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: JULY 24, 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	23CV409762	Rico v. FMA Landscape Services, Inc., et al. (Class Action)	See Line 1 for tentative ruling.
LINE 2	22CV393492	Perez v. Best Overnite Express, Inc. (Class Action)	See Line 2 for tentative ruling.
LINE 3	18CV335706	Moniz v. Service King Paint & Body, LLC (Class Action/PAGA)	See Line 3 for tentative ruling.
LINE 4	22CV396462	Long v. Juniper Networks (US), Inc. (Class Action/PAGA)	See Line 4 for tentative ruling.
LINE 5	23CV409729	Sell v. Eblock Corporation (Class Action/PAGA) (Lead Case; Consolidated with 23CV410279)	See Line 5 for tentative ruling.
LINE 6	18CV322077	Shuff, et al. v. Stevens Creek Quarry, Inc., et al. (Class Action)	See Line 6 for tentative ruling.
LINE 7	23CV423934	Lozano v. C&L Refrigeration Corporation (Class Action/PAGA)	See Line 7 for tentative ruling.
LINE 8	20CV368472	Tesla, Inc. v. Pascale, et al.	See Line 8 for tentative ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: Rico v. FMA Landscape Services, Inc., et al. (Class Action)
Case No.: 23CV409762

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 24, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This class and representative action, arising out of alleged wage and hour violations, is brought by plaintiff Juan Manuel Nino Rico ("Plaintiff") against defendants F M A Landscape Services, Inc. and Miguel A. Medina (collectively, "Defendants"). Plaintiff filed the operative complaint ("Complaint") on January 10, 2023, setting forth the following causes of action: (1) Recovery of Unpaid Minimum Wages and Liquidated Damages – Labor Code §§ 1194, 1194.2; (2) Recovery of Unpaid Overtime – Labor Code § 1194; (3) Failure to Provide Meal Periods of Compensation in Lieu thereof – Labor Code § 226.7; (4) Failure to Provide Rest Periods or Compensation in Lieu thereof – Labor Code § 226.7; (5) Failure to Provide Accurate Itemized Wage Statements – Labor Code § 226; (6) Waiting Time Penalties – Labor Code §§ 201, *et seq.*; (7) Violation of Unfair Competition Law – Bus. & Prof. Code §§ 17200, *et seq.*; (8) Violation of Private Attorneys General Act – Labor Code §§ 2698, *et seq.*

The parties have reached a settlement. Plaintiff now moves for preliminary approval of the settlement. The motion is unopposed.

II. Legal Standard

Generally, "questions whether a 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*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> 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, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The 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*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

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

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

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.)

III. Discussion

A. Provisions of the Settlement

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

> [a]ll current and former non-exempt California employees who worked for Defendants at any time during the period of July 16, 2018 through the earlier of: (a) the date the court enters and [sic] order granting preliminary approval of this settlement; or (b) December 31, 2023.

(Declaration of J. Kirk Donnelly in Support of Motion for Preliminary Approval of Class Action Settlement ("Donnelly Dec."), Ex. 1 ("Settlement Agreement"), ¶ 1.9.) The agreement defines "Defendants" as F M A Landscape Services, Inc. and Miguel Medina. (Settlement Agreement, ¶ 1.17.) The settlement also includes a subset PAGA class of "Aggrieved Employees," defined as:

> [a]ll current and former non-exempt California employees who worked for Defendants at any during the period of July 16, 2018 through the earlier of: (a) the date the court enters and [sic] order granting preliminary approval of this settlement; or (b) December 31, 2023 (the "PAGA Period").

(Settlement Agreement, ¶ 1.5.)

According to the terms of the settlement, Defendant will pay a gross settlement amount of $360,000. (Settlement Agreement, ¶¶ 1.24, 3.1.) The settlement agreement provides that the Gross may be increased proportionately if the actual number of pay periods is determined to be incorrect by more than 10 percent or 13,200 workweeks. (Settlement Agreement, ¶ 4.1.) The gross settlement amount includes attorney fees up to 1/3 of the gross settlement amount (currently estimated to be $120,000), litigation costs not to exceed $10,000, a PAGA allocation of $20,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Aggrieved Employees as individual PAGA payments), a service award up to $10,000, and settlement administration costs not to exceed $12,000. (Settlement Agreement, ¶¶ 1.24, 3.2, 3.2.1-3.2.3, 3.2.5.)

The settlement agreement identifies Phoenix Settlement Administrators ("Phoenix") as the entity the parties appointed to administer the settlement. (Settlement Agreement, ¶ 1.2.) Phoenix has provided a declaration indicating that the settlement administration for this matter has a flat fee of $12,000. (Declaration of Michael Moore on Behalf of Phoenix Class Action Settlement Administration in Support of Preliminary Approval, ¶ 17, Ex. B.) The court approves Phoenix as the settlement administrator and settlement administration costs up to $12,000.

The net settlement amount will be distributed to participating class members on a pro rata basis according to the number of workweeks they were employed by Defendants. (Settlement Agreement, ¶ 3.2.4.) Similarly, the portion of the PAGA allocation designated for Aggrieved Employees will be distributed on pro rata basis according to the number of pay

periods worked. (Settlement Agreement, ¶ 3.2.5.1.)Defendants will fund the gross settlement amount in three installments. (Settlement Agreement, ¶ 4.3.) Within ten days of the funding of each installment, the administrator will issue checks to Class Members and Aggrieved Employees with a void date of 120 days after mailing. (Settlement Agreement, ¶ 4.4.1.) For the distributions from the first and second installments, checks remaining uncashed more than 120 days after mailing will be void and the funds from those checks will be added back into the net settlement amount and distributed pro rata to the participating class members with the next distribution. (Settlement Agreement, ¶¶ 1.30, 4.4.1, 4.4.3.) For the distributions from the third installment, funds from checks that remain uncashed more than 120 days after mailing will be transmitted to the California State Controller's Office Unclaimed Property Fund. (Settlement Agreement, ¶¶ 4.4.1, 4.4.3.)

The parties' proposal to send funds from uncashed checks issued to class member to the State of California Unclaimed Property Fund does not comply with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class members funds be given to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." The court will continue the hearing on this matter due to allow the parties to meet and confer to select a *cy pres* recipient. Prior to the continued hearing, Plaintiff shall provide the court with information regarding the new *cy pres* recipient in compliance Code of Civil Procedure section 384.

In exchange for the settlement provisions, Plaintiff, Class Members and Aggrieved Employees each respectively agree to release the "Released Parties" from certain claims. (Settlement Agreement, ¶¶ 1.40-1.42.) The term "Released Parties" means "Defendants and each of their former and present directors, officers, partners, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates and parent." (Settlement Agreement, ¶ 1.42.) Plaintiff agrees to a comprehensive general release. (Settlement Agreement, ¶ 5.1.1.)

Class Members agree to release the Released Parties from all claims that were alleged based on the facts pleaded in the Complaint occurring during the Class Period. (Settlement Agreement, ¶ 5.2.) PAGA Aggrieved Employees agree to release the Released Parties from all claims for PAGA civil penalties that were alleged based on facts pleaded in the Complaint and/or the notice Plaintiff sent to the LWDA. (Settlement Agreement, ¶ 5.3.)

B. Fairness of the Settlement

Plaintiff states that the settlement was reached through discovery, analysis, and mediation with Hon. George Hernandez (Ret.). (Donnelly Dec., ¶¶ 8-9, Settlement Agreement, ¶¶ 2.3-2.4.) In anticipation of mediation, the parties engaged in extensive informal discovery, and Defendants provided Plaintiff with payroll records, personnel policies/handbooks, personnel files, and a random sampling of paystub and time records for about 25% of the putative class. (Donnelly Dec., ¶ 8.) Plaintiff conducted a detailed review of the payroll records, time records, and other information provided by Defendant. (*Id.* at ¶ 24.) Defendant represented that there are approximately 193 class members who worked approximately 12,000 workweeks within the class period. (Donnelly Dec., ¶ 11, Settlement Agreement, ¶ 4.1.) Plaintiff states the net settlement amount will be approximately $180,000, meaning the average net payment to class members will be $974.09. (Donnelly Dec., ¶¶ 10-11.)

Plaintiff estimates that Defendant's maximum potential liability for all the claims is approximately $3,844,175, based on estimated potential exposure of $2,344,175 for the class claims and $1,500,000 for the PAGA claims. (Donnelly Dec., ¶¶ 25-26, 31.) Plaintiff provides a breakdown for this amount by claim. (*Ibid.*) Plaintiff discounted the value of the claims given Defendants' defenses, the possibility that the court could substantially reduce any PAGA penalties, and the risks and costs associated with class certification. (Donnelly Dec., ¶¶ 29-33.)

The gross settlement amount represents approximately 9.36% of the potential maximum recovery. The proposed settlement amount is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavasos 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 listing range of 5 to 25-35 percent of the maximum potential exposure].)

Therefore, the court finds the terms of the settlement to be fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

C. Incentive Award, Fees and Costs

Plaintiff request enhancement awards in the total amount of $10,000.

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

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Plaintiff has provided a declaration detailing his involvement in this matter. (Declaration of Juan Manuel Nino Rico ("Rico Dec."), ¶¶ 3-7.) Plaintiff states he has participated in numerous meetings and communication with his lawyers, and that he provided his lawyers with information and documents related to this case. (Rico Dec., ¶ 5-7.) Plaintiffs states he participated in all stages of this litigation and spent time on tasks such as searching for documents, responding to requests for information, and reviewing drafts of the Complaint and the settlement agreement. (*Ibid.*) Plaintiff asserts that he spent at least 15-20 hours of his time on this litigation. (Rico Dec., ¶ 7.)

The time Plaintiff spent on this litigation benefited the putative class members and Aggrieved Employees because of the resulting settlement. Plaintiff also undertook risk by attaching his name to this case because it might impact her future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].).

For the forgoing reasons, the court finds that a service award to Plaintiff is appropriate. However, the amount sought for the service award is higher than the court typically awards in these types of cases. Accordingly, the court approves a service award to Plaintiff in the amount of $2,500.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees up to 1/3 of the gross settlement amount (currently estimated to be $120,000) and litigation costs not to exceed $10,000. Plaintiff's counsel shall submit lodestar information (including hourly rate and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiff's counsel shall also submit, prior to the final approval hearing, evidence of actual costs incurred as well as evidence of any settlement administration costs.

D. Conditional Certification of Class

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

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

wrongdoing." (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

As explained by the California Supreme Court,

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

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

Plaintiff states that there are approximately 193 class members, who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

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

The notice generally complies with the requirements for class notice. (Settlement Agreement, Ex. A.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion.

However, section 8 at page "31" of the class notice must be amended to include the following language regarding the final approval hearing:

> Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). 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 who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimized.

Further, as discussed above, Plaintiff shall provide a *cy pres* recipient in compliance with Code of Civil Procedure section 384, and the class notice must be amended to indicate this change. The parties are ordered to submit an amended class notice making these changes to the court for approval prior to mailing.

IV. Conclusion

Accordingly, the motion for preliminary approval of the class and representative action settlement is CONTINUED to September 18, 2024 at 1:30 p.m. in Department 19. Plaintiff shall inform the court of the new *cy pres* recipient and provide an updated copy of the settlement agreement and class notice no later than September 2, 2024. No additional filings are permitted.

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

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Calendar Line 2

Case Name: Perez v. Best Overnite Express, Inc. (Class Action)
Case No.: 22CV393492

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 24, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a putative class and Private Attorneys General Act ("PAGA") action arising out of various alleged wage and hour violations. The operative First Amended Complaint ("FAC") against defendant Best Overnite Express, Inc. ("Defendant"), filed on April 12, 2022, sets forth the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Reimburse Business Expenses; (3) Failure to Provide Accurate Itemized Wage Statements; (4) Failure to Pay All Wages Due Upon Separation of Employment; (5) Violation of Business and Professions Code §§ 17200[] *et seq.*; and (6) Enforcement of Labor Code, § 2698, *et seq.* ("PAGA").

The parties have reached a settlement. On February 9, 2024, Plaintiff filed a motion for preliminary approval of the settlement, and the motion is unopposed. On May 22, 2024, the court continued the motion for preliminary approval to July 24, 2024. In its minute order, the court explained that it found the settlement to be fair overall, but there were several areas requiring further attention. The court identified the following issues: the identification of a *cy pres* recipient; the scope of the release for the PAGA claims; the amount of settlement administration costs; and modifications to the class notice. The court also instructed Plaintiff to file a declaration in support of his request for a service award.

On July 10, 2024, Plaintiff, his attorneys, and the settlement administrator all filed supplemental papers in support of the motion for preliminary approval. Among these filings are an amended settlement agreement and an amended class notice. (Supplemental Declaration of Julia M. Toscano in Support of [] Motion for Preliminary Approval of Class and Representative Action Settlement ("Toscano Dec."), Ex. 1.)

II. Legal Standard

Generally, "questions whether a 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*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> 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, citing *Dunk, supra,* 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba, supra,* 91 Cal.App.4th at p. 245.) The 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*., quoting *Dunk, supra,* 48 Cal.App.4th at p. 1801 and *Officers, supra,* 688 F.2d at p. 625, internal quotation marks omitted.)

