SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 19, Honorable Theodore C. Zayner Presiding

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

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

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LAW AND MOTION TENTATIVE RULINGS
DATE: NOVEMBER 20, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV362508	Brown v. Young Men's Christian Association of Silicon Valley (Class Action)	See Line 1 for tentative ruling.
LINE 2	23CV411346	Cook v. Gogris Corporation, et al. (PAGA)	See Line 2 for tentative ruling.
LINE 3	22CV404499	Montoya v. FPR II, LLC, et al. (Class Action)	See Line 3 for tentative ruling.
LINE 4	22CV400863	Klopotic v. Home Consignment Center, et al. (Class Action)	See Line 4 for tentative ruling.
LINE 5	24CV435308	Charles v. Advanced Chemical Transport, et al. (Class Action) [Coordination Proceedings PENDING]	See Line 5 for tentative ruling.
LINE 6	19CV347249	Charles, et al. v. Varsity Tutors, LLC	See Line 6 for tentative ruling.
LINE 7	23CV418864	Fox, et al. v. Crisis24 Protective Solutions, LP (Class Action)	See Line 7 for tentative ruling.
LINE 8	20CV362508	Brown v. Young Men's Christian Association of Silicon Valley (Class Action)	Case Management Conference.

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LAW AND MOTION TENTATIVE RULINGS

LINE 9	23CV417680	Waltrip v. Highgate Hotels, L.P. (Class Action)	See Line 9 for tentative ruling.
LINE 10	20CV368379	Milon v. David & Esperanza Chavez Family Limited Partnership DBA Chavez Supermarket (Class Action)	See Line 10 for tentative ruling.
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: Brown v. Young Men's Christian Association of Silicon Valley (Class Action)
Case No.: 20CV362508

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 20, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a putative class and representative action arising from alleged wage and hour violations. On January 31, 2020, Plaintiff Ethan Brown ("Plaintiff") began this action by filing a Class Action Complaint against Defendant Young Men's Christian Association of Silicon Valley ("Defendant"). On April 20, 2020, Plaintiff filed his operative First Amended Class Action Complaint ("FAC") setting forth causes of action as follows: (1) unpaid overtime; (2) unpaid minimum wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) non-complaint wage statements and failure to maintain payroll records; (6) wages not timely paid upon termination; (7) failure to timely pay wages during employment; (8) failure to provide reporting time pay; (9) unreimbursed business expenses; (10) civil penalties pursuant to the Private Attorneys General Action ("PAGA"), Labor Code, section 2698, *et seq.*; (11) unlawful business practices in violation of Business and Professions Code section 17200, *et seq.*; (12) unfair business practices in violation of Business and Professions Code section 17200, *et seq*.

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

II. Legal Standard for Settlement Agreements

A. Class Action

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

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

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

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba, supra,* 91 Cal.App.4th at p. 245.) The trial court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, citation and internal quotation marks omitted.)

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

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

B. PAGA

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

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

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

III. Discussion

A. Provisions of the Settlement

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

> [A]ll persons who were employed by Defendant in non-exempt positions and worked on-stie at the Work Locations in the State of California at any time during the Class Period.

(Declaration of Raul Perez ("Perez Dec."), Ex. 1 ("Agreement"), ¶ 4.)

"As of November 176, 2023, there were approximately 4,500 Class Members." (Agreement, ¶ 4.) The Class Period is defined as "the period from January 31, 2016 through the Release End Date [the date of preliminary approval or June 4, 2024, whichever is earlier]." (*Id.* at ¶¶ 7, 27.) "'Work Locations' means Defendant's locations at: (a) Central, (b) East Valley, (c) El Camino, (d) East Palo Alto, (e) Mt. Madonna, (f) Northwest, (g) Palo Alto, (h) Sequoia, (i) South Valley, and (j) Southwest." (*Id.* at ¶ 36.) The settlement also includes a subset group of PAGA Members defined as "[A]ll persons who were employed by Defendant in non-exempt

positions and worked on-site at the Work Locations in the State of California at any time during the PAGA Period [from February 13, 2019, through the Release End Date]." (*Id.* at ¶¶ 20-21.)

According to the terms of the settlement, Defendant will pay a gross settlement amount of $3,500,000, subject to the escalator clause. (Agreement, ¶ 14.) The gross settlement amount includes attorney fees of up to one-third of the gross settlement amount (currently estimated to be $1,166,667), litigation costs not to exceed $30,000, a PAGA allocation of $200,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments), an incentive award of $20,000; and settlement administration expenses not to exceed $30,000. (*Id.* at ¶¶ 14, 22, 44-49.) The net settlement amount will be distributed to participating class members on a pro rata basis according to the number of workweeks they were employed by Defendant. (*Id.* at ¶ 53.) Individual PAGA payments will be distributed on a pro rata basis according to the number of workweeks worked during the PAGA period. (*Ibid.*) The Agreement includes an escalator clause in the event the estimated number of workweeks is determined to be incorrect by more than 10 percent. (*Id.* at ¶ 63.)

The Agreement states that individual settlement payment checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the Justice Gap Fund as the designated *cy pres* recipient pursuant to Code of Civil Procedure, section 384. (Agreement, ¶ 71.) The court approves the designated *cy pres* recipient.

In exchange for the settlement, the class members agree to release Defendant, and related entities and persons, from all claims that were, or reasonably could have been, alleged based on the facts pleaded in the FAC occurring during the Class Period. (Agreement, ¶¶ 28, 30, 65.) Aggrieved Employees agree to release Defendant, and related entities and persons, from all claims for PAGA civil penalties that were alleged based on facts pleaded in the FAC and the LWDA notice. (Agreement, ¶¶ 29-30, 66.) Plaintiff also agrees to a comprehensive general release. (*Id.* at ¶ 84.) The release provisions are appropriately tailored to the factual

allegations of the operative pleading. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

B. Fairness of the Settlement

Plaintiff contends that the settlement constitutes a fair, reasonable, and adequate compromise of the claims at issue. (Perez Dec., ¶ 5.) Plaintiff states that the settlement was reached through discovery, analysis, and mediation with Louis Marlin, Esq. (Perez Dec., ¶¶ 3-4.) Prior to mediation, the parties engaged in substantial formal and informal discovery, including the production of a list of Class Members, Defendant's updated policies and procedures, and a sample Class Member's time and wage records. (*Id.* at ¶ 3.) Plaintiff took the deposition of Defendant's person most qualified. (*Ibid.*)

Plaintiff estimates that Defendant's maximum potential exposure for his class claims is $18,023,744. (Motion, pp. 17:16-18:8.) Plaintiff also estimates that Defendant's maximum exposure for his PAGA claim is $8,500,000. (*Id.* at pp. 20:4-21:1.) Thus, Plaintiff estimates that Defendant's total maximum exposure for his class and PAGA claims is $26,523,744. Plaintiff explains how and why the claims were discounted for purposes of settlement. (*Id.* at pp. 18:6-22:8.)

The proposed gross settlement amount of $3,500,000 represents approximately 13.2 percent of Defendant's estimated total potential exposure. This amount is within the general range of percentage recoveries that California court typically find to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases approving settlements in the range of 5 to 35 percent of the maximum potential exposure].)

The court has reviewed Plaintiff's written submissions in support of the proposed settlement. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation. Based on the circumstances of the case, including the relative strengths of Plaintiffs' case and Defendant's arguments in defense, the court finds the terms of the settlement to be fair.

C. Incentive Award, Fees and Costs

Plaintiff requests an incentive award/general release payment in the amount of $20,000.

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

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

Plaintiff argues that the court should approve the negotiated class representative enhancement/general release payment of $20,000. (Motion, pp. 22:9-24:8.) He explains that the requested amount considers his general release of claims, which includes his wrongful termination claim. (*Id.* at pp. 23:14-24:3.) Plaintiff states that he will file a formal motion and detailed declaration in support of his request for the requested class representative enhancement/general release payment. (*Id.* at p. 24:4-8.) Accordingly, the court will address approval of the requested award after it has received Plaintiff's supporting declaration.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will seek attorney fees of up to one-third of the maximum settlement amount (currently estimated to be $1,166,667), and litigation costs not to exceed $30,000. Prior to the final approval hearing, Plaintiff's counsel shall submit lodestar information (including hourly rate and hours worked), evidence of actual costs incurred, and evidence of settlement administration costs.

D. Conditional Certification of Class

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

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

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

As explained by the California Supreme Court,

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

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

Plaintiff states there are approximately 4,500 class members who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

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

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

Here, the notice describes the lawsuit, explains the settlement, and informs class members that they may opt out of the settlement or object. (Agreement, Ex. A.) The settlement amounts, including attorney fees and payment to the named plaintiff, are stated.

The court observes that the address for Department 19 should be corrected to: Old Courthouse, 161 North First Street, San Jose, CA 95113. The court also requests that the notice be modified to include the following instructions regarding how to attend the final approval hearing:

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

Provided that the above changes are made to the notice prior to its mailing, the notice is approved.

IV. Conclusion

For the reasons discussed above, the motion for preliminary approval of class and representative action settlement is GRANTED. The court sets a final approval hearing for May 21, 2025, at 1:30 p.m. in Department 19. At least ten courts days prior to the hearing, Plaintiff's counsel shall submit supplemental declaration(s) containing information regarding the notice process and other information requested by the court, including that relating to attorney fees and costs and settlement administration expenses.

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

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Calendar Line 2

Case Name: Cook v. Gogris Corporation, et al. (PAGA)
Case No.: 23CV411346

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 20, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a representative action arising from alleged wage and hour violations. On February 21, 2023, Plaintiff Heather Cook ("Plaintiff") commenced this action by filing a Complaint, against Defendants Gogris Corporation, Gogris J424 Corporation, Gogris J4366 Corporation, Gogris J447 Corporation, and Indmex Corporation (collectively, "Defendants"). Plaintiff's still operative Complaint sets forth a sole cause of action for civil penalties pursuant to the Private Attorneys General Act ("PAGA"), Labor Code, section 2698, *et seq.*

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

II. Legal Standard

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

A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699, subd. (l)(2).) The court's review "ensur[es] that any negotiated resolution is fair to those

affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) The proposed settlement must be submitted to the LWDA at the same time it is submitted to the court. (*Ibid*.)

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

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

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

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

"[W]hen a PAGA claim is settled, the relief provided … [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …." (*O'Connor, supra* at p. 1133.) The settlement must be reasonable in light of the potential verdict value. (*Id.* at 1135 [rejecting settlement of less than one percent of the potential

verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc*. (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759 at *8-9.)

III. Discussion

A. Provisions of the Settlement

This case has been settled on behalf Aggrieved Employees defined as follows:

> [A]ll persons who were employed by Defendants in California as non-exempt, hourly paid employees at any time from December 14, 2021 through April 28, 2024.

(Declaration of Raul Perez ("Perez Dec."), Ex. 1 ("Agreement"), ¶ 2.)

According to the terms of the settlement, Defendant will pay a gross settlement amount of $600,000. (Agreement, ¶¶ 4, 12.) The gross settlement amount includes: attorney fees of up to $200,000; litigation costs not to exceed $20,000; a service award of up to $10,000; settlement administration expenses not to exceed $7,500; and a PAGA Penalties Fund (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments). (*Id.* at ¶¶ 12-17.) Individual payments from the PAGA Penalties Fund will be distributed to participating class members on a pro rata basis according to the number of pay periods worked during the Settlement Period. (*Id.* at ¶ 13.)

In exchange for the settlement, Aggrieved Employees will be deemed to release Defendants, and related entities and persons, from all claims PAGA civil penalties that were alleged based on facts pleaded in the operative Complaint and the LWDA notice. (Agreement, ¶¶ 8, 10, 22.) Plaintiff also agrees to a comprehensive general release. (*Id.* at ¶ 15.) The release provisions are appropriately tailored to the factual allegations of the operative pleading. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

B. Fairness of the Settlement

Plaintiff states that the settlement constitutes a fair, reasonable, and adequate compromise of the claims at issue. (Perez Dec., ¶ 4.) Following the exchange of informal discovery, the Parties participated in mediation with Hon. Carl J. West (Ret.), Esq., on February 28, 2024. (*Id.* at ¶ 3.) Prior to mediation, Plaintiff's counsel received and reviewed employee

demographic data, a sample of time and pay records, and Defendant's labor policies and procedures manual. (*Id.* at ¶ 7.) Plaintiff's counsel used this information to perform a thorough investigation into the claims at issue, including by evaluating all of Plaintiff's potential representative claims, analyzing a sample of Aggrieved Employee's time and wage records, and estimating Defendant's liability for purposes of settlement. (*Id.* at ¶ 8.)

