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. Thank you.

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DATE: NOVEMBER 1, 2023 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	20CV368472	Tesla, Inc. v. Pascale, et al.	See Line 1 for tentative ruling.
LINE 2	21CV382938	Adami v. Prime Now LLC (Class Action/PAGA)	See Line 2 for tentative ruling.
LINE 3	21CV376845	Showalter v. Northern California Chair Corporation (Class Action/PAGA)	See Line 3 for tentative ruling.
LINE 4	22CV396328	Garcia v. San Jose Water Company (Class Action/PAGA)	See Line 4 for tentative ruling.
LINE 5	21CV387223	Clay v. Conservice, LLC (Class Action) (Lead Case; Consolidated with the related PAGA Action 21CV391470)	See Line 5 for tentative ruling.
LINE 6	18CV339719	Buchanan v. Aramark Campus, LLC, et al.	See Line 6 for tentative ruling.
LINE 7			

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LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

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 November 1, 2023, 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"). According to the allegations of the operative Fourth Amended Complaint ("FAC"), filed on September 21, 2021, Plaintiff designs, manufactures, and sells electric cars, electric vehicle powertrain components, as well as scalable energy generation and storage products. (FAC, ¶ 36.) Plaintiff sells successful 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. (FAC, ¶ 37.) Plaintiff, 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 plaintiff 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. (FAC, ¶ 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." (FAC, ¶ 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. (FAC, ¶ 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 implementing stringent information and security policies and practices. (FAC, ¶¶ 46-47.)

Rivian is knowingly encouraging the misappropriation of Plaintiff's trade secret, confidential, and proprietary information by employees that Rivian hires. (FAC, ¶ 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.*)

The information misappropriated by the Individual Defendants 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. (FAC,

¶ 126.) This is information Plaintiff does not make available to its competitors or to the public. (*Ibid*.)

Based on the foregoing allegations, the FAC sets forth causes of action for: (1) Violation of the Uniform Trade Secrets Act (Cal. Civ. Code § 3426 et seq.); (2) Breach of Contract; and (3) Violation of California Computer Access and Fraud Act (Cal. Pen. Code § 520 et seq.).

Now before the court are the following motions: (1) Rivian's motion to seal portions of its motion for summary judgment; (2) Plaintiff's motion to seal portions of Rivian's motion for summary judgment; (3) Plaintiff's motion to seal portions of its opposition to Rivian's motion for summary judgment; (4) Rivian's motion to seal portions of Plaintiff's opposition to its motion for summary judgment; (5) Rivian's motion to seal portions of its reply in support of its motion for summary judgment; and (6) Rivian's motion for summary judgment of the FAC. Plaintiff opposes the motion for summary judgment. The motions to seal are unopposed.

II. MOTIONS TO SEAL

A. Legal Standard

"Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, rule 2.550(c).) "A record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties." (Cal. Rules of Court, rule 2.551(a).) 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 exist to achieve the overriding interest.

(Cal. Rules of Court, rule 2.550(d).)

A party moving to seal a record must file a memorandum and a declaration containing facts sufficient to justify the sealing. (Cal. Rules of Court, rule 2.551(b)(1).) A declaration

supporting a motion to seal should be specific, not conclusory, as to the facts supporting the overriding interest. If the court finds that the supporting declarations are conclusory or otherwise unpersuasive, it may conclude that the moving party has failed to demonstrate an overriding interest that overcomes the right of public access. (See *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 305.)

Further, where some material within a document warrants sealing but other material does not, the document should be edited or redacted if possible, to accommodate the moving party's overriding interest and the strong presumption in favor of public access. (See Cal. Rules of Court, rule 2.550(e)(1)(B); see also *In re Providian Credit Card Cases*, *supra*, 96 Cal.App.4th at p. 309.) 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. (*In re Providian Credit Card Cases*, *supra*, 96 Cal.App.4th at p. 309.)

B. Rivian's Motion to Seal Portions of Motion for Summary Judgment

Rivian moves to seal portions of its motion for summary judgment. Specifically, Rivian seeks an order sealing the second sentence of footnote 8 in its motion for summary judgment and Exhibit 42 to Rivian's Evidence In Support Of Motion For Summary Judgment, which consists of its amended response to Plaintiff's special interrogatory No. 24. Rivian argues that sealing in warranted on the grounds that subject material contain confidential business information regarding the current status of batteries in its electric vehicles and its future plans relating to the batteries in its electric vehicles. Rivian limits public disclosure of certain categories of information about the batteries in its electric vehicles and its plans relating to those batteries. For example, employees and vendors are not permitted to disclose such information without prior approval from Rivian. Rivian asserts that public disclosure of the subject material would be likely to harm its competitive standing by providing its competitors with information about the batteries in its vehicles.

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 Defendant Rivian Automotive, Inc. and Rivian Automotive, LLC's Motion to Seal, ¶¶ 2-5.)

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*).) 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 information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

C. Plaintiff's Motion to Seal Portions of Rivian's Motion for Summary Judgment

Plaintiff moves to seal portions of Rivian's Evidence In Support Of Motion For Summary Judgment (Part 1) and Rivian's Evidence In Support Of Motion For Summary Judgment (Part 2). Specifically, Plaintiff seeks an order sealing the highlighted portions of Exhibits 13-15 and 23, and the entirety of Exhibits 22, 25, and 26. Plaintiff asserts that sealing is warranted on the grounds that the subject materials contain private employment information of individual employees as well as Plaintiff's confidential business information and trade secret information, and public disclosure would create an unreasonable risk of harm to Plaintiff.

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, ¶¶ 3-13.)