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

(*Wershba, supra,* 91 Cal.App.4th at p. 245, citing *Dunk, supra,* 48 Cal.App.4th at p. 1802.)

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.)

III. Discussion

A. Provisions of the Settlement

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

> [a]ll California residents currently or formerly employed by Defendant as a non-exempt employee in the State of California at any time during the Class Period [from June 15, 2019 through June 15, 2023].

(Toscano Dec., Ex. 1 ("Settlement Agreement"), ¶¶ 1.5, 1.12.) The class includes a subset of PAGA Members who are identified as all California residents currently or formerly employed by Defendant as a non-exempt employee in the State of California at any time during the PAGA Period [from June 15, 2020 through June 15, 2023]. (Settlement Agreement, ¶¶ 1.4, 1.30.)

According to the terms of the settlement, Defendant will pay a gross, non-reversionary amount of $450,000. (Settlement Agreement, ¶¶ 1.21, 3.1.) The gross settlement payment includes attorney fees not to exceed one-third of the gross settlement amount (currently estimated at $150,000), litigation costs up to $25,000, an incentive award up to $15,000 for the class representative, settlement administration costs up to $10,650, and PAGA allocation of $40,000 (75 percent of which will be paid to the Labor and Workforce Development Agency ("LWDA") and 25 percent of which will be available for PAGA Members). (Settlement Agreement, ¶¶ 3.2.1-3.2.3, 3.2.5.) Amounts not approved for use as an incentive award, attorney's fees, litigation costs, and settlement administration costs will revert to the net settlement amount. (Settlement Agreement, ¶¶ 3.2.1-3.2.3.) Plaintiff submitted a copy of the proposed settlement to the LWDA. (Toscano Dec., ¶ 11.)

The net settlement amount will be distributed to the participating Class Members on a pro rata basis based on their number of applicable workweeks. (Settlement Agreement, ¶ 3.2.4) Similarly, the individual PAGA payments will be distributed to PAGA Members based on their number of applicable pay periods worked. (Settlement Agreement, ¶ 3.2.5.1.) Funds

from checks that remain uncashed 180 days after issuance will be sent to the *cy pres* chosen by the parties: St. Jude Children's Research Hospital. (Settlement Agreement, ¶ 4.4.3.) The court approves the *cy pres* recipient.

Regarding the administration costs, Plaintiff has submitted a declaration from the settlement administrator, ILYM Group, Inc. ("ILYM Group") along with his supplement briefing. (See Declaration of Lisa Mullins ("Mullins Dec.").) The settlement administrator has provided evidence that, based in part on the number of Class Members (561), its fees associated with the administration of this settlement are $10,650. (Mullins Dec., ¶¶ 9-10, Ex. C.) Having received this information, the court approves ILYM Group as the settlement administrator and settlement administration costs in the amount of $10,650.

As part of the settlement, Plaintiff, Class Members, and PAGA Members agree to respective releases with respect to "Released Parties," defined as Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries and affiliates." (Settlement Agreement, ¶ 1.40.) In exchange for the settlement, the class members agree to release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts pleaded in the FAC occurring during the Class Period. (Settlement Agreement, ¶¶ 1.38, 6.2.)

PAGA Members who are not participating Class Members "are deemed to release … the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Period facts stated in the PAGA Notice that are pled in the Operative Complaint. (Settlement Agreement, ¶¶ 1.39, 6.3.) The court finds that the release for PAGA Members is now reasonably tailored to the operative pleading, and therefore is consistent with the appellate court's reasoning in *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521.

B. Fairness of the Settlement

Plaintiff states that the settlement was reached through discovery, analysis, and mediation with Jill Sperber. (Declaration of Jessica L. Campbell in Support of Motion for Preliminary Approval of Class Action Settlement, filed on February 9, 2024 ("Campbell Dec."), ¶¶ 6-7, 14.) In anticipation of mediation, the parties engaged in informal discovery,

and Defendant produced pay records, time sheets, hiring and termination dates, and employee handbooks and policies for all Class Members for the Class Period. (Campbell Dec., ¶ 6.) Plaintiff's counsel provides a detailed analysis of its reasoning with respect to the maximum realistic recovery of the claims alleged in the FAC. (Campbell Dec., ¶¶ 13-20.) Defendant's records show that there are approximately 561 Class Members who worked approximately 40,000 workweeks. (Campbell Dec., ¶ 9; Settlement Agreement, ¶ 4.1.)

As discussed in the court's May 22, 2024 minute order, the court finds that the settlement amount is fair despite being somewhat low as percentage of the maximum potential recovery. By the court's calculation, the total maximum potential recovery is $10,949,813 (including maximum potential recovery of $1,802,200 for the PAGA claim), so the gross settlement amount represents approximately 4 percent of the total maximum potential recovery. Plaintiff provides a detailed breakdown of this amount by claim. (Campbell Dec., ¶¶ 16-20.) Thus, the proposed settlement amount is slightly below general range of percentage recoveries that California courts have found to be reasonable. (See *Cavasos 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 listing range of 5 to 25-35 percent of the maximum potential exposure].)

Nevertheless, Plaintiff's counsel has provided reasons why the claims were discounted as they were, including the anticipated difficulties on the merits and in proving violations on a class-wide basis. (Campbell Dec., ¶¶ 15-20.) Plaintiff's counsel estimates that the maximum realistic recovery for the class claims is $458,000. (*Ibid.*) Thus, the gross settlement amount represents approximately 98 percent of the maximum realistic recovery.

Therefore, the court finds the terms of the settlement to be fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

C. Incentive Award, Fees and Costs

Plaintiff requests an enhancement award of $15,000.

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

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

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Since the May 22, 2024 hearing on his motion for preliminary approval, Plaintiff has submitted a declaration describing his involvement in this case. (Declaration of Baltazar Perez in Support of Motion for Preliminary Approval of Class Action Settlement ("Perez Dec."), ¶¶ 8-12, 20.) Plaintiff states that he participated in many conversations with his attorneys and contacted them regularly, spent time looking for documents, provided verified responses to written discovery, and assisted with the preparations for mediation. (*Ibid.*) Plaintiff estimates that he has spent approximately 40 hours of his time on this litigation. (Perez Dec., ¶ 20.)

The time Plaintiff spent on this matter benefited the class because it led to the settlement now before the court. Plaintiff also undertook risk by attaching his/her name to this case because it might impact [his/her] future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].).

For the foregoing reasons, the court finds that a service award to Plaintiff is warranted. Nevertheless, the amount sought for the enhancement award is higher than the court typically awards in these types of cases. Therefore, the court approves a service award to Plaintiff in the amount of $5,000.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will seek attorney fees up to $150,000 (1/3 of the gross settlement amount) and litigation costs not to exceed $25,000. Plaintiff's counsel shall submit lodestar information (including hourly

rate and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiffs' counsel shall also submit evidence of actual costs incurred.

D. Conditional Certification of Class

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

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

As explained by the California Supreme Court,

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

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

Plaintiff states that there are approximately 561 class members, who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

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

The notice generally complies with the requirements for class notice. (Settlement Agreement, pp. 22-31.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion. The court acknowledges that that Plaintiff has amended the class notice to include the *cy pres* recipient (at section 3.5, p. 26) and the information regarding remote appearance at the final approval hearing (at section 8, p. 30).

Accordingly, the court approves the class notice as amended.

IV. Conclusion

Accordingly, the motion for preliminary approval of the class and representative action settlement is GRANTED. The final approval hearing is scheduled for January 22, 2025 at 1:30 p.m. in Department 19. Plaintiff shall provide a supplemental declaration with lodestar information (including hourly rate and hours worked), as well as evidence of costs incurred, no later than January 7, 2022.

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

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Calendar Line 3

Case Name: Moniz v. Service King Paint & Body, LLC (Class Action/PAGA)
Case No.: 18CV335706

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 24, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is putative class and Private Attorneys General Act (PAGA) action arising out of various alleged wage and hour violations. On October 9, 2023, plaintiffs Erica Moniz, Hagop Ajeman, Hugo Gutierrez, Philip Gabriel, Adolfo Chavez, and Manuel Ramirez (collectively, "Plaintiffs") filed the operative Third Amended Complaint ("TAC") against defendants Service King, Inc. and Service King Paint & Body, LLC (collectively, "Defendants").

The TAC sets forth the following causes of action: (1) Minimum Wage Violations (Labor Code, §§ 1182.12, 1194, 1194.2, 1197); (2) Failure to Pay All Overtime Wages (Labor Code, §§ 204, 510, 558, 1194, 1198); (3) Rest Period Violations (Labor Code, §§ 226.7, 516, 558); (4) Meal Period Violations (Labor Code, §§ 226.7, 516, 558); (5) Waiting Time Penalties and Failure to Timely Pay Wages During Employment (Labor Code, §§ 201-204); (6) Wage Statement Violations (Labor Code, § 226, *et seq.*); (7) Civil Penalties Under the Private Attorneys General Act (Labor Code, § 2698, *et seq.*); (8) Unfair Competition (Bus. & Prof. Code § 17200, *et seq.*); (9) Failure to Reimburse for All Business Expenses (Labor Code, § 2802); and (10) Failure to Provide or Compensate Paid Sick Leave.

The parties have reached a settlement. On April 19, 2024, Plaintiffs filed a motion for preliminary approval of the settlement, and the motion is unopposed. On May 22, 2024, the court continued the hearing on the motion to July 24, 2024. In its minute order, the court explained that it found the settlement to be fair overall, but there were several areas requiring further attention. The court identified the following issues: the identification of a *cy pres* recipient; the scope of the release for the PAGA claims; evidence that the proposed settlement was submitted to the Labor and Workforce Development Agency ("LWDA"); the

authenticating language within plaintiff Philip Gabriel's declaration; consistency regarding the settlement administration costs, and corrections to the class notice.

On July 10, 2024, Plaintiffs submitted supplemental papers in support of the motion for preliminary approval of class action settlement. Among these filings are an amended settlement agreement and an amended class notice. (Declaration of Paul K. Haines in Support of Plaintiffs' Supplemental Brief [] ("Haines Supp. Dec."), Ex. 1.)

II. Legal Standard

Generally, "questions whether a 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*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> 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, citing *Dunk, supra,* 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba, supra,* 91 Cal.App.4th at p. 245.) The 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.*, quoting *Dunk, supra,* 48 Cal.App.4th at p. 1801 and *Officers, supra,* 688 F.2d at p. 625, internal quotation marks omitted.)

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

> discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

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.)

III. Discussion

A. Provisions of the Settlement

The cases has been settled on behalf of the following class:

> [A]ll current and former non-exempt employees of Defendant in the State of California who held the job title(s) of Service Advisor, Painter, and/or Body Technician during the Class period and thereby received various forms of productivity/commission pay.

(Haines Supp. Dec., Ex. 1, Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement"), ¶ 1.7.) "Class Period" means September 25, 2024 through January 31, 2023 – however – for all persons who participated in the class action settlement in the case of *Roman v. Service King Paint & Body, LLC*, No. CIVDS16002618, the Class Period shall begin on December 9, 2016 and run through January 31, 2023. (Settlement Agreement, ¶ 1.14.)

The class includes a subset of Aggrieved Employees ("PAGA Members"), who are identified as "current and former non-exempt employees of Defendant in the State of California who held the job title(s) of Service Advisor, Painter, and/or Body Technician and thereby received various forms of productivity/commission pay at any time during the PAGA Period [from December 21, 2017 through January 31, 2023]." (Settlement Agreement, ¶¶ 1.6, 1.37.)

According to the terms of settlement, Defendants will pay a gross, non-reversionary amount of $4,750,000. (Settlement Agreement, ¶ 3.1.) The gross settlement payment includes attorney s fees not to exceed $1,583,333 (1/3 of the gross settlement amount) (*id.*, ¶ 3.2.2),

litigation costs up to $150,000 (*id.*), an incentive award of $15,000 each to Plaintiffs Moniz, Ajemyan, Gutierrez, and Gabriel, and $7,500 each to Plaintiffs Chavez and Ramirez (for a total of $75,000) (*id.*, 3.2.1), reasonable costs of settlement administration up to $16,500 (*id.*, 3.2.3), and a PAGA allocation of $100,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be available for PAGA Members) (*id.*, 3.2.5).

The court notes that the parties have modified paragraph 3.2.3 to provide for a maximum of $16,500 in settlement administration costs, as opposed to the prior amount of $18,500. This is consistent with the settlement administrator's declaration indicating a total cost of $16,500. (Declaration of Jodey Lawrence of Phoenix Settlement Administrators [], ¶ 18, Ex. B.) The court approves Phoenix Settlement Administrators as the administrator and settlement administration costs not to exceed $16,500.

Per paragraphs 3.2.1, 3.2.2, and 3.2.3 of the Settlement Agreement, amounts not approved or used for the incentive awards, attorney fees, litigations costs, or settlement administration costs shall be added to the Net Settlement Amount.

Individual payments to Class Members will be calculated as follows:

> (i) 15% of the NSA shall be designated as the Waiting Time Penalty Fund and shall be distributed in equal, pro-rata shares to each Settlement Class Member who separated their employment with Service King at any time between September 25, 2015 through January 31, 2023;
>
> (ii) 10% of the NSA shall be designated as the Wage Statement Penalty Fund and each Settlement Class Member who was employed by Service King at any time from December 21, 2017 through January 31, 2023 ("Wage Statement Period"), shall receive a portion of the Wage Statement Penalty Fund proportionate to the number of workweeks that he or she worked during the Wage Statement Period; and
>
> (iii) the remainder (75%) of the NSA will be distributed to each Settlement Class Member based on the proportionate number of workweeks worked during the Class Period.