Based on the information produced, Plaintiff's counsel determined that there are approximately 631 Aggrieved Employees who worked a total of approximately 14,088 pay period during the Settlement Period. (Perez Dec., ¶ 10.) Plaintiff provides an estimate of Defendants' maximum exposure with respect to each claim, amounting to a total of $6,823,000. (*Id.* at ¶¶ 14-27.) Plaintiff also provides a detailed explanation of the factors supporting a reduction in penalties for purposes of settlement, including the anticipated trial result, the weight of the evidence, the clarity of controlling law, and Defendants' defenses. (*Id.* at ¶¶ 28-57.) Based on this analysis with respect to each claim, Plaintiffs estimates that Defendants' total realistic exposure at trial is $728,570. (*Id.* at ¶ 57.)

The proposed gross settlement amount of $600,000 represents approximately 8.8 percent of Defendants' estimated total maximum exposure. This amount is within the general range of percentage recoveries that California courts typically find to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases approving settlements in the range of 5 to 35 percent of the maximum potential exposure].) The court also observes that the settlement amount represents 82.4 percent of Defendants' estimated total realistic exposure at trial, according to Plaintiff.

The court has reviewed Plaintiff's written submissions in support of the proposed settlement. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation. Based on the circumstances of the case, including the relative strengths of Plaintiffs' case and Defendant's arguments in defense, the court finds the terms of the settlement to be fair.

C. Incentive Award, Fees and Costs

Plaintiffs request enhancement awards in the total amount of $10,000. Although service awards are common in class actions, there is less authority regarding the propriety of service awards in PAGA cases. Nevertheless, a PAGA case is a representative action like a class action, and courts have recognized that an individual's willingness to act as a private attorney general may merit a service award. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959.)

Plaintiff has filed a declaration describing her participation in this litigation. (Declaration of Heather Cook.) She states that she decided to file this lawsuit because she had several grievances against Defendants due to their labor policies. (*Id.* at ¶ 3.) Her participation has included conferences and phone calls with her attorneys, reviewing the Complaint and the proposed settlement, and continuing to confer with her attorneys regarding the case status and her duties as a PAGA plaintiff. (*Id.* at ¶¶ 4-11.) Plaintiff estimates that she has spent between 25 and 35 hours participating in this litigation. (*Id.* at ¶ 12.)

While the court agrees that Plaintiff's participation merits a service award, the amount requested in relation to the time spent is more than the court typically awards in such situations. Therefore, the court approves a service award to Plaintiff in the amount of $7,500.

Plaintiff's counsel seeks attorney fees of $200,000 (1/3 of the maximum settlement amount). Plaintiff's counsel provides a breakdown demonstrating a lodestar of $96,775, based on 153.3 attorney hours billed rates ranging from $475 to $950 per hour. (Perez Dec., ¶ 68.) This results in a modest multiplier of 2.07. The court finds the requested fees to be reasonable as a percentage of the total recovery, and the fees are approved in the in the amount of $200,000.

Plaintiff's counsel also requests litigation costs in the total amount of $14,474.20 and provides a breakdown of costs incurred in that amount. (Perez Dec., ¶ 72.) Therefore, the court finds cost in the amount of $14,474.20 to be reasonable and approves that amount.

Plaintiff also asks for settlement administration costs in the amount of $7,500, and provides a copy of CPT Group's bid for a flat fee of $7,500. (Perez Dec., Ex. 4.) Therefore, the court approves settlement administration costs in the amount of $7,500.

IV. Conclusion

The motion for approval of the PAGA settlement is GRANTED.

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

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

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Calendar Line 3

Case Name: Montoya v. FPR II, LLC, et al. (Class Action)
Case No.: 22CV404499

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 20, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a putative class and representative action arising from alleged wage and hour violations as originally set forth in four separate actions. (See *Joint Stipulation for Leave to File Plaintiff's First Amended Class and Representative Action Complaint*, filed on June 24, 2024 ("Stipulation"), p. 2:4-26.)

On October 13, 2022, Plaintiff Jennifer Montoya ("Montoya") initiated this action by filing a Class Action Complaint against Defendant FPR II, L.L.C, dba Leadpoint Business Services ("Defendant" or "Leadpoint") (the "*Montoya* Class Action").

On December 16, 2022, Montoya filed a separate Representative Action Complaint in Santa Clara County Superior Court, Case No. 22CV408517, alleging a sole cause of action for civil penalties pursuant to the Private Attorneys General Action ("PAGA"), Labor Code, section 2698, *et seq.* (the "*Montoya* PAGA Action").

On October 20, 2022, Juan Manso Gontez ("Gontez") filed a Class Action Complaint, titled Juan Manso Gontez v. Marborg Industries, a California Corporation; FPR II, LLC d.b.a. Leadpoint Business Services, an Oregon Limited Liability Company; and Does 1 through 100; Santa Barbara Superior Court, Case No. 22CV04157 (the "*Gontez* Class Action").

On January 25, 2023, Gontez filed a separate PAGA Representative Action Complaint, titled Juan Manso Gontez v. Marborg Industries, a California Corporation; Marborg Recovery Management, LLC, a California limited liability company; FPR II, LLC d.b.a. Leadpoint Business Services, an Oregon limited liability company; and Does 1 through 100; Santa Barbara Superior Court, Case No. 23CV00298 (the "*Gontez* PAGA Action").

On January 25, 2024, Plaintiff Montoya, Gontez, and Defendant Leadpoint (collectively, the "Parties") all participated in a mediation that resulted in a global settlement of the *Montoya* Class Action, the *Montoya* PAGA Action, the *Gontez* Class Action, and the

Gontez PAGA Action. The Parties agreed to a Memorandum of Understanding ("MOU") whereby Plaintiff Montoya would amend the *Montoya* Class Action to include the parties and allegations existing in the *Montoya* PAGA Action, the *Gontez* Class Action, and the *Gontez* PAGA Action.

On June 24, 2024, the court entered an order on the Parties' Stipulation, granting Montoya leave to amend to file a First Amend Complaint in accordance with the Parties' MOU. On June 26, 2024, Plaintiffs Jennifer Montoya and Juan Gontez ("Gontez") (collectively, "Plaintiffs") filed the operative First Amended Complaint ("FAC") against Defendant FPR II, L.L.C, dba Leadpoint Business Services ("Defendant" or "Leadpoint"), setting forth various causes of action for violations of the Labor Code, for unfair competition, and for civil penalties pursuant to the PAGA.

Now before the court is Plaintiffs' unopposed motion for approval the Parties' settlement.[1]

II. Legal Standard for Settlement Agreements

A. Class Action

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

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

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

[1] The court observes that on August 13, 2024, a notice of related case was filed by the Defendant in reference to *Jason White v. FCC Environmental Services, LLC, et al.*, Sacramento County Superior Court, Case No. 23CV007753.

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The trial court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, citation and internal quotation marks omitted.)

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

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

B. PAGA

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

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77.) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp*. (N.D. Cal. 2019)

383 F. Supp. 3d 959, 971 ["when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

III. Discussion

A. Provisions of the Settlement

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

> [A]ll persons currently or formerly employed by [Defendant] as nonexempt, hourly-paid employees during the Class Period in the State of California. The definition for "Class Members," "Settlement Class" or "Settlement Class Members" does not include any current or former employees directly hired or employed by MarBorg during the Class Period, except to the extent claims by the "Class Members," "Settlement Class" or "Settlement Class Members" are released as against Leadpoint and/or MarBorg as set forth herein

(Declaration of Kyle Nordrehaug ("Nordrehaug Dec."), Ex. 1 ("Agreement"), § 1.D.) The "Class Period" is defined as the period from October 13, 2018, through January 25, 2024. (*Id.* at § 1.E.)

The settlement also includes a subset PAGA class of "Aggrieved Employees" defined as:

> "[A]ll persons currently or formerly employed by [Defendant], as non-exempt, hourly-paid employees during the PAGA Period in the State of California. The definition for "Aggrieved Employees" does not include any current or former employees directly hired and employed by MarBorg Industries, Inc. and/or MarBorg Recovery Management, LLC (collectively, "MarBorg") during the PAGA Period, except to the extent claims by the "Aggrieved Employees" are released as against Leadpoint and/or MarBorg as set forth herein.

(*Id.* at ¶ 1.B.) The "PAGA Period" is defined as the period from July 12, 2021, through January 25, 2024. (*Id.* at ¶ 1.U.)

According to the terms of the settlement, Defendant will pay a gross settlement amount of $1,500,000. (Agreement, ¶¶ 1.M.) The Agreement provides that the gross settlement amount may be increased if the estimated number of workweeks during the Class Period is determined to be incorrect by more than 5%. (*Id.* at ¶ 17.) The gross settlement amount includes attorney fees of up to one-third of the gross settlement amount (currently estimated to be $500,000), litigation costs not to exceed $50,000, a PAGA allocation of $75,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments), a total of $25,000 in service awards ($12,500 to each of the Plaintiffs), and estimated settlement administration expenses $15,000. (*Id.* at ¶¶ 1.Q, 1.AA, 1.BB, 8, 12, 15.) The net settlement amount will be distributed to participating class members on a pro rata basis according to the number of workweeks they worked during the Class Period. (*Id.* at ¶ 10.) Individual PAGA payments will be distributed on a pro rata basis according to the number of pay periods worked during the PAGA Period. (*Ibid.*)

The Agreement states that individual settlement payment checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to Child Advocates of Silicon Valley as the designated *cy pres* recipient in accordance with Code of Civil Procedure, section 384. (Agreement, ¶ 11.) The court approves the designated *cy pres* recipient.

In exchange for the settlement, the class members agree to release Defendant, and related entities and persons, from all claims that were, or reasonably could have been, alleged based on the facts pleaded in the operative Complaint occurring during the Class Period. (Agreement, ¶¶ 1.X, 7.A.) Aggrieved Employees agree to release Defendant, and related entities and persons, from all claims for PAGA civil penalties that were alleged based on facts pleaded in the operative Complaint and the LWDA notice. (*Id.* at ¶¶ 1.X, 1.B.) Plaintiffs also agree to a comprehensive general release. (*Id.* at ¶ 7.E.) The release provisions are appropriately tailored to the factual allegations of the operative pleading. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

B. Fairness of the Settlement

Plaintiffs contend that the settlement is fair, reasonable, and adequate. (Nordrehaug Dec., ¶ 5.) On January 25, 2024, the Parties participated in mediation with Mark Rudy, Esq. (*Id.* at ¶ 5.) Prior to mediation, Defendant provided Plaintiffs' counsel with information such as payroll and timekeeping data, which Plaintiffs analyzed with the help of an expert. (*Ibid.*) At mediation, it was represented that there were approximately 1,485 Class Members who collectively worked approximately 58,000 workweeks. (*Id.* at ¶ 6.) According to Plaintiffs' calculations, the Net Settlement Amount will provide an average recovery of $562.28 per class member. (*Ibid.*) Plaintiffs' counsel analyzed the data for putative class members to determine the potential maximum damages for the class claims. (*Ibid.*)

Plaintiffs estimate that the maximum value of their class claims is $19,227,746, and they provide a breakdown of this amount by claim. (Nordrehaug Dec., ¶ 6.) Plaintiffs further estimate that the maximum value of the PAGA claim is $3,339,000. (*Id.* at ¶ 33(b).) Thus, Plaintiffs estimate that Defendant's total maximum potential exposure is $22,566,746. Plaintiffs explain that they discounted the value of their class claims for purposes of settlement to account for the risks associated with continued litigation and the potential that they will not prevail at trial. (*Id.* at ¶¶ 6, 23-29.) Plaintiffs further explain that they reduce the value of the PAGA claim due to factors such as the Defendant's defenses the likelihood that any PAGA penalties awarded at trial could be significantly reduced. (*Id.* at ¶ 33(b).)

The proposed settlement amount of $1,500,000 represents approximately 6.6% of the Defendant's estimated total maximum exposure. This amount is within the general range of percentage recoveries that California court typically find to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases approving settlements in the range of 5 to 35 percent of the maximum potential exposure].) Additionally, the court observes that the PAGA allocation of $75,000 represents 5% of the gross settlement amount and finds that Plaintiffs' counsel has sufficiently explained the rationale for the settlement amount.

The court has reviewed Plaintiffs' written submissions in support of the proposed settlement. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation. Based on the circumstances of the case, including the

relative strengths of Plaintiffs' case and Defendant's arguments in defense, the court finds the terms of the settlement to be fair.

C. Incentive Award, Fees and Costs

Plaintiffs request a total of $25,000 in service awards ($12,500 to each Plaintiff).

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

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

Plaintiff Montoya has submitted a declaration describing her participation in this litigation. (Declaration of Jennifer Montoya, ¶¶ 6-11.) She states that her participation has included frequent communication with her attorneys, gathering and providing documents, and closely reviewing pleadings and the settlement agreement. (*Ibid*.) Plaintiff Montoya estimates that she has spent approximately 30-40 hours working on this case. (*Id.* at ¶ 12.)

