SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

JORDAN CASE, et al., individually, and on behalf of all others similarly situated, Plaintiffs, v. PINNACLE PIPELINE INSPECTION, INC., et al., Defendants.	Case No.: 21CV389608 ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT Dept. 7

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Jordan Case, Jonell Murphy, Mark Fajardo and David Galvan (collectively, "Plaintiffs") allege that Defendant Pinnacle Pipeline Inspection, Inc. ("Defendant" or "Pipeline"), who provides inspection, cleaning and rehabilitation of pipelines throughout Northern California, committed various wage and hour violations. Currently before the Court is Plaintiffs' motion for preliminary approval of settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

I. BACKGROUND

According to the allegations of the operative First Amended Complaint ("FAC"), Mr. Case was formerly employed by Defendant as an hourly-paid, non-exempt employee from July

2020 to January 2021. (FAC, ¶ 8.) Mr. Murphy and Mr. Galvan were employed in similar roles from December 2020 to January 2021 and December 2021 to approximately 2023, respectively, while Mr. Fajardo has been employed as an hourly-paid, non-exempt employee by Defendant since July 2020. (*Id*., ¶¶ 9-10.) Plaintiffs allege that throughout their employment, Defendants failed to: pay them and putative class members for all hours worked (including minimum, straight time and overtime wages); provide them with legally compliant meal periods; authorize and permit them to take rest periods; timely pay all final wages to Plaintiffs Case and Murphy when Defendants terminated their employment; furnish accurate wage statements to them; and indemnify them for expenditures incurred as a consequence of discharging their job duties. (*Id*., ¶¶ 17-25.)

Based on the foregoing allegations, Plaintiffs initiated this action with the filing of the Complaint on October 29, 2021, and filed the operative FAC on October 11, 2023, asserting the following causes of action: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) fail to authorize and permit rest periods; (5) failure to timely pay wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; (8) failure to produce requested employment records; (9) unfair business practices; and (10) civil penalties under PAGA.

Plaintiffs now seek an order: preliminarily approving the Class Action and PAGA Settlement Agreement and Class notice; certifying the Class for settlement purposes; approving the notice and the plan for distribution; appointing Plaintiffs as Class representatives for settlement purposes; appointing Justin F. Marquez, Benjamin H. Haber, and Arrash T. Fattahi of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes; appointing ILYM Group, Inc. ("ILYM") as the settlement administrator; and scheduling a final approval hearing.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

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

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

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

B. PAGA

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

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

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

III. SETTLEMENT PROCESS

Subsequent to the initiation of this action, the parties engaged in informal discovery, with Defendant providing a sample of time and pay records for class members, its wage and hour policies and practices during the class period, and information regarding the total number of current and former employees. The foregoing enabled Plaintiffs' counsel to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. Class counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation.

On June 22, 2023, the parties participated remotely in mediation with John Hyland, Esq., an experienced class action mediator, and reached the settlement agreement now before the Court.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement is $295,000. Attorney's fees of up to $98,333.33 (one-third of the gross settlement), litigation costs not to exceed $25,000 and administration costs not to exceed $15,000 will be paid from the gross settlement. $100,000 will be allocated to PAGA penalties, 75% of which ($75,000) will be paid to the LWDA, with the remaining 25% distributed to "PAGA Members," who are defined as "all persons who worked for Defendant in California as an hourly paid or non-exempt employee during [November 24, 2020 through

September 20, 2023],” on a pro rata basis. Plaintiffs will each seek an enhancement award not to exceed $10,000.

The estimated net settlement of $119,116.67 will be allocated to members of the “Class,” which is defined as “all persons who worked for Defendant in California as an hourly paid or non-exempt employee during [October 29, 2017 through September 20, 2023],” on a pro-rata basis based on the number of weeks worked during the class period. Class members will not be required to submit a claim to receive their payment. For tax purposes, settlement payments will be allocated 33% to wages and 67% to penalties and interest. Funds associated with checks uncashed after 180 days will be transmitted to the Controller of the State of California to be held in trust for such class members pursuant to California unclaimed property law.

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

[All] claims alleged in all versions of the complaints filed in the Class Action Lawsuit, as well as all any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney's fees, damages, action or causes of action, whether known or unknown, contingent or accrued, under any legal theory under federal and state law that were or reasonably could have been brought based on the facts alleged in any version of the complaints filed in the Class Action Lawsuit and/or the PAGA Action Lawsuit, regardless of theory of recovery, including: claims under California Labor Code sections 201, 202, 203, 204, 206, 210, 218, 218.5, 221, 226, 226.7, 510, 511, 512, 1182.12, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802; the California IWC Wage Orders; the Fair Labor Standards Act (29 U.S.C. Section 201, et seq.); and California Business and Professions Code section 17200, et seq. (the "Released Class Claims"). Class Members shall further agree to waive their right to pursue individual lawsuits as to any of the Released Class Claims against the Released Parties to the extent such Released Class Claims accrued during the Class Period. Additionally, Plaintiffs, on behalf of the State of

California and the PAGA Members, will release Defendant and the Released Parties from any and all PAGA claims or causes of action which occurred during the PAGA Period that were or reasonably could have been brought based on the facts alleged in any version of the complaints filed in the Class Action Lawsuit and/or the PAGA Action Lawsuit, and in the LWDA Letter submitted to the LWDA by Plaintiffs JORDAN CASE, JONELL MURPHY and MARK FAJARDO, regardless of theory of recovery, including but not limited to, any alleged violations of or relief under California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 2699, and the applicable provisions of the applicable IWC Wage Orders ….

