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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SARA ACEVEDO, and JESUS SOTO, individually, and on behalf of all others similarly situated, PLAINTIFFS, v. DEANCO HEALTHCARE, LLC, a California Limited Liability Company, and DOES 1 thru 50, inclusive, DEFENDANTS.	Case No.: 21STCV34724 [Assigned for all purposes to Judge William F. Highberger, Dept. 10] **DECLARATION OF DAVID S. WINSTON IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL** Date: November 1, 2022 Time: 1:30 pm Place: Department 10

DECLARATION OF DAVID S. WINSTON

I, **DAVID S. WINSTON**, declare as follows:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am the attorney of record for Plaintiff RONALD FLORES NUNFIO. I have personal knowledge of the facts set forth herein, and if called upon as a witness, I could and would testify competently thereto.

2. I graduated from the University of California, Los Angeles School of Law in 2014 and graduated *summa cum laude* with a B.A. in Political Science from Vanderbilt University. I am admitted to practice before the following Courts: the United States District Court for the Central District of California, the United States District Court for the Eastern District of California, the United States District Court for the Southern District of California, the United States District Court for the Northern District of California, the Ninth Circuit Court of Appeal, and all California State Courts. I have been practicing law since 2014.

THE EXPERIENCE AND VIEWS OF CLASS COUNSEL

3. Prior to starting the Winston Law Group, P.C. in 2017, I regularly litigated class and representative PAGA actions as an Associate at Kingsley & Kingsley and represented employers in class, representative, and individual actions at Lewis Brisbois Bisgaard & Smith and Burke, Williams, & Sorensen, LLP.

4. Since founding Winston Law Group, P.C. I have also been appointed Class or PAGA Counsel in numerous class action and PAGA cases including:

a. Porras et al. vs. Chipotle Services, LLC, *Stanislaus County Superior Court (Case No. CV-19-000937)*. This PAGA settlement was approved by the Hon. Sonny S. Sadhu on June 16, 2020 in the gross amount of $4,900,000.

b. Miller et al. vs. Mattress Firm, Inc., Santa Clara County Superior Court (Case No. 17CV313148). This PAGA settlement was approved by the Hon. Thomas E. Kunle on December 17, 2018 in the gross amount of $3,750,000.

c. Smart & Final Wage and Hour Cases, Sacramento County Superior Court (*JCCP Number 5089*). This PAGA settlement was approved by the Hon. Richard K. Sueyoshi on July 9, 2021 in the gross amount of $3,470,000.00.

d. Zirpolo vs. UAG Stevens Creek, Inc. (Penske), *Santa Clara County Superior Court (Case No. 17CV313457)*. The matter was finally approved for settlement by the Honorable Brian C. Walsh on July 10, 2018 in the gross amount of $3,275,000.

e. Espindola et al. vs. Panda Express, LLC et al., San Bernardino County Superior Court (Case No. CIVDS1931455). This PAGA settlement was approved by the Hon. David Cohn on April 13, 2021 in the gross amount of $3,125,000.00.

f. Westbrook vs. Winco Holdings Inc. et al., *Riverside County Superior Court (Case No. RIC1710168)*. The matter was finally approved for settlement by the Hon. Raquel A. Marquez on January 15, 2019 in the gross amount of $3,000,000.

g. Amster et al. vs. Starbucks Corporation, *San Bernardino County Superior Court (Case No. CIVDS1922016*). This PAGA settlement was approved by the Hon. Donald Alvarez on July 14, 2020 in the gross amount of $3,000,000.

h. Antonov et al. vs. GL HHR, LLC (Ken Garff Automotive) et al., *San Bernardino County Superior Court (Case No. CIVDS1724725)*. The matter was finally approved for settlement by the Hon. David Cohn on December 11, 2018 in the gross amount of $2,850,000.

i. Scoggins et al. vs. Crossmark, Inc. et al., Ventura County Superior Court (Case No. 56-2017-00492936-CU-OE-VTA). The matter was finally approved for settlement by the Hon. Matthew P Guasco on January 23, 2020 in the gross amount of $2,100,000.

j. Smith et al. vs. Burlington Merchandising Corporation et al., San Bernardino County Superior Court (Case No. CIVIDS1929684). This PAGA settlement was approved by the Hon. David Cohn on October 23, 2020 in the gross amount of $2,000,000.

k. Castaing et al. vs. Hendrick Automotive Group et al., Alameda County Superior Court (Case No. RG17879115). The matter was finally approved for settlement by the Hon. Brad Seligman on June 24, 2019 in the gross amount of $1,850,000.

l. Westphal vs. New York Life Insurance Company, *Placer County Superior Court (Case No. S-CV-0040532)*. The matter was finally approved for settlement by the Hon. Michael Jones on September 11, 2018 in the gross amount of $1,701,366.

m. Williams vs. Kaiser Foundation Health Plan, Inc., Alameda County Superior Court (Case No. RG 18917898). The matter was finally approved for settlement by the Hon. Stephen Klaus on August 19, 2020 in the gross amount of $1,250,000.

n. Berbano and Centeno vs. Ingram Micro, Inc., *San Bernardino County Superior Court (Case No. CIVDS1826805)*. The matter was finally approved for settlement by the Hon. David Cohn on September 17, 2019 in the gross amount of $1,180,000.

o. Chiefer and Goldenberg vs. WHGM, Inc. (Keyes Motors), *Los Angeles County Superior Court (Case No. LC106505*). The matter was finally approved for settlement by the Hon. Rupert A. Byrdsong on September 21, 2018 in the gross amount of $1,150,000.

p. Hollis vs. Union Pacific Railroad Co., *Central District of California* No. 5:17-Cv-02449-JGB (SHKx)). The matter was finally approved for settlement by the Hon. Jesus G. Bernal on September 19, 2018 in the gross amount of $1,083,965.

q. Myers vs. Mor Furniture for Less, Inc., *San Diego County Superior Court (Case No. 37-2018-00055055-CU-OE-NC)*. The PAGA Settlement was approved by the Hon. Ronald Frazier on November 27, 2018 in the amount of $1,062,000.

r. Grotte vs. Normal Life of California, Inc. et al., *San Luis Obispo County Superior Court (Case No. 18CV-0672)*. The matter was finally approved for settlement by the Hon. Tana L. Coates in the gross amount of $1,050,000 on June 24, 2020.

s. Wilson et al. vs. DGDG 1, LLC et al. (Del Grande Automotive Group), Santa Clara County Superior Court (Case No. 2018-1-CV-331434). The matter was finally approved by the Hon. Thomas E. Kuhnle on January 17, 2020 in the gross amount of $1,024,963.71.

t. Perea vs. Drybar Holdings LLC, Los Angeles County Superior Court (Case No.BC703413). The matter was finally approved for settlement by the Hon. Yolanda Orosco on September 9, 2019 in the amount of $1,000,000.

u. Ali vs. Auto Nation, Inc. et al., San Diego County Superior Court (Case No. 37-2018-00037616-CU-OE-CTL). The PAGA settlement was approved by the Hon. Ronald Frazier on November 14, 2019 in the gross amount of $851,000.

v. Ashe vs. Farmers Insurance Exchange et al., Los Angeles County Superior Court (Case No. 18STCV00453). This Fair Credit Reporting Act class action was finally approved by the Hon. Steven J. Kleifield on August 6, 2020 in the gross amount of $800,000.

w. Martinez vs. Vieira Agricultural Enterprises, LLC, *Merced County Superior Court (Case No. 19CV-04603)*. The matter was finally approved for settlement by the Hon. Brian McCabe on February 26, 2021 in the gross amount of $775,000.

x. Pia vs. 5G's Automotive, Inc., *Tulare County Superior Court (Case No. VCU274628)*. The matter was finally approved for settlement by the Hon. Brett Hillman on September 6, 2019 in the gross amount of $750,000.

y. Herrera vs. Inland Staffing et al., *San Bernardino County Superior Court (Case No. CIVDS2924284).* The matter was finally approved for settlement by the Hon. David S. Cohn on March 10, 2021 in the gross amount of $750,000.

z. Kennedy vs. 99 Cents Only Stores, LLC, *Los Angeles County Superior Court (Case No. 19STCV09311)*. The PAGA settlement was approved by the Hon. Anthony Mohr on November 19, 2019 in the gross amount of $700,000.

aa. Sumlin vs. BNSF Railway Company, *San Bernardino County Superior Court (Case No. CIVDS1724126)*. The matter was finally approved for settlement by the Hon. David Cohn on September 5, 2018 in the gross amount of $675,000.

bb. Brown vs. Saks and Company, LLC, *Central District of California* (CV 17-04210 SJO (JEM)). This matter was finally approved for settlement by the Hon. S. James Otero on March 22, 2018 in the gross amount of $638,800.

cc. Myers vs. LBC Limited Partnership, *San Bernardino County Superior Court (Case No. CIVDS 1715068)*. The matter was finally approved for settlement by the Hon. Janet Frangie on July 25, 2018 in the gross amount of $600,000.

dd. Bunkley vs. DMSD Foods et al., San Diego County Superior Court (Case No. 37-2020-00017973-CU-OE-CTL. This PAGA settlement was approved on July 9, 2021 by the Hon. Richard E. L. Strauss in the gross amount of $595,000.

ee. Garcia vs. Optima Tax, Orange County Superior Court (Case No. 30-2019-01082473-CU-OE-CXC). This PAGA settlement was approved on July 31, 2020 by the Hon. William Claster in the gross amount of $550,000.