Plaintiff Gontez has submitted a declaration describing his participation in this litigation. (Declaration of Juan Gontez, ¶¶ 9-14.) He states that his participation has included frequent communication with his attorneys, gathering and providing documents, and closely reviewing pleadings and the settlement agreement. (*Ibid*.) Plaintiff Gontez estimates that he has spent at least 25 hours working on this case. (*Id.* at ¶ 12.)

In addition to the time spent on this litigation, Plaintiffs also took risk by attaching their name to this litigation because it might impact their future employment. (See *Covillo v. Specialty's Café* (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].)

For these reasons, the court finds that an incentive award is justified. However, the amount requested in relation to the time spent is more than the court typically awards in similar situations. Therefore, the court approves a service award to Plaintiff Montoya in the amount of $7,500 and a service award to Plaintiff Gontez in the amount of $5,000.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees of up to one-third of the maximum settlement amount (currently estimated to be $500,000), and litigation costs not to exceed $50,000. Prior to the final approval hearing, Plaintiffs' counsel shall submit lodestar information (including hourly rate and hours worked), evidence of actual costs incurred, and evidence of settlement administration costs. The court approves ILYM Group as the settlement administrator.

D. Conditional Certification of Class

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

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

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

As explained by the California Supreme Court,

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

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

Plaintiffs state there are approximately 1,485 class members who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

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

Here, the notice describes the lawsuit, explains the settlement, and informs class member that they may opt out of the settlement or object. (Agreement, Ex. A.) The settlement amounts, including attorney fees and payment to the named plaintiff, are stated. The notice informs class members that they may appear at the final approval hearing to address the court and provides the instructions for appearing remotely.

Accordingly, the class notice is approved.

IV. Conclusion

The motion for preliminary approval is GRANTED.

The court sets a final approval hearing date for April 2, 2025, at 1:30 p.m. in Department 19. At least ten court days prior the hearing date, Plaintiffs' counsel shall submit lodestar information (including hourly rate and hours worked), evidence of actual costs incurred, and evidence of settlement administration costs.

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

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Calendar Line 4

Case Name: Klopotic v. Home Consignment Center, et al. (Class Action)
Case No.: 22CV400863

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 20, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Background

This is a putative class and representative action arising from alleged wage and hour violations. Before the court is the motion to intervene by proposed intervener Darlene Blanchard ("Blanchard"). The motion is opposed by defendant Home Consignment Center ("Defendant") and by plaintiffs Jeff Klopotic ("Klopotic"), Jennifer Perkins (also known as Dakini Amitabha ("Perkins")), and Mary Lynn Hanchett ("Hanchett") (collectively, "Plaintiffs").

On July 1, 2022, Plaintiff Klopotic commenced this action by filing a Class Action Complaint against Defendant and related persons (the "*Klopotic* Action"). (See Declaration of Jeffrey T. Green in Support of Motion to Intervene ("Green Dec."), ¶ 2.) The *Klopotic* Complaint alleged that Defendant violated various Labor Code provisions relating to the failure to pay wages and reimbursement of business-related expenses.

In January 2023, Plaintiff Klopotic and Defendant agreed to mediate and engage in discovery prior to mediation. (Declaration of Allison Ross is Support of Defendant's Opposition to Motion to Intervene ("Ross Dec."), ¶ 2.) Plaintiffs' counsel informed Defendant that he intended to add Hanchett and Perkins as Plaintiffs and conduct related additional discovery. (*Ibid.*)

On October 31, 2023, Blanchard submitted a notice to the Labor and Workforce Development Agency ("LWDA") pursuant to the Private Attorneys General Act ("PAGA"). (Green Dec., ¶ 3.) On November 28, 2023, Blanchard filed a Class Action Complaint in Orange County Superior Court, commencing the following action: *Blanchard v. Home Consignment Center*, Orange County Superior Court Case No. 30-2023-01365696-CU-OE-CXC (the "*Blanchard* Action"). (*Id.* at ¶ 4.) On January 25, 2024, Blanchard filed her operative First Amended Complaint in the *Blanchard* Action, adding a PAGA claim. (*Id.* at ¶ 5.)

On January 11, 2024, Plaintiffs and Defendant mediated the *Klopotic* Action. (Ross Dec. at ¶ 4.) The mediator, Hon. Jamie Jacobs-May (Ret.), issued a mediator's proposal, which the parties accepted on January 12, 2024. (*Ibid.*) On April 8, 2024, the Plaintiffs and Defendant fully executed a Memorandum of Understanding ("MOU") regarding settlement of the *Klopotic* Action. (*Id.* at ¶ 6.) The MOU conditioned settlement on the Plaintiffs filing an amended complaint adding Plaintiffs Hanchett and Perkins and expanding the complaint to allege, among other things, claims for failure to provide meal periods and rest breaks, and civil penalties under PAGA along with required exhaustion of administrative remedies. (*Id.* at ¶ 6.)

Also on April 8, 2024, Defendant asked Blanchard to stipulate to stay the *Blanchard* Action pending the related settlement in the *Klopotic* Action. (Green Dec., ¶ 7.) This was when Blanchard first became aware of the *Klopotic* Action and the proposed settlement. (*Ibid.*) On April 9, 2024, Defendant provided Blanchard with the fully executed settlement agreement in this action. (*Id.* at ¶ 8.) On April 29, 2024, the Orange County Superior Court (Hon. Randall J. Sherman) stayed the *Blanchard* Action pending final approval of the settlement in this action. (Ross Dec., ¶ 10.)

On or about April 25, 2024, Plaintiffs submitted a PAGA Notice to the LWDA. (Ross Dec., ¶ 7.) On or about June 26, 2024, Plaintiffs submitted an amended PAGA Notice to the LWDA with their amended complaint. (*Id.* at ¶ 7.) On July 19, 2024, Plaintiffs filed their operative First Amended Complaint ("FAC"), consistent with the terms of the MOU and the settlement agreement. (*Id.* at ¶ 8.) Court records show that Plaintiffs have reserved a hearing date on January 22, 2025, in this court for preliminary approval of the settlement, but no such motion has yet been filed or is before the court at this time.

On May 20, 2024, Blanchard filed the motion now before the court, a motion for leave to intervene in this action. Defendant filed opposition papers, Plaintiffs filed a notice of joinder to Defendant's opposition, and Blanchard filed reply papers.

II. Requests for Judicial Notice

A. Defendant's Request

In connection with its opposition to the motion to intervene, Defendant asks the court to take judicial notice of the following: (a) a copy of the Class Action Complaint filed in this

action on July 1, 2022; (b) a printout from the State of California, Department of Industrial Relations webpage of the PAGA Case Details for Case LDWA-CM-1024296-24 (PAGA Case for Plaintiff Klopotic); (c) a copy of the FAC filed in this action on July 19, 2024; (d) a copy of a Stipulation and Order issued in the *Blanchard* Action in Orange County Superior Court (Hon. Randall J. Sherman) on April 29, 2024.

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

Accordingly, the request for judicial notice is GRANTED.

B. Blanchard's Request

In connection with her reply to Defendant's opposition to her motion to intervene, Blanchard asks the court to take judicial notice of the following: (a) a copy of a PAGA Notice her attorney sent to the Department of Industrial Relations, dated January 25, 2024 and titled: "Amended Notice of Representative Action Pursuant to the Private Attorneys General Act of 2004"; and (b) Plaintiffs' notice of joinder to Defendants' opposition to the instant motion, filed on October 30, 2024.

As a general matter, the moving party may not rely upon additional evidence filed with its reply papers. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538 ["The general rule of motion practice … is that new evidence is not permitted with reply papers."]; see also *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252; *San Diego Watercrafts, Inc. v.*

Wells Fargo Bank, N.A. (2002) 102 Cal.App.4th 308, 316.) Nevertheless, the court will consider the requests as there appears to be little prejudice to Defendant.

First, Blanchard's Exhibit A is not a proper subject of judicial notice. Blanchard references Evidence Code section 452, subdivisions (d) and (h), in support of the request, but her PAGA Notice letter is not a court record or a fact or proposition subject not reasonable subject to dispute and capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. Accordingly, the request is DENIED as to Exhibit A.

Blanchard's Exhibit B is a proper subject of judicial notice as a relevant court record. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records]; see also *Woodell, supra*, 17 Cal.4th at p. 455 [Evid. Code, § 452, subd. (d) permits trial courts to "take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decisions, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact."].) Accordingly, the request is granted as to Exhibit B.

III. Legal Standard

Code of Civil Procedure section 387 ("Section 387") governs intervention and provides mandatory terms under which the Court "shall" permit intervention where the proposed intervener demonstrates in a "timely application" that "[a] provision of law confers an unconditional right to intervene" or "[t]he person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impeded that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties." (Code Civ. Proc., § 387, subd. (d)(1).) Where the would-be intervenor "meets the qualifications for mandatory intervention…, the fact that such intervention would add to the complexity of the action, create delay, or adversely affect the original parties is of no moment." (*California Physicians' Service v. Superior Court (Gilmore)* (1980) 102 Cal.App.3d 91, 96 (*California Physicians' Service*).)

Section 387, subdivision (d)(2), pertains to permissive intervention. "[F]or permissive intervention, three factors must be established: 'The intervenor must have a direct interest in the lawsuit, the intervenor must not enlarge the issues raised by the original parties, and the intervenor must not tread on the rights of the original parties to conduct their own lawsuit.' [Citation.]" (*Lincoln National Life Inc. Co. v. State Bd. of Equalization* (1994) 30 Cal.App.4th 1411, 1422.) "[T]he intervenor's interest in the litigation must be direct and immediate rather that consequential, the issues must not be enlarged by the intervention and the reasons for intervention must outweigh the rights of the original parties to litigate in their own way." (*California Physicians' Service, supra*, 102 Cal.App.3d at pp. 95-96.) "One cardinal rule which is established by the cases is that an intervenor's must be more direct and immediate than that of a simple creditor of one of the parties." (*Ibid.*) "The purpose of allowing intervention is to protect others potentially affected by a judgment, thus obviating delay and multiplicity of suits." (*Catello v. I.T.T. General Controls* (1984) 152 Cal.App.3d 1009, 1013.)

IV. Discussion

Blanchard argues that she is entitled to mandatory and permissive intervention. (Notice of Motion and Motion ("Mot."), p. 2:9-16.)

A. Plaintiffs' PAGA Standing

As an initial matter, Blanchard argues that this action must be stayed, and the court must grant her request for intervention because Plaintiffs do not have PAGA standing. (Mot., pp. 8:19-10:19.) Blanchard contends that PAGA standing only exists after the aggrieved employee gives written notice to the LWDA regarding the specific alleged Labor Code violations and the LWDA does not provide written notice of an investigation within the 65-day period following the employee's notice. (*Id.* at pp. 8:24-9:7.)

Blanchard argues that Plaintiffs have not met the exhaustion requirements here because Plaintiff Klopotic did not submit a PAGA Notice to the LWDA before agreeing to settle the PAGA claim following mediation. (Mot., p. 9:8-20.) Next, Blanchard contends that Plaintiffs are attempting to settle PAGA claims outside the statutory period because the earliest date of standing is April 23, 2023, based on when the PAGA Notice was submitted. (*Id.* at pp. 9:23-10:3.) Finally, Blanchard argues that this action should be stayed under the rule of exclusive

concurrent jurisdiction because she filed her complaint pursuing a PAGA claim before Plaintiffs did. (*Id.* at p. 10:16.)

Here, Defendant persuasively argues that Blanchard's standing argument fails because she has not provided any legal or factual support for her position. (Defendant's Opposition, ("Opp."), pp. 6:4-7:19.) Defendant asserts that Plaintiff Klopotic submitted a PAGA Notice to the LWDA on or about April 25, 2024, and that the *Klopotic* Plaintiffs submitted an amended PAGA Notice on or about June 26, 2024. (*Ibid*.) Thus, Plaintiffs' PAGA claim is not premature because the LWDA had the opportunity to investigate the claim before they filed their FAC on July 19, 2024. (*Ibid.*)

Blanchard relies upon *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 381-382 (*Caliber*) for the proposition that the complaint must allege compliance with the LWDA notice requirement. (Mot., p. 9:5-7.) However, Blanchard does not mention or recognize the court's explanation that the plaintiff could amend her complaint, filed before she served her LWDA notice, to seek PAGA penalties after she had complied with the notice requirements.

> As with their causes of action for only civil penalties, plaintiffs are not precluded from later requesting leave to amend their first amended complaint to seek civil penalties for the Labor Code violations alleged in the first, third and fourth causes of action but must first satisfy the requirements of section 2699.3, subdivision (a). (§ 2699.3, subd. (a)(2)(C).)

(*Caliber*, *supra*, 134 Cal.App.4th at p. 385, fn. 19.)