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, supra,* 110 Cal.App.4th at p. 1286.) 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 (*NBC*), fn. 46; see Civ. Code, § 3426.5.) Finally, individuals have a right to privacy in their personal employment information. (See *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn.3 (*In re Providian*) ["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."].) 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.

D. Plaintiff's Motion to Seal Portions of its Opposition

Plaintiff moves to seal portions of its Memorandum And Points Of Authorities In Opposition to Defendants Rivian Automotive, Inc. And Rivian Automotive, LLC's Motion for Summary Judgment, its Response To Rivian's Separate Statement, its Objections To Rivian's Evidence, the Declarations of Collin Sacks ("Sacks"), Sara Pollock ("Pollock"), and Melissa Baily ("Baily"), and exhibits thereto. Specifically, Plaintiff seeks an order sealing the redacted portions of its opposition, its response to Rivian's separate statement, its objections to evidence, the declaration of Sacks, and the declaration of Baily, as well as the entirety of Exhibits 2-17 to the Sacks declaration, Exhibits 19-29, 31, 40-42, 46, and 48-51 to the Pollock declaration, and Exhibits G, H, J, M, N, and P to the Baily declaration. Plaintiff asserts that sealing is warranted on the grounds that the subject materials contain private employment information of individual employees as well as Plaintiff's confidential business information and trade secret information, and public disclosure would create an unreasonable risk of harm to Plaintiff.

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 to Declarations in Support of Opposition […], ¶¶ 3-15.)

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, supra,* 110 Cal.App.4th at p. 1286.) In addition, courts have found that, under appropriate circumstances, trade secrets, when properly asserted and not waived, may constitute overriding interests warranting sealing. (*NBC, supra,* 20 Cal.4th at p. 1222, fn. 46; see Civ. Code, § 3426.5.) Finally, individuals have a right to privacy in their personal employment information. (See *In re Providian, supra,* 96 Cal.App.4th at p. 298, fn.3 ["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."].) 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.

E. Rivian's Motion to Seal Portions of Plaintiff's Opposition

Rivian moves to seal portions of Plaintiff's opposition to its motion for summary judgment. Specifically, Rivian seeks an order sealing Exhibits 35-39, 43-45, and 47 to Plaintiff's Evidence In Opposition To Rivian's Motion For Summary Judgment and Exhibits A, L, S, and T to the Baily declaration. Rivian argues that sealing in warranted on the grounds that subject material contain confidential business information regarding the batteries in Rivian electric vehicles; Rivian's policies, agreements, and procedures; descriptions of Rivian employee roles and responsibilities; and how Rivian evaluates candidates for employment. Rivian also states that the subject materials contain private contact and visa status information for Das. Rivian limits public disclosure of the subject information and public disclosure of the subject material would be likely to harm its competitive standing.

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

Defendant Rivian Automotive, Inc. and Rivian Automotive, LLC's Motion to Seal Portions of Plaintiff Tesla, Inc.'s Opposition to Motion for Summary Judgment, ¶¶ 2-7.)

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, supra,* 110 Cal.App.4th at p. 1286.) In addition, individuals have a right to privacy in their personal employment information. (See *In re Providian, supra,* 96 Cal.App.4th at p. 298, fn.3 ["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."].) 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 information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

F. Rivian's Motion to Seal Portions of its Reply

Rivian moves to seal portions of its reply in support of its motion for summary judgment. Specifically, Rivian seeks an order sealing the redacted portions of its reply memorandum, its response to Plaintiff's separate statement of additional facts, Plaintiff's objections to evidence, and Exhibit 5 to the reply, as well as the entirety of Exhibit 2 to the reply. Rivian argues that sealing in warranted on the grounds that subject material contain confidential and sensitive business information regarding its internal investigations. Rivian also states that the subject materials contain private employment information of its employees. Rivian limits public disclosure of the subject information and public disclosure of the subject material would be likely to harm its competitive standing.

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 Defendant Rivian Automotive, Inc. and Rivian Automotive, LLC's Motion to Seal, ¶¶ 2-6.)

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, supra,* 110 Cal.App.4th at p. 1286.) In addition, individuals have a right to privacy in their personal employment information. (See *In re Providian, supra,* 96 Cal.App.4th at p. 298, fn.3 ["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."].) 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 information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

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 said 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

As a preliminary matter, Plaintiff argues that Rivian's motion for summary judgment should be continued to allow it to complete necessary discovery. Plaintiff provides a lengthy declaration from its counsel, explaining that a substantial amount of discovery remains outstanding at this time. (Declaration of Melissa Baily Regarding Ongoing Discovery in Support of Plaintiff Tesla, Inc.'s Opposition to Defendants Rivian Automotive Inc. and Rivian Automotive, LLC's Motion for Summary Judgment ("Baily Dec."), ¶¶ 4-75.) In particular, Plaintiff states that it has not obtained necessary PMQ testimony because Rivian has not yet identified the availability of its PMQ witness on its battery manufacturing process (due to the witnesses personal circumstances) (*id*. at ¶ 44) and Rivian has not identified a PMQ witness for other various topics or provided a date for deposition (*id*. at ¶¶ 45-46, 68). In addition,

