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

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LAW AND MOTION TENTATIVE RULINGS
DATE: 2/5/25 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	20CV366939	ZL Technologies, Inc. v. Splitbyte Inc., et al.	See Line 1 for tentative ruling.
LINE 2	20CV366939	ZL Technologies, Inc. v. Splitbyte Inc., et al.	See Line 1 for tentative ruling.
LINE 3	21CV382771	Rodriguez v. Palo Alto Hills Golf and Country Club, Inc. (PAGA)	See Line 3 for tentative ruling.
LINE 4	21CV385614	Smith, et al. v. Advanced Clinical Employment Staffing, LLC (Class Action)	See Line 4 for tentative ruling.
LINE 5	21CV385614	Smith, et al. v. Advanced Clinical Employment Staffing, LLC (Class Action)	See Line 4 for tentative ruling.
LINE 6	21CV386789	Florian v. Los Altos Golf & Country Club (PAGA)	See Line 6 for tentative ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 7	22CV397331	Mangold, et al. v. Bucher and Christian Consulting, Inc., et al. (Class Action/PAGA)	See Line 7 for tentative ruling.
LINE 8	22CV405002	Cancino v. Cotton on USA Inc. (Class Action)	See Line 8 for tentative ruling.
LINE 9	23CV416653	Perez v. DGA Services, Inc. dba JIT Transportation (Class Action/PAGA)	See Line 9 for tentative ruling.
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Lines 1 – 2

Case Name: ZL Technologies, Inc. v. SplitByte, Inc., et al.
Case No.: 20CV366939 (Lead Case, consolidated with 20CV366939; 20CV373027; 20CV373149; 21CV378097; 21CV382329)

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 5, 2025, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This is a consolidated action comprised of five cases filed in this court, all related to disputes between Plaintiff/Cross-Defendant ZL Technologies, Inc. ("ZL") and Defendant/Cross-Complainant Arvind Srinivasan ("Srinivasan").[1]

The consolidated cases are: (1) *ZL Technologies, Inc. v. SplitByte Inc. et al.* (Case No. 20CV366939) (the "First Action"); (2) *Arvind Srinivasan v. ZL Technologies, Inc. et al.* (Case No. 20CV373027) (the "Second Action" or "304 Action"); (3) *Arvind Srinivasan v. ZL Technologies, Inc.* (Case No. 20CV373149) (the "Third Action"); (4) *ZL Technologies, Inc. et al. v. Arvind Srinivasan* (Case No. 21CV378097) (the "Fourth Action"); (5) *Arvind Srinivasan v. ZL Technologies, Inc. et al.* (Case No. 21CV382329) (the "Fifth Action").

On June 2, 2020, ZL initiated the First Action by filing a Complaint against SplitByte Inc. ("SplitByte") and Srinivasan. On August 1, 2022, ZL filed the now operative Second Amended Complaint ("SAC") against SplitByte, Srinivasan, Kapisoft Inc. ("Kapisoft"), MI17 Inc. ("MI17") (collectively, "Defendants"). The SAC alleges that ZL is a California corporation co-founded by Srinivasan, a former officer and employee of ZL. (SAC, ¶¶ 1, 3, 8.) In April 2020, the ZL board of directors voted to remove Srinivasan as Chief Technology Officer ("CTO") and terminate his employment. (*Id.* at ¶ 3, 8.) While at ZL, Srinivasan founded Kapisoft and MI17 without the knowledge or consent of the ZL board of directors. (*Id.* at ¶ 8.) Kapisoft and MI17's technology competes with ZL's technology. (*Id.* at ¶¶ 4-5.)

[1] In its *Order Re: Motion for Consolidation of Related Cases and Designation of Consolidated Cases as Complex*, issued on September 22, 2021, the court (Hon. Patrcia M. Lucas) sets forth a detailed description of the five matters comprising this consolidated action.

The SAC alleges Srinivasan improperly controlled and managed ZL's technology and related personnel, allowing him to make unfair and overreaching demands of ZL in breach of his fiduciary duties to ZL. (SAC, ¶ 9.) Srinivasan recruited ZL's employees to work for SplitByte and used his knowledge as a director and officer of ZL to solicit investments in SplitByte. (*Id.* at ¶¶ 19-22.) Srinivasan made unfair demands of ZL, including a demand to open a ZL office in Chennai, India (with office space rented from his parents) and a demand for a $500,000 personal loan. (*Id.* at ¶¶ 11, 27.)

In Second Action (the "Section 304 Action") Srinivasan filed the Complaint against ZL and Kon Leong ("Leong") on November 3, 2020. He then filed the operative First Amended Complaint on March 2, 2021, setting forth a single claim to remove Leong as director and officer of ZL under Corporations Code section 304.[2] According to the allegations of the First Amended Complaint, Leong engaged in a wide variety of misconduct and self-dealing during his management of ZL, including paying undisclosed amounts of compensation to himself and his wife, Chimmy Shioya ("Shioya"), using ZL's funds for personal endeavors, causing ZL to file false tax documents, taking actions without board approval, and refusing Srinivasan's request for company information. (First Amended Complaint, ¶¶ 8-17.)

Thereafter, Srinivasan commenced the Third Action relating to his alleged right to inspect ZL records. ZL, Leong, and Shioya then filed the Fourth Action, stating a single cause of action for defamation against Srinivasan. Finally, Srinivasan commenced the Fifth Action, seeking enforcement of ZL's alleged obligation to pay for the costs of his defense in the defamation action. On August 6, 2021, Srinivasan filed a motion to consolidate the five related cases and for assignment of the cases to the complex division. On September 22, 2021, the court (Hon. Patricia M. Lucas) issued an order granting Srinivasan's motion to consolidate.

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[2] Corporations Code section 304 (hereinafter "Section 304") provides as follows in full:

> "The superior court of the proper county may, at the suit of shareholders holding at least 10 percent of the number of outstanding shares of any class, remove from office any director in case of fraudulent or dishonest acts or gross abuse of authority or discretion with reference to the corporation and may bar from reelection any director so removed for a period prescribed by the court. The corporation shall be made a party to such action."

On August 29, 2022, the court (Hon. Patricia M. Lucas) issued an order regarding the schedule for pretrial and trial proceedings, including setting November 19, 2022, as the deadline for completion of written discovery and setting trial for September 25, 2023. The court later continued the trial date to October 2, 2023.

On June 23, 2023, the Sixth District Court of Appeal affirmed in part and reversed in part an order by the court (Hon. Drew C. Takaichi) denying Srinivasan's special motion to strike the defamation cause of action under the anti-SLAPP statute. Specifically, the reviewing court directed the trial court to issue a new order granting the motion to strike defamation claims arising out of an October 7, 2020 letter that Srinivasan's counsel sent to ZL's counsel and denying the motion with respect to claims arising out of other republications and communications. (See *Zl Techs. v. Srinivasan* (June 26, 2023, No. H049444) [2023 Cal. App. Unpub. LEXIS 3675, at **22-23].)

On July 26, 2023, the court vacated the October 2023 trial date and ordered the parties to meet and confer regarding a new trial date. On October 5, 2023, the court issued an order granting Srinivasan's request for additional time to complete Shioya's and Leong's depositions. On December 8, 2023, the court issued an order denying a motion by Defendants to disqualify counsel for ZL, Leong, and Shioya. On January 19, 2024, the court issued an order denying the Defendants' motion to reopen discovery and reset the discovery cutoff date. Three days later, the court issued an order after case management conference, setting trial for November 4, 2024.

On February 1, 2024, the court issued an order adopting the Discovery Referee's July 24, 2023 Order. On April 25, 2024, the court issued an order denying Srinivasan's renewed motion for advancement of attorney fees and costs, denying ZL's motion for summary adjudication of ZL's sixth cause of action for breach of written loan agreement and of Srinivasan's tenth cause of action for reformation of the written loan agreement, and granting ZL's motion for summary adjudication of Srinivasan's fifth cause of action for breach of severance agreement and of Srinivasan's sixth cause of action for breach of an agreement to establish an office in Chennai, India.

On June 11, 2024, the court issued orders adopting the Discovery Referee's orders of July 5, 2023 (granting ZL's motion to designate ZL computer images Attorneys Eyes Only) and July 26, 2023 (granting in part and denying in part Defendants' motion to compel production of documents from ZL). As relevant here, the Discovery Referee's July 26, 2023 Order regarding Srinivasan's motion to compel states the following:

> Finally, Srinivasan argues that as a ZL director and shareholder, he has an absolute right to inspect company documents. However, established California law provides that, because the right of inspection arising out of a director's fiduciary duty—a duty to act with honesty, loyalty, and good faith in the best interests of the corporation—courts may limit inspection rights when a director intends to misuse those rights to harm the corporation. *Fowler v. Golden Pacific Bancorp, Inc.* 80 Cal. App. 5th 205, 218-20 (2022); *Havlicek v. Coast-to-Coast Analytical Services, Inc.*, 39 Cal. App. 4th 1844, 1855-56 (1995).
>
> ZL has set forth evidence supported by declarations and documents of multiple instances of actions taken by Srinivasan involving use of ZL information and resources to his benefit and against ZL's interests. See [Phani Kuppa's] March 2022 declaration, [Declaration James Wagstaffe] Ex. A (Kuppa declaration paras 5-8, 18, 25, 32-28). Defendants have failed to rebut that showing. In light of this evidence, the Discovery Referee finds that ZL has made a sufficient showing beyond a "mere possibility" that Defendants will misuse the information. Thus, denying this motion to compel in part is further justified in order to protect ZL from undue burden and oppressions (see Code Civ. Proc. § 2031.060(a)-(b)), as well as to prevent Srinivasan from breaching his fiduciary duties or otherwise harming ZL.

(Order Adopting Discovery Referee's Order of July 26, 2023, Ex. A, p. 3:10-25.)

On October 24, 2024, the court issued an order denying Srinivasan's motion to bifurcate the Section 304 Action for court trial and denying ZL's motion for terminating sanctions against Defendants. On October 28, 2024, the court vacated the jury trial set for November 4, 2024, and continued the jury trial to May 5, 2025. On December 12, 2024, the court issued an order granting ZL's motion for summary adjudication of Srinivasan's fourteenth cause of action for intentional inference with prospective economic relations and fifteenth cause of action for negligent interference with prospective economic relations (both asserted in Srinivasans' Second Amended Cross-Complaint in the First Action).

The following motions are now before the court: (1) Srinivasan's Motion for Leave to Amend Complaint; and (2) Srinivasan's Motion to Enforce Inspection Rights. ZL and Leong oppose both motions, and Srinivasan has filed written replies.[3]

II. MOTION FOR LEAVE TO AMEND

Srinivasan moves for leave to file an amended complaint in the Section 304 Action to add Srinivasan, as the Trustee of the Arvind Srinivasan and Surya Arvind Charitable Remainder Trust (the "Trust") as a plaintiff to pursue the Section 304 Action. (Memorandum of Points and Authorities ISO Arvind Srinivasan's Motion for Leave to Amend Complaint ("Motion for Leave"), p. 1:1-16.) Srinivasan seeks to add the Trust as a plaintiff in response to ZL and Leong's assertion that Srinivasan lacks standing to pursue the Section 304 Action due to the percentage of stock that he owns. (*Ibid*.) Srinivasan asserts that the Trust owns ZL stock and that adding himself as the Trustee of the Trust will cure the identified standing defect and will cause no prejudice to ZL or Leong. (*Ibid*.)

ZL and Leong oppose the motion for leave to amend, contending that Srinivasan seeks a major amendment of the pleadings years after the cutoff for written discovery. (ZL and Leong's Opposition to Srinivasan's Motion for Leave to Amend Complaint ("Opposition to Leave"), p. 1:4-7.) ZL and Leong argue that the case law does not support the proposed amendment, that Srinivasan's delay in seeking the amendment is unconscionable and unjustified, that granting the amendment would cause prejudice to ZL and Leong, and that amending the pleading as proposed would be futile. (*Id*. at pp. 1:10-2:23.)

A. Legal Standard

Section 473, subdivision (a) of the Code of Civil Procedure, provides the court with discretion regarding the proposed amendment of pleadings, as follows:

> (1) The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for

[3] In connection with his replies in support of both of his motion, Srinivasan asks the court to judicial notice of documents already filed in this action. As the documents in question are already part of the record in this case, Srinivasan's requests for judicial notice are DENIED as unnecessary. (See *Duarte v. Pacific Specialty Insurance Company* (2017) 13 Cal.App.5th 45, 51, fn. 6 [denying request where judicial notice is not necessary, helpful or relevant].)

> answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.
>
> (2) When it appears to the satisfaction of the court that the amendment renders it necessary, the court may postpone the trial, and may, when the postponement will by the amendment be rendered necessary, require, as a condition to the amendment, the payment to the adverse party of any costs as may be just.

In considering a motion for leave to amend, "courts are bound to apply a policy of great liberality in permitting amendments … at any stage of the proceedings, up to and including trial." (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761.) "[I]t is a rare case" in which a court will be justified in denying a party leave to amend his pleadings. (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.)

