SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2170

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

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

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LAW AND MOTION TENTATIVE RULINGS

DATE: AUGUST 15, 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	23CV427458	PDF Solutions, Inc. v. Cloud Software Group, Inc.	Tentative ruling provided directly to the parties.
LINE 2	23CV427458	PDF Solutions, Inc. v. Cloud Software Group, Inc.	Tentative ruling provided directly to the parties.
LINE 3	23CV427458	PDF Solutions, Inc. v. Cloud Software Group, Inc.	Tentative ruling provided directly to the parties.
LINE 4	23CV413920	Rangel v. President and Board of Trustees of Santa Clara College (Class Action)	See Line 4 for tentative ruling.
LINE 5	22CV399734	Boyer v. Serrano Electric Inc. (Class Action/PAGA)	See Line 5 for tentative ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	22CV394559	Singh v. San Jose Sharks, LLC, et al. (Class Action/PAGA)	Plaintiff seeks preliminary approval of a class action and PAGA settlement. Although Plaintiff's motion states that the proposed class notice was attached as Exhibit A, no such attachment exists. Accordingly, this motion is CONTINUED to August 29, 2024 at 1:30 p.m. No later than August 22, 2024, Plaintiff must file a supplemental declaration attaching the proposed class notice.

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LAW AND MOTION TENTATIVE RULINGS

LINE 7	21CV378464	Cativo v. ATMHS, LLC, et al.	This matter is off-calendar by request of the parties.
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name:
Case No.:

- oo0oo -

Calendar Line 2

Case Name:
Case No.:

- oo0oo -

Calendar Line 3

Case Name:
Case No.:

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Calendar Line 4

Case Name: *Victor Rangel v. President and Board of Trustees of Santa Clara College*
Case No.: 23CV413920

This is a putative class and Private Attorneys General Act ("PAGA") representative action. Plaintiff Victor Rangel alleges that Defendants President and Board of Trustees of Santa Clara College (collectively, "Defendants") committed various wage and hour violations. Before the Court are Plaintiff's motions to compel further responses to Special Interrogatories ("SI"), Set One, and to Request for Production of Documents ("RPD"), Set One, both of which are opposed by Defendants. As discussed below, the Court GRANTS the motions to compel IN PART.

I. BACKGROUND

Plaintiff was employed by Defendants as a campus security guard, a non-exempt position. (First Amended Class Action Complaint ("FAC"), ¶ 26.) He alleges that Defendants failed to: pay all wages owed (including minimum and overtime wages); provide meal periods or compensation in lieu of such periods; authorize or permit rest breaks or provide compensation in lieu of such breaks; reimburse necessary business-related expenses; provide accurate itemized wage statements; timely pay wages during employment; and pay all wages due upon separation of employment.

Based on the foregoing allegations, Plaintiff initiated this action in March 2023 and filed the operative FAC on July 19, 2023, asserting the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to timely pay wages during employment; (8) failure to pay all wages due upon separation of employment; (9) violation of Business & Professions Code § 17200, et seq.; and (10) PAGA penalties.

II. PLAINTIFF'S MOTIONS TO COMPEL

With the instant motions, Plaintiff moves to compel further responses to SI, Set One, Nos. 1-3 and RPD, Set One, Nos. 3 and 5-9. Plaintiff also requests monetary sanctions against Defendants and/or their counsel.

A. SI

A party propounding interrogatories may move for an order compelling further responses if it deems an answer is evasive or incomplete and/or an objection is without merit or too general. (Code Civ. Proc., § 2030.300, subd. (a).) The statutes do not require any showing of good cause in support of such a motion. (See *id*., § 2030.300; see also *Coy v. Superior Court* (1962) 58 Cal.2d 210, 220–221 ("*Coy*").) The burden is on the responding party to justify any objections or failure to fully answer.[1] (*Coy, supra,* 58 Cal.2d at pp. 220–221.)

[1] The pertinent facts of the parties' dispute is discussed in connection with the motion to compel further responses to RPD.

