SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

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

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

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

Court Reporters are not provided. Please consult our Court's website, www.scscourt.org, for the rules, policies, and required forms for appointment by stipulation of privately-retained court reporters.

- **Parties can appear either in person or remotely.** All remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.
- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
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- As a reminder, state and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while in the courtroom and while on Microsoft Teams.

LAW AND MOTION TENTATIVE RULINGS

DATE: SEPTEMBER 26, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV366070	Welch v. Staffmark Holdings, Inc., et al. (Class Action/PAGA)	See Line 1 for tentative ruling.
LINE 2	21CV387956	Patton v. Home Depot U.S.A., Inc. (Class Action/PAGA)	See Line 2 for tentative ruling.
LINE 3	22CV395001	Veitch, et al. v. Stanford Health Care (Class Action)	See Line 3 for tentative ruling.
LINE 4	20CV370665	Smith v. Curio Management, LLC, et al. (PAGA)	See Line 4 for tentative ruling.
LINE 5			
LINE 6			
LINE 7			

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LAW AND MOTION TENTATIVE RULINGS

LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Herman Welch v. Staffmark Holdings, Inc., et al.*
Case Nos.: 20CV366070

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Herman Welch alleges that defendants Staffmark Holdings, Inc., Staffmark Investment LLC and Air Menzies International (U.S.A.), Inc. (collectively, "Defendants") failed to pay overtime and minimum wages, failed to provide meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

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

I. BACKGROUND

According to the allegations of the operative First Amended Complaint ("FAC"), Plaintiff was employed by Defendants as a non-exempt hourly employee (specifically, a warehouse worker) from October 15, 2015 until January 25, 2019. Plaintiff alleges that he was not provided with all meal periods and/or rest breaks, that he was directed by his managers not to clock out for meal periods and that he would have to work through them, that he was not paid out all his accrued but unused vacation time, that he was not paid at the regular rate of pay for any overtime worked and/or meal period and/or rest break premiums, and that he was not reimbursed for all accrued business expenses. (FAC, ¶¶ 20-44.)

Based on the foregoing, Plaintiff initiated this action with the filing of the class action complaint on April 15, 2020. Plaintiff filed the operative FAC on December 21, 2023 asserting the following causes of action: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay hourly wages; (4) failure to pay vacation wages; (5) failure to indemnify business expenses; (6) failure to provide accurate written wage statements; (7) failure to timely pay all final wages; (8) unfair competition; and (9) civil penalties under PAGA.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

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

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the

> extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

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

B. PAGA

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

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

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum

even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

III. SETTLEMENT CLASS

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

> All persons who have previously been or currently are employed in California by Air Menzies International (U.S.A.) Inc., whether directly or through any staffing agencies or any third parties, in hourly or non-exempt positions in California at any time from April 15, 2016, to November 1, 2023, and all persons who were employed by Staffmark Investment LLC as a temporary non-exempt employee and placed to work on assignment with Air Menzies International (U.S.A.) Inc. in California at any time from April 15, 2016 to November 1, 2023.

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

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

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

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

IV. TERMS AND ADMINISTATION OF SETTLEMENT

The non-reversionary gross settlement is $300,000. Attorney's fees of up to one-third of the gross settlement ($100,000), litigation costs of up to $1,403.99, and administration costs not to exceed $3,000 will be paid from the gross settlement. $15,000 will be allocated to PAGA penalties, 75% of which ($11,250) will be paid to the LWDA, with the remaining 25% dispensed to "PAGA Employees," who are defined as:

> (1) All persons who have previously been or currently are employed in California by Air Menzies International (U.S.A.) Inc., whether directly or through any staffing agencies or any third parties, in hourly or non-exempt positions in California at any time during the PAGA Period; and
> (2) All persons who were employed by Staffmark Investment LLC as a temporary non-exempt employee and placed to work on assignment with Air Menzies International (U.S.A.) Inc. in California at any time during the PAGA Period.

The "PAGA Period" is defined as the period of time from February 10, 2019 to November 1, 2023. Plaintiff also seeks an enhancement award of $5,000.

The net settlement will be allocated to class members- who are defined nearly the same as PAGA Employees, barring class period running from April 15, 2016 to November 1, 2023 (see above)- on a pro rata basis based on the number of weeks worked during the class period. Class members will not be required to submit a claim to receive their payment. For tax purposes, settlement payments will be allocated 33% to wages and 66.67% to penalties and interest. The employer-side payroll taxes on the portion allocated to wages will be paid by Defendants separate from, and in addition to, the gross settlement amount, 100% of the payment to PAGA Employees will be allocated to penalties. Funds associated with checks uncashed after 180 days will be transmitted to the Alliance for Children's Rights, a third-party nonprofit organization selected by the parties as the *cy pres* recipient.

