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ORDER ON SUBMITTED MATTER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

R. ROSS, et al.,

Plaintiffs,

v.

HEWLETT PACKARD ENTERPRISE COMPANY,

Defendant.

Case No.: 18CV337830

ORDER CONCERNING (1) PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS AND (2) DEFENDANT HEWLETT PACKARD ENTERPRISE COMPANY'S MOTION TO SEAL DOCUMENTS LODGED CONDITIONALLY UNDER SEAL

This is a putative class action alleging gender-based pay discrimination under the Equal Pay Act ("EPA") and related claims. Before the Court is Plaintiffs' motion for preliminary approval of a settlement, which is unopposed. Also at issue is Defendant Hewlett Packard Enterprise Company's ("HPE") unopposed motion to seal certain materials filed in support of Plaintiffs' motion.

The Court issued a tentative ruling on October 18, 2022. It heard oral argument on October 20 and took the matter under submission. The Court now issues its final order, which GRANTS preliminary approval and GRANTS the motion to seal.

I. BACKGROUND

As alleged in the Complaint, HPE is a multinational corporation headquartered in Palo Alto and is one of the largest information technology companies in the world, selling products and services on an enterprise level. (Complaint, ¶ 1.) Women make up approximately 33% of HPE's employees. They fill 81 percent of administrative support jobs, but only 17 percent of technician jobs, 22 percent of sales jobs, and 17 percent of executive/senior/official & manager positions. (*Id.*, ¶ 3.)

HPE does not publish the measures it takes to address the gender pay gap among its workers, and instructs employees to keep their compensation to themselves and not to compare their compensation to coworkers' during salary negotiations. (Complaint, ¶ 5.) It also fails to make its pay grades available, leaving employees in the dark about what male counterparts may make. (*Ibid.*) Plaintiffs allege that HPE's policies, "however facially uniform," do not result in equal pay and treatment for similarly situated male and female employees. (*Id.*, ¶¶ 7-8.)

A. General Allegations Regarding HPE's Compensation Practices

HPE's Global Pay Policy applies to all of its employees worldwide (other than "Section 16 Officers"), and provides that "[s]alary ranges are assigned to each position in each country to define a range of pay which is appropriate and market competitive." (Complaint, ¶¶ 18-19.) Plaintiffs allege on information and belief that HPE does not publicly disclose its pay-grade or job-level structure and pays wide ranges of salaries to employees at a particular job level. (*Id.*, ¶¶ 21-22.)

Plaintiffs allege that throughout the class period, HPE has paid and continues to pay its female employees systematically lower compensation than male employees performing substantially equal or similar work, both when they are in the same job position and salary band and when they are in the same job position but in a different salary band. (Complaint, ¶¶ 35-40.) HPE has known or should have known of this pay disparity, but has taken no action to equalize pay, and its failure to pay equal compensation is willful. (*Id.*, ¶ 41.)

Plaintiffs allege on information and belief that HPE considers new hires' prior compensation when determining their compensation and deciding which job level to place them

in, perpetuating historical pay disparities between men and women. (*Id.*, ¶ 43.) They allege on information and belief that long-term employees remain at a job level of 1 or 2, in contrast to new hires who start at or quickly rise to a level 3. (*Id.* at ¶ 42.) Plaintiffs further allege on information and belief that HPE channels women into lower-paying positions, for example, in Operations instead of higher-paying Engineer jobs, due to its stereotypes about their capabilities. HP allegedly also starts men in the same jobs at higher pay bands. (*Id.*, ¶¶ 45, 52.) HPE's practices governing performance reviews, raises, bonuses, and promotions perpetuate and widen the gender pay gap. (*Id.*, ¶¶ 54-57.)

B. Allegations Regarding the Named Plaintiffs

Plaintiff R. Ross was employed by HPE and its predecessor in sales operations for a total of 17 years. (Complaint, ¶ 67.) She progressed from a business analyst to a Director of Sales Operations, with duties including overseeing sales operations and developing and supporting operational strategic models to support success in worldwide channel sales of HPE products. (*Id.*, ¶¶ 68-72.)

