TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, February 5, 2025, 3:00 p.m.
Courtroom 16 – Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.
Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. 23CV01893, Looney v. BFAM MGMT Inc

This matter is on calendar for the motion of Plaintiff Gary E. Looney, dba Collectronics of California ("Plaintiff") for an order compelling Defendants BFAM management, Inc., dba Chi-Chi's Mexican Cantina and Vincent Colabelli individually as personal guarantor of BFAM Management, Inc. ("Defendants"), to furnish responses to Plaintiff's First Set of Post Judgment Interrogatories and Plaintiff's Post Judgment Demand for Production of Documents and Tangible Things. Plaintiff requests sanctions in the amount of $60. **The motion is GRANTED. Defendant is ordered to provide responses, without objections, to Plaintiff's discovery requests and pay sanctions within 30 days of this order.**

On April 3, 2024, Plaintiff obtained a judgment against Defendants in the amount of $5,403.05. On April 9, 2024, Plaintiff served Defendants with form interrogatories and a request for production of documents. (Looney Decl. ¶1, Ex. A.) As of the date of the motion, no responses have been provided. (*Id.*, at ¶¶2, 3.)

The motion is GRANTED. Plaintiff is directed to submit a written order to the Court consistent with this tentative ruling.

2. 23CV02180, Perez v. Gardenhire

Plaintiff Nicholas Perez ("Plaintiff") moves pursuant to CCP section 2025.450 for an order compelling the depositions of Bridget Pedersen, Tony Guevara, and Dean Kerstetter. Plaintiff

requests sanctions against Defendant Mendocino Forest Products Company, LLC ("Defendant Mendocino"), and their counsel of record, Smith, Gambrell & Russell, LLP, in the amount of $3,900. **The motion is GRANTED. Sanctions are granted in the amount of $960 against Defendant Mendocino and their counsel of record.**

On or about August 14, 2024, Plaintiff served a Notice of Deposition on Bridget Pedersen, Tony Guevara, and Dean Kerstetter. (Crippen decl., ¶2.) Tony Guevara's and Nicholas Perez's depositions were scheduled for September 18, 2024. (*Id.,* Exhibit 1.) Bridget Pedersen's deposition was scheduled for September 20, 2024. (*Ibid*.)

Defendant Mendocino and defendant Gabriel Gardenhire (together "Defendants") objected to the deposition notices of Tony Guevara and Dean Kerstetter on the grounds that they were unavailable on the date set for deposition. (*Id.,* Exhibits 2, 3.) Defendants did not serve a formal objection to the date of the deposition noticed for Bridget Petersen. (*Id.,* ¶4.)

On October 2, 2024, Plaintiff's counsel emailed about rescheduling the deposition dates and provided some possible dates. (*Id.,* Exhibit 3.) Defendants' counsel responded only to dates for Plaintiff's deposition. (*Ibid*.) On October 31, 2024, Plaintiff's counsel proposed several dates in December for the three depositions. (*Ibid*.) As Defendants' counsel failed to respond, on November 4, 2024, Plaintiff's counsel followed up to see if any of the proposed dates were acceptable. (*Ibid*.) Defendants' counsel has not provided any possible deposition dates. (*Id.,* ¶13.)

"If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice." (CCP section 2025.450(a).)

"If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

Here, there was no valid objection to the taking of the depositions—just to the dates scheduled for two of the deponents. Therefore, the motion is GRANTED. The parties are hereby ordered to meet and confer to find available dates for the depositions of Bridget Pedersen, Tony Guevara, and Dean Kerstetter. As trial is set for May 16, 2025, said depositions shall occur by March 21, 2025.

Plaintiff's counsel states she spent two hours drafting this motion. (Crippen decl., ¶14.) Her hourly rate is $650. (*Ibid*.) Counsel has not justified this rate. She only states that she charges this rate "based on [her] experience and skill." (*Ibid*.) The court will award $900 in attorney fees. The motion fee was $60.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling.