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

> [A]all claims, judgments, liens, losses, debts, obligations, guarantees, penalties (including but not limited to all penalties available under the California Labor Code), costs, expenses, attorneys' fees, damages, indemnities, actions, demands, rights, liabilities, and causes of action of any kind whatsoever, known or unknown, disclosed or undisclosed, suspected or unsuspected, that have been, or that could have been, asserted against the Released Parties, whether or not presented, based on the primary rights or the facts alleged at any point in time in this Action….

PAGA Employees will release "all PAGA Claims that were actually alleged or could have been alleged in the Complaint in this Action or in the Notice of PAGA Claim submitted by Plaintiff to the California Labor and Workforce Development Agency on February 10, 2020, on behalf of the State of California, himself, and PAGA Employees …." Consistent with the statute, Aggrieved Employees will not be able to opt out of the PAGA portion of the settlement.

As the Court determined in its order preliminarily approving the settlement, the releases are appropriately tailored to the factual claims at issue. (See *Amara v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

The notice period has now been completed. According to the declaration of case manager Nathalie Hernandez with settlement administrator ILYM Group, Inc. ("ILYM") submitted in support of the instant motion, on April 16, 2024, ILYM received from Defendants' counsel the class data file containing the names, social security numbers, last known mailing addresses, and the total number of relevant workweeks worked for each of the 96 settlement class members. ILYM processed the addresses it had against the National Change of Address database to confirm and update this information, and then mailed the notice packets to Class members on May 6, 2024 via first class mail. As of the date of Ms. Hernandez's declaration, September 4, 2024, ILYM has received 14 notice packets as undeliverable; two contained forwarding addresses to which packets were promptly re-mailed. For the remaining 12, ILYM conducted a skip trace and located 6 updated addresses; notice packets were re-mailed to these addresses. At present, 6 notice packets have been deemed undeliverable as no updated addresses have been located.

The deadline to submit a request for exclusion, a challenge to the amount of work weeks listed, or an objection to the settlement was June 20, 2024. As of the date of Ms. Hernandez's declaration, none of the foregoing have been received, resulting in 96 participating settlement class members. Based on this number, Class members will receive an estimated average gross payment of $1,829.13, with the highest estimated gross payment being $12,427.13.

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

V. ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS

As set forth above, Plaintiff's counsel seeks a fee award of $100,000 or one-third of the gross settlement amount, which is not an uncommon contingency fee allocation in a wage and hour class action. Plaintiff also provides a lodestar figure of $85,097.50, which is based on 115.6 hours of work at billing rates of $250 to $1,150 per hour, resulting in a modest multiplier of 1.175. This is well within the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra,* 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

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

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

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

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

Plaintiff's counsel also seeks $1,588.75, in litigation costs, which exceeds the amount ($1,403.99) permitted under the settlement agreement. Consequently, the Court will approve recovery of only $1,403.99 in litigation costs, which are substantiated by the declaration of Plaintiff's counsel. The $3,000 in administrative costs are also approved.

Finally, Plaintiff requests an incentive award of $5,000. To support this request, Mr. Welch submits a declaration describing his efforts in this action. The Courts finds that he is entitled to an incentive award and the amount requested is reasonable and therefore is approved.

VI. CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

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

> All persons who have previously been or currently are employed in California by Air Menzies International (U.S.A.) Inc., whether directly or through any staffing agencies or any third parties, in hourly or non-exempt positions in California at any time from April 15, 2016, to November 1, 2023, and all persons who were employed by Staffmark Investment LLC as a temporary non-exempt employee and placed to work on assignment with Air Menzies International (U.S.A.) Inc. in California at any time from April 15, 2016 to November 1, 2023.

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

The Court sets a compliance hearing for **May 15, 2025 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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

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

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Calendar Line 2

Case Name: *Douglas Patton v. Home Depot U.S.A., Inc.*
Case Nos.: 21CV387956

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Douglas Patton and Salvador Reynosa, Jr. (collectively, "Plaintiffs") allege that defendant Home Depot U.S.A., Inc. ("Home Depot" or "Defendant") failed to pay overtime and minimum wages, failed to provide meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

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

I. BACKGROUND

According to the allegations of the operative Second Amended Class and Representative Complaint ("SAC"), Mr. Patton has been employed by Defendant since August 2017 as a non-exempt, hourly associate, while Mr. Reynosa was employed in a similar role from January 2018 to October 2018. (SAC, ¶¶ 2-3.) Plaintiffs allege that Defendant failed to pay them for all hours worked by requiring them to perform work off the clock. (*Id*., ¶ 8.) Plaintiffs would clock out of Defendant's timekeeping system for meal periods but would continue to work at Defendant's direction. (*Id.*) As a result, Plaintiffs forfeited minimum wages and overtime wage compensation by working without their time being correctly recorded and without compensation at the applicable rates. (*Id.*) Defendant also failed to include Plaintiffs' non-discretionary incentive compensation as part of their "regular rate of pay," underpaid Plaintiffs' sick wages, and failed to provide them with meal and rest periods during which they were fully relieved from work. (*Id*., ¶¶ 11-14.) Additionally, Plaintiffs were not reimbursed for business expenses incurred as a result of their employment. (*Id*., ¶¶ 15-16.)

