SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 19, Honorable Theodore C. Zayner Presiding

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

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

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LAW AND MOTION TENTATIVE RULINGS
DATE: OCTOBER 9, 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	21CV382011	Lopez v. Bay Mountain Air, Inc. (Class Action/PAGA) (Lead Case; Consolidated With 21CV386284)	See Line 1 for tentative ruling.
LINE 2	23CV427117	Cruz v. Quantumscape, et al. (Class Action)	Off Calendar per S&O.
LINE 3	20CV371934	Manalo v. San Jose, LLC, et al. (Class Action)	Continued per S&O to March 26, 2025.
LINE 4	20CV373998	Garcia v. Din Tai Fung Restaurant, Inc., et al. (PAGA)	See Line 4 for tentative ruling.
LINE 5	24CV432129	Bobadilla v. Loan Factory, Inc. (Class Action)	Reset to October 16, 2024.
LINE 6	22CV401779	Kovacevic v. Pure Wafer, Inc. (PAGA)	See Line 6 for tentative ruling.
LINE 7			
LINE 8			
LINE 9			

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LAW AND MOTION TENTATIVE RULINGS

LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: Lopez v. Bay Mountain Air, Inc. (Class Action/PAGA) (Lead Case; Consolidated With 21CV386284)
Case No.: 21CV382011

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on October 9, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This consolidated action involves two cases: (1) *Carlos Lopez v. Bay Mountain Air, Inc. et al.* (Santa Clara County Superior Court, Case No. 21CV382011) ("Lead Case"); and (2) *Carlos Lopez v. Bay Mountain Air, Inc. et al.* (Santa Clara County Superior Court, Case No. 21CV386284) ("Individual Case").

On May 17, 2021, in the Lead Case, Plaintiff Carlos Lopez ("Plaintiff") filed the operative Class Action Complaint ("Complaint") against Defendant Bay Mountain Air, Inc. ("Defendant").

According to the Complaint's allegations, Plaintiff worked for Defendant as a non-exempt hourly employee installing air conditioners from approximately November 10, 2019 to September 18, 2020. (Complaint, ¶¶ 19-20.) Plaintiff regularly worked five days per week, over eight hours per day, and over 40 hours per week. (*Id.* at ¶¶ 21, 25.) Defendant failed to compensate Plaintiff for travel time as well as pre-shift and post-shift off-the-clock work. (*Id.* at ¶¶ 24-26, 28.) Defendant failed to provide adequate meal or rest breaks, failed to pay meal or rest break premiums, and had a policy and practice of combining the 30 minute meal period with the 10 minute rest breaks. (*Id.* at ¶¶ 32-37.) Plaintiff's wage statements did not accurately reflect his time worked, rates of pay, and meal and rest breaks, and Defendant failed to pay all wages due to him upon termination. (*Id.* at ¶ 42.)

The Complaint sets forth causes of action for: (1) failure to pay all hours worked; (2) failure to pay all overtime hours worked; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; (7) failure to reimburse business-related expenses; (8) Private Attorneys General Act ("PAGA"); and (9) unfair competition in violation of Business and Professions Code sections 17200, *et seq.* ("UCL").

In the Lead Case, Defendant moved for summary judgment, or in the alternative, summary adjudication. On December 8, 2022, the court entered an order denying the motion for summary judgment, granting the motion for summary adjudication of the third and seventh causes of action, and denying the motion for adjudication of the first, second, fourth, fifth, sixth, eighth, and ninth causes of action.[1]

Plaintiff now moves for class certification, and Defendant opposes the motion.

II. Legal Standard for Class Certification

Any party may file a motion to certify a class. (*In re BCBG Overtime Cases* (2008) 163 Cal.App.4th 1293, 1298, citing California Rules of Court, rule 3.764(a).) 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 … ."

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

(*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*), internal punctuation and citations omitted.)

A party seeking certification "has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members." (*Sav-On*, *supra,* 34 Cal.4th at p. 326, citations omitted.) "The 'community of interest' requirement embodies three factors: (1) predominant common 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." (*Ibid.*)

"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

[1] In Plaintiff's Individual Case, Defendant also moved for summary judgment, or alternatively, summary adjudication. In an April 13, 2023 order regarding the Individual Case, the court denied the motion for summary judgment, and granted in part and denied in part the motion for summary adjudication.

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.) A trial court ruling on a class certification motions must "carefully weigh the respective benefits and burdens [and] allow maintenance of the class action only where substantial benefits accrue both to litigants and the courts." (*Blue Chip Stamps v. Superior Court of Los Angeles County* (1976) 18 Cal.3d 381, 385, quoting and citing *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 459.)

III. Discussion

As the party advocating class treatment, it is Plaintiff's burden to demonstrate the following: (A) an ascertainable class; (B) a well-defined community of interest; and (C) substantial benefits of class litigation. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021 (*Brinker*).)

