett Packard Enterprise Company ("HPI" or "Defendant") committed various wage and hour violations. Before the Court is Plaintiff's motion for preliminary approval of settlement, which is unopposed. As discussed below, assuming the changes are made concerning the information that must be provided by a class member in a request for exclusion, the Court GRANTS the motion.

I. BACKGROUND

According to the allegations of the operative First Amended Class Action Complaint ("FAC"), Plaintiff was employed by HPI from November 2012 to July 6, 2018 as a customer engineer, a non-exempt, hourly position that provided information technology services and support to Defendant's commercial clients. (FAC, ¶ 13.) Plaintiff alleges that during his employment, HPI failed to: pay all wages owed, including overtime compensation and accrued vacation pay; provide meal periods and rest breaks or compensation in lieu thereof; maintain accurate records; provide employees with accurate, itemized wage statements; and pay all wages due in a timely manner.

Based on the foregoing, Plaintiff initiated this action on June 20, 2019, in San Francisco County Superior Court. On March 4, 2020, the action was transferred to this Court pursuant to a joint stipulation between the parties. On July 13, 2020, Plaintiff filed the operative FAC asserting the following causes of action: (1) failure to pay lawful wages; (2) failure to provide lawful meal periods or compensation in lieu thereof; (3) failure to provide lawful rest periods or compensation in lieu thereof; (4) failure to timely pay wages including accrued vacation; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) violation of Unfair Competition Law ("UCL"); and (7) penalties under PAGA.

Plaintiff now seeks an order: preliminarily approving the Stipulation of Settlement of Class and PAGA Action; provisionally certifying the Class for settlement purposes; approving the notice and the plan for distribution; appointing Plaintiff as Class representative for settlement purposes; appointing James R. Hawkins, Isandra Fernandez, and Lance Dacre of James Hawkins APLC, as Class Counsel; appointing Simpluris, Inc. as the settlement administrator; and scheduling a final approval hearing.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

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

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

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

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

B. PAGA

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

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

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

III. SETTLEMENT PROCESS

As part of Plaintiff's counsel's investigation into Plaintiff's claims, the parties engaged in both formal and informal discovery, through which Plaintiff obtained timecard records and wage reports of putative Class members and a Class-wide sampling of time records, wage statements and information regarding the number of non-exempt employees during the relevant time period. These materials allowed Plaintiff, along with his retained expert, to conduct a class-wide assessment and analysis of the potential value of his claims.

On November 15, 2022, the parties participated in a full-day mediation session with the Hon. Ronald Sabraw (Ret.), but were unable to resolve this action. However, they subsequently continued to engage in settlement discussions with the assistance of the mediator and were able to reach a settlement upon acceptance of his proposal. The parties exchanged multiple drafts of the proposed settlement agreement and continued to negotiate its terms, ultimately reaching and executing the final version of the agreement, on November 8, 2023, that is now before the Court.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement amount is $1,400,000. Attorney fees of up to $466,662 (one-third of the gross-settlement), litigation costs not to exceed $20,000 and administration costs not to exceed $20,000 will be paid from the gross settlement. $200,000 will be allocated to PAGA penalties, 75% of which ($150,000) will be paid to the LWDA, with the remaining 25% distributed, on a pro rata basis, to "PAGA Employees," who are defined as "non-exempt employees in the State of California who worked for HPI during [June 19, 2018, through April 19, 2023] …." Plaintiff will seek an enhancement award of $7,500.

The net settlement will be allocated, on a pro rata basis based on the number of weeks worked during the class period to members of the "Class," which is defined as "[a]ll persons who are or were employed by HP Inc. in the State of California as non-exempt employees between July 1, 2017, and April 19, 2023, excluding those who signed releases of claims and those who signed arbitration agreements with class action waivers." For tax purposes, settlement payments will be allocated 33.3% to wages and 66.6% to non-wage compensation. Funds associated with checks uncashed after 180 days will be transmitted to the Controller of the State of California to be held in trust for such class members pursuant to California unclaimed property law.

