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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SANTA CLARA**

10  
11 PASSION JOHNSON,

12 Plaintiff,

13 vs.

14 DAL GLOBAL SERVICES, LLC, et al.,

15 Defendants.  
16

Case No.: 20CV364694

**ORDER CONCERNING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

17  
18 This is a putative class and Private Attorneys General Act (“PAGA”) action on behalf of  
19 employees of defendant DAL Global Services, LLC (“DAL”). Plaintiff Passion Johnson alleges  
20 failure to reimburse business expenses, wage statement violations, and other wage and hour  
21 violations. Before the Court is Plaintiffs’ motion for preliminary approval of a settlement. No  
22 one appeared at the March 4, 2021 hearing to contest the Court’s tentative ruling. The Court  
23 now issues its final order, which GRANTS Plaintiff’s motion.

24 **I. BACKGROUND**

25 As alleged in the operative complaint, Plaintiff worked for DAL in Santa Clara County  
26 during the relevant time period. (First Amended Complaint (“FAC”), ¶ 1.) She and other  
27 employees were regularly required to use their cell phones in the normal course of their job  
28 duties to communicate with each other, respond to communications from supervisors, check

1 flight times, and place calls to disarm alarms and to operations. (*Id.*, ¶ 18.) But they were not  
2 reimbursed for associated expenses. (*Ibid.*) In addition, employees’ wage statements incorrectly  
3 identified two separate hourly base rates and consequently displayed other wrong information;  
4 incorrectly identified the employer and omitted its address; and reflected pay in the form of a  
5 point or unit system rather than on an hourly basis for certain paper and/or final wage statements.  
6 (*Id.*, ¶¶ 20–25.)

7 Assuming that the “units” reflected on impacted wage statements correspond to hours,  
8 Defendant failed to pay overtime for units worked in a week that exceeded 40 units. (FAC,  
9 ¶ 27.) DAL failed to pay daily and weekly overtime due to its practice of paying regular wages  
10 at less than the hourly base rate. (*Id.*, ¶ 28.) And it failed to maintain accurate records of the  
11 total hours worked and wages paid to employees due to its other violations. (*Id.*, ¶ 30.) Finally,  
12 Defendant failed to timely pay wages at termination and otherwise because of its other  
13 violations. (*Id.*, ¶¶ 31–32.)

14 Based on these allegations, Plaintiff asserts putative class claims under the Labor Code  
15 for (1) failure to reimburse business expenses, (2) inaccurate wage statements, (3) failure to pay  
16 regular and overtime wages, and (4) waiting time penalties, as well as (5) a derivative, putative  
17 class claim for unlawful business practices and (6) a representative claim for PAGA penalties.

## 18 **II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

### 19 **A. Class Action**

20 Generally, “questions whether a [class action] settlement was fair and reasonable,  
21 whether notice to the class was adequate, whether certification of the class was proper, and  
22 whether the attorney fee award was proper are matters addressed to the trial court’s broad  
23 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),  
24 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th  
25 260.)

26 In determining whether a class settlement is fair, adequate and reasonable, the  
27 trial court should consider relevant factors, such as the strength of plaintiffs’ case,  
28 the risk, expense, complexity and likely duration of further litigation, the risk of

1 maintaining class action status through trial, the amount offered in settlement, the  
2 extent of discovery completed and the stage of the proceedings, the experience  
3 and views of counsel, the presence of a governmental participant, and the reaction  
4 of the class members to the proposed settlement.

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

6 In general, the most important factor is the strength of the plaintiffs’ case on the merits,  
7 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)  
8 168 Cal.App.4th 116, 130 (*Kullar*.) But the trial court is free to engage in a balancing and  
9 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91  
10 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the  
11 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
12 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a  
13 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation  
14 marks omitted.)

15 The burden is on the proponent of the settlement to show that it is fair and  
16 reasonable. However “a presumption of fairness exists where: (1) the settlement  
17 is reached through arm’s-length bargaining; (2) investigation and discovery are  
18 sufficient to allow counsel and the court to act intelligently; (3) counsel is  
19 experienced in similar litigation; and (4) the percentage of objectors is small.”