A. 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 framed in objective terms that make the identification of class members possible promotes due process in at least two ways. Such phrasing 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.

(*Ibid.*) "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." (*Id.* at p. 984.)

It has long been held that "[c]lass members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932, disapproved of in part by *Noel*, *supra*, 7 Cal.5th at p. 985-986, fn. 15 ["As our analysis should make clear, this is one way but not the only way to show as ascertainable class. We therefore disapprove of this standard insofar as it could be perceived as exclusive."]; 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 parameters, and can be determined by DIRECTV'S own account records. No more is needed."].)

Plaintiff seeks certification of the following class:

> [A]ll current and former hourly paid/non-exempt employees of Defendant who work or worked as HVAC installers or technicians in the State of California during the Class Period.

(Plaintiff's Motion for Class Certification ("Mot."), p. 4:23-25.) Plaintiff's class definition also includes several subclasses, as follows:

1. (Unpaid Work Due to Rounding): Class members who are or were employed by Defendant from July 2020 through the present and were underpaid due to Defendant's unlawful rounding practices;
2. (Unpaid Work Due to Block Payments): Class members who were employed by Defendant from May 17, 2017 through July 2020 and were underpaid because Defendant only paid them for their scheduled shifts, despite working beyond their scheduled shifts;
3. (Rest Periods): Class members who suffered rest period violations because Defendant unlawfully combined their meal period and their rest periods;
4. (Wage Statements): Class members who were provided inaccurate wage statements by Defendant because of unpaid work due to rounding, unpaid work due to block payments, or rest period violations;
5. (Waiting Time Penalties): Class members who are no longer employed by Defendant and who were provided insufficient final wages because of unpaid work due to rounding, unpaid work due to block [payments], and/or Defendant's failure to provide rest period premiums.

(*Id.* at pp. 4:21-5:10.)

Plaintiff contends that the putative class list is readily ascertainable through a review of Defendant's records relevant to the Class Period, which the Complaint defines as beginning on May 17, 2017 and running through the entry of final judgment in this action. (Mot., p. 10: 4-5; Complaint, ¶ 18.) Plaintiff asserts that Defendant has already produced a partial class list identifying 159 putative class members, and that Defendant can use the same procedure to identify the remaining class members, described as those Defendant hired since April 22, 2022. (Mot., p. 10:6-9.) Plaintiff argues that because there are at least 159 putative class members, the class is sufficiently numerous. (*Id.* at p. 1:5-7.)

Plaintiff does not appear to separately address whether the proposed subclasses are sufficiently ascertainable. Nevertheless, Plaintiff does point to authority that a "class will be deemed sufficiently ascertainable if it is feasible to determine whether a given individual is a member of that class." (Mot., p. 10:2-3, quoting *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 706.) Here, it generally appears feasible to determine whether a given individual is a member of the proposed subclasses.

Regarding the third subclass definition based on rest period violations, it is less clear to the court whether one can determine from Defendants' records whether a given individual "suffered rest period violations because the Defendant unlawfully combined their meal period and rest period." (Mot., p. 5:3-5.) Plaintiff asserts that he will "confirm this common practice by surveying putative class members." (Mot., p. 11:21-23, fn. 5.) Plaintiff also presents authority that "it may be possible to manage individual issues through the use of surveys and statistical sampling." (*Ibid.*, quoting *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, [1142-1143].) Therefore, using the survey method proposed by Plaintiff, the court finds that it is feasible to determine whether a given individual is a member of the rest period subclass.

In opposition, Defendant does not contest Plaintiff's assertions that the proposed class is ascertainable and numerous. Instead, Defendant's opposition focuses on whether there are predominant questions of law or fact, as discussed further below. (Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Class Certification ("Opp."), pp. 2:22-3:14.)

Therefore, the issue of whether the proposed class and subclasses are ascertainable and sufficiently numerous are deemed waived by Defendant. (*Coziar v. Otay Water Dist.* (2024) 103 Cal.App.5th 785, 799 (*Coziar*) ["Points must be supported by reasoned argument, authority, and record citations, or may be deemed forfeited."]; see also *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 [when a party fails to raise a point or support it with reasoned argument and citations to authority, a court may treat the point as waived].)

Accordingly, the court finds that Plaintiff has met the ascertainable class requirement.

B. 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*, *supra*, 34 Cal.4th at p. 326.) Defendant maintains that this requirement is not met here because Plaintiff has not provided competent evidence of company policies or practices regarding rounding, working of the clock, or rest breaks. (Opp., p. 3:4-7.)

1. Predominant Questions of Law or Fact

"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 v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, citation omitted.) "In 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." (*Ibid*.)

The court must also consider evidence of a conflict of interest among the proposed class members. (*J.P. Morgan & Co., Inc. v. Superior Court* (2003) 112 Cal.App.4th 195, 215.) The "ultimate question" is whether "the issue which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of class action would be advantageous to the judicial process and to the litigants." (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104-1105.) The answer hinges on "whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amendable to class treatment." (*Sav-On*, *supra*, 34 Cal.4th at p. 327.)