(Settlement Agreement, ¶ 3.2.4.)

PAGA penalties distributed to PAGA Members will be calculated by (a) dividing the amount of the Aggrieved Employees 25% share of PAGA Penalties by the total number of PAGA Period Workweeks worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee s PAGA Period Workweeks. (Settlement Agreement, ¶ 3.2.5.1.)

As amended, the settlement agreement now provides that funds from checks that remained uncashed 180 days after issuance will be sent to the *cy pres* recipient Child Advocates of Silicon Valley in accordance with California Code of Civil Procedure section 384, subdivision (b). (Settlement Agreement, ¶ 4.4.3.) The court approves the designated *cy pres* recipient.

In exchange for the settlement, Settlement Class Members who do not opt out will release "all claims that were alleged, or reasonably could have been alleged, based on the Class Period factual allegations and primary rights stated in the Operative Complaint and any amendments thereto, and ascertained in the course of the Actions[.]" (Settlement Agreement, ¶ 5.2.)

PAGA Members will release "all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period factual allegations and primary rights stated in the Operative Complaint and any amendments thereto, and ascertained in the course of the Actions[.]" (Settlement Agreement, ¶ 5.3.) The court notes that the parties have amended the PAGA release provision to remove the prior reference to "PAGA Notices." Accordingly, the court finds that the PAGA release is now appropriately tailored to the operative pleadings and is therefore consistent with the appellate court's reasoning in *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521.

The court also notes that Plaintiffs have now provided evidence showing that the proposed settlement was submitted to the LWDA as required under Labor Code section 2699, subdivision (l)(2), which states that "[t]he proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (See Haines Supp. Dec., ¶¶ 5-6, Exs. 5-7.) Accordingly, Plaintiffs have sufficiently addressed the court's concerns regarding notice to the LWDA.

B. Fairness of the Settlement

As addressed by the court in its May 22, 2024 minute order, Plaintiffs assert that the settlement is fair, reasonable, and adequate, given the inherent risks of litigation, including substantial risks relative to class certification and the merits of the claims, and the costs of pursing litigation. Plaintiffs state that the settlement is the result of extensive discovery and

motion practice, arm's-length negotiations between the parties and their experienced counsel, and private mediation before an experienced wage and hour class action mediator, Mark S. Ruby. The parties engaged in extensive formal and informal discovery, with both sides propounding and responding to formal written discovery, meeting and conferring over responses, and providing supplemental discovery responses. Defendants deposed Plaintiffs Moniz, Ajemyan, Gutierrez, and Gabriel, as well as Plaintiffs declarants who submitted declarations in support of Plaintiffs class certification motion. Plaintiffs deposed Defendants corporate witnesses on numerous topics. Defendants produced relevant wage and hour policies, timekeeping records, payroll records, contact information, and records for a sampling of the putative class. Plaintiffs also retained an expert to conduct an analysis on data produced and create a damages model.

Plaintiffs estimate that there are approximately 1,250 Class Members and 1,001 PAGA Members. Plaintiffs state the estimated net settlement amount is $2,823,166.67, and the average net payment is approximately $2,258.53 per Class Member and $24.98 per PAGA Member.

By the court's calculation based on numbers provided in Plaintiffs' initial filings on this motion, the total maximum potential recovery is $32,325,804 (including maximum potential recovery of $7,624,000 for the PAGA claim), so the gross settlement amount represents approximately 14.7 percent of the total maximum potential recovery. (See Declaration of Paul K. Haines in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Haines Dec."), ¶¶ 18-29.) Plaintiffs provide a detailed breakdown of this amount by claim. (*Ibid*.) This amount is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D.Ca|. Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201, at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].) Moreover, Plaintiff estimates the maximum realistic recovery for class claims to be $5,458,697 (including maximum realistic recovery of $381,200 for the PAGA claim). (Haines Dec.at 30.) Thus, the gross settlement amount represents approximately 87 percent of the maximum realistic recovery.

Overall, the court finds the settlement is fair. It provides for some recovery for each class member and eliminates the risk and expenses of further litigation.

C. Incentive Award, Fees, and Costs

Plaintiffs request incentive awards of $15,000 each to Plaintiffs Moniz, Ajemyan, Gutierrez, and Gabriel, and $7,500 each to Plaintiffs Chavez and Ramirez, for incentive awards totaling $75,000.

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

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

As addressed by the court in its May 22, 2024 minute order, Plaintiffs filed declarations in support of their requests for an incentive award. However, the court is not inclined to individual awards of $15,000 and $7,500 (depending on the Plaintiff) entirely as requested for the following reasons. Plaintiffs Moniz and Gabriel contributed approximately 60 to 65 hours to the case while Plaintiffs Ajemyan and Gutierrez contributed approximately 15 to 16.5 hours, yet all four requested $15,000 incentive awards. By comparison, Plaintiffs Chavez and Ramirez requested $7,500 incentive awards and state they contributed approximately 8 to 15 hours to the case. Plaintiffs Moniz, Gabriel, Ajemyan, and Gutierrez prepared for and attended depositions, while Plaintiffs Chavez and Ramirez did not. Three of the Plaintiffs (Moniz, Ajemyan, and Gutierrez) were all Service Advisors and it is unclear if their contributions to this case were duplicative.

The court notes that, since the May 22, 2024 hearing, Plaintiff Gabriel has submitted a revised declaration. (*Revised* Declaration of Phillip Gabriel in Support of Motion for

Preliminary Approval of Class Action Settlement.) The court finds that Plaintiff Gabriel's revised declaration complies with Code of Civil Procedure section 2015.5.

Based on the declarations provided, the court is inclined to approve incentive awards of $15,000 each for Plaintiffs Moniz and Gabriel, $7,500 each for Plaintiffs Ajemyan and Gutierrez, and $5,000 each for Plaintiffs Chavez and Ramirez. (See *Cellphone Termination Fee Cases, supra,* 186 Cal.App.4th at p. 1395 ["These 'incentive awards' to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit. [Citation.]"].)

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees up to $1,583,333.33 (1/3 of the gross settlement amount) as well as up to $150,000 in litigation costs. Plaintiffs' counsel shall submit lodestar information (including hourly rate and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiffs' counsel shall also submit evidence of actual costs incurred as well as evidence of any settlement administration costs.

D. Conditional Certification of Class

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

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

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

As explained by the California Supreme Court,

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

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

Plaintiff states that there are approximately 1,250 Class Members and 1,001 PAGA Members that can be determined from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

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

The notice generally complies with the requirements for class notice. (Haines Supp. Dec., Ex. 2.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion. The court notes that the spelling of the plaintiffs' names has been corrected at pages 23 and 26, that Child Advocates of Silicon Valley is indicated as the *cy pres* at page 27, and that the remote appearance instructions have been added to section 8 on page 31.

Accordingly, the court approves the class notice.

IV. Conclusion

Accordingly, the motion for preliminary approval of the class and representative action settlement is GRANTED. The final approval hearing is scheduled for January 22, 2025 at 1:30 p.m. in Department 19. Plaintiff shall provide a supplemental declaration with lodestar information (including hourly rate and hours worked), as well as evidence of costs incurred, no later than January 7, 2022.

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

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Calendar Line 4

Case Name: Long v. Juniper Networks (US), Inc. (Class Action/PAGA)
Case No.: 22CV396462

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 24, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a putative class and representative action arising out of alleged wage and hour violations, brought by plaintiffs Jamie Long and Marcus Serrano (collectively, "Plaintiffs") against defendant Juniper Networks (US), Inc. ("Defendant").

On February 24, 2022, plaintiff Jamie Long ("Long") brought an action against Defendant in the Northern District of California, *Long v. Juniper Networks (US) Inc.*, Case No. 5:22-cv-01158-BLF, alleging wage and hour violations under the FLSA (the "Federal Lawsuit"). (Declaration of Jonathan Lebe ("Lebe Dec."), ¶ 19.) On April 6, 2022, Long initiated the instant action by filing a Class Action Complaint on April 6, 2022. (Lebe Dec., ¶ 20.)

On December 20, 2023, Plaintiffs filed the operative First Amended Class Complaint ("FAC") setting forth the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Pay Wages Upon Separation of Employment and Within the Required Time; (6) Failure to Furnish Accurate and Itemized Wage Statements; (7) Failure to Reimburse All Business Expenses; (8) Failure to Produce All Employment Records; (9) Violation of California Business and Professions Code, § 17200, *et seq.*; (10) Enforcement of Labor Code, § 2698, *et seq.* [Private Attorneys General Act] ("PAGA"); and (11) Violation of Fair Labor Standards Act [29 U.S.C. § 201, *et seq.* ("FLSA")].

The parties have reached a settlement. Plaintiffs now move for preliminary approval of the settlement. The motion is unopposed.

II. Legal Standard

Generally, "questions whether a 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*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> 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, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The 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*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

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

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

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.)

III. Discussion

A. The Settlement Groups

This case has been settled on behalf of three groups: (1) "California Class" members; (2) "Settlement Collective" members; and (3) "PAGA" members. (Lebe Dec., ¶ 23, Ex. 1, Joint Stipulation of Class, Collective, and PAGA Settlement and Release ("Settlement Agreement"), ¶¶ 8, 32, 52.) The Settlement Agreement defines "Class Members" as "all California Class Members and all Settlement Collective Members." (Settlement Agreement, ¶ 9.) As set forth below, the Settlement Agreement includes separate release provisions for each of these three groups. These releases relate to both this action (the "State Lawsuit"), and the separate FLSA action Long filed in federal court (the "Federal Lawsuit"). (Settlement Agreement, ¶¶ 21, 55.)

1. The California Class

The "California Class" is defined as "any individual who worked for Defendant in California in a commissioned sales role listed in Exhibit A." (Settlement Agreement, ¶ 8.) Exhibit A to the settlement agreement contains a list of job titles. The "California Class Settlement Period" is defined as the period from October 9, 2017 through March 13, 2023. (Settlement Agreement, ¶ 3.) The Settlement Agreement defines "Released Class Claims" to include "any and all claims alleged or that could have been alleged based on the facts alleged in the Actions' operative complaints, which arose during the California Class Settlement Period[.]" (Settlement Agreement, ¶ 41.)

2. The FLSA Settlement Collective

The "Settlement Collective" includes "any individual who worked for Defendant in the U.S. outside of California in a commissioned sales role listed in Exhibit A at any time during the Collective Settlement Period [from September 7, 2019 through March 13, 2023]." (Settlement Agreement, ¶¶ 13, 53.)

> "Released FLSA Claims" means all federal wage and hour law claims, obligations, demands, rights, causes of action, and liabilities, of whatever kind and nature, character and description, that were or could have been asserted in the Federal Lawsuit, arising out of or reasonable related to any facts,

> transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the Federal Lawsuit. Released FLSA Claims include, but are not limited to, claims for overtime wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, based on any and all claims arising under the Fair Labor Standards Act of 1938 ("FLSA"), as amended, 29 U.S.C. § 201, *et seq*., that have been or could have been asserted during the Collective Settlement Period.

(Settlement Agreement, ¶ 42.)

3. PAGA Members

"PAGA Member" means "any individual who worked for Defendant in California in a commissioned sales role listed in Exhibit A and who Defendant classified as exempt at any time during the PAGA Settlement Period [January 1, 2021, through March 13, 2023]." (Settlement Agreement, ¶¶ 32, 37.) In exchange for the settlement, PAGA Members agree to release Defendant and related people and entities from all claims for civil penalties under PAGA that were, or reasonably could have been, alleged in the State Lawsuit or in any PAGA letter sent by Plaintiffs to the LWDA. (Settlement Agreement, ¶ 43.)

B. Provisions of the Settlement

According to the terms of the settlement, Defendant will pay a gross settlement amount of $3,850,000. (Settlement Agreement, ¶ 26.) The settlement agreement provides that the gross settlement amount may be increased proportionately if the actual number of pay periods is determined to be incorrect by more than 10 percent. (Settlement Agreement, ¶ 32.) The gross settlement amount includes attorney fees up to 1/3 of the gross settlement amount (currently estimated to be $1,283,333.33), litigation costs not to exceed $20,000, a PAGA allocation of $200,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments), enhancement awards in the total amount of $30,000 ($15,000 to each Plaintiff), and settlement administration costs not to exceed $20,000. (Settlement Agreement, ¶¶ 3, 4, 20, 24, 26, 34.) The PAGA allocation is relatively low. Accordingly, the court request further justification of this amount. The court approves Phoenix Class Action Administrators as a settlement administrator.

