SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 02/05/2026

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties email or call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of their decision to appear and of the issues to be argued**.** Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (*Local Rule* 3.43(2).)

Note: In order to minimize the risk of miscommunication, parties are to provide an **EMAIL NOTIFICATION TO THE DEPARTMENT OF THE REQUEST TO ARGUE AND SPECIFICATION OF ISSUES TO BE ARGUED**. Dept. 39's email address is: dept39@contracosta.courts.ca.gov. Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

Submission of Orders After Hearing in Department 39 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

Courtroom Clerk's Calendar

1. 9:00 AM CASE NUMBER: MSC21-01583
CASE NAME: CASTILLO VS. CUPERTINO ELECTRIC
ISSUE CONFERENCE WITH SETTLEMENT MENTOR
FILED BY:
TENTATIVE RULING:
Appearances required, in accordance with directions of the Settlement Mentor.

Law & Motion

2. 9:00 AM CASE NUMBER: C22-01352
CASE NAME: ETHAN LYNCH VS. JOHN MUIR HEALTH, A CORPORATION
HEARING ON SUMMARY MOTION JUDGMENT
FILED BY: CALAFI, LEO AFSHIN, MD
TENTATIVE RULING:
Withdrawn at request of moving party.

3. 9:00 AM CASE NUMBER: C23-00570
CASE NAME: GENOVEVA HERRERA HERNANDEZ VS. LAS MONTANAS MARKET, INC.
***HEARING ON MOTION IN RE: FINAL APPROVAL SET BY THE COURT**
FILED BY:
TENTATIVE RULING:

Plaintiff Geneveva Hernandez moves for preliminary approval of her class action and PAGA settlement with defendant Los Montanas Market, Inc.

A. **Background and Settlement Terms**

The original complaint was filed by plaintiff on March 14, 2023 , 2023, raising class action claims and PAGA claims on behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation. The operative complaint, adding PAGA allegations, was filed on July 20, 2023.

The settlement would create a gross settlement fund of $450,000. The class representative payment to plaintiff would be up to $10,000. Attorney's fees would be $150,000 (one-third of the settlement). Litigation costs would not exceed $20,000. The settlement administrator's costs would not exceed $15,000. PAGA penalties would be $10,000. Because the LWDA notices in question were filed before June 19, 2024, the employees would receive a 25% share of PAGA penalties, or $2,500. (Labor Code §2699(m), (v)(1).) The net amount paid directly to the class members would be about $240,500. The fund is non-reversionary. Based on the estimated class size of 466, the average net payment for each class member is approximately $531. (Since notice was provided, the class size has been set at 489 members, and the average payment is now estimated at about $520.)

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendants during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Checks undelivered or uncashed 180 days after mailing will be voided, and would be tendered to the State Controller's unclaimed property fund.

The settlement contains release language (See Par. 1.34.) covering "all California wage and hour claims, damages, penalties, interest, and causes of action, arising from or related to the claims alleged in the Complaint or in the Action, or that could have been alleged or pled in the Complaint based on the allegations in the Complaint." Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Informal and formal written discovery was undertaken. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel attest that they have analyzed the value of the case, and that the result achieved in this litigation is fair, adequate, and reasonable. The moving papers include an estimate of the potential value of the case, broken down by each type of claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."])

A copy of the proposed settlement was served on the LWDA.

Since preliminary approval, notice was mailed to 490 class members. After some packets were returned, follow-up skip-tracing was done. 46 notice packets remain undeliverable. No objections were received. One request for exclusion was received.

B. **Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria

that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. **Attorney fees**

Plaintiff seeks one-third of the total settlement amount as fees ($150,000), relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Plaintiff's counsel have prepared a lodestar amount of $109,062.60, based on 157.3 hours. Thus, the blended hourly rate is $693. The imputed multiplier is 1.38. Under the circumstances of this case, no adjustment is required. The attorney's fee award of $150,000 is reasonable and is approved.

Litigation costs of $17,084.95 are reasonable and are approved.

Settlement administration costs of $8,890 are reasonable and are approved.

The requested representative payment of $10,000 for plaintiff will be reviewed under the criteria for evaluation of representative payment requests discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807. Plaintiff attests that she gave a broader release than that given by the class members, but she does not identify any additional waived claims of value. She attests that she endangered her chances of future employment by being identified as a plaintiff in this type of action. She estimates that she has spent about 30 hours of time working on the case. All things considered, the payment of $10,000 is approved.

D. **Conclusion**

The Court finds that the proposed settlement is fair, reasonable, and adequate. The motion is granted.

Counsel are directed to prepare an order reflecting this tentative ruling and the other findings in the previously submitted proposed order, as well as a judgment. The individual class member who requested exclusion, Luis E. Pena, shall be identified in the judgment as excluded. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. The date shall be selected in consultation with the Department 39 clerk, but will be held in Department 16, the Honorable Benjamin Reyes, where the matter is assigned for all purposes as of March 1, 2026. Plaintiff's counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

4. 9:00 AM CASE NUMBER: C23-01684
CASE NAME: STAR JOSHUA VS. THE COUNTY OF CONTRA COSTA
***HEARING ON MOTION IN RE: AWARD OF ATTORNEY FEES**
FILED BY: JOSHUA , STAR
****TENTATIVE RULING:****

Plaintiff Star Joshua moves for final approval of her class action settlement with defendant Contra Costa County and separately for an award of attorney's fees, litigation costs, and a representative plaintiff award. The two motions will be considered together. The case arises from an alleged "data incident."

A. Background and Settlement Terms

The complaint alleges that on September 19 and 20, 2022, hackers gained access to two County employees' email accounts, the attachments to which included highly sensitive personally identifiable information ("PII").

The original complaint was filed on July 11, 2023. A First Amended Complaint was filed on August 30, 2023, and remains the operative complaint.

The parties engaged in early informal discovery and engaged a mediator. Informal discovery included identification of the number of affected persons, the categories of PII involved, and the number of notices to affected persons.

The proposed settlement would certify a class of all persons with California mailing addresses who were mailed a letter sent from Defendant County entitled "NOTICE OF DATA BREACH" on or about May 10, 2023. It includes approximately 15,591 members.

Class members will receive the following benefits: reimbursement of documented "extraordinary" economic losses up to $5,000; reimbursement of documented "ordinary" losses up to $500, and up to $100 in "lost time" compensation (at a rate of $25 per hour). In addition, class members may claim two years of credit monitoring and identity theft protections services. The county also will implement information security practice changes to reduce the risk of similar data incidents in the future.

"Ordinary" and "extraordinary" are defined in the agreement, with "extraordinary" having

eight categories of expenses eligible for reimbursement. "Ordinary" losses are somewhat less demanding, including, but not limited to thirteen identified types of expenses that qualify. The difference appears to be that "extraordinary" expenses are intended to cover expenses that resulted from actual access to and misuse of PII in ways that had a direct cost to the class member. Any disputes about eligibility for reimbursement may be resolved by the settlement administrator.

The class will be given mail notice. A settlement website will be maintained, which can be used for filing reimbursement claims. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. The class members will be required to file a claim. Class members may object or opt out of the settlement. The Settlement administrator would be Eisner Advisory Group. They estimate settlement costs at $47,551. Since preliminary approval, notice was mailed to the class, and the settlement website was established. The website received 16,431 views from 8,035 visitors. 15,014 notices were mailed, of which 997 were returned as undeliverable. Based on follow up, 149 notices were remailed, of which 34 were returned. Thus, 14,132 notices were delivered. 512 claims were received, of which 35 were deemed invalid, because they were from non-class members. One exclusion request was received, and no objections were received.

The settlement contains release language covering "released claims," which are identified as "all past, present, and future claims and causes of action including, but not limited to any individual or class-wide causes of action…based on or relating to, concerning or arising out of the Data Incident." (Settlement, Par. 1.20.) Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.) Because all released claims must be related to the Data Incident, which is specially defined in the agreement and alleged in the First Amended Complaint, these requirements appear to be satisfied.

Where the administrator issues a check for expense reimbursement, "any funds disbursed by Defendant for a voided check shall be paid to a mutually agreeable cy pre recipient to advance privacy interests," subject to this Court's approval. (Par. 10.13.) Counsel have provided the Court with no material meeting the requirements for a cy pres distribution to a non-profit entity. Counsel must provide a declaration concerning the cy pres recipient that meets the requirements of Code of Civil Procedure section 382.4. In addition, the cy pres recipient must be qualified under Code of Civil Procedure section 384(b), which requires that cy pres funds be provided "to 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[.]" Counsel also must attest that they do not have any pecuniary interest in the cy pres recipient, and must "notify the court if the attorney has a connection to or a relationship with a nonparty recipient of the distribution that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class." (CCP § 382.4.) The Court understands that the payments here are unlikely to be large, and that the settlement provides that the recipient of the funds must be approved by the Court. Nonetheless these requirements must be established "in connection with the hearing for preliminary approval" of the settlement. (*Id*.)

Accordingly, the Court requested clarification of these issues at the first hearing on

preliminary approval. Counsel identified the State Bar's "Justice Gap Fund," which is an organization providing civil legal services to the indigent, and therefore qualifies. Counsel further have attested that they have no problematic interest or association with the recipient.

Plaintiffs' counsel will seek, by motion, attorney's fees not to exceed $150,000. The named plaintiff seeks a service award in the amount of $2,500. These fees, plus the costs of claims administration and the costs of class notice, will be paid by the County.

The initial moving papers for the motion for preliminary approval did not contain any discussion of the extent to which any individual's information actually was accessed and the nature of their damages. Nor was there any discussion of the extent to which class members actually are likely to file claims, which would presumably be addressed by experience with similar settlements. In connection with the initial hearing on the motion for preliminary approval, counsel submitted a supplemental declaration, which addressed these issues to the satisfaction of the Court.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. Attorney fees, costs and representative payment.

Plaintiff will seek no more than $150,000 in attorney's fees. Often in class actions, the amount sought is a percentage of a common fund. There is no identified fund here, however. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Under these circumstances, it appears that a lodestar analysis would be appropriate. The Court also notes that two firms will split the fee equally, which has been agreed to by the class representative. This would appear to comply with Rules of Professional Conduct Rule

1.5.1.

