SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

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

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department7@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: MARCH 21, 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	19CV345534	Palomino v. Northrop Grumman Systems Corporation	See Line 1 for tentative ruling.
LINE 2	22CV399340	Jamie Komen Revocable Trust v. Page, et al. (Alphabet Inc.) [Shareholder Derivative]	Rescheduled to September 12, 2024 at 1:30 p.m.
LINE 3	19CV342636	Juarez v. Palo Alto Community Child Care (Class Action)	See Line 3 for tentative ruling.
LINE 4	21CV376394	Hicks v. California Water Service (Class Action)	See Line 4 for tentative ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 5	22CV397353	Barajas Maya v. United Facilities Group, Inc. (Class Action)	See Line 5 for tentative ruling.
LINE 6	22CV401148	Barajas Maya v. United Facilities Group, Inc. (PAGA)	See Line 5 for tentative ruling.
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Esteban Palomino v. Northrop Grumman Systems Corp., et al.*
Case No.: 19CV345534

This is a class and Private Attorneys General Act ("PAGA") action alleging wage statement violations against Defendant Northrop Grumman Systems Corporation ("Northrup" or "Defendant"). Following a two-day bench trial in January 2023, along with consideration of post-trial briefing and objections to a Proposed/Tentative Statement of Decision, the Court issued its Final Statement of Decision on November 2, 2023, finding that Northrup failed to provide wage statements that complied with Labor Code Section 226 ("Section 226") by (1) using two-separate wage-related documents to provide all legally-required information instead of one, (2) not listing the correct employer name and (3) not permitting a reasonable employee to use simple math to calculate total hours worked when overtime hours were listed on the pay statement. The Court awarded $1,199,800 in classwide damages and $3,160,950 in civil PAGA penalties based on Northrup's violation of subdivision (a)(8) of Section 226. Plaintiff was therefore adjudged the prevailing party and entitled to recover his costs of suit pursuant to a memorandum of costs.

Before the Court is Northrup's motion to strike, or in the alternative, to tax costs, which is opposed by Defendant.[1] As discussed below, Northrup's motion to strike Plaintiff's memorandum of costs is DENIED. Northrup's alternative motion to tax costs is GRANTED IN PART and DENIED IN PART as detailed below.

I. NORTHRUP'S MOTION TO STRIKE, OR IN THE ALTERNATIVE, TAX COSTS

A. Legal Standard

A "prevailing party" is generally entitled, as a matter of right, to recover costs of suit in any action or proceeding. (Code Civ. Proc., § 1032, subdivision (a).) "Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation [and] . . . shall be reasonable in amount." (Code Civ. Proc., § 1033.5, subd. (c)). As its initial burden, the party seeking costs need only submit a memorandum of costs with a statement by the attorney verifying that the costs claimed are correct and were necessarily incurred in the case. (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1267.) "If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they were not reasonable or necessary. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on

[1] In its December 14, 2023 Minute Order, the Court established a briefing schedule for this motion which provided that any opposition to the motion to strike was due on February 1, 2024. However, Plaintiff did not file an opposition to this motion until March 8, 2024, over a week after Northrup filed a reply citing Plaintiff's non-opposition. Plaintiff explains that due to an internal clerical error, his counsel calendared the deadline to oppose the instant motion based on Code of Civil Procedure section 1005, subdivision (b), rather than the specific briefing schedule set by the Court. Despite the clear tardiness of Plaintiff's opposition, in the interests of deciding this matter on the merits, and the apparent lack of prejudice to Northrup as it submitted a substantive reply, the Court will consider the substance of its contents.

the party claiming them as costs." (*Ladas v. California State Auto. Assn.* (1993) 19 Cal. App. 4th 761, 774 (*Ladas*).) Here, Plaintiff's memorandum of costs consists of filing and motion fees, expenses for depositions, costs incurred in effecting service, costs incurred for court-ordered transcripts, costs incurred in connection with exhibits, court reporter fees, travel expenses, and expert fees.

Northrup moves to strike Plaintiff's memorandum in its entirety on the ground that it fails to provide any detail about the costs incurred or supporting documentation. In the alternative, Northrup challenges various costs included in Plaintiff's memorandum as improper, unreasonable, and/or not reasonably necessary. Specifically, Northrup moves to strike or tax the following amounts: (1) $3,007.02 in court transcripts (item 9); (2) $642.50 in court reporter fees (item 11); (3) $2,258.26 in costs associated with photocopies of exhibits; (4) $4,975 in mediation fees; (5) $12,568.03 in expert costs associated with the engagement of EconOne (item 16); and (6) $3,057.72 in travel-related expenses.

B. Discussion

1. *Plaintiff's Entitlement to Costs Generally*

As a general matter, the "right to recover costs exists solely by virtue of statute." (*Murillo v. Fleetwood Enterprises, Inc.* (1998) 17 Cal.4th 985, 989 (*Murillo*).) Here, the claimed basis for Plaintiff's request for costs is Code of Civil Procedure section 1032 ("Section 1032") which, as set forth above, provides that "[e]xcept as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subd. (b).) Thus, a prevailing party's right to recover costs under Section 1032 is *mandatory* except as otherwise expressly provided statute. In order to recover costs, the prevailing party "must file and serve a memorandum of costs … [t]he memorandum must be verified by a statement of the party, attorney, or agent that to the best of his or her knowledge the items of cost are correct and were necessarily incurred in the case." (Cal. Rules of Court, rule 3.1700(a)(1).)

Because it is undisputed that Plaintiff is the prevailing party in this action (see Code Civ. Proc., § 1032, subd. (a)(4), the only issue before the Court as to Northrup's request to strike Plaintiff's cost memorandum in its *entirety* is whether there exists an applicable exception to Section 1032, subdivision (b).

