

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 22, Honorable Beth McGowen Presiding

Farris Bryant, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: (408) 882-2340

To contest a tentative ruling, you must:

1. Call (408) 808-6856 before 4:00 P.M. and leave a voicemail message containing the information described below, and
2. Notify the other side before 4:00 P.M. that you will appear at the hearing to contest the tentative ruling.

In the voicemail message, please state your case name, case number, the name of the attorney, who you represent (Plaintiff or specific defendant) and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested.

PLEASE NOTE:

- If you do not notify the Court and/or opposing side as required by California Rule of Court, rule 3.1308(a)(1) and Civil Local Rule 8(E), the Court will not hear argument and the tentative ruling will be adopted even if all parties appear at the hearing.
- Sending an email to the department or to the Complex Clerk will no longer suffice to constitute notice to the Court of the need for a hearing regarding a tentative ruling.

Court Reporters are not provided. Please consult our Court's website, www.scscourt.org, for the rules, policies, and required forms for appointment by stipulation of privately-retained court reporters.

- **Parties can appear either in person or remotely.** All remote appearances must be made through UDC, unless otherwise arranged with the Court. Please go to <https://santaclara.courts.ca.gov/online-services/remote-hearings> to find the appropriate link. Also, please note that that you must register in advance to appear remotely.
- As a reminder, state and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while in the courtroom and while appearing remotely.

DATE: October 22, 2026 TIME: 1:30 P.M.

**PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE [RULE OF COURT 3.1312](#))**

LINE #	CASE #	CASE TITLE	RULING
LINE 1	19CV342788	Mohammed v. American Airlines, Inc. (Lead Case; Consolidated Action)	Hearing: Motion for Final Approval of Settlement and fees is GRANTED as unopposed. Click on line 1 for tentative ruling
LINE 2	21CV390163	Morales v. Kenneth C. Ray, et al. (Class Action/PAGA)	Hearing: Motion to Dismiss continued to trial date of November 2, 2026. Parties to inform Court of status during readiness conference at 3.00.
LINE 3	24CV436497	Adam Salcido et al vs Google LLC	Motion: Leave to Amend is DENIED without prejudice Click on line 3 for tentative ruling
LINE 4	24CV442123	Carter v. Deliverimates, LLC (Class Action/PAGA)	Motion: Preliminary Approval of Class Action and PAGA settlement is GRANTED Click on line 4 for tentative ruling
LINE 5	25CV481408	Javier Ramos et al vs California Surety Investigations, LLC et al (Class Action)	Hearing: Petition Compel Arbitration Is GRANTED, the PAGA action is STAYED and Class Claims are DISMISSED Click on line 5 for tentative ruling
LINE 6			
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Hasim A. Mohammed v. American Airlines, Inc.*

Case No.: 19CV342788

This is a putative class and representative action under the Private Attorneys General Act (“PAGA”). Plaintiff Paula Dane alleges that Defendant American Airlines, Inc. (“Defendant”) committed various wage and hour violations, including meal and rest period violations and failure to provide employees with an option to receive paper wage statements.¹

Before the Court is Plaintiff’s motion for final approval of settlement and fees, which is unopposed. As discussed below, the Court GRANTS the motions.

I. BACKGROUND

According to the operative complaint (“Complaint”), Plaintiff worked for Defendant as non-exempt, hourly employee from January 17, 2000 through February 28, 2018. (Complaint, ¶ 19.) Plaintiff and other putative class members were frequently not provided with compliant meal and rest periods due to American’s policies of (1) not scheduling breaks as part of each work shift, (2) chronically understaffing each shift, (3) imposing too much work on employees for them to take breaks, and (4) failing to maintain formal meal and rest period policies to encourage employees to take breaks. (*Id.*, ¶¶ 20, 24.)

When a plane arrived, Plaintiff and other employees were required to interrupt their breaks to immediately perform their job duties. (Complaint, ¶¶ 21, 25.) Plaintiff and the putative class were not instructed or required to clock out for meal periods; rather, Defendant automatically deducted one hour² from their hours worked. (*Id.*, ¶ 22.) This allowed Defendant to avoid paying overtime, as Plaintiff and the putative class were seldom, if ever, provided with one-hour, uninterrupted, duty-free meal period. (*Ibid.*) As result of these meal and rest period violations, American failed to provide employees with accurate itemized wage statements reflecting all hours worked and any premiums owed. (*Id.*, ¶¶ 27-29.) Defendant also failed to provide employees who received electronic wage statements with the ability to easily access the associated information and convert the electronic statements into hard copies at no expense. (*Id.*, ¶¶ 82-83.)

Based on the foregoing allegations, Plaintiff filed the Complaint on February 19, 2019, asserting putative class claims for (1) failure to provide meal periods, (2) failure to provide rest periods, (3) failure to pay hourly and overtime wages, (4) failure to provide accurate written wage statements, (5) failure to timely pay all final wages, and (6) unfair competition.

On April 21, 2026, the Court granted Plaintiff’s motion for preliminary approval of the parties’ settlement.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

¹ On September 10, 2025, the Court (Hon. Adams) issued its order which substituted Plaintiff Dane as the class representative in this matter and plaintiff Hasim Mohammed remains a class member only in this action.

² The reference in the Complaint to one-hour meal period appears to be incorrect, as the evidence shows that the automatically deducted meal periods were half hour long.

A. Class Action

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

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

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

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

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.)

Similar to its review of class action settlements, the Court must “determine independently whether a PAGA settlement is fair and reasonable,” to protect “the interests of

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

The settlement must be reasonable in light of the potential verdict value. (See *O’Connor, supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 LX 94488, at *25-26.)

III. SETTLEMENT CLASS

For settlement purposes only, Plaintiff requests the following Class be certified:

All non-exempt, hourly ground crew employees of American Airlines in California who worked a shift in excess of five hours, and who had a half hour of meal period time deducted from their pay on each such shift, for the time period beginning February 19, 2015, through December 31, 2025.

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

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

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

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

At preliminary approval, the Court provisionally certified the above-described class, determining that Plaintiff has demonstrated by a preponderance of the evidence (1) an ascertainable class, (2) a well-defined community of interest among the class members and (3) that a class action provides substantial benefits to both litigants and the Court. Consequently, the Court will certify the class for settlement purposes as requested.

IV. TERMS AND ADMINISTRATION OF SETTLEMENT

The non-reversionary gross settlement amount is \$40,000,000. Attorneys' fees of up to 36% of the gross settlement (\$14,400,000), litigation costs of up to \$850,000, and administration costs of up to \$29,950 will be paid from the gross settlement. \$400,000 will be allocated to PAGA penalties, 75% of which (\$300,000) will be paid to the LWDA, with the remaining 25% (\$100,000) paid on a pro rata basis to "Aggrieved Employees," who are defined as "individual employed by Defendant as non-exempt employees in California at any time during February 19, 2018, through December 31, 2025." Plaintiff seeks a class representative enhancement payment in the amount of \$20,000.

The net settlement amount of \$24,400,050 will be allocated on a pro rata basis to Class members who are defined as "all non-exempt, hourly ground crew employees of American Airlines in California who worked a shift in excess of five hours, and who had half hour of meal period time deducted from their pay on each such shift, for the time period beginning February 19, 2015, through December 31, 2025." The average individual payment is \$3,253.34. For tax purposes, settlement payments will be allocated 20% to wages and 80% to non-wages. Funds associated with checks uncashed will be transmitted to the Legal Aid Foundation of Los Angeles.

