SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 19, Honorable Theodore C. Zayner Presiding

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

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department19@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

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LAW AND MOTION TENTATIVE RULINGS
DATE: OCTOBER 23, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV415465	Torres, et al. v. Medallion Landscape Management LLC (Class Action/PAGA)	See Line 1 for tentative ruling.
LINE 2	23CV415867	Agaceta v. HCA Healthcare, Inc., et al. (Class Action/PAGA)	See Line 2 for tentative ruling.
LINE 3	21CV381912	Bravo, et al. v. Gallaher Company, et al. (PAGA)	See Line 3 for tentative ruling.
LINE 4	21CV380800	Guzman v. Randstad US, LLC (PAGA)	See Line 4 for tentative ruling.
LINE 5	23CV418864	Fox, et al. v. Crisis24 Protective Solutions, LP (Class Action)	See Line 5 for tentative ruling.
LINE 6	21CV386241	Madriz v. Full Service Janitorial, Inc. (Class Action)	Continued per Stipulation and Order.
~~9~~10:00 A.M.	23CV413574	Kern Delta Water Dist. et al. v. Rosedale-Bravo Water Storage Dist. et al.	Merits Hearing on Petition brought under CEQA. No tentative ruling posted. Parties to appear.

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LAW AND MOTION TENTATIVE RULINGS

LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: Torres, et al. v. Medallion Landscape Management LLC (Class Action/PAGA)
Case No.: 23CV415465

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on October 23, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a putative class and representative action arising from alleged wage and hour violations. On May 1, 2023, Plaintiff Lino Torres commenced this action by filing a Class Action Complaint against Defendant Medallion Landscape Management LLC ("Defendant").

On April 23, 2024, Plaintiffs Lino Torres and Rosalio Pineda ("Plaintiffs") filed the operative Third Amended Complaint ("TAC") against Defendant. According to the TAC, Defendant is a California limited liability company that owns and operates a landscaping business throughout California. (TAC, ¶ 11.) Plaintiff Torres began working for Defendant in October 2022 as a Gardener/Landscaper and remains employed by Defendant. (*Id.* at ¶ 8.) Plaintiff Pineda worked for Defendant from October 2021 to March 2023 as a Crew Leader/Gardener. (*Id.* at ¶ 9.)

Among other allegations, the TAC alleges that Defendant denied Class Members the opportunity to take required rest breaks, failed to pay Class Members for off-the-clock work, and failed to reimburse Class Members for necessary business expenses, such as those for tools, uniforms, boots, and cell phone expenses. (*Id.* at ¶¶ 20, 22, 40, 47, 76.)

Based on these and related allegations, the TAC sets forth the following causes of action: (1) violation of Labor Code sections 226.7 and 512 (meal period violations); (2) violation of Labor Code section 226.7 (rest period violations); (3) violation of section 12(A) of Industrial Welfare Commission Wage Order 5-2001; (4) violation of Labor Code sections 201 through 203 (waiting time penalties); (5) violation of Labor Code sections 204 and 210 (untimely payment of wages); (6) violation of Labor Code sections 1194, 1194.2, 1197, 1197.1, 1198, and 1199 (failure to pay minimum wages); (7) violation of Labor Code section 510 (failure to pay overtime wages); (8) violation of Labor Code section 2802 (failure

to reimburse for business expenses); (9) violation of Business and Professions Code section 17200, *et seq.*; and (10) violation of the Private Attorneys General Act ("PAGA") at Labor Code section 2698, *et seq.*

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

II. Legal Standard for Settlement Agreements

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

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

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citation omitted.)

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.___, 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, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

III. Discussion

A. Provisions of the Settlement

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

> [All] individuals who are or were employed by Defendant in the State of California and classified as non-exempt during the Class Period [from May 1, 2019 through May 13, 2024].

(Declaration of Amir Seyedfarshi ("Seyedfarshi Dec."), Ex. 1 ("Agreement"), ¶¶ 1.5, 1.12.)

The settlement also includes a subset PAGA class of Aggrieved Employees defined as "[all] individuals who are or were employed by Defendants as non-exempt employees in the State of California and who worked one or more shifts of 3.5 hours or longer during the PAGA Period [from 30, 2022 through May 13, 2024]." (Agreement, ¶¶ 1.4, 1.31.)

According to the terms of the settlement, Defendant will pay a gross settlement amount of $300,000. (Agreement, ¶ 1.22.) This amount includes attorney fees of up to one-third of the gross settlement amount ($100,000), litigation costs not to exceed $14,000, a PAGA allocation of $15,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments), a total of $15,000 in incentive awards ($7,500 each); and settlement administration expenses not to exceed $13,000. (*Id.* at ¶¶ 3.2, 3.2.1-3.2.5.) The net settlement amount will be distributed to participating class members on a pro-rata basis according to the number of workweeks worked during the Class Period. (*Id.* at ¶ 3.2.4.) PAGA payments to Aggrieved Employees will be distributed on a pro-rata basis according to the number of pay periods worked during the PAGA Period. (*Id.* at ¶ 3.2.5.1.)

The Agreement states that individual settlement payment checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the California Controller's Unclaimed Property Fund. (Agreement, ¶¶ 4.4.1, 4.4.3.) The parties' proposal to send funds from uncashed checks issued to class members to the State of California Unclaimed Property Fund does not comply with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class members funds be given to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and

purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent."

The court is disinclined to grant preliminary approval of a settlement that does not comply with Code of Civil Procedure section 384. Therefore—prior to the upcoming hearing, if possible—the parties are encouraged to designate a *cy pres* recipient by agreement in writing (for example, by stipulation). Otherwise, the motion shall be CONTINUED.

In exchange for the settlement, the class members agree to release Defendant, and related entities and persons, from all claims that were, or reasonably could have been, alleged based on the facts pleaded in the TAC. (Agreement, ¶ 1.39, 1.41, 5.2.) Aggrieved Employees agree to release Defendant, and related entities and persons, from all claims for PAGA civil penalties that were alleged based on facts pleaded in the FAC and the LWDA notice. (Agreement, ¶¶ 1.40, 1.41, 5.3.) Plaintiffs also agree to a comprehensive general release. (Agreement, ¶ 5.1.) The release provisions are appropriately tailored to the factual allegations of the operative pleading. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

B. Fairness of the Settlement

Plaintiffs assert that the settlement is fair, reasonable, and adequate. (Plaintiffs' Notice of Motion and Motion ("Mot."), pp. 34:26-40:13; see also Seyedfarshi Dec., ¶¶ 46-50, 57; see also Declaration of Tatiana Hernandez ("Hernandez Dec."), ¶¶ 2-5.) Plaintiffs state that the settlement was reached through and informed, non-collusive negotiations and reflects a fair compromise of claims and risk factors. (Mot., pp. 34:26-35:12.)

On February 15, 2024, the parties attended a full-day mediation with mediator Kelly A. Knight. (Mot., pp. 16:8-18.) Prior to mediation, Plaintiffs sought formal and informal discovery from Defendant, who provided relevant information, including a class list detailing the number of class members and Aggrieved Employees and corresponding workweeks and pay periods, as well as employee handbooks and a sampling of timekeeping and payroll records. (*Id.* at pp. 15:20-16:7.)

During the Class Period, Defendant employed approximately 639 Class Member who worked approximately 35,000 workweeks. (Mot., p. 14:2-3.) During the PAGA Period,

Defendant employed approximately 201 Aggrieved Employees who worked approximately 3,000 pay periods. (*Id.* at p. 14:8-10.)

Plaintiffs present an analysis of the value of their claims, concluding that Defendant's estimated "realistic, risk-adjusted exposure" is $329,350. (Seyedfarshi Dec., ¶ 49.) Plaintiff provide a breakdown of this amount by claim. (*Ibid.*) According to Plaintiff's exposure analysis, Defendant's total maximum potential liability for all claims is $5,959,200.

The gross settlement amount of $300,000 represents approximately 5% of the maximum potential recovery and 91% of the realistic, risk-adjusted potential recovery. Therefore, the proposed settlement amount is just within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases approving settlements in the range of 5 to 35 percent of the maximum potential exposure].)

