SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1, 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: FEBRUARY 7, 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	21CV390701	Aguilar v. Seaside Dining Group, Inc.	See Line 1 for tentative ruling.
LINE 2	20CV373147	Cuevas v. Little Caesars Enterprises, Inc. (PAGA)	See Line 2 for tentative ruling.
LINE 3	22CV396584	Recology Wage and Hour Cases (JCCP 5251)	See Line 3 for tentative ruling.
LINE 4	20CV363833	Hernandez v. Burdick Painting (Lead Case; Consolidated w/ Case No. 20CV366446)	See Line 4 for tentative ruling.
LINE 5			
LINE 6			
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			

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LAW AND MOTION TENTATIVE RULINGS

LINE 12			
LINE 13			

Calendar Line 1

Case Name: Aguilar v. Seaside Dining Group, Inc.
Case No.: 21CV390701

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 7, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This is a representative action arising out of various alleged wage and hour violations. The Complaint, filed by plaintiff Norma Aguilar ("Plaintiff") on November 22, 2021, sets forth a single cause of action for Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq. ("PAGA").

The parties have reached a settlement of the PAGA claim.

Plaintiff now moves for approval of the PAGA settlement. The motion is unopposed.

II. LEGAL STANDARD

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.) 75 percent of any penalties recovered go to the Labor and Workforce Development Agency ("LWDA"), leaving the remaining 25 percent for the employees. (*Ibid*.) PAGA is intended "to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id*. at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

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

> As discussed by one court:
> PAGA does not establish a clear standard for evaluating PAGA settlements.
> …

> Accordingly, certain courts have been willing to approve PAGA settlements only if (1) the statutory requirements set forth by PAGA have been satisfied, and (2) the settlement agreement is fair, reasonable, and adequate in view of PAGA's public policy goals.

(*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061 at *2.)

As part of this analysis, these courts have evaluated proposed PAGA settlements under the relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel v. Nike Retail Services, Inc.*, *supra*, 2019 WL 2029061 at *2.) "Of the *Hanlon* factors, the following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and views of counsel. (*Ibid*.)

"[W]hen a PAGA claim is settled, the relief provided … [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …." (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at *13.) The settlement must be reasonable in light of the potential verdict value. (See *O'Connor v. Uber Technologies, Inc*. (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc*. (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

III. DISCUSSION

The proposed settlement has been made with regard to the following aggrieved employees: "all persons who, during the Representative Period, have previously been or currently are employed in California by Defendant [Seaside Dining Group, Inc. ('Defendant')], as a non-exempt employee." (Declaration of Raul Perez in Support of Motion for Court Approval of the Parties' PAGA Settlement ("Perez Dec."), Ex. 1 ("Settlement Agreement"),

¶ 2.) The "Representative Period" is defined as the period of time from September 15, 2020 through February 26, 2023. (Settlement Agreement, ¶ 18.)

Pursuant to the terms of the settlement, Defendant will pay a non-reversionary, maximum settlement amount of $775,000. (Settlement Agreement, ¶¶ 11, 48.) This amount includes attorney fees in the amount of $258,333.33 (1/3 of the maximum settlement amount), litigation costs not to exceed $25,000, a service award up to $10,000 for Plaintiff, reasonable settlement administration costs (estimated to be $10,000), and other unspecified fees and expenses. (Settlement Agreement, ¶¶ 13, 15, 16, 19, 21, 49.) Of the remaining net settlement amount, 75 percent will be paid to the LWDA and 25 percent will be distributed to aggrieved employees based on the pro rata number of pay periods worked by each aggrieved employee during the Representative Period. (Settlement Agreement, ¶¶ 4, 5, 8, 10, 13, 17, 18, 46, 49.) Funds from checks that are not cashed within 180 days from the date of mailing will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law. (Settlement Agreement, ¶¶ 42, 43.)

> In exchange for the settlement, the aggrieved employees agree to release Released Parties and the State of California from claims for civil penalties pursuant to PAGA based upon all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and matters contained in the Action, and/or the LWDA Exhaustion Letter, including all of the following claims for relief: (i) failure to pay all regular wages, minimum wages and overtime wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure to pay split shift premiums (IWC Wage Order No. I-15(4)); (iii) failure to provide one day's rest in seven (Lab. Code § 552); (iv) failure to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (v) failure to provide compliant rest breaks (Lab. Code § 226.7); (vi) failure to timely pay wages during employment (Lab. Code §§ 204 & 210); (vii) failure to provide complete, accurate wage statements (Lab. Code § 226); (viii) failure to maintain accurate employment and payroll records (Lab. Code §§ 1174 & 1174.5); (ix) failure to pay wages timely at time of termination or resignation (Lab. Code §§ 201-203); (x) failure to indemnify all necessary business expenses (Lab. Code §§ 2800, et seq.); and (xi) any claim for costs and attorney's and expenses arising out of the foregoing claims (collectively, the "PAGA Released Claims"). PAGA Released Claims for Aggrieved Employees who worked for Defendant in California during the Representative Period shall have their claims released during the Representative Period.

(Settlement Agreement, ¶ 53.) "Released Parties includes Defendant and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, including but not limited to O'Hagan Meyer, insurers, partners,

investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers." (Settlement Agreement, ¶ 54.)

Plaintiff also agrees to a general release. (Settlement Agreement, ¶¶ 51, 52.)

Plaintiff contends the PAGA settlement is fair, reasonable, and adequate. Plaintiff indicates that the settlement resolves PAGA claims on behalf of 2,300 aggrieved employees who collectively worked 42,188 pay periods during the Representative Period. Prior to mediation, Plaintiff's counsel conducted several interviews with Plaintiff, reviewed Plaintiff's employment records, and analyzed and reviewed employee demographic data, human resource documents, labor policies, time records, and payroll data. The parties participated in a full-day mediation with Louis Marlin, Esq. on December 20, 2022, and reached a settlement. The average estimated individual settlement payment is $52.63. Defendant's maximum potential exposure for the PAGA claim is $24,016,100. Plaintiff's counsel provides a breakdown of the potential exposure based on the underlying Labor Code violations. Plaintiff's counsel generally explains that the value of the claims was discounted due to the strength of Defendant's defenses on the merits, the risk that the court would exercise its discretion to significantly reduce any PAGA penalties available, the chance that a favorable verdict could be reversed on appeal, and the difficulties attendant to collecting on a judgment. The settlement is approximately 3.2 percent of the maximum potential value of the PAGA claim.

The court has multiple concerns regarding the fairness of the settlement. First, the term "Released Parties" as defined in the settlement agreement is overbroad. The settlement agreement provides that "Released Parties includes Defendant and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers." (Settlement Agreement, ¶ 54.) Thus, as currently drafted, the list of persons and entities that are included in the term "Released Parties" is not exhaustive. No other definition is provided for the term "Released Parties." Consequently, that court cannot determine with certainty who is, and is not, a released party

under the settlement agreement. The parties are directed to meet and confer to determine whether they can amend the definition of the term "Released Parties" to cure the overbreadth.

Second, the proposed settlement amount is below 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 (*Cavazos*), at *41-42, 46-47 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

Although Plaintiff generally highlights the risks of continued litigation and trial court's ability to reduce PAGA penalties, Plaintiff does not adequately explain why this warrants such a steep discount of the PAGA claims. (See *O'Connor v. Uber Techs., Inc*. (N.D.Cal. 2016) 201 F. Supp. 3d 1110, 1133- [holding that the PAGA settlement was not fair and adequate when the plaintiffs sought to settle a PAGA claim for $1 million, despite conceding that the PAGA claim could potentially result in penalties over $1 billion (i.e., settling the PAGA claim for 0.1% of its estimated full worth; a 99.9 percent reduction in the potential maximum value of the claim)].)

