

Tentative Rulings for February 19, 2026
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

24CECG04726 *Cristian Ochoa v. Carniceria Colima, Inc. / Complex / Class Action*

24CECG03966 *Erik Camacho v. Aldo Ramirez Rios (Dept. 502)*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

22CECG02655 *S.N. v. Fresno Unified School District* is continued to Thursday, March 19, 2026, at 3:30 p.m. in Department 502.

25CECG03035 *New Age AG Service, LLC v. Westway Feed Products, LLC* is continued to Thursday, March 19, 2026, at 3:30 p.m. in Department 502.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(47)

Tentative Ruling

Re: **Erica Casique v. Planet Home Lending, LLC**
Superior Court Case No. 25CECG05765

Hearing Date: February 19, 2026 (Dept. 502)

Motion: Petition for Relief from Financial Obligations During Military Service

Tentative Ruling:

To grant and sign the proposed order.

Explanation:

Petitioner Erica Casique ("petitioner") seeks relief from financial obligations during her military service from respondent, Planet Home Lending, LLC ("respondent").

The Court finds that the declaration submitted by petitioner demonstrates that petitioner's ability to comply with the terms of her mortgage have been materially affected by her most recent period of military service, where petitioner, a single mother of two children with over \$10,000 in debt, \$913 a month in daycare fees, earns \$1,006.08 less per month due to her active service. (Mil. & Vet. Code §409.3, subd. (d).) Consequently, petitioner is entitled to "a deferment of the payments due on the obligation for a period of time equal to the period of military service." (Mil. & Vet. Code §409.3, subd. (d)(1)).

Respondent's contentions that it needs more documentary evidence is unwarranted. Petitioner has complied with the requirements under Military and Veterans Code section 409.3, subdivision (d)(1), and also adequately filled out Form MIL-015, which the Judicial Council developed for these purposes. Respondent's contention that filling out form MIL-015, as self-serving (Opposition papers, pg. 6) is meritless considering the title of that form is "DECLARATION IN SUPPORT OF PETITION FOR RELIEF FROM FINANCIAL OBLIGATIONS DURING MILITARY SERVICE." The Court notes that Form MIL-015 may be self-serving, given that the title of Form MIL-015 sets out a self-serving purpose for a petitioner.

Finally, respondent attempts to bifurcate the relief sought by petitioner, where the current relief sought would not extend to deferment petitioner received for the six-month period between April and September of 2025 pursuant to Military Veterans Code sections 800-804. (Opposition papers, pg. 2.)

However, the plain language of Military and Veterans Code section 409.3, subdivision (a) provides that this section applies to "**any obligation or liability** incurred by the service member before the effective date. ..." [Emphasis added.] Furthermore, Military and Veterans Code section 409.3 is a specific remedy where a serviceman seeks

a court order, whereas the provisions under Military and Veterans Code sections 800 through 804, do not. Accordingly, the Court will not bifurcate the relief sought.

For the above reasons, the Court will grant the relief sought by petitioner, and sign the proposed order.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: **KCK** **on** **02/17/26** .

(Judge's initials)

(Date)

(47)

Tentative Ruling

Re: **Lucas Juan v. American Roadlines LLC**
Superior Court Case No. 23CECG05635

Hearing Date: February 19, 2026 (Dept. 502)

Motion: By Plaintiff to Change Venue

Tentative Ruling:

To grant plaintiff's motion to change venue to Los Angeles County Superior Court. Plaintiff shall submit a proposed order for the Court's approval changing venue to Los Angeles County Superior Court within 10 days of the date of service of this order.

Explanation:

Plaintiff, Lucas Juan, makes the motion to transfer venue to Los Angeles County under Code of Civil Procedure section 397, subdivision (c), contending that a change of venue would serve the convenience of necessary witnesses and the ends of justice. Code of Civil Procedure section 397, subdivision (c), states that, "[t]he court may, on motion, change the place of trial in the following cases: [¶] (c) When the convenience of witnesses and the ends of justice would be promoted by the change." There is no set time limit to bring a motion to transfer venue based on the convenience of witnesses and the ends of justice. Instead, such motions must simply be brought "within a reasonable time." (*Willingham v. Pecora* (1941) 44 Cal.App.2d 289, 294-295.) Also, if all of the evidence submitted to the court shows that the convenience of witnesses and the ends of justice would be promoted by a change of venue, it is an abuse of discretion to deny the motion. (*Richfield Hotel Management, Inc. v. Superior Court* (1994) 22 Cal.App.4th 222, 226-227.)