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

> All federal, state and local law claims or causes of action against Releasees pled in the Action or that could have been pled in the Action that reasonably arise out of the same set of operative facts or are reasonably related to the facts alleged in

> the Action, by members of the Settlement Class while employed during the Settlement Class period by HPI, including but not limited to (a) all claims of any kind related to alleged unpaid compensation, including without limitation all claims for wages, overtime, meal and rest period premiums, failure to timely pay wages, failure to pay final wages upon termination, failure to provide meal or rest breaks, damages, unpaid costs, penalties (including civil and statutory penalties), liquidated damages, putative damages, interest, attorneys' fees, litigation expenses, restitution, or equitable relief, whether known or unknown; (b) all claims for inaccurate or deficient wage statements under Labor Code section 226 and any other applicable sections; (c) "waiting time" penalties for late paid or unpaid wages under California Labor Code section 203 and any other applicable sections; (d) claims based on (a) through (c) above, as a predicate for alleged violations of the California Unfair Competition Act, and in particular, California Business & Professions Code § 17200 et seq.; (e) and (f) any premiums, penalties, interest, punitive damages, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting based on or
> related to the alleged claims ….

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

> [A]ll claims against Releasees during the PAGA Period seeking civil penalties under PAGA that Plaintiff in his capacity as proxy for the State of California, the LWDA, and as a private attorney general acting on behalf of himself and the PAGA Employees, asserted or could reasonably have asserted based on the facts alleged in the Action and/or LWDA letters including California Labor Code, without limitation, §§ 201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199. This release shall bar all PAGA Released Claims by or on behalf of Plaintiff and all PAGA Employees regardless of whether Plaintiff and/or a PAGA Employee negotiates his/her settlement checks.

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

V. FAIRNESS OF SETTLEMENT

Based on a review of available data, Plaintiff's counsel (with the assistance of a retained expert) performed a comprehensive damages analysis and estimated Defendant's maximum exposure for each claim to be at the following amounts: $111,856 (underpayment of overtime wages); $6,308,488 (meal break claim); $6,493,471 (rest break claim); $652,000 (failure to provide accurate wage statements); $40,043-$80,085.6 (failure to timely pay wages); $4,740,300 (PAGA penalties).

However, Plaintiff's counsel arrived at the settlement amount by offsetting or reducing Defendant's maximum theoretical liability by: the risk of class certification being denied due to potential individualized issues; Defendant's arguments on the merits, including (among other things) that it allowed employees to take their meal and rest breaks and its bonus payment plan is entirely discretionary; the difficulty and uncertainty in proving the amount of wages due to

each class member; and the likelihood that PAGA penalties would be significantly reduced (e.g., by 80% to 90%) in line with relevant case law.

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

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

VI. PROPOSED SETTLEMENT CLASS

Plaintiff requests that the following settlement class be provisionally certified:

> All persons who are or were employed by HP Inc. in the State of California as non-exempt employees between July 1, 2017, and April 19, 2023, excluding those who signed releases of claims and those who signed arbitration agreements with class action waivers.

A. Legal Standard for Certifying a Class for Settlement Purposes

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

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

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the ascertainable class

determination need not be confronted, and the court's review is more lenient in this respect. (*Id.* at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

B. Ascertainable Class

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

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

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

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

Here, the estimated 168 class members are readily identifiable based on Defendant's records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable and appropriately defined.

C. Community of Interest

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

For the first community of interest factor, "[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so

numerous or substantial that the maintenance of a class action would be good for the judicial process and to the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105 (*Lockheed Martin*).) "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks*, *supra,* 89 Cal.App.4th at p. 916.)

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

As for the second factor,

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

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

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

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

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

D. Substantial Benefits of Class Certification

"[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to

individual lawsuits. (*Ibid.)* "Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action." (*Id*. at pp. 120–121, internal quotation marks omitted.)

Here, there are an estimated 168 class members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

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

Here, the notice describes the lawsuit, explains the settlement, and instructs class members that they may opt out of the settlement (except the PAGA component) or object. The gross settlement and estimated deductions are provided. Class members are informed of their qualifying pay periods as reflected in Defendant's records and are instructed how to dispute this information. Class members are given 45 days to request exclusion from the class or submit a written objection to the settlement.

The form of notice is generally adequate, <u>but the notice must be modified to instruct class members that they may request to be excluded from the class by simply providing their name, without the need to provide other identifying information</u>. Regarding appearances at the final fairness hearing, the notice shall be further modified to instruct class members as follows:

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

Turning to the notice procedure, the parties have selected Simpluris, Inc. as the settlement administrator. The administrator will mail the notice packet within 42 days of the Court granting preliminarily approval of the parties' settlement, after updating members' addresses through skip traces and other similar means. Any returned notice will be mailed to any forwarded addresses,

or an updated address located through the aforementioned methods. These notice procedures are appropriate and are approved.