The court has reviewed Plaintiffs' written submissions in support of the proposed settlement. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation. Based on the circumstances of the case, including the strength of Plaintiffs' case and the risks associated with litigating the particular claims alleged, the court finds the terms of the settlement to be fair.

C. Incentive Award, Attorney Fees and Costs

Plaintiffs request enhancement awards in the total amount of $15,000 ($7,500 each).

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

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, internal punctuation and citations omitted.)

Plaintiff Torres has submitted a declaration describing his participation in this action. (Declaration of Lino Torres, ¶¶ 5-10.) Torres communicated frequently with his attorneys, search for and produced documents, and was present in person for the full-day mediation. (*Id.* at ¶¶ 5-6.) Torres discussed discovery issues at length with his attorneys and reviewed documents, including the pleadings, the PAGA notice to the LWDA, and the settlement agreement. (*Id.* at ¶¶ 7-9.) Torres estimates that he has spent up to 50 hours with his attorneys on this case. (*Id.* at ¶ 10.)

Plaintiff Pineda has also submitted a declaration describing his participation in this action. (Declaration of Rosalio Pineda, ¶¶ 5-10.) Pineda communicated frequently with his attorneys, search for and produced documents, and was present in person for the full-day mediation. (*Id.* at ¶¶ 5-6.) Pineda discussed discovery issues at length with his attorneys and reviewed documents such the pleadings, the PAGA notice to the LWDA, and the settlement agreement. (*Id.* at ¶¶ 7-9.) Pineda estimates that he has spent up to 50 hours with his attorneys on this case. (*Id.* at ¶ 10.)

Plaintiffs Torres and Pineda have spent time in connection with this litigation and undertaken risk by attaching their names to this case because it might impact their future employment. (See *Covillo v. Specialty's Café* (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].)

For the forgoing reasons, the court finds that the requested enhancement awards are justified and that the amounts requested are reasonable. The incentive awards are approved in the amounts requested.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees of up to one-third of the maximum settlement amount ($100,000) and litigation costs not to exceed $14,000. Prior to a final approval hearing, Plaintiffs' counsel shall submit lodestar information (including hourly rate and hours worked), as well as evidence of actual costs incurred and evidence of any settlement administration costs.

D. Conditional Certification of Class

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

The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class representatives who can adequately represent the class. (*Sav-On, supra*, 34 Cal.4th at p. 326.) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

As explained by the California Supreme Court,

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

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

Plaintiff states there are approximately 639 class members, who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has

been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

The content of a class notice is subject to court approval. "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).) "The notice 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 informs class members that they may opt out of the settlement or object. (Agreement, Ex. A.) The settlement amounts, including attorney fees and payments to the named Plaintiffs, are stated. The notice directs class members that they may appear at the final fairness hearing to make an oral objection without filing a written objection and provides instructions for attending the hearing remotely. The notice will be provided in both English and Spanish. (See Agreement, ¶¶ 1.11, 7.4.2.)

As discussed above, Plaintiffs shall provide a *cy pres* recipient in compliance with Code of Civil Procedure section 384, and the class notice must be amended to indicate this change. Provided that step is completed prior to the mailing of the class notice, the notice is approved.

IV. Conclusion

Accordingly, unless the parties are able to designate a *cy pres* recipient by agreement in writing (for example, by stipulation) prior to the upcoming hearing, the motion for settlement approval will be CONTINUED to November 20, 2024 in Department 19 at 1:30 p.m.

Prior to the continued hearing, Plaintiffs' counsel shall provide the parties' stipulation regarding a new *cy pres* recipient in compliance with Code of Civil Procedure section 384 as well as the revised class notice.

Plaintiffs shall prepare the order.

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Calendar Line 2

Case Name: Agaceta v. HCA Healthcare, Inc., et al. (Class Action/PAGA)
Case No.: 23CV415867

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on October 23, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a putative class and representative action arising from alleged wage and hour violations and brought by Plaintiff Efleda Agaceta ("Plaintiff") against Defendants HCA Healthcare, Inc. and San Jose, LLC, d/b/a Regional Medical Center of San Jose (collectively, "Defendants").

On May 15, 2023, Plaintiff filed the operative Complaint, setting forth the following causes of action: (1) failure to provide meal periods; (2) failure to authorize and permit rest periods; (3) failure to pay minimum wages; (4) failure to pay overtime wages; (5) failure to pay all wages due to discharged and quitting employees; (6) failure to maintain required records; (7) failure to furnish accurate itemized wage statements; (8) failure to indemnify employees for necessary business expenditures incurred in discharge of duties; (9) unfair and unlawful business practices; and (10) representative action for penalties under the Private Attorneys General Act ("PAGA") [Labor Code section 2698, *et seq.*].

On August 14, 2023, Defendants filed a Notice of Related Cases, identifying three other actions filed in Santa Clara County Superior Court as related to this action: *Gerardo Segura v. San Jose, LLC* (Case No. 17CV304860) (now settled and dismissed with prejudice); *Fernando Flores v. San Jose, LLC* (Case No. 20CV371772) (the "Flores Action"); and *Joanne Manalo v. San Jose, LLC* (Case No. 20CV371934) (the "Manalo Action"). On February 21, 2024, the court (Hon. Evette D. Pennypacker) issued an order designating the Flores Action, the Manalo Action and this action as related and assigning all three to Department 19.

Now before the court is Defendants' demurrer to Plaintiff's Complaint, or in the alternative, motion to stay this action.

II. Requests for Judicial Notice

A. Defendants' Request

Defendants ask the court to take judicial notice of various court documents filed in this action, in the Flores Action, and in the Manalo Action.

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

Accordingly, Defendants' request for judicial notice is GRANTED.

B. Plaintiff's Request

Plaintiff asks the court to take judicial notice of an *amicus curiae* brief filed by the California Labor Commissioner in *Price v. Uber Technologies, Inc., et al.* (Super Ct. Los Angeles County, 2018, No. BC554512).

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

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

III. Legal Standard

A demurrer may be utilized by the party against whom a complaint has been filed to object to the legal sufficiency of the pleading as a whole or to any cause of action stated

therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).) As relevant here, "[t]he party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one more of the following grounds: … (c) There is another action pending between the between the same parties on the same cause of action." (Code Civ. Proc., § 430.10, subd. (c).)

The court treats a demurrer as "admitting all properly pleaded material facts, but not contentions, deductions or conclusions of fact or law." (*Piccini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint …; the question of plaintiff's ability to prove these allegations, or the possibility in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214, internal quotations and citations omitted.) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.)

IV. Discussion

Defendants demur to Plaintiff's Complaint pursuant to Code of Civil Procedure section 430.10, subdivision (c), on the basis that there are two pending actions against Defendant San Jose, LLC, "alleging substantially the same causes of action." (Notice of Demurrer and Demurrer, or in the Alternative, Motion to Stay Plaintiff's Complaint ("Notice"), p. 1:2-7; Defendants' Memorandum of Points and Authorities ("MPA"), pp. 5:22-8:2.) Alternatively, Defendants ask the court to stay this action on the ground that the Flores Action and the Manalo Action pending in this court are "substantially identical" to this action. (Notice, p. 1:8-15; Defendants' MPA, pp. 8:3-10:25.)

In opposition, Plaintiff contends that a demurrer under Code of Civil Procedure section 430.10, subdivision (c), may not be sustained because the actions in question are not between the same parties. (Plaintiffs' Opposition to Defendants' Demurrer, or in the Alternative, Motion to Stay Plaintiff's Complaint ("Opp."), p. 2:2-12.) Plaintiff further contends that the court

should decline to stay this action because there is no risk of potentially conflicting judgments, the court can effectively manage the cases to avoid unnecessary duplication, and because none of Plaintiff's claims will be addressed by the Manalo Action. (*Id.* at p. 2:13-25.)

A. The Related Actions

1. *The Flores Action*

On October 19, 2020, plaintiff Fernando Flores commenced the Flores Action by filing a Class and Representative Action Complaint against defendant San Jose, LLC ("Flores Complaint"). The Flores Complaint sets forth two causes of action: (1) violation of Labor Code section 226, subdivision (a) (failure to provide accurate itemized wage statements; and (2) violation of Labor Code section 2698 (seeking civil penalties pursuant to PAGA). (Flores Complaint, ¶¶ 27-35.) The Complaint defines the putative class as follows, in pertinent part:

> [A]ll current and former non-exempt employees of Defendant in the State of California who were paid overtime wages at any time between April 22, 2019, through the present … and all current and former non-exempt employees of Defendant in the State of California who were paid shift differential wages at any time between April 22, 2019, through the present… .