On July 27, 2023, Plaintiff propounded SI, Set One, on Defendants. After various extensions, Defendants served their responses on October 3, 2023. Believing the responses to be deficient, Plaintiff initiated meet and confer efforts with Defendants, but the parties were unable to resolve their dispute. Consequently, an informal discovery conference ("IDC") was scheduled for December 22, 2023.

At the IDC, the parties agreed to sign a stipulation memorializing their agreement to resolve all pending discovery disputes, including full compliance by January 16, 2024. However, Defendants never signed the stipulation. On January 16, 2024, the parties finalized the *Belaire-West* notice and Defendants served unverified supplemental responses to SI Nos. 2 and 3 and RPD Nos. 1, 7 and 9. Plaintiff again believed the responses to be deficient, and the parties continued to meet and confer and did so until filing the instant motion on July 3, 2024.

As set forth above, there are three interrogatories at issue- Nos. 1-3. However, Plaintiff does not take issue with the substance of Defendants' responses to Nos. 2 and 3, he only requests that verifications be provided. According to Defendants' opposition and the declaration of counsel filed in support, they served such verifications on July 18, 2024. Consequently, Plaintiff's motion relative to these requests is moot.

As for the remaining interrogatory, this request asks Defendants to "[l]ist the full name, last known addresses, telephone numbers, email addresses, dates of employment, job titles, and locations of employment of each non-exempt employee who worked for [Defendants] at any time during the relevant time period." "Relevant time period" is defined within set of interrogatories to mean "October 2, 2018 through the date of [Defendants'] final response" to the interrogatories." In response, Defendants object that the interrogatory is overbroad as to time, unduly burdensome, oppressive and seeks private contact information in violation of third parties' right to privacy. Defendant then states that it "is willing to meet and confer in good faith regard [sic] the relevant time period, scope of this interrogatory and *Belaire-West* privacy opt-out administration procedure."

Plaintiff argues that a further response to this interrogatory is warranted because he is entitled to the contact information of putative class members, Defendants' objections are without merit and any privacy concerns can be ameliorated by the use of redactions, a protective order, or the *Belaire-West* notice that the parties already agreed to use.

In their opposition, Defendants emphasize that precertification class discovery is not a matter of right and urge the Court to exercise its discretion to deny Plaintiff access to any current or former employees' contact information at this "early stage" so as to protect their right to privacy. They continue that the term "non-exempt" is overbroad and "sufficiently creates a presumption of undue burden and intent to harass" them and thus the Court should sustain their objections. The Court does not find the foregoing assertions persuasive.

As discussed by Plaintiff in his supporting memorandum, the key authority on this issue is *Williams v. Superior Court* (2017) 3 Cal.5th 531 (*Williams*). *Williams* held that- as in a putative class action- the contract information for the *entire* group of employees a plaintiff seeks to represent under the PAGA "is routinely discoverable as an essential prerequisite to effectively seeking group relief, without any requirement that the plaintiff first show good cause" regarding the scope of the impacted group. (*Id.* at 538; see also *id.* at 549 ["[t]he trial court had no discretion to disregard the allegations of the complaint making this case a

statewide representative action from its inception"].) The *Williams* court continued that "California law has long made clear that to require a party to supply proof of any claims or defenses as a condition of discovery in support of those claims or defenses is to place the cart before the horse," and the fact "[t]hat the eventual proper scope of a putative representative action is as yet uncertain is no obstacle to discovery; a party may proceed with interrogatories and other discovery methods precisely in order to ascertain that scope." (*Williams, supra*, 3 Cal.5th at 551.)

Here, information about the entire putative class[2]- all California citizens currently or formerly employed by Defendants as non-exempt employees in the State of California at any time between October 3, 2018 and the date of certification- is relevant to class certification as well as the ultimate merits of the class claims, and discovery has not been bifurcated or otherwise limited in scope. Meanwhile, employees' privacy interests can be protected through the *Belaire-West* process- which the parties have discussed many times- and the LA Model Protective Order cited by Plaintiff. The discovery Plaintiff seeks is appropriate and not "premature."