This action arises from an automobile collision that took place on December 24, 2022, in New Mexico. Plaintiff resides in Los Angeles. The original named defendants, American Roadlines LLC and Rubal Singh ("Fresno defendants") are both Fresno residents, and they did not oppose this motion. Plaintiff has submitted declarations from multiple treating physicians who reside and practice in Los Angeles County and who state that trial in Fresno County would impose substantial burdens on their practices and patient care. (Heidari Decl., ¶¶3-6, Exs. B-E.)

Defendant Fedex Freight, Inc. ("Fedex") opposes this motion. Fedex provides in its opposition papers that there is a potential for three Fresno based witnesses, including the Fresno defendants (who did not oppose plaintiff's motion), as well as six out-of-state witnesses. (Fedex Opposition Papers, pg. 3.)

Under these circumstances, plaintiff has met his burden under Code of Civil Procedure section 397, subdivision (c). Plaintiff has provided that his treating physicians, medical records, treatment provides, documentation, are located in Los Angeles County. Plaintiff himself resides in Los Angeles County. The Fresno defendants, which are

(34)

Tentative Ruling

Re: **Mukai v. Nonini, et al.**
Superior Court Case No. 23CECG05196

Hearing Date: February 19, 2026 (Dept. 502)

Motion: Defendants' Demurrer to Complaint and Motion to Strike

Tentative Ruling:

To continue the motion to Thursday, March 19, 2026 at 3:30 p.m. in Department 502, in order to allow the parties to meet and confer in person or by telephone, as required. If this resolves the issues, defendants shall call the calendar clerk to take the motion off calendar. If it does not resolve the issues, counsel for defendants shall file a declaration, on or before March 9, 2026, stating the efforts made. If no declaration is filed, the motion will be taken off calendar.

Explanation:

Under Code of Civil Procedure section 430.41, “[b]efore filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.” (Code Civ. Proc., § 430.41, subd. (a).) “As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies.” (Code Civ. Proc., § 430.41, subd. (a)(1).)

“The demurring party shall file and serve with the demurrer a declaration stating either of the following: (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer. (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.” (Code Civ. Proc., § 430.41m subd. (a)(3)(A), (B), paragraph breaks omitted.) The statute regarding motions to strike contains the same requirements regarding meet and confer efforts. (Code Civ. Proc. § 435.5.)

Here, counsel for defendant has filed a declaration indicating counsel's belief that meet and confer would be futile with regard to the Third Amended Complaint because the parties met and conferred in email communications as to the merits of the Second Amended Complaint and earlier iterations. (Phillips Decl., ¶ 6.) The declaration does not show that counsel engaged in good faith meet and confer efforts before filing the demurrer at bench.

(34)

Tentative Ruling

Re: **Oblea v. HMC Fresh Foods, LLC**
Superior Court Case No. 25CECG03095

Hearing Date: February 19, 2026 (Dept. 502)

Motion: by Defendant to Compel Arbitration

Tentative Ruling:

To grant Defendant HMC Fresh Foods, LLC's motion to compel arbitration of Plaintiff Antonia Oblea's individual claims, dismiss the class claims, and stay Plaintiff's court action pending the arbitration of plaintiff's claims.

Explanation:

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc., § 1281.2) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Cal.App.4th 1497, 1505) Thus, when a motion to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine: (1) whether the agreement exists, and (2) if any defense to its enforcement is raised, whether it is enforceable. The moving party bears the burden of proving the existence of an arbitration agreement by a preponderance of the evidence. The party claiming a defense bears the same burden as to the defense. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413-414.)

The agreement at issue is intended to be governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, et seq. Section 2 of the FAA provides for enforcement of arbitration provisions in any contract "evidencing a transaction involving commerce." (9 U.S.C. § 2.) To determine whether there is an enforceable arbitration agreement, courts apply state law principles related to formation, revocation, and enforcement of contracts. (*Banner Entertainment, Inc. v. Alchemy Filmworks, Inc.* (1998) 62 Cal.App.4th 348, 357.) Moving defendants are not required to submit evidence of impact on interstate commerce to establish FAA preemption. (See *Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 157; *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 387, 394.)