Plaintiff cites to *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (*Carrington*) and *Fleming v. Covidien, Inc*. (C.D.Cal. Aug. 12, 2011, No. ED CV10-01487 RGK (OPx)) 2011 U.S.Dist.LEXIS 154590 (*Fleming*) to support her position that the settlement is reasonable. But in *Carrington*, the appellate court affirmed the trial court's grant of 10 percent of the potential PAGA penalties when the trial court found that "imposing the maximum penalty would be unjust, arbitrary, and oppressive based on [the defendant's] 'good faith attempts' to comply with meal break obligations" and because "the violations were minimal." (*Carrington, supra*, 30 Cal.App.5th at pp. 507,508, 517, 529; see *Cavazos, supra*, 2022 U.S.Dist.LEXIS 30201, at *46 [describing the result in *Carrington*].) Similarly, in *Fleming*, the trial court awarded 17.8 percent of the potential PAGA penalties in light of the fact that the aggrieved employees suffered no injury due to the erroneous wage statements, the aggrieved employees made no complaint of the errors or omissions contained therein prior to filing suit, the defendants were not aware that the wage statements violated the law, and the

defendants took prompt steps to correct all violations once notified. (*Fleming, supra*, 2011 U.S.Dist.LEXIS 154590, at *1-2 & 8-9.)

Here, Plaintiff has not presented any evidence regarding whether the aggrieved employees suffered any harm as a result of the alleged violations, Defendant's knowledge of the alleged violations prior to the action being filed, and whether Defendant made good faith attempts to comply with the law. Prior to the continued hearing, Plaintiff shall submit a supplemental declaration explaining in greater detail the factual basis for the discount applied to the PAGA claim and addressing whether the aggrieved employees suffered any harm as a result of the alleged violations, Defendant's knowledge of the alleged violations prior to the action being filed, and whether Defendant made good faith attempts to comply with the law.

As part of the settlement, Plaintiff seeks a service award in the amount of $10,000. Although service awards are common in class actions, there is less authority regarding the propriety of service awards in PAGA cases. Nevertheless, a PAGA case is a representative action like a class action and it has been recognized that an individual's willingness to act as a private attorney general may merit a service award. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959.) Plaintiff has submitted a declaration detailing her participation in the action. Plaintiff declares that she spent approximately 71.5 hours on this case, including discussing the case with counsel, reviewing the complaint, gathering facts and documents for counsel, preparing and being available for mediation, and reviewing settlement documents. (Declaration of Norma Aguilar in Support of Motion for Court Approval of the Parties' PAGA Settlement, ¶¶ 4-13.) Plaintiff acted as representative for the aggrieved employees and, moreover, has agreed to a broader release.

However, the requested amount of $10,000 is excessive. The settlement is very modest and not an unusually good result for the aggrieved employees. Each aggrieved employee will receive approximately $52.63. Consequently, the sought-after service award would amount to more than 190 times the estimated average payout. Additionally, the amount requested is higher than the court typically awards for the amount of Plaintiff time spent in connection with this action. The court finds that a service award in the amount of $5,000 is merited and it is approved.

Plaintiff's counsel seeks attorney fees of $258,333.33 (1/3 of the maximum settlement amount). Plaintiff's counsel provides evidence demonstrating a lodestar of $261,800. (Perez Dec., ¶¶ 20-23.) This results in a negative multiplier. The court finds that the fees requested are reasonable as a percentage of the total recovery. The fees are therefore approved.

Plaintiff's counsel also requests litigation costs in the total amount of $12,717.84 and provides evidence of incurred costs in that amount. (Perez Dec., ¶ 24.) Consequently, the court finds costs in the amount of $12,717.84 to be reasonable and approves that amount.

Plaintiff also asks for settlement administration costs in the amount of $10,000. However, Plaintiff does not provide any declaration from the settlement administrator demonstrating that costs in this amount are reasonable. Prior to the continued hearing, Plaintiff shall submit a declaration from the settlement administrator justifying the request for settlement administration costs in the amount of $10,000.

Accordingly, the motion to approve PAGA settlement is CONTINUED to March 13, 2024, at 1:30 p.m. in Department 19. Plaintiff shall file supplemental declarations with the additional information requested by the court no later than February 26, 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: Cuevas v. Little Caesars Enterprises, Inc. (PAGA)
Case No.: 20CV373147

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 7, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

IV. INTRODUCTION

This is a representative action arising out of various alleged wage and hour violations. Defendant Little Caesar Enterprises, Inc. ("Defendant") allegedly employed plaintiff Jose Cuevas ("Cuevas") from approximately June 15, 2006 to November 5, 2019, as an hourly-paid crew member/cook at Defendant's restaurant in San Jose, California. (First Amended Complaint ("FAC"), ¶ 7.) Cuevas alleges that Defendant failed to pay minimum and overtime wages, failed to provide and record meal periods, failed to provide rest periods, failed to provide accurate itemized wage statements, failed to provide or produce employment records, failed to maintain accurate time and payroll records, failed to pay wages during employment, failed to pay wages upon termination, failed to reimburse necessary business expenses, failed to provide reasonable working conditions, and failed to provide suitable seating. (FAC, ¶¶ 42-118.) Based on the foregoing allegations, the operative First Amended Complaint, filed on July 24, 2023, sets forth a single cause of action for Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.

Now before the court is plaintiff Nathalie Aldana's ("Aldana") petition to coordinate this action with the following case: *Nathalie Aldana v. Little Caesar Enterprises, Inc., et al.* (Los Angeles County Superior Court, Case No. 23STCV06058) ("*Aldana* Action"). Cuevas initially filed an opposition to the petition. However, on January 25, 2024, Cuevas and Aldana filed a joint reply in support of the petition for coordination, explaining that Cuevas withdraws any prior opposition to coordination.

V. LEGAL STANDARD

> When civil actions sharing a common question of fact or law are pending in different courts, a petition for coordination may be submitted to the Chairperson of the Judicial Council, by the presiding judge of any such court, or by any party to one of the actions after obtaining permission from the presiding judge, or by all of the parties plaintiff or defendant in any such action. A petition for

> coordination, or a motion for permission to submit a petition, shall be supported by a declaration stating facts showing that the actions are complex, as defined by the Judicial Council and that the actions meet the standards specified in Section 404.1. On receipt of a petition for coordination, the Chairperson of the Judicial Council may assign a judge to determine whether the actions are complex, and if so, whether coordination of the actions is appropriate, or the Chairperson of the Judicial Council may authorize the presiding judge of a court to assign the matter to judicial officers of the court to make the determination in the same manner as assignments are made in other civil cases.

(Code Civ. Proc., § 404.)

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

(Code Civ. Proc., § 404.1.)

III. DISCUSSION

Aldana and Cuevas (collectively, "Plaintiffs") argue that their respective actions should be coordinated because the cases involve overlapping common issues of law and fact against the same defendant. Specifically, the operative First Amended Complaint filed in the *Aldana* Action on June 30, 2023, also alleges a PAGA claim predicated on Defendant's alleged failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to provide compliant wage statements, and failure to pay all wages upon termination. Plaintiffs also note that both of the actions have been designated complex. Plaintiffs also assert that the actions are in the relatively early stages of litigation—no class certification deadlines, discovery cut-off dates, or trial dates have been set. Plaintiffs advise that substantial formal discovery has been conducted in this action, but a discovery stay has been in place for much of the pendency of the *Aldana* Action. Plaintiffs also not that Defendant has filed a motion to compel arbitration of Aldana's individual claims. They assert that coordination will aid in the management of costly and extensive PAGA discovery and motions and will help avoid the risk of inconsistent proceedings and rulings.

Plaintiffs' arguments have merit. There is significant overlap between the two cases, including the legal and factual issues, as well as the parties. Given the overlap between the cases, coordination will also advance the convenience of the parties, counsel, and at least some witnesses. Having the parties conduct the same discovery and make the same arguments in two separate courts would waste significant time and resources for all involved. Coordination will also significantly reduce the likelihood of inconsistent rulings. While some discovery has been conducted in this action, this will prevent duplication of the same discovery needing to be conducted in the *Aldana* Action. Notably, if coordination is denied, and the matters continue to proceed on separate tracks, settlement only becomes less attractive to the parties, as it makes a single global settlement less likely. Therefore, the court finds the cases should be coordinated.