While Defendants are correct that "precertification discovery" is not a matter of right, the cases they cite in support of this proposition, *CVS Pharmacy, Inc. v. Superior Court* (2015) 241 Cal.App.4th 300 (*CVS Pharmacy*) and *Starbucks Corp. v. Superior Court* (2011) 194 Cal.App.4th 820, predate *Williams* and address the application of so-called "*Parris* balancing" in situations where a putative class representative has lost standing, or never had standing, to represent *any* portion of the putative class. Even assuming that *Parris* balancing applies here, it requires the Court to "expressly identify any *potential abuses* of the class action procedure that may be created if the discovery is permitted, and weigh the danger of such abuses against the rights of the parties under the circumstances." (*CVS Pharmacy, supra*, 241 Cal.App.4th at p. 308, quoting *Parris v. Superior Court* (2003) 109 Cal.App.4th 285, 301, italics added, internal quotations omitted.) Here, Defendants have not identified a *particular* threat of abuse, and while they argue that the term "non-exempt" is overbroad such that a presumption of undue burden should be assumed, they offer no *evidence* which establishes as much. (See *Williams, supra,* 3 Cal.5th at pp. 549–550 [an objection based upon burden must be supported by evidence showing the quantum of work required].) Ultimately, the Court finds that the potential benefits of the requested discovery to the putative class outweigh any potential for abuse here. Consequently, Defendants' objections are without merit and they must provide a further response to this interrogatory.

B. RPD

A party propounding a request for production may move for an order compelling a further response if it deems that a statement of compliance is incomplete, a representation of inability to comply is inadequate, or an objection is without merit. (Code Civ. Proc., § 2031.310, subd. (a).) The motion must set forth "specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310, subd. (b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98 ("*Kirkland*").) Good cause is established simply by a fact-specific showing of relevance. (*Kirkland, supra*, 95 Cal.App.4th at p. 98.) If good cause is shown, the burden shifts to the responding party to justify any objections. (*Ibid*.)

[2] Plaintiff additionally asserts claims on behalf of himself and a waiting time subclass.

There are six RPD at issue in this motion- Nos. 3, 5, 6, 7, 8 and 9. These requests seek the following materials:

- All documents that constitute time-keeping records which Defendants maintained for non-exempt employees during the "relevant time period" (No. 3);
- All documents, records and/or writings stating and evidencing all wage, overtime, and/or double-time payments made to non-exempt employees during the "relevant time period" (No. 5);
- All training materials, employment manuals, handbooks and/or other policy documents which Defendants provided to Plaintiff (No. 6) and to Plaintiff's supervisors (No. 8) in connection with his employment;
- All training materials, employments, handbooks and/or other policy documents related to meal periods, rest breaks, timekeeping, compensation, overtime pay, bonuses, shift differentials, sick pay, radios/walkie talkies, cell phone use, reporting time pay, COVID health screenings, tools/equipment, rounding of time punches, tardiness, final pay, uniforms, and/or expense reimbursements which Defendants provided to non-exempt employees (No. 7) and to supervisors of non-exempt employees (No. 9) in connection with their employment during the "relevant time period";

1. *RPD Nos. 3 & 5*

Defendants respond identically to RPD Nos. 3 and 5, stating:

> Defendant objects to this request on the grounds that the "RELEVANT TIME PERIOD" as defined is overbroad and seeks documents that are not relevant or reasonably calculated to lead to the discovery of relevant documents. Defendant further objects to this request on the grounds that it is overbroad, unduly burdensome and oppressive. Defendant further objects to this request on the grounds that it seeks documents protected by third parties' right to privacy under the California Constitution Article I, Section 1. (*Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4th 554.) Notwithstanding said objections, but subject to them, Defendant is willing to meet and confer in good faith regarding the appropriate time period, sampling size and *Belaire-West* privacy notice opt-out administration procedure.