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

[Alny and all actions, causes of action, suits, liabilities, claims, and demands whatsoever, whether known or unknown, from February 19, 2015, through to and including December 31, 2025, which the Settling Class, or individual members thereof, has, or had against the Releasees, or any of them, which are based on any and all claims and causes of action alleged in the Litigation, or that could have been brought based on the factual allegations therein, including any claims based on: Labor Code §§ 201, 202, 203, 204, 223, 226, 226.7, 227.3, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and/or 1199 (regardless of the theory of liability under said statute or statutes); Labor Code §§ 2698 et seq., to the extent predicated in whole or in part on alleged violations of the foregoing; Business & Professional Code) (17200-17210; any other California or local or federal law ordinance, wage order, and/or administrative regulation covering the subject matter of the Litigation; and any additional claims for penalties, wages, interest or other monies predicated on same (the "Released Claims").

Aggrieved Employees will release:

[All] claims during the PAGA Period for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the PAGA Notice, concerning alleged violations of Labor Code §§ 201, 202, 203, 204, 223, 226, 226.7, 227.3, 256, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 1199. Claims released include any and all claims for attorneys' fees, attorneys costs/expenses, fines, penalties, interest, restitution, liquidated damages, punitive damages, declaratory relief, and/or injunctive relief allegedly due and owing by virtue of the claims released in the foregoing sentences, whether based on statutory, regulatory, or common law.

As determined in the Court's order preliminarily approving the parties' settlement agreement, the foregoing releases are both appropriately tailored to the allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

The notice period has now been completed. According to the corrected declaration submitted in support of this motion of case manager Cassandra Polites with settlement administrator ILYM Group, Inc. ("ILYM"), on May 21, 2026, ILYM received from Defendant class data files containing the names, social security numbers, last known mailing addresses, and the total number of relevant workweeks worked for each of the 6,675 settlement Class members. (See Declaration of ILYM processed the addresses it had against the National Change of Address database to confirm and update this information and then mailed the notice packet to Class members on July 10, 2026 via first class mail. Around this time, an individual reached out to ILYM requesting to be added to the class list. Upon receiving confirmation from defense counsel, ILYM added the individual to the class list and promptly mailed a Notice Packet. The total number of Class members is 6,676.

As of the date of Ms. Polites' corrected declaration, October 1, 2026, 301 notices have been returned to ILYM as undeliverable, none of which have included a forwarding address. ILYM performed a skip trace to locate a current mailing address for these notices and located 297 updated addresses, to which notices were promptly re-mailed. At present, four Class notices are considered undeliverable.

The deadline to submit a request for exclusion, a challenge to the amount of work weeks listed, or an objection to the settlement was August 24, 2026. As of the date of Ms. Polites' declaration, ILYM has received no requests for exclusion, objections or disputes concerning the number of weeks worked. Consequently, there are 6,673 participating settlement class members. Based on this number, Class members will receive an average estimated gross payment of \$3,671.52, with the estimated highest payment being \$7,671.80. The average estimated PAGA payment to Aggrieved Employees is \$16.64, with the estimated highest payment being \$30.34.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiff's claims, and that the PAGA settlement is genuine, meaningful, and fair to those affected. It finds no reason to depart from these findings now, especially considering that there are no objections. Therefore, the Court finds that the settlement is fair and reasonable for the purposes of final approval.

V. ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS

As set forth above, Plaintiff's counsel seeks a fee award of \$14,400,000 or 36% of the gross settlement amount, which is not an uncommon contingency fee allocation in a wage and hour class action. Plaintiff also provides a lodestar figure of \$5,215,684.70 (\$4,666,332.00 lodestar for the Saterah Law Group and \$549,352.70 for Kiesel Law), which is based on 5,792.75 hours of work at billing rates of \$250 to \$1,280, resulting in a multiplier of 2.76, which is within the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503-504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra*, 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

"While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable by refining the choice of a percentage or by checking the percentage result against a lodestar- multiplier calculation." (*Laffitte, supra*, 1 Cal.5th at pp. 494-495.) Applying this latter approach,

[T]he percentage-based fee will typically be larger than the lodestar based fee. Assuming that one expects rough parity between the results of the percentage method and the lodestar method, the difference between the two computed fees will be attributable solely to a multiplier that has yet to be applied. Stated another way, the ratio of the percentage-based fee to the lodestar-based fee implies a multiplier, and that implied multiplier can be evaluated for reasonableness. If the implied multiplier is reasonable, then the cross-check confirms the reasonableness of the percentage-based fee; if the implied multiplier is unreasonable, the court should revisit its assumptions.

(*Laffitte, supra*, 1 Cal.5th at p. 496, quoting Walker & Horwich, *The Ethical Imperative of a Lodestar Cross-check: Judicial Misgivings About "Reasonable Percentage" Fees in Common Fund Cases* (2005) 18 Geo. J. Legal Ethics 1453, 1463.) As described by the California Supreme Court, "[i]f the multiplier calculated by means of a lodestar crosscheck 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." (*Laffitte, supra*, 1 Cal.5th at p. 505.)

Here, as the multiplier sought by Plaintiff's counsel is within the range of modifiers typically approved by courts and is supported by the percentage cross-check, the Court finds counsel's requested fee award is reasonable.

Plaintiff's counsel also seeks \$643,783.65 in litigation costs, of the \$850,000 allowed under the settlement agreement. Based on the information contained in the declaration of

Plaintiff's counsel, this amount is reasonable and is therefore approved. The \$29,950 in administrative costs are also approved.

Finally, Plaintiff's counsel requests an enhancement award of \$20,000 to Plaintiff Paula Dane. To support this request, Plaintiff submits a declaration which describes her efforts in this action. The Courts finds that they are entitled to an incentive award and the amounts requested are reasonable and are therefore approved.

VI. CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Plaintiff's motions for final approval and for fees and costs are GRANTED. The following class is certified for settlement purposes only:

All non-exempt, hourly ground crew employees of American Airlines in California who worked a shift in excess of five hours, and who had a half hour of meal period time deduced from their pay on each such shift, for the time period beginning February 19, 2015, through December 31, 2025.

Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff and the members of the class will take from their Complaint only the relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court will retain jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **June 24, 2027 at 2:30 P.M.** in Department 22. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted to the *cy pres* recipient; the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.

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Calendar Line 2

Case Name:

Case No.:

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Calendar Line 3

Case Name: *Adam Salcido, et al. v. Google LLC*

Case No.: 24CV436497

This case arises out of defendant Google LLC's ("Google" or "Defendant") alleged surreptitious interception and unlawful collection of Plaintiffs' personal and sensitive data when they were in "Incognito" mode in Google's Chrome browser, which was supposed to permit them to browse privately. According to the operative Third Amended Complaint ("TAC") there are 150 named plaintiffs, including Adam Salcido. Before the Court is Plaintiffs' motion for leave to amend, which is opposed by Google.

The motion is DENIED WITHOUT PREJUDICE to refiling with a declaration that specifically describes the changes to be made to the proposed Fourth Amended Complaint by page and line number. The parties are ordered to appear to confer with the Court regarding the timing and scope of these filings.

VII. BACKGROUND

This matter stems from *Brown v. Google LLC* (N.D. Cal., No. 4:20-cv-03664-YGR) (*Brown*), a federal class action that plaintiffs' counsel prosecuted against Google beginning in June 2020. In *Brown*, the court denied Google's motions to dismiss and summary judgment, denied certification of a damages class on December 12, 2022, and certified injunctive-relief classes. The parties later settled the injunctive-relief claims while preserving class members' ability to bring individual damages actions. (Defendant's Opposition to Motion for Leave to Amend, p. 6.) Boies Schiller Flexner LLP and Morgan & Morgan P.A ("BSF/MM") subsequently filed 1,934 complaints in this Court for more than 96,000 plaintiffs. (*Ibid.*)

The operative TAC of the instant matter alleges Google surreptitiously intercepted, collected, saved, and sold each Plaintiffs' personal and sensitive user information data while in "Incognito mode." (TAC, ¶ 1.) Whenever account holders, like Plaintiffs, visited a website that is running Google Analytics, Ad Manager, or some similar Google service, Google's software tracked them. (TAC, ¶ 6.) Once a user visited a website, the user's browser sent a "GET" request to the website to retrieve it and it read Google's code which was embedded on the website. (TAC, ¶ 7.) Google's code instructed the user's browser to send a second and concurrent transmission directly to Google, which told Google exactly what a user's browser communicated to the website. (*Ibid.*) Google took the users' personal information and associated it with preexisting account holder profiles. (TAC, ¶ 8.) The personal information that Google sold, shared, and used included the very sensitive private information Google promised it would not use for advertising purposes. (TAC, ¶ 9.)