The remaining net settlement amount and 25% of the PAGA allocation will be distributed to Settlement Class Members, Settlement Collective Members, and PAGA

aggrieved employees based on the number of workweeks they were employed by Defendant. (Settlement Agreement, ¶ 24.) More specifically, Settlement Class Members will receive 66.66% of the net settlement amount, while Settlement Collective Members will receive 33.4% of the net settlement amount. (*Ibid*.) The Settlement Agreement contains a reversionary provision:

> Neither Settlement Class Members nor Settlement Collective Members will be required to return any claims form, however, in recognition of the fact that Defendant does not obtain a release of the Released FLSA Claims from Settlement Collective Members who do not cash their FLSA settlement checks, the Settlement Administrator shall issue a check in the amount of the fund attributable to the uncashed Settlement Collective checks payable to Defendant.

(Settlement Agreement, ¶¶ 24, 48.)

Any "Individual Class Settlement Payment" or "Individual PAGA Settlement Payment" checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the designated *cy pres* recipient, nPower. The court approves the designated *cy pres* recipient.[1]

As addressed above, in exchange for the settlement, the California Class members, FLSA Settlement Collective Members, and PAGA Members agree to respective releases.

C. Proposed FLSA Settlement

As set forth above, the Settlement Agreement includes release provisions relating to the FAC's eleventh cause of action for violations of the FLSA. The appellate court in *Haro v. City of Rosemead* (2009) 174 Cal.App.4th 1067 (*Haro*), explained that the FLSA "govern[s] minimum wages and maximum hours." (At p. 1070.) Notably, the FLSA establishes an "opt-in" procedure for collective actions under its authority, which is essentially the opposite of the "opt-out" procedure typically employed in class actions. The "opt-in" procedure requires that aggrieved employees "give[] [their] consent in writing" to become a party to an FLSA action, which consent must be "filed in the court in which such action is brought." (29 U.S.C. § 216(b); *Haro, supra*, 174 Cal.App.4th at p. 1071.) As stated in *Haro*, "[a]n FLSA action has to

[1] Code of Civil Procedure section 384 requires that the unpaid residue or abandoned class member funds be paid to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent."

be litigated according to rules that are specifically applicable to these actions" and may not be prosecuted as a class action. (*Haro, supra,* 174 Cal.App.4th at p. 1077.)

While some unpublished federal decisions have approved "hybrid" class action and FLSA settlements, these settlements have not complied with the statutory requirement of written consents that are filed with the court. (See *Smothers v. Northstar Alarm Services, LLC* (E.D. Cal., Jan. 22, 2019, No. 217CV00548KJMKJN) 2019 U.S.Dist.LEXIS 10220, at *28-29 ["Courts more elevated than this one have read the statutory language as requiring written consent filed with the court …."].) Many other courts have disapproved of this practice. (See *Haralson v. U.S. Aviation Services Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959, 968 ["[m]any courts" have rejected this opt-in by settlement check proposal]; see also *Beltran v. Olam Spices & Vegetables, Inc.* (E.D.Cal. Dec. Mar. 23, 2021, No. 1:18-cv-01676-NONE-SAB) 2021 U.S.Dist.LEXIS 55013, at *8; *Anderson v. Safe Streets USA, LLC* (E.D.Cal. Dec. 20, 2022, No. 2:18-cv-00323-KJM-JDP) 2022 U.S.Dist.LEXIS 229149, at *20-21 ["[U]nder the current settlement agreement, class members opt into the collective action and release their FLSA claims when they cash, deposit, or endorse their settlement check. [] Such an opt-in procedure is prohibited under the FLSA. [Citation.]"].)

Here, while the court appreciates counsel's efforts in achieving the settlement, Plaintiffs' moving papers do not sufficiently address the unique issues presented by a hybrid FLSA/class action settlement. Plaintiffs estimate that Defendant's maximum exposure for the FLSA cause of action is $26,433,142. (Lebe Dec., ¶ 39.) Counsel seemingly acknowledges the opt-in procedure required for an FLSA cause of action, stating, "Plaintiffs would only be entitled to damages under the FLSA to the extent potential collective employees opted-in to the action." (Lebe Dec., ¶ 44.) However, Plaintiffs offer no authority in support of their proposed opt-in procedure for the FLSA claim, i.e., by cashing a settlement check. Accordingly, the motion is DENIED WITHOUT PREJUDICE.

In a future motion, the parties must further address the purported release of the FLSA claims. The parties' failure to allow putative class members to participate in one but not the other form of action "counsels against the court's granting of preliminary approval." (*Maciel v. Bar 20 Dairy, LLC* (E.D. Cal., Oct. 23, 2018, No. 1:17-CV-00902-DAD-SKO) 2018 U.S.

Dist. LEXIS 181956 at *25, citing *Millan v. Cascade Water Services, Inc.* (E.D. Cal. 2015) 310 F.R.D. 593, 602.) Further, courts considering settlements in hybrid FLSA and class actions "consistently require class notice forms to explain: (1) the hybrid nature of the action; and (2) the claims involved in the action; (3) the options that are available to [class] members in connection with the settlement, including how to participate or not participate in the … class action and the FLSA collective action aspects of the settlement; and (4) the consequences of opting-in to the FLSA collective action, opting-out of the … class action, or doing nothing." (*Id.* at *6, quoting *Thompson v. Costco Wholesale Corporation* (S.D.Cal. Feb. 22, 2017, No. 14-cv-2778-CAB-WVG) 2017 U.S. Dist. LEXIS 24964, at *23.)

Here, there are separate notices for the California Class and the (out-of-state) FLSA Settlement Collective. (Settlement Agreement, Exs. A ("California Notice") and B ("Collective Notice").) But, without setting forth that the settlement provides for a specified payment for FLSA claims or explaining the "Released FLSA Claims," the California Notice states that recipients who cash their checks will be deemed to have released the "Released FLSA Claims." (California Notice, ¶¶ 6, 8, 10.) With respect to the California Class settlement and the FLSA Collective Settlement, California Class members are not given the option to participate in one but not the other. Neither notice explains the hybrid nature of the settlement.

While the court might conceivably approve an appropriately structured hybrid FLSA/class action settlement, changes to the settlement would be required for the court to approve the FLSA releases before it. In particular, the court finds that the proposed settlement does not comply with the opt-in requirement applicable to the FLSA claim. (See 29 U.S.C. § 216, subd. (b); *Haro*, *supra,* 174 Cal.App.4th at p. 1071 [the opt-in procedure requires that aggrieved employees give their consent in writing to become a party to the FLSA action, and the written consent must be filed with the court in which the FLSA action is brought].) Nonetheless, for the benefit of the parties in bringing any future motions, the court will go on to discuss the fairness of the settlement.

D. Fairness of the Settlement

Plaintiffs state that the settlement was reached through discovery, analysis, and mediation with Lisa Klerman, Esq. (Lebe Dec., ¶¶ 21, 27, 35; Settlement Agreement, ¶ 3.) In

anticipation of mediation, the parties engaged in informal discovery, and Defendant provided time and payroll records as well as policy documents related to Plaintiffs' claims. (*Ibid.*) Plaintiff conducted a detailed review of the payroll records, time records, and other information provided by Defendant. (*Ibid.*) The total number of Class Members and Collective members is estimated to be 1,063 individuals. (Lebe Dec., ¶ 49.)

Plaintiff estimates that Defendant's maximum potential liability for all the claims is approximately $78,956,358. (Lebe Dec., ¶ 44.) Plaintiff provides a breakdown for this amount by claim. (Lebe Dec., ¶¶ 36-44.) Plaintiffs discounted the value of the claims given Defendant's defenses, the possibility that the court could substantially reduce any PAGA penalties, and the risks and costs associated with class certification. (Lebe Dec., ¶¶ 34-35, 44, 46.) Plaintiffs estimate that California Class members will receive an average of approximately $1,440.22 and Settlement Collective members will receive an average of approximately $720.32. (Lebe Dec., ¶¶ 32, 47.)

The gross settlement amount represents approximately 4.9% of the potential maximum recovery. The proposed settlement amount is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavasos 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 listing range of 5 to 25-35 percent of the maximum potential exposure].) While the gross settlement amount is at the bottom of the range that California courts have found to be reasonable, the court finds the settlement to be fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

However, the court is disinclined to approve the reversionary structure of the settlement proposed by the parties with respect to the FLSA claims. While this unusual structure may be permissible "as long as it d[oes] not render the settlement unfair, inadequate or unreasonable" (*Cundiff v. Verizon California, Inc.* (2008) 167 Cal.App.4th 718, 728), here, Plaintiffs do not sufficiently address the reasoning supporting the reversion. The Settlement Agreement explains that the reversion is in recognition of the fact that Defendant will only release of the FLSA claims from those who cash their checks. (Settlement Agreement, ¶¶ 24, 48.) But in the court's view as discussed above, the proposed settlement of the FLSA cause of action does not

comply with the opt-in requirement for such claims. In a future motion, parties must better explain the justification for the reversion to Defendant, unless they opt to eliminate this provision to speed the approval of their settlement.

D. Incentive Award, Fees and Costs

Plaintiffs request enhancement awards in the total amount of $30,000 (i.e., $15,000 to each Plaintiff).

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

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Plaintiff Jamie Long has provided a declaration describing participation in this litigation. (Declaration of Jamie Long in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, ("Long Dec."), ¶¶ 9-15.) Long's involvement included initial conversations with attorneys, searching for relevant documents, and reviewing documents with attorneys, and preparing for a possible deposition (though such deposition did not occur). (Long Dec., ¶¶ 9-10.) Long also assisted in preparation for mediation and reviewed the mediation agreement. (Long Dec., ¶¶ 11-12.) Long spent between 45 and 55 hours in connection with this action. (Long Dec., ¶ 15.)

Plaintiff Marcus Serrano also provided a declaration detailing involvement in this case. (Declaration of Marcus Serrano in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, ¶¶ 9-15.) Serrano's involvement included initial conversations with attorneys, searching for relevant documents, and reviewing documents with attorneys, and preparing for a possible deposition (though such deposition did not occur). (Serrano Dec., ¶¶ 9-10.) Serrano also assisted in preparation for mediation and reviewed the

mediation agreement. (Serrano Dec., ¶¶ 11-12.) Serrano spent between 35 and 45 hours in connection with this action. (Long Dec., ¶ 15.)

Plaintiffs spent time in connection with this litigation and undertook risk by attaching his/her name to this case because it might impact [his/her] future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].). While the court finds that enhancement awards to Plaintiffs are warranted, the amounts requested are higher than the court normally approves in similar situations. The court also notes that, while the Plaintiffs request the same amounts, Plaintiff Long appears to have spent more time in connection with this matter. Accordingly, in a future motion, the court would be inclined to approve enhancement awards, albeit in reduced amounts.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees of 1/3 of the gross settlement amount (currently estimated to be $1,283,333) and litigation costs not to exceed $20,000. If the court were to grant preliminary approval, Plaintiffs' counsel would have to submit lodestar information (including hourly rate and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiffs' counsel would also be required to submit evidence of actual costs incurred as well as evidence of any settlement administration costs.

E. Conditional Certification of Class

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

interpreted by the California Supreme Court, section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*).)

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

As explained by the California Supreme Court,

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

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

Plaintiffs' counsel states that the total number of California Class members and Settlement Collective members is 1,063. (Lebe Dec., ¶ 49.) However, Plaintiffs' counsel does not provide a breakdown of this figure between these two groups, nor does he state the source of this total estimate. And while Plaintiffs' motion requests certification of the FLSA collective, their supporting memorandum is silent as to why the court should certify the FLSA collective even without a written opt-out procedure. Therefore, Plaintiffs must further address the court's concerns regarding a hybrid settlement before the court can conditionally the settlement agreement as currently presented.

F. Class Notice

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

Here, there are separate notices for the California Class and the FLSA Settlement Collective. The California Notice provides general information but does not adequately explain the hybrid nature of the proposed settlement. Rather, it simply states that California Class members who do nothing "will be deemed to have released or waived the Released Class Claims, Released FLSA Claims, and Released PAGA Claims." (California Notice, ¶ 8.) There is no indication of how a recipient of the California Notice could elect to participate in the California Class and not the FLSA Collective, or vice versa. Similarly, the Collective Notice does not explain the hybrid nature of the proposed settlement. As discussed above, the Collective Notice also does not provide a means for the recipient to opt-in to the settlement apart from cashing a check.

Accordingly, substantial modifications to the notices will be required if the parties seek approval of a modified hybrid FLSA/class action settlement, as discussed above.

IV. Conclusion

In light of the issues discussed above, the motion for preliminary approval is DENIED WITHOUT PREJUDICE.

Plaintiff shall prepare the order.

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Calendar Line 5

Case Name: Sell v. Eblock Corporation (Class Action/PAGA) (Lead Case; Consolidated with 23CV410279)
Case No.: 23CV409729

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 24, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a consolidated putative class and representative action arising out of alleged wage and hour violations, brought by plaintiff Tina Sell ("Plaintiff") against defendant Eblock Corporation ("Defendant"). On January 10, 2023, Plaintiff initiated this action by filing her Class Action Complaint. On January 25, 2024, Plaintiff filed a separate Representative Action Complaint for civil penalties pursuant to Labor Code, § 2699, *et seq.* (Private Attorneys General Act ("PAGA"), also in Santa Clara County Superior Court, Case No. 23CV410279. On March 14, 2023, the court entered an order on the parties' stipulation to consolidate the two aforementioned actions under Case No. 23CV409729.