E. CONCLUSION

Subject to the changes to the notice discussed above concerning the information a class member objecting to the settlement or requesting exclusion from its terms is required to provide, Plaintiff's motion for preliminary approval is GRANTED. The final approval hearing shall take place on **March 13, 2025** at 1:30 in Dept. 7. The following class is preliminarily certified for settlement purposes:

> All persons who are or were employed by HP Inc. in the State of California as non-exempt employees between July 1, 2017, and April 19, 2023, excluding those who signed releases of claims and those who signed arbitration agreements with class action waivers.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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

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

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Calendar Line 4

Case Name: *Jeffrey P. Niemann v. LVNV Funding, LLC*
Case No.: 22CV402583

This case is a putative class action seeking damages under the California Fair Debt Buying Practices Act, California Civil Code sections 1788.50 to 1788.64 ("CFDBPA"), which prohibits debt buyers from engaging in abusive, deceptive, and unfair practices. Before the Court is Defendant LVNV Funding, LLC's ("LVNV" or "Defendant") motion for judgment on the pleadings, which is opposed by Plaintiff. As discussed below, the Court GRANTS the motion WITH 20 DAYS LEAVE TO AMEND.

I. BACKGROUND

According to the allegations of the operative complaint ("Complaint"), Plaintiff is alleged to have incurred a financial obligation in the form of a consumer credit account issued by Citibank, N.A. ("Citibank"). (Complaint, ¶ 10.) On January 17, 2020, Citibank received the last payment on the alleged debt and no further payments were made beyond that date. (*Id*., ¶ 11.) Thereafter, Citibank removed the alleged debt from its books as an asset and treated it as a loss or expense. (*Id*., ¶ 12.)

On June 24, 2022, the aforementioned charged off consumer credit card, as that term is defined under the CFDBPA, was sold by Citibank to LVNV for collection purposes. (Complaint, ¶ 13.) Plaintiff alleges that LVNV then caused Financial Recovery Services, Inc. to send him a notice under Civil Code section 1788.52 ("Section 1788.52"), subdivision (d)(1), in smaller than 12-point font, thereby violating the CFDBPA. Plaintiff also asserts that LVNV has sent such allegedly-defective notices to several other class members.

Plaintiff initiated this action with the filing of the Complaint on August 30, 2022, asserting a single cause of action for violation of the CFDBPA, specifically subdivision (d)(1) of Section 1788.52.

II. DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

A. Legal Standard

"If the moving party is a plaintiff," a motion or judgment on the pleadings may only be made on the grounds "that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint." (Code Civ. Proc., § 438, subd. (c)(1)(A).) The motion may be made as to "[t]he entire complaint or cross-complaint or as to any of the causes of action stated therein." (*Id.*, subd. (2)(A).) If the motion is granted, it "may be granted with or without leave to file an amended complaint …." (Code Civ. Proc., § 438, subd. (h)(1).)

"A motion for judgment on the pleadings, like a general demurrer, confines the court's consideration to the face of the pleading under attack and to matters outside the pleading that are judicially noticeable. No extrinsic evidence can be considered." (*Jayasinghe v. Lee* (1993) 13 Cal.App.4th Supp. 33, 36.) On such motions, "[t]he court accepts as true all material factual allegations, giving them a liberal construction, but it does not consider conclusions of

fact or law, opinions, speculation, or allegations contrary to law or judicially noticed facts." (*Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1254.)

B. Discussion

The thrust of Defendant's motion is that Plaintiff lacks standing to bring his claim for statutory damages under the CFDBPA because he fails to allege sufficient injury. Consequently, LVNV argues, Plaintiff lacks standing to represent the putative class.

As set forth above, Defendant is alleged to have violated the CFDBPA, particularly Section 1788.52, subdivision (d)(1), which provides:

> A debt buyer shall include with its first written communication with the debtor in no smaller than 12-point type, *a separate prominent notice* that provides:
>
> "You may request records showing the following: (1) that [insert name of debt buyer] has the right to seek collection of the debt; (2) the debt balance, including an explanation of any interest charges and additional fees; (3) the date of default or the date of the last payment; (4) the name of the charge-off creditor and the account number associated with the debt; (5) the name and last known address of the debtor as it appeared in the charge-off creditor's or debt buyer's records prior to the sale of the debt, as appropriate; and (6) the names of all persons or entities that have purchased the debt. You may also request from us a copy of the contract or other document evidencing your agreement to the debt.
>
> "A request for these records may be addressed to: [insert debt buyer's active mailing address and email address, if applicable]."