3. SCV-270409, Fischer v. Fischer

1. Motion for Attorney Fees

Plaintiff Cindy Fischer ("Plaintiff") moves for an order awarding her $86,584.10 in attorney fees and costs incurred in preparation for and attendance at the contempt trial in this matter. The hearing on this motion was initially heard on January 15, 2025, and was continued to this calendar for further briefing. **The motion is GRANTED. Plaintiff is awarded $46,879.00 in attorney fees and costs.**

The issue addressed by supplemental briefing is which fees were incurred "in connection with the contempt proceedings" as allowed for by CCP section 1218(a). Attorney fees incurred as a result of a rule violation are not recoverable. (*Sino Century Development Limited v. Farley* (2012) 211 Cal.App.4th 688, 697.) "[W]hen the Legislature enacted fee sanctions as additional punishment for contemptuous violation of a court order, it did not allow the recovery of all fees resulting from the violation, but only those incurred in connection with the contempt proceeding itself. (§ 1218, subd.(a).)" (*Trans-Action Commercial Investors, Ltd. v. Jelinek* (1997) 60 Cal.App.4th 352, 371.)

Defendants Craig Fischer, Janice Chaney Fischer, CJ Fischer, LLC, and Fischers Collision Center, LLC ("Defendants") seek the narrowest interpretation of the statute so that only time spent at the contempt hearing is applicable.

Plaintiff seeks a broad interpretation, including fees incurred in gathering evidence presented at the contempt trial. However, based upon comments made by this court, in her supplemental briefing, Plaintiff proposes a reduction in her fee request to $66,806.60. She proposes half of Craig's deposition be considered part of the contempt proceedings, none of Janice's deposition, and none of the mediation—a reduction of 43.95 hours.

First, the court notes that it is the moving party's burden to establish the right to fees and the reasonableness of fees. Plaintiff has not provided a case that established what, specifically, is meant by "in connection with" the contempt proceedings and whether that could include, for example, a portion of time spent taking a deposition, even if no contempt proceedings were contemplated at the time the deposition was taken but the deposition transcript was used at the trial.

Here, in reviewing Plaintiff's counsel's invoices, keeping in mind the Plaintiff's burden on this motion, it is this court's opinion that certain hours were not incurred in connection with the contempt proceeding. For example, asking defendant Craig Fischer about his violation of the injunction did not pertain to the contempt *proceeding* (see Glaubiger decl., ¶5.), nor was taking defendant Janice Chaney Fischer's deposition. (*Ibid*.) Rather, this was discovery that occurred prior to even drafting a motion for an OSC Re Contempt. Plaintiff has not cited authority that mere use of evidence at the contempt proceeding means that the discovery was "in connection with" the proceeding. The discovery efforts are more reasonably characterized as giving rise to the contempt proceedings—not in connection with it.

Plaintiff's initial motion included time spent at the December 2023 and January 2024 mediation/settlement conference because "it was a direct outgrowth of the contempt hearing." (Glaubiger decl., ¶7.) As an outgrowth, it was not incurred "in connection with" the contempt proceeding. In distinguishing the two proceedings, Mr. Glaubiger notes that the "contempt hearings were put on hold pending the outcome of the mediation/settlement conference." (*Ibid*.)

Plaintiff's counsel states that he had to consult with experts to assist in his understanding of the case. (Glaubiger decl., ¶8.) This was for the entirety of the case; not solely "in connection with" the contempt proceeding.

On the other hand, the entry for reviewing billing records is part of this motion for attorney fees, which is the sanctions portion of the contempt proceeding and, therefore, made in connection with it. (See Glaubiger decl., ¶9.) However, of course, the overall reasonableness of the amount of time spent in connection with the hourly rate must be considered. In making that consideration, the court finds $46,879.00 was reasonably incurred in connection with the contempt proceeding.