The stated basis for Northrup's request to strike Plaintiff's costs memorandum in its entirety is that Plaintiff has not submitted supporting documentation. Northrup acknowledges that "[t]here is no requirement that copies of bills, invoices, statements, or any other such documents must be attached to the memorandum" (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1267), but explains that "if the costs have been put in issue via a motion to tax costs [,] supporting documentation must be submitted." (*Id.*) This foregoing quote does not paint an entirely accurate picture of the burdens on a motion to tax costs. While the "mere filing a motion to tax costs may be a 'proper' objection to an item, the necessity of which appears doubtful, or which does not appear to be proper on its face," "[i]f the items appear to be proper charges the verified memorandum is prima facie evidence that the costs, expenses and services therein listed were necessarily incurred by the [party seeking costs] [citations], and the burden of showing that an item is not properly chargeable or is unreasonable is upon the [*objecting party*]." (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131, internal citations omitted.)

Thus, the fact that Plaintiff has not submitted supporting documentation with his memorandum of costs does not, by itself, provide a basis to strike the memorandum in its entirety. Northrup otherwise does not identify a statutory exception to Plaintiff's entitlement to recover costs as the prevailing party and thus its motion to strike the cost memorandum must be DENIED.

2. *Reasonableness and Necessity of Plaintiff's Costs*

As set forth above, Northrup moves in the alternative to strike or tax the following amounts: (1) $3,007.02 in court transcripts (item 9); (2) $642.50 in court reporter fees (item 11); (3) $2,258.26 in costs associated with photocopies of exhibits (item 12); (4) $4,975 in mediation fees (item 16); (5) $12,568.03 in expert costs associated with the engagement of EconOne (item 16); and (6) $3,057.72 in travel related expenses (item 16).

Where a party seeks to tax costs sought by the prevailing party, "[t]he court's first determination … is whether the statute expressly allows the particular item, and whether it appears proper on its face. If so, the burden is on the objecting party to show them to be unnecessary or unreasonable." (*Nelson, supra,* 72 Cal.App.4th at 131.) "Whether a cost item was reasonably necessary to the litigation presents a question of fact for the trial court …." (*Ladas, supra,* 19 Cal.App.4th at 774.)

Items explicitly allowed as costs are set forth in Code of Civil Procedure section 1033.5 ("Section 1033.5"), subdivision (a). Items expressly disallowed as costs are set forth in section 1033.5, subdivision (b). Other costs may be allowed or denied in the court's discretion. (Code Civ. Proc., § 1033.5, subd. (c)(4).) "Any award of costs shall be subject to the following: [¶] (1) Costs are allowable if incurred, whether or not paid. [¶] (2) Allowable costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation. [¶] (3) Allowable costs shall be reasonable in amount." (Code Civ. Proc., § 1033.5, subd. (c)(1)-(3).)

a. <u>Item 9: $3,007.02 (Court Transcripts)</u>

Plaintiff seeks $3,007.02 for fees incurred for transcripts for the following four hearings: (1) "January 23, 2023- Trial"; (2) "January 23, 2023- Trial Exhibits in Transcript"; (3) "January 24, 2023- Trial"; and (4) "June 9, 2023 – Oral Argument." (Memo. at 5.)

Section 1033.5 provides for the recovery of "[t]ranscripts of court proceedings ordered by the court." (Code Civ. Proc., § 1033.5, subd. (a)(9).) Northrup maintains that these costs should be stricken because the Court did not order any transcripts in this action, it already paid an invoice for the transcript fees for the June 9, 2023 oral argument, and as Plaintiff has not provided any supporting documentation or invoices, it is "far from clear that Plaintiff actually paid [this] amount[s]" or that the item is "reasonable in amount and reasonably necessary to the conduct of this litigation." (Mtn. at 10:15-16.)

While it is true that there is no formal court order requesting a transcript of any of the hearings in this matter, in support of his opposition, Plaintiff submits copies of an email exchange dated September 5, 2023, between the Court (via the complex coordinator) and counsel for both sides wherein the Court requested a copy of the trial transcript, i.e., the January 23 and 24, 2023 hearings. (See Declaration of Kristen Agnew in Support of Opposition to Motion to Strike or Tax Costs ("Agnew Decl."), ¶ 2, Exhibit A.) For the

purposes of Section 1033.5, the Court believes this establishes that the trial transcripts were "ordered by the court" and thus are recoverable as costs by Plaintiff. However, it does appear, based on materials submitted by Northrup in support of its motion, that it already paid fees incurred for the transcript produced for the June 9, 2023 hearing and therefore this amount is not recoverable by Plaintiff. (See Declaration of Jesse A. Cripps in Support of Motion Strike or Tax Costs ("Cripps Decl."), ¶ 3, Exhibit 2.) As for the issue of documentation, as stated above, documentation is not required to substantiate costs unless they do not appear proper on their face or the objecting establishes that they are unnecessary or unreasonable. (*Nelson, supra,* 72 Cal.App.4th at 131.) Northrup simply arguing that these costs, which *do* appear to the court to be facially proper, are not reasonable in amount or reasonably unnecessary, without more, is insufficient to establish as much and place the burden on Plaintiff to make such a showing.

Therefore, the Court strikes the transcript costs for June 9, 2023 ($186.02) but will not strike the remaining amount ($2,820.40).

b. Item 11: $642.50 (Court Reporter Fees)

Plaintiff requests $642.50 in court reporter fees incurred for the October 29, 2020 hearing and the January 18, 2023 hearing.