Plaintiff asserts that further responses to these requests are warranted because they seek the most basic components of class action discovery in that the documents at issue will show whether Defendants applied the same policies and practices related to timekeeping, pay, reimbursements, meal periods, and rest breaks to all putative class members, and whether Plaintiff can prove on a class-wide basis that these practices are unlawful. Given what these items might show, Plaintiff explains, good cause for these requests clearly exists. The Court agrees.

Addressing Defendants' objections, Plaintiff explains that during meet and confer, Defendants made clear that their objection to the "relevant time period" as defined in the requests as overbroad was based on their concern that a prior class settlement in the case of *Peng v. The President and Board of Trustees of Santa Clara College*, Case No. 19CV348190, might overlap with the class definition and limit discovery here, but the parties ultimately

determined that there was no overlap because the class in that action was limited to adjunct faculty, not non-exempt employees. He continues that Defendants have not substantiated their undue burden objection.

Indeed, it is not enough to just generally assert that responding to a request is unduly burdensome; a party objecting on this basis must make a *particularized* showing of facts demonstrating hardship, including *evidence* showing the quantum of work required to respond. (See *West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417-418.) Here, Defendants make no such showing, simply stating that the request is burdensome because it involves the records of over 700 employees. However, according to Defendants, during the meet and confer efforts which preceded this motion, the parties agreed that Defendants would produce a sample of time and payroll records constituting 15 percent of the total number of employees, and Defendants offer that they are preparing such a production. In his supporting memorandum, Plaintiff states his willingness to agree to this sampling, but *only* if Defendants will stipulate that the sample group is statistically significant and representative of the class, and Defendants will not use records outside of the sampling in defending this action. Defendants do not address this qualification in their opposition and thus indicate no agreement to make such a stipulation.

Because they have not made the requisite showing, the Court must conclude that Defendants' undue burden and overbreadth objections lack merit. In the absence of an agreement by Defendants to stipulate to the arrangement discussed above, the Court orders that further responses and production to these requests, without objection or limitation, be provided. As for Defendants' concerns for the privacy rights of third parties, Plaintiff represents in his reply that Defendants already have the final *Belaire-West* notice, administrator information and cost quote in their possession, and thus it appears that the ball is in Defendants court as to meeting its discovery obligations.

2. *RPD Nos. 6 and 8*

In response these RPDs, Defendants object that these requests seek documents that are not relevant or likely to lead to the discovery of admissible evidence and then state, subject to this objection, that they "will comply with this request in part by producing all training materials, employment manuals, handbooks and/or policy documents provided to Plaintiff bearing on the allegations in this case." Plaintiff contends that further responses are warranted because given the qualifiers placed on the agreed production by Defendants, the responses are not code-complaint. The Court agrees.

Discovery is allowed for any matters not privileged that are either relevant to the subject matter involved in the action or reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc., § 2017.0101.) Information is relevant to the subject matter if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating settlement. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.) "Admissibility is *not* the test and information, unless privileged, is discoverable if it might reasonably *lead* to admissible evidence." (*Ibid.*, original in italics.) Courts liberally construe the relevance standard, and any doubts as to whether a request seeks information within the scope of discovery are generally resolved in favor of discovery. (*Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790.) Here, the materials sought by these requests easily fall within the scope of what is discoverable as they potentially implicate Plaintiff's

ability to serve as class representative by reflecting on the elements of adequacy and typicality. Given this, good cause for these RPD exists.

As good cause exists, the Court turns to the adequacy of Defendants' responses. A party responding to an inspection demand must respond by stating one of the following: (1) an agreement to comply; (2) a representation of inability to comply; or (3) objections. (Code Civ. Proc., § 2031.210, subd. (a).) By qualifying their agreement to produce responsive materials to what *they* deem relevant, Defendants have not complied with the foregoing code section. Consequently, further responses to these requests (including production), without objections, are warranted.