Based on the foregoing allegations, the SAC asserts the following causes of action: (1) unfair business practices; (2) failure to pay overtime wages; (3) failure to pay minimum wages; (4) failure to provide required meal periods; (5) failure to provide required rest periods; (6) failure to reimburse required business expenses; (7) failure to provide required rest periods; (8) failure to provide accurate itemized wage statements; and (9) violation of PAGA.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

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

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case,

> the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

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

B. PAGA

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

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

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that

courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

III. SETTLEMENT CLASS

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

> All non-exempt, hourly associates employed by Home Depot U.S.A., Inc. (and its past and present Affiliates) in the State of California at a California supply chain facility at any point during the Class Period, excluding those associates who worked at the Tracy RDC prior to June 17, 2021.

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

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

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

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

IV. TERMS AND ADMINISTATION OF SETTLEMENT

The non-reversionary gross settlement amount is $1,112,500. Attorney fees of up to one-third of the gross settlement ($370,333), litigation costs of up to $50,500, and

administration expenses not to exceed $60,000 will be paid from the gross settlement. $20,000 will be allocated to PAGA penalties, 75% of which ($15,000) will be paid to the LWDA, with the remaining 25% ($5,000) paid to "PAGA Group Members," who are defined as "any non-exempt, hourly associate employed by Home Depot in the State of California at a supply chain facility at any point during [January 26, 2020 through April 16, 2023], excluding those associates who worked at the Tracy RDC prior to June 17, 2021." Plaintiffs each seek a service award of $10,000.

The net settlement amount will be allocated to class members- defined as "any non-exempt, hourly associate employed by [Home Depot] (and its past and present Affiliates) in the State of California at a California supply chain facility at any point during [January 26, 2017 through April 16, 2023], excluding those associates who worked at the Tracy RDC prior to June 17, 2021"- on a pro-rata basis based on the number of weeks worked during the class period. For tax purposes, settlement payments will be allocated 25% to wages and 75% to interest and penalties. The employer side payroll taxes will be paid by Defendant separately from the gross settlement amount. 100% of the PAGA payment to PAGA Group Members will be allocated to penalties. Funds associated with checks uncashed after 180 days will be transmitted to the State of California to be held pursuant to Unclaimed Property Law.

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

> [A]ny claim for restitution, penalties, civil, damages, or any other form of relief asserted or pleaded (or that could have been pleaded based on the factual allegations) in the Operative Complaint and/or notice provided to the LWDA by any Named Plaintiff that accrued during the Class Period, including claims for (1) unpaid wages; (2) unpaid overtime (included alleged violations of Labor Code Sections 210, 221, 510, 558, 1194, 1198 and similar provisions of the California Wage Orders); (3) minimum wage violations (including alleged violations of Labor Code Sections 210, 221, 1194, 1197, 1197.1, and similar provisions of the California Wage Orders); (4) failure to provide meal and/or rest breaks in accordance with Labor Code Section 512 (and/or the applicable California Wage Order); (5) failure to properly calculate and/or pay break premiums as required by Labor Code Section 226.7 (and/or the applicable California Wage Order); (6) violations of California's sick leave laws (including COVID-related emergency sick leave); (7) miscalculation of the regular rate and/or rate for payment of sick leave and/or emergency sick leave; (8) failure to reimburse for work-related expenditures in violation of Labor Code Section 2802 (and/or the applicable California Wage Order); (9) failure to provide accurate wage statements or otherwise keep accurate payroll records (alleged violations of Labor Code Section 226 and similar provisions of the California Wage Orders); (10) failure to timely pay wages (including wages due upon termination and waiting time penalties) as required by Labor Code Sections 201, 202, 203, 204, and 227.3 (and/or the applicable California Wage Order).