Plaintiff's motion for attorney fees is GRANTED. Pursuant to CCP section 1218, Plaintiff is awarded $46,879.00 in attorney fees and costs.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

2. Motion to Compel Accounting

Court Appointed Receiver Randy Sugarman ("Receiver") moves for an order compelling Defendants Craig Fischer, Janice Fischer, Fischers Collision Center, LLC ("Collision Center"), and CJ Fischer, LLC ("Defendants") to provide the Receiver with an accounting. The motion is made on the grounds that Fischers Enterprises, LLC ("Enterprises") was terminated on September 22, 2023, by Craig Fischer and is in liquidation. The Receiver notes that Collision Center was formed on September 1, 2023, and was a rebranding of Enterprises. **The motion is DENIED without prejudice.**

Defendants' objections are overruled.

In their opposition, Defendants argue that the Receiver has not provided any legal basis to compel an accounting from Collision Center. Defendants also argue that the Receiver locked them out of the subject business property, so they do not have sufficient information or documentation to provide an accounting. Craig Fischer states that all of Collision Center's records are on the business property which was taken control of by the Receiver.

In joining the motion, Plaintiff argues that an accounting of assets is properly the subject of this motion based upon defendant Craig Fischer's agreement to abide by the terms of the May 12, 2022, stipulated preliminary injunction. Plaintiff does not specify which terms of the preliminary injunction would allow this court to order Defendants to provide an accounting of Collision Center's assets; this court does not recall the specific terms of that agreement.

Plaintiff also argues that an accounting is appropriate based upon the evidence introduced at the contempt trial. Plaintiff argues that evidence established that Craig Fischer and Janice Fischer usurped and/or embezzled funds and assets of Enterprises by causing payments intended for Enterprises to be transferred to Collision Center and by using Enterprises' BAR number for work allegedly performed by Collision Center. Plaintiff argues that, despite representation by Janice during the contempt trial that the information and reimbursement of money belonging to Enterprises would be provided, the information and reimbursement of misappropriated funds has not been provided.

While the court does not necessarily disagree with the statements made by the Receiver and by Plaintiff's counsel, neither the Receiver nor Plaintiff has provided legal authority by which this court can order an LLC, prior to any affirmative finding of alter ego liability or otherwise, to create an accounting of its assets. Had the Receiver presented specific assets or accounts receivable that belonged to Enterprises that were in the possession of Collision Center, this court could have made determinations about those specific assets/receivables. However, a more broad and intrusive inquiry into Collision Center's finances has not been shown to be proper.

The motion is DENIED without prejudice.

Defendants' counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

3. Receiver's Motion for a Claims Bar Date

Court-Appointed Receiver, Randy Sugarman ("Receiver"), moves for entry of an order establishing a claims bar date and a last date for submission of claims. The motion is made on the

grounds that Fischers Enterprises, LLC ("Enterprises") was terminated on September 22, 2023, and is in liquidation together with its successor entity, Fischers Collision Center, LLC ("Collision Center"). This motion was originally scheduled for January 24, 2025, and was heard on January 30, 2025. At the hearing, this court ordered the parties to meet and confer regarding the best way to notify Collision Center's creditors of the claims bar date who may believe that they are a creditor of Enterprises. **APPEARANCES REQUIRED TO DISCUSS A SUITABLE CLAIMS BAR DATE.**

4. SCV-270624, Pedraza v. Leanos

Plaintiffs Roberto Pedraza, Gualberto Menendez Caceres, Rocio Cambray, Luz Emily Richardson Saavedra, Salvador Monjaras, Veronica Gil Rodriguez, Sergio Lopez, Sebastian Lazaro Ortiz, Edgar Leon Leonidez, and Andres Pureco Ortega ("Plaintiffs") move for leave to file a Fifth Amended Complaint ("5AC"). **The motion is GRANTED.**