However, the policy of liberality in permitting amendments should be applied only where no prejudice is shown to the adverse party. (*Atkinson*, *supra*, 109 Cal.App.4th at p. 761.) Where an amendment would require substantial delay in the trial date and substantial additional discovery; would change not only the specific facts and causes of action pled, but the tenor and complexity of the complaint as a whole; and where no reason for the delay in seeking leave to amend is given, refusal of leave to amend is not an abuse of discretion. (See *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 486–488 (*Magpali*) [affirming denial of request to amend made during trial].)

"Even if a good amendment is proposed in proper form, unwarranted delay in presenting it may – of itself – be a valid reason for denial," which "may rest upon the element of lack of diligence in offering the amendment after knowledge of the facts, or the effect of the delay on the adverse party." (*Roemer v. Retail Credit Co.* (1975) 44 Cal.App.3d 926, 939–940 (*Roemer*) [trial court appropriately denied request to amend answer made during trial]; see also *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345 [plaintiff did not seek leave to amend until after trial readiness conference, amendment would require additional discovery and might prompt a demurrer or other pretrial motion, and plaintiff's explanation for the delay was inadequate]; *Miles v. City of Los Angeles* (2020) 56 Cal.App.5th 728, 739 (*Miles*) ["plaintiffs waited until four and a half years into the litigation to assert a

federal claim, admittedly doing so only after the court indicated its intent to grant summary judgment"].)

A party requesting leave to amend must include a copy of the proposed amended pleading with their noticed motion, as well as a supporting declaration which sets forth: (1) the effect of the amendment; (2) why the amendment is necessary and proper; (3) when the facts giving rise to the amended allegations were discovered; and (4) the reasons why the request for amendment was not made earlier. (Cal. Rules of Court, rule 3.1324 (a) and (b).)

B. Discussion

Srinivasan seeks leave to amend with respect to his Section 304 Action. "Section 304 specifies that '[t]he superior court of the proper county may, at the suit of shareholders holding at least 10 percent of the number of outstanding shares of any class, remove from office any director in case of fraudulent or dishonest acts." (*Turner v. Victoria* (2023) 15 Cal.5th 99, 118.) Srinivasan asserts that he had standing when he initially filed his Section 304 Action and that ZL has also recently raised the issue of his alleged lack of standing due to holding less than 10 percent of ZL's outstanding common stock. (Motion for Leave, p. 10:1-7.)

By way of background, Srinivasan filed his initial Complaint in the Section 304 Action on November 3, 2020. (See Section 304 Complaint.) There, he alleges that he is a ZL shareholder holding at least 10 percent of ZL's outstanding shares. (*Id.* at ¶¶ 1, 20.) Srinivasan's operative First Amended Complaint in the Section 304 Action, filed on March 2, 2021, again asserts that Srinivasan is a ZL shareholder holding at least 10 percent of ZL's outstanding shares. (See First Amended Complaint, ¶¶ 1, 20.) On August 23, 2024, Defendants filed a motion to bifurcate the Section 304 Action for court trial.

On September 18, 2024, ZL filed its opposition to Defendant's motion for bifurcation. (ZL's Opposition to Defendant's Motion for Bifurcation.) There, ZL asserts the following regarding Srinivasan's Section 304 cause of action: "[d]espite Srinivasan's repeated misrepresentations on this issue, the fact is that Srinivasan actually holds less than 10 percent of the stock (see attached Declaration of Kon Leong), and therefore, lacks standing to bring this cause of action." (*Id.* at p. 14:12-14.) ZL acknowledges that it had not raised this standing issue previously: "[a]nd while this jurisdictional defect is raised at this point for the first time

to highlight the impropriety of the present bifurcation motion, of course, such jurisdictional defects can be raised at any time and are not subject to estoppel or wavier the circumstances. [Citation.]" (*Id.* at p. 14:16-19.) Leong asserts the following in support of ZL's opposition to the motion for bifurcation: "Defendant Arvind Srinivasan holds 2,318,334 or 9.280% of all outstanding common shares in ZL. Mr. Srinivasan owns no other class of stock in ZL." (Declaration of Kon Leong ISO ZL's Opposition to Motion to Bifurcate ("Leong Decl. Re: Bifurcation"), ¶ 2.)

In support of its instant motion for leave to amend the Section 304 Action, Srinivasan emphasizes that the court has discretion to allow the addition of the name of a new party. (Motion for Leave, p. 9:6-27.[4]) Srinivasan relies on *Morgan v. Superior Court of Los Angeles County* (1959) 172 Cal.App.2d 527, 530 (*Morgan*), which states:

> If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. [Citations.]

Srinivasan further argues that motions to amend can be granted as late as the first day of trial or even during trial if the defendant is alerted to the charges by the factual allegations, no matter how framed, and the defendant will not be prejudiced." (Motion for Leave, p. 9:22-24, citing *Honig v. Financial Corp. of America* (1992) 6 Cal.App.4th 960, 965 (*Honig*).) Srinivasan also relies upon *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, 243 (*Branick*) for the proposition that "courts have permitted plaintiffs who have been determined to lack standing, or who have lost standing after the complaint was filed, to substitute as plaintiff the true real parties in interest. [Citations.]" (Motion for Leave, p. 9:24-27.)

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[4] In addition to the cases discussed below, Srinivasan also relies upon: *Citizens Assn. for Sensible Development of Bishp op Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 160 (*Citizens*) [the mere addition of a party plaintiff did not alter the general set of facts alleged or cause prejudice to defendants]; *Edwards v. Superior Court* (2001) 93 Cal.App.4th 172, 180 (*Edwards*) [court's discretionary power to allow amendments must be exercised liberally to permit amendments "which will facilitate the interests of justice and resolve all disputed issues"]; and *Douglas v. Superior Court* (1989) 215 Cal.App.3d 155, 158 (*Douglass*) [court is rarely justified in "refusing a party leave to amend his pleadings so that he may properly present his case"].

Srinivasan contends that he only recently became aware of the asserted defect concerning his standing for the Section 304 Action. (Motion for Leave, p. 10:1-16.) He further asserts that, because the Trust holds additional ZL shares, adding himself as Trustee of the Trust as an additional party would allow him to maintain standing to continue to pursue the Section 304 cause of action. (*Ibid.*, see also Declaration of Arvind Srinivasan ISO Motion for Leave to Amend Complaint ("Srinivasan's Decl. Re: Motion for Leave"), ¶ 26, Ex. EE.) Srinivasan also argues that the court should grant leave to amend because there is merit to his Section 304 claim, based on his assertations that Leong, as Chairman of the Board and the sole officer of ZL, has violated the Corporations Code and failed to comply with ZL's own bylaws on various occasions. (Motion to Amend, pp. 10:17-12:3; Srinivasan's Decl. Re: Motion for Leave, ¶¶ 2-28.) Finally, Srinivasan contends that the alleged dilution of Srinivasan's ownership interest and ZL's assertion that Leong is a majority shareholder further support Srinivasan's motion for leave to amend. (Motion to Amend, pp. 12:3-13:4.)

In opposition, ZL and Leong first argue that the case law relied upon by Srinivasan does not apply here. (Opposition to Leave, pp. 6:14-9:8.) They contend that several of the cases Srinivasan relies upon – specifically *Edwards*, *Douglas*, *Morgan*, and *Honig* – do not involve the addition of new parties and include a specific finding of no prejudice. (*Id.* at pp. 6:15-7:1.) ZL and Leong point out that proposed amendment here involves the addition of a new plaintiff rather than new allegations. (*Id.* at p. 7:1-3.)

ZL and Leong further assert that some courts have declined to follow *Honig*. (Opposition to Leave, pp. 6:26-7:1, fn. 2 [citing the following decisions: *A.N. v. County of Los Angeles* (2009) 171 Cal.App.4th 1058, 1069 ["*Honig* does not help [plaintiff] because we have reached a different conclusion with regard to the presence of prejudice"]; *Record v. Reason* (1999) 73 Cal.App.4th 472, 487 [*Honig* distinguishable "because (in *Honig*) the events giving rise to the new causes of action transpired subsequently to the filing date of the initial complaint"]; *Lee v. Bank of America* (1994) 27 Cal.App.4th 197, 205 (*Lee*) [declining to follow *Honig* because it is "fundamentally inconsistent with settled California law that causes of action do not accrue until after defendants have committed the wrongful act" and because it is "inconsistent with the way our Supreme Court has construed the same general set of facts test

which governs whether amended complaint relate back to original complaints for statute of limitations purposes"]' and *Fix the City, Inc. v. City of Los Angeles* (2024) 100 Cal.App.4th 363, 377, fn. 7 [agreeing with *Lee* "that the *Honig* court reached its conclusion without persuasively addressing the problem of a distinct wrongful act"].)

ZL and Leong also contend that *Branick* is distinguishable. (Opposition to Leave, p. 7:4-19.) As observed by ZL and Leong, Srinivasan relies upon *Branick* for the proposition that "courts have permitted plaintiffs who have been determined to lack standing, or who have lost standing after the complaint was filed, to substitute as plaintiff the true real parties in interest." (*Branick, supra,* 39 Cal.4th at p. 243.) As ZL and Leong point out, and as the *Branick* decision acknowledges, the court in *Jensen v. Royal Pools* (1975) 48 Cal.App.3d 717, 719, 720-723 (*Jensen*) permitted condominium owners to be submitted for an owners' association after an intervening appellate decision held that an owner's association lacks standing to sue for damages to common areas of a condominium. ZL and Leong contend both *Branick* and *Jensen* are distinguishable because, here, the complaint in the Section 304 was filed from the outset without satisfying the statutory standing requirements. (Opposition to Leave, p. 7:17-19.)

Next, ZL and Leong argue that this is not a situation where a real party in interest substitutes a nominal party because of an honest mistake. (Opposition to Leave, p. 8:1-10; citing *Cal Air Resources Bd. v. Hart* (1993) 21 Cal.App.4th 289, 300-301 ["[a]mendment generally is proper where leave is sought to substitute a new plaintiff based upon a technical defect in the plaintiff's status, such as an honest mistake in the naming of a party, but may not be used to interject a new party into the litigation for the first time under the guise of a misnomer"] and *Bartalo v. Superior Court* (1975) 51 Cal.App.3d 526, 534 [observing that, in cases allowing the addition of a new party by an amendment to the complaint, "[g]enerally, a different plaintiff was substituted in because there was a technical defect in the plaintiff's status (an administrator for a deceased plaintiff; a stockholder in place of a corporation; etc.); a necessary party was joined; or a nominal plaintiff was removed and the real party in interest took his place"].)

In this case, the gravamen of ZL and Leong's opposition to the proposed amendment is that the Trust is an additional proposed party who could have been added to the action long ago: "[a]t the time Srinivasan filed the complaint in the 304 action, the Trust chose not to bring its individual claim, despite the fact that the circumstances underlying the complaint were certainly known to it given Srinivasan's purported position as its trustee." (Opposition to Leave, pp. 8:21-9:8 [also stating "[t]he Trust's potential cause of action for removal of director is now barred by the statute of limitations, and any assertion that relation back is appropriate is belied here by Srinivasan's deliberate acts foreclosing such discovery (see below)"].) ZL and Leong then argue that Srinivasan's delay in seeking to add the Trust as a plaintiff is unreasonable and unjustified, and that this delay has caused prejudice to ZL. (*Id.* at pp. 9:9-12:16.)

While ZL and Leong suggest that Srinivasan must show that the failure to name the Trust as a party was a mistake, as opposed to a conscious decision, the court is not persuaded that such a showing is required. In *Branick*, the California Supreme Court addressed a similar situation:

> Defendants argue plaintiffs should not be permitted to substitute a new plaintiff because their failure to name the new plaintiff in their original complaint was not a mistake. No such rule exists. To the contrary, courts have permitted plaintiffs who have been determined to lack standing, or who have lost standing after the complaint was filed, to substitute as plaintiffs the true real parties in interest. … Amendments for this purpose are liberally allowed.
>
> The important limitation on the rule just mentioned is that the plaintiff proposed to be substituted may not state facts which give rise to a wholly distinct and different legal obligation against the defendant. For this purpose, in determining whether a wholly different cause of action is introduced by the amendment technical considerations or ancient formulae are not controlling; nothing more is meant than that the defendant not be required to answer a wholly different legal liability or obligation from that originally stated. Similar principles govern the question whether an amendment relates back, for purposes of the statute of limitations, to the date on which the original complaint was filed. The relation-back doctrine requires that the amended complaint must (1) rest on the *same general set of facts*, (2) involve the *same injury*, and (3) refer to the *same instrumentality*, as the original one.

(*Branick, supra,* 39 Cal.4th at pp. 243-244, emphasis original, internal punctuation and citations omitted.)

While ZL and Leong argue that *Branick* and *Jensen* are distinguishable because here, Srinivasan never had standing for the Section 304 Action, they fail to support this contention with facts. (Opposition to Leave, p. 7:4-19.) ZL and Leong acknowledge that they did not raise the standing issue before September 18, 2024, when they filed their opposition to Srinivasan's motion for bifurcation of the Section 304 Action. Leong's declaration in support of that opposition, dated September 18, 2024, states that Srinivasan holds 9.280 percent of all outstanding common shares in ZL and that he owns no other class of stock of class in ZL. ("Leong Decl. Re: Bifurcation"), ¶ 2.) However, Leong makes no reference in this short declaration regarding what percentage of ZL's stock Srinivasan purportedly held when he filed the Section 304 Action on November 3, 2020. (*Id.* at ¶¶ 1-2.)