20 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit  
21 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently  
22 and objectively analyze the evidence and circumstances before it in order to determine whether  
23 the settlement is in the best interests of those whose claims will be extinguished,” based on a  
24 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

## 25 **B. PAGA**

26 Labor Code section 2699, subdivision (l) provides that “[t]he superior court shall review  
27 and approve any penalties sought as part of a proposed settlement agreement pursuant to”  
28 PAGA. The court’s review “ensur[es] that any negotiated resolution is fair to those affected.”

1 (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties  
2 recovered under PAGA go to the Labor and Workforce Development Agency (“LWDA”),  
3 leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS*  
4 *Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.)

5 “[W]hen a PAGA claim is settled, the relief provided ... [should] be genuine and  
6 meaningful, consistent with the underlying purpose of the statute to benefit the public ....”  
7 (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX)  
8 2015 WL 12732709, at \*13.) The settlement must be reasonable in light of the potential verdict  
9 value. (See *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135  
10 [rejecting settlement of less than one percent of the potential verdict].) But a permissible  
11 settlement may be substantially discounted, given that courts often exercise their discretion to  
12 award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See  
13 *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL  
14 5907869, at \*8–9.)

### 15 **III. SETTLEMENT PROCESS**

16 Plaintiff explains that DAL is an aviation ground handling services provider. She worked  
17 as one of its “rampers,” directing as well as loading and unloading luggage from airplanes, from  
18 September to December 2019. The parties discussed early mediation soon after this action was  
19 filed, but it was continued twice due to the impact of COVID-19, particularly on the airline  
20 industry.

21 Meanwhile, the parties exchanged documents and information. Defendant provided a  
22 spreadsheet that Plaintiff used to determine the number of impacted employees, the number of  
23 pay periods at issue, the number of former employees, and the manual checks issued. After a  
24 full-day mediation before Lisa Klerman on October 27, 2020, the parties were able to reach the  
25 settlement before the Court. The settlement period begins on July 31, 2018 due to a previous  
26 settlement in another case.

27 As a condition of the settlement, Defendant agreed to provide additional confirmatory  
28 discovery for analysis by Plaintiff’s expert. On December 17, 2020, it produced a large,

1 randomized sampling of employee payroll and time-keeping data that allowed Plaintiff's expert  
2 to model the damages and violation rates associated with Plaintiff's claims. This analysis  
3 confirmed that the settlement is fair and reasonable. The parties subsequently made minor  
4 amendments to the settlement to conform to the Court's new guidelines.

#### 5 **IV. SETTLEMENT PROVISIONS**

6 The non-reversionary gross settlement amount is \$425,000. Attorney fees of up to  
7 \$141,666.66 (one-third of the gross settlement), litigation costs not to exceed \$12,000, and  
8 administration costs of up to \$16,500 will be paid from the gross settlement. \$10,000 will be  
9 allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named  
10 plaintiff will also seek a service award of \$7,500.

11 The net settlement, approximately \$239,833.34, will be distributed to class members  
12 proportionally based on their weeks worked during the class period. The average settlement  
13 payment will be approximately \$114.21 to each of the 2,100 class members. Class members will  
14 not be required to submit a claim to receive their payments. Settlement awards will be allocated  
15 five percent to wages and 95 percent to interest and penalties for tax purposes. The employer's  
16 share of any payroll taxes will be paid separately from the settlement fund. Funds associated  
17 with checks uncashed after 180 days will be redistributed to participating class members pro rata  
18 if such funds exceed \$35,000; otherwise, they will be tendered to Child Advocates of Silicon  
19 Valley.

20 Class members who do not opt out of the settlement will release any and all claims "that  
21 were or could have been pled based on the allegations in the First Amended Complaint,  
22 including, but not limited to, claims based on hours worked, minimum wage, overtime, wage  
23 statements, final pay, timing of pay, record retention, expense reimbursement, unfair  
24 competition, and statutory and civil penalties, that accrued or accrue through March 1, 2021,"  
25 including claims based on California's Wage Orders, the California Labor Code, Business &  
26 Professions Code section 17200 et seq., and the federal Fair Labor Standards Act ("FLSA").  
27 Although no FLSA claim is alleged in this action and the Court does not approve a settlement of  
28

1 any such claim, the scope of the release is appropriate. (See *Rangel v. PLS Check Cashers of*  
2 *California, Inc.* (2018) 899 F.3d 1106.)

