SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 11/06/2025

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties email or call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of their decision to appear and of the issues to be argued**.** Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (*Local Rule* 3.43(2).)

Note: In order to minimize the risk of miscommunication, parties are to provide an **EMAIL NOTIFICATION TO THE DEPARTMENT OF THE REQUEST TO ARGUE AND SPECIFICATION OF ISSUES TO BE ARGUED**. Dept. 39's email address is: dept39@contracosta.courts.ca.gov. Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

**Submission of Orders After Hearing in Department 39 Cases**

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

**Law & Motion**

**1. 9:00 AM CASE NUMBER: C23-02216**
**CASE NAME: GEROSKA GAY VS. PREMIUM RETAIL SERVICES, INC.**
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
**FILED BY:**
****TENTATIVE RULING:****
Plaintiffs Geroska Gay, Patricia Young, Philip Jackson, and Vanessa Martinez move for preliminary approval of their class action and PAGA settlement with defendants Premium Retail Services, LLC Premium Retail Services, Inc., and Ezat Rahimi. The matter was first heard on October 2, 2025, at which the Court requested that plaintiffs provide a supplemental declaration addressing two matters and continued the matter to November 6, 2025.

A. **Background and Settlement Terms**

The original complaint was filed by Ms. Gay on June 28, 2023, raising class action claims on behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation. Ms. Young and Mr. Jackson filed class claims in the U.S. District Court for the Southern District of California on August 17, 2023 making similar allegations. On September 21, 2023, Ms. Martinez filed her class action in Santa Clara County Superior Court, making similar claims. The currently operative complaint is a First Amended and Consolidated Complaint filed in this case on May 15, 2025.

The settlement would create a gross settlement fund of $3,000,000. The class representative payment to plaintiffs would be $10,000 each. Attorney's fees would be $1,000,000 (one-third of the settlement). Litigation costs would not exceed $65,000. The settlement administrator's costs would not exceed $35,000. PAGA penalties would be $150,000, resulting in a payment of $112,500 to the LWDA and $37,500 to plaintiffs. The net amount paid directly to the class members would be about $1,710,000 (not counting the PAGA payment). The fund is non-reversionary. Based on the estimated class size of 4,206, the average net payment for each class member is approximately $415.
The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendants during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.
Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable.

Initially, the proposed settlement provided that checks undelivered or uncashed 180 days after mailing will be voided, and would be paid to the Legal Aid Association of California. (Proposed Final Order, Par. 11.) Counsel did not provide the Court with material meeting the requirements for a cy pres distribution to a non-profit entity. Under Code of Civil Procedure section 382.4, counsel must "in connection with the hearing for preliminary approval pursuant to subdivision (c) of Rule 3.769 of the California Rules of Court, notify the court if the attorney has a connection to or a relationship with a nonparty recipient of the distribution that could reasonable create the appearance or impropriety[.]" In addition, the cy pres recipient must be qualified under Code of Civil Procedure section 384(b), which requires that cy pres funds be provided "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[.]" In addition, section 384(b) imposes procedural requirements on the ascertainment and dispersal of such funds. In response to the Court's request for documentation on this subject, the parties have modified the agreement to provide that any funds from uncashed and voided checks would be transmitted to the State Controller's Unclaimed Property Fund in the name of the class member. Thus, the cy pres related documentation is no longer required.

The settlement contains release language covering all claims "that were asserted in the Actions and the Operative Complaint, and any claims which reasonably flow from the facts alleged in the Actions

and the Operative Complaint[.]" (Settlement, Par. 6.2.) Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Informal and formal written discovery was undertaken. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel attest that they have analyzed the value of the case, and that the result achieved in this litigation is fair, adequate, and reasonable. The moving papers include an estimate of the potential value of the case, broken down by each type of claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."])

By supplemental declaration counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

B. **Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn.*

*Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. **Attorney fees**

Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

The reasonableness of litigation costs and the settlement administrator's fees will be considered at final approval.

Similarly, the requested representative payment of $10,000 for each plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. **Conclusion**

As supplemented, the Court finds that the agreement is sufficiently fair, reasonable, and adequate, to justify preliminary approval. The motion for preliminary approval is granted.

Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

**2. 9:00 AM CASE NUMBER: C23-02709**
**CASE NAME: MELISSA PALMER VS. DIGGER'S DINER CONCORD, INC.**
***HEARING ON MOTION IN RE: QUASH SERVICE OF SUMMONS**
**FILED BY: DIGGER'S DINER CONCORD, INC.**
****TENTATIVE RULING:****

***If any party contests the below tentative ruling, the Court will hear oral argument on Friday November 14th, at 9:00 a.m.***

**Granted**, without opposition. On October 23, 2025, Plaintiff filed a statement indicating that she does not oppose the motion and has had defendant re-served.

**3. 9:00 AM CASE NUMBER: C23-03169**
**CASE NAME: ADAM DRAGISCH VS. TRALEE, INC.**
***HEARING ON MOTION IN RE: TO BE RELIEVED AS COUNSEL**
**FILED BY:**
****TENTATIVE RULING:****

***If any party contests the below tentative ruling, the Court will hear oral argument on Friday November 14th, at 9:00 a.m.***

**The motion is granted**. Counsel is directed to serve the order relieving counsel in compliance with CRC 3.1362(d). Counsel is not formally relieved until the order is served on the client and proof of service is filed with the court.

**4. 9:00 AM CASE NUMBER: C24-01207**
**CASE NAME: 800 WHARF ST LLC VS. AMNAV MARITIME, LLC**
**HEARING ON SUMMARY MOTION JUDGMENT**
**FILED BY: AMNAV MARITIME, LLC**
****TENTATIVE RULING:****

***If any party contests the below tentative ruling, the Court will hear oral argument on Friday November 14th, at 9:00 a.m.***

Defendant Amnav Maritime, LLC's **motion for summary judgment is denied**.

Plaintiff is suing for negligence due to damage to Plaintiff's property, known as the Sugar Dock, located at 800 Wharf Street in Richmond. Plaintiff alleges that Defendant's tugboats the *Liberty* and the *Revolution* were engaged in operations across the channel from the Sugar Dock when they caused a prop wash, which caused damage to the Sugar Dock.

Defendant filed this motion for summary judgment, arguing that the dominant mind doctrine applies here and bars Plaintiff's recovery. Defendant's notice of motion, included an alternative of summary adjudication but no separate issues were included and therefore, the Court treats this as a motion for summary judgment.

The first issue here is whether Defendant may bring this motion based upon an affirmative defense of dominant mind when that defense is not included in their answer. Plaintiff argues that Defendant has waived this defense by not including it in their answer.

"Ordinarily, an affirmative defense must be alleged in the answer or it is waived. (*Green v. Healthcare Services, Inc.* (2021) 68 Cal.App.5th 407, 415.) This does not mean, however, that the failure to plead an affirmative defense in the answer necessarily precludes the defendant from raising it in a motion for summary judgment. (*Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 75; *Cruey v. Gannett Co.* (1998) 64 Cal.App.4th 356, 367.) Instead, courts generally have allowed an affirmative defense to be asserted for the first time in a motion for summary judgment 'absent a showing of prejudice.' (*Nieto*, at p. 75.) As explained by one appellate court: 'Given the long-standing California court policy of exercising liberality in permitting amendments to pleadings

at any stage of the proceedings … we believe that a party should be permitted to introduce [a] defense … in a summary judgment procedure so long as the opposing party has adequate notice and opportunity to respond.' (*Cruey*, at p. 367, citations omitted.)" (*Atkins v. St. Cecilia Catholic School* (2023) 90 Cal.App.5th 1328, 1341; see also *Superior Dispatch, Inc. v. Insurance Corp. of New York* (2010) 181 Cal.App.4th 175, 193–194, fn. 11, *Wang v. Nibbelink* (2016) 4 Cal.App.5th 1, 10.)

Defendant did not include the dominant mind defense in their answer and did not seek leave to amend their answer before this hearing (which is the preferred method to rectify such an issue). Still, the dominant mind defense was the focus of Defendant's moving papers and Plaintiff was able to oppose the motion on the merits. In reply, Defendant's counsel represented that they included the dominant mind defense in an amended interrogatory response on November 27 2024, which was several months before the May 2025 depositions of Captains Manes and Johnson. Further, leave to amend an answer is liberally granted. Given the situation here, the Court finds that it can consider the dominant mind defense even though it was not included in Defendant's answer. It would be prudent for defendant to file an amended answer well before trial.