The lodestar fee presented by plaintiff is $252,965. The total number of hours is 341.9, with hourly rates ranging from $475 to $1,025. This results in an imputed multiplier of 0.59, i.e., a "negative" multiplier. While the billing of a $1,025 rate might be questioned, counsel have in essence discounted their lodestar by 41%, which is sufficient. The attorney's fee of $150,000 is reasonable and is approved.

Litigation costs of $12,522.87 are reasonable and are approved.

Settlement administration costs of $47,550.85 are reasonable and are approved.

The requested representative payment of $2,500 for plaintiff will be reviewed now, under the criteria for evaluation of representative payment requests discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807. Plaintiff attests to her work on the case, and that since the data incident she has experienced identity theft and suspicious phishing emails. She has spent several hours working on the case. The $2,500 payment is approved.

The motion for approval of attorney's fees, costs, administrative costs, and representative payment is granted.

D. Conclusion

The Court finds that the settlement is fair, reasonable, and adequate, and grants the motion for approval, as well as the motion for approval of fees and costs. Counsel are directed to prepare an order reflecting this ruling as well as the other items in the proposed order, and a final judgment. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. That hearing date should be determined in consultation with the Department 39 clerk, but will be held in Department 16. Department 16, the Honorable Benjamin Reyes is assigned to this matter for all purposes as of March 1, 2026. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. If any funds are to be provided to the cy pres recipient, that shall be documented in the compliance declaration, and the judgment shall be amended to reflect the authorized payment. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

5. 9:00 AM CASE NUMBER: C23-01684
CASE NAME: STAR JOSHUA VS. THE COUNTY OF CONTRA COSTA
***HEARING ON MOTION IN RE: FINAL APPROVAL SET BY THE COURTROOM**
FILED BY:
TENTATIVE RULING:
See line 4.

6. 9:00 AM CASE NUMBER: C23-02285
CASE NAME: FREDRICK HAGEN VS. TOWN OF DANVILLE
***HEARING ON MOTION FOR DISCOVERY COMPEL FURTHER DISCOVERY RESPONSES TO SPECIAL INTERROGATORIES, SET 1**
FILED BY: CENTRAL CONTRA COSTA SANITARY DISTRICT
TENTATIVE RULING:
Defendant Central Contra Costa Sanitary District (District) moves to compel further responses to

Special Interrogatories, Set Number 1 and Requests for Production of Documents, Set Number 2.

Requests at Issue:

The district's moving papers seek further responses to 8 different requests for production of documents and 25 special interrogatories. In opposition, plaintiff states that he has provided further responses to Special Interrogatories numbers 1, 3, and 20-24, leaving only numbers 25-28 and Request for Production of documents number 37 in dispute. While whether the supplemental responses resolve the underlying issues remains to be seen, for purposes of this motion the Court will consider only the remaining requests.

The requests are as follows:

SRog 25: Please state your starting salary with Freeman Mathis & Gary;

SRog 26: Please state your current salary with Freeman Mathis & Gary

SRog 27: If you have a billable hour requirement at Freeman Mathis & Gary, please provide that information for each year you have worked for that firm;

SROg No. 28: If there is a salary bonus at Freeman Mathis & Gary available to you, please state the details of the salary bonus for each year you have worked for that firm, including the amount and how you qualify for it.

RFP No. 37: A copy of your entire personnel file at Freeman Mathis & Gary.

Discussion:

In summary, the dispute is centered around requests seeking employment-related information from plaintiffs. As plaintiff states, "Plaintiff does not seek wage loss damages. He seeks general damages for the lasting, non-economic harms and diminished quality of life caused by the incident." Thus, plaintiff argues, the matters are not only irrelevant but implicate the constitutional right of privacy, meaning that relevance is not enough.

The District asserts that plaintiff's "claimed emotional distress and diminished professional functioning are directly tied to his ability to work and perform as an attorney. Plaintiff's salary and bonus information is therefore relevant to the severity of this claimed loss of enjoyment of life and to whether his alleged limitations are consistent with his income and professional status."

In the Court's view, to the extent plaintiff intends to argue that as a result of the accident, he now is unable to engage in the practice of law (at least to the same extent as he did in the past), and that this has caused him emotional suffering, discovery into the extent of his actual work for his firm is relevant. And the District is entitled to inquire into how his ability to work after the accident compared to before the accident. But the amount of money he is making compared to the past is not relevant.

Applying these principles to the Special Interrogatories at issue, the Court denies the motion as to

Numbers 25, 26 (salary), and 28 (bonus). The motion is granted as to Number 27 (billable hour requirement).

As to Request for Production of Documents Number 37, ordinarily, where a request is overbroad, the responding party still must produce as much of the material as is discoverable. In this instance, however, the request for the entire personnel file is so clearly overbroad that plaintiff was substantially justified in objecting to the entire request. Moreover, the District's position in this motion is that "Plaintiff's entire personnel file is highly relevant." It does not propose any narrowing. Given its breadth, the request would require production of large amounts of irrelevant and private information. The motion is denied as to Request for Production of Documents Number 37.

Sanctions:

Each side seeks sanctions against the other. Plaintiffs assert that the District failed to adequately meet and confer, that most of the issues were resolved by negotiation, and that the motion was unnecessary.

The District contends that Plaintiffs only supplemented their responses after the motion was filed. Rule of Court 3.1348(a) specifically addresses this situation, providing: "The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed." Failure to oppose or filing of a supplemental response "shall not be deemed an admission that the motion was proper or that sanctions should be awarded." (CRC 3.1348(b).)

Under the circumstances, starting with the requests and including the meet and confer process and the motion, the Court concludes that each side's position was substantially justified, and denies both requests for sanctions.

7. 9:00 AM CASE NUMBER: C23-02401
CASE NAME: KIARA ROSS VS. KOTLIER ERNEST M.
***HEARING ON MOTION IN RE: CONSOLIDATE RELATED CASES**
FILED BY: SEQUOIA EQUITIES, INCORPORATED
****TENTATIVE RULING:****

Before the Court is a motion to consolidate related cases per Cal. Rules of Court, Rule 3.350(a)(1)(C) filed by defendants Sequoia Equities, Inc. and Alder Creek Management, Inc. For the reasons set forth, the motion is **denied, without prejudice**.

Background

This class action lawsuit was filed by Kiara Ross, Felicia Costa, and Mark Piepowski, on behalf of themselves and a putative class of tenants ("Class Plaintiffs'), against defendants Sequoia Equities, Inc. and Alder Creek Management, Inc. ("Sequoia/Alder Defendants"), along with approximately 67 single purpose entity-apartment building owners. (Original Class Compl. ¶¶ 13, 15.) The entity-

apartment owners were dismissed without prejudice pursuant to the Stipulation re Dismissal of Defendants; Tolling Agreement; Good Cause Declaration and Order filed December 10, 2024 in this case, leaving the Sequoia/Alder Defendants as the sole defendants.

The operative class action first amended complaint ("FACC") alleges four causes of action for unlawful retention of residential security deposits in violation of Civil Code section 1950.5, violation of the Unfair Competition Law, Business & Professions Code section 17200 *et seq.* ("UCL"), negligence, and defamation based on allegedly false statements made about the tenants. The FACC names approximately 67 defendants, some with Sequioa Equities-related names that share a business address with Sequoia Equities and others that appear to be unaffiliated apartment building owner entities whose apartment properties are managed by Sequoia and Alder. (FACC ¶¶ 17 [listing 37 alleged Sequoia-owned properties] and 23 [listing 30 third party owned apartment building owners].) The FACC alleges that Sequoia has management contracts with the third party owners pursuant to which it has the exclusive right to manage the properties and is bound to indemnity and hold the third party owners harmless in connection with "the negligent handling of the disposition of security deposits, including attorneys' fees and costs." (FACC ¶¶ 20-22.)

In December 2024, the parties in the Class Action agreed to dismiss the third party apartment owners from the Class Action with a tolling agreement. (12/10.2024 Stip. and Order.) The third party owners, including the Landlord Plaintiffs as defined below, have not appeared in defense of the Class Action, other than through the Stipulation for their dismissal.

Subsequent to the commencement of the Class Action, Fuller Properties, LLC and 21 other entities ("Landlord Plaintiffs") filed suit against the Sequoia/Alder Defendants, initiating the related action C24-01538 ("Landlord Action"). The now operative second amended complaint ("2AC") in the Landlord Action alleges seven causes of action against the Sequoia/Alder Defendants, including breach of fiduciary duty, fraud and intentional misrepresentation, breach of contract, negligent interference with prospective business advantage, broker's constructive fraud, declaratory relief, and accounting. The claims as alleged arise out of the Sequoia/Alder Defendants' obligations to the Plaintiffs under written management contracts for leasing and property management of the apartment buildings owned by the Landlord Plaintiffs and their alleged breaches of duties as agents for Plaintiffs as the property owners. Plaintiffs allege the Sequoia/Alder Defendants mismanaged the Landlord Plaintiffs' apartment buildings, failed to account for rental and other proceeds from the properties, and made misrepresentations to Plaintiffs in managing their properties, among other claims. (2AC ¶¶ 43-52.) They allege that one of the breaches or defalcations by the Sequoia/Alder Defendants was the mishandling of tenant security deposits which resulted in the Class Action lawsuit being filed against the Plaintiffs. (2AC ¶ 50.)

Sequoia and Alder have filed a cross-complaint in the Class Action. The Sequoia/Alder cross-complaint names Fuller Properties, LLC and the other Landlord Plaintiffs as well as Doug Smith as cross-defendants (the "Class Action Cross-Defendants"). In the Sequoia/Alder cross-complaint, Sequoia and Alder allege that cross-defendant Smith controls all the entity Class Action Cross-Defendants and is the alter ego of those entities. The Sequoia/Alder cross-complaint alleges causes of action for breach of contract, based on express contractual indemnity and duty to defend, "declaratory relief-contract." equitable indemnity, contribution, and "declaratory relief – tort."

Legal Standards Applicable to Motion for Consolidation

Code of Civil Procedure section 1048 provides, "When actions involving a common question or law or fact are pending before the court, it may order a joint hearing or trial of any or all of the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." (Code Civ. Proc. § 1048(a).) The decision whether to consolidate actions is left to the sound discretion of the trial court based on its assessment of various factors, including whether there are common issues of fact or law, and even if there are, whether other factors, such as potential prejudice to one or more parties, delay, confusion or other considerations do not warrant consolidation. (*Todd- Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978-979 ["Code of Civil Procedure section 1048 grants discretion to the trial courts to consolidate actions involving common questions of law or fact. The trial court's decision will not be disturbed on appeal absent a clear showing of abuse of discretion."].)