Section 1033.5 provides for the recovery of "court reporter fees as established by statute." (Code Civ. Proc., § 1033.5, subd. (b)(11).) Northrup maintains that the $642.50 in court reporter fees claimed by Plaintiff are not recoverable essentially for the same reasons it maintains the transcript fees are not, i.e., transcripts were not ordered by Court and Plaintiff has not established that these amounts are reasonable or were necessary. In its reply, it notes that Plaintiff has not identified any statute authorizing court reporter fees.

Indeed, Plaintiff has not identified any statutory basis for recovery of court reporter fees, merely asserting in his opposition that because court reporters are no longer provided by the Court "it cannot be disputed that transcripts of … proceedings are absolutely essential to litigation." Further, there is no indication from Plaintiff that transcripts for the October 29, 2020 and January 18, 2023 hearings were ordered by the Court or were otherwise "reasonably necessary." As such, the Court will strike $642.50 in court reporter fees in item 11 of Plaintiff's cost memorandum.

c. Item 12: $2,258.26 (Photocopies of Exhibits)

This amount is comprised of $81.50 for "Binding costs for Opposition to Petition for Writ of Mandate," $635.81, $786.21 and $595.64 for "trial exhibits" and $159.10 for "trial binders."

Section 1033.5 provides for the recovery of costs incurred on "[m]odels, the enlargements of exhibits and photocopies of exhibits … if they were reasonably helpful to aid the trier of fact." (Code Civ. Proc., § 1033.5, subd. (a)(13).) Northrup argues that these amounts should be stricken because they are only recoverable "if they were reasonably helpful to the trier of fact" and it follows that "fees are not authorized for exhibits not used at trial." (Mtn. at 10:24-26, quoting *Ladas, supra,* 19 Cal.App.4th at 775.) Northrup explains that Plaintiff only used 33 percent of their exhibits because of the 70 on his exhibit list, only 23

were admitted at trial, and thus if the Court is inclined to order reimbursement of copying costs, it should only order reimbursement for the exhibits that were actually admitted. It continues that Section 1033.5 does not contemplate costs for "binding" or assembly of "binders," but only contemplates *demonstrative* exhibits made for trial.

The Court agrees that the statute contemplates demonstrative exhibits, and thus the costs incurred to prepare trial binders and the writ petition are *not* recoverable under subdivision (a)(13). However, it disagrees with the notion that a party cannot recover costs for exhibits that were ultimately not admitted at trial. While costs for such exhibits would not be recoverable under subdivision (a)(13) since they were not admitted and, by definition, not "reasonably helpful" to the trier of fact, such costs are recoverable because they were "reasonably necessary to the conduct of the litigation" under subdivision (c)(4). (See, e.g., *Applegate v. St. Francis Lutheran Church* (1994) 23 Cal.App.4th 361, 364 [holding that it was within trial court's discretion to allow costs for exhibits made for a trial that was never held because the plaintiff dismissed the action on the day of trial; until the dismissal was filed, the defendants were "forced to continue preparing for trial" and therefore those exhibits were "reasonably necessary to the conduct of the litigation."].) Here, while not all of the exhibits prepared by Plaintiff were admitted, they were part of his counsel's preparation for trial and thus reasonably necessary to the conduct of the litigation. Consequently, the Court will not strike the "trial exhibits" costs from Plaintiff's memorandum.

d. Item 16: $4,975 (Mediation Fees)

Northrup next argues that Plaintiff cannot recover mediation costs because there is no statutory basis for their recovery and courts do not allow cost reimbursement for mediation where the parties agreed to each pay half up front, as was the case here. The Court does not find either of these contentions persuasive.

Section 1033.5, subdivision (c)(4), authorizes the court to exercise its discretion to award costs for items not specifically allowed nor prohibited under subdivisions (a) and (b) as long as they are "reasonably necessary to the conduct of the litigation." This includes costs incurred for mediation, which is "not statutorily proscribed." (*Gibson v. Bobroff* (1996) 49 Cal.App.4th 1202, 1206, 1210, citing Code Civ. Proc., § 1033.5, subd. (b) [affirming trial court's order awarding fees incurred for court-ordered mediation to prevailing party after rejecting the appellant's argument that the Legislature did not intend mediation expenses to be recoverable as Section 1033.5 costs, reasoning that "[h]ad the Legislature intended to exclude mediation expenses from items allowable as costs, it would have been a simpler matter to have listed them in section 1033.5, subdivision (b), as an item which could not be awarded," and concluding that the trial court could properly hold that such costs were, based on the circumstances before it, "reasonably necessary to the conduct of the litigation."].)

Citing *Anthony v. Xiaobin Li* (2020) 47 Cal.App.5th 816, 825, where the appellate court affirmed the lower court's order taxing mediation fees and costs because the parties agreed to share them, Northrup insists that because the parties each paid half of the mediation costs up front, Plaintiff should not be permitted to recover his share. But *Xiaobin* is distinguishable because the parties actually had a written agreement which expressly provided that they would share the costs of court-ordered mediation. Here, not only is there no indication that the mediation was court-ordered, but there is also no indication of an express agreement that the

costs of mediation would be shared equally by parties rather than equally fronted by the parties.

Despite this, the Court in inclined to agree with Northrup that Plaintiff is not entitled to recover these costs as he fails to establish that mediation was "reasonably necessary to the conduct of the litigation," especially when it does not appear to have been ordered by the Court. Given that mediation costs are not expressly listed under Section 1033.5 as recoverable, the Court cannot determine if they are facially proper as it can with other expressly allowable costs, and thus the burden is on Plaintiff to establish the reasonable necessity of the mediation. As Plaintiff has failed to make this showing, the Court strikes the mediation costs from Plaintiff's cost memorandum.

e. Item 16: $12,568.03 (Expert Costs- EconOne)

Item 16 in Plaintiff's memorandum is comprised of the following "expert fees": $870.20 (EconOne December 8, 2022); $4,695.38 (EconOne January 10, 2023); and $7,002.45 (EconOne February 14, 2023). Northrup asserts that these amounts are not recoverable as costs because the expert witness identified by Plaintiff- Dr. Kriegler- was not ordered or appointed by the Court, with Plaintiff electing to bring him in as an expert on the eve of trial. (See Cripps Decl., ¶ 6, Exhibit 5.)