5. I am experienced and qualified to evaluate the Class and PAGA claims and viability of the defenses. I have extensive experience in prosecuting and defending employment litigation, and have focused my practice primarily on cases regarding wage and hour class actions and representative PAGA actions.

6. I also have significant experience with Class Action Wage and Hour and PAGA litigation having briefed PAGA issues before the California Court of Appeal several times including in *Anaya v. J's Maint. Serv., Inc*., No. B261662, 2016 WL 519867 (Cal. Ct. App. Feb. 9, 2016) and the appellant's brief in *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) while at Kingsley & Kingsley, APC.

7. I also represented employees in a number of other significant cases prior to starting Winston Law Group, P.C.

8. I also have experience with contested class certifications having successfully overseen the class certification in *Amaro v. Gerawan Farming, Inc.*, No. 1:14-CV-00147-DAD-SAB (E.D. Cal. May 19, 2016) resulting in the certification of three classes of more than 6,000 employees. I personally drafted the motion for class certification, the reply in support of class certification, and the opposition to the defendant's motion for reconsideration as well as the supporting documents.

9. Based upon my experience and after factoring in the risks, I believe that this settlement is fair and reasonable in light of the risks associated with the claims and that this settlement should be approved. In making this determination, I weighed the benefits and risks associated with each of the claims in light of the factual challenges as well as Defendant's potential defenses and determined the amount offered in settlement was fair and reasonable considering the risks and the likelihood of success

on the merits. After a review of these facts, it is my opinion that the proposed settlement represents not only a fair, but an excellent result for the Class.

10. Following the filing of the Complaint, Plaintiff Flores propounded four (4) sets of discovery on May 21, 2021 consisting of Request for Production of Documents, Special Interrogatories, Requests for Admission, and Employment Form Interrogatories. Defendant failed to timely respond to Plaintiff's discovery requests leading Plaintiff to file four (4) motions to compel.

11. During the pendency of these Motions and in an effort to minimize the potential impact caused by the mandatory sanctions on resolution efforts, Plaintiff and Defendant entered into a stipulation requiring Defendant to produce a significant number of documents and information. Plaintiffs' relied upon this formal production along with additional informal discovery requested by Plaintiffs in advance of the Mediation.

12. The Parties participated in a mediation with well-respected mediator David Phillips, Esq. on December 20, 2021. Mr. Phillips helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks. Although the Parties did not reach a settlement at the Mediation, Mr. Phillips made a mediator's proposal resulting in the proposed Settlement pending before the Court. At all times, the Parties' negotiations were adversarial and non-collusive.

13. In analyzing this potential settlement, I considered the Labor Commissioner's Brief in *Price v. Uber Technologies*, *Inc.*, Case No. BC554512 (Los Angeles County Superior Court). Attached hereto as **Exhibit 1** is a true and correct copy of the Labor Commissioner's Brief from *Price v. Uber Technologies*, *Inc.*, Case No. BC554512 (Los Angeles County Superior Court).

14. Given the Department of Industrial Relations' emphasis on affirmative non-monetary relief in measuring the utility of a PAGA settlement and willingness to consider other alternatives aside from penalties, Plaintiffs structured the settlement in a manner that provided genuine and meaningful relief in the form of a six-figure penalty, while also maximizing the recovery for the affected employees.

15. In my opinion, Plaintiff Flores' limited $5,000.00 service award reflects his contributions in structing the settlement in a manner that maximized the recovery for the affected employees/class members and not merely the amount of PAGA penalties obtained.

16. In my opinion, Plaintiff Flores' initiation of his PAGA action in January 2021 created an additional 8 months of available PAGA penalties that, although discretionary, greatly outweighed the potential recovery for the underpayments and other wage and hour violations.

17. In my opinion, this allowed the Class to obtain a significantly larger settlement than otherwise available and provided an extended recovery period of approximately 166% in comparison to the typical PAGA statutory period. This greatly benefitted both the Class and the State of California.

18. I am aware that the attorneys' fees in this action shall be divided 80% to Winston Law Group, P.C. and 20% to Wilshire Law Firm. Plaintiffs have given written consent to this division of attorneys' fees and the division of by no means increased the amount of legal fees that Plaintiffs will pay or have agreed to pay for services rendered on their and the Class' behalf.

19. In analyzing the potential settlement and Defendant's defnses, I considered the result in *Troester vs. Startbucks*. Attached hereto as **Exhibit 2** is a true and correct copy of the Order Granting Defendant's Motion for Partial Summary Judgment and Denying Plaintiff's Motion for Class Certification from *Troester vs. Startbucks*.

20. As part of the Settlement, my firm agreed to waive the mandatory sanctions associated with Defendants' failure to provide any response whatsoever to his initial sets of discovery.

21. The Proposed Settlement was provided to the LWDA as required by PAGA. Attached hereto as **Exhibit 3** is a true and correct copy of the email from the LWDA confirming that Plaintiff submitted the proposed PAGA Settlement to the LWDA.

22. In the interest of transparency, I wish to disclose to the Court that Plaintiff and Defendant settled Plaintiff Ronald Flores' separately pled individual employment claims and the claims related to retaliation that he raised in writing for $15,000. As detailed in the Class/PAGA settlement, my firm did not receive any compensation or cost reimbursement associated with the resolution of Plaintiff Flores' individual claims.

23. Code of Civ. Proc. § 384 requires that any funds associated with uncashed voided checks issued as part of this settlement be paid "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives

and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." In accordance with Code of Civ. Proc. § 384, Plaintiff proposes to designate CASA of Los Angeles County. I have no interest in the governance of CASA of Los Angeles County who the Parties' propose as the *cy pres* beneficiary for any uncashed/unclaimed funds as required by California Code of Civil Procedure § 384.

24. The Parties previously sought approval of their proposed settlement on June 8, 2022 in Department 50 of the Los Angeles County Superior Court since that action is the low numbered case. During the proceedings the Parties and the Court discussed Judge Beaudet's view that the settlement should be considered by the Complex Department, that neither Counsel nor the Court knew of a way to consolidate the matters in the complex department given the procedural posture, the claims in the various cases, and the inability of Jesus Soto's Counsel to contact him. During the hearing Judge Beaudet directed the Parties to seek approval of their Proposed Settlement in this Court and to ask this Court to consolidate the matters for settlement purposes only. Attached hereto as **Exhibit 4** is a true and correct copy of the June 8, 2022 Minute Order from Judge Beaudet.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 7th day of October 2022, in Los Angeles, California.

David S. Winston

DAVID S. WINSTON

Exhibit 1

OFFICE OF THE DIRECTOR
State of California, Department of Industrial Relations
Christopher G. Jagard (Bar No. 191147)
Dan L. Gildor (Bar No. 223027)
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Counsel for Department of Industrial Relations
Appearing specially for the State Labor Commissioner, Julie A. Su

FILED
Superior Court of California
County of Los Angeles

JUN 16 2017

Sherri R. Carter, Executive Officer/Clerk
By Isabel Arellanes, Deputy
Isabel Arellanes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

STEVEN PRICE, an individual; individually and on behalf of all others similarly situated, Plaintiff, vs. UBER TECHNOLOGIES, INC., a Delaware Corporation, RAISER-CA, LLC, a Delaware Limited Liability Company, and DOES 2 through 100, inclusive, Defendant.	Case No: BC554512 <u>Assigned for all Purposes to:</u> Hon. Maren Nelson – Dept. 307 **THE CALIFORNIA LABOR COMMISSIONER'S AMICUS CURIAE BRIEF PURSUANT TO MAY 11, 2017 ORDER** **BY FAX** Dept: 307 Date: June 30, 2017 Time: 1:30 p.m. [***EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103* **]

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Pursuant to the Court's May 11, 2017 order, Labor Commissioner Julie A. Su ("Labor Commissioner") respectfully submits this *amicus curiae* brief regarding the proposed settlement in this matter.[1] The Court requested briefing on three issues:

1. Where multiple plaintiffs bring PAGA claims against the same employer for the same or similar alleged violations of law, which plaintiffs, if any, speak on behalf of the Labor Commissioner?

2. What legal standard should the court apply in approving a settlement under Labor Code section 2699, subdivision (*l*)(2)?

3. The propriety of the proposed settlement in this action.

While these issues implicate some unsettled legal questions, the Labor Commissioner believes that these issues are best resolved by applying principles of fairness and justice that have developed in other forms of representative actions, as well as by considering PAGA's role in helping the Labor Commissioner discharge her mandate

> to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employers that have not secured the payment of compensation, and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

(Lab. Code § 90.5, subd. (a).)