Here, Defendant HMC Fresh Foods, LLC has met its burden of showing that an agreement to arbitrate the parties' dispute exists. Defendant has presented evidence that Plaintiff twice signed an agreement to arbitrate employment related disputes. (Parkinson Decl., Exh. A.)

Plaintiff objects to the declaration of defendant's Director of Human Resources, Kevin Parkinson, who testifies as to the two arbitration agreements signed by plaintiff being present in her personnel file maintained by the defendant in Parkinson's office. The objections challenge Parkinson's personal knowledge of plaintiff's onboarding process

and her having signed the agreements at issue. The declaration reflects Parkinson's review of company records and understanding of company policies and he specifically states he was not personally involved in plaintiff's onboarding. To the extent the objections appear to be to statements that are not in the declaration, they are overruled. To the extent plaintiff is challenging Parkinson's authority to authenticate a business record in his custody as the Director of Human Resources, the objection is overruled. (See Objection No. 5.) The custodian of a document does not need to have been present when the document was created or signed to authenticate a document in a company's files. (*Iyere v. Wise Auto Group* (2023) 87 Cal.App.5th 747, 758.)

Plaintiff argues defendant has not met its burden based upon her statements that she does not recall signing the agreements and would not have signed documents she did not understand. (Oblea Decl., ¶¶ 5, 8.) When challenging a handwritten signature, as opposed to an electronic signature, "[i]f a party confronted with his or her handwritten signature on an arbitration agreement is unable to allege that the signature is inauthentic or forged, the fact that that person does not recall signing the agreement neither creates a factual dispute as to the signature's authenticity nor affords an independent basis to find that a contract was not formed." (*Iyere v. Wise Auto Group, supra*, 87 Cal.App.5th at p. 758.) Thus, plaintiff's inability to recall signing the document bearing her handwritten signature is not sufficient to create a dispute as to the existence of the agreement.

Defendant has provided sufficient evidence to meet its burden of showing that an agreement to arbitrate exists between the parties that covered the plaintiff's Labor Code and unfair competition claims alleged in the complaint. As a result, the burden shifts to plaintiff to show that a defense to the arbitration agreement exists. However, plaintiff has failed to meet his burden here.

Plaintiff opposes the motion on the basis that she is exempt from the FAA because she was a worker involved in interstate commerce. Section 1 of the FAA provides, "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

The Supreme Court held in *Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450, 458, that the exemption included workers who "play a direct and 'necessary role in the free flow of goods' across borders." (*Ibid.*, quoting *Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 121.) The Supreme Court determined that cargo loaders responsible for loading cargo onto airplanes "exhibit this central feature of a transportation worker" and that loading cargo "bound for interstate transit is intimately involved with the commerce (e.g., transportation) of that cargo." (*Ibid.*)

The court in *Ortiz v. Randstad Inhouse Services, LLC* (9th Cir. 2024) 95 F.4th 1152, 1160, in relying on *Saxon*, stated, "an employee's relationship to the movement of goods must be sufficiently close enough to conclude that his work plays a tangible and meaningful role in their progress through the channels of interstate commerce." It went on, "*Saxon* is clear on this issue: what matters is not the worker's geography, but his work's connection with—and relevance to—the interstate flow of goods." (*Id.* at p. 1162.) The analysis is "not on the flow of goods themselves but on the employee's relationship with the flow of goods and the extent to which his role enables them to flow in interstate commerce." (*Id.* at p. 1164.) The court in *Ortiz* found that the worker responsible for transporting packages and storing goods within a warehouse while the goods awaited

further interstate transport was an exempt transportation worker engaged in interstate commerce. (*Id.* at p. 1162.)