PAGA Group Members will release:

> [C]laims arising during the PAGA Period made on behalf of the LWDA and/or State of California included in any notice provided to the LWDA by any Named Plaintiffs or as pleaded in any Complaint or that could have been pled based on

> factual allegations contained in the Operative Complaint or any written notice provided to the LWDA, including PAGA claims for or predicated on (1) unpaid wages; (2) unpaid overtime (included alleged violations of Labor Code Sections 210, 221, 510, 558, 1194, 1198 and similar provisions of the California Wage Orders); (3) minimum wage violations (including alleged violations of Labor Code Sections 210, 221, 1194, 1197, 1197.1, and similar provisions of the California Wage Orders); (4) failure to provide meal and/or rest breaks in accordance with Labor Code Section 512 (and/or the applicable California Wage Order); (5) failure to properly calculate and/or pay break premiums as required by Labor Code Section 226.7 (and/or the applicable California Wage Order); (6) violations of California's sick leave laws (including COVID-related emergency sick leave); (7) miscalculation of the regular rate and/or rate for payment of sick leave and/or emergency sick leave; (8) failure to reimburse for work-related expenditures in violation of Labor Code Section 2802 (and/or the applicable California Wage Order); (9) failure to provide accurate wage statements or otherwise keep accurate payroll records (alleged violations of Labor Code Section 226 and similar provisions of the California Wage Orders); (10) failure to timely pay wages (including wages due upon termination and waiting time penalties) as required by Labor Code Sections 201, 202, 203, 204, and 227.3 (and/or the applicable California Wage Order); (11) any alleged failure to comply with California's Wage Orders including provisions regulating conditions of employment including temperature and suitable seating; and (12) civil penalties pursuant to PAGA based on any of the foregoing alleged violations.

Consistent with the statute, PAGA Group Members will not be able to opt out of the PAGA portion of the settlement. As determined in the Court's order preliminarily approving the parties' settlement agreement, the foregoing releases are both appropriately tailored to the allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

The notice period has now been completed. According to the declaration of case manager Nathalie Hernandez with settlement administrator ILYM Group, Inc. ("ILYM") submitted in support of the instant motion, on May 7, 2024, ILYM received from Defendant's counsel several class data files containing the names, social security numbers, last known mailing addresses, and the total number of relevant workweeks worked for each of the 11,945 settlement class members. ILYM processed the addresses it had against the National Change of Address database to confirm and update this information and then mailed the notice packet to Class members on June 5, 2024 via first class mail. As of the date of Ms. Hernandez's declaration, September 4, 2024, ILYM has received 573 returned notice packets as undeliverable; 8 contained forwarding addresses to which packets were promptly re-mailed. For the remaining 565, ILYM conducted a skip trace and located 486 updated address, to which notice packets were re-mailed. At present, 79 Notice packets have been deemed undeliverable as no updated addresses have been located.

The deadline to submit a request for exclusion, a challenge to the amount of work weeks listed, or an objection to the settlement was August 5, 2024. As of the date of Ms. Hernandez's declaration, none of the foregoing had been received. Consequently, there are 11,945 participating settlement class members. Based on this number, settlement Class

members will receive an estimated average gross payment of $48.65, with the estimated highest gross payment being $230.37.

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

V. ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS

As set forth above, Plaintiffs' counsel seeks a fee award of $370,833, or one-third of the gross settlement amount, which is not an uncommon contingency fee allocation in a wage and hour class action. Plaintiffs also provide a lodestar figure of $544,312.50, which is based on 763 hours of work at billing rates of $450 to $995, resulting in a *negative* multiplier of less than 0.7. This is far less than the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra,* 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

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

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

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

Here, as the multiplier sought by Plaintiffs' counsel is negative, far less than the range of modifiers typically approved by courts and is supported by the percentage cross-check, the Court finds counsel's requested fee award is reasonable.

Plaintiffs' counsel also seeks $50,486.03 in litigation costs, which is less than the maximum amount ($50,500) permitted under the settlement agreement. Based on the information contained in the declaration of Plaintiffs' counsel, this amount is reasonable and is therefore approved. The $60,000 in administrative costs are also approved.

Finally, Plaintiffs request incentive awards of $10,000 each. To support this request, Plaintiffs submit the declaration of their counsel which describes their efforts in this action. The Courts finds that they are entitled to an incentive award and the amounts requested are reasonable and are therefore approved.

VI. CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

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

> All non-exempt, hourly associates employed by Home Depot U.S.A., Inc. (and its past and present Affiliates) in the State of California at a California supply chain facility at any point during the Class Period, excluding those associates who worked at the Tracy RDC prior to June 17, 2021.

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

The Court sets a compliance hearing for **May 15, 2025 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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

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

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Calendar Line 3

Case Name: *Andrew Veitch, et al. v. Stanford Health Care*
Case Nos.: 22CV395001

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Andrew Veitch, Ramona McCamish and Bennie Sumner (collectively, "Plaintiffs") allege that Defendant Stanford Health Care ("SHC" or "Defendant") committed various wage and hour violations. Before the Court is Plaintiffs' motion for preliminary approval of settlement, which is unopposed. As discussed below, the Court GRANTS Plaintiffs' motion.