(*Id.* at ¶ 16.) The Complaint also seeks PAGA penalties on behalf of all Aggrieved Employees for the period from April 22, 2019, "through the present." (*Id.* at ¶ 32.)

On September 6, 2024, the parties to the Flores Action filed a Joint CMC Statement indicating that they have resolved the matter and are finalizing a long form settlement agreement. According to court records, the only hearing currently set in the Flores Action is a CMC scheduled for January 29, 2025.

2. *The Manalo Action*

On October 23, 2020, plaintiff Joanna Manalo commenced the Manalo Action by filing a Class Action Complaint against San Jose, LLC, d/b/a Regional Medical Center of San Jose. Manalo filed the operative First Amended Complaint ("Manalo FAC") on April 25, 2024, setting forth the following causes of action: (1) failure to provide meal periods and/or pay meal period premiums (Labor Code sections 226.7, 512; Wage Order 5-2001); (2) failure to authorize and permit rest breaks and/or pay rest break premiums (Labor Code sections 226.7, 512; Wage Order 5-2001); (3) failure to pay overtime wages (Labor Code sections 1194, 1198, 510, 515, subd. (d)); Wage Order 5-2001); (4) failure to pay for all hours worked (Labor Code

sections 200, 201, 202, 204; Wage Order 5-2001); (5) failure provide accurate itemized wage statements (Labor Code section 226, subds. (a) and (e); Wage Order 5-2001); (6) civil penalties for violation of PAGA (Labor Code section 2698, *et seq.*); and (7) failure to pay all wages due upon separation (Labor Code sections 201-203).

The Manalo FAC defines the putative class as follows, in pertinent part:

> All persons who are or have been employed by Defendants as hourly nonexempt registered nurses at any time during the period from October 22, 2019 to the final disposition of this case… at Regional Medical Center of San Jose… .

(Manalo FAC, ¶ 34.) The Manalo FAC also seeks "civil penalties and unpaid wages for violations committed by Defendants from July 21, 2019 or October 22, 2019 through the present… on behalf of herself and all other aggrieved non-exempt nurses of Defendants pursuant to Labor Code sections 2698 *et seq.*" (*Id.* at ¶ 85.)

On October 2, 2024, the court entered an order on the parties' stipulation, continuing the hearing on the parties' respective class certification motions to March 26, 2025 in light of the parties' stated intent to seek resolution of the matter through mediation.

3. *This Action*

As detailed above, Plaintiff Agaceta filed her Complaint in this action on May 15, 2023, setting forth various wage and hour claims and seeking civil penalties under PAGA. Plaintiff was employed as a Nurse Assistant at Defendants' San Jose facility from approximately October 2006 to December 2021. (Complaint, ¶ 4.) The Complaint defines the putative class as follows:

> [A]ll current and former non-exempt employees of DEFENDANTS in the State of California at any time within the period beginning four (4) years prior to the filing of this action and ending at the time this action settles or proceeds to final judgment (the 'CLASS PERIOD').

(Complaint, ¶ 5.) The Complaint also seeks civil penalties on behalf of "current and former employees of DEFENDANTS pursuant to the procedures specified in California Labor Code § 2699.3… ." (*Id.* at ¶ 60.)

B. Defendants' Demurrer

Defendants initially contend that the court must abate this action pursuant to Code of Civil Procedure section 430.10, subdivision (c). (Defendants' MPA, pp. 6:27-8:2.)

A demurrer based on another action pending is one of the grounds for demurrer explicitly set forth in Code of Civil Procedure section 430.10. (See Code Civ. Proc., § 430.10, subd. (c).) "A plea in abatement pursuant to section 430.10, subdivision (c), may be made by demurrer or answer when there is another action pending between the same parties on the same cause of action." (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 789 (*Plant Insulation*).) Although the existence of the other lawsuit may not appear on the face of the complaint, the court can take judicial notice of the existence of the other court files. (Evid. Code § 452, subd. (d).)

At the same time, a demurrer on the ground that there is another action pending between the same parties is not judicially favored. (*Conservatorship of Pacheco* (1990) 224 Cal.App.3d 171, 176.) "Because of its disfavored status the statutory language has been strictly interpreted to defeat pleas in abatement." (*Ibid.*) Thus, a special demurrer on this ground requires showing: "(1) That both suits are predicated upon the same cause of action; (2) that both suits are pending in the same jurisdiction; and (3) that both suits are contested by the same parties. [Citations.]" (*Colvig v. RKO Gen.* (1965) 232 Cal.App.2d 56, 70 (*Colvig*).)

To be considered the same "cause of action," the pleadings in question must allege invasion of the same "primary right." (*Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 1384 (*Bush*).) Actions filed in different counties of the Superior Court of California are within the "same jurisdiction." (See *Simmons v. Superior Court of Los Angeles County* (1950) 96 Cal.App.2d 119, 122-123; *Burch v. Slamin* (1955) 137 Cal.App.2d 1, 3 ["Where complaints are filed in two counties involving the same subject of action the county in which summons is first served acquires jurisdiction of the entire controversy and the action in the other county is subject to abatement on the ground of another action pending. [Citations.]")

A statutory plea in abatement requires showing the "absolute identity of parties." (*Plant Insulation, supra*, 224 Cal.App.3d at p. 789.) To meet this standard, the parties must "stand in the same relative position as plaintiff and defendant. [Citation.]" (*National Auto Ins. Co. v. Winter* (1943) 58 Cal.App.2d 11, 16 (*National Auto*); see also *Western Pipe & Steel Co. v. Tuolumne Gold Dredging Corp.* (1944) 63 Cal.App.2d 21, 28-29 [the parties need not named

be as plaintiff and defendant in both actions but must stand in the same "relative position as plaintiff and defendant"].)

Here, Defendant argues that the Flores Action and the Manalo Action involve the same defendant and that the proposed classes have substantial overlap. (MPA, pp. 5:22-8:2.) Defendant emphasizes that seven of Plaintiff's ten claims are also asserted in the Flores Action and the Manalo Action. (*Id.* at p. 7:6-18.) Defendant relies on *Leadford v. Leadford* (1992) 6 Cal.App.4th 571, 574 (*Leadford*) for the proposition that "[a] later-filed action cannot proceed if it involves 'substantially the same controversy between the same parties' as an earlier action." (MPA, p. 5:23-24.)

In opposition, Plaintiff contends that a plea in abatement may not be sustained because the actions in question are not between the same parties. (Plaintiffs' Opposition to Defendants' Demurrer, or in the Alternative, Motion to Stay Plaintiff's Complaint ("Opp."), p. 2:2-12.) Plaintiff points out that the Flores Action, the Manalo Action, and this action all involve three different plaintiffs. (*Id.* at p. 4:20-22.) With respect to the PAGA claims specifically, Plaintiff presents authority that "nothing in the PAGA statutory scheme forecloses separate but similar action by different employees against the same employer. [Citation.]" (*Id.* at p. 5:25-27, citing *Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 866.)

In reply, Defendants assert that Plaintiff is highlighting miniscule differences and reiterate their position that the actions involve substantially the same claims. (Reply, p. 2:14-22.) Defendants maintain that the actions need not be exactly identical for the statutory plea in abatement to apply because the standard is whether the actions involve the same primary rights. (*Id.* at pp. 2:23-3:6.)

Nevertheless, Defendants fail to address the requirement for a statutory plea in abatement of showing that both actions involve the same parties. (See *Plant Insulation, supra*, 224 Cal.App.3d at p. 789; see also *Colvig, supra*, 232 Cal.App.2d at p. 70.) Even the authority relied upon by Defendants in their "primary right" argument states that, for the ground of abatement to apply, the action must involve a primary right "possessed by the plaintiff… ." (Reply, pp. 2:25-3:3, emphasis added, quoting *Bush, supra*, 10 Cal.App.4th at p. 1384.)