In her capacity as Director of Sales Operations, Ross was privy to financial documents and, on at least one occasion, received a file including salary information of her male colleagues. (*Id.*, ¶ 73.) She noted that the base pay of male employees who joined HPE during the class period exceeded the base pay of females who joined around the same time, even where the female employees had more extensive work experience at HPE. (*Ibid.*) Further, Ross was told by a former supervisor who had access to the salaries of her subordinates that her salary was less than her male peers who were performing substantially equal or similar work under similar working conditions. (*Id.*, ¶ 74.) Ross received only a three percent increase in total annual compensation from 2014 to 2017. (*Id.*, ¶ 75.) When she left HPE in January of 2018, a superior told her that she was underpaid compared to male peers. (*Id.*, ¶ 76.)

Plaintiff C. Rogus was hired by HPE's predecessor in April of 2013 to work in its Veterans Affairs Integrated Services 21 project based in Roseville, California, as Implementation Project Manager ("IM") for a project called the Real Time Location System. (Complaint, ¶¶ 78-79.) HPE's predecessor asked about, and Rogus disclosed, her prior compensation before she

joined the organization. (*Id.*, ¶ 86.) IMs reported to Project Managers ("PM"s), who had more supervisory authority and were consequently paid more. Plaintiffs allege on information and belief that more men than women were in PM positions, and male PMs were paid more than female PMs. (*Id.*, ¶¶ 92-93.) In March of 2014, Rogus obtained information showing that the male PM on her team was paid 14.27 percent more than her. (*Id.*, ¶ 87.) When her PM passed away in September of 2014, she was offered his position, but received only a two percent performance-related pay increase and no role change. (*Id.*, ¶ 90.) Although she excelled in the PM position, Rogus stopped working at HPE in April of 2018. (*Id.*, ¶¶ 91, 94.)

C. Claims Alleged in the Complaint and Procedural Background

Based on the allegations summarized above, Plaintiffs seek to represent a class of all women employed by HPE in California in a Covered Position, defined as positions in one of the following categories: "(1) Engineering, Information Technology, and Design (Software Engineer Positions; Engineer Positions; Software Manager Positions;); (2) Administration, Finance, and Legal; (3) Operations[] (Sales Positions; Director of Operations Positions)[;] (4) Public Relations, Marketing, and Sales (Sales Positions; Director of Operations Positions); and (5) Human Relations and Development." (Complaint, ¶ 6.) They assert claims for (1) violations of the EPA, Labor Code sections 1197.5 and 1194.5; (2) failure to pay all wages due to discharged and quitting employees, Labor Code sections 201–202 and 1194.5; (3) violation of the Unfair Competition Law ("UCL"); and (4) declaratory relief.

In an order filed on July 2, 2019, the Court (Judge Walsh) overruled HPE's demurrer to the Complaint and granted its motion to strike in part as to one of the theories supporting the UCL claim (the theory based on violations of the Fair Employment and Housing Act or "FEHA"). On August 8, 2019, HPE filed a petition for alternative and peremptory writs of mandamus, which the Court of Appeal denied on May 27, 2020. The parties engaged in discovery, including the issuance of a *Belaire-West* notice. They stipulated to a briefing schedule for a motion for class certification, with the hearing scheduled for late July 2022.

Meanwhile, the parties engaged in settlement negotiations and eventually reached a settlement in June 2022, as discussed in more detail in section III below. Plaintiffs now move

for an order preliminarily approving the settlement of the class claims, provisionally certifying the settlement class, approving the form and method for providing notice to the class, and scheduling a final fairness hearing.

II. LEGAL STANDARD FOR SETTLEMENT APPROVAL

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.)

III. SETTLEMENT PROCESS

Since August 2019, the parties exchanged multiple rounds of discovery, including over 150 requests for production, nearly 150 special interrogatories, and over 30 requests for admission. The parties reviewed over 9,000 pages of documents and voluminous data; took and defended five days of testimony from three person most knowledgeable witnesses covering 20 deposition topics; and engaged in continuous meet and confers throughout the discovery process until mediation in early 2022. Plaintiffs' counsel engaged two experts, labor economist Dr. David Neumark and industrial and organizational psychologist Dr. Leaetta Hough. Dr. Neumark analyzed HPE's payroll data for the entire class period with reference to the pay earned by men and women in the same job code. Defendant also retained a labor economist who disputed Dr. Neumark's methodology, analysis, and conclusions.

After completing this discovery and preparing for class certification, the parties agreed to mediate before Tripper Ortman. Following two full-day mediation sessions on January 28 and February 14, 2022, the parties had not reached an agreement. Mr. Ortman made a mediator's proposal that the parties tentatively accepted, and they continued to negotiate settlement terms for several months. On June 15, 2022, they executed a memorandum of understanding. After three more months of negotiating over the language of the full settlement agreement now before the Court, they reached a final agreement.