On April 23, 2024, Plaintiffs initiated this action and, on August 5, 2024, they filed their first amended complaint. On December 5, 2024, they filed the second amended complaint, which asserted causes of action for the following: (1) invasion of privacy (Pen. Code, §§ 631-632); (2) violation of the Comprehensive Computer Data Access and Fraud Act ("CDAFA"); (3) invasion of privacy; (4) intrusion upon seclusion; (5) breach of contract; (6) violation of Unfair Competition Law; (7) negligence per se; (8) larceny/receipt of stole property; and (9) trespass to chattels. On May 1, 2025, the Court (Hon. Adams) issued its order, which sustained Google's demurrer to Plaintiffs' first cause of action with 10 days'

leave to amend; sustained as to the second cause of action without leave to amend; and overruled as to causes of action three through six and on the basis of uncertainty and misjoinder.

On May 7, 2025, Plaintiffs filed the operative TAC, which asserts causes of action for the following: (1) invasion of privacy (Pen. Code, §§ 631-632); (2) fraud; (3) invasion of privacy; (4) intrusion upon seclusion; (5) breach of contract; (6) violation of Unfair Competition Law. On November 21, 2025, Google filed its demurrer and motion to strike portions of the TAC. On January 23, 2026, the Court granted the parties' joint stipulation to which vacated the hearing set for the demurrer and motion to strike pending the resolution of the motion for leave to amend the TAC. (Joint Stipulation Regarding Plaintiffs' Motion for Leave to Amend, pp. 1:25-2:2.)

Prior Motion for Leave and Coordination with the *Luna/Massie* Matter

Plaintiffs filed a motion for leave to amend the TAC on January 29, 2026. On March 19, 2026, the Court denied the motion without prejudice based on procedural deficiencies. The Court found that Plaintiffs' counsel Barry Walker's declaration did not conform to California Rules of Court, rule 3.1324. In particular, "Walker's declaration fail[ed] to specify 'why the amendment is necessary and proper,' 'when the facts giving rise to the amended allegations were discovered,' or 'why the request for amendment was not made earlier.'" (Order (Mar. 12, 2026), p. 4:11-23.)

On May 1, 2026, Plaintiffs entered into a Joint Prosecution and Common Benefit Agreement with the Plaintiffs from another *Brown*-related matter, *Massie, et al v. Google, LLC* (the *Luna/Massie* matter)³. (Declaration of Attorney Barry Walker in Support of Motion for Leave ("Walker Decl."), ¶ 13.) "As a result of that collaboration, Plaintiffs determined that it was strategically and procedurally appropriate to harmonize the allegations, organization, and legal theories asserted in [Plaintiffs'] complaint with those being advanced in the [*Luna/Massie*] complaint so that the related actions proceed under a coordinated factual and legal framework." (Walker Decl., ¶ 13.)

On June 23, 2026, the Court approved the Joint Stipulation establishing a streamlined amendment procedure for *Luna/Massie* plaintiffs. (Walker Decl., ¶ 15.) According to Plaintiffs' counsel, Google and the *Luna/Massie* plaintiffs then agreed that this amendment procedure would "reduce burdens on the Court" and "permit the related actions to proceed efficiently and consistently with the Court's prior rulings." (*Ibid.*) On July 30, 2026, the parties in the instant matter met and conferred to discuss Plaintiffs' request for a stipulation for leave to file the Fourth Amended Complaint. (*Id.*, at ¶ 18.) According to counsel for Plaintiffs, Defendant "responded that same day but declined to stipulate, thereby necessitating this motion." (*Ibid.*)

The Instant Motion

Plaintiffs now seek to leave to amend to "align" their complaint with the operative first amended complaint filed by the *Luna/Massie* plaintiffs. (Plaintiffs' Motion for Leave to Amend, p. 2:4-10.) According to Plaintiffs, the proposed amendment "promotes consistency

³ The *Luna/Massie* matter is filed in this Court under case no. 24CV434093.

across related cases, avoids unnecessary pleading discrepancies between similarly situated plaintiffs, and allows the *Salcido* Plaintiffs to proceed on allegations and legal theories aligned with the coordinated prosecution strategy, while still preserving *Salcido* specific allegations concerning delayed discovery, fraudulent concealment, statute of limitations issues, and fraud.” (*Id.* at p. 12:8-13.)

On August 5, 2026, Plaintiffs filed the present motion for leave to file a Fourth Amended Complaint that would: (1) supplement allegations concerning statute of limitations, delayed discovery, and fraudulent concealment as to their existing California Invasion of Privacy Act (CIPA) §§ 631 and 632 claims; (2) add a federal Electronic Communications Privacy Act (ECPA) / Federal Wiretap Act cause of action; (3) add allegations supporting an alternative theory under CIPA (Pen. Code, § 638.51 [pen register]); and (4) supplement factual allegations supporting their existing fraud cause of action. (Walker Decl., ¶ 21.) Google has opposed the motion and Plaintiffs have filed a reply.

In support of this instant motion, Plaintiffs filed a proposed Fourth Amended Complaint which appears to be a redlined version of the first amended complaint in the *Luna/Massie* matter. (Walker, Decl. ¶ 9, Exh. 1.)

VIII. MOTION FOR LEAVE TO AMEND

A. Legal Standard

Section 473, subdivision (a)(1) of the Code of Civil Procedure states in pertinent part: “[t]he court may ... , in its discretion after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars” (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 760 (*Atkinson*).) In considering a motion for leave to amend, “courts are bound to apply a policy of great liberality in permitting amendments ... at any stage of the proceedings, up to and including trial.” (*Id.* at p. 761.) “[I]t is a rare case” in which a court will be justified in denying a party leave to amend his pleadings. (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.)

However, the policy of liberality in permitting amendments should be applied only where no prejudice is shown to the adverse party. (*Atkinson, supra*, 109 Cal.App.4th at p. 761.) Where an amendment would require substantial delay in the trial date and substantial additional discovery; would change not only the specific facts and causes of action pled, but the tenor and complexity of the complaint as a whole; and where no reason for the delay in seeking leave to amend is given, refusal of leave to amend is not an abuse of discretion. (See *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 486-488 [affirming denial of request to amend made during trial].) “Even if a good amendment is proposed in proper form, unwarranted delay in presenting it may – of itself – be a valid reason for denial,” which “may rest upon the element of lack of diligence in offering the amendment after knowledge of the facts, or the effect of the delay on the adverse party.” (*Roemer v. Retail Credit Co.* (1975) 44 Cal.App.3d 926, 939-940 [trial court appropriately denied request to amend answer made during trial]; see also *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345 [leave to amend properly denied where plaintiff did not seek leave to amend until after trial readiness conference, amendment would require additional discovery and might prompt a demurrer or other pretrial motion, and plaintiff’s explanation for the delay was inadequate]; *Miles v. City of Los Angeles* (2020) 56 Cal.App.5th 728, 739 [“plaintiffs

waited until four and a half years into the litigation to assert a federal claim, admittedly doing so only after the court indicated its intent to grant summary judgment”].)