3 **V. FAIRNESS OF SETTLEMENT**

4 Plaintiff estimates Defendant’s exposure for failure to pay regular and overtime wages,  
5 which is based on DAL’s rounding of employees’ *pay rates*, would total a maximum of  
6 \$216,849, with a realistic exposure of \$81,318. The derivative waiting time penalties—which  
7 would require a finding of willfulness—have a maximum value of \$3,491,806.32, with a realistic  
8 exposure of \$157,131.28. The wage statement claims are worth up to \$6,784,450 assuming  
9 Plaintiff prevailed on her theory regarding failure to identify the employer, but Defendant has a  
10 good defense on the merits of this theory. The wage statement claim based on pay rates has a  
11 maximum value of \$2,561,450. Averaging the value of the two theories and applying discounts,  
12 Plaintiff estimates the realistic value of the wage statement claims overall at \$262,853.44. The  
13 PAGA penalties in the action could total \$10,576,000, but are highly discretionary. Plaintiff  
14 estimates their realistic value at \$264,400. Among other risks, Plaintiff considered the financial  
15 difficulties the airline industry is experiencing as a result of COVID-19 (which could make it  
16 difficult to collect a judgment) in calculating the realistic value of her claims.

17 Based on the analysis above, the maximum potential value of Plaintiff’s claims is  
18 \$21,069,105.30, mostly in penalties. The settlement is only about two percent of that amount,  
19 but the realistic value of the case is \$608,571. The settlement constitutes roughly 70 percent of  
20 that realistic exposure, and well over the maximum estimated value of the claims for unpaid  
21 regular and overtime wages.

22 As for Plaintiff’s claim for failure to reimburse business expenses, the Court asked  
23 Plaintiff to submit a supplemental declaration concerning the merits and potential value of the  
24 claim. After reviewing Plaintiff’s February 24, 2021 declaration, the Court agrees that this claim  
25 had very low realistic value. The Court therefore agrees with Plaintiff that the overall settlement  
26 is fair and reasonable to the class.

27 As for attorney fees, the Court retains an independent right and responsibility to review  
28 the requested attorney fees and award only so much as it determines to be reasonable. (See

1 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.)

2 While 1/3 of the common fund for attorney fees is generally considered reasonable, counsel  
3 shall submit lodestar information before the final approval hearing in this matter so the Court can  
4 compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half Intern.*  
5 *Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the reasonableness of  
6 a percentage fee through a lodestar calculation].)

7 **VI. PROPOSED SETTLEMENT CLASS**

8 Plaintiff requests that the following settlement class be provisionally certified:

9 All persons employed by Defendant in non-exempt positions in California at any  
10 time from July 31, 2018 through March 1, 2021 or the Preliminary Approval  
11 Date, whichever date is earlier (the “Class Period”).

12 **A. Legal Standard for Certifying a Class for Settlement Purposes**

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

18 Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence:

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

27 In the settlement context, “the court’s evaluation of the certification issues is somewhat  
28 different from its consideration of certification issues when the class action has not yet settled.”

1 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the  
2 settlement-only context, the case management issues inherent in the ascertainable class  
3 determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.*  
4 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or  
5 overbroad class definitions require heightened scrutiny in the settlement-only class context, since  
6 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

#### 7 **B. Ascertainable Class**

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

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

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

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



1 Here, the 2,100 class members are readily identifiable based on Defendant’s records. The  
2 settlement class is defined based on objective characteristics. The Court finds the settlement  
3 class is numerous, ascertainable, and appropriately defined.

4 **C. Community of Interest**

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

9 For the first community of interest factor, “[i]n order to determine whether common  
10 questions of fact predominate the trial court must examine the issues framed by the pleadings  
11 and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.*  
12 (2001) 89 Cal.App.4th 908, 916 (*Hicks*)). The court must also examine evidence of any conflict  
13 of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court*  
14 (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be  
15 jointly tried, when compared with those requiring separate adjudication, are so numerous or  
16 substantial that the maintenance of a class action would be good for the judicial process and to  
17 the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105  
18 (*Lockheed Martin*)). “As a general rule if the defendant’s liability can be determined by facts  
19 common to all members of the class, a class will be certified even if the members must  
20 individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

21 Here, common legal and factual issues predominate. Plaintiff’s claims all arise from  
22 Defendant’s wage and hour practices applied to the similarly-situated class members.