On December 18, 2023, Plaintiff filed the operative First Amended Consolidated Class and Representative Action Complaint ("FAC"), setting forth the following causes of action: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code, §§ 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code, §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code, § 510; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code, §§ 226.7 & 512 and the Applicable [Industrial Welfare Commission ("IWC")] Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code, §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code, § 226; (7) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code, § 2802; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code, §§ 201, 202 and 203; (9) Failure to Pay Sick Pay Wages in Violation of Cal. Lab. Code, §§ 201-204, 233, 246; and (10) Civil Penalties Pursuant to [PAGA].

The parties have reached a settlement. Plaintiff now moves for preliminary approval of the settlement. The motion is unopposed.

II. Legal Standard

Generally, "questions whether a 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*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> 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, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The 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*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

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

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

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 [Labor and Workforce Development Agency ("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.)

III. Discussion

A. Provisions of the Settlement

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

> [a]ll individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the Class Period [from November 20, 2020 through the earlier of preliminary approval of January 26, 2024].

(Declaration of Kyle Nordrehaug in Support of Motion for Preliminary Approval of Class Settlement ("Nordrehaug Dec."), Ex. 1 ("Settlement Agreement"), ¶¶ 1.5, 1.13.)

The settlement also includes a subset PAGA class of "Aggrieved Employees" who are defined as "all individuals who were employed by Defendant in California and classified as a non-exempt employee at any time during the PAGA Period [November 21, 2021 through the earlier of preliminary approval or January 26, 2024]." (Settlement Agreement, ¶¶ 1.4, 1.31.)

According to the terms of the settlement, Defendant will pay a gross settlement amount ("GSA") of $532,500. (Settlement Agreement, ¶¶ 1.22, 3.1.) The Settlement Agreement provides that the GSA may be increased proportionately if the actual number of pay periods is determined to be incorrect by more than 10 percent. (Settlement Agreement, ¶ 9.) The GSA includes attorney fees up to one-third of the GSA (currently estimated to be $177,550) litigation costs not to exceed $25,000, a PAGA allocation of $15,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments), a service award up to $12,500, and settlement administration costs not to exceed $10,000. (Settlement Agreement, ¶¶ 3.2(a)-3.2(d).) The net settlement amount will be distributed to participating class members on pro rata basis according to the number of workweeks worked during the Class Period. (Settlement Agreement, ¶ 3.2(e).) Similarly, the

portion of the PAGA amount allocated for individual payments will be distributed to Aggrieved Employees based on the number of pay periods worked during the PAGA Period. (Settlement Agreement, ¶ 3.2(d)(ii).)

According to the Settlement Agreement, checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the California State Controller's Office Unclaimed Property Fund. (Settlement Agreement, ¶¶ 5.2, 5.5.) The proposal to send funds from uncashed checks issued to class member to the State of California Unclaimed Property Fund does not comply with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class members funds be given to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent."

Nevertheless, Plaintiff's counsel asserts that the parties have stipulated to change paragraph to a *cy pres* procedure, and the parties propose the Interdisciplinary Center for Healthy Workplaces as the *cy pres* recipient. (Nordrehaug Dec., ¶ 19, fn. 3, Ex. 4.) The court notes that the stipulation provided by Plaintiff's counsel is not signed by Defendant or defense counsel. (Nordrehaug Dec., Ex. 4, p. 2.) However, the class notice attached to the Settlement Agreement indicates that the Interdisciplinary Center for Healthy Workplaces as the *cy pres* recipient. (Settlement Agreement, Ex. A, class notice at Section 3, p. 4.) The court approves the Interdisciplinary Center for Healthy Workplaces as the *cy pres* recipient, subject to its receipt of a stipulation or amended settlement agreement confirming the same.

In exchange for the settlement, the class members agree to release Defendant and related entities and persons from all claims that were alleged, or reasonably could have been alleged, based on the facts pleaded in the FAC occurring during the Class Period. (Settlement Agreement, ¶¶ 1.38, 1.40, 6.2.) PAGA Employees agree to release Defendant and related entities and persons from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on facts pleaded in the FAC and the PAGA notice. (Settlement Agreement, ¶¶ 1.39, 1.40, 6.3.)

B. Fairness of the Settlement

Plaintiff states that the settlement was reached through discovery, analysis, and mediation with Michael Dickstein, Esq. (Nordrehaug Dec., ¶¶ 5-6, 10-12, 28-29.) In anticipation of mediation, the parties conducted significant investigation of the facts through informal discovery, and Defendant data concerning the composition of the Class; payroll and time punch data, Defendant's wage and hour policies, Plaintiff's employment file, and samples of wage statements. (Nordrehaug Dec., ¶ 10.) Plaintiff conducted a detailed review of the payroll records, time records, and other information provided by Defendant. (Nordrehaug Dec., ¶ 11.) Defendant represented that there are 333 Class Members who collectively worked approximately 25,100 workweeks within the Class Period. (Nordrehaug Dec., ¶ 6; Settlement Agreement, ¶ 4.1.) Defendant further represented that there are 263 Aggrieved Employees who worked an estimated total of 7,911 pay periods during the PAGA Period. (Nordrehaug Dec., ¶ 33(b); Settlement Agreement, ¶ 4.1.)

Taking the sum of Plaintiff's estimates of the maximum value of the class and PAGA claims, Plaintiff estimates that Defendant's maximum potential liability for all the claims is approximately $2,687,907. (Nordrehaug Dec., ¶¶ 6, 33(b).) The maximum potential liability for the class claims is approximately $1,896,807, and Plaintiff provides a breakdown for this amount by claim. (Nordrehaug Dec., ¶ 6.) The maximum potential liability for the PAGA claims is approximately $791,100, and Plaintiff provides a breakdown of this amount by claim. (Nordrehaug Dec., ¶ 33(b).) Plaintiff discounted the value of the claims given Defendant's defenses, the possibility that the court could substantially reduce any PAGA penalties, and the risks and costs associated with class certification. (Nordrehaug Dec., ¶¶ 6, 23-26, 33.) Plaintiff asserts that the net settlement amount results in an average recovery of $876.72 per class member. (Nordrehaug Dec., ¶ 6.)

The gross settlement amount represents approximately 19.81% of the potential maximum recovery. Thus, the proposed settlement amount is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavasos 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 listing range of 5 to 25-35 percent of the maximum potential exposure].)

Therefore, the court finds the terms of the settlement to be fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

C. Incentive Award, Fees and Costs

Plaintiff requests an enhancement award of $12,500.

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

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Plaintiff provided a declaration describing her involvement in this matter. (Declaration of Tiana Sell in Support of Motion for Preliminary Approval of Class Settlement ("Sell Dec.").) Plaintiff states that she communicated with her attorneys and assisted with their investigation by providing documents, answering questions, and reviewing pleadings. (Sell Dec., ¶ 6.) Plaintiff reviewed court filings and communicated with her attorneys regarding mediation and the terms of settlement. (Sell Dec., ¶¶ 10-11.) Plaintiff estimates that she has spent approximately 30-40 hours on this litigation. (Sell Dec., ¶ 12.)

The time Plaintiff spent in connection with this litigation benefited the class members and Aggrieved Employees because it resulted in this proposed settlement. Plaintiff also undertook risk by attaching her name to this case because it might impact her future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].).

For the forgoing reasons, the court finds that a service award to Plaintiff is warranted. Nevertheless, the amount sought for the enhancement award is higher than the court typically awards in these types of cases. Therefore, the court approves a service award to Plaintiff in the amount of $5,000.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees up to 1/3 of the GSA (currently estimated to be $177,550) and litigation costs not to exceed $25,000. Plaintiff's counsel shall submit lodestar information (including hourly rate and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiffs' counsel shall also submit evidence of actual costs incurred as well as evidence of any settlement administration costs.

D. Conditional Certification of Class

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

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

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

As explained by the California Supreme Court,

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

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

Plaintiff states that there are approximately 333 class members, who can be identified from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

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

The notice generally complies with the requirements for class notice. (Settlement Agreement, Ex. A ("Class Notice").) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion. The Class Notice indicates that recipients may choose to do nothing, opt-out, or object to the settlement (either in writing or verbally at the hearing). (Class Notice, p. 2.) As mentioned previously, the Class Notice indicates the Interdisciplinary Center for Healthy Workplaces as the *cy pres* beneficiary. (Class Notice, Section 3, p. 7.) Section 8 at pages 10-11 of the Class Notice includes the court's instructions regarding remote appearances at the final approval hearing.

Accordingly, the court approves the class notice. The parties shall provide the court with a fully executed stipulation regarding the chosen *cy pres* recipient prior to the mailing of the class notice.

IV. Conclusion

Accordingly, the motion for preliminary approval of the class and representative action settlement is GRANTED, subject to the parties providing the court with an executed stipulation concerning the chosen *cy pres* recipient.

The final approval hearing is scheduled for January 15, 2025 at 1:30 p.m. in Department 19.

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

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Calendar Line 6

Case Name: Shuff, et al. v. Stevens Creek Quarry, Inc., et al. (Class Action)
Case No.: 18CV322077

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 24, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is putative class action arising out of various alleged Labor Code violations. On January 19, 2018, plaintiff William Shuff ("Shuff") filed a putative class action and representative wage and hour action defendants Stevens Creek Quarry, Inc. and Richard A. Voss (collectively, "Defendants").

On March 29, 2018, Shuff filed a First Amended Complaint, adding John Howland ("Howland") as a plaintiff and potential class representative. Howland and Shuff were dismissed as plaintiffs on April 24, 2019 and November 1, 2019, respectively. On November 6, 2019, the Second Amended Complaint was filed, adding Christopher Bryan ("Bryan") as a plaintiff.

On March 25, 2021, Bryan filed the operative Third Amended Complaint ("TAC") which added Nick Hernandez ("Hernandez") as a plaintiff. The TAC sets forth the following causes of action: (1) Failure to Provide Required Meal Periods; (2) Failure to Provide Required Rest Periods: (3) Failure to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay all Wages Due to Discharged and Quitting Employees; (6) Failure Furnish Accurate Itemized Wage Statements; (7) Failure to Indemnify Employees for Necessary Business Expenditures Incurred in the Discharge of Duties; and (8) Unfair and Unlawful Business Practices.

The court certified the class on June 30, 2021, and appointed Plaintiffs' counsel as class counsel. On December 14, 2021, the court granted Defendants' motion for summary adjudication as to the first, third, and seventh causes of action. On December 15, 2022, the court held a Phase I bench trial on Defendants' ninth affirmative defense as to the applicability of Plaintiff's collective bargaining agreement to the rest-break claims. On December 20, 2022,

the court issued its decision finding in Defendants' favor. The remainder of the case was then set for trial on May 22, 2023.

The parties reached a settlement, and Bryan and Hernandez (collectively, "Plaintiffs") moved preliminary approval of the settlement. The motion was unopposed. On September 13, 2023, the court granted the motion for preliminary approval of the settlement, and on September 21, 2023, the court entered a formal order memorializing the decision.

Now before the court is the unopposed motion for final approval of the settlement agreement.

II. Legal Standard

Generally, "questions whether a 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*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> 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, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The 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.*, quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

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

(*Wershba, supra,* 91 Cal.App.4th at p. 245, citing *Dunk, supra,* 48 Cal.App.4th at p. 1802.)

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.)

III. Discussion

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

> [A]ll current and former hourly, non-exempt employees who worked for Defendants in California at any time between January 19, 2014 and June 30, 2021.

(Declaration of Joshua D. Boxer in Support of Motion for Preliminary Approval of Class Action Settlement ("Boxer Dec."), Ex. 1 ("Settlement Agreement"), ¶ 1.3.)

According to the terms of settlement, Defendants will pay a gross, non-reversionary amount of $575,000. (Settlement Agreement, ¶ 1.16.) The gross settlement amount includes attorney fees of $191,666.67 (1/3 of the gross settlement amount), litigation costs not to exceed $300,000, a total service award of $20,000 ($10,000 for each class representative), and reasonable settlement administration costs. (Settlement Agreement, ¶¶ 1.16, 1.19, 5.1, 5.2, 5.3, 5.4.)

The net settlement amount will be distributed to the class members on a pro rata basis based on the number of workweeks worked during the Class Period. (Settlement Agreement, ¶ 5.5.) Funds from undeliverable or uncashed checks will be distributed to Safe Place for Youth. (Settlement Agreement, ¶ 5.8.2.) The cy pres recipient is approved.

In exchange for the settlement, class members agree to release Defendants, and related entities and persons, from claims during the class period that were raised or could have been

raised based on the factual allegations made in the Complaint. (Settlement Agreement, ¶¶ 1.26, 1.27, 6.1.) Plaintiffs further agree to a general release. (Settlement Agreement, ¶ 6.2.)

On October 27, 2023, the settlement administrator mailed notice packets to all 190 class members. (Declaration of Makenna Snow of ILYM Group, Inc. in Support of Motion for Final Approval of Class Settlement ("Snow Dec."), ¶¶ 5-7.) Ultimately, four notice packets were deemed undeliverable. (*Id.* at ¶ 7.) The highest settlement payment is estimated to be $892.69, and the average settlement payment is estimated to be $312.61. (*Id.* at ¶ 16.)

The settlement administrator declares that as of June 21, 2024, it has received five requests for exclusion and no objections to the settlement. (Snow Dec., ¶¶ 11-12.) Also as of that date, the settlement administrator reports a total of 185 participating class members, representing 97.37% of the 190 class members. (*Id.*, ¶ 14.)