(Italics added.)

Plaintiff pleads that the initial written communication sent by LVNV was on smaller than 12-point type. (Complaint, ¶ 23.)

Defendant acknowledges that Plaintiff is correct that, as a technical matter, the CFDBPA provides that the required notice be provided in 12-point font, but maintains that such a technical violation, without more, does not give rise to standing under California law, as Plaintiff must demonstrate that he is "beneficially interested" in the controversy- i.e., that he suffered an injury-in-fact- in order to bring his claim under the CFDBPA. Plaintiff, it continues, has not and cannot allege such an injury.

As Defendant explains, as a general matter, a named plaintiff must have standing to prosecute a class action. (*Schoshinski v. City of Los Angeles* (2017) 9 Cal.App.5th 780, 791.) "[S]tanding to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator." (*Id*.) In order to have standing under California law, "a party must be beneficially interested in the controversy; that is, he or she must have some special interest to be served or some particular right to be

preserved or protected over and above the interest held in common with the public at large." [Citation.] The party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical. …" (*Id*.)

With the foregoing in mind, Defendant directs the Court to *Limon v. Circle K Stores, Inc.* (2022) 84 Cal.App.5th 671 (*Limon*) as instructive with regards to what is required to have standing in an action where the statute at issue provides for statutory damages in the absence of actual damages.

In *Limon*, the court considered what was required to assert standing in California courts to pursue a claim under the Fair Credit Report Action ("FCRA"), a federal statute which "require[s] that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information." (15 U.S.C. § 1681(b).) The court acknowledged the correctness of the plaintiff's assertion that the Legislature has the power to confer standing on a class of persons irrespective of whether they suffered injury but concluded, after a broader evaluation of standing requirements under California law, that "in order to have standing to pursue a claim for damages in the courts of California, a plaintiff must be beneficially interested [suffer an injury in fact] in the claims he is pursuing." (*Limon*, 84 Cal.App.5th at p. 700.) The court then proceeded to look at the FCRA to determine whether it eliminated the beneficial interest requirement for standing and concluded that it did not. The court reached this conclusion after evaluating the language of the statute and holding that the FCRA's statutory damages provision was intended to compensate a plaintiff for injury rather than penalize a company for violating the FCRA. The court then rejected the plaintiff's contention that the FCRA conferred public interest standing on him. Based on the foregoing, the *Limon* court held that in order to have standing to pursue his FCRA claim, the plaintiff had to allege a *concrete* injury.

Following the approach laid out by the *Limon* court, Defendant submits that a review of the statutory language of the CFDBPA reveals that it does *not* provide for public standing or otherwise confer standing on Plaintiff, and thus he must meet the beneficial interest requirement for standing and demonstrate he suffered an injury in fact as a result of LVNV's alleged violation of the statute. In the Complaint, Plaintiff claims that as a consequence of Defendant's actions, he is entitled to "statutory damages" under Civil Code section 1788.62 ("Section 1788.62"). This section provides in relevant part:

> (a) In the case of an action brought by an individual or individuals, a debt buyer that violates any provision of this title with respect to any person shall be liable to that person in an amount equal to the sum of the following:
> (1) Any **actual *damages*** sustained by that person as a result of the violation...
> (2) **Statutory *damages*** in an amount as the court may allow, which shall not be less than one hundred dollars ($100) nor greater than one thousand dollar s($1,000).
>
> (b) In the case of a class action, a debt buyer that violates any provision of this title shall be liable for any **statutory *damages*** for each named plaintiff as provided in paragraph (2) of subdivision (a). If the court finds that the debt buyer engaged in a pattern and practice of violating any provision of this title,

> the court may award additional ***damages*** to the class in an amount not to exceed the lesser of five hundred thousand dollars ($500,000) or 1 percent of the net worth of the debt buyer

(Civ. Code, § 1788.62, subds. (a)-(b) [emphasis added].)