Here, Srinivasan sets forth a plausible argument that he was unaware of any possible issue regarding standing until September 18, 2024, and that he brought his motion for leave to amend shortly thereafter. (See Declaration of Ji W. Kim ISO Motion for Leave to Amend, ¶ 12.) While ZL and Leong argue that the motion to add the Trust as a plaintiff was filed on the eve of trial, it is apparent that they also only raised the standing issue in the same timeframe. As such, ZL and Leong's arguments regarding prejudice are unpersuasive. The addition of the Trust as a plaintiff would result in a claim resting upon the same general set of facts and does not involve a new legal theory. ZL and Leong argue that allowing the proposed amendment would be prejudicial because discovery in the Section 304 Action has been closed for a long time. (Opposition to Leave, p. 12:11-12.) However, to the extent that discovery must to re-opened following the court's ruling on this motion, it appears that ZL and Leong bear some responsibility – based both on the timing of their standing argument and their refusal to provide corporate records in response to Srinivasan's requests, as discussed further below. Moreover, as Srinivasan argues in reply, ZL itself should be in possession of some documents relating to the Trust's ownership interest in the corporation. (Reply, p. 7:6-25.)

Finally, ZL and Leong argue that the court should deny the motion for leave to amend because the Section 304 Action is futile. (Opposition to Leave, pp. 12:17-14:27, citing *Payton v. CSI Electrical Contractors, Inc.* (2018) 27 Cal.App.5th 832, 851 ["[t]he futility of a proposed amendment can provide a ground to deny a request to amend"] and *Singh v. Lipworth*

(2014) 227 Cal.App.4th 813, 828 ["leave to amend may be denied where permitting an amendment would be futile"].) They assert that there is substantial evidence that Srinivasan has acted in bad faith and in violation of his duties as a director of the corporation, and that such evidence justifies denial of the relief Srinivasan seeks in the Section 304 Action. (*Id.* at p. 14:2-16.) ZL and Leong further contend that the Section 304 Action is largely superfluous because Leong has a majority interest and Srinivasan is a minority shareholder. (*Id.* at p. 14:20-23.) In reply, Srinivasan argues that Leong has taken authorized action that harmed ZL, and that Leong has not produced evidence supporting his claim that he is a majority shareholder. (Reply, p. 8:1-10.) Srinivasan contends that ZL and Leong bring their futility argument with unclean hands because they have set forth conflicting arguments as to whether Srinivasan's interest in ZL has been diluted. (*Ibid.*)

Here, the material facts concerning the futility of the Section 304 Action are in dispute. While there may be merit to ZL and Leong's claim that the Section 304 cause of action will ultimately prove to be futile, they have not fully developed or supported this argument at this stage to warrant the denial of the proposed amendment. In sum, the court finds that Srinivasan has explained the delay in requesting the proposed amendment – one that is required to maintain the Section 304 Action according to Leong's declaration – and that ZL and Leong have not made a persuasive showing of prejudice in opposition. (See *Morgan*, *supra*, 172 Cal.App.2d at p. 530 [court is rarely justified in refusing a party leave to amend his pleadings so that he may properly present his case]; see also *Atkinson*, *supra*, 109 Cal.App.4th at p. 761 ["[i]t is an abuse of discretion to deny leave to amend whether the opposing party was not misled or prejudiced by the amendment"].) Accordingly, the Motion for Leave to Amend is GRANTED.

IV. MOTION TO ENFORCE INSPECTION RIGHTS

Srinivasan moves for an order compelling ZL to produce various corporate records. (Notice of Motion and Motion, p. 1.) Srinivasan contends that ZL has refused his requests to inspect ZL's records, and that such refusal constitutes the concealment of improper and dishonest acts of ZL's board. (Memorandum of Points and Authorities ISO Arvind Srinivasan's Motion to Enforce Inspection Rights ("Motion for Inspection"), p. 1:1-16.) He further argues

that shareholders have an absolute right to know if their interest in ZL has been diluted and that there is no justification to prevent a director from inspecting corporate records when there is no trade secret or confidential information in the corporate records to be inspected. (*Ibid*.)

As an initial matter, Srinivasan argues that the court should disregard ZL's opposition because it is untimely. (Arvind Srinivasan's Reply to Plaintiff ZL Technologies, Inc's Opposition to Defendant Arvind Srinivasan's Motion to Enforce Inspection Rights (Reply ISO Inspection), p. 1:2-4, fn. 1.) Srinivasan points out that, according to the Stipulation and Order Concerning Pretrial Schedule, signed by the court on January 8, 2025, the last day to file opposition briefs to the motions to amend and enforce inspection rights was January 8, 2025. ZL filed its opposition to the Motion for Inspection on January 9, 2025, one day late.

California Rules of Court, rule 3.1300, subdivision (d) provides, "No paper may be rejected for filing on the ground that it was untimely submitted for filing. If the court, in its discretion, re refuses to consider a late filed paper, the minutes or order must so indicate." The court has discretion to consider a late-filed paper, and ZL filed its opposition one day late, still allowing Srinvasan ample time to respond. Because Srinivasan has suffered little to no prejudice from the late filing, the court will look past the tardiness of the filing and consider the opposition on its merits. The parties are reminded to comply with filing deadlines, whether stipulated or otherwise, and that the court may in the future refuse to consider untimely papers.

ZL argues that Srinivasan's requests to inspect its records must be balanced against the company's duty to act in its own best interest and that of its shareholders. (Plaintiff ZL Technologies' Opposition to Defendant's Motion to Enforce Inspection Rights ("Opposition to Inspection"), p. 1:9-19.) ZL contends that it needs to balance Srinivasan's rights of inspection with the company's fiduciary duty to its shareholders because Srinivasan has already used corporation information to commit torts against ZL. (*Ibid*.) ZL further contends that Srinivasan's motion is premature and unripe because it has not refused or denied all of Srinivasan's requests and because Srinivasan did not meet and confer before filing his motion to enforce inspection rights. (*Id*. at pp. 1:20-2:2.) ZL also asserts that hundreds of thousands of documents have already been produced in this litigation and that if the court requires the

production of certain documents, "just and proper conditions should also be imposed." (*Id.* at p. 2:2-9.)

A. Legal Standard

Corporations Code sections 1600-1605 provide rights of inspection of corporate records.[5] "Section 1600 provides a shareholder with the right to inspect and copy the record of shareholders during using usual business hour upon proper written demand." (*Singhania v. Uttarwar* (2006) 136 Cal.App.4th 416, 431.)

> Section 1601 provides a shareholder with a right to inspect and copy "[t]he accounting books and records and minutes of proceedings of the shareholders and the board and committees of the board of any domestic corporation, and of any foreign corporation keeping any such records in this state or having its principal executive office in this state" "at any reasonable time during usual business hours" "for a purpose reasonably related to such holder's interests as a shareholder … ." … [¶] A shareholder has recourse to the courts if a corporation does not comply with a lawful demand for inspection of corporate records. (See § 1603 [superior court has the power to enforce a lawful demand for inspection]; see also Code Civ. Proc., § 1085.) A court may award "reasonable expenses incurred by such holder, including attorneys' fees," against a corporation where a shareholder must resort to a court action as a result of the corporation's unjustified failure to comply with a proper demand to inspect records. (§ 1604.)

(*Ibid.*)

> Section 1601 appears as part of a statutory scheme of corporate disclosure, which also includes sections 1602 and 1501. Section 1602 affords *directors* a still broader right "at any reasonable time to inspect and copy all books, records and documents of every kind," which may be exercised either in person or by agent. The right of inspection by a director is enforceable only by court order under section 1603 without benefit of recovery of attorney fees under section 1604. In contrast, section 1501, subdivision (a), requires corporations to "cause an annual report," with specified content, "to be sent to the shareholders" within 120 days of the end of the fiscal year.

(*Jara v. Suprema Meats, Inc.* (2004) 121 Cal.App.4th 1238, 1263.)

"The directors of a corporation owe a fiduciary duty to the corporation and its shareholders. [Citation.]" (*Havilcek v. Coast-to-Coast Analytical Services, Inc.* (1995) 39 Cal.App.4th 1844, 1852 (*Havlicek*).) "Section 1602 represents a legislative judgment that directors are better able to discharge those duties if they have free access to information concerning the corporation. Thus, California has a public policy favoring broad inspection

[5] Further undesignated statutory references are to the Corporations Code.

rights for the directors." (*Ibid.*) The *Havilcek* court explained that a trial court is not obligated to grant "unfettered access" upon a director's demand, but instead may impose "just and proper" limitations on a director's inspection rights. (*Id.* at p. 1855.) "Where the corporation determines that an unfettered inspection will result in a tort against the corporation, it may decline the request for inspection." (*Id.* at p. 1856.)

> Upon a director's request for inspection pursuant to section 1603 in the superior court, the corporation must demonstrate, by evidentiary showing, that a protective order is necessary to prevent a tort against the corporation Whether there are other situations where a director's inspection rights may be curtailed is not before us and we offer no opinion thereon. The superior court may then exercise its broad discretion under section 1603, subdivision (a) to fashion a protective order imposing just and proper conditions on the inspection. Precisely what "just and proper conditions" are necessary in this case, if any, is a question we leave to the superior court.

(*Ibid.*; see also *Tritek Telecom, Inc. v. Superior Court* (2009) 169 Cal.App.4th 1385, 1390 [director's right to inspect "is subject to exceptions and may be denied where a disgruntled director announces his or her intention to violate his or her fiduciary duties to the corporation, such as using inspection rights to learn trade secrets to compete with the corporation"].) However, "the mere possibility that information could be used adversely to the corporation is not by itself sufficient to defeat a director's inspection rights." (*Fowler v. Golden Pacific Bancorp, Inc.* (2022) 80 Cal.App.5th 205.)

B. Discussion

Srinivasan asserts that he has a right to inspect ZL's records and that there is no justification to completely refuse his requests for ZL's share register, annual reports, and financial statements. (Motion for Inspection, pp. 13:8-14:28.) Srinivasan acknowledges that, under *Havlicek*, a corporation may decline a request for inspection when it determines that unfettered access will result in a tort against it. (*Id.* at p. 15:1-5.) Nevertheless, Srinivasan argues that the exception to a director's absolute right of inspection does not apply here because he is not seeking information that could harm the corporation, such as trade secrets. (*Id.* at p. 15:5-28.) Srinivasan also argues that good cause exists to award him expenses and fees incurred in connection with his motion. (*Id.* at pp. 18:24-19:4.)

In opposition, ZL acknowledges that Srinivasan has a right to some portion of the records demanded, stating that it has only had the opportunity to respond to two of the ten

demands and has not denied outright the production of any of the records in question. (Opposition to Inspection, p. 7:4-11.) ZL maintains that it is reasonable for it to require conditions on the release of the information in question, and that Srinivasan had not attempted to meet and confer to address such concerns. (*Id.* at pp. 7:17-8:5.) ZL emphasizes the Discovery Referee's July 26, 2023 Order, denying some of Srinivasan's requests on that basis that ZL had presented unrefuted evidence of "multiple instances of actions taken by Srinivasan involving the use of ZL information and resources to his benefit and against ZL's interests." (*Id.* at pp. 8:14-9:13, quoting June 11, 2024 Order Adopting Discovery Referee's Order of July 26, 2023, Ex. A, p. 3:10-25.) ZL repeatedly asserts that the court should impose "just and proper" conditions for the production and inspection of records, but ZL does not propose any conditions that it contends would be "just and proper" under the circumstances here. (*Id.* at pp. 2:8-9, 3:25-28, 4:3-7, 5:3-6; 7:9-11; 11:12-14.)

Here, the court finds merit in Srinivasan's request to enforce his right to inspection of ZL's corporate records because ZL has not demonstrated by an evidentiary showing that preventing the disclosure of all such records is necessary to prevent a tort against the corporation. (See *Havlicek, supra*, 39 Cal.App.4th at p. 1856.) To the extent that ZL seeks a protective order relating to some portion of the records requested, it must make a demonstration that the protective order sought is necessary. (*Ibid.*) Given that ZL has expressed a willingness to disclose some records in response to Srinivasan's request, the court is optimistic that the parties will be able to reach an agreement – or at least narrow the disputed issues – regarding just and proper conditions for the production and inspection of records responsive to Srinivasan's demand.

Accordingly, the Motion to Enforce Inspection Rights is GRANTED. Because the court finds that ZL acted with substantial justification in opposing the motion, the request for expenses and attorney's fees is DENIED. The parties shall meet and confer regarding the scope of the records to be produced and the deadline(s) for such production.

V. CONCLUSION

The Motion for Leave to Amend is GRANTED. Srinivasan shall file the amended pleading as proposed within 10 court days of the filing of this order. The Motion to Enforce Inspection Rights is GRANTED, subject to just and proper limitations on Srinivasan's access to ZL records to be agreed upon by the parties or determined by the court.

The parties shall meet and confer, and no later than February 19, 2025, shall submit a Joint Stipulation regarding the scope of the records to be produced, the deadline(s) for such production or any additional limited written discovery, and whether the parties seek a continuance of the trial date. To the extent that the parties are unable to reach an agreement as to any the above issues, they shall each serve and file supplemental briefing no later than 5 p.m. on February 21, 2025, and the court will address any disagreements at the hearing already scheduled for February 26, 2025, at 1:30 p.m. in Department 19.