Plaintiffs request incentives award in the amount of $20,000 ($10,000 for each class representative). The class representatives each filed declarations detailing their participation in the action. (See Declaration of Plaintiff Christopher Bryan in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ("Bryan Dec."); and Declaration of Plaintiff Nick Hernandez in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ("Hernandez Dec.").)

In his declaration, Plaintiff Bryan states that his involvement in this litigation includes telephone calls and meetings with his attorneys, time searching for and reviewing relevant information to provide his attorneys. (Bryan Dec., ¶ 4.) Bryan further states that he actively participated in the prosecution of this action, including by explaining Defendant's practices and information regarding potential witnesses and by assisting in the preparation of written discovery responses. (*Id.* at ¶¶ 6-7.) On January 21, 2021, defense counsel took Bryan's deposition, and prior to that, Bryan met with his attorneys many times to prepare for the deposition. (*Id.* at ¶ 8.) Bryan also provided a declaration in support of the motion for class certification, made himself available during mediation, spent significant time preparing to testify at trial, and did testify at trial. (*Id.* at ¶¶ 9-11.) Plaintiff Bryan estimates that he spent 60 hours participating in this litigation. (*Id.* at ¶ 14.)

In his declaration, Plaintiff Hernandez states that his participation in this action includes telephone calls and conversation with his attorneys as well as time spent searching for information at his attorneys' request. (Hernandez Dec., ¶ 4.) Hernandez helped his attorneys analyze relevant documents and provided background information about practices at his work location. (*Id.* at ¶ 6.) During the discovery phase, Hernandez spent many hours reviewing responses to written discovery, preparing for his deposition, and attending his deposition on May 7, 2021. (*Id.* at ¶ 7.) Hernandez provided a declaration for the motion for class certification and made himself available during three separate mediation sessions. (*Id.* at ¶¶ 9-10.) Hernandez also spent time meeting with his attorneys to prepare for both the bench trial and jury trial pending when the case ultimately settled. (*Id.* at ¶ 11.) Hernandez estimates that he spent approximately 60 hours participating in this action. (*Id.* at ¶ 14.)

The class representatives' efforts in the case resulted in a benefit to the class. Moreover, Plaintiffs both undertook risk by putting their names on the case because it might impact their future employment. (See *Covillo v. Specialty's Café* (N.D. Cal. 2014) 2014 U.S. Dist. LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].) Plaintiffs Bryan and Hernandez each had significant involvement in this litigation, including participation in depositions. Accordingly, the court find the requested incentive awards are warranted and they are approved.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co*. (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel seeks attorney fees of $191,666.67 (1/3 of the escalated gross settlement amount). (Declaration of Dalia Khalili in Support of Motion Final Approval of Class Action Settlement ("Khalili Dec."), ¶ 48.) Plaintiffs' counsel states that its lodestar is $1,307,957.50 based on approximately 1,443 of attorney time at the attorneys' usual hourly rates. (*Id.* at ¶¶ 74.) This results in a significant multiplier. The court finds the attorney fees are reasonable as a percentage of the common fund and they are approved.

Plaintiff's counsel also requests costs in the amount of $291,291.20. (Khalili Dec., ¶ 46, Ex. 2.) Plaintiff's counsel provides evidence of incurred costs in that amount and the costs are approved. (*Ibid*.) The settlement administration costs are also approved in the amount of $5,500. (Snow Dec., ¶ 17.)

IV. Conclusion

Accordingly, the motion for final approval of the class and representative action is GRANTED.

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

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Calendar Line 7

Case Name: Lozano v. C&L Refrigeration Corporation (Class Action/PAGA)
Case No.: 23CV423934

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 24, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This is a putative class and representative action brought by plaintiff James Lozano ("Plaintiff") against defendant C & L Refrigeration Corporation ("Defendant") alleging various wage and hour violations. On October 3, 2023, Plaintiff commenced this action by filing a Class Action Complaint. On December 1, 2023, Plaintiff filed the operative First Amended Class and Representative Action Complaint ("FAC"), setting forth the following causes of action: (1) Unpaid Wages (Lab. Code, §§ 1182.12, 1197); (2) Unpaid Overtime (Lab. Code, §§ 510, 1198); (3) Inaccurate Itemized Wage Statements (Lab. Code, § 226, subd. (a); (4) Unfair or Unlawful Business Practices (Bus. & Prof. Code, §§ 17200, *et seq*.); and (5) Violation of the California Labor Code (Lab. Code, §§ 2698, *et seq.* [Private Attorneys General Act ("PAGA")].)

According to the parties' Joint Case Management Statement filed on February 15, 2024, Defendant has produced an arbitration agreement, and Plaintiff is willing to stipulate to the dismissal of the class claims and allegations as well as to arbitration of Plaintiff's individual claims and individual PAGA claims. The parties disagree as to whether the non-individual PAGA claims should be stayed pending arbitration.

Now before the court is Defendant's motion to stay Plaintiff's non-individual PAGA claim, filed on June 5, 2024. Plaintiff filed opposition papers, and Defendant filed a reply.

II. Requests for Judicial Notice

A. Defendant's Request

In connection with its moving papers, Defendant asks the court to take judicial notice of: (1) Plaintiff's FAC; (2) Plaintiff and Defendant's Joint Case Management Statement filed on [February 15, 2024]; (3) Plaintiff and Defendant's Joint Stipulation Re: Proposed Briefing

Schedule for Defendant's Motion to Stay Plaintiff's Non-Individual PAGA Claims filed April 3, 2024; (4) The court's signed Order Re: Proposed Briefing Schedule for Defendant's Motion to Stay Plaintiff's Non-Individual PAGA Claims, dated April 19, 2024.

Item Nos. 1 through 4 are generally proper subjects of judicial notice as they are court records that are relevant to issues raised in connection with the pending motion to stay. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records]; see also *People v. Woodell* (1998) 17 Cal.4th 448, 455 [court may take judicial notice of court records, but "cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statement of fact."].)

Accordingly, Defendant's request for judicial notice is GRANTED to the extent that the court takes judicial notice of the court records, though not necessarily of the truth of any matters asserted therein.

B. Plaintiff's Request

In connection with his opposition, Plaintiff asks the court to take judicial notice of an order in the matter of *Garcia v. Din Tai Fung Restaurant, et al.*, Santa Clara County Superior Court, Case No. 20CV373998. "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to material issue before the court. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.) It is well established that an unrelated trial court decision "has no precedential value and it not citable authority." (*Aixtron, Inc. v. Veeco Instruments Inc.* (2020) 52 Cal.App.5th 360, 399, citing Cal. Rules of Court, rule 8.1115(a) [unpublished opinions "must not be cited or relied upon by a court or a party in any other action"]; see also *Santa Ana Hospital Med. Ctr. v. Belshe* (1997) 56 Cal.App.4th 819, 831 ["A written trial court ruling has no precedential value."])

Here, Plaintiff attempts to analogize Defendant's instant motion to stay with that in an entirely different proceeding before this court. However, the order cited bears no relevance to the motion now before the court. The facts are readily distinguishable because, there, the plaintiff decided to dismiss her arbitrable claims and pursue her non-arbitrable claims.

Moreover, even if the material facts were similar, it is well established that a trial court decision has no precedential value in and of itself.

Accordingly, Plaintiff's request for judicial notice is DENIED, and counsel is admonished to refrain from citing unpublished and irrelevant trial court decisions in the future.

III. Legal Standard

The court has the inherent authority to control the litigation before it to avoid conflicting rulings and unnecessary waste of parties' and judicial resources. (Code Civ. Proc., § 128, subds. (a)(2), (a)(8).) The authority includes the power "to stay an action when appropriate." (*Jordache Enters., Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 758.) "A court ordinarily has inherent power, in its discretion, to stay proceedings when such a stay will accommodate the ends of justice." (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141, internal punctuation and citation omitted.)

Generally, any party to a judicial proceeding "is entitled to a stay of those proceedings whenever (1) the arbitration of a controversy has been ordered, and (2) that controversy is also an issue involved in the pending judicial action." (*Marcus v. Superior Court* (1977) 75 Cal.App.3d 204, 209 (*Marcus*).) "The purpose of the statutory stay [under Code of Civil Procedure section 1281.4] is to protect the jurisdiction of the arbitrator by preserving the status quo until arbitration is resolved." (*Federal Ins. Co. v. Superior Court* (1998) 60 Cal.App.4th 1370, 1374.) "In the absence of a stay, the continuation of the proceedings in the trial court disrupts the arbitration proceedings and can render them ineffective." (*Id.*)

IV. Discussion

Defendant seeks an order staying Plaintiff's non-individual PAGA claims until arbitration of Plaintiff's individual claims and individual PAGA claims is concluded. (Notice of Motion and Motion to Stay [], ("Mot."), p. 1:19-24.) Defendant contends that granting the requested stay is in the interest of judicial economy and will prevent inconsistent results. (*Id.* at pp. 7:20-26, 9:1-4.) Defendant also argues that a delay until the arbitrator issues an order will not prejudice Plaintiff because the case is its stages and neither party has propounded discovery. (*Id.* at p. 9:4-6.)

Defendant further asserts that the arbitrator's decision will determine whether Plaintiff is able to qualify as an aggrieved employee and proceed with the non-individual PAGA action. (Mot., pp. 9:7-11, 9:23-26.) According to Defendant, the Federal Arbitration Act ("FAA") requires an automatic stay in this case. (*Id.* at p. 10:5-8.) Finally, Defendant contends that our high court's decision in *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 (*Adolph*), and subsequent appellate court decisions interpreting *Adolph*, dictate that PAGA claims should be stayed pending arbitration. (*Id.* at pp. 11:4-9, 12:12-20.)

In opposition, Plaintiff acknowledges that his individual PAGA claims are subject to arbitration but asserts that a stay of his non-individual PAGA claims would impose pointless delay. (Plaintiff's Opposition to Defendant's Motion to Stay ("Opp."), pp. 1:9-11, 1:19-20.) Plaintiff relies heavily upon a concurring opinion in *Johnson v. Lowe's Home Centers, LLC* (9th Cir. 2024) 93 F.4th 459 (*Johnson*), 467 [Lee, J., concurring]) for the proposition that an arbitration decision on an individual PAGA may not be given preclusive effect in a later non-individual PAGA lawsuit in court. (Opp., pp. 1:24-26, 4:1-19, 6:1-3.)

Plaintiff further asserts that the FAA does not require an automatic stay of Plaintiff's non-individual PAGA claims because they are not referable to arbitration. (Opp., p. 16-20.) Plaintiff, citing *Adolph*, contends that a stay of his non-individual claim here is discretionary but not mandatory. (*Id.* at p. 7:9-13.) Plaintiff contends that a discretionary stay is not warranted here because Plaintiff does not have adequate incentive to "overlitigate the individual PAGA claims in arbitration." (*Id.* at pp. 3:16-18, 4:20-21.)

Plaintiff points to language in the arbitration agreement stating the parties intend resolve disputes in the most expeditious and economic ways possible. (Opp., p. 5:4-8.) According to Plaintiff, this language leads to an imbalance between the stakes in the arbitration and the more formal litigation proceedings. (*Id.* at p. 5:9-12.) Plaintiff contends that such an imbalance means the arbitrator's decision cannot be given preclusive effect here. (*Id.* at p. 5:18-21.) Lastly, Plaintiff argues that the interests of justice favor allowing him to litigate his representative PAGA claims concurrently with the arbitration of his individual PAGA claims. (*Id.* at p. 6:8-16.)

In reply, Defendant states that Plaintiff's arguments improperly reframe Defendant's argument regarding standing as one of issue preclusion. (Defendant's Reply to Plaintiff's Opposition, p. 2:9-16.) Defendant also points out that the language of the concurring opinion in *Johnson*, relied upon so heavily by Plaintiff, is contradicted by language in the *Johnson* opinion itself. (*Id.* at p. 3:2-12 [quoting the following language in *Johnson*, *supra*, 93 F.4th at p. 465: "the [*Adolph*] Court held that if the plaintiff lost on the merits of his individual PAGA claims in arbitration, he no longer had standing to pursue his non-individual PAGA claims in court."]) Defendant contends that Plaintiff has a full and fair opportunity to pursue his individual claims in arbitration and that he bears the burden to substantiate his claims. (*Id.* at pp. 3:19-27, 4:8-11.) Lastly, Defendant reiterates that the court has inherent power to stay proceedings in the interests of justice and judicial economy. (*Id.* at p. 4:21-25.)

Having carefully considered the parties' arguments, the court exercises its discretion to stay these proceedings with respect to Plaintiff's non-individual PAGA claims until the arbitration of his individual PAGA claims is concluded. Because such a stay will prevent inconsistent results and because the case is in early stages, the court is not persuaded by Plaintiff's argument that a stay will result in a pointless delay. Plaintiff's reliance upon a concurring appellate decision and an unpublished, irrelevant and readily distinguishable trial court decision does not convince the court otherwise.

V. Conclusion

Accordingly, the motion to stay Plaintiff's non-individual PAGA claim is GRANTED.