I. BACKGROUND

According to the allegations of the operative Fourth Amended Complaint ("4AC"), Plaintiffs were employed by SHC as nurses in and adjacent to Stanford Hospital operating rooms and cardiovascular operating rooms. (4AC, ¶ 1.) Plaintiffs allege that Defendant failed to: provide timely meal periods; pay meal period premiums for late or missed meal periods; pay meal period premiums at the regular rate of pay; provide accurate wage statements; timely pay wages owed; pay all wages due at termination; and keep accurate payroll records.

Based on the foregoing, Plaintiffs initiated this action March 2022 and filed the operative 4AC on September 12, 2023, asserting the following causes of action: (1) failure to provide timely meal periods; (2) failure to pay meal period premiums at the regular rate of pay; (3) failure to provide accurate wage statements; (4) failure to pay all wages owed at separation; (5) violation of California Unfair Competition Law; and (6) penalties under PAGA.

Plaintiffs now seek an order: preliminarily approving the parties' class action settlement; certifying the Class for settlement purposes; ordering the proposed Class Notice be sent to the settlement Class; appointing Atticus Administration, LLC as the settlement administrator; granting conditional certification of the settlement Class; conditionally appointing Plaintiffs as Class representatives; appointing Goldstein, Borgen, Dardarian & Ho as Class counsel; and scheduling a final approval hearing.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

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

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

> and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

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

B. PAGA

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

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

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

III. SETTLEMENT PROCESS

Shortly before the filing of the Second Amended Complaint, the Court lifted a stay of discovery on July 13, 2022, and Plaintiffs subsequently propounded various discovery on SHC. Shortly thereafter, the parties agreed to engage in early mediation with Mr. Jeffrey Ross and to limit SHC's responses to discovery to those documents that would aid settlement discussions. Although the parties were unable to reach a resolution upon the conclusion of the March 29, 2023 mediation session, they agreed to continue settlement discussions with Mr. Ross' assistance, while resuming formal discovery.

In response to Plaintiffs' discovery requests and to aid in settlement discussions, SHC produced thousands of pages of documents, including personnel files for each of the three named plaintiffs, timekeeping data for the entire class, payroll data for the entire class, contact information for the entire class, job history assignment data for the entire class, meal period policy documents, payroll policy documents, employee handbooks, collective bargaining agreements, document and data retention policies, job descriptions, and thousands of pages of redacted documents related to meal break timing and exception requests maintained by SHC in hard copy form. Plaintiffs' counsel also undertook its own independent investigation, interviewing Plaintiffs and many putative class members and reviewing numerous documents produced by those individuals.

The parties engaged in a second mediation session with Mr. Ross on January 24, 2024, at which time they were able to reach a settlement in principle. The parties executed a memorandum of understanding on April 16, 2024, and a long form settlement agreement on May 10, 2024, which is now before the Court.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement amount is $10 million.[1] Attorney's fees of up to $3.33 million (or one-third of the gross settlement), litigation costs not to exceed $50,000 and administration costs not to exceed $15,000 will be paid from the gross settlement. $240,000 will be allocated to PAGA penalties, 75% of which ($180,000) will be paid to the LWDA, with the remaining 25% distributed, on a pro rata basis, to "Aggrieved Employees," who are defined as "all SHC nurses who were paid on an hourly basis and who worked in California for SHC as (1) an operating nurse, (2) a peri-operative and/or post-operative nurse, or (3) a catheterization laboratory/endoscopy/interventional radiology/procedure room nurse from March 4, 2021 through April 13, 2024." Plaintiffs will each seek an enhancement award of $20,000.

The estimated net settlement will be allocated, on a pro rata basis, to "Class Members," who are defined as "all SHC nurses who were paid on an hourly basis and who worked in California for SHC as (1) an operating nurse, (2) a peri-operative and/or post-operative nurse, or (3) a catheterization laboratory/endoscopy/interventional radiology/procedure room nurse from March 4, 2018 through April 13, 2024." Class Members will not be required to submit a

[1] The parties' settlement agreement also contains an escalator clause which provides for scaled increases in the settlement fund in the event there is a 10% increase in the number of work weeks encompassed by the settlement Class during the Class Period as compared to the data Defendant provided for mediation.

claim to receive payment. For tax purposes, settlement payments will be allocated 20% to wages and 80% to penalties, interest and other non-wages. PAGA payments to Aggrieved Employees will be allocated 100% to penalties. Defendant is responsible for employer-side payroll taxes. Funds associated with checks uncashed after 180 days will be transmitted to the Controller of the State of California to be held in trust for such class members pursuant to California unclaimed property law.