The Court in *Askew v. Askew* (1994) 22 Cal.App.4th 942 explained: "A motion to consolidate under section 1048 of the Code of Civil Procedure is predicated on the assumption that two or more actions already 'involv[e] a common question of law or fact.' The motion requests the court to exercise its *discretion* to consolidate the actions (the court '*may* order a joint hearing or trial of any or all the matters in issue in the actions,' italics added). Therefore it is possible that actions may be thoroughly 'related' in the sense of having common questions of law or fact, and still not be 'consolidated,' if the trial court, in the sound exercise of its discretion, chooses not to do so." (*Id.* at 964 [italics in original].)

Landlord Plaintiffs' Request for Judicial Notice

The Landlord Plaintiffs ask the Court to take judicial notice of the civil case cover sheets filed with the complaint in the Landlord Action and filed with the Class Action complaint, as well as the Stipulation re Dismissal of Defendants; Tolling Agreement; Good Cause Declaration and Order filed December 10, 2024 in this Class Action. (Landlord RJN ¶¶ 1-3.) The Court grants the unopposed request, subject to the limitations on judicial notice. (Evid. Code § 452(d); *StorMedia, Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9 [judicial notice of pleadings extends to the fact of the filings but not the truth or interpretation of the content of the filings to the extent reasonably disputable]; *Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-115 [same].)

Analysis

The issue of whether there are common questions of "law and fact" that warrant consolidation of the Class Action with the Landlord Action necessarily must consider the identities of the parties to the actions and the claims that are asserted. If a party is not a party to an action or claim, that fact is relevant to assessing the extent to which there are common issues of fact or law. If a claim is founded on contract and requires interpretation or resolution of rights, powers, duties, or liability under the contract, the identity of the parties to the contract is an issue clearly relevant to whether there are common questions of fact or law.

A. Parties to the Actions

The Court's analysis of consolidation considers the putative class and subclasses alleged in the FACC. The classes as described are relevant to assessment of the claims in the Class Action and the propriety of consolidation with the Landlord Action. The Class Plaintiffs define the proposed class and

subclasses as follows: "Unsubstantiated-Charges Class: All former residents of Defendants' California properties whose leaseholds terminated between September 25, 2019 to present, and who had at least $125 of their security deposit retained for cleaning, repairs and/or replacements combined (the 'Plaintiff Class'). [¶] Untimely Security Deposit Class: All former residents of Defendants' California properties whose leaseholds terminated between September 25, 2019 to present, who had any portion of their security deposit withheld by Defendants for more than 21 days after they vacated their premises at Defendants' property (the 'Plaintiff Subclass No. 1'). [¶] Defamation Class: All former residents of Defendants' California properties whose leaseholds terminated between September 25, 2019 to present, who had a balance due after exhaustion of their security deposit and were reported by Defendants to collections after move-out (the 'Plaintiff Subclass No. 2')." (FACC ¶ 77.)

The Class Action thus may encompass a large number of plaintiffs, many of whom reside at properties owned by the Sequoia-related entity defendants, not the Landlord Plaintiffs. None of the Class Plaintiffs or members of the putative class and subclasses are parties to the Landlord Action. The Class Plaintiffs' claims against 37 of the defendants in the Class Action have nothing to do with the Landlord Plaintiffs; they involve different properties in which the Landlord Plaintiffs have no interest and different management contracts to which the Landlord Plaintiffs are not parties. Indeed, while moving parties argue that the Landlord Plaintiffs own one-third of the properties subject to the tenant claims in the Class Action, that means that the Landlord Plaintiffs have no interest, relationship or involvement in two-thirds of the properties subject to the Class Action.

The Landlord Plaintiffs have been dismissed without prejudice from the Class Action. They are not presently parties to the Class Action claims in the FACC. Sequoia and Alder have made the Landlord Plaintiffs parties to the Sequoia and Alder cross-complaint, which through filed in the Class Action case is nevertheless a separate, independent action. (*See, e.g., Westamerica Bank v. MBG Industries, Inc.* (2007) 158 Cal. App. 4th 109, 134 [" '"Where there are both a complaint and a cross-complaint there are actually two separate actions pending and the issues joined on the cross-complaint are completely severable from the issues under the original complaint and answer. [Citations.]' [Citation omitted.]"]; *Security Pacific National Bank v. Adamo* (1983) 142 Cal. App. 3d 492, 496 ["A complaint and a cross-complaint are, for most purposes, treated as independent actions. [Citation omitted.] 'Procedurally, a cross-complaint is a separate pleading and represents a separate cause of action from that which may be stated in the complaint.' [Citation omitted.]"].)

Sequioa and Alder argue the differences in the parties to the Class Action and Landlord Action are "irrelevant." (Sequoia/Alder Reply p. 5, l. 12.) The Court disagrees that the differences are irrelevant. The fact that the Class Action involves classes of claimants as Plaintiffs and 37 defendants who are not parties to the Landlord Action is clearly relevant to whether consolidation of the two actions is appropriate, or whether consolidation would result in prejudice, delay, confusion, or increased expense rather than avoiding or reducing expense.

In *Todd-Stenberg, supra,* the Court of Appeal found no abuse of discretion by the trial court consolidating three separate actions by individual plaintiffs for personal injuries they allege they suffered using the Dalkon Shield. In affirming the trial court's proper exercise of its discretion to consolidate the actions, the Court explained, "The trial court correctly anticipated that a large portion of the trial would be devoted to issues common to the three cases: how PID [pelvic inflammatory disease] occurs, whether it can be caused by the use of Dalkon Shield, and what other factors might

cause or contribute to the disease. In short, a large part of the trial was devoted to educating the jury about the female reproductive system, the Dalkon Shield and PID." (*Todd-Stenberg, supra,* 48 Cal.App.4th at 979.) While there may have been some idiosyncratic facts relevant to each plaintiff's claims, the essential basis for liability – product liability for a dangerous device that caused a particular disease in each plaintiff – were present in each action that was consolidated.

B. Claims Alleged In the Actions

Paragraph 40 of the Sequoia/Alder cross-complaint summarizes the claims made by the Class Plaintiffs in the Class Action as "related to violations of the Landlord Tenant and Security Deposit Laws, including but not limited to: [¶] Improper use of security deposits by using them for charges other than rent, repairs (exclusive of ordinary wear and tear), cleaning to bring the apartment back to its pre-lease state, or the remedy of future defaults. (1950.5(b)) [¶] The amounts charged were not reasonably necessary, but charging a standardized fee (1950.5(e)) [¶] Sending an itemized statement of the disposition of the security deposit and any remaining amount to the tenant within 21 days of the tenant vacating (1950.5(g)(1)) [¶] Not including copies of documents substantiating any charges, including bills, invoices or receipts, and where the work is carried out by the landlord an itemized statement of the time spent and hourly rate. (1950.5(g)(2)(A) and (B))."

In this case, unlike *Todd-Stenberg*, the claims in the Class Action are at most a narrow part of the issues involved in the Landlord Action. The Landlord Plaintiffs' 2AC addresses the rights, duties, obligations, and liabilities of the parties to the management agreements to one another in relation to the management of the properties owned by the Landlord Plaintiffs/Class Action Cross-Defendants. Those rights and duties are based on written contracts to which the tenants are not parties and on broader fiduciary duties arising in the relationship between principal and agent or real estate broker and principal, which are not the legal relationships involved in the tenants' claims against Sequoia and Alder. The Sequoia/Alder cross-complaint, which brings in the Landlord Plaintiffs as cross-defendants, similarly addresses Sequoia and Alder's indemnity rights based on their contracts with the Landlord Plaintiffs and under equitable principles unrelated to the basis for the claims made by the Class Plaintiffs for violation of their rights as tenants.

The scope of the Landlord Plaintiffs' claims are not limited to mishandling of tenant security deposits or failure to properly support charges imposed on the tenants for repairs or other expenses, which are the scope of the claims by the tenants in the FACC. The Landlord Plaintiffs in their 2AC allege Sequoia and Alder committed many other types of acts and omissions that violated their duties to the Landlord Plaintiffs. Among other things, the Landlord Plaintiffs allege Sequoia and Alder failed to properly staff management of the properties, failed to properly train or supervise the personnel managing the properties, failed to maintain expense receipts, misused rental proceeds from the properties for the Defendants' corporate expenses, allowed tenants to occupy units at the properties without written rental agreements or security deposits, failed to properly screen tenants, failed to timely respond to tenant complaints, failed to pay bills timely resulting in late charges, and failed to timely evict nonpaying tenants. (2AC ¶¶ 51, 55, 63, 73-75, 86.)

Moving parties argue that the fact the legal basis for the claims by the tenants against Class Action defendants is different from the legal basis for the claims in the Landlord Action and the Sequoia/Alder cross-complaint is also irrelevant to whether the actions should be consolidated. They

argue that the common question of law as to whether Sequoia and Alder violated the Civil Code statute governing the treatment of tenant security deposits is present in both the Class Action and the Landlord Action. The tenants have statutory rights, and they also signed rental or lease agreements that may govern their rights and their ability to recover in the Class Action. That question of law as to whether the tenants' statutory rights as tenants were violated is the primary legal issue in the Class Action. That question at most is one of perhaps 10 or more breaches of contractual and legal duties alleged by the Landlord Plaintiffs in the Landlord Action, based on the operative pleadings.

Further, while the determination of the Class Plaintiffs' claims for statutory violations as to the security deposits and improper charges, if proven, may give the Class Plaintiffs a right to recover against the Class Action defendants, including the Landlord Plaintiffs if they later become parties to the Class Action, the determination would not necessarily resolve whether the Landlord Plaintiffs can recover against Sequoia and Alder for any Class Action liability the Landlord Plaintiffs may have to the tenants. The Landlord Plaintiffs' recovery against Sequoia and Alder is dependent upon the interpretation of the management contracts with the Landlord Plaintiffs, the duties of Sequoia and Alder as agents, and/or the resolution of Sequoia's and Alder's contentions in their Class Action cross-complaint in which they assert essentially that they were acting at the direction of the Landlord Plaintiffs and Doug Smith. The liability the Landlord Plaintiffs may have in the Class Action again is only one of many components of the Landlord Plaintiffs' factual and legal claims against Sequoia and Alder alleged in the Landlord Action.