Plaintiffs state that, based upon document production from defendant Valdivia Trucking ("Valdivia") and the PMK deposition, Plaintiffs have determined that, despite Plaintiffs' work hours regularly exceeding 10 hours per day, Plaintiffs were not given uninterrupted meal or rest breaks during their shifts. Plaintiffs also state that Valdivia's handbook produced in discovery shows that Plaintiffs should have been paid overtime, which Plaintiffs argue they were not. Plaintiffs argue these facts support new legal theories that Plaintiffs' annual performance bonus and accrued PTO were wages that were unpaid at termination. Plaintiffs also seek to remove their claim for failure to pay statutory overtime. Plaintiffs' counsel specifies that the 5AC would add new causes of action for breach of contract and failure to provide statutory rest breaks based upon the same underlying facts alleged in the fourth amended complaint. (Bronstein decl., ¶4.) The proposed 5AC shows factual additions supporting these new causes of action, which are based upon the underlying employment and wage allegations. (*Id.*, Exhibit A.)

A. Opposition

Defendant Granite Construction Incorporated ("GCI") opposes the motion. GCI argues that the motion should be denied because Plaintiffs failed to comply with Cal., Rules of Court, Rule 3.1324. GCI argues that a motion for leave to amend must be accompanied by a declaration stating the effect of the amendment, why it is necessary and proper, when the facts giving rise to the amended allegations were discovered, and why the request for the amendment was not made earlier.

"Where no prejudice is shown to the adverse party, the liberal rule of allowance [of amendments to pleadings] prevails." (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564.) Plaintiffs' motion at least substantially complies with Cal. Rules of Court, Rule 3.1324. Regardless, GCI has not even attempted to show prejudice from the filing of a 5AC.

Defendant Sukut Construction, Inc. joins in GCI's opposition to the motion. It does not provide any additional argument.

B. Conclusion and Order

Amendments to pleadings are liberally allowed. No party has shown the existence of a legally significant prejudicial effect if Plaintiffs are allowed to amend their complaint. Therefore, the motion is GRANTED.

Plaintiffs' counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

5. SCV-272344, Wilde v. Morrone

Defendants Sonoma Academy, Marco Morrone, Ellie Dwight, and Janet Durgin ("Defendants") move for an order striking certain portions of Plaintiffs' Third Amended Complaint ("TAC") pertaining to CCP section 340.1 allowance for treble damages. **The motion is DENIED without prejudice.**

Plaintiffs' TAC alleges administrative staff at Sonoma Academy failed to protect students from pervasive inappropriate mental and physical abuse, and sexual misconduct by certain members of its faculty and staff. Plaintiffs allege a cover-up of incidents of sexual assault and sexual harassment of female students by faculty and by male students.

CCP section 340.1(b)(1) provides: "In an action described in subdivision (a), a person who is sexually assaulted and proves it was as the result of a cover up may recover up to treble damages against a defendant who is found to have covered up the sexual assault of a minor, unless prohibited by another law."

Defendants argue that the court in *K.M. v. Grossmont Union High School District* (2022) 84 Cal.App.5th 717 ("*K.M.*") found that section 340.1 significantly altered settled expectations such that absent clear and unambiguous statutory language for retroactive application, the treble damage provision is construed to apply prospectively only.

In *K.M.,* students sued a school district for negligence based upon alleged sexual abuse by the high school drama teacher. After trial, on appeal, the plaintiffs argued they were entitled to a new trial to seek treble damages under their Civil Code section 51.9 claim for sexual harassment that had been dismissed on a demurrer. Focusing on the statutory language of CCP section 340.1, the appellate court determined that the treble damages provision in section 340.1 was not retroactive. (*K.M, supra,* at 735-736.)

The appellate court explained: " 'Section 340.1 governs the period within which a plaintiff must bring a tort claim based upon childhood sexual abuse.' [Citation.] After its enactment in 1986, the section was amended repeatedly to expand the statute of limitations and reduce other barriers to claims, including with a one-year claim revival period in 2002. [Citation.] Assembly Bill 218 further extended the statute of limitations, permitted up to treble damages for abuse resulting from a coverup, and provided a three-year claim revival period. (Assem. Bill 218, § 1.)" (*Ibid*.)