Under Section 1033.5, expert fees are recoverable if "ordered by the court." (Code Civ. Proc., § 1033.5; see *Sanchez v. Bay Shores Medical Group* (1999) 75 Cal.App.4th 946, 950 ["an expert witness ordered by the court is one who has been appointed by the court pursuant to Evidence Code section 730 or other statutory authority"].) Where an expert has *not* been ordered by the court, it is "not allowable as costs, *except* when expressly authorized by law." (Code Civ. Proc., § 1033.5, subd. (b)(1); *Sanchez, supra,* 75 Cal.App.4th at 950 ["In the absence of an order of the trial court appointing an expert witness, the fees of an expert witness are *not* recoverable as costs under [Section] 1032."].) Here, Plaintiff implicitly admits that none of the experts who are associated with these fees were ordered by the Court by leaving blank section 8.c. of the Memorandum of Costs, entitled "court-ordered expert fees." "In the absence of an order of the trial court appointing an expert witness, the fees of an expert witness are *not* recoverable as costs under [Section] 1032." (*Sanchez, supra,* 75 Cal.App.4th at 950, emphasis added.) Plaintiff insists Northrup should pay these fees because this expert's work was "instrumental" in his case, but "[t]he fact that an expert is necessary to present a party's case does not mean that expert has been ordered by the court for purposes of recovery of expert witness fees as costs." (*Id.*)

Thus, because there is no indication that the expert at issue was ordered by the Court, Plaintiff is not entitled to recover $12,568.03 for his engagement of EconOne and these amounts are stricken.

f. Item 16: $3,057.72 (Travel Expenses)

Finally, Plaintiff claims $3,057.72 in lodging and travel costs, including transportation, hotel and meal charges. Northrup asserts that these charges should be stricken because only deposition-related travel and lodging costs are recoverable by right, and Plaintiff has not specified which of the costs he seeks relate to depositions, and also Plaintiffs has not

demonstrated that any of the costs were reasonably necessary for the litigation rather than being "merely convenient or beneficial."

Indeed, the only travel expenses *expressly* authorized by Section 1033.5 are those incurred to attend depositions. (Code Civ. Proc., § 1033.5, subd. (a)(3).) In his opposition, Plaintiff does not articulate what portion of these expenses, if any, were incurred to attend depositions, and in fact, in stating that they were incurred "in connection with attorney travel for trial and oral argument," seemingly admits that they were *not* incurred to attend depositions. (Opp. at 7:19-20.) Additionally, while it is of course true that the Court possesses the discretion to allow such costs (see Section 1033.5, subd. (c)(4)), they must be reasonably necessary for the litigation, and this Court questions whether they were given that most of the proceedings in this action, including the trial, were conducted remotely over the phone and videoconference. Given this, the Court agrees that these amounts should be stricken.

II. CONCLUSION

Northrup's motion to strike Plaintiff's memorandum of costs in its entirety is DENIED. Northrup's alternative motion to strike is GRANTED IN PART and DENIED IN PART. The Court strikes the following amounts from the cost memorandum: $186.02 (transcript costs); $642.50 (court reporter fees); $81.50 ("Binding costs for Opposition to Petition for Writ of Mandate"); $159.10 ("trial binders"); $4,975 (mediation Fees); $12,568.03 (expert costs-EconOne); and $3,057.72 (travel expenses). The motion to tax is denied as to the remaining amounts at issue.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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

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

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Calendar Line 2

Case Name:
Case No.:

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Calendar Line 3

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

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

Before the Court is Plaintiff's motion for preliminary approval of settlement, which is unopposed. Subject to the changes to the notice discussed below, the Court GRANTS Plaintiff's motion for preliminary approval.

I. BACKGROUND

A. Factual

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

B. Procedural

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

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

Generally, "questions whether a [class action] settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and

whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

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

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

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

B. PAGA

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

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

the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

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

III. SETTLEMENT PROCESS

As part of the Plaintiff's counsel's investigation into Plaintiff's claims, the parties engaged in extensive informal discovery, with Defendant producing a class wide sampling of time records, payroll records, sample pay stubs, written policies including the employee handbooks in effect during the Class Period, and other relevant information. Defendant also provided information regarding the number of putative class members, the number of current versus former employees, the total workweeks and pay periods worked by the Class, and the Class Members' average rate of pay. These materials allows Plaintiff to conduct a class-wide assessment and analysis of the potential value of her claims.

On January 24, 2020, the parties participated in a mediation session before Tripper Ortman, an experienced wage and hour class action neutral, but were unable to resolve this action. The parties agreed to a brief stay in order to continue informal efforts to resolve the dispute, but were still unable to reach a resolution.

In November 2020, Plaintiff served her initial set of written discovery and a notice to depose Defendant's Person Most Knowledgeable. Approximately three months later, Defendant represented to Plaintiff that it was undergoing significant financial difficulties that would potentially impact its ability to fund a class-wide judgment and proceed with litigation.

In October 2022, the parties again agreed to attempt to resolve the matter with private mediation, this time before mediator Jeff Krivis, which ultimately took place on March 23, 2023. In the interim, Defendant agreed to and did provide updated time and payroll records, as well as updates to its policies. With Mr. Krivis' assistance, the parties were eventually able to resolve their dispute, fully executing the resulting Joint Stipulation of Class Action and Settlement Agreement which is now before the Court.