Dominant Mind Defense

"Where a tug is a mere servant, obeying the orders of a 'dominant' tug or other vessel, it is *not liable* for any damages caused by its actions pursuant to those orders. *The Connecticut*, 103 U.S. 710, 712, 26 L. Ed. 467 (1880) ("So far as the [servant tug] is concerned, she was clearly not to blame. She was the mere servant of the [dominant tug], and could exercise no will of her own"); *In re Walsh, et al.*, 136 F. 557, 559 (5th Cir. 1905) ("As the [servant tug] was not responsible for the proper navigation of the fleet, and in all respects complied with the laws and regulations applicable to her handling and management in the premises, and in no way by her own fault contributed to the collision, she ought not to be held responsible for faults, if there were any, in the navigation…."); *Moran Towing & Transp. Co. v. Empresa Hondurena De V.*, 194 F.2d 629, 632 n.3 (5th Cir. 1952) (collecting cases)." (*In re McAllister Towing & Transp. Co.* (E.D.Pa. Sep. 8, 2004, No. 02-858) 2004 U.S.Dist.LEXIS 18156, at *23-24.)

"An assist tug may be exonerated from liability provided the tug obeyed all orders and was not guilty of negligence, either in the manner of executing the orders or by participating in an obviously dangerous maneuver. *Marathon Pipe Line Co. v. Drilling Rig Rowan/Odessa*, 527 F. Supp. 824, 834 (E.D. La. 1981), *aff'd*, 699 F.2d 240 (5th Cir. 1983) (citing *Dow Chemical Co. v. Tug THOMAS ALLEN*, 349 F. Supp. 1354 (E.D. La. 1972))." (*Archer Daniels Midland v. M/T Am. Liberty* (E.D.La. 2021) 545 F. Supp. 3d 390, 410.)

Thus, in order to show that the dominant mind defense applies, Defendant must show that its tugboat was obeying all orders and was not guilty of negligence at the time of the incident.

Here, the undisputed facts show that on September 1, 2020, the tank ship *Panagia Thalassini* (the Tanker) was to dock at the IMTT Terminal, which is located in the Santa Fe Channel across from the Sugar Dock. The Tanker was under the control of Captain Mike Manes, a licensed San Francisco Bar Pilot (called unit M). Two tugboats are used every time Manes docks a ship in the Santa Fe Channel. Defendant AmNav's tugboats the *Liberty* and the *Revolution* were assigned to assist the Tanker. Captain Johnson was the master of the *Liberty* that day. While the tugs were assisting in docking the Tanker, some prop wash occurred that allegedly caused damage to the Sugar Dock.

Defendants presented testimony from Captain Manes and Captain Carl Johnson, along with a few exhibits including the log from the *Liberty*.

The *Liberty*'s Log shows the following for 10:15a.m. on September 1, 2020:

> ASSIST PANAGIA THALASSINI STRM TO RCH 17 W/ REV & UNIT "M"
> AT 1127 APPROACHING BERTH DERELICT VESSELS AT SUGAR DOCK
> CALLED ON 13. UNIDENTIFIED PARTY RELAYED THAT WASH HAD
> PUSHED A BARGE INTO DOCK. ON APPROACH WITH ORDERS FROM M
> PUSHED 10 SECONDS HALF, APROX 5 MINS EASY, THEN STRONG DEAD
> FOR REMAINDER OF TIE UP. NO DAMAGE SEEN

According to the testimony of Captains Manes and Johnson, this log means that the tugboat *Liberty* was called to assist *Panagia Thalassini* to get to Richmond 17 (also known as IMTT) with the tugboat *Revolution*. The Bar Pilot was Captain Manes (known as Unit M). There was a call on Channel 13 that prop wash had pushed a barge into the Sugar Dock. Following orders by Unit M, the *Liberty* pushed for 10 seconds at half, 5 minutes at easy and then strong dead for the remainder of the tie up. (Manes depo. 30:16-34:11; C. Johnson depo. 26:7-28:10, 30:5-33:6, 36:2-24.) Both Captains testified that strong dead is a speed between easy and dead strong. (Manes depo. 28:24-29:8; C. Johnson depo. 22:6-13.) Further, both Captains watched a video of the incident and testified that the prop wash looked to be dead or strong dead. (Manes depo. 30:3-8, C. Johnson depo. 37:10-22.)

Manes also explained that he heard people yelling to stop pushing on Channel 13, but it was not possible to stop because the Tanker was not secured to the dock and there were line handlers tying the ship up. (Manes depo. 33:2-10.) Similarly, C. Johnson explained that the Liberty could not stop when requested because that would countermand the order given to him by Manes and that means he would be effectively taking control of the Tanker, which he was not in a position to do. (C. depo. Johnson 33:7-23.)

Further, C. Johnson explained that he did not have much discretion in following Manes' orders and that Manes gives the orders on the amount of speed to use. (C. Johnson depo. 14:10-15:1, 21:24-22:6, 22:14-20, 39:18-23.) He further explains that the *Liberty* needed to be at a 90 degree angle from the hull, but that the ASD thrusters have two 360-degree propellers that can be moved and he has some ability to control the angle and direct the wash. (C. Johnson depo. 38:5-24.) Johnson did what he could to minimize prop wash on the Sugar Dock. (C. Johnson depo. 38:23-24.)

The Court finds that Defendant has met its burden of showing that the dominant mind defense applies here. The evidence shows that Captain Johnson did what he could to minimize prop wash on the Sugar Dock, but that the speeds where determined by Manes. Further, the evidence shows that Manes and Johnson agree on the speed orders that were given and used on the day the incident, thus showing that Johnson followed Manes' orders.

Plaintiff opposes this motion by arguing three substantive issues: (1) there is a conflict between testimony and the log about whether Liberty pushed strong dead or dead slow, (2) Defendant changed its practices after this incident and (3) there is a dispute about whether C. Johnson used his thruster angles negligently.

Manes testified that he and C. Johnson talked about what happened on September 1 and they

agreed that "we had pushed easy and dead slow." (Manes depo. 42:7-8.) This testimony shows that at one point in time, Manes and C. Johnson "agreed" that they went "dead slow", however, during both of their deposition testimonies they went through the logs in detail and both agreed that C. Johnson followed Manes' orders. The Court is not convinced that this one time use of "dead slow" instead of "strong dead" is sufficient to create a triable issue of material fact when the remainder of Manes testimony shows C. Johnson followed the strong dead command.

As to the argument that Defendant changed its practices, evidence of remedial or precautionary measures taken after an accident is inadmissible to prove negligence. (Evidence Code section 1151.) Further, the evidence does not support this argument. Johnson testified that he did not think the procedures changed after the incident. (C. Johnson depo. 46:10-48:24.) In opposition, Plaintiff provided a declaration from an eyewitness who works in the area and believes that the procedure for docking at the IMTT dock changed after the incident. (Adams dec.) Further, Plaintiff's owned the Sugar Dock since 2017 and this is the only time there was damage on the Sugar Dock. (Roberts dec.) Plaintiff's evidence is conjecture as to what happened.

Plaintiff has provided an expert to opine on whether Johnson acted negligently when executing the commands issued by Manes. Captain R. Russel Johnson has been working as a tug captain since 1967, has worked in all major ports on the West Coast and has trained other people to become tug captains since 1984. (R. Johnson dec. ¶2.) R. Johnson explains that the Liberty was equipped with a Z-drive, capable of a 360-degree rotation and that typically the vectoring of the z-drives is done at the tug captain's discretion. (R. Johnson dec. ¶4-5.) R. Johnson says that Manes did not provide any orders regarding the position of the *Liberty*'s Z-drives and that the video evidence showed that the *Liberty* had not vectored its wash away from the Sugar Dock. (R. Johnson dec. ¶6, 8.) Finally, R. Johnson opines that the Liberty's captain failed to exercise reasonable care. (R. Johnson dec. ¶7.)