"Section 340.1, subdivisions (q) and (r) address claim revival. Subdivision (q) states, 'any claim for damages described in paragraphs (1) through (3), inclusive, of subdivision (a) that has not been litigated to finality and that would otherwise be barred as of January 1, 2020, because the applicable statute of limitations, claim presentation deadline, or any other time limit had expired, is revived, and these claims may be commenced within three years of January 1, 2020. A plaintiff shall have the later of the three-year time period under this subdivision or the time period under subdivision (a) as amended by [Assembly Bill 218].' Subdivision (r) states, "The changes made to the time period under subdivision (a) as amended by [Assembly Bill 218] apply to and revive any action commenced on or after [its] enactment ... , and to any action filed before [its] enactment, and still pending ... , including any action or causes of action that would have been barred by the laws in effect before the date of enactment.'" (*Id.,* at pg. 735-736.)

" '[S]tatutes ordinarily are interpreted as operating prospectively in the absence of a clear indication of a contrary legislative intent,' and there is a 'presumption against retroactive application ... .' (*Id.,* at pg. 736, citing case.) 'We apply the presumption in the absence of explicit

legislative indications of retroactivity, doing so based on the fundamental fairness considerations raised by " 'imposing new burdens on persons after the fact.'" (*Ibid*.)

Section 340.1 contains no language that supports retroactive treble damages. Subdivision (b), the treble damages provision, is silent as to timing. Section 340.1, subdivisions (q) and (r) revive claims based on conduct prior to enactment of Assembly Bill 218, but expressly reference only subdivision (a), not subdivision (b). (*Id.*, at pg. 737.)

The appellate court also found that prospective application of the treble damages provision is consistent with the statutory scheme and with legislative history. (*Id.*, at pg. 739-740.)

In their opposition, Plaintiffs argue that *K.M.* actually supports their position. Plaintiffs argue that *K.M.* only found that treble damages were not applicable to a public entity because punitive damages are not available against a public entity.

Plaintiffs appear to entangle the two analyses in *K.M.* The appellate court first analyzed the issue of retroactivity of section 340.1's treble damages provision. In a separate analysis, they looked at whether the treble damages provision would be available against the public entity school district. *K.M.'s* determination that treble damages were not retroactive did not rely on the fact that the defendant in that case was a public entity.

Treble damages for a cover-up of abuse were enacted as Assembly Bill No. 218 (2019-2020 Reg. Sess.) (Assembly Bill 218). (*K.M., supra,* at 727.) Assembly Bill No. 218 became effective January 1, 2020. (AB 218.) This lawsuit was filed using the three-year window reviving claims of childhood sexual assault. (TAC, ¶32.) This is due to the fact that the alleged incidents occurred beginning in the early 2000s up until the year 2020. (TAC, ¶54.)

In *K.M.*, the cover-up occurred prior to 2020. Here, Defendants have not addressed the allegations in the TAC and how those allegations establish that none of the alleged conduct occurred on or after January 1, 2020. Based upon the language of the TAC, some of the alleged actions could have occurred after AB 218 became effective. Defendants have not established that they could not be liable for treble damages if actions covering up abuse are found to have occurred in 2020.

Based upon Defendants' failure to meet their burden to establish that the allegations in the TAC all occurred prior to January 1, 2020, the motion is DENIED. This denial is without prejudice.

Plaintiffs' counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

6. SCV-272665, Miller v. Murillo

Plaintiff Traci Miller ("Plaintiff") moves for leave to file a first amended complaint ("FAC") to add additional facts and causes of action against Defendants Mark R. Murillo and Oralee R. Murillo, individually, and Mark and Oralee as Trustees of the Murillo Family Trust (altogether "Defendants"). **The motion is GRANTED.**

Plaintiff's underlying complaint against Defendants alleges that Plaintiff sustained personal injuries when steps collapsed leading down from the deck at a property she rented. The new allegations stem from the same rental. However, these pertain to allegations that while Plaintiff was away recovering from her orthopedic injuries, the residence she rented from Defendants was broken into and used for manufacturing methamphetamine. Despite requests for Defendants to remedy the state of the residence, she states Defendants took no action to remediate the hazard. She alleges that Defendants retained her security deposit after she was forced to move due to suffering ill effects from contact with hazardous chemicals. She argues that, at the time she filed her complaint, she did not know the extent to which toxic exposure had injured her. Plaintiff seeks leave to amend her

complaint to add a cause of action for Constructive Eviction, additional allegations in support of Negligence Per Se, and for violation of Civil Code Section 1950.5 [Wrongful Retention of Security Deposit].