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

B. Plaintiffs’ Motion for Leave Does Not Comply with Rule 3.1324

The proposed Fourth Amended Complaints seeks to “align the *Salcido* pleading” with the *Luna/Massie* first amended complaint. However, no copy of any operative “*Salcido* pleading” is found with Plaintiffs’ moving papers. Instead of a redline of the operative TAC, Plaintiffs have submitted a redline of the first amended complaint in the *Luna/Massie* matter. (Walker Decl., ¶ 9, Exh 1.) This copy of the proposed Fourth Amended Complaint appears to be *Salcido*-specific changes made to the *Luna/Massie* complaint. As noted by Google in its opposition, this “inappropriately shifts the burden to the Court to determine on its own what specific amendments the *Salcido* Plaintiffs are proposing to delete or add to their own pleading.” (Defendant’s Opp., p. 10:4-6.) The changes to the TAC are inadequately described in the Plaintiffs’ moving papers. (See *Quantum Cooking Concepts, Inc. v. LV Assocs., Inc.* (2011) 197 Cal.App.4th 927, 934 [stating that the trial court is not required to “comb the record and the law for factual and legal support that a party has failed to identify or provide”].)

The Court DENIES the motion because it fails to comply with the Rules of Court. A party moving to amend a pleading must include a copy of the proposed amended pleading with the motion. (Cal. Rules of Court, rule 3.1324(a)(1).) The party must also state in the motion what allegations are proposed to be added to, or deleted from, the previous pleading, and where, by page, paragraph, and line number, the additional allegations or deletions are located. (*Id.*, rule 3.1324(a)(2) & (a)(3).) A supporting declaration must also be filed specifying: (1) the effect of the amendment, (2) why the amendment is necessary and proper, (3) when the facts giving rise to the amended allegations were discovered, and (4) the reasons why the request for amendment was not made earlier. (*Id.*, rule 3.1324(b).) The prior motion for leave filed by Plaintiffs was rejected for failure to comply with rule 3.1324(b). As noted above, the present motion is not fully compliant with these requirements. A court may deny a motion to amend where the moving party does not comply with rule 3.1324. (See *Hataishi v. First American Home Buyers Protection Corp.* (2014) 223 Cal.App.4th 1454, 1469 [affirming court ruling denying leave to amend where no noticed motion was filed and no declaration under rule 3.1324 was provided].)

In the reply papers, Plaintiffs’ counsel requests permission to lodge a “direct comparison of the operative *Salcido* TAC against the exact proposed Fourth Amended Complaint” and a “supplemental declaration authenticating the comparison and confirming that no additional substantive amendments are introduced.” (Plaintiffs’ Reply, p. 8:7-10.) Considering the policy of liberality in permitting amendments during the pleading stage, the Court would ordinarily grant such a request. However, the supplemental declaration filed with the Reply states that the entire TAC is superseded and merely provides a red-lined version of the TAC in which the entire TAC is crossed out. This is unhelpful and does not indicate to the satisfaction of the Court what changes were made.

IX. CONCLUSION

The motion is DENIED WITHOUT PREJUDICE to refiling with a declaration that specifically described the changes to be made to the proposed Fourth Amended Complaint by page and line number. Prior to the filing of such motion, Plaintiffs are ordered to meet and confer with Defendant *after* the Court's final order on the *Luna/Massie* demurrer is issued.

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Calendar Line 4

Case Name: *David Carter v. Deliverimates, LLC, et al.*

Case Nos.: 24CV442123

This is a consolidated putative class action and representative action under the Private Attorneys General Act (“PAGA”). Plaintiff David Carter (“Plaintiff”) alleges that Defendants Deliverimates, LLC and Sruti Jilla (“Defendants”) committed various wage and hour violations.

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

X. BACKGROUND

According to the allegations of the Complaint, Plaintiff was employed by Defendants from October 2023 through February 2024 as a delivery driver in a non-exempt, hourly-paid position. (Complaint, ¶ 6.) He alleges that Defendants failed to: pay for all time worked, including minimum and overtime wages; permit employees to take uninterrupted meal breaks or provide compensation in lieu of a compliant meal break; provide the rest periods to which employees were entitled, or provide compensation in lieu thereof; provide accurate and complete wage statements; timely pay all wages owed; and reimburse employees for necessary business expenses.

Based on the foregoing, Plaintiff initiated this action on July 1, 2024, asserting the following causes of action: (1) Unfair Competition under California Business and Professions Code sections 17200 *et seq.*; (2) Minimum Wages under California Labor Code §§ 1194, 1197, and 1197.1; (3) Failure to Pay Overtime Wages under California Labor Code § 510, *et seq.*; (4) Failure to Provide Required Meal Periods under California Labor Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods under California Labor Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage Statements under California Labor Code § 226; (7) Failure to Pay Wages When Due under California Labor Code §§ 201, 202, and 203; (8) Failure to Reimburse Employees for Expenses under California Labor Code § 2802; and (9) Violation of California’s PAGA under California Labor Code § 2698.

Plaintiff now seeks an order: preliminarily approving the parties’ class action and PAGA settlement; conditionally certifying the Class for settlement purposes; approving distribution of the proposed notice of class action settlement to settlement Class; provisionally appointing Plaintiff David Carter as Class representative; appointing Jean-Claude Lapuyade of JCL Law Firm, APC, Shani Zakay of Zakay Law Group, APLC, and Kenneth Seligson of Seligson Law P.C. as Class counsel; and scheduling a final approval hearing.

XI. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

Generally, “questions whether a [class action] settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad

discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

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

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

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

B. PAGA

Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.)

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

statute to benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

The settlement must be reasonable in light of the potential verdict value. (See *O’Connor, supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 LX 94488, at *25-26.)

XII. SETTLEMENT PROCESS

Prior to the initiation of this lawsuit, Plaintiff’s counsel conducted a substantial investigation into the facts of the case and applicable law. During the course of this action, the parties engaged in formal and informal discovery, through which Plaintiff’s counsel received timecard records and payroll data of all putative Class members. Plaintiff’s counsel utilized expert analysis of the timekeeping records and payroll data to calculate Defendants’ maximum liability.

On April 14, 2025, the parties participated in mediation with Lisa Klerman, Esq., an experienced wage and hour class action and PAGA claims mediator. The mediation concluded with the parties accepting a mediator’s proposal to settle the class and PAGA claims asserted in the action.

XIII. SETTLEMENT PROVISIONS

The non-reversionary gross settlement is \$142,000. Attorneys’ fees of up to \$47,333.33 (or 33% of the gross settlement), litigation costs up to \$25,000 and administrative costs not to exceed \$8,950 will be paid from the gross settlement. \$5,000 will be allocated to PAGA penalties, 75% of which (\$3,750) will be paid to the LWDA, with the remaining 25% (\$1,250) dispensed, on a pro rata basis, to “Aggrieved Employees,” who are defined as “all non-exempt employees who are or previously were employed by Defendants and performed work in California (‘Aggrieved Employees’) during the period from April 23, 2023, through April 14, 2025 (‘PAGA Period’).” Plaintiff will seek a service award payment not to exceed \$10,000. Prior to final approval, Plaintiff will need to provide a declaration to support the service award, indicating the number of hours he spent working on this case, the tasks he completed, and other efforts he made during the litigation.

The net settlement amount, estimated to be \$45,716.67, will be allocated to members of the “Class,” who are defined as “all non-exempt employees who are or previously were employed by Defendants and performed work in California [] during the period from July 1, 2020 to April 14, 2025 []” on a pro rata basis based on the number of weeks worked during the foregoing period. For tax purposes, twenty-five percent (25%) of each individual settlement payment will be reduced by any legally mandated employee tax withholdings (*e.g.*, employee payroll taxes, etc.). According to the parties’ agreement, funds associated with checks uncashed after the void date will be deposited with California Controller’s Unclaimed Property Fund subject to Code of Civil Procedure section 384, subdivision (b).