Defendant also points to Manes' deposition testimony where he discussed different speeds and stated that in dead slow and easy the drives would be pointed straight back. (Manes depo. 27:18-28:6.) Defendant also points to C. Johnson's testimony where he explains that he tried to use different angles to direct the wash, but that the thrust had to go essentially back in order to power forward. (C. Johnson depo. 38:19-22, 72:9-10.) While Manes testified that normally the drives are pointed back, there is no evidence that Manes told C. Johnson how to point the Z-drives that day. Further, C. Johnson testified that he had some discretion in the angles of the drives and that he did his best to angle the prop wash away from the Sugar Dock. The Court finds that the testimony of Manes and C. Johnson on these points does not preclude R. Johnson's declaration.

Defendant attempts to discredit Plaintiff's expert by challenging his expertise in this particular location or in narrow waterways like the Santa Fe Channel. Further, Defendant argues that R. Johnson's opinion should not be considered because he fails to sufficiently explain the basis for his opinion or where the *Liberty*'s prop wash should have been directed. The Court finds that R. Johnson has sufficient expertise to opine on the issue here as he has been a tug captain for over 50 years and has also trained other individuals on becoming tug captains. Further, a trial court must liberally construe the evidence submitted in opposition to a summary judgment motion when ruling on both the admissibility of expert testimony and its sufficiency to create a triable issue of fact. (*Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 189.) Applying a liberal construction to R. Johnson's declaration, the Court finds that his opinion on the *Liberty* failing to act with reasonable

care is admissible. Therefore, there is a triable issue of material fact as to whether C. Johnson was negligent in executing the orders by Manes.

Evidence

The Court denies Plaintiff's request for judicial notice of the complaint and answer in this case as unnecessary. Those documents are already part of the Court's file.

The Court rules on Plaintiff's objections to evidence as follows:

1. Overruled.
2. Overruled.

The Court rules on Defendant's objections to evidence as follows:

1. Overruled.
2. Overruled.
3. Overruled.
4. Overruled.
5. Sustained. Improper expert opinion.
6. Sustained. Improper expert opinion.
7. Sustained. Improper expert opinion.

**5. 9:00 AM CASE NUMBER: C24-01377**
**CASE NAME: RAMON RODRIGUEZ VS. DISTRICT COUNCIL OF CONTRA COSTA COUNTY, SOCIETY OF ST. VINCENT DE PAUL, DIOCESE OF OAKLAND, A NONPROFIT CORPORATION**
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL SET BY THE COURTROOM.**
**FILED BY:**
****TENTATIVE RULING:****
Plaintiff Ramon Rodriguez moves for preliminary approval of his class action and PAGA settlement with defendant District Council of Contra Costa County, Society of St. Vincent De Paul, Diocese of Oakland.

A. **Background and Settlement Terms**

The original complaint was filed by Plaintiff on May 23, 2024, raising class action claims on behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation. Plaintiff filed a First Amended Complaint asserting claims under PAGA on July 26, 2024. That is the operative complaint.

The settlement would create a gross settlement fund of $175,000. The class representative payment to plaintiff would be $10,000. Attorney's fees would be $58,333.33 (one-third of the settlement). Litigation costs would not exceed $20,000. The settlement administrator's costs will not exceed $6,500. PAGA penalties would be $15,000, resulting in a payment of $11,250 to the LWDA and $3,750 to the aggrieved employees. The net amount paid directly to the class members would be about $68,916.67. The fund is non-reversionary. Based on the estimated class size of 127, the average net payment for each class member is approximately $542.

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendant during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.
Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable.

The proposed settlement provides that checks undelivered or uncashed 180 days after mailing will be voided, and the funds will be provided to the State Controller's Unclaimed Property Fund.

The settlement contains release language covering all "claims that occurred during the Class Period and were alleged, or reasonably could have been alleged, based on the facts stated in the Operative complaint[.]" (Settlement, Par. 5.2.) Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Informal written discovery was undertaken. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel attest that they have analyzed the value of the case, and that the result achieved in this litigation is fair, adequate, and reasonable. The moving papers include an estimate of the potential value of the case, broken down by each type of claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

B. **Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v.*

*Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. **Attorney fees**

Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

The reasonableness of litigation costs and the settlement administrator's fees will be considered at final approval.

Similarly, the requested representative payment of $7,500 for each plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. **Conclusion**

The Court finds that the agreement is sufficiently fair, reasonable, and adequate, to justify preliminary approval. The **motion is granted**.

Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate

to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 10% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

**6. 9:00 AM CASE NUMBER: C24-02160**
**CASE NAME: KENNETH DURHAM VS. BELL-CARTER FOODS, LLC**
***HEARING ON MOTION IN RE: ATTORNEYS' FEES, LITIGATION COSTS, AND SERVICE AWARD**
**FILED BY: DURHAM, KENNETH**
****TENTATIVE RULING:****
See line 7.

**7. 9:00 AM CASE NUMBER: C24-02160**
**CASE NAME: KENNETH DURHAM VS. BELL-CARTER FOODS, LLC**
***HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS ACTION SETTLEMENT SET BY THE COURTROOM**
**FILED BY:**
****TENTATIVE RULING***

***If any party contests the below tentative ruling, the Court will hear oral argument on Friday November 14th, at 9:00 a.m.***

Plaintiff Kenneth Durham moves for final approval of his class action settlement with defendant Bell-Carter Foods, LLC. Separately, he moves for approval of attorney's fees, costs, and a representative payment. The two motions will be considered together.

The case arises from an alleged data breach. On February 27, the Court issued an order requesting supplemental briefing on specified issues, and continued the matter to April 10, 2025. On that date, finding the supplement inadequate to addressing the matters in question, the Court again continued the motion and requested another supplement. The Court's two rulings on those dates are incorporated by reference. The second supplemental declaration was filed and the Court granted preliminary approval.

A. **Background and Settlement Terms**

The complaint alleges that on September 7, 2022, hackers breached defendant's system, obtaining confidential information concerning defendants' employees, and that defendant failed to protect the information and delayed in notifying the employees promptly, preventing them from mitigating the incident's impact on them.

The original complaint was filed on May 30, 2023, raising class action claims on behalf the affected employees. The action was removed to federal court, and partly remanded.

The proposed settlement would certify a class of all those whose information was alleged to be compromised in the incident, including those who received notice.

Class members will receive the following benefits: reimbursement of documented "extraordinary"

economic losses up to $4,500; reimbursement of documented "ordinary" losses up to $175, and up to $60 in "lost time" compensation (at a rate of $20 per hour). "Ordinary" and "extraordinary" are defined in the agreement, with "extraordinary" having nine separate requirements, each of which must be satisfied, including that the loss resulted in identity theft, fraud, or likely crime victimization. "Ordinary" losses are somewhat less demanding. Any disputes about eligible for reimbursement may be resolved by the settlement administrator.

The class will be given mail notice. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable.

The class members will be required to file a claim. Class members may object or opt out of the settlement. The class is estimated to have about 2,000 members.

Since the time of preliminary approval, notice was given as provided in the Court's preliminary approval to 2,013 class members. 3 notices were returned as undeliverable, and follow-up found 2 addresses, to which notice was remailed. (See Hughes Dec.) The required website was established. 31 people filed timely claims, equaling about 1.5% of the class members. This appears to be somewhat low, even for this type of settlement. The administrator, Stretto, Inc., is currently reviewing the validity of the claims. Three class members opted out and no class members objected.

The settlement contains release language covering all claims that arise out of "the Incident," which means the data security incident alleged to have occurred from approximately September 7, 2022 and September 13, 2022, as alleged in the class action complaints[.]" Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Informal written discovery was undertaken. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Checks that are not negotiated after 90 days will have payment stopped by the administrator. Any remaining balance after that "shall be returned to Bell-Carter."

Plaintiffs' counsel will seek, by motion, attorney's fees not to exceed $130,000. The named plaintiff seeks a service award in the amount of $3,000.

In his second supplemental declaration, Counsel states that defendant represents that no class member's unencrypted data was accessed by an unauthorized persons. He states that plaintiff has no economic damages, and that non-economic damages would be speculative. As to the estimated extent of claims, he notes that consumer class actions typically have a claims rate between 4% and 9%, and data breach settlements have tended to be in that range. Finally, he states that if the matter proceeds it will be costly and plaintiff may obtain no recovery at all.

B. **Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. **Attorney fees, litigation costs, and representative service award**

Plaintiff's counsel moves for $130,000 in attorney's fees. The basis for this amount is not stated. Often in class actions, the amount sought is a percentage of a common fund. There is no identified fund here, however. (The Declaration of Matthew Wilson states that "class counsel's fees will be paid on top of class Member relief, not out of that relief.") Plaintiff bases the fee request on Code of Civil Procedure section 1021.5, and the amount requested on a lodestar analysis. The calculated lodestar is $175,859.50, which, when applied to the $130,000 request, yields a fractional multiplier of 0.74.