Plaintiff recently moved to compel the depositions of Rivian witnesses—i.e., Alex Paz ("Paz") (a paralegal at Rivian who was involved in Rivian's investigation of Plaintiff's claims), Marco Batra ("Batra") (a former Plaintiff employee who now supervises Yoste at Rivian), Nina Bruno ("Bruno") (a former Plaintiff employee who now supervises Bero at Rivian), and Victor Prajapati ("Prajapati") (a former Plaintiff battery engineer who supervised Alinkil at Rivian and supervises Wu at Rivian)—and the discovery referee granted Plaintiff's motion, but the depositions of those individuals have not yet been scheduled. (Baily Dec., ¶¶ 51, 66-67.) Plaintiff further contends that Alinkil has refused to participate in discovery (e.g., Alinkil refused to appear at his scheduled deposition and produce for inspection personal devices and storage accounts) based on his pending motion to compel arbitration, forcing Plaintiff to move to compel this discovery. (*Id.* at ¶¶ 56-61.) Moreover, Plaintiff noticed the depositions of other individual defendants (i.e., Tanner-Duran, Pascale, Bero, Wu, Zechmann, and Bradley), but those individuals have not been deposed and Plaintiff is conferring with the defendants regarding scheduling. (*Id.* at ¶ 64.) Additionally, Plaintiff notes that the parties did not complete their questioning during the first day of Das' deposition and, therefore, a second day of deposition will be required. (*Id.* at ¶ 65.) Plaintiff also asserts that Rivian and the individual defendants continue to refuse to substantively respond to many of Plaintiff's written discovery requests (*id*. at ¶¶ 4-18, 54, 69-72), and Rivian's document production is incomplete (*id*. at ¶¶ 21-39).

In reply, Rivian states that the case has been pending for three years. Rivian asserts that with respect to document discovery, Plaintiff has received everything that the discovery referee has determined it is entitled to receive from Rivian. With respect to the outstanding depositions of the individual defendants (except for Alinkil), Rivian asserts that Plaintiff was not diligent because Plaintiff first noticed the depositions after Rivian filed its motion for summary judgment. However, Rivian appears to acknowledge the need for a continuance to allow for some additional discovery, stating that it believes a continuance to December 2023 would be appropriate to allow the depositions of Alinkil and Prajapati to be completed.

Plaintiff's request for additional time to complete discovery is made pursuant to Code of Civil Procedure section 437c, subdivision (h). That statutes states, in pertinent part, that

"[i]f it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just."

Where a party requests a denial or a continuance to obtain facts essential to justify opposition to a motion for summary adjudication, the determination whether to grant the request is vested in the discretion of the trial court. (*Chavez v. 24 Hour Fitness USA, Inc.* (2015) 238 Cal.App.4th 632, 643 (*Chavez*).)

> "Notwithstanding the court's discretion in addressing such continuance requests, 'the interests at stake are too high to sanction the denial of a continuance without good reason.' [Citation.] Thus, '[t]o mitigate summary judgment's harshness, the statute's drafters included a provision making continuances—which are normally a matter within the broad discretion of trial courts—virtually mandated " 'upon a good faith showing by affidavit that a continuance is needed to obtain facts essential to justify opposition to the motion.' " ' " [Citation.]
>
> To make the requisite good faith showing, an opposing party's declaration must show (1) the facts to be obtained are essential to opposing the motion, (2) there is reason to believe such facts may exist, and (3) the reasons why additional time is needed to obtain these facts. [Citation.] The reason for this "exacting requirement" [citation] is to prevent "every unprepared party who simply files a declaration stating that unspecified essential facts may exist" [citation] from using the statute "as a device to get an automatic continuance" [citation]. "The party seeking the continuance must justify the need, by detailing both the particular essential facts that may exist and the specific reasons why they cannot then be presented." [Citation.]

(*Chavez, supra*, 238 Cal.App.4th at p. 643, citations omitted.)

Notably, "[e]ven absent a sufficient declaration, 'the court must determine whether the party requesting the continuance has nonetheless established good cause therefor.' [Citation.]" (*Chavez, supra*, 238 Cal.App.4th at p. 643, citations omitted.)

Under the facts presented here, the court finds that there is good cause for a continuance to allow Plaintiff to complete discovery. "[I]n deciding whether to continue a summary judgment to permit additional discovery courts consider various factors, including (1) how long the case has been pending; (2) how long the requesting party had to oppose the motion; (3) whether the continuance motion could have been made earlier; (4) the proximity of the trial date or the 30-day discovery cutoff before trial; (5) any prior continuances for the same reason; and (6) the question whether the evidence sought is truly essential to the motion. [Citation.]" (*Chavez, supra,* 238 Cal.App.4th at p. 644.) Most of these factors favor a

continuance here. Although this action has been pending for approximately three years, no trial is set and discovery remains open. Additionally, a substantial amount of discovery remains pending despite Plaintiff's diligent efforts. For example, the discovery referee recently issued its order granting Plaintiff leave to complete the depositions of Paz, Batra, Bruno, and Prajapati, but the depositions of those witness have not been completed. Similarly, the parties deposed Das for one day, but were unable to complete their questioning such that a second day of testimony will be necessary. Additionally, Plaintiff diligently sought testimony and documents from Alinkil, but Alinkil has refused to participate in discovery. And, most importantly, the subject testimony from these individuals is plainly essential to Plaintiff's opposition.

Accordingly, the court grants Plaintiff's request for additional time to complete discovery. The court orders the motion for summary judgment CONTINUED to February 7, 2024, at 1:30 p.m. in Department 19. Plaintiff shall file any amended opposition to the motion for summary judgment (including any additional evidence obtained from completed discovery) no later than January 22, 2024. Rivian shall file any reply to the amended opposition no later than January 29, 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: Adami v. Prime Now LLC (Class Action/PAGA)
Case No.: 21CV382938

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 1, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

III. INTRODUCTION

On June 11, 2021, plaintiff Sima Adami ("Plaintiff") filed a complaint against defendant Prime Now LLC("Defendant"), which set forth a single cause of action for civil penalties pursuant to the Private Attorneys General Act of 2004 (Labor Code §§ 2698, et seq.) ("PAGA").