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

> [A]ll claims, rights, demands, liabilities, charges, complaints, obligations, damages and causes of action, known or suspected, that each Settlement Class Member had, now has, or may hereafter claim to have had against the Released Parties, which were asserted in the Action, or that arise from or could have been asserted based on any of the facts circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act alleged in the alleged in the Action, during the Settlement Class Period. The Released Class Claims specifically include claims for (1) Failure to Provide Timely Meal Periods; (2) Failure to Pay Meal Period Premiums at the Regular Rate of Pay; (3) Failure to Provide Accurate Wage Statements; (4) Failure to Pay All Wages Owed at Separation; and (5) California Unfair Competition Law. The specific statutes released include but are not limited to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197. 1197.1, and 2698 et seq., as well as Business & Professions Code § 17200 and Wage Order 5. The enumeration of these specific statutes shall neither enlarge nor narrow the scope of res judicata based
> on the claims that were or could have been asserted in the Action …

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

> [A]ll allegations and claims for PAGA civil penalties under the California Private Attorneys General Act, California Labor Code sections 2698 et seq., for any and all claimed violations listed and based on the facts alleged in Plaintiffs' March 4, 2022 and September 26, 2022 letters to the California Labor & Workforce Development Agency, or otherwise claimed in the Action, including violations of Labor Code sections 201-203, 204, 210, 226, 226.3, 226.7, 256, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 2698-99 and Wage Order 5.

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

V. FAIRNESS OF SETTLEMENT

Based on available data, Plaintiffs' counsel estimated Defendant's maximum exposure for each claim to be as follows: $35.9 million (meal period claims); $113,736 (failure to pay meal period premiums at regular rate of pay); and $660,300 (wage statement and waiting time penalties). Plaintiffs' counsel than estimated Defendant's *realistic* exposure for Plaintiffs' claims to be: $9.2 million (meal period claims); $350,000 (wage statement claims); and $440,000 (waiting time penalties). Plaintiffs' counsel arrived at the aforementioned amounts by

offsetting Defendant's maximum exposure by, among other things: the risk of class certification being denied (particularly with respect to the meal period claim due to the presence of individualized issues); Defendant's arguments on the merits, including that the nurses' union bargained for a waiver of one of two meal breaks owed to nurses who worked longer than ten hours under Wage Order 5 section 11(D), that employees voluntarily took short or late meal breaks and that its policies otherwise complied with applicable law; the settlement, in this Court, of the related case of *Audycki, et al. v. Stanford Health Care*, No. 19CV347173, which involved wage statement claims; a lack of willfulness on Defendant's part with regard to various claimed violations; and the risk of not prevailing at trial or on appeal.

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

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

VI. PROPOSED SETTLEMENT CLASS

Plaintiffs request that the following settlement class be provisionally certified:

> All SHC nurses who were paid on an hourly basis and who worked in California for SHC as (1) an operating nurse, (2) a peri-operative and/or post-operative nurse, or (3) a catheterization laboratory/endoscopy/interventional radiology/procedure room nurse from March 4, 2018 through April 13, 2024.

A. Legal Standard for Certifying a Class for Settlement Purposes

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

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

burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

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

B. Ascertainable Class

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

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

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

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

Here, the estimated 870 class members are readily identifiable based on Defendant's records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

C. Community of Interest

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

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

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

As for the second factor,

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

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

Like other members of the class, Plaintiffs were employed by Defendants as non-exempt, hourly-paid employees and allege that they experienced the violations at issue. The anticipated defenses are not unique to Plaintiffs, and there is no indication that Plaintiffs' interests are otherwise in conflict with those of the class.

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

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

D. Substantial Benefits of Class Certification

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

Here, there are an estimated 870 Class Members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

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

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

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

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

Turning to the notice procedure, as articulated above, the parties have selected Atticus Administration, LLC as the settlement administrator. The administrator will mail the notice packet within 28 days of preliminary approval of the settlement, after updating Class Members' addresses using the National Change of Address Database. Any returned notices will be re-mailed to any forwarding address provided or a better address located through a skip trace or other search. Class Members who receive a re-mailed notice will have an additional 15 days to respond. These notice procedures are appropriate and are approved.

VIII. CONCLUSION

Plaintiffs' motion for preliminary approval is GRANTED. The final approval hearing shall take place on **March 27, 2025** at 1:30 in Dept. 7. The following class is preliminarily certified for settlement purposes:

> All SHC nurses who were paid on an hourly basis and who worked in California for SHC as (1) an operating nurse, (2) a peri-operative and/or post-operative nurse, or (3) a catheterization laboratory/endoscopy/interventional radiology/procedure room nurse from March 4, 2018 through April 13, 2024.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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

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

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Calendar Line 4

Case Name: *Michelle Smith v. Curio Management, LLC, et al.*
Case Nos.: 20CV370665

This is a representative action under the Private Attorneys General Act ("PAGA"). Plaintiff Michelle Smith alleges that Defendants Curio Management, LLC, Curio Employer, LLC and Hilton Domestic Operating Company, Inc. (collectively, "Defendants") committed various wage and hour violations and seeks PAGA penalties for those violations.