In sum, Blanchard simply does not provide authority for the proposition that PAGA settlement terms may not be enforced when they are agreed upon prior to the fulfillment of the PAGA notice requirements. Furthermore, the issue of the validity of proposed PAGA settlement in this action is not yet before the court. Thus, the court is not persuaded that a stay or intervention is warranted due to Plaintiffs' alleged lack of PAGA standing.

Next, as Defendant points out, a PAGA settlement can release claims that fall outside of the one-year statute of limitations period of the plaintiff's own claim. (Opp., p. 6:17-27.) In *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 541-543 (*Amaro*), the appellate court specifically addressed this issue. The court observed that a PAGA claim is "fundamentally a law enforcement action" and not one for the benefit of private parties. (*Id.* at

p. 542, quoting *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 197.) The *Amaro* court concluded that allowing the plaintiff to release claims outside the limitations period of her own claim does not interfere with PAGA's statutory goals. (*Id.* at p. 543.) In reply, Blanchard contends that *Amaro*, and related decisions, such as *Hutcheson v. Superior Court* (2022) 74 Cal.App.5th 932, are distinguishable because the plaintiffs in those cases "conventionally" fulfilled the PAGA notice requirements. (Reply, pp. 5:2-6:10.) Nevertheless, Blanchard's argument does not address the statute of limitations issue itself, and furthermore, Defendant has submitted evidence of Plaintiffs' compliance with the PAGA notice requirements. Therefore, Blanchard's attempt to distinguish the *Amaro* holding fails.

Finally, Blanchard argues that the rule of exclusive concurrent jurisdiction applies to require a stay of this action. "Under the rule of exclusive concurrent jurisdiction, 'when two superior courts have concurrent jurisdiction over the subject matter and parties involved in litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matter have been resolved." (*Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 786-787 (*Plant Insulation*).) "The rule is based upon the public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy, and preventing vexatious litigation and multiplicity of suits." (*Id.* at p. 787.)

Blanchard asserts that the rule of exclusive concurrent jurisdiction can be applied to concurrent PAGA actions, citing *Shaw v. Superior Court* (2022) 78 Cal.App.5th 245, 257-263 (*Shaw*). (Mot., p. 10:4-16.) In *Shaw*, the appellate court found that "the absence of an express first-to-file rule in PAGA does not mean that the common law doctrine [of exclusive concurrent jurisdiction] cannot be applied in PAGA representative suits." (*Shaw, supra,* 78 Cal.App.5th at pp. 257-258.) The *Shaw* court reasoned that "PAGA and the exclusive concurrent jurisdiction rule can rationally coexist, and so they must." (*Id.* at p. 260.)

Nevertheless, Blanchard does not demonstrate the requirements for the rule of exclusive jurisdiction have been met here or that the policies supporting the rule would be served by applying the rule in this case. (Mot., p. 10:4-16.) For instance, Blanchard has not

shown that applying the rule would serve the policies of "avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy, and preventing vexatious litigation and multiplicity of suits." (*Plant Insulation*, *supra*, 224 Cal.App.3d at p. 787.) Furthermore, as Defendant contends, Blanchard has not brought a noticed motion to stay based on the rule of exclusive concurrent jurisdiction but has instead briefly mentioned the rule in support of her motion to intervene pursuant to Code of Civil Procedure, section 387, subdivision (d). (See Mot., p. 2.)

Accordingly, the court finds no merit to Blanchard's arguments that Plaintiffs lack PAGA standing and that a stay of this action is required.[2]

B. Mandatory Intervention

1. *Timeliness*

Blanchard argues that her application is timely because she brought it as early as possible after discovering the settlement agreement, observing that the court has not yet granted preliminary approval of the settlement. (Mot., p. 11:8-14.)

Defendant, relying upon *Noya v. A.W. Coulter Trucking* (2006) 143 Cal.App.4th 838, 842 (*Noya*), contends that the application to intervene is untimely because it was filed after a comprehensive settlement was reached. (Opp., p. 14:11-27.) Defendant also argues the application is untimely because the *Klopotic* Action was in litigation for 1.5 years and had settled before Blanchard served Defendant with her complaint. (*Ibid*.) Defendant further contends that there is no way to avoid jeopardizing the *Klopotic* settlement by allowing Blanchard's intervention. (*Id.* at pp. 14:26-15:8.) In reply, Blanchard argues that Defendant's reliance on *Noya* is misplaced because the facts here are distinguishable. (Reply, p. 8:23.)[3]

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[2] Blanchard points out that Plaintiffs' PAGA Notices incorrectly list Plaintiffs' counsel, James Dal Bon, as the employer. Nevertheless, Blanchard concedes that it can be inferred that the PAGA Notices in question pertain to Defendant. Therefore, the court does not find that the error in labeling the employer in the LWDA system is fatal to Plaintiffs' PAGA standing.

[3] Blanchard asserts that Defendant falsely attributed a direct quotation to *Noya*. (Reply at p. 10:13-14 and fn. 6.) There is merit to this assertion because the language the Defendant attributes to *Noya* at p. 14, lines 15-18 of the reply, does not appear in the *Noya* decision. Nevertheless, the court perceives this as an error as opposed to malfeasance because the language in question does in fact appear in other citable decisions. (See, *e.g.*, *Crestwood*

"Timeliness is measured from 'the date the proposed intervenors knew or should have known their interests in the litigation were not being adequately represented.'" (*Lofton v. Wells Fargo Home Mortgage, Inc.* (2018) 27 Cal.App.5th 1001, 1013 (*Lofton*), quoting *Ziani Homeowners Assn. v. Brookefield Ziani LLC* (2015) 243 Cal.App.4th 274, 282.)

In *Noya*, the plaintiffs sued California Department of Transportation ("Caltrans") for wrongful death and Zurich American Insurance Company ("Zurich") refused a tender of defense by Caltrans. (*Noya*, *supra*, 143 Cal.App.4th 838, 840.) The parties litigated for several years, and the plaintiffs reached a settlement with Caltrans. (*Id.* at p. 841.) Two months after the settlement was reported to the court, Zurich filed an ex parte application to intervene. (*Ibid.*) The trial court denied the motion as untimely, and the appellate court affirmed. (*Id.* at pp. 841, 845.) The *Noya* court observed that there is no statutory time limit placed on motions to intervene, and further that Zurich took no steps to participate until several years had passed after it refused a tender of defense from Caltrans. (*Id.* at p. 842.)

Here, Blanchard persuasively argues that *Noya* does not help Defendant. The *Noya* court's conclusion relied upon authority specific to insurers regarding the tender of defense: "In effect, when the insured tenders the suit, the carrier is receiving its chance to be heard." (*Noya, supra,* 142 Cal.App.4th at pp. 842-843, internal punctuation and citations omitted.) There is no similar insurance issue present in this case affecting the timeliness of Blanchard's application.

In this case, Blanchard argues that she did not know that her interests were not being adequately represented until April 8, 2024, when she found out her claims would be extinguished by the settlement reached between the parties in this action. She filed her motion to intervene less than two months later, on May 20, 2024. Thus, the motion is timely. (See *Lofton*, *supra*, 27 Cal.App.5th at p. 1013 [timeliness measured from when the proposed intervenor "knew or should have known their interests in the litigation were not being adequately represented"].)

2. *Related Interest*

i. PAGA Claims

Behavioral Health, Inc. (2021) 70 Cal.App.5th 560, 574.) Defendant's counsel is reminded to provide accurate citations in future filings.

Blanchard contends that she has a direct and immediate interest in this case because she is acting on behalf of the State of California as a representative for all aggrieved employees and the settlement would wrongfully dispose of her ability to prosecute Defendant for PAGA civil penalties. (Mot., p. 11:17-23.) In opposition, Defendant argues that the California Supreme Court's recent decision in *Turrieta v. Lyft* (2024) 16 Cal.5th 664 (*Turrieta*) precludes Blanchard from intervening in the PAGA claim. (Opp., pp. 5:1-6:3.) In reply, Plaintiff contends that *Turrieta* is distinguishable and does not preclude intervention in this case. (Reply, pp. 2:23-4:25.)

The court agrees with Defendant that *Turrieta* is the controlling authority here. In *Turrieta*, the California Supreme Court held that "an aggrieved employee's status as the State's proxy in a PAGA action does not give that employee the right to seek intervention in the PAGA action of another employee, to move to vacate a judgment entered in the other employee's action, or to *require* a court to receive and consider objections to a proposed settlement of that action." (*Turrieta*, *supra*, 16 Cal.5th at p. 716.) There, three Lyft drivers (including plaintiff Turrieta) each filed a separate action seeking civil penalties under PAGA for Lyft's alleged wage and hour violations. (*Id.* at p. 676.) Turrieta and Lyft signed an agreement settling Turrieta's action. (*Ibid.*) Before the hearing on Turrieta's motion to approve the settlement, the two other drivers filed separate motions to intervene in Turrieta's action and submitted objections to the settlement. (*Ibid.*) The trial court denied the motions, and the appellate court affirmed. (*Ibid.*)

In its *Turrieta* decision, the California Supreme Court explained that allowing a PAGA plaintiff to intervene in the ongoing PAGA action of another plaintiff asserting overlapping claims would be inconsistent with PAGA's statutory scheme as enacted by the Legislature. (*Turrieta*, 16 Cal.5th at pp. 676-677.) The court observed that the PAGA statutory scheme does not provide for or reference "other PAGA plaintiffs," and that Legislature expressly provided for review of any proposed settlement by the trial court and the LWDA, while not providing for review by other PAGA plaintiffs. (*Id.* at p. 692.) After examining the PAGA's legislative history, the *Turrieta* court concluded that the appellant's proposed reading of PAGA, "would permit multiple PAGA plaintiffs, all representing the same state interest, to formally intervene

in and become parties to the PAGA action of another PAGA plaintiff who is already representing the state's interest—clearly implicates concerns about curtailing PAGA litigation by making it more difficult." (*Id.* at p. 699.)

The California Supreme Court's *Turrieta* opinion, published after Blanchard filed her motion to intervene, disposes of her contention that she has an interest in the PAGA claim in this action. Blanchard's arguments in reply fail to persuade the court otherwise. She asserts that "[i]n *Turrieta*, the intervenors were precluded because Turrieta was first to establish PAGA standing and the first to file a lawsuit." (Reply, p. 3:17-19.) Blanchard claims the circumstances are different here because she is deputized to act as the proxy of the State. (*Ibid.*) However, Blanchard does not cite any part of the *Turrieta* decision in support of her position that only the first plaintiff to submit a PAGA Notice to the LWDA is authorized to act as the proxy of the state by filing a PAGA action. Blanchard acknowledges that she does not have a personal protected interest in the proposed PAGA claim but contends that she must be permitted to intervene on behalf of the state because Plaintiffs had not yet submitted a PAGA Notice at the time the settlement was reached. (Reply, pp. 3:23-4:2.) Again, Blanchard fails to support this contention with authority. (*Ibid.*)

Therefore, Blanchard does not have a related in the PAGA claim.

ii. Class Claims

Blanchard contends that she has a substantial interest in the subject matter of this litigation in her capacity as a class representative. (Mot., pp. 12:25-13:2.) In opposition, Defendant argues that Blanchard does not have the right to intervene on behalf of absent class members, relying upon *Edwards v. Heartland Payment Systems, Inc.* (2018) 29 Cal.App.5th 725, 733 (*Edwards*). (Opp., p. 8:3-24.) The *Edwards* court found that formal intervention was unnecessary where the proposed intervenor's "ability to protect their interest would not be practically impaired or impeded by the settlement … because they could opt out or object to the settlement." (*Edwards*, *supra*, 29 Cal.App.5th at p. 733.)

In reply, Blanchard states that she "is aware that she does not have the right to object to class claims on behalf of class members." (Reply, p. 7:14-20.) Blanchard argues that her motion "specifically seeks intervention on the basis of her PAGA claims, which does not

provide an alternative basis for recovery." (*Ibid.*) Thus, Blanchard effectively concedes that she does not have a related interest in the class claims in this action.

Therefore, Blanchard does not have a related interest in the class claims.

3. *Whether the Disposition of the Matter will Impair or Impede Proposed Intervenor's Rights*

Blanchard contends that denying her motion to intervene would impair and impede her ability to protect her interests. (Mot., pp. 13:3-16:6.) She again argues that Plaintiffs are not authorized to settle their PAGA claims because they did not fulfill the notice requirements before agreeing to the settlement. (*Id.* at p. 13:8-25.) She argues that a trial court reviewing a PAGA settlement must scrutinize whether a PAGA plaintiff has adequately represented the state's interests, relying upon *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56. (*Id.* at pp. 13:26-14:20.) Blanchard asserts that, without intervention, she and the State of California will be impaired by collusion between Plaintiffs and Defendant. (*Id.* at pp. 15:22-16:6.) Blanchard states that Plaintiffs' and Defendant's actions here "amount to collusion through their efforts to effectuate a believed reverse auction[.]" (*Id.* at pp. 15:3-21.)