On June 7, 2023, the court entered a Stipulation to Permit Filing of Consolidated Complaint; Order ("Stipulation"), which granted Plaintiff leave to file a consolidated complaint. The Stipulation states that Plaintiff filed a putative wage and hour class action, *Sima Adami v. Prime Now LLC* (Santa Clara County Superior Court, Case No. 21CV379287), in addition to her PAGA representative action. The putative class action was removed to federal court on May 19, 2021. The Stipulation represents that the parties participated in a global mediation of both cases on April 27, 2023, which resulted in a settlement. Thereafter, the federal court stayed the class action pending final approval of the settlement agreement. The Stipulation advises that Plaintiff wishes to file a consolidated complaint in the PAGA representative action in order to include her class claims.

On June 14, 2023, Plaintiff filed a Consolidated Class and Representative Action Complaint, sets forth causes of action for: (1) Failure to Timely Pay Minimum Regular and/or Overtime Wages (Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, and 1198); (2) Failure to Timely Pay All Wages Due and Owing Upon Separation of Employment (Labor Code §§ 201-203 and 210); (3) Failure to Furnish Accurate Itemized Wage Statements (Labor Code §§ 226 and 226.3); (4) Failure to Maintain Accurate Employment Records (Labor Code §§ 226, 1174, and 1174.5); (5) Violation of California's Unfair Competition Law (Business &

Professions Code §§ 17200, et seq.); and (6) Violation of the Private Attorneys General Act of 2004 ("PAGA") (Labor Code §§ 2698, et seq.).

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

IV. 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.)

V. DISCUSSION

A. Provisions of the Settlement

> The case has been settled on behalf of the following class:
> [A]ll current and former non-exempt employees of [Defendant] in California during the Class Period who underwent one or more COVID-19 temperature screenings.

(Declaration of Graham S.P. Hollis in Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement ("Hollis Dec."), Ex. 1 ("Settlement Agreement"), ¶ 36.) The Class Period is defined as the period from March 18, 2020, through and including July 5, 2021. (*Id.* at ¶ 6.) The class includes a Waiting Time Sub-Class, which is defined as "former non-exempt employees of [Defendant] in California during the Class Period who underwent one or more COVID-19 temperature screenings." (*Id.* at ¶ 37.) The class also contains a subset of PAGA Members who are defined as "all non-exempt employees of [Defendant] in California during the PAGA Period who underwent one or more COVID-19 temperature screenings." (*Id.* at ¶ 21.) The PAGA Period is defined as the period from April 7, 2020, through July 5, 2021. (*Id.* at ¶ 19.)

According to the terms of settlement, Defendant will pay a gross, non-reversionary amount of $4,300,000. (Settlement Agreement, ¶ 13.) The gross settlement amount includes attorney fees of $1,433,333.33 (1/3 of the gross settlement amount), litigation costs not to exceed $25,000, a service award for the class representative not to exceed $10,000, settlement administration costs not to exceed $130,000, and a PAGA allocation of $215,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to the PAGA Members). (*Id*. ¶¶ 2, 7, 13, 34, 42, 43 45.)

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, ¶¶ 14, 16, 46.) Waiting Time Sub-Class members will be credited with an additional six workweeks towards the calculation of their total workweeks worked. (*Id*. ¶ 46.) 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. (*Id*. ¶¶ 15, 20, 45, 47.)

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law. (Settlement Agreement, ¶ 65.) The parties' proposal to send funds from uncashed checks to the Controller of the State of California does not comply with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class member 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." Plaintiff is directed to identify a new *cy pres* in compliance with Code of Civil Procedure section 384 prior to the final approval hearing.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from all claims that are based on the facts and legal theories asserted in the operative complaint, or which relate to the primary rights asserted in the operative complaint. (Settlement Agreement, ¶¶ 28, 31, 59(a).) PAGA Members agree to release Defendant, and related persons and entities, from all claims for civil penalties pursuant to PAGA based on the facts and legal theories alleged in the operative complaint, or which relate to the primary rights asserted in the operative complaint. (*Id*. at ¶¶ 29, 31, 59(b).) Plaintiff further agrees to a general release. (*Id*. at ¶ 59(c).)

B. Fairness of the Settlement

Plaintiff asserts that the settlement is fair, reasonable, and adequate, given the strength of her claims, the inherent risks of litigation, including substantial risks relative to class certification and the merits of the claims, and the costs of pursuing litigation. Plaintiff's counsel conducted a thorough investigation into the facts underlying Plaintiff's claims, including reviewing Plaintiff's employment file, interviewing Plaintiff, and reviewing time and payroll records. (Hollis Dec., ¶ 10.) Plaintiff also propounded formal written discovery on Defendant and responded to Defendant's written discovery. (*Id*. at ¶¶ 11-12.) Prior to mediation, Defendant also produced information regarding the total number of class members, the total number of workweeks and pay periods in the PAGA and Class Periods, contact

information for a random sample of class members, and timekeeping and payroll records for a random sample of class members. (*Id*. at ¶ 14.) Defendant also produced several hours of video footage showing the temperature screening process at various facilities throughout the state, as well as additional policies and procedures that were in effect during the relevant time period. (*Ibid.*) Plaintiff's counsel conducted fact-finding interviews with dozens of putative class members regarding their employment with Defendant. (*Id*. at ¶ 15.) Subsequently, the parties attended mediation with Lisa Klerman, which was unsuccessful. (*Id*. at ¶ 18.) Thereafter, the parties accepted a mediator's proposal to settle the claims. (*Id*. at ¶ 19.) Plaintiff estimates that Defendant faced a maximum potential liability of $120,855,512 for all claims. (*Id*. at ¶¶ 23-32.) Plaintiff provides a detailed breakdown of this amount by claim. (*Ibid.*) Plaintiff asserts that for the approximately 43,860 class members, the average recovery is approximately $57.92 per class member. (*Id*. at ¶ 28.)