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

[A]ny and all claims, causes of actions, demands, debts, obligations, penalties, damages or liability of any nature whatsoever, known or unknown, based on or arising out of the facts, circumstances, or primary rights that were alleged, or could have been alleged, in any version of the complaints filed in this Action (any amendments thereto), including but not limited to: (1) unfair competition in violation of California Business and Professions Code sections 17200, et seq.; (2) failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of California Labor Code sections 510, et seq.; (4) failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage orders; (5) failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage orders; (6) failure to provide accurate itemized wages statements in violation of California Labor Code section 226; (7) failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203; and (8) failure to reimburse employees for required expenses in violation of California Labor Code section 2802. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

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

[A]ll claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and any amendments thereto, the PAGA Notice, and ascertained in the course of the Action, including any and all claims for PAGA penalties involving any alleged unpaid wages, including but not limited to, failure to pay minimum wages, straight time compensation, overtime, and double time compensation; failure to timely pay regular and final wages; failure to pay the proper rate of pay for overtime, meal and rest period premiums, and sick pay; failure to provide meal and rest periods or provide premium pay; failure to provide accurate itemized wage statements; failure to keep accurate records of wages paid and hours worked; failure to reimburse business expenses; and alleged violations of Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 et seq. Aggrieved Employees will not be provided with the opportunity to opt out of this PAGA Release.

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

XIV. FAIRNESS OF SETTLEMENT

Based on the data provided by Defendants, Plaintiff's counsel and his retained expert estimated Defendants' maximum exposure for each claim to be as follows: \$143,986 (minimum wage violations); \$2,587,881 (waiting time penalties); \$233,200 (wage statement violations); \$163,234 (meal period violations); \$1,343,365 (rest period violations); \$139,377 (unpaid overtime wages); \$1,661 (unpaid sick pay); \$86,771 (unreimbursed business expenses); and \$1,208,700 (PAGA penalties).

Counsel then determined an appropriate range of recovery for settlement purposes by offsetting Defendants' maximum theoretical liability by the multiple, dependent contingencies Plaintiff would have to overcome in order to prevail on his claims, including: (i) the risk of certification being denied; (ii) the extensive resources required to proceed through trial and post-trial; (iii) the costs of extensive expert testimony; and (iv) the possibility of Defendants appealing a favorable judgment. Taking the foregoing into account, Plaintiff's counsel, for the purposes of settlement, valued Plaintiff's claims at approximately 3.02% of Defendants' *class-wide* liability exposure for damages, and approximately 2.4% of Defendants' maximum class wide liability exposure for damages *and* statutory penalties.

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

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

XV. PROPOSED SETTLEMENT CLASS

Plaintiff requests that the following settlement class be provisionally certified:

All persons employed by Deliverimates, LLC in California and classified as a non-exempt employee who worked for Deliverimates, LLC during the period from July 1, 2020 to April 14, 2025.

A. Legal Standard for Certifying a Class for Settlement Purposes

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

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

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

B. Ascertainable Class

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

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

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

“As a rule, a representative plaintiff in a class action need not introduce evidence establishing how notice of the action will be communicated to individual class members in order to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV*,

Inc. (2009) 178 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with objective characteristics and transactional parameters, and can be determined by DIRECTV’s own account records. No more is needed.”].)

Here, the estimated 724 Class members are readily identifiable based on Defendants’ records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

C. Community of Interest

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

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

Here, common legal and factual issues predominate. Plaintiff’s claims all arise from Defendants’ wage and hour practices (and others) applied to the similarly situated class members.

As for the second factor,

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

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

Like other members of the class, Plaintiff was employed by Defendants as a non-exempt, hourly-paid employee and alleges that he experienced the violations at issue. The anticipated defenses are not unique to Plaintiff, and there is no indication that Plaintiff’s interests are otherwise in conflict with those of the class.

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

Plaintiff has the same interest in maintaining this action as any Class member would have. Further, he has hired experienced counsel. Plaintiff has sufficiently demonstrated adequacy of representation.

D. Substantial Benefits of Class Certification

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

Here, there are an estimated 724 class members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

XVI. NOTICE

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

Here, the notice describes the lawsuit, explains the settlement, and instructs Class members that they may opt out of the settlement (except for the PAGA component) or object. The gross settlement amount and estimated deductions are provided, and Class members are informed of their qualifying workweeks as reflected in Defendants’ records and are instructed how to dispute this information. Class members informed that they may dispute the amount of

qualifying workweeks, request exclusion from the class or submit a written objection to the settlement. The form of notice is adequate.

Regarding appearances at the final fairness hearing, the notice shall be modified to instruct class members as follows: “Although class members may appear in person, the judge overseeing this case encourages remote appearances. Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at <https://santaclara.courts.ca.gov/online-services/remote-hearings> and should be reviewed in advance. Class members may appear remotely using the UDC link for Department 22 or by calling the toll free conference call number for Department 22.”

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

XVII. CONCLUSION

Plaintiff’s motion for preliminary approval is GRANTED.

The final approval hearing shall take place on **April 27, 2027** at 1:30 in Dept. 22. The following class is preliminarily certified for settlement purposes:

All persons employed by Deliverimates, LLC in California and classified as a non-exempt employee who worked for Deliverimates, LLC during the period from July 1, 2020 to April 14, 2025.

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Calendar Line 5

Case Name: *Javier Ramos et al v. California Surety Investigations, LLC et al*

Case No.: 25CV481408

This is a putative class action. Plaintiff Javier Ramos (“Plaintiff”) alleges that defendants California Surety Investigations, LLC (“CSI”), Western Surety Investigators, LLC (“Western”), Triton Management Services, LLC (“Triton”), and Two Jinn, Inc. (“Two Jinn”; collectively, “Defendants”) committed various wage and hour violations. Before the Court is Defendants’ motion to compel arbitration, which Plaintiff opposes. For the reasons discussed below, the Court GRANTS Defendants’ motion to compel arbitration.

Background

Plaintiff initiated this action on December 2, 2025, alleging the following causes of action: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; (8) failure to produce requested employment records; and (9) unfair business practices. Plaintiff allegedly worked for Defendants as an hourly-paid, non-exempt employee from August 2024 to October 2025. (Complaint, ¶ 7.)

Plaintiff also filed a Private Attorneys General Act (“PAGA”) Representative Action against the same Defendants in Santa Clara County Superior Court Case No. 26CV486324, which this Court ordered to be related on April 2, 2026. (See *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 752 [“the court may take judicial notice on its own volition”]; Evid. Code, § 452, subd. (d).) The PAGA action seeks a declaration that Defendants violated the Labor Code by failing to: (1) pay for all hours worked (minimum, straight time, and overtime wages); (2) provide meal periods; (3) authorize and permit rest periods; (4) pay all earned wages twice per month; (5) maintain accurate records of hours worked and meal periods; (6) timely pay final wages; (7) furnish accurate wage statements; (8) indemnify for necessary expenditures; and (9) produce requested employment records. (PAGA Complaint, p. 13:11-16.)

Defendants now move to compel arbitration, based on the Voluntary and Mutual Arbitration Agreement (the “VMAA”) and the Proprietary Information and Inventions Agreement (“PIIA”).

Legal Standard

Defendants argue that the Federal Arbitration Act (“FAA”) governs given the VMAA’s language and Plaintiff’s employment involved interstate commerce. The VMAA states, “Except as provided in this Agreement, the Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings pursuant to this Agreement. To the extent that the Federal Arbitration Act is inapplicable, the California Arbitration Act shall apply.” (Notice of Lodging [“NOL”], Ex. 1.) Plaintiff does not dispute the applicability of the FAA.

Under the FAA, the court’s role is limited to determining “(1) whether a valid agreement to arbitrate exists, and if it does (2) whether the agreement encompasses the dispute at issue.” (*Chiron Corp. v. Ortho Diagnostic Systems, Inc.* (9th Cir. 2000) 207 F.3d 1126,

1130.) To determine “whether a valid contract to arbitrate exists,” courts apply “ordinary state law principles that govern contract formation.” (*Davis v. Nordstrom, Inc.* (9th Cir. 2014) 755 F.3d 1089, 1093 [citations omitted].)