Absent prejudice, the court's discretion in allowing amendments should be exercised in favor of allowing amendments up to and including at the time of trial. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; *Atkinson v. Elk Corp*. (2003) 109 Cal.App.4th 739, 761; *Kittredge Sports Co. v. Superior Ct.* (1989) 213 Cal.App.3d 1045, 1048.)

Based upon the liberal policy of allowing amendments and the absence of any prejudice to the Defendants, the motion is GRANTED.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling.

7. <u>SCV-273003, Vega v. North Bay Concrete, Inc.</u>

Plaintiff Jose Perez Vega ("Plaintiff") moves for an order granting preliminary approval of the proposed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement"); Conditionally certifying the proposed Class for settlement purposes only; Appointing Plaintiff as the Class Representative; Appointing Aegis Law Firm, PC as Class Counsel; Appointing ILYM Group, Inc. as the Settlement Administrator and authorizing ILYM Group, Inc. to send notice of the Settlement to the Class Members; and setting a final approval hearing date. **The motion is GRANTED. The final fairness hearing is hereby set for June 4, 2025, at 3:00 p.m., in Department 16.**

On April 5, 2023, Plaintiff filed a putative class action on behalf of Defendant North Bay Concrete, Inc.'s ("Defendant's") non-exempt employees alleging the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to pay wages timely during employment; (8) failure to pay all wages due upon separation of employment; and (9) violation of Business and Professions Code § 17200, et seq. for the preceding claims. Plaintiff's counsel provided notice to LWDA. (Robles Decl., ¶4, Exhibit 3.)

At least some basic discovery was conducted wherein Defendant informally produced policy documents and Class Members' timekeeping and pay records. (Robles Decl., ¶5.) Plaintiff's counsel hired an expert to quantify the potential exposure using the time and payroll records. (*Ibid*.)

On May 22, 2024, the parties attended mediation with Russ J. Wunderli, Esq. (Robles Decl., ¶6.) The parties settled. (*Ibid*.)

The basic terms of the Settlement Agreement and Class Notice provide for the following: (1) A non-reversionary Gross Settlement Amount of $875,000 allocated to approximately 198 Class Members on a pro rata basis according to the number of weeks each Class Member worked during the Class Period; (2) An award of up to one-third of the Gross Settlement Amount (currently $291,666.67) and up to $20,000.00 in reimbursement of costs to Plaintiff's Counsel for services rendered as counsel on this matter; (3) Service Payment of up to $15,000.00 to the Named Plaintiff; (4) Settlement Administration fees and costs of up to $6,550.00; and (5) Allocations of $40,000 for resolution of civil penalties under PAGA. Seventy-five percent (75%) of this payment will be paid to the California Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid to Class Members who worked for Defendant during the PAGA Period.

The class consists of approximately 198 individuals who worked for Defendants and were subject to common wage and hour policies and practices. (Robles Decl., ¶¶8-11.) Plaintiff's counsel has considered the risks inherent in litigation and its cost. (*Id.*, ¶¶12-13.)

Plaintiff's claims are based upon a failure to maintain accurate itemized wage statements. (Robles Decl., ¶14.) Plaintiff alleged that Defendant failed to identify the address of the legal entity that is the employer and failed to identify the total hours worked in violation of Labor Code section 226. (*Ibid*.) Assuming all wage statements contained a violation, penalties could reach up to $461,750. (*Ibid*.) However, Plaintiff would have to be able to prove that Class Members suffered an "injury" as a result of "knowing and intentional" wage statement violations as required by Labor Code section 226. (*Ibid*.) In light of the above, Plaintiff estimated a 50% chance at class certification and a 30% chance at trial, valuing the wage statement claim at roughly $69,623. (*Ibid*.)