The settlement represents approximately 3.5 percent of the maximum potential value of Plaintiff's claims. 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, at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

However, Plaintiff states that a discount of 75 percent should be applied to Defendant's maximum potential exposure because, with 43,860 class members who worked at more than 100 different facilities, there is a significant possibility that class certification might be denied. (Hollis Dec., ¶ 27.) Plaintiff also asserts that a 50 percent discount should be applied to account for the possibility that Plaintiff would not succeed on the merits of the claims and the possibility that the court might reduce the PAGA penalties. (*Ibid.*) In addition, Plaintiff notes that video footage showed that at some of Defendant's facilities, the temperature screening process merely entailed class members walking past a thermal camera, and discovery showed that class members at other facilities clocked in for their shift prior to entering the temperature screening area. (*Id*. at ¶ 29.) In light of the foregoing, Plaintiff's counsel contends that a more realistic valuation of the claims in this case is $15,106,939. (*Id*. at ¶ 27.)

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

B. Incentive Award, Fees, and Costs

> Plaintiff requests an enhancement award of $10,000 for the class representative. 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 submitted a declaration detailing her participation in this action. Plaintiff declares that she spent approximately 40 hours in connection with this lawsuit, including providing documents and information to class counsel, discussing the case with class counsel, responding to written discovery, and reviewed settlement documents. (Declaration of Sima Adami in Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement, ¶¶ 12-19.)

Moreover, Plaintiff undertook risk by putting her name on the case because it might impact his 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].)

However, the enhancement award to Plaintiff appears to be high. The court is mindful of the fact that Plaintiff worked for Defendant for less than three months and the recovery obtained by other class members in this action is very modest. Consequently, the court finds it appropriate to reduce the amount of the enhancement award. The court approves an enhancement award 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.) Plaintiff's counsel will seek attorney fees of $1,433,333.33 (1/3 of the gross settlement fund). 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 as well as settlement administration costs.

C. Conditional Certification of Class

Plaintiff requests that the putative 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.)

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 43,860 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.

D. 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, page 4, "Option – Object to the Settlement," suggest that a class member who wishes to object to the settlement must submit a written objection. 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.

> Additionally, the parties must amend the class notice 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 mailing.

VI. CONCLUSION

Accordingly, the motion for preliminary approval of the class action settlement is GRANTED, subject to approval of the amended class notice. The final approval hearing is set for May 8, 2024, 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 3

Case Name: Showalter v. Northern California Chair Corporation (Class Action/PAGA)
Case No.: 21CV376845

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 1, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VII. INTRODUCTION

This is a putative class and representative action arising out of various alleged wage and hour violations. The operative Class Action Complaint ("Complaint"), filed on March 2, 2021, sets forth causes of action for: (1) Violation of Labor Code §§ 510, 558, and 1194; (2) Violation of Labor Code §§ 226.7 and 512; (3) Violation of Labor Code § 2802; (4) Violation of Labor Code § 226; (5) Violation of Business and Professions Code §§ 17200, et seq.; and (6) Violation of Labor Code §§ 2698, et seq. ("PAGA").

The parties have reached a settlement. Plaintiff Marie Rebelo Showalter ("Plaintiff") now moves for preliminary approval of the settlement. The motion is unopposed.

VIII. 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.)

IX. DISCUSSION

E. Provisions of the Settlement

> The case has been settled on behalf of the following class:
> [A]ll current and former non-exempt sales employees who worked for Defendant [Northern California Chair Corporation ("Defendant")] in California any time between May 1, 2019 and July 11, 2023, inclusive.

(Declaration of Max W. Gavron in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Gavron Dec."), Ex. A ("Settlement Agreement"), ¶¶ 1.9, 1.10, 1.17.) The class also contains a subset of aggrieved employees that are defined as "all current and former non-exempt sales employees who worked for Defendant in California during the PAGA Period." (*Id.* at ¶ 1.3.) The PAGA Period is defined as the period from February 12, 2020 through July 11, 2023. (*Id.* at ¶ 1.33.)

According to the terms of settlement, Defendant will pay a gross, non-reversionary amount of $500,000. (Settlement Agreement, ¶¶ 1.22, 3.1.) The gross settlement amount includes attorney fees of $166,667 (1/3 of the gross settlement amount), litigation costs not to exceed $25,000, a service award for the class representative not to exceed $10,000, settlement administration costs not to exceed $8,250, and a PAGA allocation of $5,000 (75 percent of

which will be paid to the LWDA and 25 percent of which will be paid to the aggrieved employees). (*Id*. ¶¶ 1.2, 1.8, 1.12, 1.22, 1.26, 1.32, 1.42, 3.1, 6.2-6.5.)

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, ¶¶ 1.27, 3.2, 6.6.) Similarly, aggrieved employees 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. (*Id*. ¶¶ 1.32, 6.5.)

Checks remaining uncashed more than 180 days after mailing will be void and the funds from those checks will be distributed to Legal Aid at Work. (Settlement Agreement, ¶ 6.9.) The *cy pres* recipient is approved.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from all claims that were or could have been asserted in this action reasonably based on the facts alleged in this action. (Settlement Agreement, ¶¶ 1.6, 1.39, 7.1.) The aggrieved employees agree to release Defendant, and related persons and entities, from claims for civil penalties sought under PAGA reasonably based on the facts alleged in the Complaint. (*Id*. at ¶¶ 1.31, 1.37, 7.2.) Plaintiff further agrees to a general release. (*Id*. at ¶ 7.3.)