The petition for add-on coordination is GRANTED, with Santa Clara County Superior Court as the court to hear the coordinated actions and the Sixth Appellate District of the Court of Appeal as the reviewing court having appellate jurisdiction.

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

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Calendar Line 3

Case Name: Recology Wage and Hour Cases (JCCP 5251)
Case No.: 22CV396584

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 7, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VI. INTRODUCTION

This coordinated action involves five cases: (1) *Jesus Beltran v. Recology South Bay, et al.* (Case No. 22CV396584, Santa Clara County Superior Court) ("*Beltran*"); (2) *Antoine Brooks, et al. v. Recology American Canyon, et al.* (Case No. CGC-22-599566, San Francisco County Superior Court) ("*Brooks*"); (3) *Adam Machado v. Recology Inc., et al.* (Case No. 22-CIV-03760, San Mateo County Superior Court) ("*Machado Class Action*"); (4) *Adam Machado v. Recology Inc., et al.* (Case No. 22-CIV-04928, San Mateo County Superior Court) ("*Machado PAGA Action*"); and (5) *Roderick Gibbs v. South Bay Recycling LLC, et al.* (Case No. 23-CIV-00809, San Mateo County Superior Court) ("*Gibbs*").

The Complaint in *Beltran,* filed on April 4, 2022, sets forth the following causes of action: (1) Failure to Compensate for All Hours Worked; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime; (4) Failure to Provide Accurate Itemized Wage Statements; (5) Failure to Pay Wages When Employment Ends; (6) Failure to Pay Wages Owed Every Pay Period; (7) Violation of Labor Code section 558; (8) Failure to Maintain Accurate Records; (9) Failure to Give Rest Breaks; (10) Failure to Give Meal Breaks; (11) Private Attorneys General Act ("PAGA"); (12) Failure to Reimburse for Business Expenses; and (13) Violation of California Business and Professions Code Section 17200.

The Complaint in *Brooks,* filed on May 10, 2022, 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 to Maintain Required Records; (7) Failure to Furnish Accurate Itemized Wage Statements; (8) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (9) Unfair and

Unlawful Business Practices; and (10) Penalties under the Labor Code Private Attorneys General Act.

The Complaint in *Machado Class Action*, filed September 14, 2022, sets forth the following causes of action: (1) Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194; (2) Failure to Pay Timely Wages Required by Labor Code § 203; (3) Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226; (4) Unlawful Deductions from Wages; (5) Failure to Indemnify Necessary Business Expenses as Required by Labor Code § 2802; and (6) Violation of Business & Professions Code § 17200, et seq.

The Complaint in *Machado PAGA Action*, filed November 21, 2022, sets forth a single cause of action under the Private Attorneys General Act (Labor Code §§ 2698 et seq.).

The operative First Amended Complaint in *Gibbs*, filed on May 15, 2023, sets forth causes of action for: (1) Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194; (2) Failure to Provide Rest Periods as Required by Labor Code §§ 226.7 and 512; (3) Failure to Pay Timely Wages as Required by Labor Code § 203; (4) Failure to Timely Pay Wages During Employment as Required by Labor Code § 204; (5) Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226; (6) Failure to Indemnify Necessary Business Expenses as Required by Labor Code § 2802; (7) Violation of Business & Professions Code § 17200, et seq.; and (8) Private Attorneys General Act of 2004 (PAGA).

Currently before the court are the following matters: (1) the motion by the *Machado* Defendants[1] for an order compelling plaintiff Adam Machado ("Machado") to arbitrate his individual claims asserted in the *Machado Class Action* and dismissing his class claims; (2) the motion by the *Machado* Defendants for an order compelling Machado to arbitrate his individual claims asserted in the *Machado PAGA Action* and staying his representative claims pending completion of the arbitration; (3) the motion by the *Gibbs* Defendants[2] for an order compelling plaintiff Roderick Gibbs ("Gibbs") to arbitrate his individual claims asserted in

[1] The court refers to defendants Recology Inc. and Recology Davis, collectively, as the *Machado* Defendants.
[2] The court refers to defendants South Bay Recycling, LLC and Recology Inc., collectively, as the *Gibbs* Defendants.

Gibbs, dismissing his class claims, and staying his representative claims pending completion of the arbitration; (4) the motion by the *Beltran* Defendants[3] for an order compelling plaintiff Jesus Beltran ("Beltran") to arbitrate his individual claims asserted in *Beltran* and staying his representative claims pending completion of the arbitration; and (5) the motion by the *Brooks* Defendants[4] for an order compelling plaintiffs Antoine Brooks ("Brooks") and Satavia Jones ("Jones") to arbitrate their individual claims asserted in *Brooks*, dismissing their class claims, and staying their representative claims pending completion of the arbitration.

These matters were initially set for hearing on December 6, 2023.

On December 5, 2023, the court entered a Stipulation and Order Re Continuing the December 6, 2023 Hearing on Defendants' Motions to Compel Arbitration and Case Management Conference ("Stipulation). The Stipulation reflects that Defendants' counsel became ill unexpectedly and, consequently, the matters were continued to February 7, 2024.

On January 22, 2024, Defendants' counsel filed notices of supplemental authority, informing the court about a trial court order entered in an unrelated case.

VII. NOTICE OF SUPPLEMENTAL AUTHORITY

As an initial matter, the court declines to take judicial notice of the Order Granting Defendant Recology San Francisco's Motion to Compel Arbitration entered on December 15, 2023, in the unrelated case of *Elgin Webb v. Recology San Francisco, et al.* (San Francisco County Superior Court, Case No. CGC-23-609033). Unpublished California opinions "must not be cited or relied on by a court or a party in any other action." (Cal. Rules of Ct., rule

[3] The court refers to defendants Recology South Bay and Salvatore Coniglio, collectively, as the *Beltran* Defendants.

[4] The court refers to defendants Recology American Canyon, Recology Arcata, Recology Auburn Placer, Recology Blossom Valley Organics – North, Recology Blossom Valley Organics – South, Recology Brisbane, Recology Butte Colusa Counties, Recology Cleanscapes (CA) (erroneously sued as Recology Cleanscrapres (CA)), Recology Davis, Recology Del Norte, Recology Dixon, Recology East Bay, Recology East Bay Organics, Recology Eel River, Recology Environmental Solutions, Inc., Recology Hay Road, Recology Humboldt County, Recology, Inc., Recology Leasing, Inc., Recology Los Angeles, Recology Mariposa, Recology Mountain View, Recology of the Coast, Recology Ostrom Road, Recology Pacheco Pass, Recology Products Inc., Recology Properties Inc., Recology Sacramento, Recology San Bruno, Recology San Francisco, Recology San Mateo County, Recology Service Center, Recology Service Center Coast, Recology Service Center North, Recology Service Center South, Recology Services, Recology Sonoma Marin, Recology South Bay, Recology South Valley, Recology Stockton, Recology Vacaville Solano, Recology Vallejo, Recology Waste Solutions, Recology Yuba-Sutter (erroneously sued as Recology Yuba-Stutter), Golden Gate Disposal & Recycling Company d/b/a Recology Golden Gate d/b/a Recology Debris Box Service, Recology San Francisco f/n/a SF Recycling & Disposal Inc., West Coast Recycling Co. d/b/a Recology Shredding & Destruction Services, collectively, as the *Brooks* Defendants.

8.1115(a); see also *Schachter v. Citigroup, Inc*. (2005) 126 Cal.App.4th 726, 738 [trial court ruling has no precedential value]; *Drummond v. Desmarais* (2009) 176 Cal.App.4th 439, 448, fn. 4 ["in the absence of some additional showing—such as the conditions for claim or issue preclusion—the actions of other judges are simply irrelevant"].) The court admonishes Defendants not to cite unpublished California trial court orders in the future.