IV. SETTLEMENT PROVISIONS

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

The net settlement will be allocated to Class Members on a pro rata basis based on the number of weeks worked during the Class Period, which is defined as February 14, 2015 to

July 24, 2023. For tax purposes, settlement payments will be allocated 10% to wages, 30% to interest and 60% to penalties. The employer side payroll taxes on the settlement payments will be paid by Defendant separately from, and in addition to, the gross settlement amount. 100% of the PAGA settlement to "Aggrieved Employees" will be allocated to penalties. Funds associated with checks uncashed after 180 days will be distributed to the Controller of the State of California to be held pursuant to Unclaimed Property Law.

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

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

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

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

V. FAIRNESS OF SETTLEMENT

Based on a review of available data, Plaintiff's counsel performed a comprehensive damages analysis and estimated Defendant's maximum exposure for each claim at the following amounts: $3,584,279.42 (meal and rest period violations); $1,050,861.09 (unpaid overtime and minimum wages); $1,995,436.80 (waiting time penalties); $440,000 (inaccurate wage statements); $9,358,100 (non-duplicative PAGA penalties, which includes penalties for the failure to reimburse business-related expenses).

However, Plaintiff's counsel arrived at the settlement amount by offsetting or reducing Defendant's maximum theoretical liability by: the risk of class certification being denied due to potential individualized issues; Defendant's arguments on the merits, including that it allowed employees to take their meal and rest breaks; the difficulty and uncertainty in proving the

amount of wages due to each class member; and the potential unmanageability of the PAGA claims. Taking into consideration the foregoing, as well as Defendant's claimed financial distress, Plaintiff's counsel reached an adjusted liability of $1,104,256.96.

Considering the portion of the case's value attributable to uncertain penalties (33% of the total estimated liability), claims that could be difficult to certify for class treatment, and the multiple, dependent contingencies that Plaintiff would have had to overcome to prevail on her claims, the settlement achieves a good result for the class. For purposes of preliminary approval, the Court finds that the settlement is fair and reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable in light of the statute's purposes.

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

VI. PROPOSED SETTLEMENT CLASS

Plaintiffs request that the following settlement class be provisionally certified:

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

A. Legal Standard for Certifying a Class for Settlement Purposes

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

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

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

(*Id.* at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

B. Ascertainable Class

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

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

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

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

Here, the estimated 481 class members are readily identifiable based on Defendant's records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable and appropriately defined.

C. Community of Interest

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

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

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

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

As for the second factor,

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

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

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

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

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

D. Substantial Benefits of Class Certification

"[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid.)* "Thus, even if questions of law or fact predominate, the lack of

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

Here, there are an estimated 481 class members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

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

Here, the notice, which will be provided in both English and Spanish, describes the lawsuit, explains the settlement, and instructs class members that they may opt out of the settlement (except the PAGA component) or object. The gross settlement and estimated deductions are provided. Class members are informed of their qualifying pay periods as reflected in Defendant's records and are instructed how to dispute this information. Class members are given 60 days to request exclusion from the class or submit a written objection to the settlement.

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

> The judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 7 (Afternoon Session) or by calling the toll free conference call number for Department 7. Any class member who wishes to appear in person should check in at Court Services (1st floor, Downtown Superior Courthouse, 191 N. 1st St., San Jose) and wait for a sheriff's deputy to escort him or her to the courtroom for the hearing.

Turning to the notice procedure, the parties have selected ILYM Group, Inc. as the settlement administrator. The administration will mail the notice packet within 37 days of the Court granting preliminarily approval of the parties' settlement, after updating members' addresses through skip traces and other similar means. Any returned notice will be mailed to any forwarded addresses or an updated address located through the aforementioned methods. Class Members who receive a re-mailed notice will have between the later of (a) an additional 15 days or (b) the response deadline to postmark a request for exclusion, or an objection to settlement. These notice procedures are appropriate and are approved.

E. CONCLUSION

Subject to the changes to the notice discussed above concerning the information a class member objecting to the settlement or requesting exclusion from its terms is required to provide, Plaintiff's motion for preliminary approval is GRANTED. The final approval hearing shall take place on **September 19, 2024** at 1:30 in Dept. 7. The following class is preliminarily certified for settlement purposes:

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

The Court will prepare the order.

****

LAW AND MOTION HEARING PROCEDURES

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

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

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

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Calendar Line 4

Case Name: *Bryan Hicks v. California Water Service*
Case No.: 21CV376394

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Bryan Hicks alleges that Defendant California Water Service ("Cal Water"), a public utility company providing drinking water and waste water services to California residents, failed to provide employees with compliant meal and rest breaks and failed to pay required premiums, failed to pay minimum and overtime wages, issued noncompliant wage statements, and committed other wage and hour violations.

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

VIII. BACKGROUND

Plaintiff was employed by Defendant from May 2018 to November 2018 as an hourly, non-exempt employee. (First Amended Class Action Complaint ("FAC"), ¶ 23.) According to Plaintiff, Defendant failed to pay employees for all hours worked and for their missed meal and rest periods. (*Id*., ¶ 24.) Employees worked for Defendant more than eight hours per day or 40 hours per week but Defendant failed to pay overtime wages. (*Id*., ¶ 24.) Defendant failed to timely pay wages during employment and upon separation and failed to provide accurate, itemized wage statements. (*Id*., ¶¶ 38, 120.) Defendant also failed to reimburse employees for required business expenses. (*Id*., ¶ 113.)