B. Fairness of the Settlement

Plaintiff asserts that the settlement is fair, reasonable, and adequate, given the strength of her claims, the inherent risks of litigation, including substantial risks relative to class certification and the merits of the claims, and the costs of pursuing litigation. Shortly after Plaintiff initiated the action, Defendant provided Plaintiff with informal discovery, which included data and information pertaining to the number of putative class members, a sampling of time and payroll records, and information pertaining to Defendant's commission pay and wage statement policies and practices. (Gavron Dec., ¶¶ 5, 6, 24, 25.) Subsequently, the parties attended mediation with Honorable Brian Walsh (Ret.), which was unsuccessful. (*Id*. at ¶ 6.) The parties then commenced formal discovery, including written discovery and the mailing of a *Belaire-West* notice for the disclosure of the putative class members' identities and contact information. (*Id*. at ¶¶ 5, 6, 24, 25.) Thereafter, the parties continued to engage in

arms-length negotiations and later reached a settlement agreement. (*Ibid*.) Plaintiff estimates that Defendant faced a maximum potential liability of $3,176,080 for all claims. (*Id*. at ¶¶ 9-17.) Plaintiff provides a detailed breakdown of this amount by claim. (*Ibid.*) Plaintiff asserts that for the approximately 240 class members, the average recovery is approximately $1,000.35 per class member. (*Id*. at ¶ 20.)

The settlement represents approximately 15.7 percent of the maximum potential value of Plaintiff's claims. The proposed settlement amount is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc*. (E.D.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].)

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

F. Incentive Award, Fees, and Costs

> Plaintiff requests an incentive award of $10,000 for the class representative. 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 supplemental declaration specifically detailing her participation in the action and an estimate of the 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 $166,667 (1/3 of the gross settlement fund). 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 as well as settlement administration costs.

G. Conditional Certification of Class

Plaintiff requests that the putative 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.)

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 240 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.

H. 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. B.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion.

However, the court requires a slight modification of sections 12 and 13 of the class notice, which contain language regarding the final approval hearing. That language shall be modified as follows:

> 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 mailing.

X. CONCLUSION

Accordingly, the motion for preliminary approval of the class action settlement is GRANTED, subject to approval of the amended class notice. The final approval hearing is set for May 8, 2024, 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 4

Case Name: Garcia v. San Jose Water Company (Class Action/PAGA)
Case No.: 22CV396328

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 1, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

XI. INTRODUCTION

This is a putative class and representative action arising out of various alleged wage and hour violations. The operative First Amended Complaint ("FAC"), filed on May 18, 2022, sets forth causes of action for: (1) Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code § 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and (9) Civil Penalties Under PAGA [Cal. Lab. Code §§ 2699, et seq.].

The parties have reached a settlement. Plaintiff Cesar Garcia ("Plaintiff") moved for preliminary approval of the settlement.

On August 30, 2023, the court continued the motion for preliminary approval of settlement to November 1, 2023. As an initial matter, the court noted that the settlement agreement did not appear to provide for what happens to amounts not approved or actually spent for settlement administration costs and encouraged the parties to meet and confer on this issue. Next, the court opined that the release might be too broad as it encompassed at least one set of facts and theory not alleged in the FAC but included in the Labor and Workforce Development Agency ("LWDA") Letter relating to the failure to pay all accrued vacation wages at termination in violation of Labor Code section 227.3. The court directed the parties to provide supplemental briefing explaining why including the LWDA Letter in the release is fair and reasonable. The court otherwise found the settlement to be fair and reasonable.

Finally, the court requested the parties modify language in the class notice regarding the final approval hearing and submit an amended notice to the court for its approval.

On October 18, 2023, Plaintiff's counsel filed a supplemental declaration, which includes an amended settlement agreement and amended class notice.

XII. 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.)

XIII. DISCUSSION

The court finds that the supplemental declaration submitted by Plaintiff's counsel, and the amended settlement agreement and amended class notice attached thereto, adequately address the court's concerns as articulated in its prior order. First, the amended settlement agreement now provides that any amounts allocated to settlement administration costs that are not approved by the court will be added to the net settlement amount. (Supplemental Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class and PAGA Representative Action Settlement, Ex. 1, ¶ 3.3.3.) Second, the released class claims as described in the amended settlement agreement have been amended to omit reference to Plaintiff's LWDA letter. (*Id.* at Ex. 1, ¶ 1.28.) Third, the amended class notice now includes the requisite language regarding the final approval hearing. (*Id.* at Ex. 1, Ex. A.)

Accordingly, the motion for preliminary approval of the class action settlement is GRANTED and the amended class notice is approved. The final approval hearing is set for May 8, 2024, 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 5

Case Name: Clay v. Conservice, LLC (Class Action) (Lead Case; Consolidated with the related PAGA Action 21CV391470)
Case No.: 21CV387223

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 1, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

XIV. INTRODUCTION

This is a consolidated putative class and Private Attorneys General Act ("PAGA") action arising out various alleged wage and hour violations. The operative Consolidated Class Action Complaint, filed on January 12, 2023, sets 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 Permit Rest Breaks; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Failure to Pay All Wages Due Upon Separation of Employment; (7) Failure to Reimburse Necessary Business Expenses; (8) Violation of Business and Professions Code §§ 17200, et seq.; and (9) Enforcement of Labor Code § 2698, et seq. (PAGA).

The parties have reached a settlement. Plaintiffs Ryan Clay ("Clay") and Jeffrey Raquel ("Raquel") ("Plaintiffs") moved for preliminary approval of the settlement.