C. <u>Prejudice, Confusion, Delay, and Increased Expense and Discovery Issues</u>

Consolidation of the actions is also likely to cause confusion and prejudice potentially to the detriment of all parties and result in unwieldy and more expensive pre-trial discovery and pre-trial motion process. Evidence relevant to the Landlord Plaintiffs' claims against Sequoia and Alder for misappropriation of rents, misuse of funds, failure to maintain receipts for expenses, and failure by Sequoia and Alder to account to the Landlord Plaintiffs for the funds entrusted to them is likely irrelevant to the Class Plaintiffs' claims and could clearly prejudice jurors against Sequoia and Alder and cause juror confusion in determining the narrow issue of whether the tenants' rights under the security deposit statute were violated. Evidence supporting the Landlord Plaintiffs' claims regarding Sequoia's and Alder's failure to train and supervise employees, lack of employee supervision, failure or delays in responding to tenant complaints, and allowing employees to reside in units without paying rent all relevant to the Landlord Plaintiffs' claims against Sequoia and Alder could well be prejudicial to the Landlord Plaintiffs in their defense of the Class Action claims.

The scope of discovery is based on the claims made in the Class Action and Landlord Action and Sequoia/Alder cross-complaint. While there may be some duplication of discovery regarding security deposit and tenant charges, the scope of relevant discovery in the Class Action as to the Landlord Plaintiffs is considerably narrower than the discovery in connection with the Landlord Plaintiffs' claims against Sequoia and Alder in the Landlord Action, because the claims by the Landlord Plaintiffs are much broader that the tenant security deposits and charges. On the other hand, the Class Action will involve discovery that is outside the scope of the Landlord Action, including discovery regarding class members for as many as 37 properties in which the Landlord Plaintiffs have no interest and discovery relevant to class certification issues, such as numerosity, common questions, typicality, whether the

Class Plaintiffs are adequate representatives, and whether a class action is superior to resolution of claims on an individual basis. (*See generally* FACC ¶ 78, pp. 26-28.)

Sequoia and Alder raise concerns regarding the designation of documents produced if the cases are not consolidated, specifically a concern that the same documents may be produced with different document identification in the two cases which may create confusion. While that concern may be legitimate, it seems that the concern can be resolved by the parties agreeing on a method of production that identifies the party producing the document and the action or actions in which they document is produced, or the parties agreeing that certain documents produced in response to discovery in one case may considered produced and usable in the other case. The Court has confidence that the parties could reach a pragmatic arrangement to address the mechanics of document identification and production. Consolidation of the actions is not the solution where the majority of the parties to the Class Action are not parties to the Landlord Action and there is only a narrow overlap of issues.

D. Wasting Insurance Policy and Risk of Inconsistent Rulings

Moving parties raise a valid concern regarding the diminishing value of the insurance coverage for the claims at issue in these actions because the policy is a "wasting" policy, such that attorneys' fees and costs incurred in the actions reduce the balance of the policy available to pay any judgment or liability of Sequoia and Alder in the actions. They also raise the possibility of inconsistent rulings regarding whether the tenant security deposit statutes were violated and whether Sequoia and Adler improperly charged tenants for repairs and other expenses if the actions are not consolidated.

As to the diminishing insurance policy value, for the reasons stated above, it is not at all clear to the Court that consolidation will conserve or reduce discovery and other pre-trial litigation expenses. To the contrary, expense may increase with the increased scope of parties and issues in a consolidated action. There are potential mechanisms available to avoid duplication of discovery, such as stipulations and orders that depositions of witnesses and discovery concerning security deposits and tenant charges produced in the Class Action may also be used in the Landlord Action.

As to concerns regarding inconsistent rulings, the Court does not find consolidation of the actions is the solution given the reasons for not consolidating the actions set forth above. For example, determining the cases are "related" cases or that the Landlord Action meets the definition of a "complex" case so that the cases are handled in the same department and can be coordinated by one judge, or staying all or a portion of the Landlord Plaintiffs' action while the Class Plaintiffs' tenant security deposit and tenant charges claims are resolved, or other case management tools available to the Court under Code of Civil Procedure section 128 and the Court's inherent powers, may provide better alternatives to address the risk of inconsistent rulings.

E. Consolidation May Be Revisited

The pleadings in the Landlord Action are not yet settled. Sequoia and Alder have filed a demurrer to the 2AC in that case set to be heard in late February 2026. Further development in the cases may merit the Court revisiting consolidation at a later date. The Court exercises its discretion to **deny** consolidation for the reasons stated based on the current record in the actions, **without prejudice** to renewal of a consolidation motion if subsequent developments warrant.

8. 9:00 AM CASE NUMBER: C23-02821
CASE NAME: LESLEY HOWARD VS. LIBERTY ASSOCIATES GROUP, LLC
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT (CONTINUED FROM 01.08.26)**
FILED BY:
****TENTATIVE RULING:****
Plaintiff Lesley Howard moves for preliminary approval of her class action and PAGA settlement with defendant Liberty Associates Group, LLC.

A. **Background and Settlement Terms**

The original complaint was filed by Plaintiff on November 6, 2023, raising class action claims on behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation. A First Amended Complaint adding PAGA claims was filed on February 5, 2024. A Second amended Complaint was filed on August 21, 2025 (pursuant to agreement of the parties) expanding the claims somewhat. It is the operative complaint.

The settlement would create a gross settlement fund of $1 million. The class representative payment to plaintiff would be $10,000. Attorney's fees would be $333,333.33 (one-third of the settlement). Litigation costs would not exceed $27,500. The settlement administrator's costs would be up to $24,000. PAGA penalties would be $100,000. The net amount paid directly to the class members would be about $505,166.67. The fund is non-reversionary. Based on the estimated class size of 2,174, the average net payment for each class member is approximately $232.

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendant during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable.

The proposed settlement provides that checks undelivered or uncashed 180 days after mailing will be voided, and the funds will be provided to the State Controller's Unclaimed Property Fund.

The settlement contains release language covering "any and all causes of action, claims, rights, damages, and penalties under California law that are alleged in the Second Amended Complaint in the action or that could have been alleged based on the facts alleged in the Second Amended Complaint[.]" (Settlement, Par. 3B.) Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the

scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Informal written discovery was undertaken, and a data expert was retained for mediation. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel attest that they have analyzed the value of the case, and that the result achieved in this litigation is fair, adequate, and reasonable. The moving papers include an estimate of the potential value of the case, broken down by each type of claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

B. **Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered

is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. **Attorney fees**

Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval. Counsel are directed to prepare a lodestar fee estimate for the motion for final approval.

The reasonableness of litigation costs and the settlement administrator's fees will be considered at final approval.

Similarly, the requested representative payment of $10,000 for plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. **Conclusion**

The settlement includes claims made in the May 2, 2025, PAGA notices, which are encompassed in the Second Amended Complaint. Because one set of LWDA notices in question were filed before June 19, 2024, while the other was filed after that date, penalties attributed to the earlier notice must be allocated 25% to the aggrieved employees, while those attributed to the later notice must be allocated 35% to the aggrieved employees. (Labor Code §2699(m), (v)(1).) At the initial hearing, the Court indicated that the parties must agree on an allocation, and continued the hearing to enable the parties to address the issue. They have now entered into an Amended Settlement Agreement, which allocates 50% of the penalties to the pre-statutory change time period and 50% to the post-statutory change period. This is acceptable, and resolves that issue.

The Court find that the agreement is sufficiently fair, reasonable, and adequate, to justify preliminary approval, and grants the motion.

Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Although the hearing date should be arranged through the Department 39 clerk, the hearing will be set in Department 16, the Honorable Benjamin Reyes, which is assigned

this case for all purposes as of March 1, 2026. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

9. 9:00 AM CASE NUMBER: C24-00320
CASE NAME: CHARLES BARRANTES VS. BEVERAGES & MORE, INC.
***HEARING ON MOTION IN RE: COMPLIANCE HEARING SET BY THE COURTROOM.**
FILED BY:
****TENTATIVE RULING:****
The Settlement Administrator's declaration shows that the settlement terms have been implemented. The Settlement Administrator is directed to disburse the remaining 5% of attorney's fees to plaintiff's counsel. No further proceedings are contemplated.

10. 9:00 AM CASE NUMBER: C24-00492
CASE NAME: THELMA JACKSON VS. JOHN PAULDING
***HEARING ON MOTION IN RE: CONFIRM REFEREE REPORT AND TO ALLOCATE SALE PROCEEDS (CONTINUED FROM: 12/11/2025 AND 01.08.26)**
FILED BY:
****TENTATIVE RULING:****
Introduction

Before the Court is the continued motion by Partition Referee David W. Martin ("Referee") for an order approving the Referee's Report and allocating and distributing the proceeds of the sale of 5648 Burlingame Avenue in Richmond, Contra Costa County, California. Referee David W. Martin has provided the Court with an updated and more detailed breakdown of costs and expenses of the allocation of the proceeds.

The Court has considered the statement of offset submitted by Defendant John Paulding. The Court will not grant any of the requested offset amounts. Assuming that they were otherwise proper, John Paulding failed to produce sufficient evidence supporting the amount or actual payment of the requested offset line items.

At the January 8, 2025, hearing the Court continued the hearing to give Defendants a chance to submit supporting documents to entail the detailed expenses.

The Court approves Referee David W. Martin updated proposed order for allocation of the proceeds for the sale of 5648 Burlingame Avenue in Richmond, Contra Costa County, California subject to including $38,020.00 to Plaintiff for back rent for the subject time period less the property insurance paid by Defendants during the subject time period.

Legal Standard for Imposing Offsets During a Partition Action

California Code of Civil Procedure §872.140 provides: "The court may, in all cases, order allowance,

accounting, contribution, or other compensatory adjustment among the parties according to the principles of equity." Further, the import of the foregoing rule is found in the Law Revision Commission Comments to §872.140, which provide, that it is intended to allow courts to make adjustments among owners for "such items as common improvements, unaccounted rents and profits, and other matters for which contribution may be required."