Similarly, Defendants' reliance upon *Leadford* is misplaced. There, the actions in question were between the same parties. (*Leadford, supra*, 6 Cal.App.4th at pp. 572-573.) Still, the appellate court reversed the trial court's decision sustaining the demurrer on abatement grounds because the other action was pending in the court of another state. (*Id.* at pp. 574-575.)

Thus, by failing to address Plaintiff's argument that abatement is improper here because the actions are not between the same parties, Defendants effectively concede the argument. (See *Glendale Redevelopment Agency v. Parks* (1993) 18 Cal.App.4th 1409, 1424 [issue is impliedly conceded by failing to address it]; see also *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 566 ["[by] failing to argue the contrary, plaintiffs concede the issue"].) Therefore, the court finds that Defendants have not established the conditions for a statutory plea in abatement.

Accordingly, Defendants' demurrer on the ground of another action pending under Code of Civil Procedure section 430.10, subdivision (c) is OVERRULED.

B. Request to Stay

As an alternative to their demurrer, Defendants ask the court to stay this action pending resolution of the Flores Action and the Manalo Action. (Notice, p. 2:8-15; MPA, p. 3:19-20.) In this regard, Defendants first reference the rule of exclusive concurrent jurisdiction. (MPA, pp. 5:28, 6:13-17.)

The rule of exclusive concurrent jurisdiction applies more broadly than the statutory plea in abatement. (See *Plant Insulation*, *supra*, 224 Cal.App.3d at pp. 786-787 ["Under the rule of exclusive concurrent jurisdiction, when two superior courts have concurrent jurisdiction over the subject matter and parties involved in litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matter have been resolved."].) This rule does not require absolute identity of the parties and, rather than a strict statutory rule, is a common-law rule that can be enforced by the trial court to avoid conflict of jurisdiction, confusion, and delay. (*Id.* at pp. 787-788.) When the rule of exclusive concurrent jurisdiction applies, the second action should be stayed so that the court retains jurisdiction until a final resolution is reached. (*Id.* at p. 792.)

The rule is "based upon the public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy, and preventing vexatious litigation and multiplicity of suits. [Citations.]" (*Plant Insulation, supra*, 224 Cal.App.3d at p. 787.) "The rule is established not so much to protect the right of parties as to protect the rights of Courts to co-ordinate jurisdiction to avoid conflict of jurisdiction, confusion and delay in the administration of justice." (*Ibid.*, internal punctuation and citations omitted.)

Plaintiff argues that the rule of exclusive concurrent jurisdiction does not apply here because all three actions are pending in the same court. (Opp., p. 6:7-14, citing *Franklin & Franklin v. 7-Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1168, 1175 and *Mobil Oil Corp. v. Superior Court* (1978) 79 Cal.App.3d 486, 492-493 (*Mobil Oil*).) Plaintiff may be correct that the rule "does not technically apply among actions pending in the same superior court." (See *Shane v Superior Court* (1984) 160 Cal.App.3d 1237, 1251, citing *Mobil Oil, supra*, 79 Cal.App.3d at pp. 492-493.)

Nevertheless, many of the same considerations may still apply with respect to actions pending in the same superior court, and the court has the inherent authority to control the litigation before it to avoid conflicting rulings and unnecessary waste of parties' and judicial resources. (Code Civ. Proc., § 128, subds. (a)(2), (a)(8).) This authority includes the power "to stay an action when appropriate." (*Jordache Enters., Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 758.) "A court ordinarily has inherent power, in its discretion, to stay proceedings when such a stay will accommodate the ends of justice." (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141, internal punctuation and citation omitted.)

In this regard, Defendants set forth several arguments in support of their request to stay this action. (MPA, pp. 8:3-10:25.) Defendants contend they will be unfairly burdened if a stay is not granted and that there is a risk of unseemly conflict if this case is allowed to proceed. (*Id.* at pp. 8:4-9:6.) They point out that the Flores Action and the Manalo Action are further along in litigation and argue that it is in the employees' best interests for this case to be stayed. (*Id.* at pp. 3:7-10:5.) Finally, Defendants argue that public interest and the fact all three cases are pending in California are factors that weigh in favor of a stay. (*Id.* at p. 10:6-25.)

In opposition, Plaintiff argues that the court should decline to stay this action because there is no risk of potentially conflicting judgments, the court can effectively manage the cases to avoid unnecessary duplication, and because none of Plaintiff's claims will be addressed by the Manalo Action. (Opp., p. 2:13-25.) Plaintiff further argues that she will be prejudiced by a stay because her case could remain stayed for years, after which time it will be more difficult to locate witnesses and evidence. (*Id.* at p. 3-13.)

Plaintiff contends that there is no risk of conflicting rulings because the action are pending in the same department. (Opp., p. 7:14-17.) Plaintiff argues that the risk of duplicative efforts is minimal here, noting that the Flores Action has settled. (*Id.* at p. 7:24-28.) As discussed above, the parties in the Manalo Action have continued their respective motions regarding certification so that they may pursue resolution in mediation.

In reply, Defendants contend that Plaintiff is not prohibited from narrowing her claims or pursuing her individual claims. (Reply, p. 4:15-16.) Defendants also assert that there is no guarantee that the court will make consistent determinations because the different plaintiffs are represented by different counsel and may make different arguments. (*Id.* at p. 4:17-23.) Lastly, Defendants assert that Plaintiff has taken no action to avoid overlap with the Flores Action and the Manalo Action. (*Id.* at p. 4:24.)

Here, while the court has discretion to issue a stay under its inherent authority, the court is not persuaded that such a stay is necessary or appropriate in this action at this time. It appears that the Flores Action has settled and the parties to the Manalo Action are actively pursuing a settlement. The terms of those proposed or potential settlements are unknown to the court at this time but, given the overlap of the allegations between these related actions, such terms may well affect Plaintiff's ability to pursue some of her class and representative claims in this action.

Nevertheless, the court finds the risk of inconsistent rulings or duplicative efforts to be minimal. Further, Plaintiff is also pursuing her claims on an individual basis, and there is no guarantee that the parties in the other actions will agree to settlements that are ultimately approved by the court. Therefore, Plaintiff would be unfairly prejudiced by a stay under the circumstances at this time.

Accordingly, Defendants' request to stay this action is DENIED, without prejudice.

V. Conclusion

Defendants' demurrer on the ground of another action pending under Code of Civil Procedure section 430.10, subdivision (c) is OVERRULED. Defendants' request to stay this action is DENIED, without prejudice.

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

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Calendar Line 3

Case Name: Bravo, et al. v. Gallaher Company, et al. (PAGA)
Case No.: 21CV381912

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on October 23, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a representative action arising from alleged wage and hour violations. On April 21, 2024, Plaintiffs Angel Bravo and Pablo Flores (collectively, "Plaintiffs") initiated this action by filing a Complaint against Defendants Gallaher Company and Robert John Gallaher (collectively, "Defendants"). On September 7, 2021, Plaintiffs filed the operative First Amended Complaint ("FAC") against Defendants, setting forth the following causes of action:

(1) unpaid wages, violation of Industrial Welfare Commission ("IWC") Orders 16-2001 and Labor Code, §§ 200, *et seq.*, 204, 223, 226.2, 1194;
(2) overtime wages, violation of Wage Orders and Labor Code, §§ 510 and 1194;
(3) failure to provide accurate itemized wage statements, violation of Labor Code, § 226;
(4) failure to pay all wages due upon termination (Labor Code, §§ 201-203);
(5) failure to reimburse expenses (Labor Code, § 2802);
(6) unfair business practices, violation of Unfair Competition Law, Business & Professions Code, §§ 17200, *et seq.*;
(7) Private Attorneys General Act ("PAGA") violations (Labor Code, §§ 2698, *et seq.* and 558).

The parties have reached a settlement. Plaintiffs' unopposed motion for approval of the PAGA settlement is before the court. At the initial hearing on September 18, 2024, the court continued the motion and requested Plaintiffs' counsel to provide supplemental information prior to the continued hearing. (See September 18, 2024 Minute Order ("Sept. 18 Minute Order"), pp. 3-4.) More specifically, the court asked the parties to meet and confer regarding the definition of the PAGA group on whose behalf the action being settled, and the court asked Plaintiffs' counsel to submit a supplemental declaration further explaining the fairness of the PAGA settlement provisions. (*Ibid.*)

On October 14, 2024, Plaintiffs' counsel submitted a supplemental declaration in support of Plaintiffs' instant motion.