On April 12, 2023, the court granted preliminary approval of the settlement subject to approval of the amended class notice. The court subsequently approved the amended class notice on April 18, 2023.

Plaintiffs now move for final approval of the settlement. The motion is unopposed.

XV. 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.)

XVI. DISCUSSION

> The consolidated action has been settled on behalf of the following class: [A]ll non-exempt employees who have worked, or continue to work, for Defendant [Conservice, LLC ("Defendant")] in California from April 3, 2017 through and including the date a signed order preliminarily approving the Settlement is filed.

The class includes a subset of Aggrieved Employees, who are defined as "all non-exempt employees who have worked or continue to work [ ] for Defendant in California from April 3, 2020 through and including the date a signed order preliminarily approving the Settlement is filed."

The total settlement payment and included amounts have increased since the time of preliminary approval. Plaintiffs do not assert that there are 185 class members, which triggered the escalator clause of the settlement agreement.

The total amount of the settlement is now $1,253,228.55. (Declaration of Taylor Mitzner with Respect to Notice and Settlement Administration ("Mitzner Dec."), ¶¶ 11-13.) This amount includes attorney fees not to exceed $438,629.99 (35 percent of the gross settlement amount), litigation costs up to $30,000, service awards in the total amount of $20,000 ($10,000 for each class representative), settlement administration costs up to $6,950, and a PAGA Payment of $50,000 (75 percent of which will be paid to the LWDA and 25 percent of which will become part of the net settlement amount to be distributed to Aggrieved Employees).

The net settlement amount that is not attributable to the PAGA Payment will be distributed to class members pro rata based on the number of workweeks worked during the class period.

Funds from checks that remained uncashed 180 days after issuance will be sent to Legal Aid at Work as a *cy pres* recipient in accordance with Code of Civil Procedure section 384.

On May 18, 2023, the settlement administrator mailed notice packets to 185 class members. (Mitzner Dec., ¶ 5.) Ultimately, all notice packets were deliverable. (*Id.* at ¶ 7.) As. of September 14, 2023, there were no requests for exclusion and no objections. (*Id.* at ¶¶ 8-9.)

The highest individual settlement share to be paid is approximately $18,058.19, the lowest individual settlement share to be paid is approximately $58.99, and the average individual settlement share to be pair is approximately $3,825.13. (Mitzner Dec., ¶ 14.) The court previously found the proposed settlement is fair and the court continues to make that finding for purposes of final approval.

Plaintiffs request service awards in the total amount of $20,000 ($10,000 for each class representative). The representatives have submitted declarations detailing their participation in the case. Clay states that he spent approximately 50 hours on the case, including searching for

documents, communicating with counsel, and reviewing the settlement documents. (Declaration of Ryan Clay in Support of Motion for Final Approval of Class Action Settlement, ¶¶ 4-6 & 11.) Raquel states that he spent approximately 35 hours on the case, including searching for documents, communicating with counsel, and reviewing the settlement documents. (Declaration of Jeff Raquel in Support of Motion for Final Approval of Class Action Settlement, ¶¶ 4-6 & 11.)

Moreover, Plaintiffs 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].) Accordingly, the court finds the service 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 $438,629.99 (35 percent of the gross settlement fund). Plaintiffs' counsel provides evidence demonstrating a lodestar of $167,337.50, based on 238.2 hours spent on the case by counsel billing between $500 to $875 per hour. (Declaration of Kristy R. Connolly in Support of Motion for Final Approval of Class Action Settlement ("Connolly Dec."), ¶¶ 27-29.) This results in a multiplier of 2.62.

Here, the percentage of the common fund sought by counsel is higher than the 33.33 percent typically awarded in wage and hour cases. While the lodestar is above the requested fee award, the court finds no reason to award counsel in this matter more than the typical one-third of the common fund considering the relevant factors. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [in order to reflect the fair market value of attorney services, lodestar may be adjusted with a multiplier based on factors including the extent to which the nature of the litigation precluded other employment by the attorneys and the contingent nature of the fee award].) Consequently, the court approves attorney fees in the amount of $417,742.85 (1/3 of the gross settlement amount). The unapproved portion of the fee request shall become part of the net settlement to be distributed to the class members.

Plaintiffs' counsel also requests $22,858.80 in litigation costs and provides evidence of costs incurred in that amount. (Connolly Dec., ¶ 31 & Ex. 4.) The costs appear to be reasonable and are approved. The administrative costs in the amount of $6,950 are also approved. (Mitzner Dec., ¶ 17.)

Accordingly, the motion for final approval of the class and representative action settlement is GRANTED, subject to the reductions noted above.

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

The court will set a compliance hearing for July 10, 2024, at 2:30 p.m. in Department 19. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein, the number and value of any uncashed checks, amounts remitted to Defendant, the status of any unresolved issues, and any other matters appropriate to bring to the court's attention. Counsel may appear at the compliance hearing remotely.

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Calendar Line 6

Case Name: Buchanan v. Aramark Campus, LLC, et al
Case No.: 18CV339719

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on November 1, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

XVII. INTRODUCTION

This is a class and representative action arising out of alleged wage and hour violations. The operative Third Amended Class and PAGA Action Complaint ("TAC"), filed on March 2, 2023, sets forth the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code §§ 226(a); (6) Violation of Labor Code § 221; (7) Violation of Labor Code § 204; (8) Violation of Labor Code § 203; (9) Violation of Business & Professions Code § 17200 et seq.; and (10) Penalties Pursuant to Labor Code § 2698 ("PAGA").