VIII. *MACHADO* DEFENDANTS' MOTIONS

Machado Defendants seek an order compelling Machado to arbitrate his individual claims asserted in the *Machado Class Action* and the *Machado PAGA Action*, dismissing his class claims in the *Machado Class Action*, and staying his representative claims in the *Machado PAGA Action* pending completion of the individual arbitration. In support of their motions, *Machado* Defendants submit copies of the arbitration agreements purportedly signed by Machado. (Declaration of Wendy Young in Support of Motion to Compel Arbitration and Stay Representative PAGA Claim Asserted by Plaintiff Adam Machado, Exs. B & C; Declaration of Wendy Young in Support of Motion to Compel Arbitration and to Dismiss Class Claims Asserted by Plaintiff Adam Machado, Exs. B & C.)

Machado filed a notice of non-opposition on November 1, 2023, stating that he does not oppose the *Machado* Defendants' motions.

Accordingly, *Machado* Defendants' motions are GRANTED. (See *Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 164-166 (*Gamboa*) [if the moving party meets its initial prima facie burden (e.g., by attaching a copy of the arbitration agreement purporting to bear the opposing party's signature) and the opposing party does not dispute the existence of the arbitration agreement, then nothing more is required for the moving party to meet its burden of persuasion]; *Iyere v. Wise Auto Group* (2023) 87 Cal.App.5th 747, 755 (*Iyere*) [same].)

IV. *GIBBS* DEFENDANTS' MOTION

Gibbs Defendants seek an order compelling Gibbs to arbitrate his individual claims asserted in *Gibbs*, dismissing his class claims, and staying his representative claims pending completion of the arbitration. In support of their motion, *Gibbs* Defendants submit a copy of the arbitration agreement purportedly signed by Gibbs. (Declaration of Wendy Young in

Support of Motion to Compel Arbitration, to Dismiss Class Claims, and Stay Representative PAGA Claim Asserted by Plaintiff Roderick Gibbs, Ex. B.)

Gibbs did not file an opposition to the instant motion.

Accordingly, *Gibbs* Defendants' motion is GRANTED. (See *Gamboa, supra,* 72 Cal.App.5th at pp. 164-166 [if the moving party meets its initial prima facie burden (e.g., by attaching a copy of the arbitration agreement purporting to bear the opposing party's signature) and the opposing party does not dispute the existence of the arbitration agreement, then nothing more is required for the moving party to meet its burden of persuasion]; *Iyere, supra,* 87 Cal.App.5th at p. 755 [same].)

V. *BELTRAN* DEFENDANTS' MOTION

A. Request for Judicial Notice

In connection with their moving papers, *Beltran* Defendants ask the court to take judicial notice of the Complaint filed in *Beltran* on April 4, 2022.

The Complaint is a proper subject of judicial notice as it is a court record relevant to the pending motion. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records]; see also *People v. Woodell* (1998) 17 Cal.4th 448, 455 (*Woodell*) [Evid. Code, § 452, subd. (d) permits the trial court to "take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact."].)

Accordingly, the request for judicial notice is GRANTED.

B. Legal Standard

As an initial matter, Beltran disputes that the FAA applies in this case, arguing that *Beltran* Defendants have not established that his employment involved interstate commerce.

However, as *Beltran* Defendants persuasively argue, Beltran's argument regarding interstate commerce is, ultimately, immaterial. It is well-established that the presence of interstate commerce is not the only circumstance under which the FAA may apply; the FAA also applies if it is so stated in the agreement since arbitration is a matter of contract. (*Davis v.*

Shiekh Shoes, LLC (2022) 84 Cal.App.5th 956, 963 (*Davis*).) Here, the arbitration agreements at issue expressly provide that the agreements are governed by the FAA. (Declaration of Wendy Young in Support of Motion to Compel Arbitration and Stay Representative PAGA Claim Asserted by Plaintiff Jesus Beltran, Exs. B & C.) Consequently, the FAA applies here. (See *Davis, supra,* 84 Cal.App.5th at p. 963 [where the contract unambiguously states that the FAA governs the arbitration agreement, the FAA applies].)

Notably, "[t]he procedural aspects of the FAA do not apply in state court absent an express provision in the arbitration agreement." (*Avila v. Southern California Specialty Care, Inc*. (2018) 20 Cal.App.5th 835, 840 (*Avila*).)

The California Arbitration Act provides that a court must grant a petition to compel arbitration "if it determines that an agreement to arbitrate … exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement," among other exceptions. (Code Civ. Proc., § 1281.2.)

The moving party must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. (See *Cruise v. Kroger Co*. (2015) 233 Cal.App.4th 390, 396 (*Cruise*) [under both federal and state law, "the threshold question presented by a petition to compel arbitration is whether there is an agreement to arbitrate"]; *Rosenthal v. Great Western Fin'l Securities Corp*. (1996) 14 Cal.4th 394, 413 (*Rosenthal*) [moving party's burden is a preponderance of the evidence].) The burden then shifts to the resisting party to prove a ground for denial. (*Rosenthal, supra,* 14 Cal.4th at p. 413.) "In determining the rights of parties to enforce an arbitration agreement within the FAA's scope, courts apply state contract law while giving due regard to the federal policy favoring arbitration." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236 (*Pinnacle*).)

C. Discussion

Beltran Defendants assert that Beltran electronically signed employment applications on March 7 and April 22, 2021, containing identical arbitration agreements, which require Beltran to arbitrate his claims against them on a individual basis. *Beltran* Defendants submit copies of the arbitration agreements, which state that Recology, its related companies, and

Beltran agree to mandatory arbitration of any claims, disputes, or controversies arising out of or relating to Beltran's subsequent employment with Recology, if any, or termination from such employment. *Beltran* Defendants contend that Beltran agreed to arbitrate his claims on an individual basis as the arbitration agreements provide that "[t]here shall be no right or authority for any dispute to be heard or arbitrated on a class action basis, as a private attorney general, or on a basis involving disputes brought in a purported representative capacity on behalf of the general public, any other applicants for employment with Recology, any other employees of Recology, or other persons similarly situated; provided however, that any individual claim of the undersigned applicant or Recology is subject to this agreement to arbitrate." In light of the foregoing, *Beltran* Defendants argue the court should compel Beltran to arbitrate his individual claims asserted in *Beltran*, including his individual PAGA claim, and stay his representative PAGA claims pending completion of the individual arbitration.

In opposition, Beltran does not dispute that he signed the arbitration agreements or that the agreements cover his individual claims. Instead, Beltran argues that the arbitration agreements are unconscionable because they are adhesive contracts, the arbitration agreements are buried in the employment applications, the arbitration agreements do not include any terms regarding *Beltran* Defendants' arbitration policy, the arbitration agreements contain a wholesale waiver of PAGA claims, and the waiver should not be severed.

Here, *Beltran* Defendants submit copies of the arbitration agreements purportedly signed by Beltran (Declaration of Wendy Young in Support of Motion to Compel Arbitration and Stay Representative PAGA Claim Asserted by Plaintiff Jesus Beltran, Exs. B & C) and Beltran does not dispute the existence of the arbitration agreements or their applicability to his claims. Therefore, *Beltran* Defendants have met their burden of persuasion to establish the existence of a valid arbitration agreement between the parties. (See *Gamboa, supra,* 72 Cal.App.5th at pp. 164-166 [if the moving party meets its initial prima facie burden (e.g., by attaching a copy of the arbitration agreement purporting to bear the opposing party's signature) and the opposing party does not dispute the existence of the arbitration agreement, then nothing more is required for the moving party to meet its burden of persuasion]; *Iyere, supra,* 87 Cal.App.5th at p. 755 [same].)