Plaintiff is challenging "three common policies or practices promulgated by Defendant: (1) rounding; (2) block payment of scheduled shifts; and (3) combined breaks." (Mot., p. 10:19-20.) He also identifies four questions stemming from these allegations that he contends are susceptible to a common resolution. (*Id.* at p. 10:20-15:9.)

i. Rounding

First, Plaintiff contends there is a common question as to whether Defendant's rounding system, over time, fails to properly compensate putative class members for all the time they have actually worked. (Mot., p. 11:1-10.) Plaintiff argues that he has already shown that

rounding led to his underpayment between July and September 2020. (*Ibid.*, citing the Declaration of Arlo Uriarte in Support of Motion ("Uriarte Dec."), Ex. B.) Plaintiff asserts that his analysis of punch clock records will definitively establish whether Defendant has underpaid due to rounding after it enacted a rounding policy in July 2020. (*Ibid.*)

In opposition, Defendant contends that it does not have a policy of rounding any time and that Plaintiff has not provided evidence of such of policy or practice. (Opp., p. 9:5-6.) Defendant acknowledges that Plaintiff's time records show instances where his time punches exceeded eight hours but argues that this is not evidence of a practice subject to class determination. (*Id.* at p. 9:13-15.) Defendant also points to Plaintiff's deposition testimony in which he stated that he was paid for all the hours that he put on his timecard. (*Id.* at p. 9:19-22.)

Here, Defendant's arguments go more to the merits of Plaintiff's rounding claim rather than whether it presents a common question of fact or law. While Defendant asserts that it has no policy regarding rounding, a "companywide practice can sustain a common question of fact or law that supports commonality for class certification. [Citation.]" (*Williams v. Superior Court* (2013) 221 Cal.App.4th 1353, 1369.)

Whether a company's policy or practice of rounding "will result in undercompensation *over time* is a factual issue." (*David v. Queen of Valley Medical Center* (2020) 51 Cal.App.5th 653, 664, emphasis original, quoting *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 912.) Plaintiff's theory of liability that Defendant has a uniform policy or practice that allegedly violates the law "is by its nature a common question eminently suited for class treatment." (*Brinker, supra*, 53 Cal.4th at p. 1033.)

Therefore, the court finds that Defendant's liability on the rounding claim is amenable to resolution by analysis of class members' time and pay records. Thus, whether Defendant implemented a practice of unlawful rounding can be determined by facts common to all members of the class.

ii. Block Payments

Second, Plaintiff contends there is a common question as to whether Defendant underpaid putative class members by failing to record their actual working hours and simply

paying their scheduled shift. (Mot., p. 11:11-20.) Plaintiff will seek a common answer by analyzing Defendant's timekeeping and payroll records and attaining representative testimony from putative class members and supervisors. (*Ibid.*)

Defendant contends that Plaintiff's claims relating to overtime are not suitable for class treatment because it has a policy that prohibits working off the clock. (Opp., p. 7:4-20.) In arguing that there is no predominant question of fact or law, Defendant relies upon *Brinker*, *supra*, 53 Cal.4th 1004. (*Id.* at pp. 3:14-18.) In addressing the certification of an off-the-clock subclass in *Brinker*, the California Supreme Court found that the plaintiff presented neither a common policy nor a common method of proof. (*Brinker*, *supra*, 53 Cal.4th at p. 1051.)

> The only formal Brinker off-the-clock policy submitted disavows such work, consistent with state law. Nor has Hohnbaum presented substantial evidence of a systematic company policy to pressure or require employees to work of the clock, a distinction that differentiates this case from those he relies upon in which off-the-clock classes have been certified.

(*Ibid.*, footnote and citations omitted.)

Here, by contrast, Plaintiff has presented evidence of a systematic company policy in the form of declarations from himself and other putative class members Alejandro Garcia Mondrago, Felipe Pacheco, and Ricardo Pulido. (Mot., pp. 2:20-3:28,11:16-17.) Plaintiff has also proposed a common method of proof through analysis of Defendant's timekeeping and payroll records and representative testimony from formerly employed putative class members. (Mot., p. 11:11-20.) In opposition, Defendant offers no argument as to why this evidence and proposed method of proof are insufficient, and instead relies upon its formal off-the-clock policy. (Opp., p. 4:15-18.) However, the mere existence of a lawful policy "will not defeat class certification in the face of actual contravening policies and practices that, as a practical matter, undermine the written policy…." (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 406, citations omitted.)