When the partition action involves one co-owner out-of-possession (usually the plaintiff) and one co-owner in possession (usually the defendant), the owner out-of-possession may claim the value of occupancy of the property. Generally, a claim for the implied rental value of exclusive possession by one co-owner depends upon a showing of actual ouster. As one court explained: "In order for a cotenant who is not in possession to recover the rents and profits, or the value of possession, from the cotenant in possession, he must establish that there has been an ouster…." (See, *Estate of Hughes* (1992) 5 Cal. App. 4th 1607, 1612.)

"An ouster, in the law of tenancy in common, is the wrongful dispossession or exclusion by one tenant of his cotenant or cotenants from the common property of which they are entitled to possession. The ouster must be proved by acts of an adverse character, such as claiming the whole for himself, denying the title of his companion, or refusing to permit him to enter. Actual or constructive possession of the ousted tenant in common at the time of the ouster is not necessary." (See, *Zaslow v. Kroenert* (1946) 29 Cal. 2d 541, 548. Emphasis added.)

Analysis

Plaintiff's Fair Market Value Rent Claim from November 2023 to May 2025

Plaintiff acknowledges its candor to the in not asserting compensation from Defendants' March 17, 2022, Probate filing challenging Plaintiff's title to the Subject Property, as it falls outside the default two-year Statute of Limitations period for claims of back-rent not based on written agreement. Although Plaintiff did file the current suit on February 23, 2025, Plaintiff did not ask for back-rent until the filing of its Claim for Equitable Compensatory Adjustment Following Partition Sale filed on November 26, 2025.

Defendants also filed a dueling statement of offset the same day on November 26, 2025. Defendants' request for offset go as far back as sixteen years. However, there is no stated legal basis for Defendants' offset. Since there is no stated grounds, the Court will treat Defendants' offset as a claim based on an unwritten agreement which would share the same statute of limitations as Plaintiff described above.

Therefore, Plaintiff bases her back-rent claims against Defendants from the Probate Court's November 3, 2023, Order confirming the ultimate state of title to the Subject Property prior to Partition Sale, to Defendants' finally vacating the Subject Property in May 2025. (See CCP § 339.) Therefore, Plaintiff bases her back-rent claims against Defendants from the Probate Court's November 3, 2023, Order confirming the ultimate state of title to the Subject Property prior to Partition Sale, to Defendants' finally vacating the Subject Property in May 2025.

Plaintiff argues that on March 17, 2022, following Ms. Hart's death on August 8, 2021, Defendants commenced Probate Court litigation in this County (i.e. Case No. MSP22-00345) denying the title of

[herein Plaintiff] effectively ousting Plaintiff. (See, supra, *Zaslow v. Kroenert* (1946) 29 Cal. 2d 541, 548.)

Accordingly, Plaintiff is entitled to claim imputed fair market value rent against defendants following their effective ouster of Plaintiff from the Subject Property. Pursuant to Evidence Code §720, Plaintiff offers the expert opinion of California-licensed real estate salesperson, Jeffrey Good, and adopts his valuations pursuant to Evidence Code §813(a)(2) as her own in support of the following claims of fair market value rental compensation from defendants. Mr. Good's Declaration regarding his professional qualifications and opinion of fair market value rent for the years relevant to this matter opines that a principal figure of $40,270.00 in uncompensated fair market value rent is owed to Plaintiff. Including 10% interest, Plaintiff claims a total of $44,108.64 in uncompensated rent with interest.

Defendant Timothy Paulding objects to imputed rent based on ouster on multiple grounds. However, none of the grounds are supported by statutes, case law, or any legal authority.

In California, Judges may ignore unsupported arguments entirely. (*Walton v. Superior Court* (1999) 77 Cal.App.4th 886, 893 [Courts are not obliged to search the law for arguments not provided by the parties], See, *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 [arguments not supported by legal authority are waived and need not be considered by the court], see also, California Rules of Court, Rule 3.1113(a): Points not supported by legal argument or authority may be disregarded.)

Defendants' Offset Claims from November 2023 to May 2025

Mortgage Payments: None. Payment history stops at 2018.

Maintenance Payment: None. Payment history stops at 2023.

Insurance Payments: $2,250.00 (2024 to July 2025; additional two months in 2025 offsets the missing 2 months in 2023.)

Property Taxes: None. Payment history stops at 2023.

Conclusion

The Court grants Plaintiff its principal figure of $40,270.00 in uncompensated fair market value rent without interest. The Court grants Defendants' offset of $2,250.00 in insurance payment for the property made during the subject time period. Thus, the Court grants $38,020.00 to Plaintiff for back rent for the subject time period less the property insurance paid by Defendants during the subject time period.

Based on the explanation provided above, **the Court approves Referee David W. Martin updated proposed order for allocation of the proceeds for the sale of 5648 Burlingame Avenue in Richmond, Contra Costa County, California subject to including $38,020.00 to Plaintiff for back rent for the subject time period less the property insurance paid by Defendants during the subject time period.**

11. 9:00 AM CASE NUMBER: C24-00492
CASE NAME: THELMA JACKSON VS. JOHN PAULDING

***HEARING ON MOTION IN RE: CONFIRM AND/OR IMPOSE LIEN ON SHARE OF JOHN AND TIMOTHY PAULDING IN PROCEEDS OF SALE (CONTINUED FROM: 12/11/2025 AND 01.08.26)**
FILED BY:
****TENTATIVE RULING:****
See line 10.

12. 9:00 AM CASE NUMBER: C24-03541
CASE NAME: DANICA AULAUMEA VS. AIRBNB, INC.
***MOTION/PETITION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**
FILED BY: AIRBNB, INC.
****TENTATIVE RULING:****
Continued to February 19, 2026, 9:00 a.m., on the Court's own motion.

13. 9:00 AM CASE NUMBER: C25-01059
CASE NAME: SHELLEY MYTHEN VS. THE ESTATE OF IDA ALFARO,
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: WILLIS, DONNA
****TENTATIVE RULING:****
The Court has received the First Amended Complaint filed by plaintiff on February 2, 2026 and defendant's opposition to the First Amended Complaint. Code of Civil Procedure section 472(a) requires that an amended complaint filed after a demurrer must be filed no later than the date the opposition to the demurrer is due. However, absent prejudice to the opposing party, courts are bound to apply a policy of great liberality in permitting amendments to the complaint "at any stage of the proceedings, up to and including trial." (*Atkinson v. Elk Corp*. (2003) 109 Cal.App.4th 739, 761.) In light of this well-settled policy of the courts, the Court will allow the untimely First Amended Complaint, which now becomes the operative pleading.

The **demurrer hearing is vacated as moot**.

14. 9:00 AM CASE NUMBER: MS5031
CASE NAME: PETITION OF: PARAQUAT CASES
***HEARING ON MOTION IN RE: FOR ORDER SUBSTITUTING PARTY PURSUANT TO CCP 377.31 AND PERMISSION TO AMEND COMPLAINT**
FILED BY:
****TENTATIVE RULING:****
Granted. The moving papers establish adequate grounds and there is no opposition.

15. 9:00 AM CASE NUMBER: MSC20-01311
CASE NAME: MICHAEL PRICE VS. STARLIGHT MARINE SERVICES, INC.
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
FILED BY: PRICE, MICHAEL
****TENTATIVE RULING:****

Plaintiffs Michael Price and Douglas Anderson move for preliminary approval of their class action and PAGA settlement with defendant Starlight Marine Services, Inc.

A. **Background and Settlement Terms**

The original complaint was filed by plaintiffs on July 16, 2020, raising class action claims against defendant, alleging that defendant violated the Labor Code in various ways, including failure to pay minimum and overtime wages, and failure to provide meal breaks. A notice of PAGA violations expanding the scope of the allegations was given, and on September 10, 2020, a First Amended complaint adding PAGA allegations was filed. This remains the operative complaint.

On September 9, 2021, defendant's motion to compel arbitration was denied.

On August 22, 2024, the court granted plaintiffs' motion for class certification, which designated three subclasses: a "meal period" subclass, an "on call" subclass, and a "waiting time" subclass. It set a class period of July 16, 2016 to February 15, 2021.

The settlement would create a gross settlement fund of $280,000. The class representative payment to plaintiff would be up to $10,000 for each of the two plaintiffs. The settlement administrator's costs would not exceed $3,250. PAGA penalties would be $15,000. Because the LWDA notices in question were filed before June 19, 2024, the employees would receive a 25% share of PAGA penalties. (Labor Code §2699(m), (v)(1).) The net amount paid directly to the class members would be about $245,000. The fund is non-reversionary. The class size is 26. The average payment per class member is about $9,423.

Unlike most settlements of this nature, attorney's fees are provided separately from the remainder of the settlement fund. Class counsel will seek approval of $300,000, by motion filed concurrently with the motion for final approval. (Settlement Agreement, Par. 3.2.2.) (See discussion below.)

The class members will not be required to file a claim. Class members may object to the settlement. They may not opt out, however, because that opportunity was provided as part of the class certification process. Aggrieved employees cannot opt out of the PAGA portion of the settlement. Funds would be apportioned to subclass members based on the number of workweeks worked during the class period.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Checks undelivered or uncashed 180 days after mailing will be voided. (Par. 4.4.1-4.4.3) The funds would be tendered to the State Controller's unclaimed property fund.

The settlement contains release language for the class (see Par. 5.2) covering "all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint." Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Formal and informal written discovery was undertaken. The matter settled after arms-length

negotiations, which included a session with an experienced mediator.

Counsel attest that they have analyzed the value of the case, and that the result achieved in this litigation is fair, adequate, and reasonable. Counsel's declaration include an estimate of the potential value of the case, broken down by each type of claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."])

Counsel attest that a copy of the proposed settlement was served on the LWDA.

B. **Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. **Attorney fees, costs, and representative payments.**

The proposed fee of $300,000 is not taken as a part of the gross settlement amount. Because this is relatively unusual, the Court notes a few points. First, if the fee were computed as a percentage of the total recovery, it would be 51% of the settlement fund, which would draw careful scrutiny from the Court. Second, it appears to have the effect of meaning that if the Court approves less than $300,000, the difference benefits the defendant, not the class. Third, defendant may oppose the fee request. Fourth, the request will "not be based on any finding of a prevailing party[.]" Fifth, the settlement agreement is binding if approved and plaintiffs' counsel retain all of their duties to the class and the Court, regardless of the outcome of the fee motion. **If any of these statements are not correct, counsel should contest the tentative ruling and appear at the hearing.**

Litigation costs of will be considered as part of the attorney fees motion.