II. Legal Standard for PAGA Settlement Approval

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S.___ [2022 U.S. LEXIS 2940].) Seventy-five percent of any penalties recovered go to the Labor and Workforce Development Agency ("LWDA"), leaving the remaining 25 percent for the employees. (*Ibid*.) PAGA is intended "to augment the limited enforcement capability of [the LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id*. at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699, subd. (l)(2).) The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) The proposed settlement must be submitted to the LWDA at the same time it is submitted to the court. (*Ibid*.)

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

(*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061, 2019 U.S. Dist. LEXIS 77988 (*Patel*), at *5.)

As part of this analysis, these courts have evaluated proposed PAGA settlements under the relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel, supra,* 2019 U.S. Dist. LEXIS 77988 at *5-6.) "Of the *Hanlon* factors, the following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and views of counsel." (*Ibid*.)

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 (*Moniz*).) 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, supra,* 383 F. Supp. 3d at p. 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*).)

"[W]hen a PAGA claim is settled, the relief provided … [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …." (*O'Connor, supra* at p. 1133.) The settlement must be reasonable in light of the potential verdict value. (*Id.* at 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, 2016 U.S. Dist. LEXIS 140759 at *8-9.)

III. Discussion

Plaintiffs move for approval of a proposed PAGA settlement. Defendants are a small construction company and its owner. (Declaration of Tomas E. Margain ("Margain Dec."), ¶ 9.) The theory of the case is that certain workers, who were drivers, were not properly paid for their mileage or their time worked prior to and after their start and end times. (*Id.* at ¶ 10.) Plaintiffs allege that Defendants did not pay Plaintiffs for the time they spent purchasing materials before or after their paid workday. (*Id.* at ¶ 11.) During discovery, Defendants produced the time and pay records for Plaintiffs Bravo and Flores, as well as those for a third individual, Javier Alejandro Martinez. (*Id.* at ¶ 15.) Defendants also produced the records of workers in the PAGA claim. (*Ibid.*)

Following mediation, the parties reached an agreement. (Margain Dec., ¶¶ 19-20.) The settlement terms regarding the individual claims of Plaintiff Bravo, Plaintiff Flores, and Mr. Martinez (the "Participating Workers"), as well as the PAGA claim on behalf of fourteen workers, were all memorialized in a single settlement agreement (the "Agreement"). (*Id.* at ¶¶ 19-20, 22.) Confidentiality of this Agreement was a non-negotiable term for the Defendants. (*Id.* at ¶ 19.)

A. Terms of the PAGA Settlement

Plaintiff's counsel has confidentially submitted a copy of the Agreement to the court for its review, and the court has received and reviewed the Agreement. Counsel represents that the amounts to be paid to the three Participating Workers are confidential. (Margain Dec. at ¶ 19.) Under the Agreement, Defendants will pay a gross amount as payment for all claims.

After removing the total amount to be paid as individual payments to the three Participating Workers, there is $90,000 remaining. (Agreement, ¶ 3.) This amount includes $44,400 in combined attorney fees and costs, $2,000 in settlement administration expenses, and $43,600 allocated to the PAGA claim. (*Id.* at ¶ 3(b)-3(d). Of the $43,600 PAGA allocation, 75 percent ($32,700) will be paid to the LWDA, and 25 percent ($10,900) will be paid to "PAGA Pool Members" on a pro-rata basis according to the number of workweeks worked by the PAGA Pool Member during the "PAGA Pool Period." (*Id.* at ¶ 3(d).) The PAGA Pool Period is defined as the period from March 11, 2020 to the date of the court's order approving the Agreement. (*Ibid.*)

In its prior minute order, the court expressed concern regarding the lack of a definition for the term "PAGA Pool Members" within the Agreement. (Sept. 18 Minute Order, p. 3 ["the parties shall meet and confer with the objective of executing a stipulation or addendum to [the] Agreement clearly defining the group of aggrieved employees on whose behalf the PAGA claim is being settled"].) In his supplemental declaration, Plaintiff's counsel states that counsel for the Parties met and conferred to address the courts' concerns. (Supplemental Declaration of Tomas E. Margain, ¶ 3 ("Supp. Margain Dec.").) Nevertheless, Mr. Margain's supplemental declaration does not address the court's concern regarding the lack of definition for the PAGA settlement group, nor is there any indication of a stipulation or addendum regarding the same.

In the court's view, the terms of a PAGA settlement must be expressly defined so that the reach of the settlement is clear with regards to any future claims.

Accordingly, the motion is CONTINUED to give the Parties a final opportunity to address this issue. Prior to the continued hearing, counsel for the parties shall meet and confer to address whether they are able to reach a written agreement concerning the definition of the proposed PAGA settlement group. At least ten days court days prior to the continued hearing, Plaintiffs' counsel shall submit a supplemental declaration advising the court of the Parties' progress in this regard.

B. Fairness of the PAGA Settlement

Plaintiffs contend the PAGA settlement is the result of non-collusive arms-length negotiations conducted during adversarial proceedings. (Margain Dec., ¶¶ 21, 24.) Counsel states that obstacles to settlement include the fact that Defendant is a small employer and may have solvency issues and the court's discretion to reduce the amount of PAGA penalties. (*Id.* at ¶ 25.) Counsel asserts that the PAGA amount of $43,600 is an excellent recovery because it amounts to $219.10 per pay period (based on 199 pay periods). (*Id.* at ¶¶ 25-26.)

Plaintiffs state that there are potentially 14 workers, in addition to themselves and Mr. Martinez, who worked approximately 199 pay periods. (Plaintiffs' Memorandum of Point and Authorities in Support of Motion for Approval of PAGA Settlement, p. 4:17-25.) Plaintiffs also state that the Defendants have a potential PAGA exposure of $295,000, based on nine different penalties. (*Ibid.*)

In its prior minute order, the court expressed concern regarding the lack of an explanation of how the Parties arrived at the amount to settle the PAGA claim. (Sept. 18 Minute Order, p. 3.) In his supplemental declaration, Plaintiffs' counsel emphasizes that the proposed settlement is the result of a mediator's proposal based on the Parties' arms-length negotiations. (Supp. Margain Dec., ¶ 11.) Counsel states that Defendant's estimated total exposure on the PAGA claims is $729,150, and he provides a breakdown of that amount by claim. (*Id.* at ¶¶ 12-14.) Counsel provides an explanation for the valuation of each of the Labor Code violations comprising Plaintiffs' PAGA claim. (*Ibid.*)

Nevertheless, the court continues to have concerns regarding the fairness of the PAGA settlement. Counsel provides no authority, and the court is aware of none, for the proposition that a PAGA settlement may be confidential. In a PAGA action, the plaintiff is standing in the shoes of the state, making the action quasi-governmental. If the PAGA settlement were allowed to be confidential, the reach of the settlement with regards to future claims would be unclear. As explained above, PAGA purpose's is to protect the public interest, and before granting approval of a PAGA settlement, 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, supra*, 72 Cal.App.5th at pp. 76–77.)

Accordingly, prior to the continued hearing, Plaintiffs' counsel shall provide supplemental briefing explaining the basis for confidentiality of the PAGA settlement and whether a confidential PAGA settlement is permissible considering that it is action brought on behalf of the state.

C. Attorney Fees and Costs

Plaintiffs' attorneys seek a combined fees and costs award of $44,400. (Margain Dec., ¶ 6.) Attorney Tomas Margain states he worked 84.6 hours at a rate of $894, for a lodestar amount of $75,632.40. (*Ibid.*) Attorney Xiaoming Liu states that she worked a total of 54 hours at $475 per hour, resulting in a lodestar amount of $25,650. (Declaration of Xiaoming Liu, ¶ 9.) Thus, Plaintiffs' counsel submit evidence supporting a combined lodestar amount of $101,282.40. Therefore, the requested amount results in a significant negative multiplier.

The court will make a determination on the reasonableness of the attorney fees and costs award at the continued hearing.

IV. Conclusion

The motion is CONTINUED to January 15, 2025 at 1:30 p.m. in Department 19.