Accordingly, the court finds that Defendant's liability on the block payments claim is amenable to resolution by analysis of class members' time and pay records and representative testimony and therefore can be determined by facts common to all members of the class.

iii. Rest Periods

Third, Plaintiff contends there is a common question as to whether Defendant unlawfully combined putative class member meal periods with their rest periods leading to rest period violations. (Mot., pp. 11:21-12:8.) As discussed previously, Plaintiff intends to confirm a common practice through the use of a survey of putative class members, and Plaintiff asserts that all putative class members held the same or similar positions such that practical considerations would not vary. (*Ibid.*)

In opposition, Defendant directs the court to its written policy regarding rest breaks, which it contends is in line with the requirements of Labor Code section 226.7 and the applicable Wage Order from the Industrial Welfare Commission. (Opp., p. 4:19-7:3.) Defendant also draws a distinction between the facts of this case and those in *Brinker*, where the defendant conceded the existence of a written rest break policy providing for a one 10-minute rest break per four hours worked. (Opp., p. 3:17-27, citing *Brinker*, *supra*, 53 Cal.4th at p. 1033.) Defendant asserts that its rest break policies and procedures are lawful and any claims otherwise by Plaintiff or putative class members are individualized. (Opp., p. 4:1-6.)

In reply, Plaintiff argues that he need not conclusively establish a non-compliant policy or practice at the certification stage, and that he has sufficiently identified common questions that impact the putative class and a plan to arrive at common answers. (Plaintiff's Reply, p. 4:20-25.)

Here, the court finds that Defendant's arguments are directed more to the merits of Plaintiff's claims rather than to whether common questions of law or fact predominate. (See *Brinker*, *supra*, 52 Cal.4th at p. 1033 ["It is far better from a fairness perspective to determine class certification independent of threshold questions disposing of the merits[.]"].) Defendant does not support its position that individual rather than common questions predominate with respect to the rest period claim. For example, Defendant has not submitted any class member declarations to counter the rest period allegations contained in the declaration presented by Plaintiff.

Accordingly, the court finds that common questions of law and fact predominate with respect to Defendant's liability on the rest break claim.

iv. Derivative Claims

Lastly, by extension of its arguments set forth above, Plaintiff contends there are common questions as to whether his core claims can support the derivative claims for wage statement violations and waiting time penalties. (Mot., pp. 12:9-15:9.) Defendant does not address either the wage statement claim, or the waiting time penalties claim in its opposition. Accordingly, the point is deemed to be waived by Defendant. (*Coziar*, *supra*, 103 Cal.App.5th at p. 799.)

2. Typicality

The purpose of the typicality requirement is "to assure that the interest of the named representative aligns with the interests of the class." (*Martinez v. Joe's Crab Shak Holdings* (2014) 231 Cal.App.4th 362, 375 (*Martinez*), quoting *Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.)

> Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought. The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.

(*Ibid*., citations omitted.)

> 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.)

Here, Plaintiff contends that his claims are typical of the class because he and the putative class members are all HVAC installers and technicians sharing the same duties and set of supervisors and bound by the same company policies and practices. (Mot., pp 14:11-21.) Plaintiff asserts that the biggest relative difference within the putative class is the extent of damages suffered, which does not make class claims atypical. (*Id.* at pp. 15:22-16:3, citing *Brinker*, *supra*, 53 Cal.4th at p. 1022 ["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."].)

Defendant makes no argument in opposition to this factor and there is no contention Plaintiff does not have similar claim to other putative class members. Therefore, the court finds that Plaintiff has met the typicality requirement.

3. Adequacy of Representation

"Although the questions whether a plaintiff has claims typical of the class and will be able to adequately represent the class are related, they are not synonymous." (*Martinez*, *supra*, 231 Cal.App.4th at p. 375.) "The adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit." (*Ibid.*, quoting *Capitol People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 696-697.)

"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 fact that a class representative does not personally incur all of the damages suffered by each different class member does not necessarily preclude the representative from providing adequate representation to class. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238, disapproved of on another ground by *Hernadez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269, 273-274, fn. 4 [unnamed class members must intervene in order to appeal a class judgment].)

Here, Plaintiff introduces evidence that class-counsel is well-qualified to conduct this litigation, which Defendant does not dispute. (Mot., p. 16:10-25; Uriarte Dec., ¶¶ 3-5.) Plaintiff also submits a declaration indicating that he understands the allegations as well as his duties to the class, and he intends to fulfill his duties. (Uriarte Dec., Ex. A, Declaration of Carlos Lopez, ¶¶ 4-11.) Defendant makes no argument in opposition that the interests of Plaintiff conflict with the interests of the class.

Given the foregoing, the court finds that Plaintiff has sufficiently demonstrated adequacy of representation.

C. Substantial Benefits of Class Litigation

"[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.)

Defendant makes no argument in opposition to this factor and there is no contention class treatment will not result in substantial benefits to the litigants and the court. Therefore, the court finds that Plaintiff has met the substantial benefits requirement and that a class action would be superior to individual lawsuits in this case.

IV. Conclusion

The motion for class certification is GRANTED as to the class and all subclasses.

The court will prepare the final order if this tentative ruling is not contested.

