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County of Santa Clara
24CV440710
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

ARTHUR ABLAY and ALLEN JARDIN, as aggrieved employees pursuant to the Private Attorneys General Act ("PAGA"), on behalf of the State of California and other aggrieved employees, Plaintiffs, v. MORNINGSTAR SENIOR MANAGEMENT, LLC, a Colorado limited liability company; MORNINGSTAR SENIOR LIVING, LLC, a Colorado limited liability company; and DOES 1 through 10, inclusive, Defendants.	Case No. 24CV440710 **ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

This is a class and Private Attorneys General Act ("PAGA") action. Plaintiffs Arthur Ablay, Allen Jardin, and Jopercy Beltran allege that defendants Morning Senior Management, LLC and Morningstar Senior Living, LLC (collectively, "Defendants") committed various wage and hour violations.

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

As discussed below, the Court GRANTS the motion.

I. BACKGROUND

According to the operative first amended complaint ("FAC"), Plaintiff Ablay worked for Defendants' facility in Pasadena from July 2023 to October 2023 as a Caregiver. (FAC, ¶ 4.) Plaintiff Jardin worked for Defendants' facility in Pasadena from July 2023 to October 2023. (FAC, ¶ 5.) Plaintiff Beltran worked for Defendants in Alameda County. (FAC, ¶ 6.) Defendant failed to: pay all wages (including minimum and overtime wages); timely pay wages; provide compliant meal periods or compensation in lieu thereof; provide rest breaks or compensation in lieu thereof; pay wages upon termination; provide complete and accurate wage statements; maintain complete and accurate payroll records; timely pay wages; pay sick leave benefit; and reimburse for business related expenses. (FAC, ¶¶ 26-40.)

Based on the foregoing, Plaintiffs Ablay and Jardin initiated this action on June 7, 2024, with the filing of the Complaint, which asserted a single claim for PAGA penalties. On April 7, 2026, Plaintiffs filed the operative FAC, which asserts the following causes of action: (1) violation of Labor Code §§ 226.7, 512, subd. (a), 516, and 1198 (failure to provide meal periods); (2) violation of Labor Code §§ 226.7, 516, and 1198 (failure to authorize and permit rest periods); (3) violation of Labor Code §§ 510 and 1198 (unpaid overtime); (4) violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (unpaid minimum wages); (5) violation of Labor Code §§ 226, 1174, subd. (d), and 1198 (non-compliant wage statements and failure to maintain payroll records); (6) violation of Labor Code § 227.3 (failure to pay vested vacation time upon termination); (7) violation of Labor Code §§ 201, 202, and 203 (wages not timely paid upon termination); (8) violation of Labor Code §§ 204 and 210 (failure to timely pat wages during employment); (9) violation of Labor Code § 2802 (unreimbursed business expenses); (10) civil penalties for violations of Labor Code §§ 2698, *et seq.*; (11) violation of Business & Profession §§ 17200, *et seq.* (unlawful business practices); and (12) violation of Business & Profession §§ 17200, *et seq.* (unfair business practices).

Plaintiffs now move for an order: preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement and Release (the "Settlement"); conditionally certifying the proposed settlement class (the "Class"); appointing Plaintiffs Ablay, Jardin, and Beltran as the

Class Representatives; appointing Capstone Law APC and Otkupman Law Firm, ALC as Class Counsel; approving distribution of the Class notice; appointing CPT Group, Inc. ("CPT") as the Settlement Administrator; granting Plaintiffs' leave to file the proposed FAC; and setting the final approval hearing.[1]

II. LEGAL STANDARD 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

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[1] Plaintiffs filed the FAC on April 6, 2026.

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.)

III. SETTLEMENT PROCESS

In April 2024, Plaintiffs Ablay and Jardin submitted written notice to the LWDA and Defendants. On July 12, 2024, Plaintiff Beltran submitted written notice to the LWDA and Defendants. Subsequently, the parties exchanged informal discovery, including the production of Defendants' relevant California labor policies and procedure manuals, and a sample of Class Members' time and pay records.

On May 6, 2025, the parties participated in a global mediation with Louis Martin, Esq., ("Martin") who helped manage the parties expectations and provided a useful, neutral analysis of the issues and risks to both sides. With Martin's help and mediator's proposal, the parties were able to negotiate a complete settlement of Plaintiffs' claims and execute the Settlement currently before the Court.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement amount is $450,000. Attorneys' fees of up to one-third of the gross settlement amount ($150,000), litigation costs of up to $25,000, and administrative costs of up to $10,000. $20,000 will be allocated to PAGA penalties, with 75% ($15,000) paid to the LWDA, and the remaining 25% ($5,000) will be distributed to "PAGA Members" who are defined as "[a]ll California non-exempt employees of Defendants who worked during the PAGA Period [April 1,2023 through July 15, 2025], including those individuals who have signed arbitration agreements." Plaintiffs will each see enhancement payments of $10,000 each—totaling $30,000.

The net settlement amount—which is estimated to be $215,000—will be allocated to "Class Members" who are defined as "[a]ll current and former California non-exempt employees of Defendants who worked for Defendants during the Class Period [September 18, 2020, through July 14, 2025], and who did not execute an arbitration agreement." The average individual payment will be approximately $548. For tax purposes, 10% of each individual payment will be allocated to wages and 90% will be allocated to non-wages. Funds associated with checks uncashed after 180 days will be transmitted to The Justice Gap Fund.