Here, Plaintiff worked in a cooler warehouse where she cleaned, sorted, and packaged grapes to be delivered to Defendant's customers. (Oblea Decl., ¶ 3.) The grapes were packed into bags, boxes, and platters [believed to be "pallets"] which were then taken by forklift drivers to large trucks for delivery to customers. (*Ibid.*) Although Plaintiff describes a role in the processing of goods that are transported to the cooler warehouse, it cannot be said that this role in processing the goods is the equivalent of actively engaging in transportation of those goods. Plaintiff specifically attests that others transport the goods within the warehouse to the delivery trucks. As such, the court finds Plaintiff is not a transportation worker within the FAA section 1 exemption.

Next, plaintiff argues that the agreement is unconscionable, and thus the court should refuse to enforce it. Again, however, plaintiff has failed to meet his burden of showing that the agreement is unenforceable.

“‘[U]nconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.’ Phrased another way, unconscionability has both a ‘procedural’ and a ‘substantive’ element. [¶] The procedural element focuses on two factors: ‘oppression’ and ‘surprise.’ ‘Oppression’ arises from an inequality of bargaining power which results in no real negotiation and ‘an absence of meaningful choice.’ ‘Surprise’ involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in a prolix printed form drafted by the party seeking to enforce the disputed terms. Characteristically, the form contract is drafted by the party with the superior bargaining position.” (*A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 486, citations omitted.)

“Substantive unconscionability is less easily explained. ‘Cases have talked in terms of “overly harsh” or “one-sided” results. [Citations.] One commentator has pointed out, however, that ‘... unconscionability turns not only on a ‘one-sided’ result, but also on an absence of ‘justification’ for it” [citation], which is only to say that substantive unconscionability must be evaluated as of the time the contract was made.” (*Stirlen v. Supercuts, Inc.* (1997) 51 Cal.App.4th 1519, 1532, citations omitted.) In other words, the contract terms must be so one-sided as to “shock the conscience.” (*Ibid.*) “The prevailing view is that these two elements must *both* be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability.” (*Id.* at p. 1533, citations omitted, italics in original.)

Plaintiff argues the agreement is procedurally unconscionable as a contract of adhesion, presented on a take-it-or-leave-it basis as a mandatory condition of employment. There is no dispute that plaintiff was not entitled to negotiate the terms of the agreement or that agreeing to arbitration was a condition of employment.

As the agreement is a contract of adhesion this supports finding a minimal amount of procedural unconscionability. However, courts frequently enforce employment arbitration agreements that are contracts of adhesion, as long as they are not also substantively unconscionable. “Arbitration clauses in employment contracts have been upheld despite claims that the clauses were unconscionable because they were presented as part of an adhesion contract on a take-it-or-leave-it basis. In finding the

arbitration clause in *Lagatree* was not unconscionable, the court noted that, 'as *Gilmer* and its progeny make clear, the compulsory nature of a predispute arbitration agreement does not render the agreement unenforceable on grounds of coercion or for lack of voluntariness.'" (*Giuliano v. Inland Empire Personnel, Inc.* (2007) 149 Cal.App.4th 1276, 1292, citations omitted.)

Mandatory arbitration clauses in employment contracts are enforceable if they provide essential fairness to the employee. (*Armendariz v. Foundation Health Psychcare Services, Inc.*, *supra*, 24 Cal.4th at pp. 90-91; see also *24 Hour Fitness v. Superior Court* (1998) 66 Cal.App.4th 1199, 1212 [arbitration clause in employee handbook was not unconscionable where it provided all parties with substantially same rights and remedies].) In the employment context, an agreement must include the following five minimum requirements designed to provide necessary safeguards to protect unwaivable statutory rights where important public policies are implicated: 1) a neutral arbitrator; 2) adequate discovery; 3) a written, reasoned, opinion from the arbitrator; 4) identical types of relief as available in a judicial forum; and 5) that undue costs of arbitration will not be placed on the employee. (*Armendariz*, *supra*, 24 Cal.4th at p. 102.)

Plaintiff argues these minimum standards are not met because there is insufficient discovery permitted and limits to judicial review. The agreement allows each party to conduct "reasonable discovery," including conducting depositions, requesting documents and requesting responses to interrogatories with the arbitrator given authority to determine what is reasonable discovery. (Arbitration Agreement, ¶16.) The court understands this to mean that the arbitrator can decide on the scope of discovery and both parties' discovery rights are at the arbitrator's discretion which does not suggest there will be inadequate discovery. The agreement calls for any appeal of the final award to be made to an arbitrator and the application of all rules governing judicial appeals from the California Court of Appeal. (Agreement, ¶ 8.) The court does not interpret this to mean the procedures to confirm, correct, or vacate an award under the California Arbitration Act are disallowed.