As to the criteria of section 1021.5, while the benefits of the settlement are modest, they are enough to render plaintiff a "successful party." The privacy rights vindicated here concern "an important right affecting the public interest." The security enhancements adopted by defendant at least potentially benefit "a large class of persons." Given the small amount at stake for the individual plaintiff, the "financial burden of private enforcement" makes a fee award appropriate. Given the modest recovery, the fees "should not in the interest of justice be paid out of the recovery."

As to the amount of fees requested, counsel spent 261.4 hours on the matter. The hourly rates applied range from $400 to $985. The hourly rates are reasonable. Counsel also attest that they took the case on a contingency basis, which ordinarily might justify a multiplier. Given that the requested fee is less than the lodestar, the Court finds that the fee is reasonable and approves it.

Litigation costs of $7,440.92 are reasonable and are approved.

The requested representative payment of $3,000 for plaintiff is reviewed under the Criteria for

evaluation of representative payment requests discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807. Counsel attests that Mr. Durham spent 5-10 hours working on the case. They do not identify any risk to him (e.g., employment consequences, or indicate that he gave a broader release than did the class. All things considered, however, the requested $3,000 is modest and is approved.

D. **Conclusion**

All things considered, the Court finds that, given the weaknesses in plaintiff's claims, this settlement is fair, reasonable, and adequate. The motion for final approval and the motion for attorney's fees are granted. The three class members who opted out should be identified in the judgment, so that if they ever bring a claim, it can easily be ascertained that they are not bound by the settlement.

Counsel are directed to prepare an order reflecting this tentative ruling and the other findings in the previously submitted proposed order. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. With the date to be selected in consultation with the Department's clerk. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

**8. 9:00 AM CASE NUMBER: C24-03074**
**CASE NAME: NICHOLAS ROUNSAVILLE VS. STANDARD PLUMBING SUPPLY COMPANY, INC.**
***MOTION/PETITION TO COMPEL ARBITRATION OF INDIVIDUAL CLAIMS AND TO STAY REMAINING CLAIMS**
**FILED BY: STANDARD PLUMBING SUPPLY COMPANY, INC.**
****TENTATIVE RULING:****

***If any party contests the below tentative ruling, the Court will hear oral argument on Friday November 14th, at 9:00 a.m.***

**Introduction**

Before the Court is Standard Plumbing Supply Company, Inc.'s (Standard Plumbing or Defendant) Motion To Compel Plaintiff Nicholas Rounsaville's individual claims to binding arbitration and stay the representative PAGA claims in this civil action. The Motion relates to Plaintiff's Complaint for (1) Private Attorneys General Act (Lab. Code § 2698, et seq.).

Defendant moves for an order to (i) compelling arbitration of Plaintiff's individual claims; and (ii) staying this action pending completion of the individual arbitration.

Plaintiff argues that Defendant Standard Plumbing's Arbitration Agreement is unenforceable because it is unconscionable.

For the reasons described below, Defendant Standard Plumbing's Motion to Compel Arbitration of Plaintiff's individual PAGA claims are **granted**. The Parties are ordered to submit this matter to arbitration in accordance with the terms of the Arbitration Agreement. The Court orders this matter to be **stayed in full**, pending conclusion of the arbitration.

**Procedural Background**

On September 24, 2024, Plaintiff filed a notice with the Labor and Workforce Development Agency ("LWDA") alleging violations of Labor Code sections 201–204, 226(a), 226.7, and 512. (Oppo p.2: 4-6.) Plaintiff filed his complaint on November 13, 2024. Plaintiff filed the Complaint on November 13, 2024, asserting a single cause of action under PAGA for penalties arising from Defendant's labor code violation, including failure to pay all wages owed, provide compliant meal and rest periods, and furnish accurate wage statements. (Oppo p.2: 7-9.)

On April 10, 2025, Defendant requested that Plaintiff stipulate to arbitration. (Motion, p. 3, ¶ 8.) Later that day, Plaintiff declined, explaining that the arbitration agreement was unenforceable. (Ibid.) On July 10, 2025, Defendant filed its Motion.

**Factual Background**

Defendant Standard Plumbing Supply Company, Inc. ("Standard Plumbing Supply") is a Utah corporation with its principal place of business in Sandy, Utah. Standard Plumbing Supply conducts business in numerous counties throughout the State of California, including in Contra Costa County. (Complaint ¶ 2.) This action arises out of Defendant's numerous violations of California labor laws during Plaintiff's employment. As outlined in Plaintiff's the Private Attorneys General Act ("PAGA") Complaint ("Complaint"), Defendant failed to pay Plaintiff and other employees for all hours worked, overtime, and frequently denied their legally mandated meal and rest periods. (Oppo p. 1: 26-27, p.2: 1-2.)

**Analysis**

**Legal Standard for Motions to Compel Arbitration**

A motion to compel arbitration "is in essence a suit in equity to compel specific performance of a contract." (*Cal. Teachers Ass'n v. Governing Bd.* (1984) 161 Cal.App.3d 393, 399, citation omitted.) "A party who files a motion to compel arbitration 'bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense." (*Alvarez v. Altamed Health Services Corp.* (2021) 60 Cal.App.5th 572, 580 quoting *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) Whether or not the arbitration clause is governed by federal law, the threshold issue of whether a valid and enforceable agreement to arbitrate exists is determined under California law and procedures. (Rosenthal v. Great Western Fin. Securities Corp. (1996) 14 Cal.4th 394, 413 ("Rosenthal").)

**Defendant's Initial Burden**

For arbitration to be compelled, the Court need only determine that (1) a valid agreement to arbitrate exists; and (2) the agreement to arbitrate encompasses the dispute at issue. (*Howsam v. Dean Witter Reynolds* (2002) 537 U.S. 79, 84.)

Here, Defendant Standard Plumbing provides a copy of the Contract, which contains the Arbitration Provision. Plaintiff does not dispute that this is a copy of the Contract or the Arbitration Agreement. (See Arbitration Agreement, Ex. B, at 40-41.) Defendant asserts that the scope of the Arbitration

Agreement Plaintiff signed was, "to arbitrate all employment disputes" between Rounsaville and Standard. (Handbook Acknowledgement, Ex. "A," at 2.) Plaintiff does not dispute the scope of the Arbitration Agreement.

Defendant Standard Plumbing has met its initial burden to establish the existence of the Arbitration Agreement. Accordingly, the burden now shifts to Plaintiff to present facts showing why it should not be enforced.

**Unconscionability**

The "unconscionability doctrine 'has both a procedural and a substantive element.'" (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 125.) "The procedural element addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power. Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided.'" (*Ibid.* quoting *Pinnacle, supra*, 55 Cal.4th at 246.)

"Both procedural and substantive unconscionability must be shown for the defense to be established, but 'they need not be present in the same degree.'" (*OTO, L.L.C.* 8 Cal.5th at 125.) "Instead, they are evaluated on a 'sliding scale.'" (*Ibid.*) "[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to 'conclude that the term is unenforceable.'" (*Ibid.*) "Conversely, the more deceptive or coercive the bargaining tactics employed, the less substantive unfairness is required." (*Ibid.*)

"The ultimate issue in every case is whether the terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement." (*Ibid.* quoting *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 912.)

**Procedural Unconscionability**

Procedural unconscionability involves the components of "oppression" and "surprise." (*OTO, supra,* 8 Cal.5th at 126.) "Oppression arises from an inequality of bargaining power that results in no real negotiation and an absence of meaningful choice." (*Flores v. Transamerica HomeFirst, Inc.* (2001) 93 Cal.App.4th 846, 853.) Surprise, for purposes of procedural unconscionability, "involves the extent to which the supposedly agreed-upon terms are hidden in a prolix printed form drafted by the party seeking to enforce them." (*Ibid.*)

**Minimal Oppression**

A procedural unconscionability analysis 'begins with an inquiry into whether the contract is one of adhesion.'" (*OTO, L.L.C.*, supra, 8 Cal.5th at 126 quoting *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 113.) "An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power 'on a take-it-or-leave-it basis.'" (*Ibid.* quoting *Baltazar v. Forever 21, Inc.* 2016) 62 Cal.4th 1237, 1245.)