Prior to the continued hearing, counsel for the parties shall meet and confer to address whether they are able to reach a written agreement concerning the definition of the proposed PAGA settlement group. At least ten days court days prior to the continued hearing, Plaintiffs' counsel shall submit a supplemental declaration advising the court of the Parties' progress in these regards. At least ten court days prior to the continued hearing, Plaintiffs' counsel shall

provide supplemental briefing explaining the basis for confidentiality of the PAGA settlement and whether a confidential PAGA settlement is permissible given that PAGA's purpose is to protect the public interest.

Plaintiff shall prepare the order.

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Calendar Line 4

Case Name: Guzman v. Randstad US, LLC (PAGA)
Case No.: 21CV380800

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on October 23, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a representative action arising from alleged wage and hour violations. On April 28, 2021, Plaintiff Christina Guzman ("Plaintiff") commenced this action by filing a Class Action Complaint against defendant Randstad US, LLC ("Defendant"). The Complaint sets forth causes of action for: (1) failure to pay wage and/or overtime under Labor Code sections 510, 1194, and 1199; (2) failure to provide meal breaks pursuant to Labor Code sections 226.7 and 512; and (3) penalties pursuant to Labor Code section 203.

On July 2, 2021, Plaintiff filed the operative First Amended Complaint ("FAC") alleging an additional cause of action for penalties under Labor Code section 2699, *et seq.* (the Private Attorneys General Act, ("PAGA")), based on Defendant's alleged violations of Labor Code sections 201, 202, 203, 226.7, 510, 512, 1194, and 1199.

In light of an existing arbitration agreement, Plaintiff requested dismissal of her class claims. On December 14, 2021, the court (Hon. Patricia M. Lucas) entered an order granting the dismissal of the class claims. On January 14, 2022, the court (Hon. Lucas) granted Plaintiff's request to dismiss her individual claims in Causes of Action 1-3. The parties agreed to arbitrate Plaintiff's individual PAGA claims pursuant to the arbitration agreement and filed a stipulation to stay Plaintiff's non-individual PAGA claims in this action.

The parties have reached a settlement regarding Plaintiff's non-individual PAGA claims. Plaintiff moved for approval of the PAGA settlement. At the hearing on September 18, 2024, the court continued the matter to October 23, 2024 and asked Plaintiff and her counsel to address several issues. More specifically, the court asked Plaintiff to provide a supplemental declaration indicating the number of hours she has spent participating in this litigation, and the

court asked Plaintiff's counsel to provide a supplemental declaration containing attorney billing records and clarifying the effect of Defendant's ability to change the settlement period.

On October 8, 2024, Plaintiff and her counsel filed supplemental declarations, and Plaintiff's counsel submitted Plaintiff's separate settlement agreement confidentially. Having reviewed these supplemental materials, the court GRANTS the motion for approval of PAGA settlement, as discussed below.

II. Legal Standard for PAGA Settlement Approval

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S.___ [2022 U.S. LEXIS 2940].) Seventy-five percent of any penalties recovered go to the Labor and Workforce Development Agency ("LWDA"), leaving the remaining 25 percent for the employees. (*Ibid*.) PAGA is intended "to augment the limited enforcement capability of [the LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id*. at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699, subd. (l)(2).) The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) The proposed settlement must be submitted to the LWDA at the same time it is submitted to the court. (*Ibid*.)

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

(*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061, 2019 U.S. Dist. LEXIS 77988 (*Patel*), at *5.)

As part of this analysis, these courts have evaluated proposed PAGA settlements under the relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel, supra,* 2019 U.S. Dist. LEXIS 77988 at *5-6.) "Of the *Hanlon* factors, the following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and views of counsel." (*Ibid*.)

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, supra,* 383 F. Supp. 3d at p. 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*).)

"[W]hen a PAGA claim is settled, the relief provided … [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …." (*O'Connor*, *supra* at p. 1133.) The settlement must be reasonable in light of the potential verdict value. (*Id.* at 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, 2016 U.S. Dist. LEXIS 140759 at *8-9.)

III. Discussion

A. Provisions of the Settlement

Plaintiff moves for approval of a proposed settlement on behalf of "Aggrieved Employees," defined as:

> [A]ll persons who are employed or have been employed as an hourly employee by RANDSTAND US, LLC, in the State of California who were assigned to work at Advoque during the Release Period [April 28, 2020 to March 17, 2024].

(Declaration of Kelsey M. Szamet ("Szamet Dec."), Ex. 1 ("Agreement"), ¶¶ 1.4, 1.20.)

According to the terms of the settlement, Defendant will pay a gross settlement amount of $140,000. (Agreement, ¶¶ 1.11, 3.1.) This amount is based on Defendant's representation that there are 981 Aggrieved Employees who worked 6,359 pay periods during the Release Period. (*Id.* at ¶ 8.) If the estimated number of pay periods increases by more than 10%, Defendant has the option to increase the gross settlement amount on a proportional basis or roll back the Release Period to end on a date before the number of pay periods exceeds 10%. (*Ibid.*)

In its prior tentative decision, the court expressed concern that allowing Defendant to shorten the PAGA Period could eliminate otherwise eligible Aggrieved Employees from the recovery. In her supplemental declaration, Plaintiff's counsel represents that there is no threat that otherwise eligible Aggrieved Employees could be eliminated from the recovery should Defendant elect to change the end date of the Release Period. (Supplemental Declaration of Kelsey M. Szamet ("Supp. Szamet Dec."), ¶¶ 5-6.) The court accepts counsel's representation and finds that Plaintiff has sufficiently addressed the issue identified regarding the escalator clause.

The gross settlement amount includes litigation costs of up to $13,000, a service award to Plaintiff of up to $5,000, settlement administration expenses up to $8,850, and PAGA penalties in the amount of $113,150. (Agreement, ¶¶ 3.2, 3.2.1-3.2.4.) Plaintiff's counsel will file a separate application or motion for approval of no more than $140,000 in attorney fees. (*Id.* at ¶ 3.2.1.) Of the amount designated as PAGA penalties, 75 percent will be paid to the LWDA, and 25 percent will be distributed to Aggrieved Employees as individual PAGA payments. (*Id.* at ¶ 3.2.4.) Funds from checks that are not cashed within 180 days after the date of mailing will be transmitted to the California Controller's Unclaimed Property fund in the name of the Aggrieved Employee. (*Id.* at ¶¶ 4.4.1, 4.4.3.)

In exchange for the settlement, the Aggrieved Employees agree to release Defendant, and related persons and entities, from all claims for PAGA penalties that were alleged or reasonably could have been alleged based on the facts stated in the operative Complaint and

the PAGA notice occurring during the PAGA Period. (Agreement, ¶¶ 1.20, 1.27, 5.1.) The scope of the release provisions are appropriately tied to the factual allegations in the complaint. (See *Amaro Arean Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

B. Fairness of the Settlement

Plaintiff contends that the settlement is fair and reasonable based on its analysis of the maximum penalties available and the risks of continued litigation. (Plaintiff's Memorandum of Points and Authorities ("Plaintiff's MPA"), p. 16:1-2.) On January 9, 2024, the parties participated in an all-day mediation with Brandon McKelvey, Esq., which lead to the Agreement to settle the action. (*Id.* at p. 3:6-7.) Prior to mediation, the parties engaged in discovery, and Plaintiff obtained personnel records and extensive time and pay data. (*Id.* at p. 3:1-2.)

Plaintiff assessed that the maximum potential exposure for the PAGA claims for Aggrieved Employees is $635,900, based on a $100 penalty for 6,359 pay periods. (Plaintiff's MPA, p. 16:3-4.) Plaintiff notes that, by stacking the penalties for each of the three distinct underlying Labor Code violations, the maximum potential exposure increases to $1,907,700. (*Id.* at p. 16:5-7.)

Thus, the gross settlement amount of $140,000 represents 22.02% of the maximum potential exposure without stacking, and 7.34% of the maximum potential exposure with stacking. This percentage recovery is within general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S. Dist. LEXIS 30201, at *41-42 [citing cases indicating that a general range of 5 to 35 percent of the maximum potential exposure is reasonable].)