In opposition, Defendant points out that the *Turrieta* court addressed and rejected the argument that allowing intervention in PAGA actions furthers PAGA's purpose by avoiding the potential for a "reverse auction." (Opp., p. 9:10-25; see also *Turrieta*, *supra*, 16 Cal.5th at pp. 702-703.) Defendant also maintains that, although Blanchard has raised the issue of collusion, she has failed to support this allegation with argument or authority. (Opp., p. 10:14-18.)

Here, Blanchard's arguments regarding her right to intervene in another PAGA action lack merit following *Turrieta*. While she is correct that a trial court must scrutinize a PAGA settlement to ensure that the plaintiff adequately represented the state's interest, the proposed settlement between Plaintiffs and Defendant is not yet before the court. Moreover, Blanchard presents no facts to support her assertion that there are indicia of "collusion" between the Parties in this action.

Thus, Blanchard has not shown that disposition of the matter will impair or impede her rights.

4. *Adequacy of Representation*

Blanchard argues that her interests will not be represented if intervention is not granted. (Mot., p. 16:7-22.) She asserts she is uniquely positioned to represent aggrieved employees because she is the only person who has PAGA standing. (*Ibid.*) She also asserts that she is uniquely positioned to represent class members but provides no argument or authority in support of this assertion. (*Ibid.*)

In opposition, Defendant argues that Blanchard cannot show that her interests are not adequately represented. (Opp., pp. 10:23-13:4.) Defendant, relying upon *Callahan v. Brookdale Senior Living Communities, Inc.* (2022) 42 F.4th 1013, 1020-1021, argues that a proposed intervenor must make a compelling showing of inadequate representation when her interest is the same as that of an existing party. (Opp., p. 11:4-23.) Defendant further argues that Blanchard has provided no basis to support an argument that the *Klopotic* settlement is inadequate, observing that courts have found that PAGA settlements in the amount 1-2% of the gross settlement amount to be fair considering PAGA's public policy goals. (*Id.* at p. 12:11-23.)

Here, Defendant persuasively argues that Blanchard has not asserted facts supporting her contention that her interests are not adequately represented. Blanchard maintains that she is the only person to have standing to bring a PAGA claim against Defendant, but she offers no facts or authority compelling this conclusion. For example, she offers no facts that the LWDA rejected Plaintiffs' PAGA notices or that it chose to prosecute the matter itself after an investigation. In reply, Blanchard asserts that Plaintiff Klopotic cannot properly serve as a PAGA plaintiff because he also an employee of the law firm representing him. However, as discussed previously, the general rule in motion practice is that new evidence is not permitted with reply papers. Further, Blanchard does not assert that Plaintiff Klopotic is himself acting as both a named plaintiff and class counsel because Klopotic is not an attorney of record in this action.

Therefore, Blanchard has not shown that her interests are not adequately represented in the absence of intervention.

In sum, Blanchard has failed to establish that she is entitled to mandatory intervention.

C. Permissive Intervention

Blanchard also argues that the court should grant permissive intervention because she has good cause to intervene. (Mot., pp. 16:23-18:13.)

Permissive intervention will generally be permitted if: "(1) the proper procedures have been followed, (2) the nonparty has a direct and immediate interest in the action, (3) the intervention will not enlarge the issues in the litigation, and (4) the reasons for the intervention outweigh any opposition by the parties presently in the action." (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1036.) Permissive intervention requires "balanc[ing] the interests of [nonparties] affected by a judgment against the interests of the original parties in pursuing their case unburdened by others." (*South Coast Air Quality Management Dist. v. City of Los Angeles* (2021) 71 Cal.App.5th 314, 320.)

Blanchard asserts that she meets all the requirements for permissive intervention. (Mot., pp. 17:1-18:13.) She states she has filed a noticed motion, that she has a direct interest in the settlement, that her intervention will not enlarge the issues because the underlying Labor Code violations are the same in the two actions, and that her interest as the only party to have PAGA standing strongly outweighs the interests of Plaintiffs and Defendant in settling without her. (*Ibid.*)

Here, the court finds Blanchard's arguments in support of permissive intervention to be conclusory. As discussed above, the *Turrieta* decision disposes of Blanchard's contention that she has a direct interest in the proposed PAGA settlement between Plaintiffs and Defendant. (See *Turrieta, supra,* 16 Cal.5th at p. 716 [aggrieved employee's status as the State's proxy in a PAGA action does not confer the right to seek intervention in another employee's PAGA action].) Also as discussed above, the court is not persuaded that Blanchard is the only person to have standing to bring a PAGA claim against Defendant.

Furthermore, Defendant persuasively argues that Blanchard's reasons for intervention are outweighed by the rights of the original parties to this action. (Opp., pp. 13:19-14:9.) Intervention must be denied if the purported reasons to intervene "are outweighed by the rights of the original parties to conduct their lawsuit on their own terms." (*County of San Bernardino v. Harsh California Corp.* (1959) 52 Cal.2d 341, 346.) Here, Defendant asserts that the Parties to this action have reached a settlement after engaging in discovery, informally exchanging

documents, and participating in mediation. (Opp., p. 13:22-28.) Allowing intervention here would jeopardize the settlement, likely increase the expense and burden on the Plaintiffs and Defendant and postpone relief in this litigation that has been pending for over two years.

Accordingly, Blanchard is not entitled to permissive intervention.

IV. Conclusion

The motion to intervene is DENIED.

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

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Calendar Line 5

Case Name: Charles v. Advanced Chemical Transport, et al. (Class Action)
Case No.: 24CV435308
(JCCP 5345)

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 20, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a putative class and representative action arising from alleged wage and hour violations. On April 15, 2024, Plaintiff Wayne Herbert Charles ("Charles") commenced this action by filing a Class Action Complaint against Defendant Advanced Chemical Transport LLC dba Actenviro ("Defendant"). On April 16, 2024, the court (Hon. Charles F. Adams) issued an order deeming the action complex and staying discovery and the responsive pleading deadline.

On June 20, 2024, Charles filed his operative First Amended Complaint ("FAC"), setting forth the following causes of action: (1) failure to pay minimum wages; (2) failure to pay wages and overtime under Labor Code, section 510; (3) meal period liability under Labor Code, section 226.7; (4) rest-break liability under Labor Code, section 226.7; (5) violation of Labor Code, section 226; (6) violation of Labor Code, section 221; (7) violation of Labor Code, section 204; (8) violation of Labor Code, section 203; (9) failure to maintain records required under Labor Code, sections 1174, 1174.5; (10) failure to reimburse necessary business expenses under Labor Code, section 2802; (11) violation of Business and Professions Code, sections 17200, *et seq.*; (12) penalties under the Private Attorneys General Action (Labor Code, section 2698, *et seq.* ("PAGA")).

Now before the court is Latrell Williams' petition to coordinate this action with the following case: *Williams v. Advanced Chemical Transport, LLC* (Merced County Superior Court, Case No. 24CV-02136) (the "*Williams* Action").

On May 10, 2024, Plaintiff Latrell William ("Williams") filed his Class Action Complaint against Defendant Advanced Chemical Transport, LLC, setting forth various wage and hour claims. On June 6, 2024, Williams filed his operative First Amended Class and

Representative and Class Action Complaint, setting forth the following causes of action: (1) failure to pay all wages due (Labor Code, §§ 226.7, 227.3, 246, 510, 512, and 1194); (2) failure to issue wages by an instrument payable in cash, on demand, and without discount (Labor Code, §§ 212 and 225.5); (3) failure to provide meal periods or compensation in lieu thereof (Labor Code, §§ 226.7, 510, 512, 1174, 1174.5, 1194, and 1194.2; Industrial and Welfare Commission ("IWC") Wage Order 9-2001); (4) failure to provide rest periods or compensation in lieu thereof (Labor Code, § 226.7; IWC Wage Order 9-2001); (5) failure to comply with itemized employee wage statement provisions (Labor Code, § 226, subds. (a), (e), and (h)); (6) failure to timely pay wages due at separation of employment (Labor Code, §§ 201-203 and 227.3); (7) violation of Business and Professions Code, § 17200, *et seq.*; (8) penalties pursuant to Labor Code, section 2699, subdivisions (a) and (f).

On July 19, 2024, Williams filed a Petition for Coordination and Application for Stay Order in the *Williams*, and on July 23, 2024, Williams filed a Notice of Submission of Petition for Coordination in this action. On September 6, 2024, the Judicial Council of California authorized the presiding judge of this court to assign the matter for coordination proceedings. On September 11, 2024, the presiding judge assigned the matter to this Department to determine whether coordination of this action and the *Williams* action is appropriate. The Petition to Coordinate is unopposed.

II. Request for Judicial Notice

In support of his Petition for Coordination, Williams asks the court to take judicial notice of the Complaints and Amended Complaints in this action and in the *Williams* action.

The existence of the subject documents, and the truth of the results reached in the court orders decisions, are proper subjects of judicial notice as they are relevant to issues raised in the pending motion. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records], § 452, subd. (h) [permitting judicial notice of facts and propositions not reasonably subject to dispute and capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy]; see also *People v. Woodell* (1998) 17 Cal.4th 448, 455 [Evid. Code, § 452, subd. (d) permits trial courts to "take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the

documents such as orders, statements of decisions, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact."].)

Accordingly, the request for judicial notice is GRANTED.

III. Legal Standard

> When civil actions sharing a common question of fact or law are pending in different courts, a petition for coordination may be submitted to the Chairperson of the Judicial Council, by the presiding judge of any such court, or by any party to one of the actions after obtaining permission from the presiding judge, or by all of the parties plaintiff or defendant in any such action. A petition for coordination, or a motion for permission to submit a petition, shall be supported by a declaration stating facts showing that the actions are complex, as defined by the Judicial Council and that the actions meet the standards specified in Section 404.1. On receipt of a petition for coordination, the Chairperson of the Judicial Council may assign a judge to determine whether the actions are complex, and if so, whether coordination of the actions is appropriate, or the Chairperson of the Judicial Council may authorize the presiding judge of a court to assign the matter to judicial officers of the court to make the determination in the same manner as assignments are made in other civil cases.

(Code Civ. Proc., § 404.)

> Coordination of civil actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and, the likelihood of settlement of the actions without further litigation should coordination be denied.

(Code Civ. Proc., § 404.1.)

As relevant here, California Rules of Court, rule 3.400, subdivision (b), provides that, "[i]n deciding whether an action is a complex case [as defined in subdivision (a)], the court must consider, among other things, whether the action is likely to involve: [¶] (4) Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court[.]"

III. Discussion

Petitioner Williams requests that the *Williams* Action be coordinated with this action for all purposes. (Petition, p. 3:8.) He contends that coordination of these two actions is necessary and appropriate under California Rules of Court, rule 3.400 and Code of Civil Procedure, section 404.1, because: (1) the lawsuits allege substantially identical claims and seek substantially the same relief; (2) coordination will advance the convenience of the parties, witnesses, and counsel; (3) coordination is appropriate given the relative development of the cases and the work product of counsel; (4) coordination will promote the efficient use of judicial facilities and manpower; (5) coordination will remove the risk of duplicative and inconsistent rulings, orders, and judgments; and (6) coordination will promote the possibility of global settlement. (*Id.* at p. 3:11-22; Memorandum of Points and Authorities ("MPA"), p. 5:20-25.)

More specifically, Williams contends that common questions of law and fact predominate because the plaintiffs' respective wage and hour claims arise from the same transactions, events, or incidents and seek similar relief from the same Defendant. (MPA, pp. 5:26-6:13.) He further argues that, if the actions are not coordinated, Defendant would undoubtedly be forced to repeatedly call many of the same witnesses to offer the same testimony on the same subjects. (*Id.* at p. 6:14-24.) Williams asserts that no depositions have been taken or written discovery promulgated in either case, and coordination would not hinder discovery but instead allow counsel for parties to avoid repetitive efforts. (*Id.* at pp. 6:25-7:3.)

Williams contends that the risk of inconsistent rulings is high due to the overlap of legal and factual issues, and further that coordination will advance the efficient use of judicial resources by sparing multiple courts from expending time and resources on duplicative efforts. (MPA, p. 7:4-17.) He also contends that coordination before one judge will promote settlement by narrowing the factual and legal issues and provide an avenue for the global settlement of the cases. (*Id.* at p. 7:18-28.)

Williams' arguments have merit, and no party has argued otherwise. There is significant overlap between the two cases, including the legal issues, the factual issues, and the parties. In light of this overlap, coordination will advance the convenience of the parties, counsel, and at least some of the witnesses. Having the parties conduct the same discovery and make the same

arguments in two separate courts would waste significant time and resources for all involved. Coordination will also effectively eliminate the likelihood of inconsistent rulings. If coordination is denied and the cases continue to proceed on different tracks, the likelihood of settlement would drop significantly.