Plaintiff argues that the Arbitration Agreement is procedurally unconscionable under the 'oppression' analysis because it is a contract of adhesion and in support of his argument points out the lack of opportunity to amend or opt out of the unilaterally prepared Arbitration Agreement. (Oppo at p. 5:

13-24.)

Defendant points out that California courts, however, have rejected this position, recognizing the "adhesive aspect of an agreement is not dispositive." (*Serpa v. Cal. Surety Investigations, Inc*., (2013) 215 Cal.App.4th 695, 704.) "When . . . there is no other indication of oppression or surprise, 'the degree of procedural unconscionability of an adhesion agreement is low, and the agreement will be enforceable unless the degree of substantive unconscionability is high.'" (Id.)

Thus, at most, any procedural unconscionability is minimal, requiring a heightened showing of substantive unconscionability.

**Lack of Support for Surprise**

**Location of Arbitration Agreement Among the Employment Handbook**

Plaintiff argues surprise because Defendant's Arbitration Agreement was buried in Defendant Standard Plumbing's voluminous handbook hidden in a prolix printed form drafted by the party seeking to enforce them as described in *Kinney*. (Oppo at pp. 3-4.) The Court respectfully disagrees. *Kinney* describes a Handbook contained in a large three ring binder with an Arbitration Agreement with extensive complicated language in which the plaintiff was pressured to sign that same day. (*Kinney v. United Healthcare Servs.* (1999) 70 Cal.App.4th 1322, 1330.) The Arbitration Agreement did not mention specific details of the policy that unfairly one-sided to the company such as the company was not required to submit claims to arbitration, the company could modify the policy at any time without notice, and the fact the policy significantly limited the plaintiff's procedural and substantive rights. (*Id*.)

This is not the case with the instant Arbitration Agreement. The operative Arbitration Agreement is approximately three pages long with titled provisions. The size and font type are not particularly hard to read. Although there are some laws that are listed, they are not accompanied with overly complicated legal citations or jargon. There are no particularly long paragraphs or sentences.

Plaintiff did not complaint of any time restrictions, and in fact the Arbitration Agreement contained an Advice of Counsel provision advising the employee that they are free to consult an attorney regarding the Agreement. (Arbitration Agreement, Ex. B, at p. 42.)

**Failure to Attach Governing AAA Arbitration Rules**

Plaintiff further argues surprise since Defendant failed to include or attach a copy of the governing AAA Employment Arbitration Rules. Plaintiff relies on *Trivedi* where the Court upheld a trial court's finding of procedural unconscionability based on: (1) the agreement being prepared by the defendant, (2) the agreement being mandatory as a condition of employment, and (3) a copy of the AAA rules referenced in the agreement not being provided. (*Trivedi v. Curexo Technology Corp*. (2010) 189 Cal.App.4th 387, 393; see also *Samaniego v. Empire Today LLC* (2012) 205 Cal.App.4th 1138, 1146; *Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, 1406.)

Defendant cited *Peng*, in which the Court of Appeal rejected the trial court's main finding, that the arbitration agreement was unconscionable because it required the employee to follow AAA's arbitration rules, but did not attach or describe them. (*Peng v. First Republic Bank* (2013) 219

Cal.App.4th 1462, 1470.) Ultimately, the *Peng* Court found no substantive unconscionability and determined that the minor procedural unconscionability arising from the adhesive nature of the agreement and the failure to attach relevant arbitration rules was insufficient to find the agreement unenforceable. (Id. at 1474.)

While it may be true that there is some procedural unconscionability present in a situation where an Arbitration Provision is offered on a 'take-it-or-leave-it basis,' that alone does not mean an arbitration provision is unconscionable. As California courts have recognized, in the context of adhesion contracts "the inclusion of an arbitration provision is not per se unconscionable, particularly in a commercial transaction….'" (*Lagatree v. Luce, Forward, Hamilton & Scripps* (1999) 74 Cal.App.4th 1105, 1126 quoting *Macaulay v. Norlander* (1992) 12 Cal.App.4th 1, 6.) Even taken together with the contract's adhesive nature, these two features yield a low level of procedural unconscionability. (*Peng v. First Republic Bank* (2013) 219 Cal.App.4th 1462, 1472.)

When there is some degree of procedural unconscionability associated with the Arbitration Agreement, the Court is required to more closely scrutinize the substantive provisions of the agreement "'to ensure they are not manifestly unfair or one-sided.' [Citations omitted.]" (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 915 ("*Sanchez"*) [quoting *Gentry v. Superior Court* (2007) 42 Cal.4th 443, 469].)

**Substantive Unconscionability**

Substantive unconscionability may be found where the substantive provisions of the agreement are so overly harsh or unreasonably favorable to the more powerful party that they undermine its neutrality. (*Sanchez, supra,* 61 Cal.4th at 910-11, 913; *Armendariz, supra,* 24 Cal.4th at 117.) Substantive unconscionability focuses on the substantive fairness of the terms and whether the agreement is "unfairly one-sided." (*Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1071; *Baltazar v. Forever 21, Inc., supra,* 62 Cal.4th at 1248.) "The ultimate issue in every case is whether the terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement." (*Sanchez, supra,* 61 Cal.4th at 911-12.)

"A contract term is not substantively unconscionable when it merely gives one side a greater benefit; rather, the term must be 'so one-sided as to "shock the conscience." [Citation omitted.]" (*Pinnacle, supra,* 55 Cal.4th at 246 [quoting *24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1213].)

**Shortening of Statute of Limitations**

Plaintiff contends that California courts have repeatedly found shortened statute of limitations periods substantively unconscionable when they apply to claims under FEHA or the Labor Code. (Oppo at p. 7: 7-19.)

Plaintiff identified two clauses. The Agreement includes the following limitations clause, "[t]o begin an arbitration, a demand for arbitration must be made in writing and delivered… to the AAA and to the other Party within six (6) months after the date of the employment action that is the subject of the demand. The parties waive any statute of limitations period that is longer than 6 months." (Motion, Ex. B, p. 3.) This language is repeated in the Acknowledgment Form, which states, "I also understand

that I have agreed to initiate arbitration within six (6) months after the date of the employment action that is the subject of the demand and that I have waived any statute of limitations that is longer than 6 months." (Motion, Ex. A.)

In *Ramirez*, The California Supreme Court has made clear: "It is settled that parties may agree, in an arbitration agreement or otherwise, to shorten the limitations period applicable to a claim. However, the shortened limitations period must be reasonable." (*Ramirez v. Charter Communications, Inc*. (2024) 16 Cal.5th 478, 501.) The *Ramirez* Court found unconscionable a provision requiring an employee bringing a FEHA claim to submit the claim to arbitration within the deadline for filing a FEHA administrative claim (one year) rather than within the statute of limitations for FEHA lawsuit (three years). (Id. at 502-503.) In *Ellis* (cited with approval in Ramirez), the Court held that an arbitration provision requiring claims to be submitted to arbitration within six months was unconscionable and violated public policy. (*Ellis v. U.S. Security Associates* (2014) 224 Cal.App.4th 1213, 1225.)

Defendant notes that the California Court of Appeals made clear, a shortened limitations period may, when coupled with other factors, support a finding of substantive unconscionability, but "this factor, by itself," is not determinative. (*Nyulassy v. Lockheed Martin Corp*., (2004) 120 Cal.App.4th 1267, 1283 fn. 12.)

California Supreme Court held that a one-year limitations period is substantively unconscionable as applied to FEHA claims like the ones Plaintiff raises in this case. Thus, the Court is bound by that ruling and finds this provision substantively unconscionable.

**Jury Trial Waiver**

Plaintiff's contention about the jury trial waiver is a very careful and nuanced one. The Agreement states that if a court finds the agreement unenforceable, or if the parties mutually waive arbitration, "the parties agree that any court proceedings between them will be decided by a judge and not a jury." (Motion, Ex. B, p. 3.) As it reads, the jury trial waiver goes beyond a standard agreement to arbitrate and extends that waiver to circumstances where arbitration does not apply and mandates that any resulting court proceedings be tried to a judge rather than a jury.

The Court notes Defendant's stance that Defendant is not moving to enforce the jury waiver if arbitration is not enforced. (Reply at p. 8: 5-14; fn. 5.)