Plaintiff explains that the total value of the PAGA claims was discounted to account for Defendant's anticipated arguments that it paid employees properly in accordance with its lawful policies and practices, that employees were provided the opportunity to take meal breaks, and that no employees complained about any of the alleged Labor Code violations prior to this lawsuit. (Plaintiff's MPA, p. 15:20-26.) Plaintiff also describes the particular risks of

proceeding with the litigation, including that the court may exercise discretion to reduce the maximum civil penalties awarded. (*Id.* at pp. 7:9-8:16, 14:17-15:28.)

The court has reviewed Plaintiff's written submissions and finds that she has sufficiently explained the rationale for the settlement amount. The settlement provides for some recovery for each Aggrieved Employee and eliminates the risk and expense of future litigation. Therefore, the court finds that the settlement of Plaintiff's non-individual PAGA claims is fair and reasonable.

C. Incentive Award

As part of the settlement, Plaintiff seeks a service award in the amount of $5,000. Although service awards are common in class actions, there is less authority regarding the propriety of service awards in PAGA cases. Nevertheless, a PAGA case is a representative action like a class action, and courts have recognized that an individual's willingness to act as a private attorney general may merit a service award. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959.)

Plaintiff has submitted a declaration detailing her participation in the action. (See Declaration of Christina Guzman.) She states that she has spent a significant amount of time on this case, including discussing the case with counsel, reviewing the complaint, gathering facts and documents for counsel, preparing and being available for mediation, and reviewing settlement documents. (*Id.* at ¶¶ 4-5.) Plaintiff was deposed for approximately 6 hours. (*Id.* at ¶ 5.) Plaintiff acted as a representative for the aggrieved employees and has agreed to a broader release.

In her supplemental declaration, Plaintiff states that she has spent approximately 50-60 hours in connection with this litigation. (Supplemental Declaration of Christina Guzman, ¶ 5.) She also states that she received a separate, individual settlement payment from Defendant in exchange for a general release and dismissal of her individual Labor Code claims pending in arbitration. (*Id.* at ¶ 6.) Plaintiff signed a confidential individual settlement agreement. (*Ibid.*)

Plaintiff's counsel has provided the confidential individual settlement agreement for the court's review. The court has reviewed the confidential individual settlement agreement and

finds that its terms do not adversely impact the fairness of the proposed PAGA settlement, including the requested incentive award and attorney fees award.

The court finds that an incentive award to Plaintiff is justified and that the amount requested is reasonable under the circumstances of this case. According, the court approves an incentive award to Plaintiff in the amount of $5,000.

D. Litigation and Settlement Administration Costs

The Agreement provides for a payment from the gross settlement amount for litigation expenses up to $13,000. (Agreement, ¶ 3.2.1.) Plaintiff's counsel represents that she has incurred $11,647.14 in costs to date and anticipates incurring another $600 in costs in connection with the instant motion. (Szamet Dec., ¶¶ 108-109.) Counsel provides evidence of costs incurred. (*Id.* at Ex. 5.) The court approves a payment of litigation expenses in the incurred amount of $11,647.14.

The Agreement provides for a payment from the gross settlement amount for settlement administration expenses up to $8,850. (Agreement, ¶ 3.2.3.) The settlement administrator has submitted a declaration representing that the fees associated with administration of this settlement are $8,850. (Declaration of Lisa Mullins of ILYM Group, ¶¶ 6-7 and Ex. C.) The court approves settlement administration expenses in the requested amount of $8,850.

E. Attorney's Fees

The Agreement provides that Plaintiff's counsel will separately file a request for attorney fees of up to $140,000. (Agreement, ¶ 3.2.1.) Plaintiff's counsel has filed a separate motion for approval of attorney fees. Counsel represents there is an aggregate lodestar in the amount of $118,255 based on 157.9 hours of work at hourly rates of $400 per hour to $1,100 per hour. (Szamet Dec., ¶¶ 75, 83.) Counsel provides a breakdown of the hours and hourly rates by attorney. (*Id.* at ¶ 98.)

With her supplemental declaration, Plaintiff's counsel has provided attorney billing records consistent with the lodestar figure of $118,255 based on 157.9 attorney hours. The $140,000 in requested attorney fees results in a reasonable multiplier of 1.18. Based on the lodestar crosscheck, the fairness of the settlement achieved, and the skill and experience of counsel, the court finds the amount requested in attorney fees is reasonable under the

circumstances. Accordingly, the court approves an award of attorney fees in the amount of $140,000.

IV. Conclusion

The motion for approval of PAGA settlement is GRANTED.

The court sets a compliance hearing for May 21, 2025 at 2:30 p.m. in Department 19.

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

- oo0oo -

Calendar Line 5

Case Name: Fox, et al. v. Crisis24 Protective Solutions, LP (Class Action)
Case No.: 23CV418864

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on October 23, 20224 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a putative class and representative action arising out of alleged employment law violations and involving multiple related actions. On July 7, 2023, Plaintiffs Rustin Fox and Gabrielle Santi commenced this action by filing a Class Action Complaint against Defendant Crisis24 Protective Solutions, LP.

On April 18, 2024, Plaintiff Partick Burk initiated an action in Los Angeles County Superior Court, captioned *Patrick Burk v. Crisis24, Inc., et al.* (Case No. 24STCV09814), now removed and pending the Central District of California (the "Burk Action").

On July 31, 2024, Plaintiffs Rustin Fox, Gabrielle Santi, and Patrick Burk (collectively, "Plaintiffs") filed the operative First Amended Class Action Complaint ("FAC") against Defendants Crisis24, Inc. and Crisis24 Protective Solutions, LP (collectively, "Defendants").

The FAC sets forth the following causes of action: (1) unfair competition and unfair, unlawful, or fraudulent business practices in violation of Business and Professions Code section 17200, *et seq.*; (2) failure to pay minimum wages and wages for all hours worked in violation of Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of Labor Code section 510 and 1194; (4) failure to provide required meal periods in violation of Labor Code sections 226.7 and 512 and the application Industrial Welfare Commission ("IWC") Wage Order; (5) failure to provide required rest periods in violation of Labor Code sections 226.7 and 512 and the application IWC Wage Order; (6) failure to provide timely accurate itemized statements in violation of Labor Code section 226; (7) failure to reimburse employees for required expenses in violation of Labor Code section 2802; (8) failure to provide wages when due and upon discharge in violation of Labor Code sections 201-203; (9) failure to pay sick pay wages in violation of Labor Code section 201-204, 233, and 246;

(10) discrimination and retaliation in violation of FEHA [California Fair Employment and Housing Act] (by Plaintiff Santi against all Defendants); (11) failure to provide reasonable accommodation in violation of Government Code section 12940, subdivision (m) (by Plaintiff Santi against all Defendants); (12) failure to provide reasonable accommodation in violation of Government Code section 12940, subdivision (m) (by Plaintiff Fox against all Defendants); and (13) wrongful termination in violation of public policy (by Plaintiff Fox against all Defendants); (14) violation of Private Attorneys General Act ("PAGA"), Labor Code section 2698, *et seq.*

The Parties have reached a settlement. Now before the court is Plaintiffs' unopposed motion for preliminary approval of the class and representative action settlement.

II. Legal Standard for Settlement Agreements

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

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citation omitted.)

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.___, 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, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

III. Discussion

A. Provisions of the Settlement

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

> [A]ll individuals who are or were (a) employed by Defendants in the State of California at any time during the Class Period, and (b) classified as non-exempt (i.e., hourly) employees.

(Declaration of Kyle Nordrehaug ("Nordrehaug Dec."), Ex. 1 ("Agreement"), ¶ 1.5.) The Agreement defines the Class Period as the period from "July 1, 2021 to the earlier of June 26, 2024, or the date of Preliminary Approval." (Agreement, ¶ 1.13.)

The settlement also includes a subset PAGA class of Aggrieved Employees defined as "all non-exempt employees who worked for Defendants in the State of California at any time during the PAGA Period." (Agreement, ¶ 1.4.)