As such, court finds the arbitration agreement meets the minimum requirements set forth in *Armendariz*.

Plaintiff argues that the agreement is substantively unconscionable because it has an overly broad scope and an indefinite duration. Plaintiff relies on *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, where the express terms of the agreement requiring arbitration of all claims "whether or not arising out of Employee's University employment ..." were found unconscionable. (*Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, 325.) Unlike the agreement in *Cook*, the terms of the arbitration agreement at bench do not expressly include claims arising outside of the employment relationship. The court declines to read the general applicability of the agreement to any and all types of claims arising between the parties during the employment relationship as unconscionable.

Plaintiff additionally argues the class action waiver and requirement to arbitrate her claims for nonpayment of wages are substantively unconscionable under California law and render the agreement unenforceable to this putative wage and hour class action. With regard to the contention that the class action waiver is substantively

(37)

Tentative Ruling

Re: **Hugo Villasenor v. J.P. Lamborn Co.**
Superior Court Case No. 22CECG02065

Hearing Date: February 19, 2026 (Dept. 502)

Motion: by Plaintiff for Order Approving PAGA Settlement

Tentative Ruling:

To grant as to the approval of the settlement, costs, and settlement administration. To approve attorney's fees in the reduced amount of \$61,825. To approve an incentive award to plaintiff Hugo Villasenor in the reduced amount of \$800. Plaintiff is directed to file a revised proposed judgment within five days of the service of the minute order by the clerk.

Explanation:

On September 8, 2022, Hugo Villasenor filed his first amended complaint against his former employer, J.P. Lamborn Co. alleging violations of the Labor Code as the basis of a representative PAGA action. The parties reached a settlement of the PAGA claim for which they seek court approval.

Because an aggrieved employee's action under the [PAGA] functions as a substitute for an action brought by the government itself, a judgment in that action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. The act authorizes a representative action only for the purpose of seeking statutory penalties for Labor Code violations (Lab.Code, section 2699, subds. (a), (g)), and an action to recover civil penalties 'is fundamentally a law enforcement action designed to protect the public and not to benefit private parties.

(Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal.4th 348, 381.)

A PAGA representative action is therefore a type of *qui tam* action. Traditionally, the requirements for enforcement by a citizen in a *qui tam* action have been (1) that the statute exacts a penalty; (2) that part of the penalty be paid to the informer; and (3) that, in some way, the informer be authorized to bring suit to recover the penalty. The PAGA conforms to these traditional criteria, except that a portion of the penalty goes not only to the citizen bringing the suit but to all employees affected by the Labor Code violation. The government entity on whose behalf the plaintiff files suit is always the real party in interest in the suit.

(Id. at 382, internal citation omitted.)

“PAGA settlements are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549, citing Labor Code section 2699(l)(2): “The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.”)

[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws. (See *Williams, supra*, 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA “sought to remediate present violations and deter future ones”]; *Arias, supra*, 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws].)

(*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)

“Thus, while PAGA does not require the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for settlements that prevents “ ‘ “ ‘fraud, collusion or unfairness’ ” ’ ” (*Dunk, supra*, 48 Cal.App.4th at pp. 1800–1801, 56 Cal.Rptr.2d 483), and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.”

(*Moniz, supra*, (2021) 72 Cal.App.5th 56, 77.)

Under the general provisions of the PAGA scheme, 75% of the civil penalties recovered goes to the state while the remaining amount is given to the aggrieved employees. (Lab. Code, § 2699, subd. (i).) Here, 75% of the settlement amount, *after deduction of attorney fees, costs, administration expenses and incentive payment*, is to be paid to the LWDA. The remaining 25% is to be distributed to aggrieved employees on a pro rata basis.

1. Notice to LWDA

The moving party has given notice of the settlement to the LWDA, so it may address the court regarding it, if it so chooses. (Lab. Code, § 2966, subd. (l)(2); see Moon Decl., Exh. 3.)