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

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Calendar Line 2

Case Name:
Case No.:

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Calendar Line 3

Case Name: *Rodriguez v. Palo Alto Hills Golf and Country Club, Inc.*
Case No.: 21CV382771

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 5, 2025, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This representative action arises out of alleged wage and hour violations. Plaintiff Armando Rodriguez ("Plaintiff") filed a Complaint on June 7, 2021, which set forth a single cause of action for Violation of California Labor Code § 2698, et seq. ("PAGA"). Plaintiff alleges that defendant Palo Alto Hills Golf and Country Club, Inc. ("Defendant") failed to pay overtime, provide meal periods, provide rest periods, pay minimum wages, pay wages upon termination, timely pay wages during employment, provide complete and accurate wage statements, keep complete and accurate payroll records, and reimburse necessary business-related expenses and costs. (Complaint, ¶¶ 53-61.)

The parties have reached a settlement of the PAGA claim. Plaintiff moved for approval of the PAGA settlement. The motion was unopposed.

On October 30, 2024, the Court continued the motion to December 11, 2024. In its minute order, the Court instructed Plaintiff to file a supplemental declaration calculating Defendant's maximum potential exposure for the PAGA claim and explaining the rationale behind the proposed settlement amount. The Court further stated that it would revisit the issue of attorney fees once it received the supplemental declaration regarding Defendant's maximum potential exposure for the PAGA claim. The Court also directed Plaintiff to file a supplemental declaration for the settlement administrator supporting the requested settlement administration

fees. The court approved the incentive award to Plaintiff in the amount of $10,000 and litigation costs in the amount of $9,814.69.

On November 25, 2024, Plaintiff's counsel filed a supplemental declaration regarding Defendant's maximum potential exposure for the PAGA claim. Plaintiff also filed a supplemental declaration from the settlement administrator regarding settlement administration costs.

II. THE DECEMBER 18, 2024 ORDER

On December 18, 2024, the Court filed its order continuing the hearing on the motion to February 5, 2025, instructing Plaintiff to file a supplemental declaration:

> The proposed settlement has been made with regard to the following aggrieved employees: "all current and former hourly employees employed by Defendant during the PAGA Period." (Declaration of Edwin Aiwazian in Support of Plaintiff's Motion for Approval of Private Attorneys General Act Settlement Agreement […] ("Aiwazian Dec."), Ex. 1 ("Settlement Agreement"), ¶ 3(a)(5).)
>
> The PAGA Period is defined as the period from October 4, 2019 to October 31, 2022. (Settlement Agreement, ¶ 3(a)(5).) Pursuant to the terms of the settlement, Defendant will pay a non-reversionary, maximum settlement amount of $350,000. (Settlement Agreement, ¶ 3(a).) This amount includes attorney fees in the amount of $140,000 (40 percent of the maximum settlement amount), litigation costs up to $15,000, a general release fee to Plaintiff in the amount of $10,000, and settlement

administration costs not to exceed $6,000. (Settlement Agreement, ¶ 3(a).) Of the remaining net settlement amount (estimated to be $184,066), 75 percent will be paid to the LWDA and 25 percent will be distributed to aggrieved employees based on the pro rata number of pay periods worked by each aggrieved employee during the PAGA Period. (Settlement Agreement, ¶¶ 3(a), 7(b).) Funds from checks that are not cashed within 90 days from the date of mailing will be sent to the California Controller's Unclaimed Property Fund in the names of the aggrieved employees to whom the checks were issued. (Settlement Agreement, ¶ 7(c)(4).)

In exchange for the settlement, the aggrieved employees agree to release Defendant, and related entities and persons, from any and all claims arising during the PAGA Period for civil penalties under PAGA based on the factual allegations in the Complaint and PAGA Notice. (Settlement Agreement, ¶ 8(a).) Plaintiff also agrees to a general release. (Settlement Agreement, ¶ 8(b).)

In his moving papers, Plaintiff contended the PAGA settlement is fair, reasonable, and adequate. Plaintiff indicated that the settlement resolves PAGA claims on behalf of approximately 325 aggrieved employees. (Aiwazian Dec., ¶ 8.) Plaintiff did not provide any information regarding the number of pay periods worked by the aggrieved employees during the PAGA Period. Prior to mediation, Plaintiff's counsel analyzed and reviewed Plaintiff's employment records, a sampling of aggrieved employees' time and pay data, Defendant's employee

handbook, job descriptions, agreements, policies, procedures, and forms. (*Id.* at ¶ 13.) The parties participated in a full-day mediation with Lynn S. Frank, Esq. and reached a settlement. (*Id.* at ¶ 12.) Finally, Plaintiff's counsel described the various risks that continued litigation posed to the PAGA action. (*Id.* at ¶¶ 14-16.)

Plaintiff's counsel has now filed a supplemental declaration regarding Defendant's maximum potential exposure for the PAGA claim. Plaintiff's counsel estimates that the maximum potential value of the PAGA claim is $7,904,900 if penalties are stacked and $462,500 if penalties are not stacked. (Declaration of Joanna Ghosh in Support of Plaintiff's Motion for Approval of Private Attorneys General Act Settlement Agreement and Release, and Award of Attorneys' Fees and Costs, General Release Fee, and Settlement Administration Costs ("Ghosh Dec."), ¶¶ 8-10.) Plaintiff's counsel further estimates that the realistic value of the PAGA claim is $179,019.66 if penalties are stacked and $185,000 if penalties are not stacked. (*Ibid.*) Plaintiff breaks down the valuation of the PAGA claim based on the alleged Labor Code violations. (*Ibid.*)

The supplemental declaration adequately addresses the court's concerns regarding Defendant's maximum potential exposure for the PAGA claim. The proposed settlement represents approximately 4.4 to 75 percent of the maximum potential value of Plaintiff's claims. Thus, the proposed settlement amount is within 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, it is unclear to the court why the PAGA Period covered by the settlement agreement begins on October 4, 2019. In the Complaint, Plaintiff alleges he sent a PAGA notice letter to the LWDA on April 2, 2021. (Complaint, ¶ 17.) This would suggest that the PAGA Period should begin on April 2, 2020. Prior to the continued hearing, Plaintiff's counsel shall file a supplemental declaration addressing why the PAGA Period set forth in the settlement agreement begins on October 4, 2019.

Next, in its prior minute order, the court approved the $10,000 payment to Plaintiff for a general release. The court continues to approve that payment.

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; see also Lab. Code § 2699(g) ["Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorneys' fees and costs."].) Plaintiff's counsel seeks attorney fees of $140,000 (40 percent of the maximum settlement fund). Plaintiff's counsel provides evidence that attorneys at Lawyers for Justice, PC spent 295.30 hours on the action. (Aiwazian Dec., ¶¶ 19-20 & Ex. 3.) Although the hours include work by multiple

attorneys, Plaintiff's counsel does not state how many hours were worked by each attorney or provide the hourly rate of each attorney; instead, Plaintiff's counsel asserts that a "blended hourly rate" of at least $850 is appropriate. (*Id*. at ¶¶ 19-20.) Given the absence of this additional information, the court cannot accurately determine the lodestar for purposes of performing a cross-check. Prior to the continued hearing on this motion, Plaintiff's counsel shall file a supplemental declaration setting forth the hours worked by each attorney on this matter, their experience, and their hourly rates.

In connection with its prior minute order, the court approved litigation costs of $9,814.69. The court continues to approve that amount.

Lastly, Plaintiff's counsel requests up to $6,000 for the claims administration fee. Plaintiff now provides a declaration from the claims administrator to support the award of settlement administration costs. The claims administrator declares that it has agreed to a capped fee of $3,982 to administer the case. (Declaration of Christopher Longley on Behal[f] of Atticus Administration LLC, the Proposed Settlement Administrator, ¶ 9 & Ex. 2.) Consequently, the court approves an award of settlement administration costs in the amount of $3,982.

(December 18, 2024 order continuing hearing on motion for approval of PAGA settlement, pp.4:4-28, 5:1-28, 6:1-26[6].)

[6] The December 18, 2024 order also included a recitation of the legal standard with regards to motions for approval of a PAGA settlement. (See December 18, 2024 order continuing hearing on motion for approval of PAGA settlement, pp.2:20-27, 3:1-27, 4:1-2.) This recitation of the legal standard is hereby incorporated by reference.

III. DISCUSSION

On January 22, 2025, Plaintiff's counsel filed another declaration in support of the motion for approval of the Private Attorneys General Act settlement agreement and release, award of attorney's fees and costs, general release fee and settlement administration costs, addressing the PAGA period set forth in the settlement agreement and the hours worked by each attorney on this matter, their experience, and their hourly rates.

The PAGA Period set forth in the settlement agreement

In addressing why the PAGA period set forth in the settlement agreement begins on October 4, 2019, Matthew Richard Soto's supplemental declaration filed on January 22, 2025 states that:

- while there is a one-year statute of limitations for PAGA claims filed on or after June 19, 2024, the letter to the LWDA was provided on April 2, 2021 before the July 2024 amendment of the PAGA statute (see Soto decl. in support of Pls.' motion for approval of the Private Attorneys General Act settlement agreement and release, award of attorney's fees and costs, general release fee and settlement administration costs ("Soto decl."), ¶¶ 12, 17, 18);
- at the time the parties were negotiating the settlement and mediating in 2022, *Johnson v. Maxim Healthcare Services, Inc.* (2021) 66 Cal.App.5th 924, 930 indicated that PAGA did not have a one-year statute of limitations but rather a three-year statute of limitations (see Soto decl., ¶ 17);
- additional case law indicated that Defendant could waive a statute of limitations defense and that parties could stipulate to the temporal scope of a PAGA claim for settlement (see Soto decl., ¶ 17, citing *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 541; *Johnson*, *supra*, 66

Cal.App.5th at p.929; *Brisbane Lodging, L.P. v. Webcor Builders, Inc.* (2013) 216 Cal.App.4th 1249, 1262; *Fnb Mortgage Corp. v. Pac. General Corp*. (1999) 76 Cal.App.4th 1116, 1134; and, *Hambrecht & Quist Venture Partners v. American Medical Internat., Inc.* (1995) 38 Cal.App.4th 1532, 1544);

- COVID-19 Emergency Rule 9 provides tolling of the statute of limitations from April 6, 2020 until October 1, 2020, and based on the April 2, 2021 PAGA notice letter to the LDWA, the statute of limitations would be tolled 178 days such that the statutory period would start on October 7, 2019, although Plaintiffs lack any supporting evidence to substantiate its assertion that the parties discussed the application of Emergency Rule 9 during mediation and settlement negotiations (see Soto decl., ¶¶ 13-16); and,
- After back-and-forth negotiations and consideration of the law, the parties ultimately agreed to a October 4, 2019 start date for the PAGA period set forth in the settlement agreement—which is 3 years prior to the parties October 4, 2022 mediation when the parties fully executed their Memorandum of Understanding to settle the matter (see Soto decl., ¶ 19).

The Court is not persuaded by Plaintiff's argument that *Johnson, supra*, indicates that there is a three-year statute of limitations for PAGA claims. Rather, another of Plaintiff's cited cases indicates that the statute of limitations is one year. (See *Amaro, supra*, 69 Cal.App.5th at p.542 (stating that "PAGA's one-year limitations period is intended to facilitate these processes"); see also *Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 839 (stating that "[t]he statute of limitations for PAGA claims is one year"); see also *Esparza v. Safeway, Inc*. (2019) 36 Cal.App.5th 42, 59 (stating that "[a] PAGA action is subject to a one-year statute of limitations").)

Regardless, the Court agrees that COVID-19 Emergency Rule 9 provides tolling of the statute of limitations from April 6, 2020 until October 1, 2020 and that the 178 days would start the statutory period on October 7, 2019. (See *People v. Financial Casualty & Surety, Inc*.