Settlement administration costs and the requested representative payment of $10,000 for each plaintiff will be reviewed at final approval. Representative payments will be reviewed under the Criteria for evaluation of representative payment requests discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. **Conclusion**

The Court finds that the agreement is sufficiently fair, reasonable, and adequate, to justify preliminary approval, and grants the motion. The fee arrangement is subject to further review at the time of final approval and the fee motion.

Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Although the hearing date should be arranged through the Department 39 clerk, the hearing will be set in Department 16, the Honorable Benjamin Reyes, which is assigned this case for all purposes as of March 1, 2026. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

16. 9:00 AM CASE NUMBER: MSC21-00423
CASE NAME: MUTUKU VS NAZARI
HEARING ON SUMMARY MOTION JUDGMENT
FILED BY: MUTUKU, ELIJAH
TENTATIVE RULING:

Before the Court is Plaintiff/Cross-Defendant Elijah Mutuku's motion for summary judgment. The motion relates to Defendant/Cross-Complainant Pervaiz Mohamad Nazari's cross-complaint for (1) unpaid overtime wages, (2) failure to pay minimum wages, (3) failure to provide meal periods, (4) failure to provide rest periods, (5) failure to provide accurate wage statements, (6) waiting time penalties, (7) failure to reimburse business expenses, (8) retaliation-employment, (9) intentional

infliction of emotional distress, (10) breach of the covenant of quiet enjoyment, (11) breach of the warranty of habitability, (12) violation of the Richmond rent ordinance, (13) specific performance, (14) (anticipatory) breach of contract, (15) (anticipatory) breach of the covenant of good faith and fair dealing, (16) fraud, (17) negligence, (18) unfair business practices, (19) declaratory relief, and (20) injunctive relief.

Previously, the Court sustained a demurrer to Defendant/Cross-Complainant's thirteenth (specific performance), fourteenth ([anticipatory] breach of contract), and fifteenth ([anticipatory] breach of the covenant of good faith and fair dealing) causes of action. Although the Court granted leave to amend, Defendant/Cross-Complainant elected not to file an amended Cross-Complaint. These claims are no longer at issue.

As a threshold issue, the motion purports to move for an order of summary judgment on Defendant/Cross-Complainant's Cross-Complaint as well as summary judgment on his affirmative claims for financial elder abuse, intentional misrepresentation of fact, and breach of contract.

"A party may move for summary judgment *in an action* or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding," or "a party may move for summary adjudication as to one or more causes of action *within an action*." (Code Civ. Proc., § 437c, subds. (a)(1) & (f)(1), emphasis added.) These references to "an action" in the summary judgment statute are singular references. The word "action" is defined as "an ordinary proceeding in a court of justice by which one party prosecutes another […]." (Code Civ. Proc., § 22, emphasis added.)

The Complaint and the Cross-Complaint are legally two separate actions. "'Where there are both a complaint and a cross-complaint there are actually two separate actions pending and the issues joined on the cross-complaint are completely severable from the issues under the original complaint and answer. [Citations.]' [Citation omitted.]' "Where a cross-complaint is filed there are two simultaneous actions pending between the parties wherein each is at the same time both a plaintiff and a defendant." [Citation.]' [Citations omitted."] (*Westamerica Bank v. MBG Industries, Inc*. (2007) 158 Cal.App.4th 109, 134.)

No authority, of which this Court is aware, permits a party to move for summary adjudication of causes of action in a complaint as well as summary adjudication of claims made in a cross-complaint in a single motion under Code of Civil Procedure section 437c. Nevertheless, Defendant and Cross-Complainant did not file an opposition or objection, and so the Court will address the motion for summary adjudication on the Complaint and the Cross-Complaint on the merits.

For the following reasons, the motion is **granted.**

Request for Judicial Notice

Defendant/Cross-Complainant requests judicial notice of a discovery ruling, deemed admissions, and prior judgments. The unopposed request is **granted**. (Evid. Code §§ 452, 453.)

Legal Standard

Code of Civil Procedure ("CCP") §§ 437c(o)(1) and 437c(p)(2) provide the relevant legal standard for deciding the MSJ. Section 437c(o)(1) provides, in relevant part:

> A cause of action has no merit if one or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

Section 437c(p)(2) provides, in relevant part:

> A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

The party moving for summary judgment has the burden of persuasion to show there is no triable issue of material fact and thus it is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.) Only if the moving party successfully meets this burden does the burden shift to the opposing party to make its own prima facie showing of the existence of a triable issue of material fact. (*Ibid*.; *see also Chern v. Bank of America* (1976) 15 Cal.3d 866, 873.) The scope of the defendant's initial burden is defined by the pleadings. (See *580 Folsom Assocs. v. Prometheus Dev. Co*. (1990) 223 Cal.App.3d 1, 18.)

The instant motion relies on deemed admissions by Defendant/Counter-Complainant.

"[A] deemed admitted order establishes, by judicial fiat, that a nonresponding party has responded to the requests by admitting the truth of all matters contained therein." (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 979.) "A party is bound by admissions made in the course of discovery and, on motion for summary judgment, no further evidence of the matters so deemed admitted is required." (*Hejmadi v. AMFAC, Inc.* (1998) 202 Cal.App.3d 525, 553; see also *Murillo v. Superior Court* (2006) 143 Cal.App.4th 730, 736.) In ruling on a motion for summary judgment/adjudication, the court may disregard declarations submitted in support of an opposition which controvert a prior admission by that party. (See *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21 [disapproved on other grounds in *Woodland Hills Residents Association, Inc. v. City Council* (1979) 23 Cal.3d 917, 929]; *Prilliman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 961; *Jogani v. Jogani* (2006) 141 Cal.App.4th 158, 177; *Cohen v. Kabbalah Centre Internat., Inc.* (2019) 35 Cal.App.5th 13, 18.)

Analysis

Cross-Complaint

Labor Code Violations

The First eight causes of action in Defendant/Cross-Complainant's Cross-Complaint arise out of alleged violations of the California Labor Code. Specifically, his causes of action for (1) unpaid overtime wages, (2) failure to pay minimum wages, (3) failure to provide meal periods, (4) failure to provide rest periods, (5) failure to provide accurate wage statements, (6) waiting time penalties, (7) failure to reimburse business expenses, and (8) retaliation-employment. However, each of these claims is predicated on an employment relationship, and it is deemed admitted that

Defendant/Counterclaimant was never an employee of Plaintiff. (RFAs to Defendant/Cross-Complainant, Set One, Request No. 13.) As a consequence, Plaintiff/Counter-Complainant owed no duties to him under the Labor Code and is entitled to summary judgment on Defendant/Counter-Complainant's first eight causes of action.

(9) intentional infliction of emotional distress

"A cause of action for intentional infliction of emotional distress exists when there is '(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct.' A defendant's conduct is 'outrageous' when it is so 'extreme as to exceed all bounds of that usually tolerated in a civilized community.' And the defendant's conduct must be 'intended to inflict injury or engaged in with the realization that injury will result.'" (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-51].)

Defendant/Cross-Complainant's ninth cause of action is predicated on his allegations that Plaintiff/Cross-Defendant failed to act reasonably or lawfully towards him. (See First Amended Cross-Complaint at ¶¶ 92-95.) However, it is deemed admitted that Plaintiff was not negligent, complied with the terms of the promissory note, and was not fraudulent toward Defendant. (RFAs to Defendant/Cross-Complainant, Set One, Request Nos. 1, 7, and 9.) Furthermore, to the extent this claim is predicated on Defendant/Cross-Complainant's allegation that he was a tenant (FAXC at ¶ 95), the undisputed evidence demonstrates that he did not pay rent (Mutuku Decl. at ¶ 25) and unlawfully possessed the property (RJN Ex. A.)

Plaintiff/Cross-Defendant is entitled to summary judgment on Defendant/Cross-Complainant's cause of action for intentional infliction of emotional distress.

Landlord Tenant Violations

Defendant/Cross-Complainant's tenth (breach of the covenant of quiet enjoyment), eleventh (breach of the warranty of habitability), and twelfth (violation of the Richmond rent ordinance) causes of action are each predicated on a landlord-tenant relationship. However, Plaintiff/Cross-Defendant has adduced evidence that Defendant/Cross-Complainant did not pay rent (Mutuku Decl. at ¶ 25) and unlawfully possessed the property (RJN Ex. A.) That said, the Court notes that judgment in an unlawful detainer action does not necessarily preclude a tenant's subsequent claims arising out of a tenancy. (See, e.g., *Moriarty v. Laramar Management Corp*. (2014) 224 Cal.App.4th 125, 138–140 [default judgment in unlawful detainer action did not preclude tenant's claims for breach of warranty of habitability and wrongful eviction based on violating the Ordinance and these claims not subject to Code Civ. Proc., § 425.164]; *Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1254 [unlawful detainer judgment did not preclude tenant's subsequent wrongful eviction claims because the stipulation did not "manifest the objective intention of the parties to award permanent possession to [the landlord] or to constitute a waiver of the [tenants'] right to reoccupy the apartment"].) With respect to habitability, Defendant/Cross-Complainant did admit that Plaintiff was under no obligation to keep the premises habitable. (RFAs to Defendant/Cross-Complainant, Set One, Request No. 13.) In light of this admission and Plaintiff's declaratory testimony, the Court concludes that Plaintiff/Cross-

Defendant has met his initial burden with respect to Defendant/Cross-Complainant's landlord tenant claims. And, as Defendant/Cross-Complainant has failed to file any opposition to the motion, the Court finds that he has failed to meet his responsive evidentiary burden. Accordingly, the unopposed motion is granted as to Defendant/Cross-Complainant's tenth, eleventh, and twelfth causes of action.