As reflected above, the aforementioned code section characterizes all available relief for violations of the CFDBPA as "damages." As Defendant explains, while the CFDBPA does not define the term "damages," the *Limon* court interpreted a similar provision in the FCRA and determined that "the term damages are intended to be compensatory, to make one whole" and accordingly, "there must be an injury to compensate." (*Limon, supra*, 84 Cal.App.5th at p. 702.) The court further found it instructive that Congress had elsewhere used the term "penalty" to describe the relief potentially available under the FCRA, stating that "where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning." (*Ibid*.) For these reasons, the court concluded, as set forth above, that "statutory damages provision is intended to compensate a plaintiff for injury" and civil penalties, conversely, "are designed to punish culpable individuals, deter future violations, and prevent the conduct's recurrence." (*Ibid*.)

As in *Limon*, the plain language of the CFDBPA's damages provision provides for relief in terms of "damages" and *not* "penalties." The Court agrees with Defendant that had the Legislature intended for the CFDBPA's damages provision to serve as a penalty, it would have stated as much in the statute, as it did in the related Rosenthal Fair Debt Collection Practices Act (Civ. Code §§ 1788 *et seq*.) (the "RFDCPA"), which was enacted prior to the CFDBPA.[1] But it elected not to do so, and this fact, along with the plain language of Section 1788.62, compels the conclusion that the damages provision of the CFDBPA confers standing on a party to bring claims for violation of its terms *only if* he can prove that he is beneficially interest—i.e., he suffered an injury in fact. Plaintiff has not alleged that he suffered such an injury here.

In his opposition, Plaintiff insists that that the standing analysis articulated by LVNV is "specious" and does not accurately describe the legal standard for determining the standard for

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[1] The RFDCPA expressly provides for a "penalty" instead of "statutory damages" as an alternate remedy where actual damages may be difficult to prove:

> (a) Any debt collector who violates this title with respect to any debtor shall be liable to that debtor only in an individual action, and his liability therein to that debtor shall be in an amount equal to the sum of any actual damages sustained by the debtor as a result of the violation.
>
> (b) Any debt collector who willfully and knowingly violates this title with respect to any debtor shall, in addition to actual damages sustained by the debt or as a result of the violation, also be liable to the debtor only in an individual action, and his additional liability therein to that debtor shall be for a penalty in such amount as the court may allow, which shall not be less than one hundred dollars ($100) nor greater than one thousand dollars ($1,000).

(Civ. Code, § 1788.30, subd. (a)-(b) [emphasis added].)

a plaintiff to bring an action in a California court for relief under a California consumer protection statute. He continues that *Limon* is distinguishable because it addressed the FCRA and the plaintiff there had ultimately consented to the defendant pulling his consumer report even though the company has used a consent form that violated the FCRA's notice and form requirements. To the extent that the Court finds *Limon* relevant, Plaintiff urges that the case was incorrectly decided and that the *Limon* court's "narrow conception of standing subverts Legislative intent." Plaintiff continues that statutory damages are punitive in nature, and not compensatory. The Court does not find these arguments persuasive.

First, Plaintiff's contention that *Limon* was incorrectly decided is a non-starter. The case remains authoritative, as the California Supreme Court denied review and a request for de-publication of the decision, and further, the "[d]ecisions of every division of the District Courts of Appeal are binding upon … the superior courts of [the] state," with the superior courts possessing the discretion to choose between which decision to follow only where there is more than one on a particular point of law and those decisions conflict. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455-456.)

Second, the fact that the *Limon* court was discussing the FCRA does not lesson its import or applicability to this case. As Defendant responds, like the instant action, *Limon* addressed the standing of a California resident to bring an action in a California court seeking to recover statutory damages with no actual harm or injury based on alleged noncompliance with the statutory requirements of a consumer protection statute. Like the FCRA, statutory relief available to consumers under the CFDBPA is classified as statutory damages, not as a penalty. (Civ. Code, § 1788.62, subd. (a).) And, as LVNV argues, just as Congress chose to include the term "penalty" to describe other statutory relief available under the FCRA, the California Legislature similarly chose to describe other available statutory relief as a "penalty" in the closely related RFDCPA. (See 15 U.S.C. § 1681s, subd. (a)(2)(A) and Civ. Code § 1788.30, subd. (b).) That *Limon* dealt with an FCRA claim and not a CFDBPA claim is a distinction without much legal significance here, as the remedies framework and language the court interpreted in *Limon* mirrors the CFDPBA's and the underlying holding is therefore apposite. Thus, under *Limon*, the statutory damages provision of the CFDPBA must be interpreted as available to a consumer only when actual damages exist but are difficult to prove. (See *Limon, supra,* 84 Cal.App.5th at p. 702 [explaining that statutory damages provisions in consumer statutes act as a "redress for plaintiffs … who have suffered concrete harm, but may find it difficult to prove actual damages."].) Accordingly, statutory damages cannot be awarded to a plaintiff under the CFDBPA absent the existence of a concrete injury or actual harm.