Accordingly, the Petition for Coordination is GRANTED.

IV. Conclusion

The Petition for Coordination is GRANTED, with Santa Clara County Superior Court designated as the court to hear the coordinated actions and the Sixth Appellate District of the Court of Appeal as the reviewing courts having appellate jurisdiction.

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

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Calendar Line 6

Case Name: Charles, et al. v. Varsity Tutors, LLC
Case No.: 19CV347249

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 20, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a representative action arising from alleged wage and hour violations. On May 1, 2019, Plaintiffs Alexander Charles ("Charles" or "Plaintiff") and Henry Mulak ("Mulak") filed a Complaint for Declaratory Relief against Defendant Varsity Tutors LLC ("Defendant"), seeking a judicial determination that they could maintain a representative action under the Private Attorneys General Act ("PAGA") in court, notwithstanding the terms of an arbitration agreement.

On May 30, 2019, Plaintiffs Charles and Mulak filed a First Amended Complaint ("FAC"), adding a claim for civil penalties pursuant to PAGA. Plaintiffs alleged that Defendant does not compensate them for time spent traveling, preparing, communicating with students and parents, or scheduling and bookkeeping. (FAC, ¶ 17.) Defendant does not pay overtime and does not allow for meal and rest breaks. (*Id*. at ¶¶ 17-18.) Defendant does not provide itemized wage statements. (*Id.* at ¶ 20.) Defendant classifies its tutors as independent contractors, despite its control over its tutors. (*Id*. at ¶ 21.) On June 9, 2021, the court (Hon. Patricia M. Lucas) entered an order granting Defendant's motion for judgment on the pleadings, dismissing Plaintiff Mulak's PAGA claim on the grounds that he failed to personally file a notice with the LWDA. (See June 9, 2021, Order re: Motion for Judgment on the Pleadings, p. 6:6-13 ("June 9, 2021, Order".)

After several years of litigation (which included appellate decisions as well as ongoing mediation efforts) the parties have now reached a settlement regarding Plaintiff Charles' PAGA claim.[4] Now before the court is Plaintiff's unopposed motion for approval of the PAGA settlement.

[4] See, generally, Declaration of Steven M. Tindall in Support of Plaintiff's Motion for Settlement Approval [] ("Tindall Dec."), ¶¶ 4-26.

II. Legal Standard

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

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

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

III. Discussion

A. Provisions of the Settlement

Plaintiff moves for approval of a proposed settlement made on behalf of:

> [A]ll individuals who signed at least one "Independent Contractor Agreement" ("ICA") with [Defendant]; who received compensation from [Defendant]

> pursuant to an ICA; and who, based on [Defendant's] records, resided in and provided tutoring services at any time from May 30, 2018, until December 31, 2019[.]

(Tindall Dec., Ex. A ("Agreement"), p. 1.)

The Agreement further defines "Tutors" as:

> [A]ll allegedly aggrieved individuals who, based on [Defendant's] records, resided and principally worked in California; signed one or more ICAs; and received compensation from Defendant pursuant to an ICA during the PAGA Period defined in Paragraph [A.16] below.

(Agreement, ¶ A.4.) The "PAGA Period" is defined as "the period beginning on May 30, 2018, through December 31, 2019, when [Defendant] stopped contracting with Tutors." (*Id.* at ¶ A.16.)

According to the terms of the settlement, Defendant will pay a "Total Settlement Amount of $2,000,000." (Agreement, ¶¶ A.26, A.36.) This amount includes attorney fees of one-third of the Total Settlement Amount ($660,000), litigation costs of $121,846, administrative costs in an amount to be determined, a total of $18,000 in service awards ($15,000 to the PAGA representative, and $3,000 to the former named plaintiff), and the net remaining amount as the the PAGA Payment (75% percent of which will be paid to the LWDA and 25% percent of which will be distributed to the Tutors). (*Id.* at ¶ E.43.) The individual PAGA payments will be distributed on a pro rata basis according to the individual's number of applicable pay dates. (*Id.* at ¶ E.43(a)(i).)

In exchange for the settlement, the aggrieved employees agree to release the Defendant and related entities and persons from all claims during the PAGA period that were alleged in the FAC. (Agreement, ¶¶ A.18, A.21.) The Named Plaintiffs also agree to a comprehensive general release. (*Id.* at ¶ F.44.) The release provisions are appropriately tailored to the factual allegations of the operative pleading. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

B. Fairness of the Settlement

Plaintiffs contend that the settlement is fair, reasonable, and adequate. (Tindall Dec., ¶ 57.) On June 27, 2022, the Parties participated in mediation with Tripper Ortman. (*Id.* at ¶ 20.) Prior to mediation, the Parties engaged in extensive discovery. (*Id.* ¶ 19.) Defendant produced documents with scheduling and revenue data from a 10% sample of tutors. (*Ibid.*)

The initial mediation was unsuccessful, and the Parties resumed discovery, which ultimately involved the production of over 35,000 pages of documents. (*Id.* at ¶ 21.) Plaintiff's expert conducted a survey of tutors, and Defendant deposed Plaintiff Charles for two full days. (*Id.* at ¶¶ 22-23.) Mr. Ortman remained in contact with the Parties, who were ultimately able to arrive at an agreement. (*Id.* at ¶ 26.) Plaintiff's counsel estimates that Defendant's potential liability is $5,429,800 and explains how he arrived at that amount. (*Id.* at ¶¶ 31-33.)

The proposed settlement amount of $2,000,000 represents approximately 36.8% of Defendant's potential liability. This amount is slightly above the general range of percentage recoveries that California court typically find to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases approving settlements in the range of 5 to 35 percent of the maximum potential exposure].) Additionally, the court finds that Plaintiffs' counsel has sufficiently explained the rationale for the settlement amount.

The court has reviewed Plaintiff's written submissions in support of the proposed settlement. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation. Based on the circumstances of the case, including the relative strengths of Plaintiff's case and Defendant's arguments in defense, the court finds the terms of the settlement to be fair.

C. Incentive Award, Fees and Costs

As part of the settlement, Plaintiff seeks a total of $18,000 in service awards ($15,000 to Plaintiff Charles as the PAGA representative, and $3,000 to Mulak as a former named plaintiff). Although service awards are common in class actions, there is less authority regarding the propriety of service awards in PAGA cases. Nevertheless, a PAGA case is a representative action like a class action, and courts have recognized that an individual's willingness to act as a private attorney general may merit a service award. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959.)

Plaintiff Charles has submitted a declaration describing his participation in the litigation. (Declaration of Alexander Charles, ¶¶ 4-17.) He states that he has spent a significant amount of time responding to discovery, and that he sat for a two-day deposition. (*Ibid.*)

Plaintiff Charles estimates that he has spent at least 91 hours on this litigation, and he provides a breakdown of this amount by activity. (*Id.* at ¶ 17.) Charles also states that was and is concerned that his participation in this litigation could affect his future employment. (*Id.* at ¶ 4.)

Former Plaintiff Henry Mulak has also submitted a declaration describing his participation. (Declaration of Former Plaintiff Henry Mulak, ¶¶ 4-14.) Mulak asserts that his attorney advised him that they had already sent a notice to the LWDA when he was added as a named Plaintiff in the FAC. (*Id.* at ¶ 8.) He states that his involvement has included responding to discovery and discussing the case with his attorneys. (*Id.* at ¶ 9.) Mulak estimates that he spent at least 223 hours in his role as a former PAGA representative Plaintiff in this case. (*Id.* at ¶ 14.)

Here, the court finds that a service award to Plaintiff Charles is warranted and that the amount requested is reasonable considering his level of involvement in this litigation. Therefore, the court approves a service award of $15,000 to Plaintiff Charles.

However, with respect to former Plaintiff Mulak, the court is not persuaded that a service award is justified, particularly because granting such an award would be inconsistent with the court's prior ruling dismiss Mr. Mulak as a Plaintiff. (June 9, 2021, Order, p. 6:6-13.) While Mulak may have demonstrated a wiliness to serve as a PAGA representative, because he did not fulfill the LWDA notice requirements in this case, he did in fact serve as a PAGA representative. Further, Plaintiff's counsel offers no authority to support the request for a service for an individual who has been dismissed as a plaintiff. According, the request for a service award with respect to Mr. Mulak is denied.

Plaintiff's counsel seeks attorney fees of one-third of the total settlement amount ($660,000). Plaintiff's counsel represents that his office's current lodestar is $1,757,616.00 based on a total of 2,554.8 hours. (Tindall Dec., ¶¶ 48-55.) This results in a negative multiplier. The court finds the requested fees to be reasonable as a percentage of the total recovery, and the fees are approved in the in the amount of $660,000. Plaintiff's counsel also requests litigation costs in the total amount of $121,846 and provides a breakdown of this amount by

cost. (Tindall Dec., ¶ 56.) Therefore, the court finds cost in the amount of $12,717.84 to be reasonable and approves that amount.

Plaintiff also asks for settlement administration costs in the amount of $14,500. (Tindall Dec, ¶¶ 34, 56.) Plaintiff provides a quote from Atticus Class Action Administration in the amount of $14,500. (Tindall Dec., Ex. E.) Therefore, the court approves Atticus Class Action Administration as the settlement administrator and administration costs in the amount of $14,500.

IV. Conclusion

The motion for approval of the PAGA settlement is GRANTED.

The court sets a compliance hearing date for May 7, 2025, at 2:30 p.m. in Department 19.

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

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Calendar Line 7

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

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 20, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

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

On July 20, 2023, Plaintiff Partick Burk initiated an action in Los Angeles County Superior Court, captioned *Patrick Burk v. Crisis24, Inc., et al.* (Case No. 24STCV09814), now removed and pending the Central District of California (the "Burk Action").

On July 31, 2024, Plaintiffs Rustin Fox, Gabrielle Santi, and Patrick Burk (collectively, "Plaintiffs") filed the operative First Amended Class Action Complaint ("FAC") against Defendants Crisis24, Inc. and Crisis24 Protective Solutions, LP (collectively, "Defendants").[5]

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

[5] Plaintiffs Fox and Santi also initiated a separate action in San Francisco County Superior Court, captioned *Fox, et al. v. Crisis24 Protective Solutions, LP, et al.*, Case No. CGC-23-609447.

to provide wages when due and upon discharge in violation of Labor Code sections 201-203; (9) failure to pay sick pay wages in violation of Labor Code section 201-204, 233, and 246; (10) discrimination and retaliation in violation of FEHA [California Fair Employment and Housing Act] (by Plaintiff Santi against all Defendants); (11) failure to provide reasonable accommodation in violation of Government Code section 12940, subdivision (m) (by Plaintiff Santi against all Defendants); (12) failure to provide reasonable accommodation in violation of Government Code section 12940, subdivision (m) (by Plaintiff Fox against all Defendants); and (13) wrongful termination in violation of public policy (by Plaintiff Fox against all Defendants); (14) violation of Private Attorneys General Act ("PAGA"), Labor Code section 2698, *et seq.*

The Parties have reached a settlement. Now before the court is Plaintiffs' unopposed motion for preliminary approval of the class and representative action settlement. At the initial hearing on October 23, 2024, the court observed that the settlement agreement at issue references separate settlement agreements reached between Defendant and Plaintiffs Fox and Santi. The court continued the hearing and requested that Plaintiffs' counsel provide the individual separate settlement agreements to the court for the judge's confidential review.

On or about October 30, 2024, Plaintiffs' counsel caused the separate settlement agreement to be delivered to the court. On October 31, 2024, Plaintiffs' counsel filed a supplemental declaration addressing the court's concerns relating the separate settlement agreements. As discussed below, having reviewed these supplemental written submissions, the court now GRANTS the motion for preliminary approval.

II. Legal Standard for Settlement Agreements

A. Class Action

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

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

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

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba, supra,* 91 Cal.App.4th at p. 245.) The trial court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, citation and internal quotation marks omitted.)

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

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

B. PAGA

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

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

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

III. Discussion

A. Provisions of the Settlement

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

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

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

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

According to the terms of the settlement, Defendant will pay a gross settlement amount of $1,250,000. (Agreement, ¶ 1.22.) This amount includes attorney fees of up to one-third of

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

The Agreement states that individual settlement payment checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the Children's Advocacy Institute and Legal Aid at Work, in equal parts, as the designated *cy pres* recipients in according with Code of Civil Procedure section 384. (Agreement, ¶¶ 5.2, 5.4.) The court approves the designated *cy pres* recipients.