Discussion

As an initial matter, Plaintiff does not dispute that an agreement to arbitrate exists. (See *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219 [noting party seeking to compel arbitration can meet its initial burden by providing a copy of the arbitration agreement purporting to bear the parties’ signatures].) Instead, Plaintiff maintains that (1) only CSI can enforce the VMAA; and (2) the VMAA is unconscionable and therefore unenforceable.

○ Enforceability By Non-Employer Entities

Plaintiff contends that the “Non-Employer Entities” (i.e., Western, Triton, and Two Jinn), as nonsignatories, cannot enforce the VMAA, which is silent as to those entities. Defendants contend that under the doctrine of equitable estoppel, the Non-Employer Entities may enforce the VMAA.

A nonsignatory to an arbitration agreement may compel or be bound to arbitration under the agreement on several theories, including agency or estoppel. (See *Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 300.) The nonsignatory bears the burden of proof on this issue. (*Jones v. Jacobson* (2011) 195 Cal.App.4th 1, 15.)

The parties identify four published Court of Appeal decisions that have reached conflicting conclusions on the question of nonsignatory enforcement based on a joint-employer theory. In *Garcia v. Pexco* (2017) 11 Cal.App.5th 782, 785 (*Garcia*) the court held that a nonsignatory defendant could compel arbitration where the plaintiff asserted Labor Code violations against both the signatory staffing agency and the nonsignatory employer on a joint-employer theory. The *Garcia* court held that the plaintiff’s claims against the nonsignatory were rooted in his employment relationship with the signatory, and “*Garcia* cannot attempt to link Pexco to Real Time to hold it liable for alleged wage and hour claims, while at the same time arguing the arbitration provision only applies to Real Time and not Pexco.” (*Id.* at p. 788.)

In *Jarboe v. Hanlees Auto Group* (2020) 53 Cal.App.5th 539, 544 (*Jarboe*), the court declined to apply equitable estoppel where the plaintiff brought wage-and-hour claims against multiple affiliated dealerships but signed an arbitration agreement only with one dealership. The *Jarboe* court distinguished *Garcia* on evidentiary grounds, noting that the evidentiary record in *Garcia* supported the integral nature of the relationships between the parties, but in *Jarboe*, “the precise nature of the relationship between Hanlees and its affiliated dealerships is unproven in this record... Rather, the record suggests that each dealership maintained separate relationships with that dealership’s employees.” (*Id.* at p. 554.) The *Jarboe* court further noted that boilerplate allegations were insufficient to support the equitable estoppel claim. (*Ibid.*)

In *Soltero v. Precise Distribution, Inc.* (2024) 102 Cal.App.5th 887, 896 (*Soltero*), the court declined to follow *Garcia* because *Garcia* failed to explain how the Labor Code claims against the nonsignatory relied on the substantive terms of his employment agreement with the signatory. In *Soltero*, the plaintiff sued only the nonsignatory employer and deliberately chose

not to sue the signatory staffing agency. (*Id.* at p. 892.) In denying the motion to compel against the nonsignatory, the *Soltero* court rejected the equitable estoppel theory, because plaintiff was not unfairly seeking to hold the nonsignatory liable for duties under an employment agreement with an arbitration clause while simultaneously denying the application of the clause because the defendant is a non-signatory. (*Id.* at p. 897 [“*Soltero* is not trying to have it both ways because she has forgone any claims against Real Time and opted to litigate her claims in court only against Precise, which is not a party to the arbitration agreement.”].)

Finally, in the most recent appellate decision, *Gonzalez v. Nowhere Beverly Hills LLC* (2024) 107 Cal.App.5th 111, 122, 126 (*Gonzalez*), the court followed *Garcia* over *Soltero* in holding a plaintiff’s Labor Code wage-and-hour claims against the signatory and nonsignatories were intimately founded in and intertwined with the employment agreement. The *Gonzalez* observed that, “several courts have used the word ‘rely’ as shorthand for the standard that equitable estoppel applies where the plaintiff’s claims against a nonsignatory must be ‘dependent upon, or founded in and inextricably intertwined with, the underlying contractual obligations of the agreement containing the arbitration clause.’ [Citation.]” (*Id.* at p. 126.) And concluded, “[t]o apply equitable estoppel only when a complaint expressly references the agreement containing an arbitration clause would either limit application of the doctrine to contractual claims or invite tort and statutory claimants to craft complaints to avoid any mention of the agreement, as happened in this case.” (*Ibid.*)

The *Gonzalez* court also respectfully disagreed with *Jarboe*, because “an equitable estoppel analysis focuses not on the relationships of the parties but the interrelatedness of the plaintiff’s claims and any obligations arising from an agreement containing an arbitration provision. [Citations.]” (*Gonzalez, supra*, 107 Cal.App.5th at p. 125.) Furthermore, *Jarboe* required the moving defendant to prove a joint employer relationship, when it was the plaintiff’s burden to do so. (*Id.* at p. 125.) And finally, the *Jarboe* court erred according to *Gonzalez* because “the issue at this stage is not whether joint employment actually exists but in what forum that issue should be decided. For present purposes it is enough that *Gonzalez* claims joint employment while simultaneously avoiding arbitration of claims based on the same facts as and inherently inseparable from arbitrable claims against his direct employer.” (*Id.* at pp. 125-126, emphasis original.)

This Court elects to follow *Gonzalez* given its recency and the factual similarities to the present action. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455-456 [noting superior courts have the discretion to choose between decisions to follow when the decisions are in conflict].) The *Gonzalez* court faced a similar situation: nonsignatories to an arbitration agreement sought enforcement under equitable estoppel because the plaintiff’s claims against all defendants were intertwined with the employer’s obligations under the employment agreement. (*Gonzalez, supra*, 107 Cal.App.5th at p. 118.) Just as in this present action, the employer-defendant presented a declaration stating that only the signatory, Nowhere Santa Monica, employed Gonzalez and none of the nonsignatory related entities employed Gonzalez. (*Id.* at p. 122.) And similarly, the *Gonzalez* complaint also alleged the joint employer relationship between Nowhere Santa Monica and the nonsignatory entities. (*Id.* at p. 123.) In holding that the employment claims were arbitrable by the nonsignatories, the *Gonzalez* court noted, “Each of these causes of action depends on the non-Santa Monica entities’ status as joint employers. Each thus derives from and depends on their share in Nowhere Santa Monica’s legal obligations, which derive solely from the employment agreement.” (*Ibid.*)

Here, Plaintiff's causes of action for unpaid wages and Labor Code violations are alleged against all Defendants and are expressly covered by the VMAA. (NOL, Ex. 1 ["VMAA"], p. 1 ["including claims for...unpaid wages, or based on the California Labor Code"].) The Complaint alleges that all Defendants were Plaintiff's former employer and that each defendant employed Plaintiff directly or indirectly and controlled his wages, hours, and working conditions, creating a common law employment relationship. (Complaint, ¶ 9.) It further alleges that each defendant was the others' principal, agent, joint venturer, joint employer, affiliate, parent, or subsidiary; acted within those relationships; and authorized, ratified, controlled, aided, and abetted the others' conduct. (*Id.* at ¶ 12.). The Complaint does not distinguish the entities and instead refers to them all as "Defendants." (See e.g., *id.* at ¶¶ 32-104.)

Plaintiff cannot evade arbitration by suing the Non-Employer Entities for the same causes of action alleged against the signatory entity. (See *Gonzalez, supra*, 107 Cal.App.5th at p. 124 ["it would be unfair for Gonzalez to group the non-Santa Monica entities with Nowhere Santa Monica for purposes of wage and hour liability as joint employers while at the same time denying the joint relationship in order to avoid arbitration"].) Under *Gonzalez*, Plaintiff's pleaded claims against the Non-Employer Entities are intimately founded in and intertwined with his employment relationship with CSI. The opposition's reliance on the supporting declaration stating that, "CSI was Plaintiff's sole and exclusive employer" does not defeat equitable estoppel. The statement addresses formal employment status, and the theory of Plaintiff's Complaint is that all defendants acted as joint employers through their agency relationships. (See *id.* at p. 123.)