According to the terms of the settlement, Defendant will pay a gross settlement amount of $1,250,000. (Agreement, ¶ 1.22.) This amount includes attorney fees of up to one-third of the gross settlement amount (currently estimated to be $416,666.67), litigation costs not to exceed $30,000, a PAGA allocation of $50,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments), a total of $30,000 in incentive awards ($10,000 each); and settlement administration expenses not to exceed $14,000. (*Id.* at ¶¶ 3.1, 3.2(a)-3.2(d).) The net settlement amount will be distributed to participating class members on a pro-rata basis according to the number of workweeks worked. (*Id.* at ¶ 3.2(e).) PAGA payments will be distributed to Aggrieved Employees on a pro-rata basis according to the number of pay periods worked. (*Id.* at ¶ 3.2(d).)

The Agreement states that individual settlement payment checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the Children's Advocacy Institute and Legal Aid at Work, in equal parts, as the

designated *cy pres* recipients in according with Code of Civil Procedure section 384. (Agreement, ¶¶ 5.2, 5.4.) The court approves the designated *cy pres* recipients.

In exchange for the settlement, the class members agree to release Defendant, and related entities and persons, from all claims that were, or reasonably could have been, alleged based on the facts pleaded in the FAC occurring during the Class Period. (Agreement, ¶¶ 1.38, 1.40, 6.2 .) Aggrieved Employees agree to release Defendant, and related entities and persons, from all claims for PAGA civil penalties that were alleged based on facts pleaded in the FAC and the PAGA Notices. (*Id.* at ¶¶ 1.39, 1.40, 6.3.) These release provisions are appropriately tailored to the factual allegations of the operative pleading. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

Plaintiffs Gabriele Santi and Rustin Fox also agree to comprehensive general releases. (Agreement, ¶ 6.1.) Plaintiff Santi has separate claims for discrimination and retaliation in violation of FEHA and for failure to provide reasonable accommodation. (*Id.* at ¶ 6.1(b). Plaintiff Fox has separate claims for failure to provide reasonable accommodation and for wrongful termination in violation of public policy. (*Ibid.*) According to the Agreement, the separate claims of Plaintiffs Santi and Fox are based on separate facts and claims and are being separately settled through unrelated consideration. (*Ibid.*)

Plaintiff Patrick Burk represents that he has claims against Defendants other than the Class and PAGA claims. (Agreement, ¶ 6.1(c).) These other claims are for discrimination, retaliation, and failure to prevent discrimination in violation of FEHA, wrongful termination, and violations of California Business and Professions Code section 17200 in the Burk Action pending the Central District of California. (*Ibid.*) According to the Agreement, Plaintiff Burk specifically does not release any of these individual claims against Defendants and these claims are unrelated to and separate from the settlement of his Class and PAGA claims and are based on separate facts and claims. (*Ibid.*)

The Agreement states: “Class Counsel will be filing a declaration with the Court affirming that the consideration given for the settlement of the Individual Claims of Fox and Santa is unrelated to and separate from the settlement of their Class claims and PAGA claims and is based on separate facts and claims.” (Agreement, ¶ 6.3(d).) The court has not been able

to locate the referenced affirmation in the declarations submitted by Plaintiffs' counsel. Furthermore, the court would like to review the individual settlement agreements before reaching a conclusion as to the fairness of the proposed settlement.

Accordingly, the motion is CONTINUED. Prior to the continued hearing, Plaintiffs' counsel shall provide copies, confidentially for the judge's review, of any individual settlement agreements between any of the Plaintiffs and any of the Defendants. If possible, counsel is requested to provide these copies prior to the upcoming hearing. In the interest of efficiency, the court will address other considerations related to the proposed settlement.

B. Fairness of the Settlement

Plaintiffs contend that the settlement is fair, reasonable, and adequate. (Plaintiffs' Memorandum of Points and Authorities ("MPA"), pp. 2:16-18, 7:9 – 14:28; see also Nordrehaug Dec., ¶¶ 3-6; see also Declaration of Danny Yadidsion ("Yadidsion Dec."), ¶¶ 85, 88-97.) Plaintiffs' counsel are qualified and experienced in the handling of wage and hour class actions. (MPA, p. 8:2-10.)

On March 26, 2024, the Parties participated in an all-day mediation with Tripper Ortman, Esq. (MPA, p. 8:11-12.) Prior to mediation, Defendants provided Plaintiffs necessary information, including Class payroll and timekeeping data, and Plaintiffs analyzed the data with the assistance of a damages expert. (*Id.* at pp. 8:12-9:1.) Based on the informal discovery and their own independent investigation, Plaintiffs' counsel believes the settlement to be fair, reasonable, adequate, and in the best interest of the class, considering the facts and circumstances of the action, including the risks associated with continued litigation. (*Id*. at p. 9:11-16.)

Plaintiffs provide a breakdown of the estimated maximum potential damages for the class claims. (MPA, p. 10:9-23.) According to Plaintiffs' estimates, the maximum potential value of the class claims is $17,818,396. (*Ibid.*) Plaintiffs further state that for mediation, they calculated the value of their PAGA claim to be up to $2,010,800, without stacking. (Nordrehaug Dec., ¶ 33.) Thus, according to Plaintiffs' figures, the maximum potential value of their combined Class and PAGA claims is $19,829,196.

Therefore, the proposed gross settlement amount of $1,250,000 represents approximately 6.3% of the maximum potential value of their claims released under the Agreement. As such, the proposed settlement amount is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases approving settlements in the range of 5 to 35 percent of the maximum potential exposure].)

The court has reviewed Plaintiff's written submissions in support of the proposed settlement. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation. Based on the circumstances of the case and the information available to the court at this time, the proposed settlement generally appears to be fair. Nevertheless, as discussed above, the motion is CONTINUED, and the court requests that Plaintiffs' counsel provide copies of any individual settlement agreements.

C. Incentive Award, Fees and Costs

Plaintiffs request incentive awards in the total amount of $30,000 ($10,000 each). (Agreement, ¶ 3.2(a).)

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

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, internal punctuation and citations omitted.)

The three named Plaintiffs have each submitted declarations in support of the request for incentive awards. Each assert that their participation in this action has included communication with their attorneys, searching for and producing relevant documents, and reviewing relevant pleadings. Each understood that they were undertaking risk by being a part

of this action because they could be held responsible for attorney fees and costs and because their involvement could impact their current or future employment.

Plaintiff Rustin Fox estimates that he has spent approximately 30-40 hours working on this case. (Declaration of Rustin Fox, ¶ 12.) Plaintiff Gabriele Santi estimates that she has spent approximately 30-40 hours working on this case. (Declaration of Gabriele Santi, ¶ 12.) Plaintiff Patrick Burk estimates that he has spent at least 10 hours working on this case. (Declaration of Patrick Burk, ¶ 15.)

Each of the named Plaintiffs have spent time in connection with this litigation and undertaken risk by attaching their names to this case because it might impact their current or future employment. (See *Covillo v. Specialty's Café* (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].)

The court finds that incentive awards are likely warranted in this case. The court will state its conclusion on this issue after Plaintiffs' counsel has submitted copies of any individual settlement agreements, as discussed above.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees of up to one-third of the maximum settlement amount (currently estimated to be $416,666.67) and litigation costs not to exceed $30,000. Prior to any final approval hearing, Plaintiffs' counsel shall submit lodestar information (including hourly rate and hours worked) as well as evidence of actual costs incurred as well as evidence of any settlement administration costs.

D. Conditional Certification of Class

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

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

The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class representatives who can adequately represent the class. (*Sav-On, supra*, 34 Cal.4th at p. 326.) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

As explained by the California Supreme Court,

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

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

Plaintiff states there are approximately 624 class members, who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

The content of a class notice is subject to court approval. "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).) "The notice 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 informs Class Members that they may opt out of the settlement or object. (Agreement, Ex. A.) The settlement amounts, including attorney fees and payment to the named plaintiff, are stated. The notice directs class members that they may appear at the final fairness hearing to make an oral objection without filing a written objection and provides instructions for attending the hearing remotely.

Accordingly, the court approves the notice.

IV. Conclusion

For the reasons discussed above, the motion for preliminary approval of class and representative action settlement is CONTINUED to November 20, 2024 at 1:30 p.m. in Department 19.

At least ten court days prior to the continued hearing, Plaintiffs' counsel shall provide copies, confidentially for the judge's review, of any individual settlement agreements between any of the Plaintiffs and any of the Defendants.

Plaintiffs shall prepare the order.

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