(16) fraud

The elements of fraud, which gives rise to the tort action for deceit, and intentional misrepresentation are the same: (1) false representation, concealment, or nondisclosure; (2) knowledge of falsity, or scienter; (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage. (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 174.) Here, the Cross-Complaint alleges several allegedly fraudulent misrepresentations including "that Nazari was (1) going to be gainfully employed, (2) going to be able to purchase a property at a substantial discount, and (3) going to be a tenant in a habitable Premises." (XC at ¶ 157.) Defendant/Cross-Complainant's deemed admissions include that Plaintiff was not fraudulent and was not obligated the keep the premises habitable for him. (RFAs to Defendant/Cross-Complainant, Set One, Request No. 9, 10.) Additionally, Plaintiff/Cross-Defendant has introduced evidence that his offer to sell the property was genuine and made conditional on Defendant/Cross-Complainant providing an interest in his automobile business. (Mutuku Decl. at ¶ 19.) In light of these admissions and Plaintiff's declaratory testimony, the Court concludes that Plaintiff/Cross-Defendant has met his initial burden with respect to Defendant/Cross-Complainant's fraud claim. And, as Defendant/Cross-Complainant has failed to file any opposition to the motion, the Court finds that he has failed to meet his responsive evidentiary burden. Accordingly, the unopposed motion is granted as to Defendant/Cross-Complainant's sixteenth cause of action for fraud.

(17) negligence

The basic elements of a cause of action for negligence are: (1) the existence of a legal duty; (2) breach of that duty; (3) causation; and (4) resulting damages. (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 213; *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158; Castellon v. U.S. Bancorp (2013) 220 Cal.App.4th 994, 998.) "Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property …" (Civ. Code, § 1714.)

Here, Plaintiff/Cross-Defendant has introduced evidence that he made a genuine offer to sell, conditional on Defendant/Cross-Complainant providing an interest in his automobile business that was never finalized. (Mutuku Decl. at ¶ 19.) Furthermore, it is deemed admitted that Plaintiff was not negligent. (RFAs to Defendant/Cross-Complainant, Set One, Request No. 1.) In light of these admissions and Plaintiff's declaratory testimony, the Court concludes that Plaintiff/Cross-Defendant has met his initial burden with respect to Defendant/Cross-Complainant's negligence claim. And, as Defendant/Cross-Complainant has failed to file any opposition to the motion, the Court finds that he has failed to meet his responsive evidentiary burden. Accordingly, the unopposed motion is granted as to Defendant/Cross-Complainant's seventeenth cause of action for negligence.

(18) unfair business practices

"[S]ection 17200 'borrows' violations of other laws and treats them as unlawful practices" that the

unfair competition law makes independently actionable. (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.) As pled, Defendant's Cross-Complaint is unclear as to the predicate violation upon which it relies for its 17200 claim. Even assuming arguendo that Defendant's landlord/tenant causes of action or fraud claim are intended to serve as a predicate for the 17200 claim, Plaintiff/Cross-Defendant has established that he is entitled to summary adjudication on those claims, as discussed herein. Plaintiff/Cross-Defendant is entitled to summary adjudication of Defendant's 17200 claim.

(19) declaratory relief

California Courts have recognized that "[t]he existence of an 'actual controversy relating to the legal rights and duties of the respective parties,' suffices to maintain an action for declaratory relief." (*Ludgatc Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 605.) "Any person interested under a written instrument,... or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, ... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court... for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract." (*Id*. [quoting Code Civ. Proc, § 1060].)

As discussed infra, the Court grants Plaintiff/Cross-Defendant's motion with respect to all of the causes of action of the Cross-Complaint. Thus, an actual controversy sufficient to sustain a declaratory judgment cause of action does not exist. Plaintiff/Cross-Defendant

is entitled to summary adjudication of Defendant's declaratory relief claim.

(20) injunctive relief

For similar reasons as discussed above, Plaintiff/Cross-Defendant is entitled to summary judgment of Defendant/Cross-Complainant's last remaining claim for injunctive relief.

Complaint

Financial Elder Abuse

One has committed "financial abuse" of an elder adult if one "takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult," either for a wrongful use, with intent to defraud, or by undue influence, or assists another in doing so. (Welf. & Inst. Code § 15610.30, subd. (a).)

It is undisputed that Plaintiff/Cross-Defendant is an elder under the meaning of the Elder Abuse Act. (Mutuku Decl. at ¶ 3.) Furthermore, Plaintiff/Cross-Defendant asserts that he offered to sell his property in good faith in exchange for an interest in Defendant/Cross-Complainant's business. (*Id*. at ¶ 19.) Plaintiff contends that Defendant never performed his part but insisted on remaining on the property without title or tenancy rights. (*Id*. at ¶¶ 19, 23-26, 36, 37.) When Plaintiff/Cross-Defendant declined to complete the sale, Defendant/Cross-Complainant used coercion and threats, including following Plaintiff/Cross-Defendant to his home, forcing Plaintiff/Cross-Defendant into a vehicle, and taking him to a location where a fraudulent promissory note was executed under duress. (Mutuku

Decl. ¶¶ 25-30.) Defendant/Cross-Complainant fabricated a $55,000 "loan" that never occurred and attempted to use the false instrument to obtain Plaintiff's property. (Mutuku Decl. ¶¶ 29-31.)

Furthermore, according to Defendant/Cross-Complainant's deemed admissions, Plaintiff did not borrow $55,000 from him and he unjustly influenced, forced, and threatened Plaintiff to sign a promissory note. (RFAs to Defendant/Cross-Complainant, Set One, Request Nos. 3,4.) Defendant/Cross-Complainant also admitted that Plaintiff complied with the promissory note and he breached his obligations under that same note. (*Id*. at Nos. 7,8.) Finally, Defendant/Cross-Defendant admitted that he caused to be drafted the Promissory Note as alleged in Plaintiff's complaint. (*Id*. at No. 14.)

The Court finds that Plaintiff/Cross-Defendant has met his initial burden as to a cause of action for Financial Elder Abuse. The burden then shifts to Defendant/Cross-Complainant to show a triable issue as to one of more material facts or a defense thereto exists. As Defendant/Cross-Complainant has failed to file any opposition to the motion, the Court finds that he has failed to meet his responsive evidentiary burden. Accordingly, the unopposed motion is granted as to Plaintiff's first cause of action for financial elder abuse.

Intentional Misrepresentation of Fact

The elements of fraud, which gives rise to the tort action for deceit, and intentional misrepresentation are the same: (1) false representation, concealment, or nondisclosure; (2) knowledge of falsity, or scienter; (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage. (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 174.) Fraud by concealment or nondisclosure involves the failure to make a full and fair disclosure of known facts connected with the matter about which a party has assumed to speak, when there is a duty to speak.

Here, it is undisputed that Defendant/Cross-Complainant represented to Plaintiff that he would vacate the property upon the receipt of $55,000 prior to July 2, 2021. (RFAs to Defendant/Cross-Complainant, Set One, Request No. 5.) Plaintiff/Cross-Defendant contends that this representation was false, as Defendant never planned on moving out of the residence. (Mutuku Decl. ¶ 34.) Indeed, Defendant/Cross-Complainant refused to accept a cashier's check from either Plaintiff/Cross-Defendant or his son-in-law for $55,000. (*Id*. at ¶¶ 34, 35.) As a consequence, Plaintiff was unable to rent or sell the property while Defendant remained in possession. (*Id*. at ¶ 37.)

Plaintiff/Cross-Defendant's evidence is sufficient to meet his initial burden on his claim for intentional misrepresentation. As the present motion is unopposed, Defendant/Cross-Complainant has failed to meet his responsive evidentiary burden. Accordingly, the unopposed motion is granted as to Plaintiff/Cross-Defendant's second cause of action for intentional misrepresentation.

Breach of Contract

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.)

Here it is undisputed that Plaintiff/Counter-Defendant attempted to perform under the Promissory Note, even though he entered into it under duress. (Mutuku Decl. at ¶¶ 30-36.) It is also deemed

admitted that Plaintiff/Cross-Defendant did not borrow $55,0000 from Defendant/Cross-Complainant and that Defendant unjustly influenced, forced, and threatened Plaintiff to sign a promissory note. (RFAs to Defendant/Cross-Complainant, Set One, Request Nos. 3,4.) Defendant/Cross-Complainant also admitted that Plaintiff complied with the promissory note and he breached his obligations under that same note. (*Id*. at Nos. 7,8.) Finally, Defendant/Cross-Defendant admitted that he caused to be drafted the Promissory Note as alleged in Plaintiff's complaint. (*Id*. at No. 14.)

Plaintiff/Counter-Defendant has met his initial burden to show he is entitled to summary judgment on his third cause of action for breach of contract. Defendant/Counter-Complainant did not oppose the motion and did not raise a triable issue as to any material fact. Accordingly, Plaintiff's unopposed motion is granted as to his third cause of action for breach of contract.

17. 9:00 AM CASE NUMBER: MSC21-00588
CASE NAME: SHARMA VS. ARS ALEUT CONSTRUCTION
***HEARING ON MOTION FOR DISCOVERY COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES BY DEFENDANT SITECH NORCAL INC.**
FILED BY: SHARMA, SHALINI
****TENTATIVE RULING:****

Plaintiff was injured while operating a "motor grader" on a construction site called "MOTCO" (short for Military Ocean Terminal Concord), in August of 2020. He alleges that Sitech Norcal was responsible for, but negligently performed, maintenance of the grader.

Plaintiff moves to compel further responses by Sitech Norcal to Special Interrogatories 19, 20, 21, and 23. The interrogatories are as follows: Special interrogatories 19 (employee contact information for those who serviced, inspected or installed large earthmoving equipment in August 2020) , response is that customer information is confidential; 20 (employee contact information for employees who went to MOTCO in August 2020) (same response as 19); 21 (employee contact information on those who were involved in servicing, renting, leasing or installing any equipment used at MOTCO in August 20 (same response as 19), 23 (employee contact information for those who have knowledge about any person going to MOTCO with a GPS module on August 20, 2020 (same response as 19).

Sitech contends that using the entire month of August is overbroad, because the accident occurred on only one day. This is not a valid objection, given that maintenance of the equipment might have happened on days other than the incident. The month in which the accident occurred is a reasonable time period for the interrogatories. Nor is the reference to number 19 adequate, because it asks for a potentially different class of employees and the answer simply asserted that the information is confidential.

In addition, Sitech amended its responses to number 20, 21, and 23 on January 23, 2026. The amended response is attached as Exhibit G to counsel's declaration. The amended responses to 20 and 21 refer to the previous answer to 19. The amended response to 23 states that Sitech is investigating and will supplement later. These are not materially different, given that the

interrogatories were served in June of last year.