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

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

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

The Agreement states: "Class Counsel will be filing a declaration with the Court affirming that the consideration given for the settlement of the Individual Claims of Fox and Santa is unrelated to and separate from the settlement of their Class claims and PAGA claims and is based on separate facts and claims." (Agreement, ¶ 6.3(d).) In its prior tentative decision, the court indicated that it had been unable to locate such a declaration. The court also stated that it wished to review the separate agreements before reaching a conclusion regarding the fairness of the proposed class and representative action settlement. Therefore, the court continued the hearing and asked Plaintiffs' counsel to provide the separate agreements for a confidential *in camera* review. As explained above, Plaintiffs' counsel has since complied with the court's requests.

Plaintiffs' counsel asserts that the individual settlement agreements provide for a general release and resolve Plaintiffs Fox and Santi's individual claims for: discrimination and retaliation under FEHA (Plaintiff Santi only); failure to provide reasonable accommodation (Plaintiffs Fox and Santi); and wrongful termination in violation of public policy (Plaintiff Fox only). (See Supplemental Declaration of Kyle Nordrehaug, ¶ 3.) The court has reviewed the individual settlement agreements and finds counsel's representations to be accurate. Furthermore, the court finds that the terms of the separate settlement agreements do not adversely affect the fairness of the proposed class and representative action settlement agreement.

B. Fairness of the Settlement

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

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

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

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

The court has reviewed Plaintiff's written submissions in support of the proposed settlement. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation. As discussed above, the court finds that the terms of

the separate settlement agreements do not adversely affect the fairness of the proposed class and representative action settlement agreement. Based on the circumstances of the case and the information available to the court at this time, the proposed settlement generally appears to be fair.

C. Incentive Award, Fees and Costs

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

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

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

The three named Plaintiffs have each submitted declarations in support of the request for incentive awards. Each assert that their participation in this action has included communication with their attorneys, searching for and producing relevant documents, and reviewing relevant pleadings. Each understood that they were undertaking risk by being a part of this action because they could be held responsible for attorney fees and costs and because their involvement could impact their current or future employment.

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

Each of the named Plaintiffs have spent time in connection with this litigation and undertaken risk by attaching their names to this case because it might impact their current or

future employment. (See *Covillo v. Specialty's Café* (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].)

The court finds that incentive awards are warranted in this case. Based the reasons set forth above, including the varying amounts of time the Plaintiffs have spent on this litigation, the court approves an incentive award of $7,500 to Plaintiff Fox, an incentive award of $7,500 to Plaintiff Santi, and an incentive award of $2,500 to Plaintiff Burk, for a total of $17,500 in approved incentive awards.

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

D. Conditional Certification of Class

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

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

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

As explained by the California Supreme Court,

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

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

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

E. Class Notice

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

Here, the notice describes the lawsuit, explains the settlement, and informs Class Members that they may opt out of the settlement or object. (Agreement, Ex. A.) The settlement amounts, including attorney fees and payment to the named plaintiff, are stated. The notice directs class members that they may appear at the final fairness hearing to make an oral objection without filing a written objection and provides instructions for attending the hearing remotely.

Accordingly, the court approves the notice.

IV. Conclusion

For the reasons discussed above, the motion for preliminary approval of class and representative action settlement is GRANTED. The court sets a final approval hearing for May 21, 2025, at 1:30 p.m. in Department 19. At least ten courts days prior to the hearing, Plaintiffs' counsel shall submit supplemental declaration(s) containing information regarding the notice process and other information requested by the court, including that relating to attorney fees and costs and settlement administration expenses.

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

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Calendar Line 8

Case Name:
Case No.:

- oo0oo -

Calendar Line 9

Case Name: Waltrip v. Highgate Hotels, L.P. (Class Action)
Case No.: 23CV417680

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 20, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a putative class and representative action arising from alleged wage and hour violations. On June 15, 2023, plaintiff Glenn Waltrip ("Waltrip") commenced this action by filing a Class Action Complaint against defendant Highgate Hotels, L.P. ("Defendant").

On October 17, 2024, Waltrip filed the Second Amended Complaint ("SAC"), setting forth 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 sick time; (5) failure to indemnify; (6) failure to provide accurate written wage statements; (7) failure to timely pay all final wages; (8) wages not timely paid during employment; (9) failure to keep requisite payroll records; (10) failure to pay interest on deposits; (11) failure to pay vacation wages; (12) unfair competition in violation of Business and Professions Code section 17200, *et seq.*; (13) civil penalties in violation of Labor Code section 2698, *et seq.* (Private Attorneys General Act ["PAGA"]).

As explained below, on or about November 18, 2024, plaintiffs Waltrip and Tamara Broadnax ("Broadnax") (collectively, "Plaintiffs") filed the operative Third Amended Complaint, setting forth the same causes of action and adding Broadnax as a plaintiff.

The parties have reached a settlement. Now before the court is Plaintiffs' unopposed motion for approval of the settlement. At the hearing on October 30, 2024, the court continued the hearing an asked the parties to meet and confer and designate a *cy pres* recipient in accordance with Code of Civil Procedure, section 384. The court also asked the parties to make modifications to the class notice.

On November 18, 2024, Plaintiffs' counsel submitted the following: (1) a Joint Stipulation for Leave to File Third Amended Complaint ("Stipulation"); and (2) the Declaration of Jose Maria D. Patino, Jr. in Support of Motion for Preliminary Approval of

Class Action Settlement ("Patino Dec."). On November 18, 2024, the court issued an order on the Stipulation, granting leave to file the TAC and add Broadnax as a plaintiff.

As discussed below, having reviewed the supplemental materials filed by Plaintiffs, the court now GRANTS the motion for preliminary approval.

II. Legal Standard for Settlement Agreements

A. Class Action

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

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

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

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba, supra,* 91 Cal.App.4th at p. 245.) The trial court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, citation and internal quotation marks omitted.)

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

(3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

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

B. PAGA

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

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

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

III. Discussion

A. Provisions of the Settlement

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

> [A]ll current and former employees of Defendant in hourly or non-exempt positions in California at any time from January 12, 2022 through the date of preliminary approval, subject to section III.L.1 of this Agreement.

(Patino Dec., Ex. A ("Agreement"), § I.D.)

Section III.L.1 is an escalator clause providing that, in the event the actual number of workweeks during the class period is determined to be above the estimated number of workweeks by more than 10 percent, then the Defendant shall have the choice of increasing the gross settlement amount on a proportional basis or electing to end the class period on the date earlier.

The settlement also includes a subset PAGA class of Aggrieved Employees defined as "[A]ll current and former hourly-paid or non-exempt employees of [Defendant] in California during the PAGA Covered Period." (Agreement, § I.B.) The "PAGA Covered Period" means the time period from May 8, 2022 through the date of preliminary approval. (*Id.* at § I.Z.)

According to the terms of the settlement, Defendant will pay a gross settlement amount of $1,200,000, subject to the escalator clause. (Agreement, § I.U.) The gross settlement amount includes attorney fees of up to one-third of the gross settlement amount (currently estimated to be $400,000), litigation costs not to exceed $15,000, a PAGA allocation of $100,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments), an incentive awards in the total amount of $10,000; and settlement administration expenses not to exceed $32,500. (*Id.* at §§ III.L.3-III.L.7.) The net settlement amount will be distributed to participating class members on a pro rata basis according to the number of workweeks they were employed by Defendant. (*Id.* at § III.L.4.)

In its prior tentative decision, the court observed that the Agreement then stated that individual settlement checks remaining uncashed more than 180 days after mailing will be void and the funds would be distributed to the California Controller's Unclaimed Property Fund. The court stated that this procedure does not comply with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class members funds be given to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying

cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." The court asked the parties to meet and confer to designate a *cy pres* recipient.

As now amended, the Agreement provides that funds from individual settlement checks remaining uncashed after the void date will be transmitted to Legal Aid at Work, San Francisco, as the designated *cy pres* beneficiary. (Agreement, § III.L.5.) The court approves the designated *cy pres* recipient.

In exchange for the settlement, the class members agree to release Defendant, and related entities and persons, from all claims that were, or reasonably could have been, alleged based on the facts pleaded in the operative Complaint occurring during the Class Period. (Agreement, §§ I.DD, I.FF, III.B.) Aggrieved Employees agree to release Defendant, and related entities and persons, from all claims for PAGA civil penalties that were alleged based on facts pleaded in the operative Complaint and the LWDA notice. (Agreement, §§ I.EE, I.FF, III.C.) Plaintiffs also agree to a comprehensive general release. (*Id.* at § III.D.) The release provisions are appropriately tailored to the factual allegations of the operative pleading. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

B. Fairness of the Settlement

Plaintiffs state that the settlement was reached through discovery, analysis, and mediation with Michael Loeb, Esq. (Declaration of Shaun Setareh ("Setareh Dec."), ¶¶ 6-7.) Prior to mediation, Plaintiffs obtained information through informal discovery, including time keeping and payroll records for a sampling of the 4,181 Class Members, relevant employment policies and agreements, and aggregate data for the Class Members and Aggrieved Employees. (*Id.* at ¶ 6.) Plaintiffs' counsel asserts that the settlement is fair, reasonable, and adequate in light of the complexities of the case and the uncertainties of further litigation. (*Id.* at ¶ 7.)

Plaintiffs estimate that Defendant's total maximum potential exposure, including PAGA penalties, is $34,714,545.67. (Setareh Dec., ¶ 8.) This amount includes $7,384,599.08 in compensatory, non-penalty class claims, $19,945,347.50 in statutory penalties, and $7,145,000.00 in PAGA penalties. (*Ibid.*) Plaintiffs provide a more detailed breakdown of these amounts by claim. (*Ibid.*) Plaintiffs explain that they substantially discounted the value of the

compensatory claims because there is an extremely low likelihood that he will prevail on all the claims. (*Id.* at ¶ 9.) Plaintiffs details the significant risks associated with the various class claims, including the difficulty in proving intentional violations of specific Labor Code provisions as well as Defendant's contentions that its policies and practices are lawful. (*Ibid.*) Plaintiffs also explain that the risks of litigation are heightened due to the potential that Defendant's policies and practices are ultimately deemed to be legal, the risk that collective treatment could be deemed improper for other than settlement purposes, and the risk that any PAGA penalties could be significantly reduced by the court in its discretion. (*Ibid.*)

The proposed gross settlement amount of $1,200,000 represents approximately 3.5 percent of Defendant's estimated total potential exposure of $34,714,545.67. This amount is below the general range of percentage recoveries that California court typically find to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases approving settlements in the range of 5 to 35 percent of the maximum potential exposure].) Nevertheless, although the settlement is low, the court finds that Plaintiffs' detailed analysis sufficiently explains the rationale for the settlement amount. (See Setareh Dec., ¶ 9.)

The court has reviewed Plaintiffs' written submissions in support of the proposed settlement. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation. Based on the circumstances of the case, including the relative strengths of Plaintiffs' case and Defendant's arguments in defense, the court finds the terms of the settlement to be fair.

C. Incentive Award, Fees and Costs

Plaintiffs request enhancement awards in the total amount of $10,000 ($5,000 each).

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

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

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

In his supporting declaration, Plaintiff Waltrip states that his participation in this action has included researching law firms, ongoing communication with his attorneys, gathering and reviewing documents, and attending an all-day mediation. Plaintiff Waltrip estimates that he has spent approximately 25 hours participating in this litigation.

In her supporting declaration, Plaintiff Broadnax states that her participation in this action has included ongoing communication with her attorneys and gathering and reviewing documents. (See Plaintiff Broadnax's Declaration filed with the Patino Dec., Ex. F.) Plaintiff Broadnax estimates that she has spent approximately 25 hours participating in this litigation.

Plaintiffs point out that there is a public record of this lawsuit, and that they took risk by attaching their names to this case because it might impact future employment. (See *Covillo v. Specialty's Café* (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].)

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

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees of up to one-third of the maximum settlement amount (currently estimated to be $400,000), and litigation costs not to exceed $15,000. Prior to the final approval hearing, Plaintiffs' counsel shall submit lodestar information (including hourly rate and hours worked), evidence of actual costs incurred, and evidence of settlement administration costs. The court approves Phoenix Settlement Administrators as the settlement administrator.

D. Conditional Certification of Class

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

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

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

As explained by the California Supreme Court,

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

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

Plaintiffs state there are approximately 4,181 class members, who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiffs as class representatives. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

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

Here, the notice describes the lawsuit, explains the settlement, and informs class member that they may opt out of the settlement or object. (Agreement, Ex. 1.) The settlement amounts, including attorney fees and payment to the named plaintiff, are stated.

In its prior minute order, the court asked counsel to make certain changes to the notice, including a clarification that class members may object orally at the final approval hearing, instructions regarding attendance of the final approval hearing remotely, and the change with respect to the *cy pres* designation. Plaintiffs have since submitted a revised class notice making the changes requested by the court, as well as additional modifications related to the addition of Plaintiff Broadnax as a named plaintiff.

Accordingly, the class notice is approved.