I. WHERE MULTIPLE PLAINTIFFS BRING PAGA CLAIMS AGAINST THE SAME EMPLOYER FOR THE SAME OR SIMILAR ALLEGED VIOLATIONS OF LAW, WHICH PLAINTIFFS, IF ANY, SPEAK ON BEHALF OF THE LABOR COMMISSIONER?

The California Supreme Court has recognized the Private Attorneys General Act of 2004 ("PAGA") as a procedural device that allows aggrieved employees to bring actions to recover civil penalties that otherwise could only be sought by the State. (*See Amalgamated Transit Union*

[1] While the Court's May 11, 2017 order invited the Labor Commissioner to submit an *amicus* brief, the state's interest with regard to the Private Attorneys General Act, Labor Code section 2698, *et seq*., lies with the Labor and Workforce Development Agency, the legislatively-created, cabinet-level agency within the State of California charged with coordinating enforcement of California's Labor Code and on whose behalf PAGA claims are brought. The Labor Commissioner is the Chief of the Division of Labor Standards Enforcement within the Department of Industrial Relations, and the LWDA oversees the Department of Industrial Relations. (Lab. Code §§ 50, 79, 82.) It is the LWDA that is the real party in interest with regard to PAGA claims, not the Labor Commissioner.

Local 1756 v. Super. Ct. (2009) 46 Cal.4th 993, 1003.) It neither creates substantive rights nor, even as a form of qui tam action, authorizes any plaintiff to speak on behalf of the Labor Commissioner. To the extent the parties and objectors disagree on whether more than one plaintiff may bring an action based on the same or similar allegations, the Labor Commissioner notes that nothing in PAGA or the general jurisprudence regarding representative actions precludes this. PAGA—unlike California's principal qui tam statute, the California False Claims Act—does not place limits on how many representative actions may proceed. (*See* Gov. Code § 12652, subd. (c)(10) ["When a person brings an action under this subdivision, no other person may bring a related action based on the facts underlying the pending action."].) The absence of such limits indicates the Legislature's intention to permit overlapping litigation against the same employer; but a judgment in a PAGA action can bind all who would be bound by a judgment in an action brought by the State. (*Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 985.)

II. <u>WHAT LEGAL STANDARD SHOULD THE COURT APPLY IN APPROVING A SETTLEMENT UNDER LABOR CODE SECTION 2699(*l*)(2)?</u>

It is well established that PAGA serves to augment the limited enforcement capability of the Labor and Workforce Development Agency by empowering employees to bring actions to enforce California's labor standards. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 383; *accord Arias*, *supra*, 46 Cal.4th at p. 986 ["The act's declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves."]; *see also* Stats. 2003, ch. 906, § 1.) In doing so, PAGA plaintiffs "take on a special responsibility to their fellow aggrieved workers who are effectively bound by any judgment." (*O'Connor v. Uber Technologies* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134.) This responsibility "is especially significant given that PAGA does not require class action procedures" that would safeguard against fraud and collusion. (*Id.* at p. 1133.) In this context, the touchstone for the adequacy of the settlement must always be the purposes and policies underlying California's labor laws, and PAGA as a proxy for a state action. To that end, a PAGA settlement must provide for relief that is genuine, meaningful, and consistent with the State's goal of benefitting the public through enforcement of its labor laws.

Against this backdrop, the Labor Commissioner believes that courts evaluating PAGA settlements should utilize the standard employed in qui tam and other representative actions: is the settlement fair, adequate, and reasonable under all of the circumstances in light of the public policies underlying California's labor standards? Part of this analysis is a consideration of the strength of the plaintiffs' case—something that courts have considered in both qui tam and class actions. (*See United States ex rel. Schweizer v. Oce N. Am., Inc.* (D.D.C. 2013) 956 F.Supp.2d 1, 11 ["While there is 'no single test' for class action settlement approval under Rule 23(e) in this jurisdiction, courts look to the following factors: . . . "(b) the terms of the settlement in relation to the strength of plaintiffs' case. . . . "]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 ["The proposed settlement cannot be judged without reference to the strength of plaintiffs' claims. [Citations]"].)

The Labor Commissioner takes no position on the merits of plaintiffs' case, but to the extent the Court determines plaintiffs may succeed, the Court may consider multiple forms of relief. While PAGA does not imbue a plaintiff with the same range of authority as the Labor Commissioner,[2] nothing in the statute precludes an aggrieved employee from seeking, and a court from imposing, injunctive relief to end ongoing violations (*e.g.*, ordering an employer to appropriately classify its workforce as employees and affirmatively comply with employer obligations like reimbursing employees for business expenses, providing meal and rest periods, paying overtime, providing paid sick leave, etc.). Consequently, where a settlement solely provides for the recovery of monetary penalties, and does not otherwise effectuate the State's interests through affirmative actions, a court should weigh the full monetary value of relevant

[2] To end and deter Labor Code violations and vindicate individual employee's rights, the Labor Commissioner possesses and utilizes broad authority. For example, in addition to the various specific citations and penalties that the Commissioner may impose, she may: investigate and adjudicate claims for wages and money owed; prosecute actions for the collection of wages and other moneys payable to employees where she determines they are financially unable to employ counsel; take assignment of employee claims for wages and other compensation; prosecute civil actions to recover unpaid minimum wage and overtime compensation with or without the affected employees' consent; represent claimants in *de novo* appeals from administrative adjudications awarding compensation; issue stop work orders prohibiting use of employee labor where an employer has failed to secure the workers' compensation for its workforce; and license various industries (*e.g.*, garment manufacturer, farm labor contractors, car wash, studio teachers and talent agents). (Lab. Code §§ 96, 98.3, 1193.6, 3710.1.)

penalties and determine if the proposed penalties effectively minimize the economic advantages employers gain by non-compliance. Only penalties that create "an effective disincentive for employers to engage in unlawful and anticompetitive business practices" achieve PAGA's purpose. (Sen. Bill. No. 796 (2003-2004 Reg. Sess.) § 1(a).)

In addition, as discussed more fully below, courts should consider other aspects of the settlement that may affect the settlement's fairness, adequacy, and reasonableness, including but not limited to the scope of the release, the risk of a reverse auction, and the disproportionate enrichment of named plaintiffs.

III. THE PROPRIETY OF THE PROPOSED SETTLEMENT IN THIS ACTION

Although the Labor Commissioner takes no position on the underlying dispute in this matter or the ultimate propriety of the settlement, she has identified the following aspects of the proposed settlement that merit closer scrutiny before the Court can assure itself that the settlement is consistent with the State's interest and PAGA's requirements.

A. SUFFICIENCY OF CIVIL PENALTIES

The parties have provided the Court their views on the underlying merits of this matter and the litigation risks. While a settlement in which a defendant agrees to classify its workers as employees and adhere to the requirements of the State's employee protections could ensure compliance with the law going forward and thereby factor into the court's evaluation of a settlement,[3] the proposed settlement does not provide for affirmative relief. The settlement's adequacy, therefore, can only be determined by examining whether, weighing all factors—including the merits of the claims—the proposed penalty amounts effectively promote PAGA's compliance and deterrence goals.

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[3] As the Legislature recognized, "[a]lthough innovative labor law education programs and self-policing efforts by industry watchdog groups may have some success in educating some employers about their obligations under state labor laws, in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code." (Stats. 2003, ch. 906, § 1.) Furthermore, as Judge Chen described, a PAGA settlement that resolves important questions regarding the status of workers, or contains substantial injunctive relief, "'augment[s] the state's enforcement capabilities, encourage[es] compliance with Labor Code provisions, and deter[s] noncompliance.' [Citations.]" (*O'Connor, supra*, 201 F.Supp.3d at pp. 1134-35.)

Here, the settlement compromises and releases penalties for 54 separate violations impacting over a million workers in California. However, the parties have not offered a robust and specific description of the maximum value of all individually-identified claims and the consequent penalties being released. Absent a description of the monetary exposure associated with each alleged violation, the Court cannot discharge its duty to determine whether a release of claims eliminates the competitive advantages an employer may improperly gain through non-compliance with the State's minimum labor standards. (*See Kullar, supra,* 168 Cal.App.4th at p. 133 [noting court cannot draw conclusions regarding the fairness and adequacy of the proposed settlement "if it is not provided 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"]; *see also O'Connor v. Uber Technologies* (N.D. Cal. June 30, 2016, 13-CV-03826-EMC, 15-CV-00262-EMC) 2016 WL 3548370, at *7 ["The parties should provide an accurate assessment of the potential verdict value of the PAGA claim"].)