IV. SETTLEMENT PROVISIONS

The non-reversionary gross settlement amount is $8,500,000. Approximately $2,833,333.33 in attorney fees, actual litigation costs, and $35,000 in administration costs will be paid from the gross settlement. The named plaintiffs will seek incentive awards of $15,000 each and "General Release Payments" of $5,000 each, for a total of $40,000.

The net settlement, approximately $5,591,666.67 minus counsel's costs and HPE's share of payroll taxes, will be distributed to class members based on their share of the total compensation (i.e., base pay, bonuses, and equity) earned by the class during the class period. Class members who worked less than twelve months will receive a minimum payment of $500, while class members who worked more than that will receive a minimum payment of $1,000. Plaintiffs estimate that these base settlement payments will range from $500 to $17,000. By the Court's calculation, the average payment will be roughly $3,223 to each of the 1,735 class members, minus taxes.

The gross settlement includes a Settlement Dispute Fund of $400,000 from which class members may seek to supplement their individual payments if they present documentary evidence of individual circumstances warranting an enhancement. This process will be monitored and coordinated by the settlement administrator and jointly approved by counsel for the parties. Any request for enhancement shall be evaluated pursuant to the criteria set forth in the EPA. Should approved requests for enhancement exceed the allocation for the Dispute Fund, all approved requests will be reallocated pro rata so as not to exceed the allocation. Any unused, residual amounts in in the fund will be distributed on a pro rata basis to the class members in the same manner as their individual payments.

Class members will not be required to submit a claim to receive their payments. For tax purposes, settlement payments will be allocated as Form W-2 income. The employer's share of taxes will also be paid from the gross settlement. Funds associated with checks uncashed after 120 days will be redistributed to participating class members.

In exchange for the settlement, class members who do not opt out will release all claims, debts, etc. "that were or reasonably could have been pled based on the same facts alleged in the Action, including, but not limited to" specified relevant causes of action. A separate, specific release of claims under the federal Equal Pay Act, 29 U.S.C § 206 (d) *et seq.* follows. The releases are appropriately tailored to the factual allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

V. FAIRNESS OF SETTLEMENT

Controlling for some legally permissible factors that may explain pay differences, Plaintiffs' expert Dr. Neumark performed a regression analysis of Defendant's payroll data and calculated a gender-based wage gap or "shortfall," the percentage by which Plaintiffs contend women in the class are underpaid compared to men in the same job code. Dr. Neumark concluded that there was a statistically significant gender-based wage gap of 1.87% for the settlement class.

Using this calculation, Dr. Neumark estimated the total actual (backpay) damages under the EPA for the class as approximately $13,641,810. He also estimated the total interest damages as approximately $4,722,857 and the total liquidated damages as approximately $18,364,666. Overall, Dr. Neumark estimated the maximum achievable recovery for Plaintiffs' claims to be approximately $36,729,332.[1] The settlement thus represents 23 percent of the maximum value of the action, or 62 percent of the core backpay damages.

Defendant disputes Plaintiffs' claim that employees in the same job code at HPE perform substantially similar work when viewed as a composite of skill, effort, and responsibility, performed under similar working conditions. According to Defendant, evidence produced in discovery, such as job requisitions, and testimony by managers and employees would demonstrate that employees in a given job code do not perform substantially similar work, rendering class certification based on Plaintiffs' job code theory inappropriate. HPE also contends that decentralized decisionmakers have wide discretion to make compensation decisions based on specific business needs and employee factors, so that common issues do not predominate for purposes of class certification, and litigating HPE's affirmative defenses would

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[1] Plaintiffs did not calculate any waiting time penalties under Labor Code section 203 since discovery revealed no evidence a willful violation. And UCL damages would largely duplicate EPA damages, except for one additional year of restitution based on the UCL's four-year statute of limitations. Defendant strongly contests liability for any damages accruing prior to November 1, 2015, the date of HPE's formation, so the class period was limited to the period beginning on that date. Dr. Neumark's analysis is discussed in more detail in the Declaration of Caleb Marker filed in support of Plaintiffs' motion. HPE's labor economist disputes Dr. Neumark's methodology, analysis, and conclusions.

also involve substantial individual issues of proof. HPE challenges the manageability of an action involving 1,735 putative class members in over 300 different job codes.