Beltran's remaining argument—that the arbitration agreements are fatally unconscionable—is not well-taken. Unconscionability has both procedural and substantive elements. (*Armendariz v. Foundation Health Psychare Services, Inc*. (2000) 24 Cal.4th 83, 114 (*Armendariz*), abrogated in part by *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333 (*Concepcion*); *Jones v. Wells Fargo Bank* (2003) 112 Cal.App.4th 1527, 1539 (*Jones*).) Both must appear for a court to invalidate a contract or one of its individual terms (*Armendariz, supra*, 24 Cal.4th at p. 114; *Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 174 (*Mercuro*)), but they need not be present in the same degree: "the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa" (*Armendariz, supra*, 24 Cal.4th at p. 114.)

Procedural unconscionability focuses on the elements of oppression and surprise. (*Armendariz, supra*, 24 Cal.4th at p. 114.) "Oppression arises from an inequality of bargaining power which results in no real negotiation and an absence of meaningful choice," while "[s]urprise involves the extent to which the terms of the bargain are hidden in a prolix printed form drafted by a party is a superior bargaining position." (*Davis v. TWC Dealer Group, Inc*. (2019) 41 Cal.App.5th 662, 671 (*Davis*), internal citation and quotation marks omitted.)

Here, it appears to be undisputed that the arbitration agreements constitute contracts of adhesion as there was no opportunity for Beltran to negotiate their terms. However, a contract of adhesion in the employment context contains only a modest amount of procedural unconscionability, unless the contract involves surprise or other sharp practices. (*Nguyen v. Applied Medical Resources Corp.* (2016) 4 Cal.App.5th 232, 248 (*Nguyen*); *Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 244 (*Carbajal*); *Baltazar v. Forever 21, Inc*. (2016) 62 Cal.4th 1237, 1245-1246 (*Baltazar*).) There is no evidence that any portion of the arbitration agreements was hidden or that Beltran was prevented from reading the terms before becoming bound by the agreements. The fact that the arbitration agreements refer to, but do not attach, *Beltran* Defendants' current arbitration policy does not demonstrate unconscionability; rather, the only impact of the absence of the contents of the arbitration policy is that the parties did not agree to govern their arbitration by procedures different from

those prescribed in the CAA. (See *Cruise, supra,* 233 Cal.App.4th at p. 399 ["the only impact of Kroger's inability to establish the contents of the 2007 Arbitration Policy is that Kroger failed to establish that the parties agreed to govern their arbitration by procedures different from those prescribed in the CAA"].) Thus, Beltran has established only a slight degree of procedural unconscionability.

The court now turns to the issue of substantive unconscionability. Substantive unconscionability focuses on the actual terms of the agreement and evaluates whether they create "overly harsh" or "one-sided results" (*Armendariz, supra,* 24 Cal.4th at p. 114, internal citation and quotations omitted), that is, whether they reallocate risks in an objectively unreasonable or unexpected manner (*Jones, supra,* 112 Cal.App.4th at p. 1539). "In assessing substantive unconscionability, the paramount consideration is mutuality." (*Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 241 (*Pinela*), internal citation and quotation marks omitted.) Arbitration agreements are substantively unconscionable where they lack a "modicum of bilaterality," "without at least some reasonable justification for such one-sidedness based on 'business realities.' " (*Armendariz, supra,* 24 Cal.4th at p. 117.)

As Beltran points out, the arbitration agreement is substantively unconscionable to the extent it purports to waive his right to bring representative PAGA claims (i.e., PAGA claims on behalf of other aggrieved employees). (See *Nickson v. Shemran, Inc.* (2023) 90 Cal.App.5th 121, 130 (*Nickson*) ["Here, the Agreement purports to waive Nickson's right "to make any claims … in a private attorney general capacity." That waiver is unenforceable as a matter of state law. [Citation.]"].) Thus, the court must address whether the waiver of the representative PAGA claims can be severed from the agreement. (See *ibid.*)

Although the arbitration agreements do not contain a severability clause, the court is authorized by statute to sever unconscionable provisions. (*Ulene v. Jacobson* (1962) 209 Cal.App.2d 139, 142 (*Ulene*) [a severability clause merely states existing law codified in Civil Code section 1599 and is unnecessary to invoke our state's liberal principle of severability]; see *Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 658-660 (*Abramson*); see also *Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1074-1076 (*Little*).)

"[W]hether to sever is within the trial court's discretion." (*Navas v. Fresh Venture Foods, LLC* (2022) 85 Cal.App.5th 626, 636–637 (*Navas*).)

> " 'In deciding whether to sever terms rather than to preclude enforcement of the provision altogether, the overarching inquiry is whether the interests of justice would be furthered by severance; the strong preference is to sever unless the agreement is "permeated" by unconscionability.' [Citation.] [¶] An agreement to arbitrate is considered 'permeated' by unconscionability where it contains more than one unconscionable provision. [Citation.] 'Such multiple defects indicate a systematic effort to impose arbitration on [the nondrafting party] not simply as an alternative to litigation, but as an inferior forum that works to the [drafting party's] advantage.' [Citation.] An arbitration agreement is also deemed 'permeated' by unconscionability if 'there is no single provision a court can strike or restrict in order to remove the unconscionable taint from the agreement.' [Citation.] If 'the court would have to, in effect, reform the contract, not through severance or restriction, but by augmenting it with additional terms,' the court must void the entire agreement." (*Magno v. The College Network, Inc.* (2016) 1 Cal.App.5th 277, 292.)

(*De Leon v. Pinnacle Property Management Services, LLC* (2021) 72 Cal.App.5th 476, 492–493 (*De Leon*).)

Here, the arbitration agreements contain only one substantively unconscionable provision. The arbitration clause plainly has a lawful purpose consistent with both the FAA and California's public policy. (See, e.g., *Graham v. Scissor-Tail, Inc.* (1981) 28 Cal.3d 807, 821, 831 (*Graham*) [recognizing there is a "strong public policy of this state in favor of resolving disputes by arbitration" and remanding for enforcement of arbitration agreement after voiding unconscionable provision providing for biased arbitrator].) Voiding the clause as it pertains to Beltran's entire PAGA claim would have the effect of depriving *Beltran* Defendants of their right to contract for bilateral arbitration based on the mandatory joinder rule of *Iskanian* that *Viking River* declared preempted. Moreover, the PAGA waiver is of the type which the court routinely construes under *Viking River Cruises, supra,* 142 S.Ct. at p. 1924. Given the United States Supreme Court's clear direction in *Viking River* that courts should interpret these provisions to require arbitration of individual PAGA claims where the agreement at issue permits, the court is unwilling to find it should not do so here, and to instead find that this partially enforceable provision tips the entire agreement into unenforceable, "permeated by unconscionability" territory. Thus, the court finds that severance furthers the interests of justice here and *Beltran* Defendants are entitled to enforce the arbitration agreements consistent with *Viking River*.

Accordingly, *Beltran* Defendants' motion is GRANTED.

VI. *BROOKS* DEFENDANTS' MOTION

A. Request for Judicial Notice

In connection with their moving papers, *Brooks* Defendants ask the court to take judicial notice of the Complaint filed in *Brooks* on May 10, 2022.

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

Accordingly, the request for judicial notice is GRANTED.

A. Legal Standard

The FAA applies in this case as provided in the subject arbitration agreements. (Declaration of Wendy Young in Support of Motion to Compel Arbitration, to Dismiss Class Claims, and Stay Representative PAGA Claim Asserted by Plaintiffs Antoine Brooks and Satavia Jones, Exs. B-D; see *Davis, supra,* 84 Cal.App.5th at p. 963 [where the contract unambiguously states that the FAA governs the arbitration agreement, the FAA applies].)

Notably, "[t]he procedural aspects of the FAA do not apply in state court absent an express provision in the arbitration agreement." (*Avila, supra,* 20 Cal.App.5th at p. 840.)

The California Arbitration Act provides that a court must grant a petition to compel arbitration "if it determines that an agreement to arbitrate … exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement," among other exceptions. (Code Civ. Proc., § 1281.2.)