Moreover, the Labor Code provides for certain penalties in the amount of unpaid wages. (*E.g.*, Lab. Code §§ 558, 1197.1.) These penalties are distinct from the other penalties that can be collected through PAGA by virtue of the fact that these penalties are payable to the aggrieved employees. (Lab. Code §§ 558, subd. (a)(3), 1197.1, subd. (a)(3); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1148.) Such wage-measured penalties, which are analogous to disgorgement, deter violations by disincentivizing the improper economic gain the non-compliant employer would otherwise receive.[4] Accordingly, in order to gauge the

[4] Where the penalty recoverable includes disgorgement of amounts required by the State's minimum labor standards, such as Labor Code sections 558 and 1197.1, review of a proposed settlement should necessarily include evaluation of the sufficiency of such disgorgement, which is not an assertion of private rights, but rather another method of enforcing the policies underlying California's minimum labor standards. (*See Eddleman v. U.S. Dept. of Labor* (10th Cir. 1991) 923 F.2d 782, 791 [enforcement proceeding by U.S. Department of Labor to liquidate unpaid wage claims was "but another method of enforcing the policies underlying the SCA [Service Contract Act]"], *modified on other grounds by Temex Energy, Inc. v. Underwood, Wilson, Berry, Stein & Johnson* (10th Cir. 1992) 968 F.2d 1003.) "[W]ithout this result [disgorgement], there would be an insufficient deterrent to improper conduct that is more profitable than lawful conduct." (*County of San Bernardino v. Walsh* (2007) 158 Cal.App.4th 533, 543; *see also Kokesh v.*

extent to which the proposed settlement fairly and adequately comports with PAGA's purpose, the Court should understand the approximate maximum value of these penalties as well and the rationale behind settling for different amounts. This information, however, has not been provided.

Finally, the Labor Commissioner further notes that PAGA puts the burden on the parties to present the facts and circumstances that would render a civil penalty unjust, arbitrary and oppressive, or confiscatory. The evaluation of whether the imposition of maximum penalties is unjust, arbitrary, oppressive, or confiscatory turns on the conduct at issue and the impact of the penalties in deterring ongoing violations. Because of this, a description of a proposed settlement as the largest assessment of civil penalties pursuant to PAGA is not dispositive of the adequacy of a settlement; nor is it dispositive to compare a case to other cases in which various penalty amounts were approved. What matters are the unique facts of the case at hand and the extent to which the proposed settlement can effectively promote the State's goals. (*See Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 176 F.Supp.3d 930, 942 ["a trial court must assess the adequacy and reasonableness of a proposed settlement in light of unique facts of the case at hand, in light of the proposed settlement as a whole, and in light of the particular risks involved"].)

B. SCOPE OF RELEASE

The Labor Commissioner observes that the settlement represents that the State of California shall be deemed to have fully, finally, and forever waived, released, relinquished, and discharged the released parties from all PAGA claims known or unknown related to the claims being released. (Provision V.C.) Though it is common for parties in private class actions to release claims known or unknown, nothing in PAGA authorizes the parties to agree to a release of unpleaded claims on behalf of the State. While the Supreme Court has recognized that a judgment concerning specific allegations and claims in an action under PAGA may bind the State, the settlement's assumption that the State is bound by this broadly-worded release is inconsistent with PAGA's specific requirements and the State's broad law enforcement and remedial authority. Private parties may waive their own rights, but they may not waive the State's. To condone an

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Securities and Exchange Commission (2017) 581 U.S. ___ [137 S.Ct. 1130] [SEC's disgorgement action operates as a civil penalty].)

attempt to limit the State's authority to redress labor violations falling outside the scope of the pleaded allegations would violate public policy and PAGA's role in augmenting, rather than supplanting, the State's law enforcement capacity.

C. RISK OF REVERSE AUCTION

Where multiple plaintiffs bring separate claims against the same employer for the same or similar alleged violations of law, there is a risk of a "reverse auction" in which "the defendants pick the most vulnerable or compliant plaintiff with which to settle and bind all other suits." (*Cobarruviaz v. Maplebear, Inc.*, No. 15-CV-00697-EMC (N.D. Cal. Sept. 30, 2016) 2016 WL 5725076, at *2.) Because PAGA actions are a form of representative action, the concern may arise—as it does in class actions—that a settlement is the product of a reverse auction, or collusion or overreaching by the parties. (*See Glidden v. Chromalloy American Corp.* (7th Cir. 1986) 808 F.2d 621, 627 [settlement of representative actions, *e.g.*, a class action, "creates obvious dangers; the representative may have been a poor negotiator or may even be in cahoots with the defendant."]; *accord Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 ["The dangers of collusion between class counsel and the defendant, as well as the need for additional protections when the settlement is not negotiated by a court designated class representative, weigh in favor of a more probing inquiry than may normally be required under Rule 23(e)."].) It is therefore incumbent on a court in PAGA actions to closely scrutinize the circumstances underlying PAGA settlements, even absent direct evidence of collusive conduct, just as it would with respect to class actions. (*Reynolds v. Beneficial Nat. Bank* (7th Cir. 2002) 288 F.3d 277, 283; *see also Crawford v. Equifax Payment Services, Inc.* (7th Cir. 2000) 201 F.3d 877, 882 [rejecting settlement when plaintiff and "his attorney were paid handsomely to go away; the other class members received nothing (not even any value from the $5,500 'donation') and lost the right to pursue class relief."].) The exercise of vigilance is especially critical given that, as previously discussed, a resolution of specifically-identified PAGA claims has preclusive impact on the State.

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D. DISPROPORTIONATELY ENRICHING NAMED PLAINTIFFS

Though class action representatives often are provided side payments in a settlement as "incentive awards," there appears to be no precedent for such awards in the context of a PAGA action. PAGA, like other qui tam actions, already creates an "incentive" to bring actions by allocating 25% of the civil penalties recovered to the plaintiff and the other aggrieved employees. (*See Baumann v. Chase Inv. Services Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123 ["The employee's recovery is thus an incentive to perform a service to the state."].) PAGA thereby links the plaintiff's self-interest to the overall litigation; the more civil penalties collected, the more the aggrieved employees—including the PAGA plaintiff—are rewarded. Providing a separate payment to a PAGA plaintiff that is not tethered to the amount of civil penalties may dilute PAGA's designed incentive and introduce a potential conflict of interest between the named representative, other aggrieved employees, and the State.

Moreover, as recognized in class actions, substantial and disproportionate awards for named plaintiffs in exchange for the named plaintiffs' individual releases of all claims raise "grave problems of collusion." (*Women's Committee For Equal Employment Opportunity v. National Broadcasting Co.* (S.D.N.Y. 1977) 76 F.R.D. 173, 180 ["[W]hen representative plaintiffs make what amounts to a separate peace with defendants, grave problems of collusion are raised."].) Notably, the Labor Commissioner does not negotiate analogous incentive payments to specifically identified employees when pursuing enforcement actions. The downside of such awards—even those that are not tied to a release—"is that the payments lend themselves for use as side payments to induce named plaintiffs to go along with sweetheart deals." (*Kakani v. Oracle Corp.*, No. C 06-06493 WHA (N.D. Cal. June 19, 2007) 2007 WL 1793774, at *10.) Named plaintiffs "are incentivized, out of self-interest, to achieve the best possible result for the class" or, in this case, the aggrieved employees. (*Ibid.*) Accordingly, the separate awards to named plaintiffs in the proposed settlement—even in exchange for broader individual releases—merit the Court's careful review.

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IV. CONCLUSION

The Labor Commissioner appreciates the invitation to comment on the proposed settlement and draw the Court's attention to the issues identified above.

Date: June 16, 2017

Respectfully submitted,

OFFICE OF THE DIRECTOR
State of California, Department of Industrial Relations

By: ______________________
Dan L. Gildor

Counsel for Department of Industrial Relations Appearing Specially for the Labor Commissioner

Exhibit 2

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DOUGLAS TROESTER, on behalf of himself, and all others similarly situated, **Plaintiff,** **v.** **STARBUCKS CORPORATION, and Does 1-50,** **Defendants.**	**Case No.: CV 12-07677-CJC(PJWx)** **ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT [Dkt. 85] AND DENYING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION [Dkt. 88]**

I. INTRODUCTION

Plaintiff Douglas Troester brings this putative class action against Defendant Starbucks Corporation ("Starbucks"), alleging claims for (1) failure to pay minimum and overtime wages, (2) failure to provide accurate written wage statements, (3) failure to timely pay all final wages, and (4) unfair competition. (Dkt. 1-1 [Complaint, hereinafter "Compl."].) Plaintiff's claims, theories, and available relief have been narrowed after appeal to the Ninth Circuit of a previous summary judgment order, related certification to the California Supreme Court, and additional summary judgment motions. The relevant allegations now are that Starbucks required employees to perform four tasks after clocking out—uploading data to Starbucks' computer system, programming the alarm, locking doors, and walking coworkers to their cars—but did not compensate employees for these tasks. Before the Court are Starbucks' Motion for Partial Summary Judgment (Dkt. 85 [hereinafter "MSJ"]) on Plaintiff's wage statement claim and his unpaid wages claim to the extent it seeks liquidated damages, and Plaintiff's Motion for Class Certification (Dkt. 88 [hereinafter "MCC"]). For the following reasons, Starbucks' Motion for Partial Summary Judgment is **GRANTED** and Plaintiff's Motion for Class Certification is **DENIED**.