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

I. BACKGROUND

According to the allegations of the operative First Amended Complaint ("FAC"), Plaintiff was employed as a service worker, a non-exempt, hourly position, by Defendants at Juniper Hotel Cupertino from August 2019 to February 2020. (FAC, ¶ 6.) She alleges that Defendants failed to: pay her and Aggrieved Employees all tips owed from gratuity payments; provide her and Aggrieved Employees timely and accurate, itemized wage statements; and timely pay her and Aggrieved Employees full wages during their employment and upon termination or resignation. (*Id.*, ¶ 4.)

Based on the foregoing, Plaintiff initiated this action in September 2020, and filed the operative FAC on February 17, 2021, asserting claims for civil penalties under PAGA.

II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT

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. 639, 2022 U.S. LEXIS 2940.) 75 percent of any penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended "to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id.* at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

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.) "[C]lass certification is not required" in this context as in a class action. (*Haralson v. U.S. Aviation Servs. Corp*. (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 (*Haralson*).)

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*).)

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

III. PLAINTIFF'S INVESTIGATION, SETTLEMENT PROCESS, AND THE PARTIES' AGREEMENT

After Plaintiff initiated this action and filed an individual demand to arbitrate her individual, non-PAGA Labor Code claims, the parties engaged in both formal and informal discovery. On August 27, 2021, the parties agreed in principle to mediate Plaintiff's PAGA claims as well as her individual arbitration claims, which were held in abeyance. However, no confirmation of mediation was provided by Defendants, and thus it was never scheduled. Consequently, Plaintiff reinitiated formal discovery in both this matter and the separate individual arbitration proceedings.

After an informal discovery conference on July 6, 2022, the Court issued an order staying discovery so that Defendants could amend their answer and file a petition to compel arbitration given the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639. Defendants' subsequent motion to compel arbitration was denied by the Court on October 17, 2022, and Defendants filed an appeal, resulting in the stay of this action. In the related arbitration case, discovery was exchanged and several depositions, including Plaintiff's, were completed.

On May 4, 2023, the parties participated in a mediation session with Raul A. Ramirez, an experienced wage and hour mediator. The mediation was partially successful, with the parties reaching an agreement in principle to settle Plaintiff's individual arbitrable wage and hour claims, but not her PAGA claims. After finalizing the arbitration settlement, the parties filed a stipulation for dismissal of Defendants' appeal.

The parties participated in a second mediation with Mr. Ramirez on November 2, 2023, and were able to reach an agreement in principle on the remaining PAGA claims. Thereafter, the parties worked together to draft the Settlement Agreement that is now before the Court, fully executing it on March 22, 2024.

Pursuant to the parties' agreement, Defendants will pay a non-reversionary gross settlement of $215,000, which is comprised of $164,014.17 in attorney's fees, $12,466.83 in litigation costs, and $2,450 in administration costs. The $28,569 in PAGA penalties will be

distributed 75% ($21,426.75) to the LWDA and 25% ($7,142.25), on a pro rata basis, to "Aggrieved Employees," who are defined as "any current and former non-exempt hourly service worker who was employed by Defendants at the Juniper Hotel Cupertino, Curio Collection by Hilton, in the State of California and were entitled to receive in-room dining gratuity payments and/or service charges during [June 29, 2019 through March 16, 2020]." It is estimated that there are approximately 20 Aggrieved Employees and 348 pay periods during the relevant time period; this results in an average payment to each employee of $357.11.

In exchange for settlement, Plaintiff will release:

> [A]ll claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including, but not limited to, civil penalties pursuant to PAGA for or related to alleged violations of Labor Code sections 201, 202, 203, 204, 351, 225.5, 226, 226(a), 226.3, 226.7, and 256, injunctive relief as it relates to the claims listed above, declaratory relief as it relates to the claims listed above, liquidated damages, penalties recoverable pursuant to the claims listed above, interest, fees, costs, as well as all other claims and allegations alleged in the Action, throughout the PAGA Period.

The LWDA will release:

> 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 Noticen [sic], including, but not limited to, civil penalties pursuant to PAGA for or related to alleged violations of Labor Code sections 201, 202, 203, 204, 351, 225.5, 226, 226(a), 226.3, 226.7, and 256, injunctive relief as it relates to the claims listed above, declaratory relief as it relates to the claims listed above, liquidated damages, penalties recoverable pursuant to the claims listed above, interest, fees, costs, as well as all other claims and allegations alleged in the Action, throughout the PAGA Period

These releases are appropriately tailored to the allegations at issue, and do not release any claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra*, 72 Cal.App.5th at p. 82 [release of "all known and unknown claims under PAGA … that were or could have been pled based on the allegations of the Complaint" was appropriately approved].)