In *Grafton*, the California Supreme Court held pre-dispute jury waivers are unenforceable and void under both the California Constitution and Code of Civil Procedure section 631. (*Grafton Partners v. Superior Court* (2005) 36 Cal.4th 944, 967.) The Supreme Court emphasized that there is no statutory authority permitting the waiver of the right to a jury trial before a dispute arises, and any such waiver is invalid as a matter of public policy. (Id. at p. 961 ["we conclude section 631 does not authorize pre-dispute waiver of [the jury trial] right"].)

To be clear, a jury waiver is permissible to the extent that it relates to the arbitration itself. (*O'Donoghue v. Superior Court* (2013) 219 Cal.App.4th 245, 256.) This waiver goes beyond the arbitration. The fact that the jury trial waiver is so overbroad that it extends to claims that are not covered by the Arbitration Agreement is problematic and substantively unconscionable.

**Adequate Discovery**

Plaintiff argues that since the Arbitration Agreement only vaguely promises reasonable discovery unaccompanied by any specific rule or procedures is insufficient to guarantee Plaintiff's tools needed to prove his claims. (Oppo at p. 11:1-6.)

Defendant retorts that the California Supreme Court recently clarified that "parties to an arbitration clause can agree 'to something less than the full panoply of discovery provided' in the Code of Civil Procedure." (*Ramirez v. Charter Communications, Inc*. (2024) 16 Cal.5th 478, 504.) Quoting *Armendariz*, the Court then elaborated that employees are entitled only to "discovery sufficient to adequately arbitrate their statutory claim, including access to essential documents and witnesses, as determined by the arbitrator(s)." (Id. at 505; quoting *Armendariz*, supra, 24 Cal.4th at 106.) In other words, it is proper for the sufficiency of the scope discovery to be determined by the arbitrator. (Id.)

**Lack of Judicial Review**

Plaintiff posits that since the Agreement fails to mention whether the arbitrator's decision can be appealed and because the arbitrator's award is binding that the Agreement should be deemed substantively unconscionable. (Oppo at p. 12: 12-14.) The Court thinks otherwise.

The California Supreme Court in *Pearson Dental* held that where non-waivable statutory rights are involved, courts have held that some kind of review must be permitted by the arbitration agreement. (*Pearson Dental Supplies, Inc. v. Super. Ct*. (2010) 48 Cal.4th 665, 680.)

*Pearson Dental* recognizes that "limited judicial review" is available when provided by statute which in that case was the prevalent sections of the California Code of Civil Procedure. (*Pearson Dental Supplies, Inc. v. Super. Ct*. (2010) 48 Cal.4th 665, 676.) Here, as Defendant correctly pointed out, the FAA also provides such limited judicial review of arbitration awards in U.S.C §§ 10-11. (Reply at p. 9: 3-4.) In sum, statutory law for both the FAA and the CAA provides that there is a limited right to appeal an arbitrator's decision regardless of the controlling Arbitration Agreement. (See *Hall St. Associates, L.L.C. v. Mattel, Inc*. (2008) 552 U.S. 576, 590; see also *Pearson Dental Supplies, Inc. v. Super. Ct*. (2010) 48 Cal.4th 665, 676.)

*Pearson Dental* further explained that "[a]ll we hold today is that in order for such judicial review to be successfully accomplished, an arbitrator . . . must issue a written arbitration decision that will reveal . . . the essential findings and conclusions on which the award is based" so that a review may be conducted. (*Pearson Dental*, supra, 48 Cal.4th at 678.) The subject Arbitration Agreement requires a written arbitration decision. (See Motion, Ex. "B," Agreement, at p. 41.) The absence of a specific judicial review clause in the Agreement does not render this section substantively unconscionable.

**Severability**

"An unconscionable contractual term may be severed and the resulting agreement enforced, unless the agreement is permeated by an unlawful purpose, or severance would require a court to augment the agreement with additional terms." (*Penilla v. Westmont Corp.* (2016) 3 Cal.App.5th 205, 223.) Severance may be properly denied when the agreement contains more than one unconscionable provision, and "'there is no single provision a court can strike or restrict in order to remove the unconscionable taint from the agreement.'" (*Baxter v. Genworth North America Corp.* (2017) 16 Cal.App.5th 713, 738.)

Here, the Court locates two distinct unconscionable terms, each of which is severable.

First, the Court agrees that the provision limiting the statute of limitation to 6 months as identified by Plaintiff in its opposition are substantively unconscionable. "To begin an arbitration, a demand for arbitration must be made in writing and delivered… to the AAA and to the other Party within six (6) months after the date of the employment action that is the subject of the demand. The parties waive any statute of limitations period that is longer than 6 months." (Motion, Ex. B, p. 42.) The Acknowledgment Form states, "I also understand that I have agreed to initiate arbitration within six (6) months after the date of the employment action that is the subject of the demand and that I have waived any statute of limitations that is longer than 6 months." (Motion, Ex. A.) Therefore, the Court strikes these two terms from the Arbitration Agreement.

The second unconscionable term is the jury waiver provision. The Court strikes "JURY TRIAL WAIVER If a court finds this arbitration agreement unenforceable, or if the parties mutually waive arbitration, the Parties agree that any court proceedings between them will be decided by a judge and not a jury. Employee expressly waives the right to a trial by jury on all claims that are the subject of this Agreement." (Motion, Ex. B, p. 42.)

On balance, Plaintiff has failed to meet his burden to show that the Mutual Agreement to Arbitrate Claims should not be enforced due to unconscionability. Thus, Defendant's motion to compel arbitration shall be granted.

**Stay**

Under the FAA, courts must stay an action where "the issue involved in such suit or proceeding is referable to arbitration under an arbitration "agreement." (9 U.S.C § 3.) It is not clear, however, that this provision applies to proceedings in state court. (*Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468, 477, fn. 6 [noting the United States Supreme Court has not held this provision applies to state court proceedings]; *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 410 [holding "section 4 of the USAA does not apply in California court" but not deciding whether section 3 applies].)

Under the CAA, courts "may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding." (CCP § 1281.2.) In other circumstances, when a court "has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before a court of this State," the court "shall … stay the action or proceeding until an arbitration is had in accordance with the order to arbitrate." (Code of Civil Procedure § 1281.4.)

Independent of the CAA and FAA, courts have inherent authority to stay proceedings. (*Landis v. North American Co.* (1936) 299 U.S. 248, 254 ["the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants"]; *Nederlandse Erts-Tankersmaatschappij, N.V. v. Isbrandtsen Co.* (2nd Cir. 1964) 339 F.2d 440, 441 [no authority under 9 U.S.C. § 3 to stay action, but stay permitted under district court's inherent power to control its docket]; *Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489 ["Trial courts generally have the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency"].) Even assuming the CAA and FAA neither require nor authorize the court to stay the current claims, the Court would exercise its inherent authority to issue a stay.

**Conclusion**

In its Reply, Defendant relies on two decisions granting motions to compel arbitration in other cases between the same parties, each of which was entered within the last two weeks. (See Reply Ex. A-B.) The Court has not considered those decisions for a couple of reasons. First, decisions of other Superior Courts are not citable authority. (See *Santa Ana Hospital Medical Center v. Belshe* (1997) 56 Cal.App.4th 819, 831 [trial court rulings are not citable]; *In re Molz* (2005) 127 Cal.App.4th 836, 845 ["These trial decisions, of course, have no precedential authority"].) Second, if Defendant was concerned about conflicting decisions concerning the related matters, there are other ways (e.g. motion to transfer or stay) to assure that only one court is considering the same matter.

Based on the analysis above, Defendant Standard Plumbing's Motion to Compel Arbitration of Plaintiff's individual PAGA claims are **granted**. The Parties are ordered to submit this matter to arbitration in accordance with the terms of the Arbitration Agreement, except for the stricken statute of limitations and jury trial waiver provisions. The Court orders this matter to be **stayed in full**, pending conclusion of the arbitration.

**9. 9:00 AM CASE NUMBER: C25-01475**
**CASE NAME: AUDREY WELSCH VS. HAYDEN FLOREZ**
***HEARING ON MOTION IN RE: ALTERNATIVE SERVICE**
**FILED BY: WELSCH, AUDREY**
****TENTATIVE RULING***
***If any party contests the below tentative ruling, the Court will hear oral argument on Friday November 14th, at 9:00 a.m.***

The Court received Notice of Withdrawal of the Motion for Alternative Service. Thus, the **hearing is vacated**.