II. BACKGROUND

In February 2008, Starbucks hired Plaintiff to work as a barista in one of its coffee shops. (Dkt. 92-1 [Defendant's Reply Separate Statement of Undisputed Facts, hereinafter "UF"] ¶¶ 1–2.) Starbucks promoted him to shift supervisor in June 2008. (*Id.* ¶ 2.) In January 2011, Plaintiff stopped working for Starbucks. (UF ¶ 1.)

Plaintiff recorded his work time for Starbucks and clocked in and out using Starbucks's point-of-sale ("POS") system. (Dkt. 64-4 ¶ 5.) Plaintiff admits Starbucks always paid him for all the time he recorded in the POS system. (*Id.* ¶ 6.) Instead, at issue in this case is time Plaintiff allegedly worked off the clock while he was a shift supervisor on shifts at the end of the business day ("closing" shifts). (UF ¶ 3.) Based on the software Starbucks used, Plaintiff alleges he had to clock out before using the store computer to send sales data to Starbucks headquarters. (*Id.* ¶¶ 4, 6.) Plaintiff then set the store alarm, exited, locked the front door, and walked coworkers to their cars. (*Id.* ¶¶ 8–10.) In total, Plaintiff contends he spent about four to ten minutes performing these tasks every shift, and that he was not compensated for this time.

III. STARBUCKS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Three claims remain in this case: unpaid wages, failure to provide accurate wage statements, and violation of California's Unfair Competition Law. Starbucks seeks summary judgment on Plaintiff's wage statement claim, and on his unpaid wages claim to the extent it seeks liquidated damages. For the following reasons, Starbucks' motion is **GRANTED**.

A. Legal Standard

The Court may grant summary judgment on "each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Fed. R. Civ. P. 56(a). Summary judgment is proper where the pleadings, the discovery and disclosure materials on file, and any affidavits show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.*; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 325. A factual issue is "genuine" when there is sufficient evidence such that a reasonable trier of fact could resolve the issue in the nonmovant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" when its resolution might affect the outcome of the suit under the governing law, and is determined by looking to the substantive law. *Id.* "Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* at 249.

In considering a motion for summary judgment, the court must examine all the evidence in the light most favorable to the nonmoving party, and draw all justifiable inferences in its favor. *Id.*; *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987).

The court does not make credibility determinations, nor does it weigh conflicting evidence. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 456 (1992). But conclusory and speculative testimony in affidavits and moving papers is insufficient to raise triable issues of fact and defeat summary judgment. *Thornhill Publ'g Co. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

B. Wage Statement Claim

Plaintiff alleges that Starbucks failed to provide accurate written wage statements by giving him pay statements that did not reflect his actual hours worked—that is, statements that did not include the time Plaintiff spent working after he clocked out. California Labor Code Section 226 requires employers to give employees "accurate itemized statement[s]" every pay period showing, among other things, the employee's total hours worked and gross wages. "An employee suffering injury as a result of a knowing and intentional failure by an employer" to provide such statements is entitled to the greater of (1) actual damages, or (2) penalties of $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of $4,000. Cal. Lab. Code § 226(e)(1). An employee may also bring an action for injunctive relief to ensure compliance with California wage statement law. *Id.* § 226(h).

In his complaint, Plaintiff sought both an injunction and the greater of actual damages or statutory penalties. The Court has previously granted summary judgment in Starbucks' favor on the wage statement claim as to injunctive relief, finding that Plaintiff lacks standing to seek injunctive relief because he no longer works at Starbucks. (Dkt. 65 at 17–18.) In another summary judgment order, the Court found that Plaintiff also cannot seek penalties on his wage statement claim because he failed to bring the claim within the one-year statute of limitations. (Dkt. 76 at 4–5.)

Starbucks now argues the Court should grant summary judgment in its favor on the last remaining category of damages, actual damages, because Plaintiff cannot show he suffered actual damages from the fact that his wage statements did not accurately list his hours. (MSJ at 5.) In support, Starbucks points to Plaintiff's deposition testimony. (*Id.*; UF 11.) At his deposition, Plaintiff was asked, "Do you contend that you've been injured in any way as a result of inaccuracies in the pay statements?" (Dkt. 85-3 at 193.) Plaintiff's counsel objected that this question called for a legal conclusion.[1] (*Id.*) Plaintiff answered that he had been injured because he did not get paid for time he spent working. (*Id.*) He could not think of any other way he had been harmed by the allegedly inaccurate wage statements. (*Id.* at 193–94.) Based on this testimony, Starbucks argues that Plaintiff does not have any evidence that he suffered actual damages based on any wage statement violations. The Court agrees.

As explained, an employee suffering "injury" as a result wage statement violation may recover, among other types of damages, actual damages. Cal. Lab. Code § 226(e)(1). To prove such "injury," Plaintiff must submit evidence showing that he suffered some sort of "concrete" or "tangible loss as a result of the allegedly deficient information on [his] wage statements." *Hoffman v. Constr. Protective Servs., Inc.*, 2006 WL 6105636, at *2 (C.D. Cal. Feb. 27, 2006). Such loss may include "the possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, [] forcing employees

[1] Plaintiff reiterates this objection on summary judgment. (See UF ¶ 11 [responding to Starbucks' statement that it is undisputed that Plaintiff was not harmed as a result of any wage statement violations, Plaintiff responds that it is "[u]ndisputed that this is how a lay witness testified in response to a legal contention question"].) This objection is **OVERRULED**. Asking a witness how he has been harmed from an alleged legal violation is a proper question for a lay witness. *See* Fed. R. Evid. 704 Adv. Comm. Note (explaining that "opinions phrased in terms of inadequately explored legal criteria" are not permissible, and "[t]hus the question, 'Did T have capacity to make a will?' would be excluded, while the question, 'Did T have sufficient mental capacity to know the nature and extent of his property and the natural objects of his bounty and to formulate a rational scheme of distribution?' would be allowed").

to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked," "lost time from other employment, [or being] denied a loan." *Id.*; *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1135 (C.D. Cal. 2011) (granting summary judgment for lack of injury where the plaintiffs' only alleged injury was "mathematical injury" because the "missing information on their wage statements [did not require] them to do any more than 'simple math' to determine whether they were compensated at the proper hourly rate").

However, a claim that Plaintiff was not paid the amount he was owed is not sufficiently "linked to a knowing and intentional failure on the part of Defendant to provide an accurate wage statement" to constitute actual damages on a wage statement claim. *See Hoffman*, 2006 WL 6105636, at *2 (granting judgment as a matter of law in the defendant's favor because evidence that the plaintiff's bank returned a check for insufficient funds and penalized him for a late payment on an automobile loan, and that plaintiff once lacked [the] funds to fulfill a promise to his daughter" was insufficient evidence of injury); *see also Pytelewski v. Costco*, 2010 WL 11442902, at *9 (S.D. Cal. Nov. 3, 2010) (granting summary judgment for failure to present evidence of injury).

Plaintiff's only response to Starbucks' argument is that, according to Plaintiff, the Court has already ruled that Plaintiff "had a claim for actual damages." (Opp. at 3 [citing Dkt. 76 at 5].) But the Court has not so ruled. In a motion for clarification regarding a previous summary judgment order, Starbucks asked the Court to decide that Plaintiff did not have evidence of actual damages. (*See* Dkt. 76.) The Court explicitly stated that it was not deciding whether Plaintiff had proof of actual damages because the issue "was not properly raised in Starbucks' motion." (*Id.* at 3.) Rather, the Court only ruled that Plaintiff filed his complaint for actual damages within the applicable limitations period. (Dkt. 76 at 5.)

Plaintiff has failed to identify evidence of injury sufficient to raise a genuine dispute of material fact on his wage statement claim. Accordingly, Starbucks' motion is **GRANTED** on Plaintiff's wage statement claim.

C. Claim for Liquidated Damages for Unpaid Wage Violations

One of the categories of damages that Plaintiff seeks on his unpaid wages claim is liquidated damages. (Dkt. 1-1 ¶¶ 23, 43.) Under California Labor Code § 1194.2, employees may recover liquidated damages "in an amount equal to the wages unlawfully unpaid and interest thereon." Starbucks argues that summary judgment should be granted on this claim because it is barred by (1) the statute of limitations and (2) the Court's previous finding that Starbucks acted reasonably in asserting that it did not owe Plaintiff any wages. The Court agrees.