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

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Calendar Line 8

Case Name: Tesla, Inc. v. Pascale, et al.
Case No.: 20CV368472

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on July 24, 2024 at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. Introduction

This action arises out of the alleged misappropriation of trade secrets owned by plaintiff Tesla, Inc. ("Plaintiff" or "Tesla"). According to the allegations of the operative Fourth Amended Complaint ("4AC"), filed on September 29, 2021, Plaintiff designs, manufactures, and sells electric cars, electric vehicle powertrain components, as well as scalable energy generation and storage products. (4AC, ¶ 36.) Plaintiff is a manufacturer of electric vehicles and is poised to enter the pickup truck market, with over 500,000 reservations for its highly anticipated Cybertruck. (*Ibid*.)

Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC (collectively, "Rivian") are a prospective electric vehicle manufacturer with a desire to bring to market a truck or SUV based on an electric drivetrain. (4AC, ¶ 37.) Plaintiff Tesla, as the world leader in electric vehicles and vehicle automation, is Rivian's number one target from which to acquire information, including trade secret, confidential, and proprietary information. (*Id*. at ¶ 38.) Rivian has hired at least 70 employees directly from Tesla. (*Ibid*.) Thirteen of Rivian's recruiters are former Tesla employees who are familiar with the type of information Tesla employees have access to and what information would be useful to Rivian. (*Id*. at ¶ 39.)

Tesla has in place a comprehensive set of policies and practices that robustly protect its trade secret, confidential, and proprietary information. (4AC, ¶ 41.) As a condition of employment, all Tesla employees must sign an Employee Nondisclosure and Inventions Assignment Agreement ("NDA"). (*Ibid*.) Defendants Vince Tanner-Duran ("Tanner-Duran"), Tami Pascale ("Pascale"), Kim Wong ("Wong"), Jessie Yoste ("Yoste"), Savayia Bero ("Bero"), Jessica Siron ("Siron"), Carrington Bradley ("Bradley"), Andrea Zechmann

("Zechmann"), Ashwin Alinkil ("Alinkil"), Saikat Das, and David Wu ("Wu") (collectively, "Individual Defendants") each electronically signed the NDA. (*Ibid*.)

Through the NDA, employees pledge, among other things, not to disclose Plaintiff's "Proprietary Information," defined to include "all information, in whatever form and format, to which I have access by virtue of and in the course of my employment," and encompassing, as relevant here, "technical data, trade secrets, know- how, plans, designs, ... methods, processes, … data, programs, lists of or information relating to, employees, suppliers, … financial information and other business information." (4AC, ¶ 42.)

Plaintiff's Internet Usage Policy and Technology Systems and Electronic Communications Policy both specifically prohibit the unauthorized "transmitting, copying, downloading, or removing" of Tesla trade secret, proprietary, or confidential business information. (4AC, ¶ 44.) Plaintiff also reminds employees that they must not forward work emails outside of Tesla or to a personal email account. (*Ibid*.)

Plaintiff takes extensive measures to ensure that its trade secret, confidential, and proprietary information cannot be wrongfully misappropriated, such as by implementing stringent information and security policies and practices. (4AC, ¶¶ 46-47.)

Rivian is knowingly encouraging the misappropriation of Plaintiff's trade secret, confidential, and proprietary information by employees that Rivian hires. (4AC, ¶ 48.) Plaintiff has discovered a pattern of its employees surreptitiously stealing trade secret, confidential, and proprietary information and departing for Rivian. (*Id*. at 48.) Rivian directs and encourages those thefts even though defendant Rivian is well aware of Tesla employees' confidentiality obligations. (*Ibid*.) Furthermore, Rivian employees, who were previously employed by Plaintiff, are soliciting Plaintiff's employees to steal Plaintiff's trade secrets by secretly sending highly confidential files to Rivian while attempting to avoid detection by Plaintiff. (*Ibid*.)

Tesla alleges Rivian's complicity in the misappropriation became evident when Tesla confronted Rivian about it. (4AC, ¶ 117.) On July 10, 2020, Tesla sent a letter to Rivian describing the thefts of information by Pascale, Wong, and Siron. During a phone call five days later, Ash Zahr ("Zahr"), Rivian Associate General Counsel, stated that Rivian had only

talked with a single employee about the allegations and the employee had confirmed that she misappropriated Tesla documents. (*Ibid*.) Zahr further stated Rivian was satisfied the employee had deleted the information in question and Rivian was confident that nothing would be found when Rivian reviewed its computer systems. (*Id*. at ¶¶ 117-118.) Additionally, when Tesla informed Rivian of Yoste's theft, Rivian responded two days later that the claim that Yoste had downloaded documents was frivolous. (*Id*. at ¶ 120.) Rivian was also aware of Alinkil's theft of Tesla information, but never notified Tesla of the theft. (*Id*. at ¶ 121.)

The information that the Individual Defendants misappropriated allows Rivian to copy significant parts of Plaintiff's work in key areas without investing the substantial effort, time, and resources that defendant Rivian would need to develop these systems on its own. (4AC, ¶ 126.) This is information Plaintiff does not make available to its competitors or to the public. (*Ibid*.)

Based on the foregoing allegations, the 4AC sets forth causes of action for: (1) Violation of the Uniform Trade Secrets Act (Cal. Civ. Code 3426, et seq.) [against all defendants except Bradley]; (2) Breach of Contract [against the Individual Defendants]; and (3) Violation of California Computer Access and Fraud Act (Cal. Pen. Code, ¶ 520, *et seq*.) [against the Individual Defendants].

On October 18, 2021, Rivian filed an answer to the 4AC, generally denying the allegations and asserting various affirmative defenses.

On May 13, 2022, the court (Hon. Patricia M. Lucas) entered a Stipulation and Order Appointing Hon. Elizabeth D. Laporte (Ret.) as Discovery Referee ("Stipulation"). Under the terms of the Stipulation, all parties to the action agreed to the appointment of Hon. Laporte (Ret.) of JAMS to act as the discovery referee in this matter, pursuant to Code of Civil Procedure section 638. The parties further agreed that all discovery issues decided by the discovery referee shall stand as the decision of the court pursuant to Code of Civil Procedure sections 638, subdivision (a) and 644, subdivision (a), subject to certain limited exceptions.

The Stipulation provides that

> [t]he Discovery Referee will hear and determine any and all discovery disputes and issue a written order reflecting any rulings, except the Discovery Referee will not have jurisdiction over the following: (a) any discovery disputes with third-parties, absent agreement by the third-party; (b) any discovery disputes

> between Tesla and Defendants Saikat Das and/or Ashwin Alinkil that do not also involve Rivian; and (c) any issues not pertaining to discovery.

(Stipulation, ¶ 3.)

On November 1, 2023, the court entered a minute order continuing Rivian's motion for summary judgment to February 7, 2024, to allow Tesla additional time to complete discovery. On January 18, 2024, the court granted Tesla's *ex parte* application to continue Rivian's motion for summary judgment to April 17, 2024.

On April 17, 2024, the court held a hearing on the following: (1) the motion by Rivian, Das, and Wu to compel the deposition of Alinkil; (2) the motion by Tesla for orders regarding the purported waiver of Rivian's assertion of attorney-client privilege and work product protection; (3) the motion by Rivian for summary judgment of the 4AC; and (4) related motions to seal. On April 30, 2024, the court memorialized its rulings on these motions in its Order Regarding Motions Set for Hearing on April 17, 2024 (the "April 30 Order").

In the April 30 Order, the court: (1) denied the motion to compel the deposition of Alinkil without prejudice; (2) denied Tesla's motions for orders regarding the purported waiver of Rivian's assertion of attorney-client privilege and work product protection; (3) continued Rivian's motion for summary judgment July 24, 2024; and (4) granted the related motions to seal.

With respect to Rivian's motion for summary judgment, the court expressed concern that Plaintiff had brought a motion to compel discovery relevant to the theory of Rivian's ratification of the Individual Defendants' conduct but the discovery referee had declined to rule on the merits of the discovery motion due to the pending motion for summary judgment. (April 30 Order, pp. 17:26-18:5.) The court explained that ratification is theory of direct liability and generally a question of fact proven by direct or circumstantial evidence. (*Id.* at pp. 18:6-8, 18:17-18.)

Rivian's repeated assertion that it took appropriate investigative action against the Individual Defendants puts the adequacy of those investigations in issue. (April 30 Order, p. 19:14-23.) Consequently, the court granted Plaintiff's request for a continuance to allow Plaintiff to obtain facts essential to justify its opposition to Rivian's motion. (*Id.* at p. 20:1-8.)

Plaintiff has since filed its second amended opposition papers, and Rivian has filed its second amended reply papers.

II. Evidentiary Objections

A. Tesla's Objections

In connection with its second amended opposition papers, Tesla submits numerous objections to evidence offered by Rivian in support of its motion for summary judgment. To the extent the court deems these objections material to the disposition of the motion, they are addressed below. Otherwise, the court declines to rule on the objections. (See Code Civ. Proc., 437c, subd. (q) ["In granting or denying motion for summary judgment or summary adjudication, the court need only rule on those objections to evidence that it deems material to its disposition of the motion."].)

B. Rivian's Objections

In connection with its second amended reply papers, Rivian submits numerous objections (Nos. 238-300) to evidence offered by Tesla in support of its second amended opposition and Tesla's response to Rivian's separate statement of undisputed material facts. Rivian also incorporates by references its prior objections (Nos. 1-237) submitted on April 5, 2024. To the extent the court deems these objections material to the disposition of the motion, they are addressed below. Otherwise, the court declines to rule on the objections. (See Code Civ. Proc., 437c, subd. (q) ["In granting or denying motion for summary judgment or summary adjudication, the court need only rule on those objections to evidence that it deems material to its disposition of the motion."].)

III. Motion for Summary Judgment

A. Legal Standard

A motion for summary judgment must dispose of the entire action. (Code Civ. Proc., 437c, subd. (a); *All Towing Services LLC v. City of Orange* (2013) 220 Cal.App.4th 946, 954 ["Summary judgment is proper only if it disposes of the entire lawsuit."].) The pleadings limit the issues presented for summary judgment and such a motion may not be granted or denied based on issues not raised by the pleadings. (See *Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; see also *Laabs v. City of Victorville* (2008) 163

Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins.* (2010) 181 Cal.App.4th 60, 73 ["the pleadings determine the scope of relevant issues on a summary judgment motion"].)

"Summary judgment is properly granted when no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. [Citation.] A defendant moving for summary judgment bears the initial burden of showing that a cause of action has no merit by showing that one or more of its elements cannot be established or that there is a complete defense. [Citation.]" (*Madden v. Summit View, Inc.* (2008) 165 Cal.App.4th 1267, 1272 (*Madden*).) To satisfy this burden, the defendant must present evidence which either conclusively negates an element of the plaintiff's cause of action, or which shows the plaintiff does not possess, and cannot reasonably obtain, needed evidence. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855.)

"Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. [Citation.] There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof. [Citation.]" (*Madden*, *supra*, 165 Cal.App.4th at p. 1272.)

For purposes of establishing their respective burdens, the parties involved in a motion for summary judgment must present admissible evidence. (*Saporta v. Barbagelata* (1963) 220 Cal.App.2d 463, 468.) Additionally, in ruling on the motion, a court cannot weigh the evidence or deny summary judgment on the ground that any particular evidence lacks credibility. (See *Melorich Builders v. Superior Court* (1984) 160 Cal.App.3d 931, 935; see also *Lerner v. Superior Court* (1977) 70 Cal.App.3d 656, 660.) As summary judgment is a drastic remedy eliminating trial, the court must liberally construe evidence in support of the party opposing summary judgment and resolve all doubts concerning the evidence in favor of that party. (See *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 389; see also *Hepp v. Lockheed-California Co.* (1978) 86 Cal.App.3d 714, 717-718.)

B. Discussion

Defendant Rivian moves for summary judgment of Plaintiff's sole cause of action against it, the 4AC's first cause of action for violation of the Uniform Trade Secrets Act (California Civil Code, section 3426, *et seq*. ("UTSA"). (Notice of Motion and Motion, p. 1.)

"A cause of action for misappropriation of trade secrets requires a plaintiff to show the plaintiff owned the trade secret; at the time of the misappropriation, the information was a trade secret; the defendant improperly acquired, used, or disclosed the trade secret; the plaintiff was harmed; and the defendant's acquisition, use, or disclosure of the trade secret was a substantial factor in causing the plaintiff harm. [Citations.]" (*AMN Healthcare, Inc. v. Aya Healthcare Services, Inc.* (2018) 28 Cal.App.5th 923, 942.)

"To prove misappropriation under the UTSA, a plaintiff must establish that the defendant improperly acquired or used trade secret information. [Citation.]" (*Hooked Media Group, Inc. v. Apple, Inc.* (2020) 55 Cal.App.5th 323 (*Hooked*), 331-332.) Mere possession of trade secrets by a departing employee is not enough to show their new employer improperly acquired or used it. (*Id.* at p. 332.)