**10. 9:00 AM CASE NUMBER: C25-01480**
**CASE NAME: ALEXANDER HILL VS. CHASE TREVINO**
**HEARING ON DEMURRER TO: COMPLAINT**
**FILED BY: CITY OF SAN PABLO**
****TENTATIVE RULING***

***If any party contests the below tentative ruling, the Court will hear oral argument on Friday November 14th, at 9:00 a.m.***

Defendant City of San Pablo demurs to the complaint on the ground that plaintiff failed to comply with the California Government Claims Act. The declaration of counsel John Robinson establishes that the City complied with its duty to meet and confer under sections 430.41before filing the demurrer.

Plaintiff alleges that he was the victim of excessive force by a San Pablo police offer arising from a traffic stop. He alleges causes of action for "motor vehicle," general negligence," and "intentional tort."

In the form complaint filed by plaintiff, Box 9, which allows the plaintiff to plead either that a claims statute was required, but either was complied with or excused, did not have any of the boxes checked.

Under Government Code sections 945.4 and 950.6, however, the Government Claims Act applies to these types of allegations, and compliance was required.

Defendant seeks a "dismissal with prejudice," or in effect that the demurrer be sustained without leave to amend, on the ground that "the declaration of a City employee confirms that no such claim was filed." The declaration of Casey Erlenheim attests that he searched the City's records and found no such claim. This is a factual matter, which is not appropriately considered on demurrer.

Plaintiff has filed no opposition to the demurrer. Nonetheless, because the defect is of the type that may be curable through amendment of the pleading, the **demurrer is sustained with leave to amend**.

**11. 9:00 AM CASE NUMBER: C25-01854**
**CASE NAME: RONESHA KEYS VS. KWAN CHEUNG**
**HEARING IN RE: APPLICATION TO TO APPEAR AS COUNSEL PRO HAC VICE FILED RE HAYDEN BERGERON FOR PLTFS**
**FILED BY: KEYS, RONESHA**
***TENTATIVE RULING:***

***If any party contests the below tentative ruling, the Court will hear oral argument on Friday November 14th, at 9:00 a.m.***

**Granted**.

**12. 9:00 AM CASE NUMBER: C25-01854**
**CASE NAME: RONESHA KEYS VS. KWAN CHEUNG**
**HEARING IN RE: APPLICATION TO APPEAR AS COUNSEL PRO HAC VICE FILED RE J. CHANDLER LOUPE FOR PLTFS**
**FILED BY: KEYS, RONESHA**
***TENTATIVE RULING:***
**Granted.**

**13. 9:00 AM CASE NUMBER: MSC16-01118**
**CASE NAME: YUE VS. TRIGMAX SOLUTIONS**
***HEARING ON MOTION FOR DISCOVERY COMPEL ANSWER TO PLTFS REQUESTS FOR ADMISSIONS (SET 2) AND ATTEND ORAL DEPOSITION**
**FILED BY: YUE, DONGXIAO**
***TENTATIVE RULING:***

***If any party contests the below tentative ruling, the Court will hear oral argument on Friday November 14th, at 9:00 a.m.***

Before the Court is plaintiff Dongxiao Yue's motion to compel defendant Muye Liu to Answer Plaintiffs Requests for Admissions (Set Two) and Attend Oral Deposition and Bring Documents.

On October 30, the Court granted defendant Muye Liu's motion to dismiss her from the case on the ground that plaintiff failed to bring the matter to trial within the time permitted by Code of Civil

Procedure section 583.350. (The Court posted a tentative ruling on October 29, and it became the order of the Court when no one contested the tentative ruling.) Since the discovery at issue in the motion only applies to parties, and Muye Liu is no longer a party, the **motion will be taken off calendar as moot**.

**14. 9:00 AM CASE NUMBER: MSC21-01549**
**CASE NAME: HALATOA VS DIABLO COUNTRY CLUB**
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL AND PAGA SETTLEMENT**
**FILED BY: BANGAR, HARMESH**
****TENTATIVE RULING:****

Plaintiff Harmesh Bangar moves for preliminary approval of their class action and PAGA settlement with defendant Diablo Country Club.

**The matter is continued to November 20, 2025, 9:00 a.m. for submission of a declaration meeting the requirements of Code of Civil Procedure section 382.4**.

A. **Background and Settlement Terms**

The original complaint was filed by Plaintiff Sunia Halatoa on July 26, 2021, raising class action claims on behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation. Halatoa filed a separate complaint under PAGA on September 20, 2021. That is the operative complaint. Sunia Halatoa passed away while the litigation was pending, and Harmesh Bangar was substituted in as a plaintiff.

The settlement would create a gross settlement fund of $840,000. The class representative payment to plaintiff would be $7,500. Attorney's fees would be $280,000 (one-third of the settlement). Litigation costs would not exceed $20,000. The settlement administrator's costs are estimated not to exceed $10,500. PAGA penalties would be $125,000, resulting in a payment of $93,750 to the LWDA and $31,250 to the aggrieved employees. The net amount paid directly to the class members would be about $397,000. The fund is non-reversionary. Based on the estimated class size of 753, the average net payment for each class member is approximately $527.

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendant during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.
Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable.

The proposed settlement provides that checks undelivered or uncashed 180 days after mailing will be voided, and would be paid to California Rural Legal Assistance, Inc. (Settlement, Par. 5.4.) The settlement recites that "[t]he parties and their counsel do not have any interests or involvement within the governance or work of the Proposed Cy Pres Recipient." Under Code of Civil Procedure section 382.4, counsel must "in connection with the hearing for preliminary approval pursuant to

subdivision (c) of Rule 3.769 of the California Rules of Court, notify the court if the attorney has a connection to or a relationship with a nonparty recipient of the distribution that could reasonably create the appearance or impropriety[.]" The Court believes that a declaration attesting to the required facts is necessary.

In addition, the cy pres recipient must be qualified under Code of Civil Procedure section 384(b), which requires that cy pres funds be provided "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[.]" California Rural Legal Assistance meets the requirements of a recipient of cy pres funds.

The settlement contains release language covering all "causes of action and factual or legal theories that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint[.]" (Settlement, Par. 1.36.) Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Informal and formal written discovery was undertaken. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel attest that they have analyzed the value of the case, and that the result achieved in this litigation is fair, adequate, and reasonable. The moving papers include an estimate of the potential value of the case, broken down by each type of claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

B. **Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. **Attorney fees**

Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

The reasonableness of litigation costs and the settlement administrator's fees will be considered at final approval.

Similarly, the requested representative payment of $7,500 for each plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. **Conclusion**

Counsel are directed to supplement the record with a declaration attesting to the facts set forth in Code of Civil Procedure section 382.4. The **declaration is to be submitted by November 13, 2025**, and the hearing on this matter is continued to November 20, 2025. If the declaration is sufficient, the Court expects that it will find that the agreement is sufficiently fair, reasonable, and adequate, to justify preliminary approval.

If preliminary approval is granted, Counsel will be directed to prepare an order reflecting this tentative

ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

**15. 9:00 AM CASE NUMBER: MSC21-02223**
**CASE NAME: VASQUEZ VS SALKHI FAMILY**
***HEARING ON MOTION IN RE: PAGA SETTLEMENT APPROVAL**
**FILED BY:**
****TENTATIVE RULING:****

***If any party contests the below tentative ruling, the Court will hear oral argument on Friday November 14th, at 9:00 a.m.***

Jessica Vasquez, Yaneth Rodriguez Melgar, and Kahlil Martin move for approval of the settlement of their PAGA suit against defendant Salkhi Family Holdings, Inc. and Salkhi Petroleum, Inc.

The Court first heard the matter on October 2, 2025, and continued the matter to enable counsel to address the Court's concern about the provision the balance from uncashed and voided checks to the LWDA. Counsel has done so, and the Court now rules as follows.

A. **Background of the Case and Terms of Settlement**

This is a PAGA case, based on notices to the LWDA from June 5, 2021 (by Vasquez and Melgar), and March 22, 2022 (by Martin), alleging a variety of violations of the Labor Code concerning failure to provide rest and meal breaks, failure to pay for off-the-clock work, failure to reimburse business expenses, and cascading derivative violations. The original complaint was filed on November 3, 2021. The operative complaint is plaintiffs First Amended Complaint, filed July 23, 2025.