1. Statute of Limitations

In 2014, the California legislature added the following language to California Labor Code § 1194.2: "A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise." The statute of limitations on a liquidated damages claim is therefore now three years. However, this case was filed in 2012, before the amendment. The parties disagree over what statute of limitations applied to liquidated damages claims before the 2014 amendment. Starbucks argues that before 2014, the statute of limitations was one year, because liquidated damages were considered a penalty, and the amendment changed the law. Plaintiff argues that the amendment was only a "*clarification* of the law," and that a three-year statute of limitations was in effect all along. The distinction is important because Plaintiff filed this case after the one-year statute of limitations passed, but before the three-year statute of limitations passed. (*See* Dkt. No. 76 at 4–5.)

a. Whether Liquidated Damages are a Penalty or Compensation

Determining whether liquidated damages are a penalty requires the Court to construe California Labor Code Section 1194.2. In interpreting California statutes, federal courts follow California's principles of statutory construction. *See In re First T.D. & Inv., Inc.*, 253 F.3d 520, 527 (9th Cir. 2001). Courts first turn to the plain language of the statute, "giv[ing] the language of the statute 'its usual, ordinary import.'" *Id.* If the statute's language is ambiguous, courts "may consider extrinsic evidence of the legislature's intent," including the statute's scheme and history, background, and purpose. *Id.*

The plain language of Section 1194.2 shows that liquidated damages are a penalty. The statute states that "an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon." Cal. Lab. Code § 1194.2. This means that an employee may recover the wages the employer failed to pay, *plus* that same amount in liquidated damages. *Djukich v. AutoNation, Inc.*, 2014 WL 12845830, at *6 (C.D. Cal. Nov. 12, 2014) (explaining that liquidated damages "essentially double[] the award" for unpaid wages). "The settled rule in California is that statutes which provide for recovery of damages additional to actual losses incurred, such as double or treble damages, are considered penal in nature, and thus governed by the one-year period of limitations stated in section 340, subdivision (1) [of the Code of Civil Procedure]." *Prudential Home Mortg. Co. v. Superior Court*, 66 Cal. App. 4th 1236, 1242 (1998) (citation omitted). California case law from before 2014 is in accord. *See Martinez v. Combs*, 49 Cal. 4th 35, 48 n.8 (2010), *as modified* (June 9, 2010) (explaining in dictum that liquidated damages under Section 1194.2 "are in effect a penalty equal to the amount of unpaid minimum wages"); *Bain v. Tax Reducers, Inc.*, 219 Cal. App. 4th 110, 550–51 (Cal. Ct. App. 2013) (depublished), *reh'g denied,* (Sept. 26, 2013), *review denied and ordered depublished,* (Dec. 11, 2013) (holding that liquidated damages under Section 1194.2 are penalties and therefore subject to a one-year statute of limitations). Apparently conceding this point, Plaintiff does not analyze the plain language of the statute, referring only to the statute's legislative history to determine its meaning. (*See* Opp. at 4–6.)

Even if Section 1194.2's plain language were ambiguous, and reasonably susceptible to interpreting liquidated damages as either compensation or a penalty, both the legislative history and purpose of Section 1194.2 show that the legislature intended liquidated damages to operate as a penalty used to punish and deter employers from unlawfully failing to pay wages. *See Djukich*, 2014 WL 12845830, at **5–7. The bill report for SB 955, which the legislature later enacted as Section 1194.2, stated that SB 955's proponents "believe that the provision for liquidated damages should serve as a deterrent to those employers who fail to pay minimum wages." *Id.* at *5. The deterrence purpose clearly indicates that liquidated damages operate as a penalty. *See id.* at **5–6.

The statute of limitations for actions seeking statutory penalties is one year, unless the statute imposing liability gives a different time period. Cal. Civ. Proc. Code § 340(a). Because Section 1194.2 as it existed in 2012 did not state a different statute of limitations, the statute of limitations was one year at that time. *Djukich*, 2014 WL 12845830, at *6.

b. Whether the 2014 Amendment Was a Clarification or Change in the Law

However, the inquiry does not end there because now, Section 1194.2 *does* give a different statute of limitations. As stated, in 2014 the California Legislature amended Section 1194.2 to state that a three-year statute of limitations applies to liquidated damages claims. The Court now considers whether the amendment clarified the law, as

Plaintiff contends, or changed the law, as Starbucks contends. If the amendment clarified the law, then Plaintiff's claim is timely, because the three-year statute of limitations was in effect all along. *Djukich*, 2014 WL 12845830, at *6. If the amendment changed the law, the Court would need to consider whether the change operates retroactively.

As another court in this district has thoroughly explained, the 2014 amendment changed the statute of limitations for liquidated damages claims, rather than clarified it. *Djukich*, 2014 WL 12845830, at *6–8. The legislature added the relevant language to Section 1194.2 "to respond to the disparity between claims for unpaid minimum wages, to which a three-year statute of limitations applies, and claims for liquidated damages, to which a one-year limitations period generally applies," which "dilute[d] the deterrent effect of liquidated damages for minimum wage violations," thereby "send[ing] a statement that there is no real penalty for such worker exploitation beyond one year." *Id.* at *8 (citing legislative history documents). Accordingly, through the amendment "the legislature appears to have recognized that liquidated damages under the statute are a penalty, but that a three-year limitations period should apply to ensure the statute has a deterrent effect." *Id.* This was a change in the law. *Id.*

Plaintiff points to language in the legislative history that speaks of "clarif[ying]" the statute of limitations. (Opp. at 5–6.) But the court in *Djukich* addressed this isolated language from the legislative history and persuasively explained that it is not dispositive and does not negate the overall thrust of the legislative history discussed in the preceding paragraph, which weighs strongly in favor of showing a change. 2014 WL 12845830, at *8; (*see also* Reply at 6 [citing places in the legislative history where the legislature suggests or even expressly uses the word "change[]" with reference to the amendment]).

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c. Whether the Change Applies Retroactively

The Court next turns to whether the change applies retroactively. Unless the legislature clearly states otherwise, new statutes operate only prospectively. *See Quarry v. Doe I*, 53 Cal. 4th 945, 955 (2012). "[T]he presumption against retroactive legislation is deeply rooted in [California's] jurisprudence." *McClung v. Emp. Dev. Dep't*, 34 Cal. 4th 467, 475 (2004). Where an amendment extends the limitations period, "revival of [a] claim is seen as a retroactive application of the law under an enlarged statute of limitations," and the expanded limitations period will not be applied retroactively "without express language of revival" in order to protect "the defendant's interest in repose." *Quarry*, 53 Cal. 4th at 947. There is no evidence that the legislature intended to revive liquidated damages claims that had lapsed under the previous one-year statute of limitations when it amended Section 1194.2. Accordingly, the change does not apply retroactively to save Plaintiff's claim, which was filed within the three-year statute of limitations, but not the one-year statute claims that had lapsed under the old one-year statute of limitations. *See Djukich*, 2014 WL 12845830, at *9; (Dkt. No. 76 at 4–5).

Concluding that liquidated damages under Section 1194.2 constituted a penalty under California law at the time Plaintiff filed his complaint, that a subsequent amendment to Section 1194.2 constituted a change and not a clarification in the law, and that the change does not apply retroactively, the Court finds that Plaintiff's claim for liquidated damages is time-barred because he filed his complaint more than one year after he received his last wage statement.

2. Good Faith

Starbucks also argues that summary judgment should be granted on Plaintiff's claim for liquidated damages based on Section 1194.2(b), which states that even where liquidated damages are awardable, the court "may, as a matter of discretion, refuse to award liquidated damages . . . if the employer demonstrates to the satisfaction of the court . . . that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage." Cal. Lab. Code § 1194.2(b). The Court agrees.

The Court previously held that Starbucks met a similar standard in finding that it did not "willfully" fail to pay wages due at termination because there was "a good faith dispute that any wages [were] due." (Dkt. 65 at 16–17.) In so holding, the Court explained that "[u]ntil the California Supreme Court's decision in this case, it was reasonable for Starbucks to assert that it did not owe any wages under the de minimis doctrine." (*Id.*) A similar logic bars Plaintiff's claim for liquidated damages.

Plaintiff urges the Court to wait to exercise its discretion until "after a trial, on a fully developed record, including but not limited to evidence of the actual amount of unpaid wages." (Opp. at 4.) But Plaintiff offers no explanation on how trial evidence could alter the clear history described above.

Accordingly, the Court **GRANTS** summary judgment in favor of Starbucks on Plaintiff's claim for liquidated damages on his unpaid wages claim because the claim is barred by the statute of limitations or, in the alternative, because Starbucks acted in good faith and had reasonable grounds for believing that the alleged act or omission was not a violation of law.

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IV. PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

After this order on Starbucks' motion for summary judgment, the following claims remain: (1) unpaid wages, by which Plaintiff may seek those wages but not liquidated damages, and (2) violation of the UCL, by which Plaintiff seeks restitution of unpaid wages, reasonable costs, and attorney fees. Plaintiff moves for class certification of the following class:

> All Starbucks employees in California from August 6, 2008 through December 31, 2012 who worked a closing shift in a Starbucks store and performed work after clocking out.

Starbucks opposes, arguing that individual issues predominate. For the following reasons, Plaintiff's motion is **DENIED**.