IV. Conclusion

The motion for preliminary approval of the settlement is GRANTED. The court sets a final approval hearing for May 21, 2025, at 1:30 p.m. in Department 19. At least ten courts days prior to the hearing, Plaintiffs' counsel shall submit supplemental declaration(s) containing information regarding the notice process and other information requested by the court, including that relating to attorney fees and costs and settlement administration expenses.

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

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Calendar Line 10

Case Name: Milon v. David & Esperanza Chavez Limited Partnership DBA Chavez Supermarket (Class Action)
Case No.: 20CV368379

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 20, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a putative class action and representative action arising out of alleged wage and hour violations. On July 17, 2020, Plaintiff Yuri Milon ("Milon") commenced this action by filing a Class Action Complaint against Defendant David & Esperanza Family Limited Partnership DBA Chavez Supermarket ("Defendant"), alleging various wage and hour violations (the "*Millon* Action").

On December 1, 2020, Olimpia Meza Pelayo ("Pelayo") commenced a separate action against Defendant in this court, captioned *Oliva Meza Pelayo v. David & Esperanza Family Limited Partnership DBA Chavez Supermarket*, Case No. 20CV373672, setting forth various wage and hours claims as well as a cause of action for civil penalties pursuant to the Private Attorneys General Act ("PAGA") (the "*Pelayo* Action"). On April 19, 2021, Pelayo filed a First Amended Class Action Complaint against Defendant in the *Pelayo* Action.

The Parties in the *Milon* Action and the *Pelayo* Action have reached a settlement that would resolve the claims alleged in both actions. (See Joint Stipulation Granting Plaintiff Leave to File First Amended Complaint; Order Thereon, p. 1:25-27.) On February 23, 2024, the court entered an order on the Parties' stipulation granting Milon leave to file a First Amended Complaint ("FAC"), which was deemed filed as of that date.

The FAC is brought in the name of Plaintiffs Milon, Pelayo, and Emilio Lopez ("Lopez") (collectively, "Plaintiffs") against Defendant and sets forth the following causes of action: (1) violation of Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code sections 226.7 and 512, subdivision (a) (unpaid meal period premiums); (3) violation of Labor Code section 226.7 (unpaid rest period premiums); (4) violation of Labor Code section 226.7; (5) violation of Labor Code sections 201 and 202 (final wages not timely

paid); (6) violation of Labor Code section 204 (wages not timely paid during employment); (7) violation of Labor Code section 226, subdivision (a) (non-compliant wage statements); (8) violation of Labor Code section 1174, subdivision (d) (failure to keep requisite payroll records); (9) violation of Labor Code section 227.3 (failure to pay vacation wages); (10) violation of Labor Code sections 2800 and 2802 (unreimbursed business expenses); (11) violation of Business and Professions Code section 17200, *et seq.*; and (12) violation of Labor Code section 2698, *et seq.* (PAGA).

Now before the court is Plaintiffs' motion for preliminary approval of the Parties' settlement. The motion is unopposed. At the hearing on October 2, 2024, the court asked the parties to meet and confer regarding the designation of a *cy pres* recipient, asked Plaintiffs' counsel to provide further information relating to the fairness of the settlement and to make minor changes to the class notice.

On November 5, 2024, Plaintiffs' counsel filed supplemental materials in response to the court's requests. As discussed below, having reviewed these supplemental materials, the court now GRANTS the motion for preliminary approval.

II. Legal Standard for Settlement Agreements

A. Class Action

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

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

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

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The trial court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, citation and internal quotation marks omitted.)

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

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B. PAGA

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

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77.) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp*. (N.D. Cal. 2019)

383 F. Supp. 3d 959, 971 ["when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

III. Discussion

A. Provisions of the Settlement

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

> [A]ll current and former non-exempt employees of Defendant employed in California during the Class Period ["the time period from July 17, 2016 through July 25, 2023, or, if applicable, the Alternate End Date pursuant to Paragraph 55"].

(Declaration of Yasmin Hosseini ("Hosseini Dec."), Ex. 1 ("Agreement"), ¶¶ 7, 9.) The settlement also includes a subset class of "PAGA Members," defined as:

> [A]ll current and former non-exempt employees of Defendant employed in the State of California during the PAGA Period ["the time period from August 19, 2019 through July 25, 2023, or, if applicable, the Alternate End Date pursuant to paragraph 55"].

(Agreement, ¶¶ 28-29.) Paragraph 55 is an escalator clause providing that, if it is determined that the actual total number of workweeks exceeds Defendant's estimated figure by more than five percent, Defendant has the option to either (a) increase the gross settlement amount proportionately; or (b) alter the end date of the Class Period and PAGA Period to the date that the five percent threshold was reached (the "Alternate End Date"). (*Id.* at ¶ 55.)

Under the terms of the Agreement, Defendant will pay a gross settlement amount of $3,500,000, subject to the provisions of Paragraph 55. (Agreement, ¶ 19.) This amount includes attorney fees of up to 35% of the gross settlement amount (currently estimated to be $1,225,000), litigation costs of up to $32,000, settlement administration costs of up to $25,000,

a total of $36,000 in enhancement awards to Plaintiffs ($12,000 each), and a PAGA allocation of $350,000. (*Id.* at ¶¶ 19, 54(a)-(e).) The court approves ILYM Group, Inc. as settlement administrator. (*Id.* at ¶ 36.)

The net settlement amount will be distributed to participating class members on a pro-rata basis according to the number of workweeks worked during the Class Period. (Agreement, ¶ 54(f).) Similarly, individual PAGA payments will be distributed to PAGA Members on a pro-rata basis according to the number of workweeks worked during the PAGA Period. (*Id.* at ¶ 54(e).)

In its prior tentative decision, the court observed that the Agreement then stated that individual settlement checks remaining uncashed more than 180 days after mailing will be void and the funds would be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law. The court stated that this procedure does not comply with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class members funds be given to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." The court asked the parties to meet and confer to designate a *cy pres* recipient.

As now amended, the Agreement provides that funds from individual settlement checks remaining uncashed after the void date will be transmitted to Leadership Counsel for Justice & Accountability as the designated *cy pres* beneficiary. (Agreement, ¶ 65.) The court approves the designated *cy pres* recipient.

In exchange for the settlement, the class members agree to release Defendant, and related entities and persons, from all claims that arise during the Class Period that were asserted or that could have been asserted based on the facts or allegations in the FAC. (Agreement, ¶¶ 33, 38, 51.) PAGA Members agree to release Defendant, and related entities and persons, from all claims for PAGA civil penalties that were asserted or that could have been asserted based on the facts or allegations in the FAC and the LWDA notice. (*Id* at ¶¶ 33,

39, 53.) Plaintiffs also agree to a comprehensive general release. (*Id.* at ¶ 52.) The release provisions are appropriately tailored to the factual allegations of the operative pleading. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

B. Fairness of the Settlement

Plaintiffs assert that the Agreement represents a fair, reasonable, and adequate resolution of their claims against Defendant. (Hosseini Dec., ¶ 11.) Plaintiffs' counsel litigated the case for over three years and was preparing for class certification and trial. (*Ibid.*) The Parties engaged in extensive settlement discussions and participated in a full-day mediation with Jeffrey A. Ross, Esq. (*Ibid.*)

Prior to reaching the settlement, Plaintiffs' counsel investigated Plaintiffs' claims and conducted both formal and informal discovery. (Hosseini Dec., ¶ 12.) Plaintiff Milon responded to discovery propounded by Defendant. (*Ibid.*) Plaintiffs' counsel reviewed and analyzed data and documents, including a detailed sampling of Class Members' time and pay data, various employee handbooks and timekeeping training manuals, new hire paperwork and meal period waivers. (*Ibid.*)

Plaintiffs state that the Parties reached a settlement based on a large volume of facts, evidence, and investigation. (Plaintiffs' Notice of Motion and Motion; Memorandum of Points and Authorities, p. 12:6-7.) Plaintiffs state that the settlement was calculated using the information and data uncovered during litigation, case investigation, and the informal exchange of information. (*Id.* at p. 12:13-14.) They explain that the settlement considers the potential risks and rewards in the matter at issue. (*Id.* at p. 12:15-16.)

In its prior tentative decision, the court observed that Plaintiffs' written submissions in support of the motion for preliminary approval did not offer any estimate of the value of their claims, either separately or as whole. The court also stated that the gross settlement amount of $3.5 million is substantial but observed that the Agreement purports to settle the claims of approximately 3,139 individuals over a period of seven years. The court asked Plaintiffs' counsel to provide further information supporting the assertion that the settlement is fair, reasonable, and adequate, including a more detailed explanation regarding the value of Plaintiffs' claims.

On November 5, 2024, Plaintiffs' counsel submitted a supplemental declaration in response to the court's requests. (See Supplemental Declaration of Yasmin Hosseini [] ("Supp. Hosseini Dec.").) Counsel has now provided a breakdown of the potential value of Plaintiffs' claims as well as information regarding the discounts applied to the claims. (*Id.* at ¶ 7.) Based on the figures provided by Plaintiffs' counsel, the estimated total potential value of Plaintiffs' claims is $48,893,074. (*Ibid.*) After applying Plaintiffs' initial discounts based on the risks associated with class certification (or, in the case of PAGA penalties, the risks associated with possible bifurcation of discovery or trial), the total more realistic value of Plaintiffs' claims is $18,693,551. (*Ibid.*)

Therefore, the proposed settlement amount of $3,500,000 is approximately 7.1 percent of the estimated total potential value of Plaintiffs' claims and approximately 18.71 percent of the estimated more realistic value of Plaintiffs' claims. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases approving settlements in the range of 5 to 35 percent of the maximum potential exposure].) Plaintiffs' counsel also explains that the PAGA allocation represents 10 percent (not one percent as the court's prior tentative decision indicated). (Supp. Hosseini Dec., ¶¶ 12-13.) In sum, the court finds that Plaintiffs have sufficiently explained the rationale for the settlement amount.

The court has reviewed Plaintiffs' written submissions in support of the proposed settlement. After reviewing counsel's supplemental declaration, the court is now persuaded that the terms of the settlement are fair, reasonable, and adequate. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation. Based on the circumstances of the case, including the relative strengths of Plaintiffs' case and Defendant's arguments in defense, the court finds the terms of the settlement to be fair.

C. Enhancement Award, Attorney Fees and Costs

Plaintiffs request enhancement awards in the total amount of $36,000 (i.e., $12,000 each).

> The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit.

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

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

The three Plaintiffs have each submitted declarations generally describing their participation in this action, which has included communication with counsel, searching for documents, and reviewing the pleadings and proposed settlement. Plaintiffs Milon, Pelayo, and Lopez also provide estimates of the number of hours they have spent participating in this litigation: 25, 24, and 21 hours, respectively.

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

Here, enhancement awards are justified. Nevertheless, the amounts requested, in relation to the times spent on the litigation, are higher than the court normally awards. Therefore, the court approves enhancements awards in the amount of $5,000 to each of the Plaintiffs, for a total of $15,000 in approved enhancement awards.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees of up to 35% of the maximum settlement amount (currently estimated to be $1,225,000), and litigation costs not to exceed $32,000. Prior to any final approval hearing, Plaintiffs' counsel shall submit lodestar information (including hourly rate and hours worked), evidence of actual costs incurred, and evidence of settlement administration costs.

D. Conditional Certification of Class

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

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

As explained by the California Supreme Court,

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

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

Plaintiffs state there are approximately 3,139 class members who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiffs as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

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

Here, the notice describes the lawsuit, explains the settlement, and instruct class member that they may opt out of the settlement or object. (Agreement, Ex. A.) The settlement amounts, including attorney fees and payment to the named plaintiff, are stated. In its prior tentative decision, the court requested that the following changes be made to the notice: (1) clarifying that class members may object by appearing at the final fairness hearing without filing a written objection; (2) correcting the address of the court; (3) including specific instructions regarding remote attendance of the final fairness hearing; and (4) inclusion of the designated *cy pres* recipient.

Plaintiffs have provided an amended class notice generally addressing the changes requested by the court and including additional modifications. (Supp. Hosseini Dec., Ex. C (redline version).) However, the penultimate paragraph of Section 3 of the notice still indicates that funds from individual settlements checks remaining uncashed after the void will be sent to the Controller of the State of California. This part of the notice should be amended to indicate the parties' designation of the Leadership Counsel for Justice & Accountability at the *cy pres* recipient. Provided that this change is made prior to the mailing of the notice, the amended class notice is approved.

IV. Conclusion

The motion for preliminary approval of the settlement is GRANTED. The court sets a final approval hearing for May 21, 2025, at 1:30 p.m. in Department 19. At least ten courts days prior to the hearing, Plaintiffs' counsel shall submit supplemental declaration(s) containing information regarding the notice process and other information requested by the court, including that relating to attorney fees and costs and settlement administration expenses.

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

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