Considering the analysis presented by Plaintiffs and its own experience with complex litigation, the Court finds that the settlement consideration is fair and reasonable for purposes of preliminary approval. Notably, the settlement recovers approximately 62 percent of the estimated core damages in an action presenting great uncertainty at class certification and on the merits.

A discussion of the allocation to individual class members is also warranted here. Plaintiffs maintain that allocating individual recoveries based on each class member's pro rata percentage of total compensation provides a reasonable approximation of each class member's potential damages. This is because damages based upon a percentage "shortfall" increase with the number of years worked and with increased compensation. Considering the likely administrative burden that would result from a more tailored allocation and the opportunity for class members to seek additional compensation from the Settlement Dispute Fund based on unique individual circumstances, the Court agrees this is a fair and reasonable way to allocate the settlement payments.

The Court's conclusion is further informed by its discussion with counsel at the hearing on this motion, and by the Supplemental Declaration of Caleb Marker filed in response to the Court's tentative ruling, which requested more information about why the amount of the Settlement Dispute Fund is $400,000 and why the settlement assumes an equal pro rata allocation of damages among different job classifications, even though these different classifications might have experienced different wage disparities.

Notably, executive employees with high-level decisionmaking authority, employees in the sales job family group who are paid on a commission-based compensation plan, and recent graduates paid on another unique compensation plan were excluded from the class, along with employees who only worked in a job code in which no men worked, or in which only one woman and one man worked. The Court is thus satisfied that the parties have structured the settlement and settlement class to minimize intra-class conflicts, and the allocation of the

settlement is "rationally based on legitimate considerations." (*7-Eleven Owners for Fair Franchising v. Southland Corp*. (2000) 85 Cal.App.4th 1135, 1162–1163, internal citations and quotation marks omitted.)

Finally, 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:

> Women (as identified in Defendant's Human Resources Information System, Workday) actively employed in California by Defendant at any point from November 1, 2015 through the date of Preliminary Approval, who have not entered into a waiver and release or arbitration agreement with respect to their employment, and who were employed in one of the job codes set forth on Exhibit A to the SA and who were not otherwise excluded.

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 1,735 class members are readily identifiable based on Defendant's records, and the settlement class is generally defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined, with one modification: the language at the end of the definition stating that the class includes only those "who were not otherwise excluded" is confusing, and suggests there is some other criteria for inclusion in the class beyond those stated in the definition.

In response to the Court's concerns, the parties propose modifying the class definition to read:

> Women (as identified in Defendant's Human Resources Information System, Workday) actively employed in California by Defendant at any point from November 1, 2015 through the date of Preliminary Approval, and who were employed in one of the job codes set forth on Exhibit A to the [Settlement Agreement].
>
> The Class does not include any individual who: (1) executed a waiver and release; (2) executed an arbitration agreement with respect to their employment upon hire or otherwise; or (3) [was] a college hire as defined by being hired within two (2) years of internship, age at hire is 23 or below with a Bachelor's degree, age at hire is 27 [or] below with a Master's degree, or age at hire is 30 or below with a Ph.D. degree.

The class definition now appropriately states exactly who is excluded from the class based on objective characteristics.

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 based on Plaintiffs' theory that employees in the same job code at HPE perform substantially similar work when viewed as a composite of skill, effort, and responsibility, performed under similar working conditions. Plaintiffs' claims all arise from Defendant's alleged disparate pay of the similarly-situated class members.

As to the second factor,

> The typicality requirement is meant to ensure that the class representative is able to adequately represent the class and focus on common issues. It is only when a defense unique to the class representative will be a major focus of the litigation,

> or when the class representative's interests are antagonistic to or in conflict with the objectives of those she purports to represent that denial of class certification is appropriate. But even then, the court should determine if it would be feasible to divide the class into subclasses to eliminate the conflict and allow the class action to be maintained.

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

Like other members of the class, Plaintiffs are women who were employed by Defendant in one of the included positions and who 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 1,735 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 describes the lawsuit, explains the settlement, and instructs class members that they may opt out of the settlement or object. The gross settlement amount and estimated deductions are provided. Class members are informed of their total compensation during the settlement period as reflected in Defendant's records and are instructed how to dispute this information. The notice makes it clear that class members may appear at the final fairness hearing to make an oral objection without filing a written objection. Class members are given 63 days to request exclusion from the class and 60 days to submit a written objection to the settlement. And they are informed how notice of final judgment will be provided to the class.