Rivian's motion focuses on whether it can be held responsible for the alleged acts of misappropriation on the part of the Individual Defendants. As relevant here, the 4AC contains the following allegations:

> 134. Tesla's interview guides created by consulting with the leaders of various groups at Tesla about what characteristics were particularly important for their groups, refining those characteristics over time based on each groups experiences, and then building predictable, repeatable processes to consistently hire people with the right characteristics constitute trade secrets as described above and defined by California's Uniform Trade Secrets Act.
>
> [… ¶ …]
>
> 136. Tesla's battery research and development, manufacturing processes, engineering processes, operative procedures, design specifications, lessons learned documents, code such as R-scripts, Factory Acceptance Testing information, testing data, top issues documents, requests for quotes, manufacturing checklists, notching metrics, and presentations summarizing challenges to overcome are themselves trade secrets, and contain trade secrets as described above and as defined by California's Uniform Trade Secrets Act.
>
> [… ¶ …]

> 139. Defendant Rivian misappropriated Tesla's trade secret information at least by acquiring such information improperly by soliciting Tesla employees to provide confidential information and inducing the Individual Defendants [with the exception of Carrington Bradley] to acquire the confidential information in violation of those individual's duties of confidentiality to Tesla and in breach of their NDAs, Tesla's Code of Ethics, and other agreements with Tesla.
>
> 140. Defendants knew or should have known under the circumstances that the information misappropriated was trade secret information.

(4AC, ¶¶ 134, 136, 139, 140.)

Rivian contends it is not liable for any misappropriation by the Individual Defendants, under a theory of vicarious liability or ratification. (Mot., pp. 16:9-11, 18:3-4.[2]) The court has previously detailed the parties' respective arguments. (See April 30 Order, pp. 15:7-16:21.) Rivian generally argues it cannot be held vicariously liable because the allegedly misappropriating conduct by Rivian employees did not occur within the scope of their employment with Rivian. (Mot., p. 16:12-27.) Rivian asserts that Wong, Pascale, Siron, Bero, Yoste, Zechman, Wu, and Das were employed by Tesla, not Rivian when they allegedly took possession of trade secrets. (*Ibid.*)

Rivian sets forth evidence that new employees represented to Rivian in writing that they would not disclose to Rivian or use at Rivian any confidential, proprietary or trade secret information of any of their former employers. (Defendant's Separate Statement and Plaintiff's Response[3] ("DSS & Pl.'s Resp."), No. 1.) Rivian provides further evidence that it instructed new hires to return proprietary information to their former employers, that the employees represented that they were not in unauthorized possession of the property of any former employers. (DSS & Pl.'s Resp, Nos. 2-3.) Rivian also points to a series of declarations stating that Rivian never asked, directed, or encouraged Siron, Pascale, Tanner-Duran, Wong, Bero, Yoste, Zechman, Wu, and Alinkil to acquire or try to acquire or use the alleged trade secrets from Tesla. (DSS & Pl.'s Resp., No. 4.)

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[2] "Mot." refers to Defendant Rivian Automotive, Inc. and Rivian Automotive, LLC's Motion for Summary Judgment; Memorandum of Points and Authorities un Support Thereof, filed on July 21, 2023.

[3] Plaintiff Tesla, Inc's Second Amended Response to Defendants Rivian Automotive, Inc.'s Separate Statement of Undisputed Material Facts, filed July 2, 2024.

In opposition, Tesla contends the declarations relied upon Rivian are conclusory and insufficient to shift the burden in summary judgment. (Opp., p. 11:1-10.[4]) Tesla further argues that the employment agreements merely contain boilerplate representations that do not determine whether unlawful conduct is within the scope of employment for purposes of vicarious liability. (*Id.* at p. 11:19-23.) Tesla contends the agreements and declarations relied upon by Rivian did not prevent a series of alleged misappropriations by Rivian employees. (*Id.* at pp. 12:7-13:6; see also DSS & Pl.'s Resp., Nos. 1-4.)

Tesla asserts that employers are liable for torts committed by employees while acting in the scope of their employment, citing *Yamaguchi v. Harnsmut* (2003) 106 Cal.App.4th 472, 481-482 (*Yamaguchi*). (See Opp., at pp. 1:21-23, 11:21-25, 16:15-18, 18:3-10.) There, the appellate court explained:

> [T]he determining factors in ascertaining whether an employee's act falls within the scope of employment for respondeat superior liability is not whether the act was authorized by the employer, benefited the employer, or was performed specifically for the purpose of fulfilling the employee's job responsibilities. Rather, the question is whether the risk of such an act is typical of or broadly incidental to the employer's enterprise. [¶] An employer may therefore be vicariously liable for the employee's tort—even if it was malicious, willful, or criminal—if the employee's act was an outgrowth of his employment, inherent in the working environment, typical of or broadly incidental to the employer's business, or, in a general way, foreseeable from his duties.

(*Yamaguchi, supra*, 106 Cal.App.4th at p. 481-482, internal punctuation and citations omitted.)

In reply, Rivian argues that it cannot be held vicariously liable for the conduct of employees that occurred before they were employed by Rivian. (Reply, p. 6:5-10; [5] see also Mot., p. 16:12-27.) Nevertheless, as Rivian is forced to acknowledge, Tesla has also presented evidence of conduct allegedly in violation of the UTSA committed by Rivian employees during the time that were employed by Rivian – most notably that of Duran and Alinkil. (See Mot., p. 17:1-15; see also DSS & Pl.'s Resp., No. 5.)

Tesla contends that Rivian ratified the Individual Defendants' misappropriation by its inadequate investigations. (Opp., pp. 18:11-19:27.) In its initial moving papers and amended

[4] "Opp." refers to Plaintiff Tesla, Inc's Second Amended Memorandum of Points and Authorities in Opposition to Defendant Rivian Automotive, Inc. and Rivian Automotive, LLC's Motion for Summary Judgment, filed on July 2, 2024.

[5] "Reply" refers to Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC's Second Amended Reply in Support of Motion for Summary Judgment, filed on July 10, 2024.

reply Rivian emphasizes that it promptly investigated the allegations of trade secret misappropriations. (Mot., pp. 17:11-15, 18:27-19:14; DSS & Pl.'s Resp., No. 8; Reply, p. 7:11-22.) As the court explained in its prior order, this assertion puts the adequacy of the investigation in issue. (April 30 Order, p. 19:14-23.)

Ratification is generally a question of fact that may be proved by circumstantial as well as direct evidence. (*City of Brentwood, supra*, 54 Cal.App.5th at p. 429 (*City of Brentwood*); *Streetscenes v. ITC Entertainment Group, Inc.* (2002) 103 Cal.App.4th 233, 242.) Case law establishes that ratification may be inferred from the fact that the employer, after being informed of the employee's actions, does not fully investigate and fails to repudiate the employee's conduct by redressing the harm done and punishing or discharging the employee. (*Garcia v. Clovis Unified Sch. Dist.* (E.D.Cal. 2009) 627 F.Supp.2d 1187, 1202; *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 621 [same], superseded by statute on other grounds as stated in *Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 880; see *PMC, Inc. v. Kadisha* (2000) 78 Cal.App.4th 1368, 1385 [holding there was a triable issue of material fact as to the issue of ratification when the plaintiff presented evidence as to the scope and results of defendants investigation from which a reasonable trier of fact could conclude that the defendants unreasonably took no action to prevent ongoing injury].)

While Tesla will ultimately bear the burden of proof at trial to establish ratification, to meet its initial burden on summary judgment, Rivian must present evidence which either conclusively negates Tesla's theory of ratification or which shows Tesla does not possess, and cannot reasonably obtain, needed evidence to support its theory of ratification. (*Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 840 (*Murillo*) ["The defendant 'must show that under no possible hypothesis within the reasonable purview of the allegations of the complaint is there a material question of fact which requires examination by trial.' [Citation.]")

In an effort to meet its burden, Rivian has presented evidence of its investigation into allegations of trade secret misappropriation. (DSS & Pl.'s Resp., No. 8.) It has also presented evidence of, in the case of two individuals, disciplinary action taken in response to its investigation. (DSS & Pl.'s Resp., No. 9-11.) Nevertheless, in the court's view, evidence of disciplinary action against two or even several individuals does not conclusively establish that

that an investigation was adequate, particularly when the operative complaint alleges ongoing misconduct involving other individuals. Rivian has not met its initial burden with respect to the ratification theory because it has not irrefutably negated the theory or shown that Tesla does not possess, and cannot reasonably obtain, needed evidence to support its theory of ratification. (*Murillo, supra*, 65 Cal.App.4th at p. 840.)

Even if Rivian had met its initial burden, Tesla has presented evidence sufficient to create a triable issue of material fact as to the ratification theory. In connection with its amended opposition, Tesla persuasively argues that Rivian could have conducted a more thorough investigation with respect to some of its employees. (See, generally, Opp., pp. 18:20-19:27.) Tesla has also produced evidence in support of these arguments. (Tesla's Additional Material Facts, Nos. 18-25, 27, 36.) Tesla's evidence establishes that some Rivian employees were less thoroughly investigated and not disciplined, and "ratification may be inferred from the fact that the employer, after being informed of the employee's actions, does not fully investigate and fails to repudiate the employee's conduct by redressing the harm done and punishing or discharging the employee. [Citations.]" (*Roberts v. Ford Aero & Communications Corp.* (1990) 224 Cal.App.3d 793, 801.)

Accordingly, the motion for summary judgment is DENIED.

IV. Motions to Seal

A. Legal Standard

"The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exists to achieve the overriding interest." (Cal. Rules of Court, rule 2.550(d).) Pleadings, in particular, should be open to public inspection "as a general rule," although they may be filed under seal in appropriate circumstances. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 104, fn. 35.)

"Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute overriding interests." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn. 3 (*Providian*).) "[A] binding contractual agreement not to disclose" may suffice. (*Huffy Corp. v. Superior Court* (2003) 112 Cal.App.4th 97, 107.)

Where some material within a document warrants sealing, but other material does not, the document should be edited or redacted, if possible, to accommodate both the moving party's overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court, rule 2.550(d)(4), (d)(5).) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*Providian, supra*, 96 Cal.App.4th at p. 309.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1286 (*Universal*).) In addition, courts have found that, under appropriate circumstances, trade secrets, when properly asserted and not waived, may constitute overriding interests warranting sealing. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1222, fn. 46 (*NBC*); see Civ. Code, 3426.5.)

B. Plaintiff's Motion to Seal

Plaintiff Tesla moves to seal portions of its opposition papers. Specifically, Plaintiff seeks an order sealing the redacted portions of its Second Amended Opposition and Second Amended Response to Rivian's Separate Statement, as well as the entirety of the following exhibits:

1) Exhibits 73-78, 80-83, 85-88 to the Declaration of Melissa Baily;
2) Exhibit Q to the Declaration of James Kaschmitter;
3) Exhibit AA to the Declaration of Mario Shen.

In support of its motion, Plaintiff provides a declaration from its counsel which generally supports the request for sealing. (Declaration of Allison Huebert in Support of

Plaintiff Tesla, Inc.'s Motion to Seal Certain Exhibits in Support of Tesla's Second Amended Opposition to Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC's Motion for Summary Judgment, ¶¶ 3-9.) The materials at issue contain information related to Plaintiff's confidential business interests. (*Ibid.*) This information is not public, and there is a substantial probability that its disclosure could harm Plaintiff. (*Ibid.*) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential and private information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

B. Rivian's Motions to Seal

1. Motion to Seal Second Amended Reply

Rivian moves to seal portions of its second amended reply papers. Specifically, Rivian seeks an order sealing the redacted portions of the following: Rivian's Second Amended Reply in Support of Motion for Summary Judgment; Rivian's Response to Plaintiff Tesla, Inc.'s Second Amended Separate Statement of Additional Material Facts; Rivian's Evidentiary Objections to Tesla's Second Amended Opposition to Motion for Summary Judgment; Rivian's Proposed Order on it Evidentiary Objections; as well as the entirety of exhibits 32-34 and 43 to Rivian's Evidence in Support of Second Amended Reply.

In support of its motion, Rivian provides a declaration from its counsel which generally supports the request for sealing. (Declaration of Katherine Wolf in Support of Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC's Motion to Seal Second Amended Reply in Support of Motion for Summary Judgment (filed July 10, 2024), ¶¶ 2-6.) The materials at issue contain information related to Rivian's confidential business interests. (*Ibid.*) This information is not public, and its disclosure could harm Rivian's competitive standing. (*Ibid.*) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential and private information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

2. Motion to Seal Materials Filed by Plaintiff Conditionally Under Seal

Rivian moves to seal portions of the materials that Plaintiff lodged conditionally under seal on July 1, 2024 in support of Second Amended Opposition of Rivian's Motion for Summary Judgment. Specifically, Rivian seeks an order sealing Plaintiff's exhibits 73-85 and exhibit 87 at exhibit Q. Rivian also joins Plaintiff's motion to seal (discussed above) as it relates to exhibits 86 and 87 to Plaintiff's opposition, which it asserts were not lodged under seal by Plaintiff but contain Rivian's confidential information.

In support of its motion, Rivian provides a declaration from its counsel which generally supports the request for sealing. (Declaration of Katherine Wolf in Support of Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC's Motion to Seal (filed July 11, 2024), ¶¶ 2-6.) The materials at issue contain information related to Rivian's confidential business interests. (*Ibid.*) This information is not public, and its disclosure could harm Rivian's competitive standing. (*Ibid.*) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential and private information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

V. Conclusion

Accordingly, the motion for summary judgment is DENIED.

The unopposed motions to seal are GRANTED.

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

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