Plaintiff's counsel also investigated and evaluated the claim for waiting time penalties. Plaintiff alleged that Defendant failed to pay wages immediately when an employee was terminated or within 72 hours if the employee quit, pursuant to Labor Code section 201 and 202. (Robles Decl., ¶ 15.) Instead of paying wages timely based on the date of termination, Plaintiff believes Defendant paid final wages on the regularly scheduled pay dates. (*Ibid*.) For these former employees, Plaintiff's expert calculated penalties could reach up to $733,488. (*Ibid*.) However, Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties. (*Ibid*.) Plaintiff would have to overcome damaging precedent to prove the Class deserved the penalties. (*Ibid*.) Plaintiff estimated a 50% chance at class certification and a 30% chance at trial, making this claim worth about $110,023. (*Ibid*.)

Plaintiff's meal period claim was based on the allegation that Defendant automatically deducted meal periods that were not provided. (Robles Decl., ¶16.) Specifically, Plaintiff alleged that the records show that exactly 30-minutes was taken from all employees' time without regard to whether a meal period was actually taken. (*Ibid*.) If Plaintiff could prove that none of the 30-minute meal periods deducted from employees' time was not taken, then damages could reach up to $1,966,294. (*Ibid*.) However, Defendant argued it paid employees for all time worked, maintained policies of paying employees for all time recorded, and that employees were responsible for recording their own hours. (*Ibid*.) As such, any time worked during the meal periods would have been at the choice of the employee and done without the employer's knowledge. (*Ibid*.) As such, this claim could have been highly individualized and difficult to certify as it would have relied on class member testimony and Defendant would have surely obtained opposing declarations confirming its defense. (*Ibid*.) Defendant provided declarations from class members attesting to their ability to take meal and rest breaks. (*Ibid*.) Plaintiff estimated a 60% chance of success at class certification and a 30% chance at trial, making this claim worth about $353,933. (*Ibid*.)

Plaintiff's rest break claims were valued at $2,699,602 to $1,61,976. (Robles Decl., ¶17.) Overtime claims were valued at $4,942 to $1,186. (*Id.*, ¶18.) Expense reimbursement claims were valued at $530,630 to $86,501. (*Id.*, ¶19.) PAGA claims were valued at $995,200 to almost nothing. (*Id.*, ¶20.)

The proposed settlement is presumptively fair because: (1) it is the product of non-collusive, arm's-length negotiations that were overseen and guided, in large part, by an independent mediator knowledgeable in wage and hour litigation; (2) it was negotiated by counsel with significant experience in similar wage-and-hour litigation; and (3) it occurred after counsel for the parties engaged in sufficient investigation to evaluate the strength and potential value of the action. (*Dunk v. Ford Motor Co*. (1996) 48 Cal. App. 4th 1794, 1802.)

Preliminary approval is warranted if the settlement falls within a "reasonable range." *See North County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.* (1994) 27 Cal. App. 4th 1085,

1089-90.) Compromise is inherent and necessary. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 250.)

The class is sufficiently ascertained and numerous. Plaintiff has established that class certification for settlement purposes is appropriate. Common questions of law or fact predominate. Plaintiff's claims are typical of the class. Plaintiff can adequately represent the class and proposed Class Counsel are experienced in wage and hour and employment class action cases. (Robles Decl., ¶¶24-37.) The proposed notice to class members is sufficient to enable class members to make an informed decision about their participation.

Based upon the foregoing, the motion is GRANTED. The final fairness hearing is hereby set for June 4, 2025, at 3:00 p.m., in Department 16. Class Counsel are directed to submit a Lodestar analysis for attorney fees for the final approval hearing. The court will sign the proposed order.