(2022) 78 Cal.App.5th 879, 885 (stating that "Emergency rule 9 reads: '(a) Tolling statutes of limitations over 180 days [¶] Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020'… [t]he advisory committee comment explains the application of the rule: 'Emergency rule 9 is intended to apply broadly to toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action'"), citing Cal. Rules of Court, appen. I., emergency rule 9.) While October 4, 2019 is three days beyond the statute of limitations, Plaintiffs are also correct that "allowing a named plaintiff to release PAGA claims beyond the one-year limitations period of his or her own claim is not unlawful per se." (*Amaro, supra*, 69 Cal.App.5th at pp. 542-543 (also stating that "[t]he PAGA statute of limitations is an affirmative defense meant to facilitate the LWDA's investigation and the employer's response… [i]t is not jurisdictional… PAGA's one-year limitations period is intended to facilitate these processes… '[T]he Legislature[] desire[d] … quick action on workplace violations… [i]f a plaintiff could wait many years to assert violations of the Labor Code or amend deficient notices, the LWDA would be hard pressed to make an informed decision about allocating scarce resources to old violations, the employer would be faced with responding based on stale evidence, and workplace violations could continue for years without being remediated or deterred'… [a]llowing Amaro to release PAGA claims outside the limitations period of her own PAGA claim does not interfere with these statutory goals"), quoting *Brown*, *supra*, 28 Cal.App.5th at pp.840-841; see also *Hutcheson v. Super. Ct. (UBS Financial Services, Inc.)* (2022) 74 Cal.App.5th 932, 942 (stating that "a PAGA plaintiff may release PAGA claims outside the limitations period of her own PAGA claim by means of a court-approved settlement… nothing in the statute prohibited the settling plaintiff from releasing PAGA claims beyond the limitations period of her claim, and concluded that allowing her to do so was consistent with PAGA's purposes").) As Plaintiff argues, the parties may agree to extend the statute of limitations. (See *Hambrecht & Quist Venture Partners v. American Medical Internat., Inc*. (1995) 38 Cal.App.4th 1532, 1547-1548 (stating that "California courts accord contracting parties substantial freedom to modify the length of the statute of limitations… California courts have permitted contracting parties to modify the

length of the otherwise applicable California statute of limitations, whether the contract has extended or shortened the limitations period"); see also *Zamora v. Lehman* (2013) 214 Cal.App.4th 193, 205-206 (stating same); see also *Ali v. Daylight Transport, LLC* (2020) 59 Cal.App.5th 462, 478, fn. 5 (stating same); see also *Moreno v. Sanchez* (2003) 106 Cal.App.4th 1415, 1430 (stating that "California courts have afforded contracting parties considerable freedom to modify the length of a statute of limitations"); see also *PGA West Residential Assn., Inc. v. Hulven Internat., Inc*. (2017) 14 Cal.App.5th 156, 185, fn. 22 (stating that "there is considerable California authority for the proposition that a party may contractually agree to modify the length of a statute of repose"); see also *Fnb Mortgage Corp. v. Pac. General Corp.* (1999) 76 Cal.App.4th 1116, 1135 (stating that "parties certainly may contract to extend the limitations period").)

The Court approves the PAGA Period as defined as the period from October 4, 2019 to October 31, 2022.

Attorney fees

As previously stated in the December 18, 2024 order, pursuant to the terms of the settlement, Defendant will pay a non-reversionary, maximum settlement amount of $350,000 that includes attorney fees in the amount of $140,000—40 percent of the maximum settlement amount. The Soto supplemental declaration supports a lodestar of $347,078.50, based on 296.30 hours billed at hourly rates ranging from $575 to $1,495 per hour. (See Soto decl., ¶¶ 7-11, exhs. 3-4.) The declaration sets forth the hours worked by each attorney on the matter, their year of admission to the State Bar and their hourly rate. (*Id*.) While the Court finds it unusual that the two shareholders and attorneys with the highest billing rates—Edwin Aiwazian at $1,495 per hour and Arby Aiwazian at $1,295 per hour--billed a large majority of the hours on the case, and that the billing rates are on the high side, the court finds that the new information is sufficient to support the claimed lodestar crosscheck figure, which results in a negative multiplier. The benefits achieved by the settlement justify an award of attorney fees

to Plaintiff's counsel. The Court finds that the requested attorney fee award is reasonable as a percentage of the maximum settlement fund and approves an attorney fee award in the requested amount of $140,000.

CONCLUSION

As stated in the December 18, 2024 order, the proposed settlement amount represents approximately 4.4 to 75 percent of the maximum potential value of Plaintiff's claims and is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D.Cal. Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201, at *41-42 (citing cases deeming range of percentage recoveries from 4.3% to 35% of the maximum potential exposure that California courts have deemed to be reasonable).

Plaintiff's newest supplemental declaration addresses the prior concerns regarding the PAGA period, and the Court approves the PAGA Period as defined as the period from October 4, 2019 to October 31, 2022.

The Court continues to approve the $10,000 payment to Plaintiff for a general release.

The Court finds that the requested attorney fee award is reasonable as a percentage of the maximum settlement fund and approves an attorney fee award in the requested amount of $140,000.

The Court continues to approve the amount of litigation costs of $9,814.69.

The Court also continues to approve an award of settlement administration costs in the amount of $3,982.

The motion for approval of PAGA settlement agreement, and award of attorneys' fees and costs, general release, and settlement administration costs is GRANTED. The Court sets a compliance hearing for **November 5, 2025, at 2:30 p.m.** in Department 19.

The Case Management Conference of February 5, 2025 at 2:30 p.m. is VACATED.

Plaintiffs' counsel shall prepare the order after hearing.

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Calendar Lines 4 – 5

Case Name: Smith, et al. v. Advanced Clinical Employment Staffing, LLC (Class Action)
Case No.: 21CV385614

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 5, 2025, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This is a class and representative action brought by Plaintiffs Ashley Smith and Donna Chang ("Plaintiffs") against Defendants Advanced Clinical Employment Staffing, LLC ("ACES"), Regina Allcorn, and Mary Pat Flanagan (collectively, "Defendants"). On August 12, 2021, Plaintiffs initiated this action by filing a Class Action Complaint against ACES, setting forth the following causes of action: (1) failure to pay for all hours worked; (2) failure to pay minimum wage; (3) failure to pay overtime; (4) failure to authorize and/or permit meal breaks; (5) failure to authorize and/or permit rest breaks; (6) failure to reimburse business-related expenses; (7) failure to furnish accurate wage statements; (8) waiting time penalties; (9) unfair business practices.

The parties have reached a settlement. On August 8, 2024, the court issued an order granting Plaintiffs' motion for preliminary approval of the settlement and setting a final approval hearing for February 5, 2025. On December 10, 2024, Plaintiff filed their motion for final approval of the settlement. The motion is unopposed.

II. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

A. Class Action

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

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs'

> case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba, supra,* 91 Cal.App.4th at p. 245.) The trial court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, citation and internal quotation marks omitted.)

> The 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, citation omitted.)

B. PAGA

Labor Code section 2699, subdivision (s)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S.___, 2022 U.S. LEXIS 2940.)

Like its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and

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

The settlement must be reasonable considering the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

III. TERMS AND ADMINISTRATION OF SETTLEMENT

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

> [A]ll of ACES's non-exempt employees who were assigned to work at any facility inside California during the Class Period [August 12, 2017, to April 22, 2024].

The agreement defines "Defendants" as ACES, Regina Alcorn, and Mary Pat Flanagan.

Defendants will pay a gross settlement amount of $450,000. The gross settlement amount may be increased proportionately if the actual number of pay periods is determined to be incorrect by more than ten percent. The gross settlement amount includes attorney fees up to one-third of the gross settlement amount (currently estimated to be $150,000), litigation costs not to exceed $25,000, service awards up to a total of $20,000, and settlement administration costs not to exceed $11,000. The net settlement amount will be distributed to participating class members on pro rata basis according to their respective number of workweeks. Funds from checks remaining uncashed more than 180 days after mailing will be transferred to Bet Tzedek Legal Services as the court-approved *cy pres* recipient.

In exchange for the settlement, participating class members agree to release Defendants and related entities and persons from all claims that were alleged or reasonably could have been alleged based on the facts pleaded in the Complaint occurring during the Class Period. (Settlement Agreement, ¶¶ 1.30, 1.31, 5.2.) Plaintiffs also agree to a comprehensive general release. (Settlement Agreement, ¶ 5.1.) The releases are appropriately tailored to the facts alleged. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

In its August 8, 2024, order granting preliminary approval of the settlement, the court approved Phoenix Settlement Administrators ("Phoenix") as the settlement administrator. On August 19, 2024, Defendant provided Phoenix with the names and information of class members, as contemplated by the settlement. (Declaration of Yami Burns ("Burns Decl."), ¶ 3.) On August 29, 2024, Phoenix mailed the class notice to all 567 class members on the class list. (*Id.* at ¶ 4.) The deadline to submit a request for exclusion, submit a written objection, or submit workweek dispute was October 28, 2024. As of the date of the administrator's declaration, November 13, 2024, zero notices have been returned to Phoenix, and Phoenix has received zero requests for exclusion, zero notices of objection, and zero workweek disputes. (*Id.* at ¶¶ 6-9.) Based on the 100% class participation rate and the settlement's terms, the average individual class payment will be $454.39. (*Id.* at ¶ 12.) The notice process has now been completed.

At preliminary approval, the court found the settlement to be fair and reasonable. Given that there are no objections, it finds no reason to deviate from that finding now. Accordingly, the court finds that the settlement is fair and reasonable for purposes of final approval.

IV. SERVICE AWARDS, ATTORNEY FEES AND COSTS

In its order granting preliminary approval of the settlement, the court preliminarily approved service awards to Plaintiffs Smith and Chang of $5,000 each, for a total $10,000 in service awards. In connection with their motion for final approval, Plaintiffs request service awards of $5,000 each. (See Declaration of Ashkan Shakouri in Support of Motion for Final Approval ("Shakouri Decl."), ¶ 11; Declaration of Plaintiff Donna Chang in Support of Motion for Final Approval, ¶ 21; Declaration of Plaintiff Ashley Smith in Support of Motion for Final Approval, ¶ 21.)

Plaintiffs have filed declarations generally describing their participation in this litigation. The court finds that service awards are justified and that the amounts requested are reasonable. Accordingly, the incentive awards are approved in the amounts requested, $5,000 each to Plaintiff Smith and to Plaintiff Chang, for a total of $10,000 in service awards.

The court 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.) "Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (*Wershba, supra,* 91 Cal.App.4th at p. 254.)

Class counsel seeks an attorney fee award of $150,000 (one-third of the gross settlement amount). (Shakouri Decl., ¶¶ 11, 40.) Counsel asserts that the requested fee award is within the range of reasonableness and that a percentage award is supported by the circumstances of the case and the contingency basis of the representation. (*Id.* at ¶¶ 29-48.) Counsel also contends that a lodestar cross-check confirms the reasonableness of the requested fee award. (*Id*. at ¶¶ 31-41.) Class counsel asserts that its total lodestar in this action is $140,940, based on a total of 194.4 hours billed at $725 per hour. (*Id.* at ¶¶ 31-32, 40, and Ex. 2.) This results in a multiplier of 1.01, which is within the range of multipliers that courts typically approve. (See *Wershba*, supra, 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases].)

The benefits achieved by the settlement justify an award of attorney fees to class counsel. The court finds that the requested attorney fee award is reasonable as a percentage of the common fund and approves an attorney fee award in the requested amount of $150,000.

Class counsel requests reimbursement of litigation costs in the amount of $21,362 and presents an itemized list supporting that figure. (Shakouri Decl., ¶ 11, 47, and Ex. 4.) This is less than the $25,000 allocated under the settlement. Accordingly, the court finds the requested litigation costs to be reasonable and approves an award in the amount of $21,362. The settlement administration costs are also approved in the requested amount of $11,000, which is the amount allocated under the settlement. (Burns Dec., ¶ 14 and Ex. B.)

V. CONCLUSION

The motion for final approval of class and representative action settlement is GRANTED. The class as defined herein is certified for settlement purposes. Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Pursuant to Rule 3.769(h) of the California Rules of Court, the Court retains jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **September 24, 2025, 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 the *cy pres* recipient; the status of any unresolved issues; and any other matters appropriate to bring to the court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

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

Calendar Line 5

Case Name:
Case No.:

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Calendar Line 6

Case Name: Florian v. Los Altos Golf & Country Club (PAGA)
Case No.: 21CV386789

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 5, 2025, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This is a representative action arising from alleged wage and hour violations. On September 16, 2021, Plaintiff Cristobal Florian ("Plaintiff") filed the operative Complaint against Defendant Los Altos Golf & Country Club ("Defendant"), asserting a sole cause of action for violation of Labor Code section 2698, et seq. (Private Attorneys General Act ("PAGA")). Plaintiff alleges that Defendant failed to pay overtime, provide meal periods, provide rest periods, pay minimum wages, pay wages upon termination, timely pay wages during employment, provide complete and accurate wage statements, keep complete and accurate payroll records, and reimburse necessary business-related expenses and costs. (Complaint, ¶¶ 53-61.)

The parties have reached a settlement of the PAGA claim. On July 12, 2024, Plaintiff filed an unopposed motion for approval of the PAGA settlement. On December 10, 2024, the court issued a tentative ruling regarding the motion, and on December 11, 2024, the court issued a minute order adopting the tentative ruling ("December 2024 Minute Order"). The court requested additional information regarding several issues, including the valuation of the PAGA claim, the scope of the release language, the general release fee to Plaintiff, and the amount of attorney fees. (December 2024 Minute Order, pp. 3-4.)

On January 27, 2025, Plaintiff's counsel submitted supplemental materials responsive to the court's requests. As discussed below, the court has reviewed Plaintiff's additional filings and will GRANT the motion for approval of the PAGA settlement.

II. LEGAL STANDARD

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other

grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S.___ [2022 U.S. LEXIS 2940].) Seventy-five percent of any penalties recovered go to the Labor and Workforce Development Agency ("LWDA"), leaving the remaining 25 percent for the employees. (*Ibid*.) PAGA is intended "to augment the limited enforcement capability of [the LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id*. at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

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

As discussed by one court:

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

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

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

Like its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72

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

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

III. DISCUSSION

A. Provisions of the Settlement

Plaintiff moves for a proposed settlement made on behalf of:

> [A]ll hourly, non-exempt employees who are currently or have been employed by Defendant in the State of California at any time during the PAGA Period [July 13, 2020 through October 31, 2022].

(Declaration of Elizabeth Parker-Fawley ("Parker-Fawley Decl."), Ex. A ("Agreement"), ¶ 3(a)(5).)