2. Fairness of the Settlement Amount

As mentioned above, the Court of Appeal in *Moniz v. Adecco USA, Inc., supra*, 72 Cal.App.5th 56 stated that the trial court should review PAGA settlements to determine whether they are fair, adequate and reasonable. (*Moniz, supra*, at pp. 75-77.) “Because many of the factors used to evaluate class action settlements bear on a settlement's

fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.” (*Id.* at p. 77.)

“Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes and policies. We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (*Ibid.*, internal citations and footnote omitted.)

a. Strength of the Case

Plaintiff's action was initiated as a wage and hour class action with the PAGA cause of action added in the First Amended Complaint. On July 20, 2023, the court stayed proceedings and plaintiff's representative PAGA claim pending resolution of arbitration. The only remaining cause of action in the complaint is the PAGA claim.

Plaintiff argues the settlement is reasonable and will redress the alleged civil code violations experienced by the 316 PAGA members. (Kaczmarek Decl., ¶ 4.) Defendant provided time and payroll data representing a 40% sample of the PAGA members which was in turn analyzed by plaintiff's counsel who determined the potential exposure for defendant ranged from \$31,600 to \$4,481,500 if penalties are stacked. (Moon Decl., ¶ 35.) Counsel asserts a more likely estimate of \$158,000 for 316 employees and five theories of recovery at a \$100 penalty. (*Ibid.*)

Plaintiff retained Berger Consulting Group, a statistical expert, to aid in the review and analysis of the sampled data received from defendant. (Moon Decl. ¶ 14.) Plaintiff states the 40% sample analyzed was a statistically significant sample. (Moon Decl., Exh. 6.) Plaintiff's expert confirms that this sample size is typical for similarly sized populations. (Gorlick Decl., ¶ 7.) The expert provided analysis based on the data and demographic information provided. (*Id.* at ¶ 6.)

Regarding weaknesses of the claims, plaintiff notes the court's discretion to reduce the civil penalties and defendant's defenses. The moving papers note that defendant continues to deny the allegations of the complaint and the settlement is not to be construed as an admission of the merits of the claims. Plaintiff's counsel details his assessment of the merits and risks of each violation alleged based upon his experience prosecuting such claims. (Moon Decl., ¶¶ 34-57.)

The court finds there is evidence to support the figures presented in the moving papers and to find that the settlement figure is reasonable.

b. Stage of the Proceeding

A presumption of fairness exists where the settlement is reached through arm's length mediation between adversarial parties, where there has been investigation and

discovery sufficient to allow counsel and the court to act intelligently, and where counsel is experienced in similar litigation. (*Dunk v. Ford Motor Company* (1996) 48 Cal. App 4th 1794, 1802.) Here, the case settled after the parties attended mediation. Plaintiff's counsel is highly experienced in representative litigation.

Plaintiff attests to the settlement as a product of arm's-length negotiations facilitated by experienced mediator Tripper Ortman. (Moon Decl. ¶ 18.) The mediation on July 2, 2024 resulted in the settlement now before the court. (*Ibid.*)

Regarding pre-settlement discovery, counsel states that defendant provided a 40% sample of time and payroll records for PAGA members and that these records were analyzed by counsel and statistical expert Berger Consulting Group for use in settlement negotiations. (Moon Decl., ¶ 15.) Counsel attests to a thorough investigation of the facts and legal issues of the case in preparation for mediation and allowing both sides to intelligently negotiate a settlement with the assistance of the mediator. (Moon Decl., ¶¶ 16-17.)

This factor weighs in favor of approval.

c. *Risks of Litigating Case through Trial*

Counsel notes that the parties both recognized the cost, time, inconvenience, and delay in the continued litigation PAGA claim. The inability to pursue the class wage and hour claims as originally intended appears to also have played a role in limiting the time spent on this matter.

d. *Amount of Settlement*

The gross settlement is \$350,000, and to assess the reasonableness of this amount, the court needs a good valuation of the total potential penalties. In this third submission, plaintiff's counsel provides analysis of the value of the respective violations supporting the PAGA penalties. (Moon Decl., ¶¶ 34-57.) Foundation for the number of employees and pay periods has also been provided. (Kaczmarek Decl., ¶ 4.) Plaintiff relied upon a statistical expert in analyzing payroll data from defendant. (Moon Decl., ¶ 15.) Counsel asserts that the settlement amount is about 74% of the realistic recovery. (*Id.* at ¶ 48.) This is a reasonable settlement amount.