Relying on *Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160 (*Angelucci*), Plaintiff asserts that the language of the CFDBPA establishes that the California Legislature has, by statute, conferred standing on "any individual who has been the target of CFDBPA violations committed by a covered debt buyer," and Plaintiff and the putative class "are such persons." (Plaintiff's Opp. at 10:20-11:3.) But the plaintiffs in *Angelucci* did show an actual injury as a result of the claimed violation of the Unruh Act, namely, that they were subjected to and paid a gender-based price differential. Consequently, *Angelucci* is distinguishable.

Plaintiff also asserts that the Legislature intended the CFDBPA's statutory damages remedy to be a form of "bounty" geared toward encouraging and incentivizing individuals and their attorneys to enforce the statute through private litigation "even when there are no actual

damages." But this assertion is not supported by citation to the statute's legislative history, or any other authority for that matter and, again, *Limon* held under similar circumstances that the intent of a statutory damages remedy like the CFDBPA's is *not* to confer standing on a party "even when there are no actual damages," but rather to provide an alternate remedy for a party who suffered actual harm but may find actual damages difficult to prove. (*Limon*, 84 Cal. App. 5th at p. 702.)

Plaintiff additionally posits that if he and putative members do not have standing in a notice case such as this one, "then who possibly could?" (Plaintiff's Opp. at 11:19-25.) This is the answer is clear: a party who suffers actual injury due to statutory noncompliance. Plaintiff also argues that LVNV is attempting to downplay its alleged statutory violation by advancing a substantial compliance standard to avoid liability under the CFDBPA, but Defendant has done no such thing. LNVN is not arguing that a debt buyer can avoid liability by substantially complying with the statute; rather, it is arguing that even if a debt buyer fails to comply with the statute's technical requirements (aka, a technical statutory violation), a plaintiff must nevertheless satisfy the beneficial interest test to have standing to bring claims seeking relief under the statute.

Finally, Plaintiff asserts that if the Court accepts the factual allegations of his complaint as true, which it must do on a motion for judgment on the pleadings, he has successfully pleaded a cause of action under the CFDBPA. But LVNV's motion is not based on a failure to plead the necessary elements of a cause of action, but on a Plaintiff's lack of standing.

In accordance with the foregoing, Defendant's motion for judgment on the pleadings is GRANTED. Although the Court is skeptical of Plaintiff's ability to overcome the standing problem, it will nonetheless permit leave to amend as this is the first challenge to the pleadings.

III. CONCLUSION

Defendant's motion for judgment on the pleadings is GRANTED WITH 20 DAYS LEAVE TO AMEND.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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Calendar Line 5

Case Name:
Case No.:

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Calendar Line 6

Case Name: *Craig Matthew Goldsberry v. Magnum Management Corporation, Inc.*
Case No.: 23CV425686

The unopposed motions to be relieved as counsel for Plaintiff are GRANTED. The Court will sign the proposed orders.

In addition, the Court orders Plaintiff to show cause why this action should not be dismissed without prejudice because he is unable to represent a putative class or group of aggrieved employees as a self-represented litigant. (See *Cal Pak Delivery, Inc. v. United Parcel Service, Inc.* (1997) 52 Cal.App.4th 1, 12 ["In the class action context, the Court has an obligation to closely scrutinize the qualifications of counsel to assure that assure that all interest, including those of as yet named plaintiffs are adequately represented. [Citations.] This is because in certifying a class action, the Court confers on absent persons the status of litigants and 'creates an attorney-client relationship between those persons and a lawyer or group of lawyers.' "]; *McShane v. United States* (9th Cir. 1966) 366 F.2d 286, 288 [self-represented litigant "has no authority to appear as an attorney for others than himself"]; *Simon v. Hartford Life* (9th Cir. 2008) 546 F.3d 661, 665 ["courts have routinely adhered to the general rule prohibiting pro se plaintiffs from pursuing claims on behalf of others in a representative capacity"].)

A hearing on the Order to Show Cause is scheduled for October 31, 2024, at 2:30 p.m. Any written response to the Order to Show Cause must be filed by October 24, 2024.

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Calendar Line 7

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