A. Legal Standard

Under Federal Rule of Civil Procedure 23, district courts have broad discretion to determine whether a class should be certified. *Armstrong v. Davis*, 275 F.3d 849, 871 n.28 (9th Cir. 2001). Rule 23 is not merely a pleading standard—a party seeking class certification must affirmatively demonstrate compliance with the Rule by proving the requirements in fact. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). A class may be certified if: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

To be certified, a class must also meet the standards of one of the subsections of Rule 23(b). In this case, Plaintiff seeks certification pursuant to Rule 23(b)(3). Rule 23(b)(3) permits certification if the court "finds that the questions of law or fact common to class members predominate over any questions affecting only individual members." Plaintiff bears the burden of satisfying the elements of Rules 23(a) and 23(b)(3). *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001).

B. Predominance

Starbucks does not contend that Plaintiff fails to meet any of the Rule 23(a) requirements. Rather, the certification dispute concerns whether "questions of law or fact common to class members predominate over any questions affecting only individual members" under Rule 23(b)(3). The Court finds that they do not, and therefore denies Plaintiff's motion.

"The predominance inquiry focuses on 'the relationship between the common and individual issues' and 'tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 927 (9th Cir. 2019) (quoting *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 944 (9th Cir. 2009)). In determining whether the predominance requirement is met, courts have a "duty to take a close look at whether common questions predominate over individual ones" to ensure that individual questions do not "overwhelm questions common to the class." *Id.* (quoting *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013)). Under Rule 23(b)(3) one factor "pertinent" to predominance is "the likely difficulties in managing a class action."

Starbucks' policy is that time worked should equal time paid—that is, employees should not work off the clock. (*See* Dkt. 91-1, Ex. G [hereinafter "Pl. Depo."] at 100;

Dkt. 91-1, Ex. F.) Plaintiff alleges, then, that Starbucks had a custom or practice where employees performed off-the-clock work. He argues that class certification is appropriate because the putative class was "subjected to the same practices in terms of uncompensated closing shift work," and that any individualized issues go to damages alone and thus do not defeat predominance. (MCC at 15–16.) The Court disagrees. Indeed, as the Court now explains, the evidence shows employee practices were not uniform, instead varying based on the store where they worked, the manager they worked for, and the time period, among other factors.

Store Close Procedure. Plaintiff alleges that he was forced to perform the store close procedure off the clock. However, many Starbucks employees testified that they ran the store close procedure on the clock. (*See, e.g.*, Dkt. 91-1, Ex. B [Amanda Barb initially testifying she always did this on the clock and then saying she could remember doing it both ways]; Ex. C [Blake Barnett testifying he performed the close store procedure on the clock]; Ex. D [Cecelia Cerna testifying that if you looked at the store's surveillance videos, "it would show, on the computer, closing store, and then . . . clocking out"]; Ex. 5 [Christopher Coye stating store close procedure was "always done on the clock"]; Ex. 7 [Roy Dominguez stating same]; Ex. 10 [Don Jenkins stating same]; Ex. 14 [Eddie Necochea stating same]; Ex. 3 [Oscar Cardona testifying he was trained to do the close store procedure before clocking out, and that is what he did].) This is consistent with Starbucks' policy and training that the store close procedure should be performed on the clock. (*See, e.g.*, *id.* Ex. E [Paul O'Leary explaining that Starbucks' "training materials are to run end of day and then clock out," and that he did not know of any managers who trained employees to clock out before running it].)

The differing experiences may be explained by the fact that Starbucks changed its computer system sometime between August and November 2010. (Dkt. 91-1 at 113 [Declaration of Connie Lange, hereinafter "Lange Decl."].) It appears that with the old system, employees performed the store close procedure off the clock, and with the new system, employees performed the store close procedure on the clock. *See Troester v. Starbucks Corp.*, 2014 WL 1004098, at *1 (C.D. Cal. Mar. 7, 2014), *rev'd and remanded,* 738 F. App'x 562 (9th Cir. 2018); (*see* Lange Decl. ¶ 5 ["After November 2010, because the [old] system was no longer in use in California, partners no longer ran the close store procedure."]; Dkt. 91-1, Ex. H [Celia Westby testifying that under the new system, the close store procedure "doesn't exist anymore"].)

Regardless, Plaintiff's proposed class is simply not cohesive on this issue. The evidence shows that "Starbucks employees in California from August 6, 2008 through December 31, 2012 who worked a closing shift in a Starbucks store and performed work after clocking out"—the proposed class definition—have experienced the close store procedure in different ways. Nor is this a matter of creating subclasses, because some employees testified that they performed even the old store close procedure on the clock. (*See, e.g.*, Dkt. 91-1, Ex. H [Celia Westby explaining that with the old system, she did the close store procedure before she clocked out].) There may be additional individualized issues regarding individual managers' practices, given Plaintiff's testimony that his manager told him, "you now have to clock out first before you [do] the store-closing procedures." (Pl. Depo at 130.)

Setting the Alarm and Locking the Door. Similarly, as to setting the alarm and locking the door, Plaintiff does not point to any policy or uniform custom or practice such that common issues predominate. Some employees performed these functions on the clock. (*E.g.*, Dkt. 91-1, Ex. C [Blake Barnett testifying he always set the alarm on the clock]; *id.* Ex. 3 [Oscar Cardona testifying that in some stores, the door locked from the inside, so he could lock the door on the clock].) Other employees did them off the clock. (*E.g.*, *id.*, Exs. 4–6 [employees explaining they set the alarm and locked the door off the clock].) Other employees testified whether they did these activities on or off the clock depended on the store they were working in. (*E.g.*, *id.*, Exs. 3, 7 [employees testifying that in some stores, the door locked by itself from the inside so they did not have to lock the door after clocking out, but in others, a physical key was required so they locked the door off the clock].) Still other employees performed these functions on the clock sometimes, and off the clock other times. (*E.g.*, *id.*, Ex. 6 [Stephanie Deleon explaining that she sometimes set the alarm on the clock, and other times off the clock].)

Walking Baristas to Cars. Analyzing Plaintiff's claim regarding time spent walking baristas to their cars is also replete with individualized issues. Although there is at least one training document stating that a shift supervisor must complete all closing tasks including walking employees to their vehicles, (*see* Dkt. 65 at 14), there is evidence showing that this was not always the policy, (*see* Lange Decl. ¶ 4), and regardless, custom and practice varied. For example, many people testified that they walked baristas to their cars not because of a Starbucks policy, but rather that they did so voluntarily, without expectation of payment. (*E.g.* Dkt. 91-1, Exs. A–C, E–H, 1–9); *see Cornn*, 2005 WL 2072091, at *2 (finding common issues did not predominate and pointing to fact that some class members "ha[d] agreed that time spent changing into uniforms is not compensable"). Additionally, many employees testified that they did not walk others to their cars because the employees in their store did not drive to work, but rather took public transportation, Uber or Lyft, walked, or biked. (Opp. at 14 [collecting testimony]; *e.g.*, Dkt. 91-1 Exs. 2–3.)

The individualized experiences of class members make managing a single trial extremely difficult if not impossible. *See* Fed. R. Civ. P 23(3)(D). Individualized issues regarding which employees performed the relevant functions on or off the clock, and why they performed those functions, predominate over common questions. And those individualized issues go not just to damages, but also to liability. *See Gibbs v. TWC Admin., LLC*, 2020 WL 42770, at *4 (S.D. Cal. Jan. 3, 2020) (declining to certify off-the-clock work class where the employer had a policy prohibiting such work and the plaintiffs failed to show a company-wide policy or practice because claims depended on individual supervisors' behavior and individualized differences did not go only to damages).

Indeed, Plaintiff points to no records or other evidence that would create common proof on whether employees performed these functions on or off the clock, or that would otherwise allow these claims to be proven for all class members collectively one way or another. *See Stiller v. Costco Wholesale Corp.*, 298 F.R.D. 611, 628 (S.D. Cal. 2014), *aff'd, 673 F. App'x 783 (9th Cir. 2017), abrogated on other grounds by Campbell v. City of Los Angeles*, 903 F.3d 1090 (9th Cir. 2018) (finding "no class-wide method of determining whether, how often, and for how long class members actually experienced unpaid [off the clock, 'OTC'] time"). This is important because without such common evidence, "liability cannot be proved on a classwide basis without thwarting [Starbucks'] ability to demonstrate that some class members, due to a variety of circumstances, did not actually experience unpaid OTC time." *Id.* Starbucks has the right to present at trial its evidence that some class members did not work off the clock. *See id.* Doing so in a single trial applicable to all class members would be simply unworkable.