3. *RPD Nos. 7 & 9*

In their initial responses to these requests, Defendants objected that the "Relevant Time Period" as defined was overbroad, they seek documents that are not relevant or reasonably calculated to lead to the discovery of relevant documents, they are vague and ambiguous, they are overbroad, unduly burdensome and oppressive, and seek documents protected by third party privacy rights. Defendants than stated that they were "willing to meet and confer in good faith regarding the appropriate time period, sampling size and Belaire-West privacy notice opt-out administration procedure."

Defendants than supplemented their responses in January 2024. In their supplemental responses these RPD, Defendants assert the same objections and then state, subject to them and the parties' meet and confer efforts, "Defendant has already provided its Staff Policy Manual at SCU0000001-0000155. Defendant will provide exemplars as to non-privileged, responsive training materials and policy documents as maintained by its Human Resources department in its possession, custody, or control." Plaintiff argues, persuasively, that the foregoing is not code-compliant because it does not affirm that *all* responsive documents will be produced or have been produced.

The Court concludes that good cause exists for the materials sought by these requests because such documents will establish whether Defendants instructed supervisors to enforce common policies and practices on other class members, and whether those policies and practices were unlawful. Further, the Court agrees with Plaintiff that further responses to these requests are warranted because the objections lack merit (Defendants fail to substantiate their objection that the requests are unduly oppressive) and Defendants have not stated, *without* qualification, that they will or have produced *all* responsive documents. Defendants do not address the sufficiency of these responses, simply stating in their opposition that they served supplemental responses and therefore these requests "should no longer be at issue." But Plaintiff is challenging the adequacy of these *supplemental* responses, so they *are* at issue.

C. Requests for Sanctions

Plaintiff makes code-compliant requests for the imposition of monetary sanctions against Defendants and/or their counsel in connection with each motion to compel. Because Plaintiff prevailed on both motions, the Court does not believe that Defendants acted with substantial justification in opposing them, and no other circumstances render an award of sanctions unjust, the Court will award sanctions. (Code Civ. Proc., §§ 2030.300, subd. (d), 2031.310, subd. (h).)

Plaintiff seeks $4,800 in sanctions in connection with his motion concerning the SIs, representing 3 hours of actual time and 3 hours of anticipated time spent by his counsel in connection with the motion, billed at $800 per hour. He seeks $7,200 in connection with his motion to compel further responses to the RDPs, for 6 hours of actual time and 3 hours of anticipated time at $800 per hour. The Court finds that the time actually spent by Plaintiff's counsel in drafting these motions and counsel's hourly rates are reasonable. Accordingly, the Court will award a total of $7,200 in sanctions to Plaintiff for both motions (9 hours x $800) and thus the requests for sanctions are GRANTED IN PART.

III. CONCLUSION

Plaintiff's motion to compel further responses to SI is MOOT as to SI Nos. 2 and 3 and GRANTED as to SI No. 1. Plaintiff's motion to compel further responses to RPD is GRANTED.

Presuming the parties have reached agreement on the form of *Belaire-West* notice and notice procedure, Defendants shall serve verified, code-compliant further responses, within 30 calendar days of the filing of this order, as to SI No. 1 and RPDs Nos. 3, 5, 6, 7, 8 and 9. The responses shall be without objection, except for privilege.

Plaintiff's request for monetary sanctions is GRANTED in the total amount of $7,200.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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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 5

Case Name: *Tami Marie Boyer v. Serrano Electric Inc.*
Case No.: 22CV399734

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Tami Marie Boyer alleges that Defendant Serrano Electric Inc. 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, assuming satisfactory clarification is provided as to the number of participating class members the Court GRANTS the motion.

I. BACKGROUND

On November 17, 2022, Plaintiff filed a class action and PAGA complaint accusing Defendant of failing to: properly pay overtime wages, provide meal periods, authorize and permit rest breaks, properly pay meal and rest break premiums, pay minimum wages, pay timely pay wages during employment and upon termination, provide accurate wage statements, keep accurate payroll records and reimburse necessary business expenses. Plaintiff also alleged that Defendant's actions violated California Business and Professions Code § 17200.