IV. DISCUSSION

A. Potential Verdict Value

In the 4AC, Plaintiff asserts two causes of action for PAGA penalties based on Defendants' alleged failure to (1) pay all wages owed from service charge/gratuity payments, (2) provide accurate, itemized wage statements and (3) timely pay all wages owed during employment and following separation from employment. Plaintiff notes that the second and third alleged failures are not applicable because they require *underlying claims* for wages but here, her theory of liability is the failure to pay all tip wages owed for service gratuity

payments. However, as tips are not wages under California law, they cannot serve as a basis for wage statement penalties and waiting time penalties.

In the absence of known findings by a court or the Labor Commissioner that Defendants violated the Labor Code, Defendants are not subject to the heightened $200 penalty for violations but only the $100 penalty per employee, per pay period for each violation. Based on figures provided by Defendants for mediation- 20 Aggrieved Employees and 348 pay periods during the relevant time period- Plaintiff calculated Defendants' total exposure for PAGA penalties to be $34,800. Plaintiff's counsel then discounted this amount to account for the following risks: that Plaintiff would not be able to proceed in this action in a representative capacity; that Plaintiff may not be able to prove a specified violation rate; and that the Court may reduce the amount of penalties.

The settlement amount of $28,569 in PAGA penalties represents approximately 82.1% of Defendants anticipated exposure on the PAGA claims. Given this, as well as the risks attendant to proceeding to trial, Defendants' insistence that any violations were not willful and the likelihood that PAGA penalties would be significantly reduced in line with numerous appellate decisions, the Court finds that the proposed settlement is fair to those affected and is genuine, meaningful, and reasonable in light of the statute's purposes.

B. Attorney Fees

While the PAGA statute does not expressly require judicial review of claimed attorney fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties associated with PAGA settlements without also considering attorney fees. The Court thus finds that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is consistent with the observation of many courts that PAGA claims are analogous to "*qui tam*" suits like those under the federal False Claims Act: when reviewing settlements of *qui tam* claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v. Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be considered by the trial court as part of its review of the "entire settlement arrangement"].)

As articulated above, Plaintiff seeks a fee award of $164,014.17 in attorney's fees. Plaintiff submits a lodestar figure of $596,958.50 based on 764.4 hours of work at billing rates of $250 to $1,155 per hour, resulting in a negative multiplier of 0.27. This is well short of the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

Here, given the significant amount of work performed by Plaintiff's counsel, and because the requested multiplier sought by them is well short of the range of multipliers

regularly approved by California courts in similar actions, the Court finds counsel's requested fee award is reasonable and therefore it is approved.

C. Other Costs and Expenses

Counsel's request for litigation costs of $12,466.83 appears reasonable based on the supporting declarations provided which establish that counsel actually incurred costs in this amount and is approved. Administration costs of $2,450 are also approved.

V. ADMINISTRATION PROCESS

Pursuant to the terms of the Settlement Agreement, within 15 days of Court approval of its terms, Defendants will provide settlement administrator Phoenix Class Action Administration Solutions ("Phoenix") with a list of all Aggrieved Employees with the relevant identifying information (including the last known home address) and the number of pay periods worked. Within seven days of the funding of the settlement (no later than 30 days after the Court enters a judgment on its order approving the PAGA settlement and that judgment becomes final), Phoenix will pay the various amounts approved by the Court to Plaintiff's counsel, the LWDA, and each Aggrieved Employee. Each Aggrieved Employee will be sent a check in the appropriate amount. Any checks returned as non-deliverable will promptly be re-mailed to the forwarding address provided; if none is, Phoenix will attempt to locate one using a skip trace or other search method. Any checks returned as undeliverable or that remain uncashed after 180 days will be transmitted to *cy pres* beneficiary Justice Gap Fund. These administrative procedures are appropriate and are approved.

VI. ORDER AND JUDGMENT

Plaintiff's motion for approval of the parties' PAGA settlement is GRANTED. The covered individuals are: any current and former non-exempt hourly service worker who was employed by Defendants at the Juniper Hotel Cupertino, Curio Collection by Hilton, in the State of California and were entitled to receive in-room dining gratuity payments and/or service charges during June 29, 2019 through March 16, 2020.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff and the Aggrieved Employees shall take from the PAGA claim in their FAC only the relief set forth in the parties' settlement agreement and this order and judgment. The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **May 29, 2025 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, Plaintiff's counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted the Justice Gap Fund; the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.

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