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

V. FAIRNESS OF SETTLEMENT

Based on available data, Plaintiffs' counsel estimated Defendant's maximum exposure at a total of approximately $3,293,092.24, with specific claims valued thusly: $317,790 (failure to pay for all hours worked); $849,182.40 (meal period claim); $515,508.84 (rest period claim); $50,350 (failure to reimburse business expenses); $235,732 (failure to pay overtime); and $1,324,529 (statutory and civil penalties).

Plaintiffs' counsel predicated that the realistic maximum recovery for all claims, including penalties, would be $577,963.12, which they arrived at by offsetting Defendant's maximum theoretical liability by: the risk of class certification being denied (particularly with respect to the meal and rest period claims); Defendant's arguments on the merits, including, among others, that employees voluntarily took short or late meal breaks and their policies otherwise complied with applicable law; the difficulty of establishing the willfulness of Defendant's actions; the expense of establishing the amount of wages due to each class member;

and the risk of losing at trial or on appeal. The settlement figure of $295,000 represents 51% of the realistic maximum recovery predicted by Plaintiffs' counsel.

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

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

VI. PROPOSED SETTLEMENT CLASS

Plaintiffs request that the following settlement class be provisionally certified:

All persons who worked for Defendant in California as an hourly paid or non-exempt employee during October 29, 2017 through September 20, 2023.

A. Legal Standard for Certifying a Class for Settlement Purposes

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

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

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

B. Ascertainable Class

A class is ascertainable "when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980 (*Noel*).) A class definition satisfying these requirements "puts members of the class on notice that their rights may be adjudicated in the proceeding, so they must decide whether to intervene, opt out, or do nothing and live with the consequences. This kind of class definition also advances due process by supplying a concrete basis for determining who will and will not be bound by (or benefit from) any judgment." (*Noel*, *supra*, 7 Cal.5th at p. 980, citation omitted.)

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

Here, the estimated 157 class members are readily identifiable based on Defendant's records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

C. Community of Interest

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

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

Here, common legal and factual issues predominate. Plaintiffs' claims all arise from Defendant's wage and hour practices (and others) applied to the similarly-situated class members.

As for the second factor, "[t]he typicality requirement is meant to ensure that the class representative is able to adequately represent the class and focus on common issues. It is only when a defense unique to the class representative will be a major focus of the litigation, or when the class representative's interests are antagonistic to or in conflict with the objectives of those she purports to represent that denial of class certification is appropriate. But even then, the court should determine if it would be feasible to divide the class into subclasses to eliminate the conflict and allow the class action to be maintained." (*Medrazo v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations, brackets, and quotation marks omitted.)

Like other members of the class, Plaintiffs were employed by Defendants as non-exempt, hourly-paid employees and allege that they experienced the violations at issue. The anticipated defenses are not unique to Plaintiffs, and there is no indication that Plaintiffs' interests are otherwise in conflict with those of the class.

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

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

D. Substantial Benefits of Class Certification

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

Here, there are an estimated 157 class members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

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

Here, the notice, which will be delivered to class members in both English and Spanish, describes the lawsuit, explains the settlement, and instructs class members that they may opt out of the settlement (except the PAGA component) or object. The gross settlement amount and estimated deductions are provided, and Class Members are informed of their qualifying workweeks as reflected in Defendant's records and are instructed how to dispute this information. Class members are given 60 days to request exclusion from the class or submit a written objection to the settlement.

The notice is generally adequate. Regarding appearances at the final fairness hearing, the notice shall be further modified to instruct class members as follows:

Although class members may appear in person, the judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 7 (Afternoon Session) or by calling the toll free conference call number for Department 7.

Turning to the notice procedure, as articulated above, the parties have selected ILYM as the settlement administrator. The administrator will mail the notice packet within 45 days of preliminary approval of the settlement, after updating Class Members' addresses using the National Change of Address Database. Any returned notices will be re-mailed to any forwarding address provided or better address located through a skip trace or other search. Class members who receive a re-mailed notice will have an additional 14 days to respond. These notice procedures are appropriate and are approved.

VIII. CONCLUSION

Plaintiffs' motion for preliminary approval is GRANTED. The final approval hearing shall take place on **January 9, 2025** at 1:30 in Dept. 1. The following class is preliminarily certified for settlement purposes:

All current and former hourly-paid, non-exempt employees of Defendant or employees of a temporary employment agency who were assigned to work for Defendant in California, at any time between July 27, 2018, and the date of preliminary approval.

DATED: July 24, 2024

CHARLES F. ADAMS
Judge of the Superior Court