Based on these allegations, Plaintiff asserts, in the operative First Amended Complaint, putative class claims for: (1) failure to pay overtime wages, in violation of Labor Code section 510, et seq.; (2) unpaid meal period premiums, in violation of Labor Code sections 226.7 and 512, subdivision (a); (3) unpaid rest break premiums, in violation of Labor Code section 226.7; (4) failure to pay minimum wages, in violation of Labor Code sections 1194, 1197, and 1197.1; (5) failure to provide wage when due under Labor Code sections 201 and 202; (6) failure to provide timely wages during employment under Labor Code section; (7) violation of Labor Code section 226 by failing to provide accurate itemized wage statements; (8) failure to keep payroll records, in violation of Labor Code section 1174, subdivision (d); (9) failure to reimburse employees for required expenses under Labor Code sections 2800 and 2802; (10) violation of Business and Professions Code section 17200, et seq.; and (11) representative claim for PAGA penalties (Lab. Code, § 2698, et seq.).

IX. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

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

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

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

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

B. PAGA

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

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

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

X. SETTLEMENT CLASS

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

> All current and former hourly non-exempt Cal Water employees who worked for Cal Water in California from February 23, 2017, to and including August 8, 2022.

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

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

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

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

XI. TERMS AND ADMINISTATION OF SETTLEMENT

The non-reversionary, escalated gross settlement amount is $2,315,267.75.[2] Attorney's fees of up to $810,343.71, or 35% of the gross settlement, litigation costs of up to $25,000, and up to $20,000 in administration costs will be paid from the gross settlement. $175,000 of the gross settlement amount will be allocated to PAGA penalties, 75% of which ($131,250) will be paid to the LWDA, leaving 25 percent ($43,750) for aggrieved employees. The named plaintiff, Mr. Hicks, seeks an incentive award of $8,000. The net settlement amount of approximately $1,296,090.72 will be allocated to the 1,083 participating settlement class members (i.e., those who did not submit timely and valid requests for exclusion) proportionally based on their pay periods worked during the class period.

The PAGA payment will be allocated to aggrieved employees on a pro rata basis based on their number of pay periods worked during the PAGA period of February 23, 2020 to August 8, 2022. The highest individual settlement payment is estimated to be at least $1,810.57, the lowest $6.36, and the average at least $1,185.99. The highest individual PAGA payment is estimated to be at least $61.94, and the average payment is estimated to be at least $47.55. For tax purposes, settlement payments will be allocated 40 percent to wages and 60 percent to penalties and interest. PAGA settlement payments will be allocated 100 percent to penalties. The employer's share of payroll taxes will be paid in addition to the gross settlement. Checks uncashed after 180 days will be cancelled and the funds will the transferred to the Leadership Counsel for Justice & Accountability, a 501(c) nonprofit organization.

In exchange for the settlement, class members who do not opt out will release "all claims under state, federal, or local law during the Release Period that were or could have been alleged based upon the facts pleaded in the Action," including specified wage and hour claims. As the Court determined in its order preliminarily approving the settlement, the release is appropriately tailored to the factual allegations at issue. (See *Amara v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) And the PAGA release is appropriately limited to "all claims, under PAGA for penalties during the PAGA Period that were or could have been alleged based upon the facts pleaded in the Action and the PAGA Notice, for alleged violations" including specified wage and hour claims. Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

The notice period has now been completed. According to the declaration of case manager Kevin Lee with settlement administrator Phoenix Settlement Administrators ("Phoenix") submitted in support of the instant motion, on August 18, 2023, Phoenix received from counsel for Cal Water the names and identifying information (including last known mailing address) for each settlement class member and subsequently processed these items against the National Change of Address database to confirm and update the relevant information. On September 1, 2023, Notice Packets were mailed via first class mail to all

[2] At preliminary approval, the non-reversionary gross settlement amount was $2,150,000. This amount increased pursuant to the escalator clause in Paragraph II.16 of the Settlement Agreement. This clause provides that if the number of workweeks exceeds 180,000 by more than 5%, the gross settlement fund shall increase in a pro-rata basis equal to the percentage increase in the number of workweeks above 5%. Because the total number of workweeks was 202,836, representing a 12.69% increase over 180,000, the gross settlement fund was increased by 7.69%.

1,038 individuals contained in the list provided to Phoenix. The deadline to submit a request for exclusion, a challenge to the number of workweeks listed or an objection to the settlement was October 16, 2023.

During the response period, Cal Water notified Phoenix of 50 inadvertently excluded individuals. After the requisite identifying information was provided to Phoenix, these additional members were mailed Notice Packets on October 16, 2023, and were provided a deadline of November 20 to submit a request for exclusion, a challenge to number of workweeks listed, or an objection to the settlement. Accounting for these additional individuals, there are 1,088 individuals identified as settlement class members.

As of the date of Mr. Lee's declaration, February 28, 2024, twenty notices had been returned as undeliverable, with none including a forwarding address. Phoenix performed a skip trace on these returned packets, and obtained eighteen updated addresses, to which Notice Packets were promptly re-mailed. At present, two notices remain undeliverable. Phoenix has received five requests for exclusion and no objections to the settlement or workweek disputes. Accordingly, there are 1,083 participating settlement class members.

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

XII. ATTORNEYS FEES, COSTS AND INCENTIVE AWARD

As articulated above, Plaintiff's counsel seeks a fee award of $810,343.71, or 35% of the gross settlement. This award is facially reasonable under the "common fund" doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar figure of $436,177.50, based on 528.70 hours at a blended billing rate of $825 per hours, resulting in a multiplier of 1.86. This is within range of multiplier's that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra,* 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

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

> [T]he percentage-based fee will typically be larger than the lodestar based fee. Assuming that one expects rough parity between the results of the percentage method and the lodestar method, the difference between the two computed fees

> will be attributable solely to a multiplier that has yet to be applied. Stated another way, the ratio of the percentage-based fee to the lodestar-based fee implies a multiplier, and that implied multiplier can be evaluated for reasonableness. If the implied multiplier is reasonable, then the cross-check confirms the reasonableness of the percentage-based fee; if the implied multiplier is unreasonable, the court should revisit its assumptions.