e. *Experience and Views of Counsel*

Plaintiff's counsel are highly experienced in class and representative litigation. They have stated that the settlement is fair, adequate and reasonable under the circumstances. Therefore, this factor weighs in favor of approval.

f. *Government Participation*

No government entity participated in the case, so this factor does not favor either approval or disapproval of the settlement.

g. *Scope of the release*

... PAGA's statutory scheme and the principles of preclusion allow, or "authorize," a PAGA plaintiff to bind the state to a judgment through litigation that could extinguish PAGA claims that were not specifically listed in the PAGA notice where those claims involve the same primary right litigated. Because a PAGA plaintiff is authorized to settle a PAGA representative action with court approval (§ 2699, (l)(2)), it logically follows that he or she is authorized to bind the state to a settlement releasing claims commensurate with those that would be barred by res judicata in a subsequent suit had the settling suit been litigated to judgment by the state. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 83.)

Here, the settlement agreement provides that the following claims would be released:

Upon entry of the Approval Order by the Court approving payment of the PAGA penalties as described in this Agreement, Plaintiff, all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from any and all Released Claims, demands, rights, liabilities, and/or causes of action for penalties under PAGA that accrued during the PAGA Release Period including, but not limited to, all claims alleged in the operative Complaints and/or LWDA Notice, or which could have been alleged based on the facts, allegations, and legal theories raised in the operative Complaints and/or LWDA Notice, and which arose during PAGA Release Period, as applicable to the specific claim. Without limiting the foregoing, Released Claims shall include any and all claims for civil penalties or causes of action arising under and/or assertable under PAGA regarding unpaid wages, including but not limited to failure to pay minimum wages, straight time wages, overtime compensation, double time compensation, and interest; failure to timely pay regular and final wages; failure to provide compliant meal, rest, and/or recovery periods; failure to pay premiums at all or at the correct rate for any violation of meal, rest, and/or recovery period obligations; invalid meal period waivers or on-duty meal period agreements; payment for all hours worked; reimbursement of business expenses; wage statement and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; unfair business practices related thereto; and any and all related penalties, including recordkeeping penalties, wage statement penalties, minimum wage penalties, waiting time penalties, and other statutory or civil penalties associated with any of the foregoing. Further, such Released Claims shall include, but are not limited to, costs and attorneys' fees and any PAGA claims stemming from or arising under California Labor Code sections 201, 202, 203, 204, 204b, 206, 207, 208, 210, 218.5, 218.6, 221., 222, 223, 225.5, 226, 226.3, 226.7, 246, subd. (i), 248.5, 510, 512, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2698 et seq., and 2699 et seq., and/or those arising under the applicable Industrial Welfare Commission Wage Order(s) (including but not limited to subsections 3, 4, 5, 7, 8, 9, 10, 11, 12, 18, and 20

of the applicable Wage Order(s), such as IWC Wage Order 5-2011 [including the provisions of the California Code of Regulations codifying the applicable Wage Order(s)], California Business Professions Code 17200 et seq. (including, without limitation, §§ 17200 through 17208); California Civil Code sections 3287 and 3289; California Code of Civil Procedure section 1021.5; PAGA claims related to claimed or unclaimed compensatory, consequential, incidental, liquidated, punitive and exemplary damages, penalties, restitution, interest, injunctive or equitable relief, and any other remedies available at law or equity, and other amounts recoverable under said claims under California law or related claims under the provisions of the Fair Labor Standards Act (29 USC §§ 201, et seq.)

(Moon Decl., Exh. 1, PAGA Settlement Agreement, Section 12.)