The moving party must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. (See *Cruise, supra,* 233 Cal.App.4th at p. 396 [under both federal and state law, "the threshold question presented

by a petition to compel arbitration is whether there is an agreement to arbitrate"]; *Rosenthal, supra,* 14 Cal.4th at p. 413 [moving party's burden is a preponderance of the evidence].) The burden then shifts to the resisting party to prove a ground for denial. (*Rosenthal, supra,* 14 Cal.4th at p. 413.) "In determining the rights of parties to enforce an arbitration agreement within the FAA's scope, courts apply state contract law while giving due regard to the federal policy favoring arbitration." (*Pinnacle, supra,* 55 Cal.4th at p. 236.)

C. Discussion

Brooks Defendants assert that Jones electronically signed an employment application on January 16, 2018, and Brooks electronically signed employment applications on August 1 and October 8, 2019, containing identical arbitration agreements, which require Brooks and Jones (hereinafter collectively, "Plaintiffs") to arbitrate their claims against on an individual basis. *Brooks* Defendants submit copies of the arbitration agreements, which state that Recology, its related companies, and Plaintiffs agree to mandatory arbitration of any claims, disputes, or controversies arising out of or relating to Plaintiffs' subsequent employment with Recology, if any, or termination from such employment. *Brooks* Defendants contend that Plaintiffs agreed to arbitrate their claims on an individual basis as the arbitration agreements provide that "[t]here shall be no right or authority for any dispute to be heard or arbitrated on a class action basis, as a private attorney general, or on a basis involving disputes brought in a purported representative capacity on behalf of the general public, any other applicants for employment with Recology, any other employees of Recology, or other persons similarly situated; provided however, that any individual claim of the undersigned applicant or Recology is subject to this agreement to arbitrate." In light of the foregoing, *Brooks* Defendants argue the court should compel Plaintiffs to arbitrate their individual claims asserted in *Brooks*, including their individual PAGA claims, dismiss Plaintiffs' class claims, and stay their representative PAGA claims pending completion of the individual arbitration.

In opposition, Plaintiffs assert that *Brooks* Defendants have not met their burden to establish with admissible evidence that Plaintiffs signed the arbitration agreements. Plaintiffs do not dispute that the agreements cover their individual claims. Plaintiffs further argue that the arbitration agreements are unconscionable because they are adhesive contracts, the

arbitration agreements do not include any terms regarding *Brooks* Defendants' arbitration policy, *Brooks* Defendants did not explain the agreements to them, *Brooks* Defendants did not sign the agreements, the arbitration agreements cover only claims typically brought by an employee against an employer, the arbitration agreements contain a wholesale waiver of PAGA claims, and the waiver should not be severed.

Here, *Brooks* Defendants submit copies of the arbitration agreements purportedly signed by Plaintiffs. (Declaration of Wendy Young in Support of Motion to Compel Arbitration, to Dismiss Class Claims, and Stay Representative PAGA Claim Asserted by Plaintiffs Antoine Brooks and Satavia Jones, Exs. B-D.) This is sufficient to meet their initial burden. (See *Iyere, supra*, 87 Cal.App.5th at p. 755 ["The arbitration proponent must first recite verbatim, or provide a copy of, the alleged agreement. [Citations.] A movant can bear this initial burden 'by attaching a copy of the arbitration agreement purportedly bearing the opposing party's signature.' [Citation.] At this step, a movant need not 'follow the normal procedures of document authentication' and need only 'allege the existence of an agreement and support the allegation as provided in rule [3.1330].' [Citation.]"].)

In opposition, Plaintiffs do not submit evidence creating a factual dispute as to the authenticity of their signatures. (See *Iyere, supra*, 87 Cal.App.5th at p. 755 ["If the movant bears its initial burden, the burden shifts to the party opposing arbitration to identify a factual dispute as to the agreement's existence—in this instance, by disputing the authenticity of their signatures. To bear this burden, the arbitration opponent must offer admissible evidence creating a factual dispute as to the authenticity of their signatures. The opponent need not prove that his or her purported signature is not authentic, but must submit sufficient evidence to create a factual dispute and shift the burden back to the arbitration proponent, who retains the ultimate burden of proving, by a preponderance of the evidence, the authenticity of the signature."].) Notably, Jones does not submit any declaration in support of the instant motion. Brooks submits a declaration in support of the motion, but does not dispute that he signed the arbitration agreements. Rather, Brooks states that he recalls filling out the two employment applications and signing the documents contained in the applications. (Declaration of Plaintiff Antoine Brooks in Support of Plaintiffs' Opposition to Defendants' Motion to Compel

Arbitration, ¶¶ 4-8.) Brooks' statements to the effect that he did not understand that he was signing an arbitration agreement or the nature of the arbitration agreement are immaterial. As *Brooks* Defendants persuasively argue, an arbitration clause may be binding on a party even if the party never actually read or understood the clause. (*Pinnacle, supra,* 55 Cal.4th at p. 236; *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 914; *Ramos v. Westlake Servs. LLC* (2015) 242 Cal.App.4th 674, 686-687.)

Because Plaintiffs fail to shift the burden back to *Brooks* Defendants, *Brooks* Defendants have met their burden of persuasion to establish the existence of a valid arbitration agreement between the parties.[5] (See *Gamboa, supra,* 72 Cal.App.5th at pp. 164-166 [if the moving party meets its initial prima facie burden (e.g., by attaching a copy of the arbitration agreement purporting to bear the opposing party's signature) and the opposing party does not dispute the existence of the arbitration agreement, then nothing more is required for the moving party to meet its burden of persuasion]; *Iyere, supra,* 87 Cal.App.5th at p. 755 [same].)

Plaintiffs' remaining argument—that the arbitration agreements are fatally unconscionable—is not well-taken. Unconscionability has both procedural and substantive elements. (*Armendariz, supra,* 24 Cal.4th at p. 114; *Jones, supra,* 112 Cal.App.4th at p. 1539.) Both must appear for a court to invalidate a contract or one of its individual terms (*Armendariz, supra,* 24 Cal.4th at p. 114; *Mercuro, supra,* 96 Cal.App.4th at p. 174), but they need not be present in the same degree: "the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa" (*Armendariz, supra,* 24 Cal.4th at p. 114).

Procedural unconscionability focuses on the elements of oppression and surprise. (*Armendariz, supra,* 24 Cal.4th at p. 114.) "Oppression arises from an inequality of bargaining power which results in no real negotiation and an absence of meaningful choice," while "[s]urprise involves the extent to which the terms of the bargain are hidden in a prolix printed form drafted by a party is a superior bargaining position." (*Davis, supra,* 41 Cal.App.5th at p. 671, internal citation and quotation marks omitted.)

[5] The court overrules all of Plaintiffs' evidentiary objections as *Brooks* Defendants have met their burden simply by producing copies of the arbitration agreements.

Here, it appears to be undisputed that the arbitration agreements constitute contracts of adhesion as there was no opportunity for Plaintiffs to negotiate their terms. However, a contract of adhesion in the employment context contains only a modest amount of procedural unconscionability, unless the contract involves surprise or other sharp practices. (*Nguyen, supra,* 4 Cal.App.5th at p. 248; *Carbajal, supra,* 245 Cal.App.4th at p. 244; *Baltazar, supra,* 62 Cal.4th at pp. 1245-1246.) There is no evidence that any portion of the arbitration agreements was hidden or that Plaintiffs were prevented from reading the terms before becoming bound by the agreements. The fact that the arbitration agreements refer to, but do not attach, *Brooks* Defendants' current arbitration policy does not demonstrate unconscionability; rather, the only impact of the absence of the contents of the arbitration policy is that the parties did not agree to govern their arbitration by procedures different from those prescribed in the CAA. (See *Cruise, supra,* 233 Cal.App.4th at p. 399 ["the only impact of Kroger's inability to establish the contents of the 2007 Arbitration Policy is that Kroger failed to establish that the parties agreed to govern their arbitration by procedures different from those prescribed in the CAA"].) Thus, Plaintiffs have established only a slight degree of procedural unconscionability.