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

Here, the multiplier sought by Plaintiff's counsel is well within the acceptable range and is supported by the percentage cross-check. As such, the Court finds counsel's requested fee award is reasonable.

Plaintiff's counsel also seeks $13,333.32 in litigation costs, which is below the $25,000 limit provided by the settlement and appears reasonable. The $12,500 in administrative costs are also below the limit provided by the agreement ($20,000) and are approved.

Finally, Plaintiff requests an incentive award of $8,000. To support his request, he submits a declaration describing his efforts on the case. The Court finds that the class representative is entitled to an enhancement award and the amount requested is reasonable.

XIII. CONCLUSION

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

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

> All current and former hourly non-exempt Cal Water employees who worked for Cal Water in California from February 23, 2017, to and including August 8, 2022.

Excluded from the class are the five individuals who submitted timely requests for exclusion.

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

The Court sets a compliance hearing for **November 14, 2024 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, class counsel and the settlement

administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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

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

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Calendar Lines 5 & 6

Case Name: *Barajas v. United Facilities Group, Inc.*
Case Nos.: 22CV397353 (class action)
22CV401148 (PAGA action)

These cases involve a putative class action and a Private Attorneys General Act ("PAGA") representative action. Plaintiff Iliana Lizbeth Barajas Maya alleges that defendant United Facilities Group, Inc. ("Defendant" or "UFG"), a maintenance and janitorial service provider for businesses and schools throughout Santa Clara and the surrounding area, failed to pay overtime and minimum wages, failed to provide meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

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

XIV. BACKGROUND

According to the allegations of the operative class action complaint ("Class Complaint"), Plaintiff was employed by Defendant as an hourly-paid, exempt employee from approximately June 2018 to August 2021. (Class Complaint, ¶¶ 7, 13.) Plaintiff alleges that throughout her employment, Defendant failed to compensate her for all hours worked (including minimum, straight time and overtime wages), failed to provide her with legally compliant meal and rest periods, failed to timely pay all wages due to her when her employment was terminated, failed to provide her accurate wage statements, and failed to indemnify her for business-related expenditures. (*Id.*, ¶ 14.) Plaintiff and class members, defined as

> All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years and 178 days before the filing of the initial complaint in this action and ending when notice to the Class is sent,

were required to work "off-the-clock" and regularly denied permission to take their mandatory meal and rest periods. (*Id.*, ¶¶ 15-17, 24.) Plaintiff and class members regularly paid out-of-pocket for necessary employment-related expenses for which they were not reimbursed, including for personal protective equipment, work attire, and personal cell phone use. (*Id.*, ¶ 20.)

Based on the foregoing allegations, Plaintiff initiated this action with the filing of the Class Complaint on April 28, 2022, asserting the following causes of action: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit meal periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; and (8) unfair business practices.

On July 25, 2022, Plaintiff filed a representative action against Defendants asserting a single cause of action for penalties under PAGA. This cause of action is based on the same Labor Code violations alleged in the Class Complaint.

Plaintiff now seeks an order: preliminarily approving the proposed settlement; provisionally certifying the class for settlement purposes; provisionally approving Plaintiff as class representative; provisionally approving Plaintiff's counsel as class counsel; setting a final fairness and approval hearing; appointing CPT Group, Inc. as the settlement administrator; and approving and distributing notice of settlement to the class.

XV. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

B. Class Action

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

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

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

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

B. PAGA

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

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

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

XVI. SETTLEMENT PROCESS

Following the filing of the Class Complaint, the parties engaged in informal discovery, with Defendant providing a sample of time and pay records for class members and information concerning the total number of current and former employees. Defendant also provided documents pertaining to its wage and hour policies and practices during the class period, as well as financial records. Utilizing these materials, Plaintiff's counsel evaluated the probability of class certification, success on the merits, Defendant's maximum exposure for all claims, as well as Defendant's ability to fund a settlement. Counsel also prepared a damages analysis prior to mediation.

On March 28, 2023, the parties participated in mediation with mediator Marc Feder and, after extensive negotiations, reached a settlement of Plaintiff's class and representative actions which is now before the Court.

XVII. SETTLEMENT PROVISIONS

The non-reversionary gross settlement amount is $293,265. Attorney fees of up to one-third of the gross settlement ($97,775), litigation costs not to exceed $15,000, and administration expenses not to exceed $15,000 will be paid from the gross settlement. $20,000

will be allocated to PAGA penalties, 75% of which ($15,000) will be paid to the LWDA, with the remaining 25% paid to "Aggrieved Employees," who are defined as individuals "employed by UFG in California and classified as an hourly non-exempt employee who worked for UFG during the PAGA Period" from May 9, 2021 to May 28, 2023. Plaintiff will also seek a service award in the amount of $10,000.

The net settlement will be allocated to class members on a pro rata basis based on the number of weeks worked during the class period, which is defined in the settlement as the period from April 28, 2018 to May 28, 2023. For tax purposes, settlement payments will be allocated 25% to wages and 75% to penalties and interest. The employer side payroll taxes on the settlement payments will be paid by Defendants separately from the gross settlement amount. 100% of the PAGA settlement to Aggrieved Employees will be allocated to penalties. Funds associated with checks uncashed after 180 days will be transmitted to the California Controller's Unclaimed Property Fund in the name of the class member.