The Agreement provides that Defendant will pay a non-reversionary maximum settlement amount of $502,000. (Agreement, ¶ 3(a).) This amount includes attorney fees in the amount of $175,000 (35 percent of the maximum settlement amount), litigation costs up to $16,000, a general release fee to Plaintiff of up to $7,500, and settlement administration costs up to $6,000. (*Ibid.*) Of the remaining net settlement amount (estimated to be $298,757.59), 75 percent will be paid to the LWDA and 25 percent will be distributed to aggrieved employees based on the number of pay periods worked. (*Ibid.*) Funds from checks remaining uncashed

after the void date (180 days from mailing) will be sent to the California Controller's Unclaimed Property Fund in the names of the corresponding aggrieved employees. (*Id.* at ¶ 7(c)(4).)

In exchange for the settlement, aggrieved employees will be deemed to have released certain claims. (See Agreement, ¶ 8(a).) In its December 2024 Minute Order, the court found the PAGA release language in the Agreement to be overbroad because it defined the term "Released Parties" to include not only Defendant and related entities and persons, but also "any other individual or entity that could be liable for any of the Released Claims." (December 2024 Minute Order, p. 3.) The court instructed the parties to meet and confer about amending the PAGA release section to omit the referenced language.

On January 27, 2025, Plaintiff's counsel filed supplemental materials in support of the current motion, including the Declaration of Selena Matavosian ("Matavosian Decl.") and Amendment No. 1 Private Attorneys General Act Settlement Agreement and Release ("Amendment No. 1"). After meeting and conferring in accordance with the court's December 2024 Minute Order, the parties executed Amendment No. 1 to the Agreement and prepared a revised cover letter to accompany the individual settlement checks mailed to aggrieved employees. (Matavosian Decl., ¶¶ 4, 14-16.) Amendment No. 1 revises paragraph 8(a) of the Agreement to remove the overbroad language previously identified by the court, such the that the "Released Parties are now defined as follows:

> Defendant, including Defendant's present and former parent companies, subsidiaries, divisions, related or affiliated companies, and its shareholders, members, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and counsel in the Action (collectively, the 'Released Parties') ….

(Amendment No. 1, ¶ A.) The court finds that Amendment No. 1 adequately addresses the overbreadth issue regarding the release language previously identified by the court. As amended, the PAGA release is appropriately tailored to the factual allegations of the operative pleading. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

B. Fairness of the Settlement

Plaintiff contends the PAGA settlement is fair, reasonable, and adequate. Plaintiff indicates that the settlement resolves PAGA claims on behalf of approximately 266 aggrieved employees who collectively worked 6,200 pay periods during the PAGA Period. (Parker-

Fawley Dec., ¶ 10.) Prior to mediation, Plaintiff's counsel analyzed and reviewed Plaintiff's employment records, a sampling of aggrieved employees' time and pay data, Defendant's employee handbook, procedures, policies, and forms. (*Id*. at ¶ 15.) The parties participated in a full-day mediation with Francis J. Ortman III, Esq. and reached a settlement. (*Id.* at ¶ 14.) Plaintiff's counsel also describes the risks that continued litigation poses to the PAGA action. (*Id.* at ¶¶ 16-19.)

In its prior minute order, the court stated that Plaintiff had not met his burden of establishing that the settlement is fair, reasonable, and adequate. (December 2024 Minute Order, p. 3.) More specifically, the court explained:

> Plaintiff does not set forth his calculation of Defendant's maximum potential exposure for the PAGA claim or provide a breakdown of the potential exposure based on the underlying Labor Code violations (i.e., wage statement violations, unpaid wages, meal period violations, rest period violations, unreimbursed business expenses, etc.). Furthermore, Plaintiff does not explain how much, if at all, the PAGA claim was discounted for settlement purposes. Additionally, Plaintiff does not estimate the average individual payment amount that will be received by aggrieved employees. Prior to the continued hearing, Plaintiff shall file a supplemental declaration addressing the court's concerns regarding the calculation of the PAGA claim's maximum potential value, the discounts applied to the value of the claim, and the individual payment amounts to be received by aggrieved employees.

(*Ibid.*)

Plaintiff's counsel has since provided more information regarding the value of the PAGA claim. (Matavosian Decl., ¶¶ 5-13.) Counsel's new declaration provides details regarding Plaintiff's allegations, Defendant's arguments, and the information relied upon in reaching the settlement amount. (*Id.* at ¶¶ 6-8.) Counsel also provides an estimate of the potential value of penalties for each of the alleged Labor Code violations and explains why and how discounts were applied to the different penalty amounts. (*Id.* at ¶ 9.) Based on the numbers provided by Plaintiff's counsel, Defendant's total maximum exposure for the PAGA claim is approximately $10,017,778.20. Thus, the gross settlement amount of $502,000 represents approximately 5.01 percent of the maximum potential value of the PAGA claim. This percentage recovery is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases

indicating that a general range of 5 to 35 percent of the maximum potential exposure is reasonable].) Plaintiff's counsel also now states that the estimated average individual settlement share is $271.63. (Matavosian Decl., ¶ 14.)

The court has reviewed the supplemental materials provided by Plaintiff in response to the court's concerns regarding the fairness of the settlement and finds that Plaintiff has sufficiently addressed those concerns. Therefore, the court finds the terms of the settlement to be fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

C. Service Award, Attorneys' Fees and Costs

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

In its prior minute order, the court stated that Plaintiff's declaration in support of the general release fee did not clearly state the total amount of time that he spent in connection with this action. (December 2024 Minute Order, p. 4.) The court also observed that Plaintiff did not state that he possesses any claims beyond those possessed by all other aggrieved employees. (*Ibid.*) According to court records, Plaintiff has not filed a supplemental declaration in support of the general release fee, as instructed by the court. Plaintiff's counsel addressed the general release fee in her additional declaration submitted in support of the motion. (Matavosian Decl., ¶¶ 17-19.) Counsel asserts that Plaintiff already described in his original declaration that he spent 47 hours of his time on this action. (*Id.* at ¶ 18.) Nevertheless, Plaintiff's declaration provides no total amount of hours he spent on this action, and it is unclear whether the numbers he does provide are potentially overlapping and duplicative. (See Declaration of Cristobal Florian, ¶¶ 2-5.) In his initial declaration, Plaintiff states,

> I have spent over 15 hours communicating with my attorneys regarding the case and fulfilling my responsibilities as a PAGA representative which included gathering documents concerning my employment with Defendant, reviewing documents with my attorneys and answering their questions, providing

> information regarding the duties of hourly, non-exempt employees, and helping develop strategy as to what documents and information to obtain from Defendant.

(*Id.* at ¶ 3.) Thus, while Plaintiff mentions other numbers in his declaration, the court interprets Plaintiff statement at paragraph 3 of his declaration to mean that he spent a total of approximately 15 hours working on this case. The court asked Plaintiff to provide some clarity regarding the total number of hours he spent on this case, and he has not. Counsel also states that Plaintiff does not possess any claims beyond those possessed by all other PAGA Members. (*Id.* at ¶ 19.)

After weighing the above considerations, the court finds that a service award to Plaintiff is justified but that the amount requested is more than the court normally approves in similar situations. Accordingly, the court approves a service award to Plaintiff in the amount of $3,750.

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; see also Lab. Code § 2699(g) ["Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorneys' fees and costs."].) Plaintiff's counsel seeks attorney fees of $175,700 (35 percent of the maximum settlement fund). Prior to the initial hearing on this motion, Plaintiff's counsel provided evidence that attorneys at Lawyers for Justice, PC spent 280.10 hours of the action. (Parker-Fawley Dec., ¶¶ 21-22 & Ex. C.)

In its prior minute order, the court observed that Plaintiff's counsel provided a "blended hourly rate" (of $850 per hour) instead of indicating the number of hours worked at specific hourly rates. (December 2024 Minute Order, p. 4.) Plaintiff's counsel has now provided evidence supporting a lodestar of $293,978, based on 280.10 hours billed at rates ranging from $575 per hour to $1,495 per hour. (Matavosian Decl., ¶¶ 21-22.) Counsel provides a breakdown of this amount by the individual attorneys and their respective experience and billing rates. (*Ibid*.) The court finds that the new information is sufficient to support the claimed lodestar crosscheck figure, which results in a negative multiplier. The benefits achieved by the settlement justify an award of attorney fees to counsel. The court finds that the

requested attorney fee award is reasonable as a percentage of the common fund and approves an attorney fee award in the requested amount of $175,000.

Plaintiff's counsel requests litigation costs in the total amount of $14,012.41 and provides evidence of costs incurred in that amount. (Parker-Fawley Dec., ¶ 24 & Ex. D.) Consequently, the court finds costs in the amount of $14,012.41 to be reasonable and approves that amount.

Lastly, the Agreement provides for up to $6,000 in settlement administration expenses. The settlement administrator has submitted a declaration stating it agreed to administer the case for a fixed fee of $4,000. (Declaration of Denise Islas on Behalf of Simpluris, Inc., ¶ 9 and Ex. C.) Accordingly, the court approves settlement administration costs in the amount of $4,000.

IV. CONCLUSION

The motion for approval of PAGA settlement is GRANTED. The court sets a compliance hearing for **November 5, 2025**, at 2:30 p.m. in Department 19.

Plaintiff shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 7

Case Name: Mangold, et al. v. Bucher and Christian Consulting, Inc., et al. (Class Action/PAGA)
Case No.: 22CV397331

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 5, 2025, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This is a class and representative action arising out of alleged wage and hour violations. On April 27, 2022, plaintiffs Brandon Mangold and Antar Morrar initiated this action by filing a class action complaint against defendants Bucher and Christian Consulting, Inc., BCforward Razor LLC, Gainwell Technologies LLC, and BCforwarding LLC. On June 28, 2022, defendant Gainwell Technologies, LLC filed a notice of related cases , and the following day, defendant BCforward Razor LLC filed a notice of removal of action to federal court. On January 12, 2023, the court (Hon. Lucas) entered an order permitting plaintiffs to file a First Amended Complaint, removing plaintiff Brandon Mangold and defendants Gainwell Technologies LLC and BFforwarding LLC.

On January 12, 2023, plaintiff Antar Morrar (Plaintiff) filed the operative First Amended Complaint (FAC) against defendants Bucher and Christian Consulting, Inc. and BCforward Razor LLC (collectively, Defendants) setting forth the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse necessary business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to pay all wages due upon separation of employment; (8) violation of Business and Professions Code §§ 17200, et seq.; and (9) enforcement of Labor Code §§ 2698, et seq. [the Private Attorneys General Act (PAGA)].

On August 21, 2024, the court granted preliminary approval of the settlement. Plaintiff now moves for final approval of the settlement, and Plaintiff's motion is unopposed.

II. LEGAL STANDARD

A. Class Action

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. [Citation.]" (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 234-235 (Wershba), disapproved of on other grounds by Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260, 269.)

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.)

"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. [Citation.]" (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. [Citations.]" (Ibid., 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." [Citation.]

(Wershba, supra, 91 Cal.App.4th at p. 245.)

B. PAGA

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 380, overruled on other grounds by Viking River Cruises, Inc. v. Moriana (2022) ___U.S.___, 2022 U.S. LEXIS 2940.) Seventy-five percent of any penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the remaining 25 percent for the employees. (Ibid.) PAGA is intended "to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (Id. at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (Id. at p. 381.)

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. Court review "ensur[es] that any negotiated resolution is fair to those affected. [Citation.]" (Williams v. Superior Court (2017) 3 Cal.5th 531, 549.) "[C]lass certification is not required" in this context as in a class action. (Haralson v. U.S. Aviation Servs. Corp. (N.D. Cal. 2019) 383 F.Supp.3d 959, 971 (Haralson); Arias v. Superior Court (2009) 46 Cal.4th 969, 975.)

Similar to its review of class action settlements, the court must "determine independently whether a PAGA settlement is fair and reasonable" to protect "the interests of the public and the LWDA in the enforcement of state labor laws[.]" (Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, 76-77.) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws. [Citations.]" (Id. at p. 77; see also Haralson, supra, 383 F.Supp.3d at p. 971 ["[W]hen a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public[.]"], quoting LWDA guidance discussed in O'Connor v. Uber Technologies, Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133 (O'Connor).)

The settlement must be reasonable in light of the potential verdict value. (See O'Connor, supra, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum

even where a claim succeeds at trial. (See Viceral v. Mistras Group, Inc. (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8-9.)

III. DISCUSSION

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

> [A]ll non-exempt employees of Defendants who have provided services to Meta Platforms, Inc. (formerly Facebook) through Accenture LLP through their employment with Defendants at any time during the Class Period.

The Agreement defines the "Class Period" as May 1, 2019, through January 14, 2024, and "Defendants" as Bucher, Christian Consulting, Inc., and BFforward Razor LLC. The settlement also includes a subset of "PAGA Group Members" defined as "all non-exempt employees who have provided services to Meta Platforms, Inc. (formerly Facebook) through Accenture LLP through their employment with Defendants at any time between April 27, 2021 through January 14, 2024 ('PAGA Period')."