The court now turns to the issue of substantive unconscionability. Substantive unconscionability focuses on the actual terms of the agreement and evaluates whether they create "overly harsh" or "one-sided results" (*Armendariz, supra,* 24 Cal.4th at p. 114, internal citation and quotations omitted), that is, whether they reallocate risks in an objectively unreasonable or unexpected manner (*Jones, supra,* 112 Cal.App.4th at p. 1539). "In assessing substantive unconscionability, the paramount consideration is mutuality." (*Pinela, supra,* 238 Cal.App.4th at p. 241, internal citation and quotation marks omitted.) Arbitration agreements are substantively unconscionable where they lack a "modicum of bilaterality," "without at least some reasonable justification for such one-sidedness based on 'business realities.' " (*Armendariz, supra,* 24 Cal.4th at p. 117.)

As an initial matter, the fact that *Brooks* Defendants did not sign the arbitration agreements does not render them substantively unconscionable. (See *Cruise, supra,* 233 Cal.App.4th at p. 397 [enforcing arbitration agreement not signed by defendant]; see also *Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 176 ["It is not the presence

or absence of a signature which is dispositive; it is the presence or absence of evidence of an agreement to arbitrate which matters"].) Here, Plaintiffs assert that the arbitration agreements were drafted by *Brooks* Defendants, and the agreements themselves state that they apply to both *Brooks* Defendants and Plaintiffs: "Recology or its related companies … and I agree that … Recology and I will resolve any and all claims, disputes, and controversies" related to the employment application, employment, or termination in arbitration. This demonstrates that *Brooks* Defendants are bound by the agreements.

Next, Plaintiffs argue that the arbitration agreements at issue are unfairly one-sided because they list only employee claims as examples of the types of claims that are subject to arbitration. The court disagrees. The arbitration agreements are clear that the parties mutually agree to arbitrate all employment-related claims. That provision clearly covers claims an employer might bring as well as those an employee might bring. (See *Baltazar, supra,* 62 Cal.4th at p. 1249.)

Nonetheless, as Plaintiffs point out, the arbitration agreements are substantively unconscionable to the extent they purport to waive Plaintiffs' right to bring representative PAGA claims (i.e., PAGA claims on behalf of other aggrieved employees). (See *Nickson, supra,* 90 Cal.App.5th at p. 130 ["Here, the Agreement purports to waive Nickson's right "to make any claims … in a private attorney general capacity." That waiver is unenforceable as a matter of state law. [Citation.]"].) Thus, the court must address whether the waiver of the representative PAGA claims can be severed from the agreements. (See *ibid.*)

Although the arbitration agreements do not contain a severability clause, the court is authorized by statute to sever unconscionable provisions. (*Ulene, supra,* 209 Cal.App.2d at p. 142 [a severability clause merely states existing law codified in Civil Code section 1599 and is unnecessary to invoke our state's liberal principle of severability]; see *Abramson, supra,* 115 Cal.App.4th at pp. 658-660; see also *Little, supra,* 29 Cal.4th at pp. 1074-1076.)

"[W]hether to sever is within the trial court's discretion." (*Navas, supra,* 85 Cal.App.5th at pp. 636–637.)

> " 'In deciding whether to sever terms rather than to preclude enforcement of the provision altogether, the overarching inquiry is whether the interests of justice would be furthered by severance; the strong preference is to sever unless the agreement is "permeated" by unconscionability.' [Citation.] [¶] An agreement to arbitrate is considered 'permeated' by unconscionability where it contains more than one unconscionable provision. [Citation.] 'Such multiple defects indicate a

> systematic effort to impose arbitration on [the nondrafting party] not simply as an alternative to litigation, but as an inferior forum that works to the [drafting party's] advantage.' [Citation.] An arbitration agreement is also deemed 'permeated' by unconscionability if 'there is no single provision a court can strike or restrict in order to remove the unconscionable taint from the agreement.' [Citation.] If 'the court would have to, in effect, reform the contract, not through severance or restriction, but by augmenting it with additional terms,' the court must void the entire agreement." (*Magno v. The College Network, Inc.* (2016) 1 Cal.App.5th 277, 292.)

(*De Leon, supra,* 72 Cal.App.5th at pp. 492–493.)

Here, the arbitration agreements contain only one substantively unconscionable provision. The arbitration clause plainly has a lawful purpose consistent with both the FAA and California's public policy. (See, e.g., *Graham, supra,* 28 Cal.3d at pp. 821, 831 [recognizing there is a "strong public policy of this state in favor of resolving disputes by arbitration" and remanding for enforcement of arbitration agreement after voiding unconscionable provision providing for biased arbitrator].) Voiding the clause as it pertains to Plaintiffs' entire PAGA claim would have the effect of depriving *Brooks* Defendants of their right to contract for bilateral arbitration based on the mandatory joinder rule of *Iskanian* that *Viking River* declared preempted. Moreover, the PAGA waiver is of the type which the court routinely construes under *Viking River Cruises, supra,* 142 S.Ct. at p. 1924. Given the United States Supreme Court's clear direction in *Viking River* that courts should interpret these provisions to require arbitration of individual PAGA claims where the agreement at issue permits, the court is unwilling to find it should not do so here, and to instead find that this partially enforceable provision tips the entire agreement into unenforceable, "permeated by unconscionability" territory. Thus, the court finds that severance furthers the interests of justice here and *Brooks* Defendants are entitled to enforce the arbitration agreements consistent with *Viking River*.

Accordingly, *Brooks* Defendants' motion 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 4

Case Name: Hernandez v. Burdick Painting (Lead Case; Consolidated w/ Case No. 20CV366446)
Case No.: 20CV363833

The above-entitled actions come on for hearing before the Honorable Theodore C. Zayner on February 7, 2024, at 9:00 a.m. in Department 19. The court now issues its tentative ruling as follows:

IX. INTRODUCTION

This consolidated action is comprised of two cases: (1) *David Villagran Hernandez v. Burdick Painting* (Santa Clara County Superior Court, Case No. 20CV363833) ("First Action"); and (2) *David Hernandez v. Burdick Painting* (Santa Clara County Superior Court, Case No. 20CV366446) ("Second Action"). Both cases are putative class actions arising out of alleged wage and hour violations.

The Class Action Complaint filed in the First Action on February 21, 2020, sets forth the following causes of action: (1) Failure to Pay All Wages; (2) Failure to Pay Reporting Time Pay in Violation of California Labor Code §§ 218, 1194; (3) Missed Rest Breaks in Violation of California Labor Code §§ 200, 226.7, 512, and Wage Order; (4) Failure to Furnish an Accurate Itemized Wage Statement Upon Payment of Wages in Violation of California Labor Code § 226; (5) Failure to Reimburse Expenses in Violation of California Labor Code § 2802; and (6) Violations of California Business & Professions Code §§ 17200, et seq.

The Class Action Complaint filed in the Second Action on May 8, 2020, sets forth the following causes of action: (1) Violation of Labor Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1, 1182.12 (Failure to Pay All Wages); (2) Violation of Labor Code §§ 226.7, 512 (Meal Period Violations); (3) Violation of Labor Code §§ 226.7 (Rest Period Violations); (4) Violation of Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment); (5) Violation of Labor Code §§ 226, subd. (a), (e), 226.3, 1174, 1174.5 (Failure to Issue Accurate Itemized Wage Statements); (6) Violation of Labor Code § 2802 (Failure to Indemnify for Expenditures or Losses in Discharge of Duties); and (7) Violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices).

On March 10, 2022, the court granted plaintiff David Hernandez's ("Plaintiff") motion to consolidate the cases.

On June 2, 2022, the court entered a Joint Stipulation for Plaintiff to File a First Amended Complaint and Order Thereon.