At the Court's direction, the notice was modified to provide an estimate of counsel's litigation costs that may be deducted from the gross settlement. Class members' estimated payments and compensation information is displayed in bold within a box set off from the rest of the text on the first page of the notice. The release language was corrected to match the language in the settlement agreement itself. The notice was also modified to instruct class members that they may opt out of the settlement by simply providing their name, without the need to provide their Social Security Number or other identifying information. The notice shall be further modified to make it clear that class members can object without giving their address.

Regarding appearances at the final fairness hearing, the notice was further modified to instruct class members as follows:

> Hearings before the judge overseeing this case will be conducted remotely. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who wish to appear 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 1 (Afternoon Session) or by calling the toll free conference call number for Department 1.

Turning to the notice procedure, the parties have selected Atticus Administration, LLC as the settlement administrator. The administrator will email or mail the notice packet within 66 days of preliminary approval,[2] 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 located through reasonable efforts such as a skip trace.

These notice procedures are appropriate. The parties have clarified that all class members will receive mailed notice and additional email notice will be provided where the email address is known.

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[2] The settlement agreement references that fact that e-mail addresses were utilized in providing information to certain settlement class members in July of 2020.

VIII. CONCLUSION REGARDING PRELIMINARY APPROVAL

Plaintiffs' motion for preliminary approval is GRANTED.

The final approval hearing shall take place on **April 27, 2023** at 1:30 p.m. in Dept. 1. The following class is preliminarily certified for settlement purposes:

> Women (as identified in Defendant's Human Resources Information System, Workday) actively employed in California by Defendant at any point from November 1, 2015 through the date of Preliminary Approval, and who were employed in one of the job codes set forth on Exhibit A to the [Settlement Agreement].
>
> The Class does not include any individual who: (1) executed a waiver and release; (2) executed an arbitration agreement with respect to their employment upon hire or otherwise; or (3) [was] a college hire as defined by being hired within two (2) years of internship, age at hire is 23 or below with a Bachelor's degree, age at hire is 27 [or] below with a Master's degree, or age at hire is 30 or below with a Ph.D. degree.

Before final approval, Plaintiffs shall lodge any individual settlement agreements they may have executed in connection with their employment with Defendant for the Court's review.

IX. MOTION TO SEAL

HPE moves to file under seal several exhibits to the Declaration of Caleb Marker filed in support of Plaintiffs' motion, as well as portions of Mr. Marker's declaration that discuss those exhibits.

A. Legal Standard

"The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed

sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." (Cal. Rules of Court, rule 2.550(d).)

"Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute overriding interests." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn. 3 (*Providian*).) "[A] binding contractual agreement not to disclose" may suffice. (*Huffy Corp. v. Superior Court* (2003) 112 Cal.App.4th 97, 107.) In addition, confidential matters relating to the business operations of a party may be sealed where public revelation of the information would interfere with the party's ability to effectively compete in the marketplace. (See *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1285–1286 (*Universal*).)

Where some material within a document warrants sealing, but other material does not, the document should be edited or redacted if possible, to accommodate both the moving party's overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court, rule 2.550(d)(4), (5).) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*Providian*, *supra*, 96 Cal.App.4th at p. 309.)

B. Analysis

The exhibits at issue are internal HPE documents produced during discovery, as well as transcripts of deposition testimony on behalf of HPE. In support of its motion to seal, HPE submits a declaration by its Senior Litigation Counsel, who explains that these materials contain information regarding HPE's non-public internal business operations and policies, including its job architecture policy, benchmarking, the company's internal procedures on creating job requisitions, and discussion about setting salaries for new and existing HPE employees. Revealing these materials to HPE's competitors would allow them to discover a wealth of information about HPE'S business strategies, as well as its procedures for managing and compensating its employees, and would provide a significant unfair competitive advantage to HPE's detriment.

Here, the proposed redactions are narrowly tailored to the information described by HPE. Maintaining this information under seal will not impede anyone from understanding and evaluating the parties' settlement. The Court finds that HPE has established an overriding interest that justifies sealing these limited materials, and the other factors set forth in rule 2.550 are satisfied.

C. Conclusion

HPE's motion to seal is GRANTED.

IT IS SO ORDERED.

Date: November 3, 2022

The Honorable Sunil R. Kulkarni
Judge of the Superior Court