- Unconscionability

Plaintiff argues that the VMA is both procedurally and substantively unconscionable.

A party challenging a contractual arbitration provision on the ground that it is unenforceable because it is unconscionable bears the burden of proving that it is both procedurally and substantively unconscionable. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126.) This may be done on a sliding scale, where the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required, and vice versa. (*Id.* at pp. 125-126.) Nevertheless, both must be shown. Procedural unconscionability focuses on oppression or surprise to the "weaker" party based on unequal bargaining power, whereas substantive unconscionability focuses on the terms of the agreement and whether they are overly harsh or one-sided. (*Id.* at pp. 125-129.)

- Procedural Unconscionability

The VMAA is a contract of adhesion. The VMAA is a preprinted, unnegotiated employment form presented by Defendants, who hold superior bargaining power. (See *Gurganus v. IGS Solutions LLC* (2025) 115 Cal.App.5th 327, 335 ["Procedural unconscionability is generally established by showing the agreement is a contract of adhesion, where a standardized contract drafted by the party with greater bargaining strength is imposed on the other party, leaving the subscribing party with only the option to adhere to the contract or reject it."].) Neither Plaintiff nor Defendants identify heightened coercion, inadequate review time, or misleading presentations as additional factors for the procedural

unconscionability analysis. Accordingly, there is a minimal degree of procedural unconscionability.

- Substantive Unconscionability

Plaintiff next argues that the VMAA suffers from substantive unconscionability because: (1) the VMAA lacks mutuality; and (2) the VMAA and the PIIA together lack mutuality.

- The VMAA

Plaintiff takes issue with the following clause in the VMAA:

The Company and I each agree to submit to final and binding arbitration any and all disputes that we would otherwise pursue in state or federal court that arise from or relate in any way to my recruitment, hiring, employment, or the termination of my employment with the Company. This includes, without limitation, claims that the Company may have against me or that I may have against the Company, or any of its employees, officers, directors, or agents[.]

(VMAA, p. 1.) Plaintiff challenges the third-party claims provision (i.e., any of CSI's employees, officers, directors, or agents) as one-sided and relies on *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312 (*Cook*) for support.

In *Cook*, the Court of Appeal determined that an arbitration clause requiring an employee to arbitrate all her claims—including claims unrelated to her employment—against USC's related entities and personnel was substantively unconscionable because there was no corresponding duty by those third parties to the employee. (*Cook, supra*, 102 Cal.App.5th at pp. 346-347.) It is against this backdrop that the *Cook* court concluded the arbitration agreement lacked mutuality. (*Id.* at p. 348 [“No explanation [was] offered as to why Cook should [have been] required to give up the ability to ever bring claims in court against a USC employee that are unrelated to USC or her employment there.”].) *Cook* is distinguishable because, here, the VMAA limits the scope of arbitrable disputes to employment-related claims while the *Cook* agreement applied to *all* claims.

In *Cocom v. ABM Aviation, Inc.* (9th Cir. 2026) 179 F.4th 1168, 1178 (*Cocom*), the Ninth Circuit analyzed *Cook* to hold, “the lack of mutuality *Cook* found substantively unconscionable was predicated on the court's conclusion that the agreement applied to all claims, regardless of whether they were related to Cook's employment.” The *Cocom* court then applied *Ayala-Ventura v. Superior Court* (2026) 119 Cal.App.5th 241 (*Ayala-Ventura*) and its analysis of *Cook* to hold that a similar agreement limited to employment-related claims was not unconscionable. The *Cocom* agreement required the employee to arbitrate any claims he had against the Company, “its past, present, and future parent(s), subsidiaries, affiliates, and/or their present, and future officers, directors, and/or employees” (*Ibid.*) And while *Ayala-Ventura* concerned a clause that further limited third party claims against an employee “in their capacity as such”—a caveat not contained here—the *Cocom* court stated, “The MAA does not explicitly include the same express limitation, but the fact that the MAA is limited to employment-related claims achieves a similar result. Just as in *Ayala-Ventura*, claims Cocom may have against third parties ‘unrelated to their role’ in ABM would not be covered by the MAA.” (*Ibid.*)

As the *Ayala-Ventura* court concluded,

We are not convinced the Agreement's purported failure to require CCS's employees and agents to arbitrate their claims against Ayala-Ventura results in a lack of mutuality between the contracting parties. The Agreement is between CCS and Ayala-Ventura; it is not between her and CCS's employees and agents. A lack of mutuality generally consists of the stronger party imposing terms on the weaker party without accepting those terms itself. [Citation.] But this is not a contract where only the weaker party's claims are subject to arbitration. The Agreement "applies equally to employee and employer initiated claims, carrying the 'modicum of bilaterality' required by law." [Citation.]

(*Ayala-Ventura*, *supra*, 119 Cal.App.5th at p. 259.) And as the *Cocom* court observed, "employment-related claims have an inherent asymmetry; an employee is more likely to sue the employer and related entities." (*Cocom*, *supra*, 179 F.4th at p. 1178.) Any lack of mutuality does not necessarily rise to the level of substantive unconscionability. (*Ibid.*) The Court therefore concludes that the VMAA does not lack mutuality.

The VMAA also satisfies the requirements of *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 91, 103 (*Armendariz*): (1) it provides for a neutral arbitrator; (2) it provides for reasonable discovery; (3) it requires a written arbitral decision; (4) it does not limit remedies available in court; and (5) the employer bears arbitrator fees and administrative costs beyond what an employee would pay to file suit. (See VMAA, p. 1.) The VMAA, therefore, is not substantively unconscionable.

- The PIIA

Plaintiff also contends that the PIIA, when read with the VMAA, renders the arbitration agreement unconscionable due to an unlawful noncompete provision and a lack of mutuality. Plaintiff asserts that the PIIA must be read with the VMAA under Civil Code section 1642 because the agreements were executed as part of the same hiring transaction. (Civ. Code, § 1642 ["Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together."].)

Plaintiff asserts that Sections 8 and 9 of the PIIA lack mutuality. Section 8 provides, "Employer Group shall have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that the Employer Group may have based on the Employee's breach of this Agreement." (NOL, Ex. 6 ["PIIA"], p. 4.) Section 9 provides, in relevant part, "No waiver by the Employer of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by the Employer of any right under this Agreement shall be construed as a waiver of any right." (*Ibid.*) Plaintiff argues that these two provisions confer protection on the employer without a reciprocal benefit to the employee.

Plaintiff relies on *Fuentes v. Empire Nissan, Inc.* (2026) 19 Cal.5th 93 (*Fuentes*) and *Cluck v. GEO Secure Services, LLC* (2026) 122 Cal.App.5th 249 (*Cluck*) to support the proposition that provisions that one-sidedly reserve the right to enforce confidentiality agreements are unconscionable due to lack of mutuality. In *Fuentes*, the Court stated, " '[I]t is unfairly one-sided for an employer with superior bargaining power to impose arbitration on the

employee as plaintiff but not to accept such limitations when it seeks to prosecute a claim against the employee, without at least some reasonable justification for such one-sidedness based on “business realities.” ’ ’ (*Fuentes, supra*, 19 Cal.5th at pp. 107-108 [quoting *Armendariz, supra*, 24 Cal.4th at p. 117].) *Fuentes*, however, did not hold that the agreements were in fact substantively unconscionable and instead found an ambiguity in whether the confidentiality agreements superseded the arbitration agreement. (See *id.* at pp. 109-112 [remanding for further proceedings].) *Cluck* is more analogous and supportive here.