In the operative complaint, Plaintiff asserts the following causes of action: (1) failure to pay minimum waged; (2) failure to pay overtime wages; (3) failure to provide meal breaks; (4) failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to pay wages timely during employment; (8) failure to pay all wages due upon separation of employment; (9) violation of Business & Professions Code § 17200; and (10) enforcement of Labor Code § 2698 et seq. ("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.)

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:

> [A]ll non-exempt employees employed by Defendant in the State of California at any time during January 2, 2018 to June 30, 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 $695,000. Attorney fees of up to one-third of the gross settlement, i.e., $231,666.67, litigation costs not to exceed $25,000, and $6,750 in administration costs 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. Plaintiff seeks an enhancement award of $10,000.

The net settlement will be allocated to class members on a pro rata basis based on the number of weeks worked during the class period. With a participating class size of 183

individuals, class members will, on average, receive $2,232. The highest award is estimated to be approximately $5,241.35, and the lowest $18.26. The average PAGA award is estimated to be approximately $36.23, the highest approximately $57.46 and the lowest $0.44. Class members were not 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 Defendant separately from, and in addition to, the gross settlement amount. 100% of the PAGA payment to "Aggrieved Employees" will be allocated to penalties. Funds associated with checks uncashed after 180 days will be transmitted to the State Controller Unclaimed Property Fund in the name of the class member for whom the funds are designated.

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

> [A]ll claims that were alleged, or reasonably could have been alleged, based on the facts alleged in the Operative Complaint, which arose during the Class Period. Except as set forth in Section 5.3 of [the Agreement], Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

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

The notice period has now been completed. According to the declaration of a project manager with settlement administrator Rust Consulting, Inc. ("Rust"), Chris Pikus, submitted in support of the instant motion, on January 29, 2024, Rust received from Defendant's counsel the names and identifying information (including last known mailing address) for each of 184 settlement class members and subsequently processed these items against the National Change of Address database to confirm and update the relevant information. On February 12, 2024, notice packets were sent via first class mail to all 184 individuals contained in the list provided to Rust. As of the date of Mr. Pikus' declaration, July 25, 2024, five notices remain undeliverable of the eight initially returned to Rust. Also, as of the foregoing date, one request for exclusion has been received. However, the exclusion was received postmarked after the April 12, 2024 deadline and, according to Rust, is therefore considered late and invalid such that there are 184 participating class members. Confusingly, Plaintiff identifies the number of class members who did not opt out and will receive distributions from the net settlement amount as 183. The Court requests clarification as to this apparent discrepancy. That is, how many participating class members are there and has Plaintiff accepted the single untimely request for exclusion received by the settlement administrator? No objections have been received.

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

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

V. ATTORNEYS FEES, COSTS AND INCENTIVE AWARD

As articulated above, Plaintiff's counsel seeks a fee award of $231,666.67, or one-third of the gross settlement, which is not an uncommon contingency fee allocation in a wage and hour class action. This award is facially reasonable under the "common fun" doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar figure of $143,035, which is based on 196.5 hours at billing rates of $450 to $950 per hour, resulting in a multiplier of 1.62. This is well within the range of multipliers that courts typically approve in actions of this type. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra*, 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

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

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

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

Here, as the multiplier is well within the acceptable range and is supported by the percentage cross-check, the Court finds counsel's requested fee award is reasonable. Plaintiff's counsel also seeks $14,945.20 in litigation costs, which is below the $25,000 limit

provided by the settlement and appears reasonable. The $6,750 in administrative costs are also approved.

Finally, Plaintiff requests an incentive award of $10,000. To support her request, she submits a declaration describing her efforts on the case. The Court finds that the class representative is entitled to an enhancement award and the amount requested is reasonable.

VI. CONCLUSION

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

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

> [A]ll non-exempt employees employed by Defendant in the State of California at any time during January 2, 2018 to June 30, 2023.

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

The Court sets a compliance hearing for **April 3, 2025 at 2:30 P.M.** in Department 1. 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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