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Calendar Line 2

Case Name:
Case No.:

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Calendar Line 3

Case Name:
Case No.:

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Calendar Line 4

Case Name: Garcia v. Din Tai Fung Restaurant, Inc., et al. (PAGA)
Case No.: 20CV373998

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on October 9, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is an action under the Private Attorneys General Act ("PAGA") arising from alleged wage and hour violations. On December 7, 2020, Plaintiff Juana Garcia ("Plaintiff") filed the operative complaint against Defendants Din Tai Fung Restaurant, Inc., Din Tai Fung (SF) Restaurant, LLC, Selena Soto and Antonio Valdez (collectively, "Defendants"), setting forth a single cause of action under the Private Attorneys General Act ("PAGA").

On December 15, 2022, Defendants filed a motion to compel arbitration. In an order entered on May 9, 2023, the court granted the motion as to the individual component of Plaintiff's PAGA claim, denied the motion insofar as it sought dismissal of Plaintiff's representative PAGA claim, and stayed the representative PAGA claim pending the California Supreme Court's decision in *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 (*Adolph*).

On July 17, 2023, the California Supreme Court issued its decision in *Adolph*, disagreeing with the United States Supreme Court's interpretation of PAGA standing in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 (*Viking River*) and holding that "where a plaintiff has filed a PAGA action comprised of individual and non-individual claims, an order compelling arbitration of individual claims does not strip the plaintiff of standing to litigate non-individual claims in court." (*Adolph, supra*, 14 Cal.5th at p. 1123.)

Plaintiff filed a motion to lift the stay and for leave to amend the complaint. On January 3, 2024, the court entered an order granting Plaintiff's motion to lift the stay and permitting Plaintiff to file an amended complaint (the "Jan. 3, 2024 Order"). Plaintiff then filed her First Amended Complaint ("FAC"), again setting forth a sole cause of action under PAGA for alleged wage and hour violations. The FAC states that Plaintiff brings this action against

Defendants solely as a representative and does not bring this action to pursue any individual claim under PAGA or intend to pursue an individual claim in arbitration. (FAC, ¶¶ 1, 3.)

Now before the court is Defendants' motion to stay this action and compel arbitration of legal disputes relating to Plaintiff's employment ("Motion"). Plaintiff opposes the Motion.

II. Request for Judicial Notice

Defendants request judicial of the following seven exhibits in support of their motion:

(1) Order Re: Defendant's Motion to Compel Arbitration and Dismiss or Stay Action, filed May 9, 2023 in this case;

(2) Plaintiff's FAC, filed January 5, 2024 in this case;

(3) Declaration of Ashley Yang in Support of Defendant's Motion to Compel Arbitration, filed the United States District Court for the Northern District of California in the case of *Garcia, Juana v. Din Tau Fung Restaurant, Inc. et al.* (Case No. 5:20-cv-02919-NC) (the "Federal Action");

(4) Order Granting Motion to Compel Arbitration and Motion to Dismiss All State Claims, filed in the Federal Action;

(5) Plaintiff's Complaint, filed December 7, 2020 in this case;

(6) Plaintiff's Class Action Complaint, filed April 28, 2020 in the Federal Action;

(7) The American Arbitration Association Employment Arbitration Rules and Mediation Procedures (the "AAA Rules"), publicly available at www.adr.org/Rules.

Defendants' request for judicial notice is DENIED. (*Duarte v. Pacific Specialty Ins. Co.* (2017) 13 Cal.App.5th 45, 51, fn. 6 [denying request where judicial notice is not necessary, helpful, or relevant].) Exhibits 1, 2, and 5 are already part of the record in this action. Exhibits 3, 4, 6, and 7 are not relevant to material issues raised by the Motion.

III. Legal Standard

A. Arbitration

In ruling on a motion to compel arbitration, the court must inquire as to (1) whether there is a valid agreement to arbitrate, and (2) if so, whether the scope of the agreement covers the claims alleged. (*Howsan v. Dean Witter Reynolds* (2002) 537 U.S. 79, 84 (*Howsan*).) "The procedural aspects of the FAA [Federal Arbitration Act] do not apply in state court absent an express provision in the arbitration agreement." (*Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 840, footnote and citations omitted.)

"The party seeking to compel arbitration bears the burden of proving the existence of an arbitration agreement, and the party opposing arbitration bears the burden of proving any defense, such as unconscionability." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) "In determining the rights of parties to enforce an arbitration agreement within the FAA's scope, courts apply state contract law while giving due regard to the federal policy favoring arbitration." (*Ibid.*)

B. Stay of Proceedings

"Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." (*Freiberg v. City of Misson Viejo* (1995) 33 Cal.App.4th 1484, 1489.) The trial court's inherent power to exercise reasonable control over all proceedings connected with the litigation before it "rests upon and is limited by the exercise of sound judicial discretion." (*Bailey v. Fosca Oil Co.* (1963) 216 Cal.App.2d 813, 818.) "Granting a stay in a case where the issues in two actions are substantially identical is matter addressed to the sound discretion of the trial court." (*Thompson v. Continental Ins. Co.* (1967) 66 Cal.2d 738, 746.)