The notice of Labor Code violations sent on behalf of plaintiff includes allegations of failure to pay for all hours worked (Lab. Code §§ 510, 1194, 1198), failure to provide meal periods (Lab. Code §§ 210, 558, and 2699(f)(2)), failure to permit rest breaks (Lab. Code §§ 210, 558, and 2699(f)(2)), failure to maintain accurate records of hours worked and meal periods (Lab. Code §§ 1174(d), 1174.5; IWC Order § 7(A)(3)), failure to reimburse business expenses (Lab. Code § 2802), failure to pay all accrued vacation wages at termination (Lab. Code § 227.3), failure to pay all wages at termination (Lab. Code §§ 201, 202, 203), failure to furnish accurate wage statements (Lab. Code § 226), and failure to pay all earned wages (Lab. Code § 204). The scope of the release appears to be appropriately limited to the PAGA claims of which the LWDA was given notice and those supported by the allegations of the complaint.

3. Attorney's Fees and Costs

The settlement agreement provides that plaintiff's counsel would get up to \$116,666.67 (1/3 of the total gross recovery) in attorney's fees, plus costs of up to \$25,000. Here, counsel seeks \$87,500, despite the court previously indicating it would approve \$61,825. (See Minute Order, June 3, 2025; Moon Decl., ¶ 83.) Plaintiff's actual costs are \$23,120.96. (Moon Decl., ¶ 83, Exh. 5.)

Courts have approved awards of fees in class actions that are based on a percentage of the total common fund recovery. (*Laffitte v. Robert Half Internat.* (2016) 1 Cal.5th 480, 503.) It appears that the same reasoning would apply to PAGA settlements, which bear similarities to class actions. However, the court may also perform a lodestar calculation to double check the reasonableness of the fee request. (*Laffitte, supra*, at pp. 504-506.) Labor Code section 2699, subdivision (g)(1) states that the prevailing employee "shall be entitled to an award of reasonable attorney's fees and costs."

Records by counsel of the time actually spent on a matter are the starting point for any lodestar determination. (*Horsford v. Board of Trustees* (2005) 132 Cal. App. 4th 359, 394.) A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." *Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48. As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by

the reasonable hourly rate. . . ." *PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.)

Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type" (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1133.) In this third submission, counsel has agreed to utilize the reduced billing rates previously applied by the court. (See Minute Order, June 3, 2025.)

Counsel's declaration states that the case was taken on a contingent fee basis and requests the court take into consideration "enhancement" factors to adjust the lodestar figure. (Moon Decl., ¶ 88.) Those factors here include the risks presented by the contingent nature of the action, difficulty of the questions involved, skill presented in negotiating and reaching a settlement in light of defendant's vigorous opposition, the work on this case precluding the ability to take another case, and the meaningful results obtained for the aggrieved employees and State of California. (Ibid.) The factors described are generally true of any plaintiff-side wage and hour litigation and does not speak to anything unique about this action. Moreover, 134.1 hours over the 24-month period between the initial notice to the LWDA on July 4, 2022 and mediation on July 2, 2024 results in a mathematical average of only 5.5 hours per month and cannot support finding this case precluded the Moon Law Group from other employment.

Using the reasonable rates of counsel, the court calculates the lodestar to be \$49,460. Counsel requests the court use a multiplier of 1.77. The evidence before the court regarding the risk in contingent litigation and preclusion of other work does not support such a multiplier. As previously addressed, the court will approve applying a multiplier of 1.25. The court finds it reasonable to apply a 1.25 multiplier and intends to award attorney fees from the settlement in the amount of \$61,825.

The court's approval of the actual costs of \$23,120.96 is requested. Exhibit 5 to the Declaration of Mr. Moon is an expense ledger of costs for this action. The court intends to approve the costs as requested.

4. Incentive Payment to Plaintiff

Plaintiff Hugo Villasenor seeks \$7,500 as an "Enhancement Award" in addition to his pro rata share of the settlement. Mr. Villasenor provides a declaration attesting to the hours spent assisting in litigation, consistent with what a representative plaintiff in a class action would represent to support a similar award.

There is nothing in PAGA that specifically authorizes an additional incentive payment to the named plaintiffs. PAGA only authorizes awards of penalties to aggrieved employees based on actual violations of the Labor Code. (Labor Code § 2699(i).) It is unclear whether additional payments to named plaintiffs are proper in PAGA actions, although such payments are common in class actions. (*Rodriguez v. West Publishing Corp.* (2009) 563 F.3d 948, 958.)

That said, the court intends to approve a reduced incentive award of \$800 to plaintiff.