23 As to the second factor,

24 The typicality requirement is meant to ensure that the class representative is able  
25 to adequately represent the class and focus on common issues. It is only when a  
26 defense unique to the class representative will be a major focus of the litigation,  
27 or when the class representative’s interests are antagonistic to or in conflict with  
28 the objectives of those she purports to represent that denial of class certification is

1 appropriate. But even then, the court should determine if it would be feasible to  
2 divide the class into subclasses to eliminate the conflict and allow the class action  
3 to be maintained.

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

6 Like other members of the class, Plaintiff was employed by Defendant as a non-exempt  
7 employee and alleges that she experienced the violations at issue. The anticipated defenses are  
8 not unique to Plaintiff, and there is no indication that Plaintiff's interests are otherwise in conflict  
9 with those of the class.

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

19 Plaintiff has the same interest in maintaining this action as any class member would  
20 have. Further, she has hired experienced counsel. Plaintiff has sufficiently demonstrated  
21 adequacy of representation.

#### 22 **D. Substantial Benefits of Class Certification**

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

1 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.  
2 120–121, internal quotation marks omitted.)

3 Here, there are 2,100 members of the proposed class. It would be inefficient for the  
4 Court to hear and decide the same issues separately and repeatedly for each class member.  
5 Further, it would be cost prohibitive for each class member to file suit individually, as each  
6 member would have the potential for little to no monetary recovery. It is clear that a class action  
7 provides substantial benefits to both the litigants and the Court in this case.

## 8 **VII. NOTICE**

9 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule  
10 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures  
11 for class members to follow in filing written objections to it and in arranging to appear at the  
12 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining  
13 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of  
14 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class  
15 members; (5) The resources of the parties; (6) The possible prejudice to class members who do  
16 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule  
17 3.766(e).)

18 Here, the notice describes the lawsuit, explains the settlement, and instructs class  
19 members that they may opt out of the settlement or object. The gross settlement amount and  
20 estimated deductions are provided. Class members’ estimated payments and qualifying  
21 workweeks are provided, and they are instructed how to dispute their workweek information.  
22 Class members are given 60 days to request exclusion from the class by providing their name  
23 and stating their intent to opt-out, or to submit a written objection to the settlement.

24 The form of notice is generally adequate and is approved, with the modification that class  
25 members’ estimated payments and work week information shall be displayed in bold within a  
26 box set off from the rest of the text on the first page of the notice. The notice must also be  
27 modified to instruct class members that they may appear at the final fairness hearing to make an  
28 oral objection without submitting a written objection or notice of intent to appear.

1 With regard to appearances at the final fairness hearing, the notice shall be further  
2 modified to instruct class members as follows:

3 Due to the COVID-19 pandemic, hearings before the judge overseeing this case  
4 are currently being conducted remotely with the assistance of a third-party service  
5 provider, CourtCall. If that remains the case at the time of the final fairness  
6 hearing, class members who wish to appear at the final fairness hearing should  
7 contact class counsel to arrange a remote appearance through CourtCall, at least  
8 three days before the hearing if possible. Any CourtCall fees for an appearance  
9 by an objecting class member shall be paid by class counsel.

10 Turning to the notice procedure, the parties have selected CPT Group as the settlement  
11 administrator. The administrator will mail the notice packet within 14 days of receiving the class  
12 database, after updating addresses using the National Change of Address Database. Any notice  
13 packets returned as undeliverable will be re-mailed to any forwarding address provided or  
14 located through a skip trace. These notice procedures are appropriate and are approved.

15 **VIII. CONCLUSION**


16 The final approval hearing shall take place on **August 12, 2021** at 1:30 p.m. in Dept. 1.  
17 The following class will be preliminarily certified for settlement purposes:

18 All persons employed by Defendant in non-exempt positions in California at any  
19 time from July 31, 2018 through March 1, 2021 (the "Class Period").

20 Before final approval, Plaintiffs shall lodge any individual settlement agreement she may  
21 have executed with Defendant in connection with her employment for the Court's review.

22 **IT IS SO ORDERED.**

23 Date: March 8, 2021

24   
25 \_\_\_\_\_  
26 The Honorable Sunil R. Kulkarni  
27 Judge of the Superior Court  
28