"In exercising its discretion, the court should consider the importance of discouraging multiple litigation designed solely to harass an adverse party, and of avoiding unseemly conflicts with the courts of other jurisdictions. It should also consider whether the rights of parties can best be determined by the court of the other jurisdictions because of the nature of the subject matter, the availability of witnesses, or the stage to which the proceedings in the other court have already advanced." (*Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.* (1993) 15 Cal.App.4th 800, 804 [internal punctuation and citations omitted].)

IV. Discussion

The court previously lifted the stay on Plaintiff's representative PAGA claim based on her assertion that she does not intend to pursue her individual PAGA claim or any individual claim in arbitration. (Jan. 3, 2024 Order, p. 3:11-17.) Plaintiff then filed her FAC, making clear that she intends to pursue her PAGA claim solely in a representative capacity, and she does not intend to pursue an individual PAGA claim or pursue any individual claim in arbitration. (FAC, ¶¶1, 3.)

Defendants now move to stay these proceedings again and compel arbitration on the basis that the FAC still invokes legal disputes specific to arbitration. (Motion, p. 4:19-21.) More specifically, Defendants contend they are entitled to an arbitrator's determination as to whether Plaintiff is an aggrieved employee for purposes of establishing her standing to maintain her representative PAGA action. (*Id.* at pp. 11:24-12:2.)

In opposition, Plaintiff contends Defendants are fabricating an individual PAGA controversy to support their renewed attempt to force Plaintiff into arbitration. (Opp., p. 3:16-22.) Plaintiff argues that there is no legal basis for Defendants' request to stay and that Defendants are attempting to circumvent this court's prior ruling by demanding arbitration of claims that she has already effectively dismissed with the court's permission. (Opp., pp. 3:25-4:15.) As discussed below, the court agrees that it is not appropriate to reinstate a stay or compel arbitration.

A plaintiff may proceed to assert representative PAGA claims in the absence of individual claims, so long as their status as an "aggrieved employee" is properly pleaded and ultimately proven. The individual component of a PAGA claim need not be expressly adjudicated, one way or another, to determine the viability of the representative claims. (See *Adolph*, *supra*, 14 Cal.5th at p. 1121 ["Standing under PAGA is not affected by enforcement of an agreement to adjudicate a plaintiff's individual claim in another forum."].)

A PAGA plaintiff "does not collect penalties merely by alleging a Labor Code violation[.]" (*Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 761.) "The plaintiff still must prove at trial that a violation in fact occurred. Procedural mechanisms such as summary adjudication remain available to weed out meritless claims before trial. (Code Civ. Proc., § 437c, subd. (f)(1).)" (*Ibid.*) But in a stand-alone PAGA case, such as here, standing is not dependent on the maintenance of an individual claim because "individual relief has not been sought." (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88.) Defendants' arguments to the contrary do not convince the court otherwise.

Defendants initially contend that because the FAC asserts allegations "specific to Plaintiff's individual employment," arbitration is mandated. (Motion, p. 6:10-12.) The existence of an arbitration agreement between the Parties has already been established and is

undisputed. (*Id.* at p. 3:2-9.) Nevertheless, "this only means that Plaintiff must arbitrate *if* she wishes to pursue her individual PAGA claims." (Jan. 3, 2024 Order, p. 3:20-21.) Based on Plaintiff's unequivocal assertion in the FAC that she is not pursuing her individual PAGA claims (nor *any* individual claims whatsoever), Defendants have not established the existence of a claim within the scope of the arbitration agreement.

Defendants emphasize that under both federal and California law, there is strong presumption in favor of arbitration. (Motion, p. 8:13-28.) However, even after *Viking River's* modification of the rules set forth by the California Supreme Court in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, "arbitration agreements that require arbitration (or waiver) of the representative portion of a PAGA claim are not enforceable." (*Piplack v. In-N-Out Burgers* (2023) 88 Cal.App.5th 1281, 1288.) Thus, while the arbitration agreement here purports to waive Plaintiff's right to bring claims on a representative basis, that provision is unenforceable.

Defendants' argument that Plaintiff must adjudicate her individual PAGA claim in arbitration "is only true if Plaintiff intends to 'adjudicate' her own individual PAGA claim in the first place." (Jan. 3, 2024 Order, p. 4:7-10.) Defendants offer no persuasive authority or argument that *Viking River* requires Plaintiff to pursue and arbitrate her individual PAGA claims regardless of whether she wishes to do so. Instead, *Viking River* held that the prior rule adopted by California court preventing arbitration of individual PAGA claims is preempted by the FAA. (See *Adolph*, 14 Cal.5th at p. 1118, citing *Viking River*, *supra*, 596 U.S. 662.)