The parties have reached a settlement. Plaintiff Robert Buchanan ("Plaintiff") moved for preliminary approval of the settlement.

On March 29, 2023, the court continued the motion for preliminary approval of settlement to May 3, 2023. The court explained that the class release and PAGA release were overbroad as they encompassed claims based on the theories asserted in the TAC (in addition to claims based on the facts alleged in the TAC). The court directed the parties to meet and confer about whether they could amend the releases. Setting aside the issue with the releases, the court found that the settlement is otherwise fair and reasonable. The court also requested the parties amend the class notice to reflect any updated language if the releases were amended, clarify that class members may object in writing and by appearing at the final approval hearing without submitting without prior notice, and include language regarding appearances at the final approval hearing.

On April 25, 2023, Plaintiff's counsel filed a supplemental declaration, which included a fully executed amended settlement agreement and an amended class notice.

On May 9, 2023, the court granted preliminary approval of the amended settlement agreement and approved the amended class notice.

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

XVIII. 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.)

XIX. DISCUSSION

> The case has been settled on behalf of the following class:
> [A]ll non-exempt employees in California who worked as concessions supervisors who managed multiple concessions stands employed by [defendants Aramark Campus, LLC and/or Aramark Sports, LLC (collectively, "Defendants")] at any time during the Class Period.

The Class Period is defined as the time period from December 11, 2017 through the earlier of August 15, 2022, or the date on which the court grants preliminary approval of the settlement. The class includes a subset of PAGA Members, who are defined as "all non-exempt employees in California who worked as concessions supervisors who managed multiple concessions stands employed by [Defendants] at any time during the PAGA Period." The PAGA Period is defined as the period from December 11, 2017, through the earlier of 90 days after the mediation date May 17, 2022 or the date on which the court grants preliminary approval.

As discussed in connection with preliminary approval, Defendants will pay a maximum, non-reversionary settlement amount of $190,000. The maximum settlement amount includes attorney fees not to exceed $66,500 (35 percent of the maximum settlement fund), litigation costs not to exceed $15,000, a PAGA allocation of $10,000 (75 percent to be paid to the LWDA and 25 percent to be paid to PAGA Members), service award up to $5,000 for the class representative, and settlement administration costs (estimated not to exceed $6,000). The net settlement amount will be distributed to class members pro rata basis. Checks that remain uncashed 180 days from initial mailing will be void and the funds from those checks will be distributed to the Boys and Girls Club of America.

On June 8, 2023, the settlement administrator mailed notice packets to 77 class members. (Declaration of Makenna Snow of ILYM Group in Support of Plaintiff's Unopposed Motion for Final Approval of Stipulation of Class and PAGA Representative Action Settlement ("Snow Dec."), ¶ 7.) Ultimately, one notice packet was deemed undeliverable. (*Id.* at ¶ 10.) As of October 6, 2023, there were no objections and no requests for exclusion. (*Id.* at ¶¶ 11-12.)

The estimated average gross payment is $1,136.36, the estimated highest gross payment is $2,572.27, and the estimated lowest gross payment is $21.44. (Snow Dec., ¶ 16.) The court

previously found the proposed settlement is fair and the court continues to make that finding for purposes of final approval.

Plaintiff requests an incentive award of $5,000. The court approved the incentive award in connection with preliminary approval of the settlement and continues to do so for purposes of final approval.

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 seek attorney fees of $66,500 (35 percent of the maximum settlement fund). Plaintiff's counsel provide evidence demonstrating a total combined lodestar of $188,042.50, based on 264.8 hours spent on the case by counsel billing between $700 to $750 per hour. (Declaration of David Yeremian in Support of Plaintiff's Unopposed Motion for Final Approval of Stipulation of Class and PAGA Representative Action Settlement ("Yeremian Dec."), ¶¶ 28-32; Declaration of Alvin B. Lindsay in Support of Plaintiff's Unopposed Motion for Final Approval of Stipulation of Class and PAGA Representative Action Settlement, ¶¶ 3-5; Declaration of Walter Haines in Support of Plaintiff's Unopposed Motion for Final Approval of Stipulation of Class and PAGA Representative Action Settlement ("Haines Dec."), ¶¶ 5-8.) This results in a negative multiplier.

Here, the percentage of the common fund sought by counsel is higher than the 33.33 percent typically awarded in wage and hour cases. While the lodestar is above the requested fee award, the court finds no reason to award counsel in this matter more than the typical one-third of the common fund considering the relevant factors. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [in order to reflect the fair market value of attorney services, lodestar may be adjusted with a multiplier based on factors including the extent to which the nature of the litigation precluded other employment by the attorneys and the contingent nature of the fee award].) Notably, the recovery achieved for the class is modest and not an unusually good result. Consequently, the court approves attorney fees in the amount of $63,333.33 (1/3 of the gross settlement amount). The unapproved portion of the fee request shall become part of the net settlement to be distributed to the class members.

Plaintiff's counsel also request $10,928.27 in litigation costs and provide evidence of costs incurred in that amount. (Yeremian Dec., ¶¶ 26 & 44 & Ex. B; Haines Dec., ¶ 10.) The costs appear to be reasonable and are approved. The administrative costs in the amount of $6,000 are also approved. (Snow Dec., ¶ 18.)

Accordingly, the motion for final approval of the class and representative action settlement is GRANTED, subject to the reductions noted above.

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

The court will set a compliance hearing for July 10, 2024, at 2:30 p.m. in Department 19. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein, the number and value of any uncashed checks, amounts remitted to Defendants, the status of any unresolved issues, and any other matters appropriate to bring to the court's attention. Counsel may appear at the compliance hearing remotely.

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Calendar Line 7

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