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

> [A]ll claims, rights, demands, liabilities, and causes of action that are alleged in the First Amended Complaint, or which could have been alleged by reason of, or in connection with, any matter or fact set forth or referred to in the First Amended Complaint, including t, including claims for violation of: (a) California Labor Code §§ 226.7, 512(a), 516, and 1198 (failure to provide all meal periods); (b) California Labor Code §§ 226.7, 510, and 1198 (failure to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); (c) California Labor Code §§ 226.7, 516, and 1198 (failure to authorize and permit all rest periods); (d) 510 and 1198 (failure to pay all overtime compensation); (e) California Labor Code §§ 1182.12, 1194, 1197, and 1198 (failure to pay at least minimum wages for all hours worked); (f) California Labor Code §§ 226(a), 1174(d), and 1198 (failure to provide accurate wage statements and maintain accurate payroll records); (g) California Labor Code §§ 201 and 202 (failure to timely pay all earned wages upon termination); (h) h) California Labor Code § 204 (failure to timely pay all earned wages during employment); (i) California Labor Code § 246 (failure to properly calculate sick leave pay); (j) California Labor Code § 2802 (failure to reimburse business expenses); (k) California Labor Code § 227.3 (failure to pay

all accrued and vested vacation/PTO); and (l) California Labor Code §§ 6401 and 6403 (failure to provide safety devices and safeguards).

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

> [All] claims for civil penalties under California Labor Code §§ 2698, *et seq.*, that were brought or could reasonably have been brought based on the same facts alleged in Plaintiffs' LWDA letters during the PAGA Period.

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

V. FAIRNESS OF SETTLEMENT

Class Counsel did not provide any figures regarding Defendants' maximum exposure. Nevertheless, Class Counsel state that they considered risks associated with continued litigation including the multiple defenses asserted by Defendants, Class Counsel estimated Defendant's realistic exposure as follows: $20,215.44 (off-the-clock claim); $80,861.76 (meal period claim); $30,327.74 (overtime claim); $181,938.96 (rest period claim); $27,504 (business expense reimbursement claim); $100,000 (wage statement claim); $238,140 (final pay claim); and $100,000 (PAGA penalties)—totaling $778,987.90.

The proposed settlement represents approximately 58% of the realistic exposure, which is well above the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S. Dist. LEXIS 30201, at *41-42 [citing cases indicating that a general range of 5 to 35 percent of the maximum potential exposure is reasonable.].)

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 Plaintiffs would have had to overcome to prevail on their 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.

VI. PROPOSED SETTLEMENT CLASS

Plaintiffs request conditional certification of the following Class for settlement purposes:

> All current and former California non-exempt employees of Defendants who worked for Defendants during the Class Period and who did not execute the arbitration agreement.

A. Legal Standard for Certifying a Class for Settlement Purposes

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

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

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

B. Ascertainable Class

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

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

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

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

Here, the estimated 392 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. Plaintiffs' claims all arise from Defendants' wage and hour practices.

As for the second factor,

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

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

Like the other members of the proposed Class, Plaintiffs were employed by Defendants, and they allege that they experienced the violations at issue. The anticipated defenses are not unique to Plaintiffs, and there is no indication that Plaintiffs' interests are otherwise in conflict with those of the proposed Class.

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

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

D. Substantial Benefits of Class Certification

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

Here, there are an estimated 392 Class Members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each Class Member. Further, it would be cost prohibitive for each Class Member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

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

Here, the notice, which will be provided in English and Spanish, informs the Class Members of the nature of the lawsuit and their rights under the terms of the Settlement and applicable law. It includes: a detailed explanation of the case, including the basic contentions or denials of the Parties and the basic terms of the Settlement; a statement that the court will exclude the member from the class if they request so by a specified date; a procedure for the member to follow in requesting exclusions from the Class; an explanation that members of the Class can participate in the Settlement by doing nothing; a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. Class Members are given 45 days to exclude themselves or object.

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

Regarding appearances at the final fairness hearing, the notice shall be modified to instruct Class members as follows:

> 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.

> 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.

Turning to the notice procedure, as articulated above, the parties have selected CPT as the Settlement Administrator. No later than 20 days after preliminary approval, Defendant will deliver the Class List to CPT. In turn, within 10 days after receiving the Class List, CPT will perform a search on the National Change of Address Database to update and correct any addresses and mail the notice packet. 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 remailed notices will have an additional 15 days to respond. These notice procedures are appropriate and are approved.

VIII. SERVICE AWARD, ATTORNEYS FEES, AND COSTS

Plaintiffs request Class Representative enhancement payments of $10,000—totaling $30,000.

> The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, internal punctuation and citations omitted; see also *Covillo v. Specialty's Café* (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].)

Prior to final approval, Plaintiffs shall submit their respective declarations detailing their efforts in this matter and any other factors they would like the Court to consider.

The Court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Class Counsel will seek attorneys' fees of up to 35% of the gross settlement amount (currently estimated to be $150,000), and litigation costs up to $25,000. Prior to any final approval hearing, Class Counsel shall submit lodestar information (including hourly rate and hours worked) as well as evidence of actual litigation costs incurred.

IX. CONCLUSION

Plaintiffs' motion for preliminary approval is GRANTED.

The final approval hearing shall take place on **November 5, 2026** at 1:30 in Department 22. The following class is preliminarily certified for settlement purposes:

> All current and former California non-exempt employees of Defendants who worked for Defendants during the Class Period and who did not execute the arbitration agreement.

IT IS SO ORDERED.

Date: 4/30/26

BMcG

BETH MCGOWEN
Judge of the Superior Court