For these reasons, among others, where courts have granted certification of classes alleging off-the-clock work claims, those claims generally revolve around company-wide policies—for example requirements that employees undergo security or bag checks, or wear special gear that they must put on and take off before and after shifts. *See Negrete v. ConAgra Foods*, 2019 WL 1960276 at *4 (C.D. Cal. 2019) (granting class certification for off-the-clock claims where Defendant did not compensate Plaintiffs for "time spent donning and doffing protective gear at the beginning and end of their shifts"); *Lao v. H&M Hennes & Mauritz, L.P.*, 2018 WL 3753708 at *1–2 (N.D. Cal. 2018) (granting class certification for off-the-clock claims where plaintiffs challenged a company-wide policy requiring employees to undergo security checks before leaving the store for rest breaks and at the end of their shifts); *Moore v. Ulta Salon Cosmetics & Fragrance Inc.*, 311 F.R.D. 590, 604, 612 (C.D. Cal. 2015) (granting class certification in bag checks case where Ulta had a "written exit inspection policy" and "company-wide practice" and individualized issues went to time spent in line for the bag check); *Scott-George v. PVH Corporation*, 2015 WL 7353928 *9 (E.D. Cal. 2015) (bag checks); *Otsuka v. Polo Ralph Lauren Corp.*, 251 F.R.D. 439, 448 (N.D. Cal. 2008) (loss-prevention inspections); *Cervantez v. Celestica Corp.*, 253 F.R.D. 562, 572 (C.D. Cal. 2008) (bag checks).

In contrast, where, as here, there is no uniform practice regarding off-the-clock work, courts deny certification. *See, e.g.*, *Koike v. Starbucks Corp.*, 378 Fed.Appx. 659, 661 (9th Cir. 2010) (finding district court did not abuse its discretion in finding that "individualized factual determinations were required to determine whether class members did in fact engage in OTC work and whether Starbucks had actual or constructive knowledge of the OTC work performed"); *In re AutoZone, Inc., Wage & Hour Emp't Practices Litig.*, 289 F.R.D. 526, 539 (N.D. Cal. 2012), *aff'd,* 2019 WL 4898684 (9th Cir. Oct. 4, 2019) (finding common issues did not predominate where there was no common answer to the question of why off-the-clock work occurred, and pointing to putative class member declarations attesting to never having performed or reported any off-the-clock work); *Stiller*, 298 F.R.D. at 628 ("[T]here is no common answer as to whether each class member actually performed uncompensated OTC work."); *Cornn v. United Parcel Serv., Inc.*, 2005 WL 2072091, at *2 (N.D. Cal. Aug. 26, 2005) (finding common issues did not predominate given individualized inquiries including whether each class member actually performed compensable work before the recorded start time).

In sum, individualized issues regarding whether employees worked off the clock and why they did so predominate over common questions regarding whether such work is compensable. Accordingly, class certification is not appropriate.

V. CONCLUSION

For the foregoing reasons, Starbucks' Motion for Partial Summary Judgment is **GRANTED** and Plaintiff's Motion for Class Certification is **DENIED**.

DATED: January 27, 2020

CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

Exhibit 3

david@employmentlitigators.com

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Friday, October 7, 2022 10:33 AM
To: david@employmentlitigators.com
Subject: Thank you for your Proposed Settlement Submission

10/07/2022 10:32:55 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement
If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit 4

FILED
Superior Court of California
County of Los Angeles
JUN 08 2022
Sherri R. Carter, Executive Officer/Clerk of Court
By ______ , Deputy
Jessica Clavero

Superior Court of California

County of Los Angeles

Department 50

RONALD FLORES NUNFIO, Plaintiff, vs. DEANCO HEALTHCARE, LLC, <u>et al.</u>, Defendants.	Case No.: 21STCV02209 Hearing Date: June 8, 2022 Hearing Time: 8:30 a.m. **[~~TENTATIVE~~] ORDER RE:** PLAINTIFFS'SUPPLEMENTAL MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Background

Plaintiff Ronald Flores Nunfio ("Nunfio") filed this action on January 19, 2021 against Defendant Deanco Healthcare, LLC ("Defendant"). The Complaint asserts causes of action for (1) violation of Labor Code § 226 (f) and (h); (2) violation of Labor Code § 1198.5; (3) failure to pay minimum wages in violation of Labor Code §§ 1194 and 1194.2; (4) failure to pay overtime wages in violation of Labor Code § 510; (5) failure to provide lawful meal periods and pay meal period premiums pursuant to Labor Code §§ 226.7 and 512, IWC Wage Order No. 5-2001; (6) failure to provide lawful rest periods and pay rest period premiums pursuant to Labor Code § 226.7, IWC Wage Order No. 5-2001; (7) violation of Labor Code § 226(e); (8) violation of Labor Code § 2802; (9) violation of Business & Professions Code § 17200; and (10) penalties pursuant to PAGA.

Nunfio, along with plaintiffs in two other actions (collectively, "Plaintiffs") now move for an order granting preliminary approval of the proposed class action and PAGA settlement entered into with Defendant. The motion is unopposed.

Discussion

As an initial matter, the Court notes that Plaintiffs' initial motion for preliminary approval of class action settlement was filed on May 16, 2022. Thereafter, Plaintiffs filed a supplemental motion for preliminary approval of class action settlement on June 2, 2022. Plaintiffs indicate that on September 21, 2021, Sara Acevedo ("Acevedo") and Jesus Soto ("Soto") filed a wage and hour class action entitled *Sara Acevedo, et al. v. Deanco Healthcare, LLC*, Case No. 21STCV43506. (Suppl. Marquez Decl., ¶ 5.) On November 21, 2021, Acevedo and Soto filed a wage and hour PAGA representative action entitled *Sara Acevedo, et al. v. Deanco Healthcare, LLC*, Case No. 21STCV34724. (Suppl. Marquez Decl., ¶ 5.)

Counsel for Acevedo and Soto indicate that his office made sustained efforts to contact Soto to no avail. (Suppl. Marquez Decl., ¶ 9.) Counsel further indicates that in the interest of Acevedo, Nunfio and the class members and in order to move forward with the global settlement and to adhere to the Court's deadline to file the motion for preliminary approval, Plaintiffs' counsel filed the motion for preliminary approval and supporting documents, but agreed to amend the papers if necessary should Soto fail to respond to counsel's efforts to contact him. (Suppl. Marquez Decl., ¶ 10.) After Plaintiffs filed the motion for preliminary approval on May 16, 2020, Acevedo and Soto's counsel continued to make efforts to contact Soto to no avail. (Suppl. Marquez Decl., ¶¶ 11-13.) Accordingly, in connection with the instant motion, Plaintiffs submit an Amended Joint Stipulation of Class Action and Representative PAGA Settlement, a redlined version of a revised Class Notice showing revisions the parties made after May 16, 2022, and a redlined version of the revised Proposed Order showing revisions the Parties made after May 16, 2022. (Suppl. Marquez Decl., ¶¶ 17-19.)

The Court notes that the supplemental motion for preliminary approval of class action settlement was filed and served via e-mail on June 2, 2022, less than 16 court days prior to the June 8, 2022 hearing date. Pursuant to Code of Civil Procedure section 1005, subdivision (b), "[u]nless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing." Under Code of Civil Procedure section 1010.6, subdivision (a)(4)(B), the notice period is extended by two court days for electronic service. Thus, Defendant has not been provided with the requisite statutory notice of Plaintiffs' supplemental motion.

More importantly, Plaintiffs do not provide any basis for this Court's ruling upon two matters that are not before this Court. The three matters identified by Plaintiffs in their motion have not been related nor have they been consolidated. The other two cases are pending in another I/C court and in a complex court. Plaintiffs must address this issue at the hearing.

Conclusion

Based on the foregoing, the Court ~~will~~ discuss ed with ~~Plaintiffs~~ the parties the issue of bringing this motion in this court when two of the cases covered by the motion are pending in other courts. Even if the motion were to proceed, because of the lack of sufficient notice, Plaintiffs' motion would have to be continued so Plaintiffs could provide sufficient notice to Defendant (*i.e.*, 16 court days). The Court denies the motion w/o prejudice. The Court sets a status conference on 7/28/22 @ 10 a.m. in Dept 50, ~~to~~ ~~Plaintiffs are ordered to provide~~ Parties waived notice of this order.

DATED: June 8, 2022

Teresa A. Beaudet

Hon. Teresa A. Beaudet
Judge, Los Angeles Superior Court

~~D~~.50 the parties can report on their efforts to have this case related to the complex case for settlement purposes only. The status conference on 6/28/22 is vacated. The Court has no objection to the parties filing for preliminary approval in the complex case.

PROOF OF SERVICE

Sara Acevedo, et al. v. *Deanco Healthcare, LLC*

21STCV34724

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Ashley Narinyans, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is minjee@wilshirelawfirm.com.

On **October 7, 2022**, I served the foregoing **DECLARATION OF DAVID S. WINSTON IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL,** on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Bradley E. Schwan, Bar No. 246457
bschwan@littler.com
Jannine E. Kranz, Bar No. 272389
jkranz@littler.com
LITTLER MENDELSON P.C.
2049 Century Park East, 5th Floor
Los Angeles, California 90067.3107
Telephone: 310.553.0308
Fax No.: 800.715.1330

Attorneys for Defendant
Deanco Healthcare, LLC

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on **October 7, 2022**, at Los Angeles, California.

Ashley Narinyans
Type or Print Name

Ashley
Signature