In *Cluck*, the Court of Appeal similarly construed a confidentiality agreement with the arbitration agreement to find the overall scheme substantively unconscionable because it “unfairly mandate[d] arbitration of Cluck’s claims against GEO while GEO is permitted to pursue its most likely claims—a breach of its confidentiality, noncompete, and nonsolicitation policies—in court.” (*Cluck, supra*, 122 Cal.App.5th at p. 255.) The employer’s reservation of specific performance and injunctive relief and the employee’s waiver of proof of irreparable harm unfairly benefitted the employer. (*Id.* at p. 264.)

Here, Section 8 similarly reserves injunction, specific performance, and other equitable relief to the Employer Group, with no reciprocal grant to the employee and no business-reality justification offered in Defendants’ papers. (See *Cluck, supra*, 122 Cal.App.5th at p. 264 [noting absence of business justification required a finding the lack of mutuality substantively unconscionable].) Defendants instead rely on Code of Civil Procedure section 1281.8, which permits interim provision remedies pending arbitration proceedings or prior to the commencement of arbitration proceedings. (Code Civ. Proc., § 1281.8, subd. (b).) Section 8 of the PIIA, however, reserves injunction, specific performance, and other equitable relief for PIIA breaches to the Employer Group without limit to interim or provisional relief. Thus, Section 8 lacks mutuality.

Section 9 operates on PIIA enforcement rather than arbitral forum, and therefore, does not alone render the VMAA and PIIA substantively unconscionable. That said, the one-sidedness is facially apparent and without a business-reality justification, it compounds the asymmetry in Section 8. (See *Cluck, supra*, 122 Cal.App.5th at p. 264.)

Plaintiff also complains that Section 6 of the PIIA is an unlawful noncompete clause that renders any agreement to arbitrate unconscionable. Section 6 bars Plaintiff from soliciting Defendants’ customers for two years after termination. (PIIA, p. 3.) That provision violates Business and Professions Code section 16600, subdivision (b)(1), which provides in relevant part, “This section shall be read broadly, in accordance with *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, to void the application of any noncompete agreement in an employment context, or any noncompete clause in an employment contract.” Illegal provisions are unconscionable and severable. (*Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 515 (*Ramirez*).)

- Severability

The unconscionable provisions in the PIIA are severable.

In *Cluck*, the Court of Appeal declined to sever the analogous one-sided provisions in the confidentiality agreement and enforce the arbitration agreement. (*Cluck, supra*, 122 Cal.App.5th at p. 255.) The *Cluck* court noted, “Because this imbalance rests at the core of the

overall agreement, and because we do not condone GEO’s practices here, it would not be in the interest of justice to enforce the agreement to arbitrate in whole or in part.” (*Ibid.*) In reaching this decision, the *Cluck* court observed that the collateral confidentiality agreement included several features—a Florida forum selection, a jury waiver, employer-only specific performance and injunctive relief—that unfairly favored the employer, and when read with the arbitration agreement, made the dispute resolution process one-sided. (See *id.* at p. 264.)

Here, the VMAA itself is substantively conscionable. The VMAA is a standalone two-page document that does not incorporate or reference the PIIA. The unconscionable PIIA provisions do not affect who arbitrates, what claims are arbitrated, or the procedures governing arbitration. The defective provisions are therefore discrete from the VMAA and can be severed without altering any terms concerning arbitration. (See *Ramirez, supra*, 16 Cal.5th at p. 516 [“If no ‘reformation is required,’ the offending provision can be severed or limited, and ‘the rest of the arbitration agreement left intact,’ then severance or restriction is the preferred course for provisions that are collateral to the agreement’s main purpose.”]; see also *Armendariz, supra*, 24 Cal.4th at p. 124 [“If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate.”])

Accordingly, severance of Sections 6, 8, and 9 of the PIIA is appropriate.

- Scope of Arbitration

Defendants assert that Plaintiff’s employment claims are covered by the VMAA and that the representative PAGA claims in the PAGA Complaint must be stayed pending arbitration. Defendants also vaguely request that Plaintiff’s class claims be dismissed. Plaintiff does not meaningfully address these arguments in his opposition.

The VMAA broadly covers claims that arise from Plaintiff’s recruitment, hiring, employment, or termination of his employment with CSI. This includes claims “based on any state or federal statute (including claims for employment discrimination, retaliation or harassment, unpaid wages, or based on the California Labor Code)[.]” (VMAA, p. 1.) Here, all nine causes of action of the Complaint arise from Plaintiff’s employment with CSI, and therefore, falls within the VMAA’s broad scope.

The VMAA also contains an express class waiver: “To the maximum extent permitted by law, I hereby waive any right to bring on behalf of persons other than myself, or to otherwise participate with other persons in, any class action.” (VMAA, p. 1.) The waiver is limited to class actions and does not reach PAGA claims. The waiver ends with “any class action”, defining the scope of the preceding clauses “bring on behalf of persons other than myself” and “otherwise participate with other persons in[.]” Read as a whole, the provision waives the right to bring or participate in, “any class action”—not a waiver of any representative action. PAGA claims are not class actions. (See *Piplack v. In-N-Out Burgers* (2023) 88 Cal.App.5th 1281, 1288-1289 [“Thus, the individual claim is ‘individual’ within the meaning of defendant’s arbitration agreement, and only the ‘representative’ claim is a true qui tam, or ‘private attorney general,’ action.”].) And California and federal law have

affirmed that class-waiver provisions in employment agreements are valid and enforceable. (See *AT&T Mobility LLC v. Conception* (2011) 563 U.S. 333, 348-352; *Iskanian v. CLS Tramp, LLC* (2014) 59 Cal.4th 348, 364 (*Iskanian*).) Accordingly, the Court will dismiss the class claims.

Plaintiff generally contends, however, that the express class waiver clause is a “wholesale” PAGA waiver. Presumably, Plaintiff relies on the VMAA’s language, “I hereby waive any right to bring on behalf of persons other than myself...” to advance this contention. (VMAA, p. 1, emphasis added.) Even if that language could be understood as detached from the “any class action” clause to reach PAGA claims, the preface “to the maximum extent permitted by law”, would rescue its wholesale-waiver nature.

In *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 644-645 (*Viking River*), the United States Supreme court left the holding of *Iskanian* undisturbed to the extent that it held that a blanket PAGA waiver is unconscionable under California law. (See *Adolph v. Uber Technologies* (2023) 14 Cal.5th 1104, 1117 (*Adolph*).) And the *Adolph* decision makes clear that, in the wake *Viking River*, a PAGA action can have “individual” and “non-individual” claims, and a court may issue an order compelling arbitration of the individual PAGA claims without affecting the plaintiff’s ability to litigate the non-individual PAGA claims. (*Adolph, supra*, 14 Cal.5th at p. 1114 [“[w]here a plaintiff has brought a PAGA action comprising individual and non-individual claims, an order compelling arbitration of the individual claims does not strip the plaintiff of standing as an aggrieved employee to litigate claims on behalf of other employees under PAGA”].)

Thus, because the VMAA calls for arbitration on individual basis “[t]o the maximum extent permitted by law,” it is consistent with both existing law and the parties’ intentions under the agreement to permit arbitration of the individual component to the PAGA Complaint’s claims. And because a PAGA plaintiff who is compelled to arbitrate his or her individual PAGA claims maintains standing to assert the remaining non-individual PAGA (i.e., representative) claims in court, a “the trial court may exercise its discretion to stay the non-individual claims pending the outcome of the arbitration pursuant to section 1281.4 of the Code of Civil Procedure.” (*Adolph, supra*, 14 Cal.5th at p. 1123.) The Court exercises its discretion here and stays the representative PAGA action.

Conclusion

The motion to compel arbitration is GRANTED as to Plaintiff’s Complaint and Plaintiff’s individual PAGA claim. The representative PAGA action is STAYED in its entirety pending the outcome of arbitration. Plaintiff’s class claims are DISMISSED.

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