On June 8, 2022, Plaintiff filed a First Amended Complaint for Damages, which set forth causes of action for: (1) Violation of Labor Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1, 1182.12 (Failure to Pay All Wages); (2) Violation of Labor Code §§ 218, 1194 (Failure to Pay Reporting Time Pay); (3) Violation of Labor Code §§ 226.7, 512 (Meal Period Violations); (4) Violation of Labor Code §§ 226.7 (Rest Period Violations); (5) Violation of Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment); (6) Violation of Labor Code §§ 226, subd. (a), (e), 226.3, 1174, 1174.5 (Failure to Issue Accurate Itemized Wage Statements); (7) Violation of Labor Code § 2802 (Failure to Indemnify for Expenditures or Losses in Discharge of Duties); and (8) Violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices).

On May 16, 2023, the court entered a Joint Stipulation for Plaintiff to File Second Amended Complaint and Order Thereon.

On May 17, 2023, Plaintiff filed a Second Amended Complaint for Damages, which set forth causes of action for: (1) Violation of Labor Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1, 1182.12 (Failure to Pay All Wages); (2) Violation of Labor Code §§ 218, 1194 (Failure to Pay Reporting Time Pay); (3) Violation of Labor Code §§ 226.7, 512 (Meal Period Violations); (4) Violation of Labor Code §§ 226.7 (Rest Period Violations); (5) Violation of Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment); (6) Violation of Labor Code §§ 226, subd. (a), (e), 226.3, 1174, 1174.5 (Failure to Issue Accurate Itemized Wage Statements); (7) Violation of Labor Code § 2802 (Failure to Indemnify for Expenditures or Losses in Discharge of Duties); (8) Violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices); and (9) Violation of Private Attorneys General Act (PAGA) (Lab. Code §§ 2698 et seq.).

The parties have reached a settlement.

Plaintiff now moves for preliminary approval of the settlement. The motion is unopposed.

X. 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.)

III. DISCUSSION

A. Provisions of the Settlement

As a preliminary matter, the settlement agreement purports to settle this consolidated action as well as a different case, *David Hernandez v. Burdick Painting* (Santa Clara County Superior Court, Case No. 20CV367255) ("PAGA Action"). (Declaration of Berkeh Alemzadeh in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Alemzadeh Dec."), Ex. A ("Settlement Agreement"), ¶ 1.) The PAGA Action, which was also before this court, was dismissed without prejudice on May 18, 2023.

The settlement provides that this consolidated action and the PAGA Action have been settled on behalf of the following class:

> [a]ll current and former non-exempt employees of Burdick Painting employed in California during the Class Period.

(Settlement Agreement, ¶¶ 1, 6.) The "Class Period" is defined as February 2106, to the date of the preliminary approval order. (Settlement Agreement, ¶ 8.) The class includes a subset of PAGA Members, who are defined as "all current and former non-exempt employees of Burdick Painting employed in the State of California during the PAGA Period." (Settlement Agreement, ¶ 24.) The "PAGA Period" is February 21, 2019, through the date of the preliminary approval order. (Settlement Agreement, ¶ 25.)

According to the terms of settlement, defendant Burdick Painting ("Defendant") will pay a non-reversionary, gross settlement amount of $420,150. (Settlement Agreement, ¶¶ 18.) The gross settlement amount includes attorney fees of $140,050 (1/3 of the gross settlement amount), litigation costs not to exceed $45,000, a service award for the class representative not to exceed $5,000, settlement administration costs not to exceed $9,000, and a PAGA allocation of $25,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Members). (Settlement Agreement, ¶¶ 3, 4, 18, 23, 31, 34, 50.)

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, ¶ 19.) Similarly, PAGA Members will receive a pro rata share of the 25 percent portion of the PAGA payment allocated to them based on the number of workweeks worked during the PAGA Period. (Settlement Agreement, ¶ 23.)

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the Katherine and George Alexander Community Law Center. (Settlement Agreement, ¶ 61.) The *cy pres* recipient is approved.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from claims that were asserted, or could have been asserted, in the operative complaint based on the facts or allegations in the complaint. (Settlement Agreement, ¶¶ 29, 35, 48.) PAGA Members agree to release Defendant, and related persons and entities, from claims for civil penalties

that were asserted, or could have been asserted, in the operative complaint based on the facts or allegations in the complaint and PAGA Notice. (Settlement Agreement, ¶¶ 29, 36, 49.)

B. Fairness of the Settlement

Plaintiff asserts that the settlement is fair, reasonable, and adequate. Plaintiff indicates that the settlement resolves claims on behalf of 650 class members. Prior to mediation, the parties engaged in extensive formal written discovery. Plaintiff's counsel reviewed a representative sampling of time and payroll records for the class and engaged an expert to create a comprehensive damages analysis. The parties participated in a full-day mediation with Mark LeHockey, Esq. on November 9, 2022, and reached a settlement. The average estimated individual settlement payment is $301.69.

Defendant's maximum potential exposure for the claims is 32,394,995.57. Plaintiff provides a detailed breakdown of this amount by claim. Plaintiff contends that a discount of 80 percent should be applied to the claims for unpaid wages and meal/rest period violations because of difficulties proving liability and damages and obtaining class certification. Plaintiff further asserts that a 70 percent discount should be applied to the inaccurate wage statement claim because of difficulties proving liability and obtaining class certification. Plaintiff also asserts that a 70 percent discount should be applied to the unpaid business expenses claim, but he does not explain why a such a discount is warranted. Similarly, Plaintiff contends that a discount of 80 percent should be applied to the claim for waiting time penalties, but he does not explain why such a discount is warranted. Finally, Plaintiff asserts that a 94 percent discount should be applied to the PAGA claim given the risks associated with the underlying claims and the possibility that the court might reduce PAGA penalties. In light of the foregoing, Plaintiff contends that a more realistic valuation of the claims in this case is $1,625,284.11.

The settlement represents approximately 1.3 percent of the maximum potential value of Plaintiff's claims. The proposed settlement amount is significantly below 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].) Furthermore, Plaintiff has not adequately explained why such a substantial discount of his claims is fair and reasonable. (*O'Connor v. Uber Techs., Inc*. (N.D.Cal. 2016) 201 F. Supp. 3d 1110, 1133 [holding that the PAGA settlement was not fair and adequate when the plaintiffs sought to settle a PAGA claim for $1 million, despite conceding that the PAGA claim could potentially result in penalties over $1 billion (i.e., settling the PAGA claim for 0.1% of its estimated full worth; a 99.9 percent reduction in the potential maximum value of the claim)].) Notably, Plaintiff does not provide any explanation for why the value of the unpaid business expenses and waiting time penalties claims was reduced.

Prior to the continued hearing, Plaintiff shall submit a supplemental declaration explaining in greater detail the factual basis for and the rationale behind the discount applied to each of his claims and address whether the class members suffered any harm as a result of the alleged violations, Defendant's knowledge of the alleged wage and hour violations prior to the action being filed, and whether Defendant made good faith attempts to comply with the law.

C. Incentive Award, Fees, and Costs

Plaintiff requests a service award in the amount of $5,000.

> 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.)

Prior to the final approval hearing, the class representative shall file a declaration specifically detailing his participation in the action and an estimate of time spent. The court will make a determination at that time.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular*

Telephone Co. (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will seek attorney fees of $140,050. Plaintiff's counsel shall submit lodestar information (including hourly rates 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 evidence of actual costs incurred.

D. Conditional Certification of Class

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.)

The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court*, *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 Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff states there are approximately 650 class members that can be ascertained from 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. In sum, 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 7 states that to object, a class member must submit an objection in writing. The parties must amend this portion of the notice to make clear that class members need not submit a written objection and may object to the settlement by appearing at the final approval hearing.

In addition, Section 8 of the class notice must be amended to include the following language:

> 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.

The amended notice shall be provided to the court for approval prior to the continued hearing.

IV. CONCLUSION

Accordingly, the motion for preliminary approval of the class action settlement is CONTINUED to March 20, 2024, at 1:30 p.m. in Department 19. Plaintiff shall file a supplemental declaration with the additional information requested by the court no later than March 4, 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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