Under the settlement, Defendants will pay a gross settlement amount of $925,000. The gross settlement amount may be increased proportionately if the actual number of pay periods is determined to be incorrect by more than 10%. The gross settlement amount includes attorney's fees of up to 1/3 of the gross settlement amount, litigation costs not to exceed $20,000, a PAGA allocation of $65,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees as individual PAGA payments), a service award up to $10,000, and settlement administration costs not to exceed $11,500. The net settlement amount will be distributed to participating class members on a pro rata basis according to the number of workweeks they were employed by Defendants.

In exchange for the settlement, the participating class members agree to release Defendants, and related entities and persons, from all claims that were (or could have been) alleged based on the facts pleaded in the FAC occurring during the Class Period. (Agreement, § 5.01.) PAGA Group Members agree to release Defendant, and related entities and persons, from all claims for PAGA civil penalties that were alleged based on facts pleaded in the FAC and the notice Plaintiff sent to the LWDA.

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

Prior to the hearing on the motion for preliminary approval, the court issued a tentative ruling indicating that the parties' proposal to send funds from uncashed checks issued to class members to the State of California Unclaimed Property Fund did not comply with Code of Civil Procedure section 384. The parties subsequently stipulated that settlement checks remaining uncashed after 180 days of issuance would be donated to cy pres recipient Legal Aid at Work, and the court finds this to comply with Code of Civil Procedure section 384.
On September 24, 2024, the settlement administrator (Phoenix Settlement Administrators, Inc.) mailed out notices to the 646 class members. (Declaration of Jarrod Salinas Regarding Notice and Settlement Administration (Salinas Decl.), ¶ 5.) One notice was returned but redelivered after skip tracing. (Id., ¶ 6.) Ultimately, all notices were deliverable. (Id., ¶ 7.) The settlement administrator received no exclusion requests, objections, or workweek disputes. (Id., ¶¶ 8-10.) The employee's estimated average gross payout is approximately $789.73, which is then reduced by the employee's share of taxes and withholding. (Id., ¶ 13.) The average payout ranges from $2,195.79 to $11.81. (Ibid.)

Plaintiff requests an enhancement award of $10,000 and filed a supporting declaration at preliminary approval. The court noted that the requested amount was higher than typically awarded by the court in these types of cases and directed Plaintiff to file a supplemental declaration specifically describing his involvement and providing an estimate of time spent. Plaintiff's supplemental declaration states that he spent approximately 100 hours on the case searching for documents, conferring with counsel, responding to questions from counsel, conducting independent research, preparing for mediation, and reviewing the settlement agreement. (Declaration of Antar Morrar in Support of Motion for Final Approval of Class Action Settlement, ¶¶ 4-9, 14.) In light of the supplemental declaration, the court approves the requested enhancement award of $10,000.

The court also has an independent right and responsibility to review the requested attorney's 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 requests attorney's fees in the amount of $308,333.33 (1/3 of the gross settlement amount).

Aegis Law Firm's lodestar reflects 181.7 hours of work and $147,565 in fees while co-counsel Castle Law's lodestar reflects 42.25 hours of work and $ 25,350 in fees, for a combined lodestar of 223.95 hours and $172,915 in fees. (Declaration of Jessica Campbell in Support of Plaintiff's Motion for Final Approval of Class Action Settlement (Campbell Decl.), ¶¶ 36-37; Declaration of Kent L. Bradbury in Support of Plaintiff's Motion for Final Approval of Class and Representative Action Settlement (Bradbury Decl.), ¶ 17.) Billed rates range from $600 to $950. (Campbell Decl., ¶ 37; Bradbury Decl., ¶ 18.)

The lodestar of $172,915 relative to the requested fee award of $308,333.33 results in a multiplier of 1.78. This is within the range of multipliers that courts typically approve. (See Wershba, supra, 91 Cal.App.4th at p. 255 ["Multipliers can range from 2 to 4 or even higher. [Citations.]"]; Vizcaino v. Microsoft Corp. (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [observing that multipliers ranging from one to four are typical in common fund cases].) The benefits achieved by the settlement justify an award of attorney's fees to class counsel. The court finds the requested attorney's fee award to be reasonable as a percentage of the common fund and approves an attorney's fee award in the requested amount of $308,333.33. Plaintiff's counsel requests and provides evidence of litigation costs of $ 15,844.85. (Campbell Decl., ¶ 45 & Exh. 3.) These costs are approved. Settlement administration costs of $11,500 are also approved. (Salinas Decl., ¶ 16.)

IV. CONCLUSION

The motion for final approval of class and representative action settlement is GRANTED. The class as defined herein is certified for settlement purposes. Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Pursuant to Rule 3.769(h) of the California Rules of Court, the court retains jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment.
The court sets a compliance hearing for October 8, 2025, 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 the cy pres recipient, the status of any unresolved issues, and any other matters appropriate to bring to the

court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

Plaintiff's counsel shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 8

Case Name: *Oscar Cancino v. Cotton On USA, Inc.*
Case No.: 22CV405002

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Oscar Cancino and Marcos Mendiola (collectively, "Plaintiffs") allege that Defendant Cotton on USA, Inc. ("Defendant") committed various wage and hour violations.

Before the Court is Plaintiffs' motion for preliminary approval of settlement, which is unopposed. As discussed below, if satisfactory clarification is provided concerning whether the notice will be provided in languages other than English, the Court is inclined to GRANT the motion.

I. BACKGROUND

According to the allegations of the operative Second Amended Complaint ("SAC"), Plaintiffs were formerly employed in hourly paid, non-exempt positions by Defendant, an Australian fast fashion retail company that operates retail clothing stores in numerous countries, including a number in California. (SAC, ¶ 12.) Mr. Cancino was employed as a Sales Associate at the Oxnard, California store from September 2021 through September 2022, and Mr. Mendiola was employed as a Key Holder from August 2023 through December 2023. (*Id*., ¶¶ 4-5.)

Plaintiffs allege that Defendants failed to: pay all wages owed (including minimum and overtime wages); permit employees to take uninterrupted meal breaks or provide compensation in lieu of a compliant meal break; provide the rest periods to which employees were entitled, or provide compensation in lieu thereof; provide complete and accurate wage statements; maintain accurate and complete payroll records; pay all sick wages owed; timely pay wages owed; provide suitable seating for employees; and reimburse employees for necessary business expenses incurred by them.

Mr. Cancino initiated this action on October 20, 2022 and filed a first amended complaint in February 2023. Plaintiffs filed the operative SAC on January 16, 2025, pursuant to a stipulation and order so as to conform the pleadings with the scope of the settlement reached between the parties. The SAC asserts claims for: (1) unpaid overtime; (2) unpaid minimum wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) non-compliant wage statements and failure to maintain payroll records; (6) wages not timely paid upon termination; (7) failure to timely pay wages during employment; (8) unreimbursed business expenses; (9) civil penalties under PAGA; (10) unlawful business practices; and (11) unfair business practices.

Plaintiffs now seek an order: preliminarily approving the parties' class action settlement; conditionally certifying the Class for settlement purposes; ordering the proposed Class notice be sent to the settlement Class; appointing CPT Group, Inc. ("CPT") as the settlement administrator; provisionally appointing Plaintiffs as Class representatives; appointing Capstone Law APC as Class counsel; and scheduling a final approval hearing.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

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

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

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

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

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) ___U.S.___, 2022 U.S. LEXIS 2940.)

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

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

III. SETTLEMENT PROCESS

Prior to initiating the instant action, Mr. Cancino contacted Plaintiffs' counsel to discuss the factual basis for pursing claims against Defendant for various Labor Code violations. Based on interviews with Mr. Cancino, counsel determined that there were legally sufficient grounds for pursuing this action and initiated a preliminary investigation into the relevant facts which entailed, among other things, an examination of Mr. Cancino's employment records. Subsequent to the filing of this lawsuit, the parties engaged in informal discovery, through which Plaintiffs obtained a considerable amount of documents and data, including Defendant's California labor handbooks, policies, procedures, and training materials, retail employee job descriptions, and a sample of Class Members' time and wage records.

Plaintiffs' Counsel performed a thorough investigation into the claims at issue, which included: (1) determining Plaintiffs' suitability as class representatives through interviews, background investigations, and analyses of their employment files and related records; (2) evaluating all of Plaintiffs' potential representative claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing a sample of Class Members' time and pay records; (5) reviewing Defendant's California labor policies and procedures manuals; (6) researching settlements in similar cases; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation briefs; and (9) participating in the mediations.

On December 15, 2023, the parties participated in mediation with Cynthia Remmers, Esq., an experienced mediator of wage and hour actions. While the parties were unable to reach a settlement, Ms. Remmers was able to help narrow the gap between the parties' respective positions.

On June 27, 2024, the parties participated in a second mediation with Daniel Turner, Esq., an equally experienced mediator of wage and hour actions, and were eventually able to negotiate a complete settlement of Plaintiffs' claims.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement is $2,150,000. Attorney's fees of up to $716,667 (or one-third of the gross settlement), litigation costs of up to $40,000 and administrative costs not to exceed $35,000 will be paid from the gross settlement. $25,000 will be allocated to PAGA penalties, 75% of which ($18,500) will be paid to the LWDA, with the remaining 25% ($6,250) dispensed, on a pro rata basis, to "PAGA Members," who are defined as "all persons who worked for Defendant as non-exempt, hourly paid retail employees, excluding Store Managers, in California at any time during the period from November 23, 2021 to August 26, 2024." Plaintiffs will seek class representative service payments of not more than $10,000 each.

The net settlement amount- estimated to be $1,313,333- will be allocated to members of the "Class," who are defined as "all persons who worked for Defendant as non-exempt, hourly paid retail employees, excluding Store Managers, in California at any time during the period from October 20, 2018 to August 26, 2024," on a pro rata basis based on the number of weeks worked during the aforementioned period. For tax purposes, settlement payments will be allocated 25% to wages and 75% to non-wages (i.e., interest and penalties). The employer-side payroll taxes will be paid by Defendant separate from, and in addition to, the gross settlement amount. Funds associated with checks uncashed after 180 days will be transmitted pursuant to Code of Civil Procedure section 384 to the Justice Gap Fund maintained by the State Bar of California.

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

> [A]ll claims, rights, demands, liabilities, and causes of action alleged or which could reasonably have been alleged in the Action based on the same set of operative facts alleged in the operative Complaint and Plaintiffs' letters to the

> LWDA. The Released Class Claims are those that accrued during the Class Period.

PAGA Members, who consistent with the statute will not be able to opt out of the PAGA portion of the settlement, will release:

> [A]ll claims, rights, demands, liabilities, and causes of action for PAGA civil penalties under California Labor Code §§ 2698, et seq., alleged or which could reasonably have been alleged in the Action based on the same set of operative facts alleged in Plaintiffs' letters to the LWDA and the operative Complaint during the PAGA Period.

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

V. FAIRNESS OF SETTLEMENT

Based on the available data provided by Defendant, including the figure of 165,884 weeks worked in the aggregate during the class period, Plaintiffs' counsel estimated Defendant's maximum exposure for each claim to be as follows: $1,443,190.80 (off-the-clock claim); $2,886,381.60 (meal period claim); $2,886,381.60 (rest period claim); $829,420 (business expense reimbursement claim); $400,000 (wage statement claim); $766,296 (final pay claim); and $4,000,000 (PAGA penalties). The foregoing amounts total in excess of $13 million.

Plaintiffs' counsel then determined an appropriate range of recovery for settlement purposes by offsetting Defendant's maximum theoretical liability by: (a) the strength of the defenses to the merits of Plaintiffs' claims; (b) the risk of class certification being denied; (c) the risk of losing on any of a number of dispositive motions that could have been brought

between certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated all or some of Plaintiffs' claims, or barred evidence/testimony in support of the claims; (d) the risk of losing at trial; (e) the chances of a favorable verdict being reversed on appeal; (f) the difficulties attendant to collecting on a judgment; and (g) the strong likelihood that, in line with relevant appellate authority, the amount of PAGA penalties would be substantially (e.g., 80%-90%) reduced. Taking the foregoing into account, Plaintiffs' counsel determined that it would be reasonable to settle for 23% of Defendant's maximum exposure.

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

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

VI. PROPOSED SETTLEMENT CLASS

Plaintiffs request that the following settlement class be provisionally certified:

> [A]ll persons who worked for Defendant as non-exempt, hourly paid retail employees, excluding Store Managers, in California at any time during the period from October 20, 2018 to August 26, 2024.

A. Legal Standard for Certifying a Class for Settlement Purposes

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

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

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

since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

B. Ascertainable Class

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

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

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

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

Here, the estimated 6,000 Class members are readily identifiable based on Defendant's records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

C. Community of Interest

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

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

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

As for the second factor,

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

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

Like other members of the class, Plaintiffs were employed by Defendant as non-exempt, hourly-paid employees and allege that they experienced the violations at issue. The anticipated defenses are not unique to Plaintiffs, and there is no indication that Plaintiffs' interests are otherwise in conflict with those of the class.

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

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

D. Substantial Benefits of Class Certification

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

Here, there are an estimated 6,000 class members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

The content of a class notice is subject to court approval. (Cal. Rules of Court, rule 3.769(f).) "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (*Ibid.*) In determining the manner of the notice, the court must consider: "(1) The interests of the class; (2) The type of relief requested; (3) The stake of the individual class members; (4) The cost of notifying

class members; (5) The resources of the parties; (6) The possible prejudice to class members who do not receive notice; and (7) The res judicata effect on class members." (Cal. Rules of Court, rule 3.766(e).)