The total settlement payment is $575,000. This is composed of attorney's fees of $191,667 (one-third of the settlement), litigation costs of $9,610.68, $7,850 in costs to the settlement administrator, and $10,000 each to the three plaintiffs. The remaining amount ($335,872.32) would be a PAGA penalty, which would be apportioned 75% to the LWDA and 25% to the aggrieved employees, i.e., $251,904.24 to the LWDA and $83,968.08 to the aggrieved employees. There are an estimated 1,500 aggrieved employees

The payments from the employee share of the penalty will be distributed among the employees based on the number of pay periods each individual worked during the PAGA period.

Plaintiff's counsel attests that they engaged in extensive arms-length settlement negotiations. Informal discovery was undertaken. Counsel's declaration provides a general discussion of the strengths and weaknesses of the case, including an estimate of the value of the claims.

Plaintiff provided required notices to the LWDA of the initial claims and of the proposed settlement.

(Yaeckel Dec., par. 40.)

The settlement provides a process for mailing the notices to the aggrieved employees, who will not have to submit a claim, along with a process for following up on returned mail. Because this is a PAGA settlement, not a class action, there is no opportunity to object or opt out.

The settlement provides that the value of checks uncashed after 180 days will be turned over to the LWDA. (Settlement, par. 22.) As modified after the first hearing, such checks will be reissued and delivered to the State Controller's Office Unclaimed Property Fund to receive checks in the names of the aggrieved employees.

The settlement provides that plaintiffs and all aggrieved employees "to the extent represented in this Action by the plaintiffs as proxies of the State of California and the LWDA will be forever barred from pursuing against Defendants… any and all Settled Claims during the Settlement Period" Aggrieved employees, other than the plaintiffs will not be deemed to have released any individual wage and hour claims by virtue of this Settlement." (Settlement, Par. 23.) The Court interprets the language "to the extent represented in this Action by the plaintiffs as proxies of the State of California" to in effect, be a reference to the violations identified in the LWDA notices, which define the scope of plaintiff's authority in the matter. In addition, under recent appellate authority, limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

B. **Standards for Review of a PAGA Settlement**

Settlements in PAGA cases must be approved by the court. (Labor Code § 2699(s)(2).) The Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141

Cal.App.4th 46, 63.)

C. **Application to this settlement**

Plaintiff indicates that the settlement is fair and was evaluated by counsel based on adequate information and arms-length negotiation. Even assuming success on the merits of each claim, PAGA gives the court discretion to reduce penalties for a variety of reasons, including where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory." (Labor Code, § 2699(e)(2).) These factors make the result hard to predict. Considering counsel's analysis, the Court finds that the recovery is fair, reasonable, and adequate.

Labor Code section 2699(k)(1) provides that a prevailing employee in a PAGA action may recover attorney's fees. Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Although *Lafitte* concerns a class action, not a PAGA-only case, this Court views the use of a lodestar cross-check as appropriate here. Based on one-third of the recovery, plaintiff seeks $191,667.

Plaintiff has conducted a lodestar cross-check. This results in a lodestar of approximately $215,288.50, which yields an implied multiplier of less than 1. Martin's counsel's lodestar is $76,618.50, based on 116.5 hours, at hourly rates for attorneys ranging from $775 to $1,200. Counsel for Vasquez and Melgar had two firms. One computed a lodestar of $38,290, based on 49.7 hours at hourly rates ranging from $650 to $950. The other firm computed a lodestar of $100,380 based on 158.6 hours at hourly rates ranging from $540 per hour to $700 per hour. Without necessarily endorsing every individual component of the lodestar, no adjustment is required.

The statute does not expressly address how the 25% plaintiff's share of the penalties is to be allocated among all of the aggrieved employees. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) One court has held, however, that the entire 25% share of penalties could not be awarded to the plaintiff. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-743.) In *Moorer*, the plaintiff had a claim worth about $9,500, yet was collecting penalties of $148,000, and keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of the fact that the purpose of the action is to benefit the public, not private parties. Allocation based on pay periods is reasonable here.

Litigation costs of $9,610.68 are sought. They are reasonable and are approved.

The administrator's costs of $7,850 are reasonable and are approved.

Although this is not a class action, representative payments are sought in the amount of $10,000 for each of the three plaintiffs. These payments are reviewed under the criteria discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807. The plaintiffs attest to spending time on the case (Martin: 35 hours; Vasquez: 33-35 hours; Melgar 30-32 hours.) They also attest that by filing suit, they took a risk of being stigmatized by employers. Moreover, the agreement sets forth that these are in exchange for a general release. As noted above, the aggrieved employees are not releasing their individual wage claims from the alleged violations at issue, but the named plaintiffs are doing so. Thus, there is value to the additional release. All things considered, the Court approves the requested payments.

D. **Conclusion**

The Court finds that the settlement is fair, reasonable, and adequate, **and grants the motion to approve**.

Counsel are directed to prepare an order incorporating the provisions of this ruling.

In addition, the order should include a compliance hearing for a suitable date (after the settlement has been implemented), chosen in consultation with the Department's clerk. One week before the compliance hearing, counsel shall file a compliance statement. 5% of the attorney's fees shall be withheld by the Administrator pending the compliance hearing.

**Law & Motion**
**Add On**

**16. 9:00 AM CASE NUMBER: C23-02239**
**CASE NAME: DAWN JANOWSKI VS. J B MECHANICAL, INC.**
***HEARING ON MOTION IN RE: FOR PRELIMINARY APPROVAL (CONTINUED FROM 10.30.2025)**
**FILED BY:**
****TENTATIVE RULING:****
***If any party contests the below tentative ruling, the Court will hear oral argument on Friday November 14th, at 9:00 a.m.***

Plaintiffs Dawn Janowski and Ellen Webb-Turner move for preliminary approval of their class action and PAGA settlement with defendants JB Mechanical, Inc. and John Billheimer.

The Court first heard the matter on October 30, 2025, based on a tentative ruling that requested a supplemental declaration concerning proper requirements for payment of funds to the Cy Pres recipient. The parties submitted a declaration from counsel on that same date.

A. **Background and Settlement Terms**

The original complaint was filed by Ms. Janowski on September 6, 2023, raising class action claims on

behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation. The currently operative complaint is a Second Amended Complaint filed on May 14, 2024.

The settlement would create a gross settlement fund of $600,000. The class representative payment to plaintiffs would be $7,500 each. Attorney's fees would be $200,000 (one-third of the settlement). Litigation costs would not exceed $25,000. The settlement administrator's costs would not exceed $8,500. PAGA penalties would be $30,000, resulting in a payment of $22,500 to the LWDA and $7,500 to the aggrieved employees. The net amount paid directly to the class members would be about $321,500. The fund is non-reversionary. Based on the estimated class size of 198, the average net payment for each class member is approximately $1,623.

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendants during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable.

The settlement agreement states that uncashed checks, will be paid to a Cy Pres Recipient, i.e., Legal Aid at Work. It further states that "The Parties, Class Counsel, and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient." (Par. 4.4.3.) Counsel now have filed a declaration concerning the cy pres recipient that meets the requirements of Code of Civil Procedure section 382.4. The declaration also shows that the cy pres recipient is qualified under Code of Civil Procedure section 384(b), which requires that cy pres funds be provided "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[.]" Counsel also is required to attest that they do not have any pecuniary interest in the cy pres recipient, and must "notify the court if the attorney has a connection to or a relationship with a nonparty recipient of the distribution that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class." (CCP § 382.4.)

The settlement contains release language covering "all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint[.]" (Par. 5.2.) Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative

complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.) The language here can be interpreted as overbroad, because it is not limited to claims with the same factual predicate as those alleged in the complaint. The language only applies, however, "to the extent permissible." Thus, the Court interprets this language to interpret the limitations established in *Amaro*. In response to the Court's initial tentative ruling, counsel have clarified the scope of the release in a manner satisfactory to the Court.

Informal and formal written discovery was undertaken. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel attest that they have analyzed the value of the case, and that the result achieved in this litigation is fair, adequate, and reasonable. The moving papers include an estimate of the potential value of the case, broken down by each type of claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

B. **Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel*

*Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. **Attorney fees**

Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative payment of $7,500 for each plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. **Conclusion**

**Motion granted**. The Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify preliminary approval.

Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.