Defendants further argue that any dispute regarding the scope of the arbitration agreement must be decided in arbitration. (Motion, pp. 9:12-13, 14:1-3.) Defendants raised this argument previously. (See Jan. 3, 2024 Order, p. 4:14-5:3.) As before, Defendants contend that Plaintiff must first establish her status as an "aggrieved employee" in arbitration before she can maintain her non-individual PAGA claim in court. Defendants again point to the two-part approach described in *Adolph* (i.e., adjudication of a plaintiff's individual PAGA claims in arbitration followed by adjudication of their non-individual PAGA claims in court) and suggest that *Adolph* mandates such an approach.

However, *Adolph* did not hold that this procedure is required in every PAGA case. Instead, the *Adolph* decision sets forth how that particular PAGA "could proceed" if the plaintiff were ordered to arbitrate his individual PAGA claim. (*Adolph*, *supra*, 14 Cal.5th at p. 1123.) It was in fact the plaintiff in *Adolph* who suggested the two part approach in response to defendant Uber's concern that the plaintiff would "run afoul of *Viking River* because he will be permitted to relitigate whether he is an aggrieved employee in court to establish standing even if he has agreed to resolve that issue in arbitration as part of his individual PAGA claim." (*Ibid.*)

Contrary to Defendants' suggestion, nothing in *Adolph* indicates that the two-part approach suggested by the plaintiff there is required where a plaintiff unequivocally indicates in their complaint that they are not pursuing their individual PAGA claim. Furthermore, in this case, there is no realistic concern regarding the potential relitigation of issues following arbitration because Plaintiff has not alleged any claims within the scope of the applicable arbitration agreement. (See Jan. 3, 2024 Order, p. 5:4-13.) While Defendants insist that the legal disputes raised by Plaintiff's FAC relate to various Labor Code violations and "pertain to Plaintiff as an individual" (see Motion, p. 13:26-28), the fact remains that the only claim asserted in the FAC is that for PAGA penalties on a representative basis.

In conclusion, while Defendants have established the existence of an arbitration agreement, the scope of the agreement does not cover the only claim alleged in Plaintiff's operative FAC. (See *Howsan*, *supra*, 537 U.S. at p. 84 [In ruling on a motion to compel arbitration, the court must inquire as to (1) whether there is a valid agreement to arbitrate, and (2) if so, whether the scope of the agreement covers the claims alleged.].) As there is no valid basis to compel Plaintiff's non-individual PAGA claim to arbitration, Defendants are not entitled to a stay pending arbitration. (See *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141 [a trial court has inherent power, in its discretion, to stay proceedings when doing will accommodate the ends of justice].)

V. Conclusion

The motion to compel arbitration and stay these proceedings is DENIED.

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

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Case Name: Kovacevic v. Pure Wafer, Inc. (PAGA)
Case No.: 22CV401779

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on October 9, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a representative action arising from alleged wage and hour violations. On August 4, 2022, Plaintiff Gzim Kovacevic ("Plaintiff") filed a Representative Action Complaint alleging a single cause of action against Defendant Pure Wafer, Inc. ("Defendant") for violation of the Private Attorneys General Act ("PAGA"), Labor Code section 2698, *et seq.*

On June 1, 2022, Plaintiff filed a separate putative class action against Defendant in the matter of *Gzim Kovacevic v. Pure Wafer, Inc.*, Santa Clara County Superior Court Case No. 22CV398811. On April 14, 2023, the court (Hon. Kulkarni) entered an order dismissing the putative class claims and compelling arbitration as to Plaintiff's individual claims in Case No. 22CV398811 and the individual component of his PAGA claim in this action.

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

II. Legal Standard for PAGA Settlements

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

employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

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

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

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

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

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

"[W]hen a PAGA claim is settled, the relief provided … [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …." (*O'Connor, supra* at p. 1133.) The settlement must be reasonable in light of the potential verdict value. (*Id.* at 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc*. (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759 at *8-9.)

III. Discussion

A. Provisions of the Settlement

Plaintiff moves for approval of a proposed settlement on behalf of "PAGA Settlement Members," defined as:

> Defendant's current and former non-exempt employees in the State of California from June 1, 2021, through November 30, 2023 [the "PAGA Claim Period"].

(Declaration of Kristen M. Agnew ("Agnew Dec."), Ex. 1 ("Agreement"), §§ I-(h), I-(s).)

According to the terms of settlement, Defendant will pay a gross settlement amount of $225,585. (Agreement, §§ I-(l), II-C-(a).) This amount is subject to a pro-rata increase in the event the actual number of pay periods exceeds the estimated number by more than 15%. (*Id.* at § II-C-(c).) The gross settlement amount includes attorney fees of up to one-third of the gross settlement amount (currently estimated to be $75,195), litigation costs up to $15,000, settlement administration expenses of up to $3,195, and a service payment to Plaintiff of up to $7,500.