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

> [A]ll claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint of the Class Action including, but not limited to, claims that: (1) UFG failed to pay wages and overtime compensation in violation of California Labor Code sections 510, 1194, 1194.2 and the applicable Industrial Welfare Commission Wage Order; (2) UFG failed to provide meal periods, or compensation in lieu thereof, including but not limited to any violation of California Labor Code sections 226.7 and 512 and the applicable Industrial Welfare Commission Wage Order; (3) UFG failed to authorize and permit rest periods, or compensation in lieu thereof, including but not limited to any violation of California Labor Code section 226.7 and the applicable Industrial Welfare Commission Wage Order; (4) UFG failed to provide itemized employee wage statements, including but not limited to any violation of California Labor Code sections 226, 1174, and 1175 and the applicable Industrial Welfare Commission Wage Order; (6) UFG failed to timely pay wages due at termination, including but not limited to any violation of California Labor Code sections 201-203 and 205; (6) UFG engaged in unlawful business practices in violation of California Business and Professions Code section 17200, et seq; (7) Class Members are entitled to restitutionary damages under California Business & Professions Code sections 17200, et seq.; (8) UFG is liable for attorneys' fees and/or costs incurred to prosecute this action on behalf of Class Members, including fees incurred for the services of Class Counsel; and (9) UFG failed to reimburse work-related expenses.

Aggrieved Employees will release "all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint of the PAGA Action, and the PAGA Notice including, e.g., '(a) any and all claims for violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1198, 1197.1, 2802, and 2699, and the applicable Industrial Welfare Commission Wage Order.'"

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

XVIII. FAIRNESS OF SETTLEMENT

Based on a review of available data, and the analysis performed with the assistance of a statistics expert, Plaintiff's counsel estimated Defendant's maximum exposure for each claim at the following amounts: $427,087.50 (failure to pay minimum and overtime wages); $845,633.25 (failure to provide meal periods); $626,395 (failure to provide rest periods); $71,600 (failure to reimburse business expenses); and $1,373,176.97 (PAGA penalties). Plaintiff's counsel than discounted the estimated maximum total recovery for the class claims ($1,970,715.15) by 80% to account for a variety of factors, including the risk of obtaining certification of the class and the difficulty is proving the scope of these claims on the merits. As for the PAGA penalties, Plaintiff's counsel discounted the estimated maximum total by 90%, believing it unlikely the Court would award the full amount given the contested nature of Plaintiff's claims, as well as the typical practice of most courts to significantly reduce the amount of penalties in PAGA cases. Using the foregoing figures, Plaintiff's counsel predicted that the realistic maximum recovery for all claims, including penalties, would be $531,460.85. The $293,265 settlement figure represents 55.2% of this amount.

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

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

XIX. PROPOSED SETTLEMENT CLASS

Plaintiff requests that the following settlement class be provisionally certified:

> All persons employed by Defendant in California and classified as hourly non-exempt employees who worked for Defendant during the period from April 28, 2018 to May 28, 2023.

F. Legal Standard for Certifying a Class for Settlement Purposes

Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of

a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court …."

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

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

G. Ascertainable Class

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

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

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

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

Here, the estimated 358 class members are readily identifiable based on Defendant's records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

H. Community of Interest

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

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

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

As for the second factor,

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

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

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

Finally, adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The

class representative does not necessarily have to incur all of the damages suffered by each different class member in order to provide adequate representation to the class. (*Wershba, supra,* 91 Cal.App.4th at p. 238.) "Differences in individual class members' proof of damages [are] not fatal to class certification. Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Ibid*., internal citations and quotation marks omitted.)

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

I. Substantial Benefits of Class Certification

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

Here, there are an estimated 358 class members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually and it is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

XX. NOTICE

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

The parties have selected CPT Group, Inc. as the settlement administrator. No later than 15 days after preliminary approval of the parties' settlement, Defendant will provide a list of all class members along with pertinent identifying information (including last known address) to the administrator. Within four days of receipt of this data, the administrator will mail the notice packet to class members after updating their addresses through a search on the National Change of Address Database.

The notice itself, which will be provided in English and Spanish, describes the lawsuit, explains the settlement, and instructs class members that they may opt out of the settlement (except the PAGA component) or object. The gross settlement amount and estimated

deductions are provided. Class members are informed of their qualifying pay periods as reflected in Defendant's records and are instructed how to dispute this information.

Members will have 45 days to submit a request for exclusion, a challenge to the amount of workweeks or pay periods set forth in the notice, of an objection to the settlement. Returned notices will be re-mailed to any forwarded address provided or an updated address located through a skip trace. Class members who receive a re-mailed notice will have an additional 14 days to respond. These notice procedures are appropriate and are approved.

The form of notice is generally adequate, but must be modified to instruct class members that they may opt out of or object to the settlement simply by providing their name, without the need to provide their phone number or other personal information.

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

> The judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 7 (Afternoon Session) or by calling the toll free conference call number for Department 7. Any class member who wishes to appear in person should check in at Court Services (1st floor, Downtown Superior Courthouse, 191 N. 1st St., San Jose) and wait for a sheriff's deputy to escort him or her to the courtroom for the hearing.

XXI. CONCLUSION

Plaintiff's motion for preliminary approval is GRANTED. The final approval hearing shall take place on **November 21, 2024** at 1:30 in Dept. 7. The following class is preliminarily certified for settlement purposes:

> All persons employed by Defendant in California and classified as hourly non-exempt employees who worked for Defendant during the period from April 28, 2018 to May 28, 2023.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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

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

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Calendar Line 6

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Case No.:

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Calendar Line 7

Case Name:
Case No.:

- oo0oo -

Calendar Line 8

Case Name:
Case No.:

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Calendar Line 9

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Case No.:

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Calendar Line 10

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Calendar Line 11

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Case No.:

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Calendar Line 12

Case Name:
Case No.:

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Calendar Line 13

Case Name:
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