Plaintiff requests sanctions against Sitech of $3,200. Sitech claims that its objections were valid. It further claims that sanctions are limited to "misuse of the discovery process under Code of Civil Procedure section 2023.030. That section, however, concerns the more general sanctions authority for abusive conduct. More specifically section 2030.300(d) provides that the "court shall impose a monetary sanction … against any party, person, or attorney who unsuccessfully makes or opposed a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

Nor is the sanction request affected by the fact that an Amended response was served. Rule of Court 3.1348(a) specifically addresses this situation, providing: "The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed." Failure to oppose or filing of a supplemental response "shall not be deemed an admission that the motion was proper or that sanctions should be awarded." (CRC 3.1348(b).)

The motion against Sitech is granted. Sitech shall provide further responses, without objection, by March 2, 2026. Sitech's objections are not substantially justified, and sanctions in the amount of $1,600 are awarded (based on $400 per hour), to be paid no later than March 2, 2026.

18. 9:00 AM CASE NUMBER: MSC21-00588
CASE NAME: SHARMA VS. ARS ALEUT CONSTRUCTION
***HEARING ON MOTION FOR DISCOVERY COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES BY DEFENDANT PETERSON-CAT**
FILED BY: SHARMA, SHALINI
TENTATIVE RULING:
Plaintiff was injured while operating a "motor grader" on a construction site called "MOTCO" (short for Military Ocean Terminal Concord), in August of 2020. He alleges that Peterson-Cat was responsible for, but negligently performed, maintenance of the grader.

Plaintiff moves to Compel further Special Interrogatories to defendant Peterson-Cat, set 5, numbers 26, 32, 33, 37, 38, 39, 40, 41.

The interrogatories and answers are as follows:

26 (employee contact information for those who worked on, serviced, maintained or prepare graders between August 1, 2020 and January 2021), response that the individual employee, Ryan Carlisle can be contacted through counsel.

32 (type of glass by product number or SKU that was in the Grader's right door) response that it was "tempered glass."

33 (employee contact information for those who inspected, worked on, or repaired any grader in 2020) (response that referred to number 23). (Number 23 is not provided in the court file.)

37: (identify contracts with Norcal Rental Group relating to heavy equipment) response that refers to answer to 36. (The response referred to Number 36, but this appears to be a typo, and the actual reference is to number 26, which identifies one employee, Ryan Carlisle.)

38: (identify contracts for rentals of the Grader) response refers to number 36, which should be 26.

39: (identify training provided to James Keating to maintain Caterpillar 140M series graders) response is a general reference to a "variety of training".

40: (identify training provided to Ryan Carlisle on Caterpillar 140M series graders) response is a general reference to a "variety of training."

41: (identify training concerning maintenance of Caterpillar 140M series graders to other employees) response is a general reference to "a variety of training."

Peterson-Cat contends that the answers were sufficient because the reference to number 26 was an adequate response. In essence, they contend that Mr. Carlisle was the only employee who fell within any of the interrogatories.

As to number 26, Peterson-Cat identified Ryan Carlisle. If they are employees or agents or officers whom counsel represents, it can require contact through counsel. No further information is required.

As to 32, if defendant has made adequate inquiry, no further response can be compelled.

As to 33, the response cannot be determined, because number 23 was not provided to the Court.

As to 37 and 38, essentially the identification is only of Mr. Carlisle. While this may seem implausible to plaintiff's counsel, there is no basis for the Court to compel a further answer.

As to 39-41 the vague references are plainly inadequate. Effort must be made to identify the training more specifically.

In addition, Peterson-Cat amended its responses to number 39 and 40 on January 23, 2026. The amended responses are attached as Exhibits E and F to counsel's declaration. They provide substantial and detailed new information, and no further order as to 39 and 40 is appropriate at this time. As to 41, the response must be supplemented.

Plaintiff requests sanctions against Peterson-Cat of $3,200. Peterson-Cat claims that its objections were valid. It further claims that sanctions are limited to "misuse of the discovery process under Code of Civil Procedure section 2023.030. That section, however, concerns the more general sanctions authority for abusive conduct. More specifically section 2030.300(d) provides that the "court shall impose a monetary sanction … against any party, person, or attorney who unsuccessfully makes or opposed a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the

imposition of the sanction unjust."

Nor is the sanction request affected by the fact that an Amended response was served. Rule of Court 3.1348(a) specifically addresses this situation, providing: "The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed." Failure to oppose or filing of a supplemental response "shall not be deemed an admission that the motion was proper or that sanctions should be awarded." (CRC 3.1348(b).)

The motion against Peterson-Cat is denied as to numbers 26, 32, 33, 37, 39, and 40. It is granted as to number 41. Peterson-Cat shall provide further responses to number 41, without objection, by March 2, 2026.

Plaintiff only partly prevailed on this motion. It prevailed as to 39, 40, and 41. (The motion is denied as to 39 and 40 only because of the supplemental responses, which were engendered by the filing of the motion.) Peterson-Cat's objections are not substantially justified as to those matters on which plaintiff prevailed. Sanctions in the amount of $800 (based on $400 per hour) are awarded against Peterson-Cat, to be paid no later than March 2, 2026.

19. 9:00 AM CASE NUMBER: MSC21-00637
CASE NAME: OSCAR CORONA VS. JOSHUA WARD
***HEARING ON MOTION IN RE: COMPLIANCE HEARING SET BY THE COURTROOM**
FILED BY:
****TENTATIVE RULING:****
Based on the settlement administrator's representation that the funds will not be distributed until February 6, 2026, the compliance hearing is continued to May 27, 2026, at 9:00 a.m., in Department 16. As of March 1, 2026, this matter is assigned for all purposes to Department 16, the Honorable Benjamin Reyes. A case management conference in this matter is set in Department 16 for April 24, 2026, 8:30 a.m.

20. 9:00 AM CASE NUMBER: MSC21-02036
CASE NAME: PEOPLE OF CA VS. CORTEVA INC
***HEARING ON MOTION IN RE: COMPEL DEFENDANTS RESPONSES AND PRODUCE DOCUMENTS**
FILED BY: PEOPLE OF THE STATE OF CALIFORNIA EX REL. MEREDITH WILLIAMS, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES
****TENTATIVE RULING:****
On January 20, the parties were directed to meet and confer in a further attempt to resolve the issues, given the guidance issued by the Court in its order. The parties have not resolved Special Interrogatories 1 and 33, and Requests for Production of Documents 9, 10, and 50. They report that they have "not yet reached an agreement" on those requests, but they are continuing to meet and confer and will report to the Court at the hearing. Accordingly, the Court will not issue a tentative ruling on those requests. **Hearing required**.

Law & Motion
Add On

21. 9:00 AM CASE NUMBER: C23-02820
CASE NAME: ILIANA REYES VS. DOES 1 THROUGH 50, INCLUSIVE
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL**
FILED BY:
TENTATIVE RULING:
The motion is **granted**.

Plaintiff Iliana Reyes moves for preliminary approval of her class action and PAGA settlement with defendants Firstamerica Automotive, Inc., Firstamerica Automotive, LLC, Sonic Automotive Inc., Beverly Hills BMW, and Echo Park Automotive.

A. **Background and Settlement Terms**

The original complaint was filed by Ms. Reyes on November 6, 2023, raising class action claims on behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation. Plaintiff filed a First Amended Complaint on January 10, 2024 adding PAGA claims. The operative pleading is the First Amended Complaint.

The settlement would create a gross settlement fund of $1,800,000. The class representative payment to plaintiff would be up to $10,000. Attorney's fees would be $600,000 (one-third of the settlement). Litigation costs would not exceed $25,000. The settlement administrator's costs would not exceed $30,000. PAGA penalties would be $200,000, resulting in a payment of $150,000 to the LWDA and $50,000 to plaintiffs. The net amount paid directly to the class members would be about $935,000. The fund is non-reversionary. Based on the estimated class size of 4,571, the average net payment for each class member is approximately $204.

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendants during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Checks undelivered or uncashed 180 days after mailing will be voided, and would be paid to a cy pres recipient, "No Kid Hungry."

Counsel must "notify the court if the attorney has a connection to or a relationship with a nonparty recipient of the distribution that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class." (CCP § 382.4.) The needed information must be provided "in connection with the hearing for preliminary approval[.]" The settlement states that "The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise with the intended Cy Pres Recipient." (Settlement, Par. 4.3.3.) This is sufficient to satisfy that requirement. In addition, the cy pres recipient must be qualified under Code of Civil Procedure section 384(b), which requires that cy pres funds be provided "to 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[.]" Initially, the moving papers did not include any representation as to the activities or status of "No Kid Hungry," or otherwise establish how it meets the requirements of Code of Civil Procedure sections 382.4 and 384(b). At the Court's request, counsel have filed two declarations establishing that "No Kid Hungry" qualifies as a "child advocacy" program.

The settlement contains release language covering the "Release by Participating Class Members, which covers "all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action[.]" (Settlement, Par. 5.3.) Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint."] "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Informal written discovery was undertaken. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel attest that they have analyzed the value of the case, and that the result achieved in this litigation is fair, adequate, and reasonable. The moving papers include an estimate of the potential value of the case, broken down by each type of claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary

and oppressive, or confiscatory."])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

B. **Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. **Attorney fees**

Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval. Counsel will be

directed to provide a lodestar figure for any hearing on final approval.

Similarly, litigation costs and the requested representative payment of $10,000 total for plaintiffs will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. **Conclusion**

The issue concerning the cy pres recipient has been resolved. Accordingly, the Court finds that the proposed settlement is sufficiently fair, reasonable, and adequate to justify preliminary approval.

Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. As of March 1, 2026, this matter is assigned for all purposes to Department 16, the Honorable Benjamin Reyes. The hearing on the motion for final approval will be held in that Department. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

22. 9:00 AM CASE NUMBER: C25-01327
CASE NAME: MARIA ESTANTE VS. NOCD FLORIDA BEHAVIORAL HEALTH, P.A.
***HEARING ON MOTION IN RE: TO SET ASIDE DEFAULT**
FILED BY:
TENTATIVE RULING:

A declaration attaching a proposed answer was filed and served before the hearing on January 29, 226. Accordingly, the motion to set aside default is granted, in conformance with the Court's tentative ruling issued January 28, 2026. Defendant is to file the proposed answer no later than ten days after notice of entry of this order.