(*Id.* at §§ II-C-(a).) The net settlement amount (approximately $124,695 based upon on the above figures) shall be allocated to payment of PAGA penalties, 75% of which will be distributed to the LWDA and 25% of which will be distributed to the PAGA Settlement Members on a pro-rata basis according to their number of qualifying pay periods during the relevant time period. (*Ibid.*)

Funds from distribution checks remaining uncashed more than 180 days after mailing will be transmitted to the East Bay Community Law Center as the designated *cy pres* recipient. (Agreement, § II-C-(b).) The court approves the designated *cy pres* recipient.

In exchange for the settlement, Plaintiff and the PAGA Settlement Members shall be deemed to have released Defendant and related entities and persons from all PAGA claims that could have been alleged based on the facts asserted in the PAGA action. (Agreement, § I-(q), I-(u), IV-A.) The release does not extend to any individual non-PAGA wage and hour claims or to violation of any predicate statutes other than PAGA. (*Id.* at § IV-(A).) Therefore, the release provisions are appropriately tailored to the factual allegations of the operative pleading. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

B. Fairness of the Settlement

Plaintiff contends that the settlement is fair, reasonable, and adequate. (Plaintiff's Motion to Approve Settlement ("Mot."), pp. 16:2-20:2; Agnew Dec., ¶¶ 39-40.) Plaintiff states that the parties were able to reach a settlement through direct negotiation. (Agnew Dec., ¶ 13.) Defendant produced its written wage and hour policies as well as data relating to the number of pay periods relevant to Plaintiff's claims. (*Id.* at ¶¶ 13-14.) Plaintiff's counsel was able to conduct a full penalties analysis as to the value of the PAGA claims, and the Parties extensively discussed the merits of Plaintiff's claims and Defendant's anticipated defenses. (*Id.* at ¶¶ 13, 16.)

Plaintiff estimates that Defendant's maximum potential exposure is $2,005,200. (Agnew Dec., ¶ 32.) Plaintiff provides a breakdown of this amount by claim. (*Ibid.*; Mot., pp. 18:17-23.) Plaintiff explains the manner in which his claims are contested and why a substantial reduction in the realistic potential PAGA penalties is warranted. (Agnew Dec, ¶¶ 17-19, 31-38; Mot., pp. 16:7-19:24.) Plaintiff also points out that the maximum potential exposure figure in based upon the stacking of penalties, and that trial courts have discretion to reduce PAGA penalties. (Agnew Dec., ¶¶ 31-34.)

The gross settlement amount of $225,585 represents 11.25% of the Defendant's estimated maximum potential exposure. This percentage recovery is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v.*

Salas Concrete, Inc. (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases indicating that a general range of 5 to 35 percent of the maximum potential exposure is reasonable].)

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

C. Service Award, Attorney Fees and Costs

As part of the settlement, Plaintiff seeks a service award in the amount of $7,500. Although service awards are common in class actions, there is less authority regarding the propriety of service awards in PAGA cases. Nevertheless, a PAGA case is a representative action like a class action, and courts have recognized that an individual's willingness to act as a private attorney general may merit a service award. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959.)

Plaintiff has submitted a declaration detailing his participation in the action. (Declaration of Gzim Kovacevic, ¶¶ 6-9.) Plaintiff acknowledges that his involvement in this action could put his current or future employment at risk. (*Id.* at ¶ 7.) He states that his involvement has included participating in numerous telephonic meetings, reviewing and signing the Complaint and PAGA Notice, providing his attorneys with documents and information, and reviewing and signing the settlement agreement. (*Id.* at ¶ 8.) The amount requested appears to be reasonable. Therefore, the court approves a service award in the amount of $7,500.

Plaintiff's counsel seeks attorney fees of $75,195 (one third of the gross settlement amount). (Mot., p. 25:3-15; Agnew Dec., ¶ 25.) Plaintiff's counsel provides evidence demonstrating a current lodestar of $57,400, based on 71.8 hours at a rate of $800 per hour. (Agnew Dec., ¶¶ 49-50, Ex. 3.) This results in a multiplier of approximately 1.3. The court finds the requested fees to be reasonable as a percentage of the total recovery, and the fees are approved in the in the amount of $75,195.

Plaintiff's counsel also requests reimbursement of actual litigation costs in the total amount of $3,319.98 and provides evidence of incurred costs in that amount. (Mot., p. 25:20-24; Agnew Dec., ¶ 51, Ex. 4.) Therefore, the court approves costs in the amount of $3,319.98.

Plaintiff also requests payment of settlement administration costs in the amount of $3,195. (Mot., p. 25:20-24.) Plaintiff provides a declaration from the settlement administrator containing a detailed breakdown of its fee of $3,195. (Declaration of Jodie Lawrence on behalf of Phoenix Class Action Administration Solutions. ¶ 16, Ex. B.) Therefore, the court approves settlement administration costs in the amount of $3,195.

IV. Conclusion

The motion for approval of PAGA settlement is GRANTED.

The court sets a compliance hearing for June 4, 2025 at 2:30 p.m. in Department 19.

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

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