Plaintiffs do not indicate whether the notice will be provided in any languages other than English and whether such translation would be reasonably necessary for the Class members to understand the notice. The Court requests that class counsel be prepared to discuss, at the hearing on this matter, whether notice should be provided in languages other than English and why or why not.

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

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

Regarding appearances at the final fairness hearing, the notice shall be modified to instruct class members 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 minimize

Turning to the notice procedure, as articulated above, the parties have selected CPT as the settlement administrator. No later than thirty (30) days after preliminary approval, Defendant will deliver the Class data (i.e., Class list and related qualifying workweeks and contact information) to CPT. CPT, in turn, will mail the notice packet within ten (10) days after receiving the Class data, subsequent to updating Class members' addresses using the National Change of Address Database. Any returned notices will be re-mailed to any forwarding address provided or a better address located through a skip trace or other search. Class members who receive a re-mailed notice will have an additional 15 days to respond, or until the response deadline (i.e., 60 calendar days from the initial mailing of the notice), whichever is later. These notice procedures are appropriate and are approved.

VIII. CONCLUSION

Assuming satisfactory clarification is provided concerning the languages in which the notice will be provided, Plaintiffs' motion for preliminary approval is GRANTED.

The final approval hearing shall take place on **August 6, 2025** at 1:30 in Dept. 19. The following class is preliminarily certified for settlement purposes:

> [A]ll persons who worked for Defendant as non-exempt, hourly paid retail employees, excluding Store Managers, in California at any time during the period from October 20, 2018 to August 26, 2024.

Plaintiffs counsel to prepare the order after hearing.

- oo0oo -

Calendar Line 9

Case Name: *Oscar Perez v. DGA Services, Inc.*
Case No.: 23CV416653

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Oscar Perez and Yari Landaverde (collectively, "Plaintiffs") allege that Defendant DGA Services, Inc. dba JIT Transportation ("Defendant" or "JIT") committed various wage and hour violations.

Before the Court is Plaintiffs' motion for preliminary approval of class action and PAGA settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

IX. BACKGROUND

According to the allegations of the operative Second Amended Complaint ("SAC"), JIT offers a variety of services to its customers including, but not limited to, shipment delivery, e-commerce fulfillment (i.e., picking, packing, and shipping orders for various companies themselves or through third parties), distribution and fulfillment (i.e., warehousing, storage and distribution services via their own warehouses and those of third parties), and value added services (e.g., pick and pack, testing and revision upgrades, vendor managed inventory, label production and application, enterprise resource planning and system integration and returns management authorization). (SAC, ¶ 10.) Mr. Perez was employed as a box driver, a non-exempt, hourly paid position, for JIT from approximately May 2019 through March 2023 and Mr. Landaverde was employed in the same role from November 2021 through September 2022. (*Id.*, ¶ 11.)

Plaintiffs allege that JIT failed to: pay all wages owed (including minimum and overtime wages); permit employees to take uninterrupted meal breaks or provide compensation in lieu of a compliant meal break; provide the rest periods to which employees were entitled, or provide compensation in lieu thereof; provide complete and accurate wage statements; timely

pay wages owed; and reimburse employees for necessary business expenses incurred by them. (SAC, ¶¶ 16-29.)

Based on the foregoing, Mr. Perez initiated this action in May 2023 and filed a first amended complaint in July 2023. Plaintiffs filed the operative SAC on May 1, 2024, pursuant to a stipulation and order so as to effectuate the terms associated with the parties' settlement agreement and add Mr. Landaverde as a plaintiff. The SAC asserts the following causes of action: (1) failure to pay minimum wage; (2) failure to pay overtime; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to pay all wages due and owing at end of employment; (6) failure to provide accurate, itemized wage statements; (7) unlawful business practices; and (8) civil penalties under PAGA.

Plaintiffs now seek an order: preliminarily approving the parties' class action and PAGA settlement (the "Settlement Agreement"); ordering the proposed Class notice be sent to the settlement Class; appointing Atticus Administration, LLC ("Atticus") as the settlement administrator; provisionally appointing Plaintiffs as Class representatives; appointing Mary Hurley, P.C. as Class counsel; preliminarily approving class representative service payments to Plaintiffs; and scheduling a final approval hearing.

X. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

B. Class Action

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

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

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

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

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) ___U.S.___, 2022 U.S. LEXIS 2940.)

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

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

XI. SETTLEMENT PROVISIONS

The proposed settlement provides that this action has been settled on behalf of the following class: all current and former Truck Drivers who worked for Defendant from May 25, 2019, through the date of execution of this Agreement [(i.e., April 17, 2024)] who have not previously released their claims against Defendant and/or accepted payments in exchange for release of their claims against Defendant. (Declaration of Vladimir J. Kozina in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ("Kozina Decl."), Ex. 2 (Settlement Agreement),¶¶ 1.5, 1.12.) The settlement also provides that the action has been settled on behalf of the following aggrieved employees: any Truck Drivers employed by Defendant in California who worked for Defendant during the PAGA Period. (Settlement Agreement, ¶ 1.4.) The PAGA Period is defined as the period of time from May 27, 2022, to the date of execution of the agreement (i.e., April 17, 2024). (Settlement Agreement, ¶ 1.31.)

According to the terms of settlement, Defendant will pay a non-reversionary, gross settlement amount of $55,000. (Settlement Agreement, ¶¶ 1.22, 3.1.) The gross settlement amount includes attorney fees of $11,000 (20 percent of the gross settlement amount), litigation costs not to exceed $16,000, a service award in the total amount of $3,000 ($2,000 for Mr. Perez and $1,000 for Mr. Landaverde), settlement administration costs not to exceed $5,500, and a PAGA allocation of $1,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to Aggrieved Employees). (Settlement Agreement, ¶¶ 1.3, 1.7, 1.15, 1.22, 1.24, 1.27, 1.28, 1.34, 3.2.)

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, ¶¶ 1.23, 1.28, 3.2.) 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. (Settlement Agreement, ¶¶ 1.24, 1.34, 3.2.) Previously, the Settlement Agreement provided that checks remaining uncashed more than 180 days after mailing would be void and the funds from those checks would be distributed to the California Controller's Unclaimed Property Fund. However, as the Court explained in its minute order

issued on December 11, 2023, the parties' proposal to send funds from uncashed checks to the Controller of the State of California did 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. Consequently, the Court directed the parties to identify a new *cy pres* in compliance with Code of Civil Procedure section 384 prior to the continued hearing date on this motion. They have since done so and agreed that the funds from checks remaining uncashed more than 180 days after mailing will be distributed to Child Advocates of Silicon Valley. (See Supplemental Declaration of Vladimir J. Kozina in Support of Motion for Preliminary Approval, ¶¶ 4-5, Exhibit 1 [Amendment to Class Action and PAGA Settlement Agreement and Class Notice].) The Court finds that this meets the requirements of Code of Civil Procedure section 384.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from "all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [ ]." (Settlement Agreement, ¶¶ 1.39, 1.41, 5.2.) Aggrieved Employees agree to release Defendant, and related persons and entities, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period acts stated in the Operative Complaint, and PAGA Notices. (Settlement Agreement, ¶ 1.40, 1.41, 5.3.) Plaintiffs also agree to a general release. (Settlement Agreement, ¶ 1.41, 5.1.)

XII. FAIRNESS OF SETTLEMENT

Plaintiffs assert that the settlement is fair, reasonable, and adequate. Plaintiffs indicate that the settlement resolves claims on behalf of 68 class members, who worked a total of 5,236 workweeks. (Kozina Dec., ¶ 14.) Prior to mediation, the parties engaged in informal discovery.

Plaintiffs' counsel reviewed time and payroll data for the class, written policies, a spreadsheet with origin and destination points of deliveries made by truck drivers. (*Id*. at 7.) Plaintiffs had the payroll and time data analyzed by a damages expert. (*Id*. at ¶ 9.) The parties participated in a full-day mediation with Nikki Tolt, Esq. on March 21, 2024, and reached a settlement. (*Id*. at ¶ 9.) The net settlement about is approximately $18,500 and the average estimated payment is $272.06 for each class member. (*Id*. at ¶ 14.) Plaintiffs estimate that Defendant s maximum potential exposure for the class claims covered by the settlement agreement is $1,240,099. (*Id*. at ¶¶ 17-25, 27-28.) Plaintiffs provide a detailed breakdown of this amount by claim. (*Ibid*.) Plaintiffs also estimate that Defendant s maximum potential exposure for the PAGA claim is $1,971,900. (*Id*. at ¶¶ 26-27.) However, Plaintiffs assert that the value of the claims should be discounted because discovery revealed that on numerous occasions many of Defendant's truck drivers drove across state lines and/or picked up/delivered goods to or from major international airports that had arrived from out of state. (*Id*. at ¶¶ 7, 30- 34.) Plaintiffs state that the realistic value of the class claims is $123,530 and the realistic value of the PAGA claim is $65,730. (*Id*. at ¶¶ 30-34.)

The proposed settlement represents approximately 4 percent of the maximum potential value of Plaintiff s claims. The proposed settlement amount falls outside the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal.) Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S. Dist. LEXIS 30201, at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].) However, Plaintiffs adequately explain why they significantly discounted the value of the claims and the settlement is approximately 43 percent of the realistic exposure in this case. 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.

XIII. INCENTIVE AWARD, FEES AND COSTS

Plaintiffs request service awards in the total amount of $3,000 ($2,000 for Mr. Perez and $1,000 for Mr. Landaverde). 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.)

Plaintiffs submit declarations detailing their participation in the action. Specifically, Perez declares that he spent approximately 25 hours in connection with this litigation, including discussing the case with class counsel, reviewing and providing documents to class counsel, answering questions from class counsel, and discussing the settlement with class counsel. (Declaration of Oscar Perez in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement, ¶ 7.) Landaverde declares that he spent approximately 10 hours, discussing the case with class counsel, reviewing and providing documents to class counsel, and discussing the settlement with class counsel. (Declaration of Yuri Landaverde in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement, ¶ 7.)

Moreover, Plaintiffs undertook risk by putting their names on the case because it might impact their future employment. (See *Covillo v. Specialty's Caf.* (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].) Consequently, the court approves the service award in the total amount of $3,000.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees of $11,000 (20 percent of the gross settlement amount). Plaintiffs' 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. Plaintiffs' counsel shall also submit evidence of actual costs incurred.

XIV. PROPOSED SETTLEMENT CLASS

Plaintiffs request that the following settlement class be provisionally certified:

> All current and former Truck Drivers who worked for Defendant from May 25, 2019, through April 17, 2024 who have not previously released their claims against Defendant and/or accepted payments in exchange for release of their claims against Defendant.

E. Legal Standard for Certifying a Class for Settlement Purposes

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

Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence: (1) an ascertainable class and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-*

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

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

F. Ascertainable Class

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

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

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

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

Here, the estimated 68 Class members are readily identifiable based on Defendant's records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

G. Community of Interest

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

For the first community of interest factor, "[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v.*

Superior Court (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be good for the judicial process and to the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105 (*Lockheed Martin*).) "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks*, *supra,* 89 Cal.App.4th at p. 916.)

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

As for the second factor,

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

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

Like other members of the class, Plaintiffs were employed by Defendant as non-exempt, hourly-paid employees and allege that they experienced the violations at issue. The

anticipated defenses are not unique to Plaintiffs, and there is no indication that Plaintiffs' interests are otherwise in conflict with those of the class.

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

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

H. Substantial Benefits of Class Certification

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

Here, there are an estimated 68 class members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

XV. NOTICE

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

Here, the notice, which will be provided in English to Class members, describes the lawsuit, explains the settlement, and instructs Class members that they may: do nothing, opt out of the settlement (except for the PAGA component) or object.[7] The gross settlement amount and estimated deductions are provided, and Class members are informed of their qualifying workweeks as reflected in Defendant's records and are instructed how to dispute this information. Class members are given 45 days to dispute the amount of qualifying workweeks, request exclusion from the class or submit a written objection to the settlement. The form of notice is adequate.

[7] Plaintiffs have made the changes to the notice requested by the Court in its December 11, 2024 minute order.

Turning to the notice procedure, as articulated above, the parties have selected Atticus as the settlement administrator. No later than fifteen (15) days after preliminary approval, Defendant will deliver the Class data (i.e., Class list and related qualifying workweeks and contact information) to Atticus. Atticus, in turn, will mail the notice packet within fourteen (14) days after receiving the Class data, subsequent to updating Class members' addresses using the National Change of Address Database. Any returned notices will be re-mailed to any forwarding address provided or a better address located through a skip trace or other search. Class members who receive a re-mailed notice will have an additional 14 days to respond. These notice procedures are appropriate and are approved.

XVI. CONCLUSION

Plaintiffs' motion for preliminary approval is GRANTED.

The final approval hearing shall take place on **August 6, 2025** at 1:30 in Dept. 19. The following class is preliminarily certified for settlement purposes:

> All current and former Truck Drivers who worked for Defendant from May 25, 2019, through April 17, 2024 who have not previously released their claims against Defendant and/or accepted payments in exchange for release of their claims against Defendant.

Plaintiffs' counsel shall prepare the order.

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