TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, February 11, 2026, 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. 23CV01351, Pierce v. WNJT Homes LLC, a California Limited Liability Company

This matter is on calendar for the application of Olivia R. Beale for an order admitting her *pro hac vice* as counsel for Plaintiff. As of the date the court reviewed this matter, proof of service of the application had not been filed. Accordingly, the motion is **CONTINUED to March 11, 2026, at 3:00 p.m., in Department 16**, to allow Ms. Beale to file proof of service of the application in conformance with Cal. Rules of Court, Rule 9.40(c)(1).

2. 23CV02197, Philbin v. Saksen

This matter is on calendar for the motions of Plaintiffs Hannah and Dan Philbin ("Plaintiffs"). Plaintiffs have combined several motions into one. In the future, these motions should be filed separately. Plaintiffs seek a combined discovery sanction on their motions in the amount of $4,500. **Plaintiffs' motions are DENIED. Sanctions are granted in the amount of $1,800 in Defendants' favor against Plaintiffs Hannah Philbin and Dan Philbin and their counsel of record, Corey Page and Matthew Hamity.**

1. Memorandum of Points and Authorities

Plaintiffs have not filed a memorandum of points and authorities. Rather, it appears that Plaintiffs have blended their memorandum into their separate statement.

"Unless otherwise provided by the rules in Division 11, the papers filed in support of a motion must consist of at least the following: [¶] (1) A notice of hearing on the motion; [¶] (2) The

motion itself; and [¶] (3) A memorandum in support of the motion or demurrer." (Cal. Rules of Court, Rule 3.1112(a).)

The papers filed under (a) and (b) of Rule 3.1112 may either be filed as separate documents or combined in one or more documents if the party filing a combined pleading specifies these items separately in the caption of the combined pleading. (Cal. Rules of Court, Rule 3.1112(c).)

"A party filing a motion, except for a motion listed in rule 3.1114, must serve and file a supporting memorandum. The court may construe the absence of a memorandum as an admission that the motion or special demurrer is not meritorious and cause for its denial and, in the case of a demurrer, as a waiver of all grounds not supported." (Cal. Rules of Court, Rule 3.1113(a).)

"The memorandum must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced." (Cal. Rules of Court, Rule 3.1113(b).)

Despite the lack of a memorandum of points and authorities, this court will address the legal authorities provided in Plaintiffs' separate statement.

2. Motion to Compel Deposition – Dr. Saksen

Plaintiffs move pursuant to CCP section 2031.310(a) for an order compelling defendant Dr. Michael Saksen ("Dr. Saksen") to appear for deposition and to bring certain documentary evidence.

Confusingly, within Plaintiffs' separate statement, they first argue that no separate statement is required for a motion to compel a deposition. Thereafter, Plaintiffs list six different categories of documents they seek to obtain during the deposition of Dr. Saksen. These consist of contracts between Dr. Saksen and defendant VCA; medical records related to the care of Plaintiffs' dog, Kate ("Kate"); correspondence related to Kate's care at VCA; records related to any feedback Dr. Saksen received in relation to Kate's care at VCA; records related to any steps taken by Dr. Saksen or VCA to prevent the type of situation that occurred with Kate on January 9, 2023; and records related to any steps taken by Dr. Saksen or VCA to improve recordkeeping.

Plaintiffs thereafter list Defendants' various objections and argue over their propriety.

a. Contracts between Defendants

It is Defendants' position that the only issue left in this case is the issue of damages such that a deposition and document production is unnecessary.

Plaintiffs argue that despite Dr. Saksen's stipulation to liability and that he was acting within the course and scope of his employment with VCA, Plaintiffs have a right to pursue discovery of potential additional claims against Defendants. Plaintiffs argue that they will be filing a motion for leave to file an amended complaint to include an additional claim under the Unfair Competition Law, and for injunctive relief, declaratory relief, and punitive damages. Plaintiffs argue that this potential new claim and requests for relief fall outside of the parties' stipulation. However, no explanation is given as to how all contracts between the Defendants have any bearing on any issue in this matter, particularly given Dr. Saksen's stipulations.

b. Kate's veterinary records, care correspondence, records of feedback, preventative measures, and post-care measures

Plaintiffs rehash, verbatim, their same argument that they have the right to pursue the discovery of other potential claims against Defendants.

c. Conclusion

Plaintiffs do not cite legal authority to compel a deposition. Rather, their motion is made pursuant to CCP section 2031.310, which governs a motion to compel further responses to a request for production of documents. That motion requires the moving party to show "good cause" for the requested production of documents. (CCP section 2031.310(b)(1).) Here, Plaintiffs have not set forth specific facts showing good cause justifying the discovery sought by their demand. Therefore, they have failed to meet their burden on this motion. The motion is DENIED.

3. Motion to Compel Deposition – Dr. Rinkhardt

Plaintiffs move pursuant to CCP section 2031.310(a) for an order compelling Dr. Nancy Rinkhardt ("Dr. Rinkhardt"), an employee of defendant VCA, Inc., to appear for deposition and to bring certain documentary evidence.

Plaintiffs have failed to set forth specific facts showing good cause justifying the discovery sought by their demand as required by CCP section 2031.310. Therefore, they have failed to meet their burden on this motion. The motion is DENIED.

4. Motion to Compel Deposition – Dr. Forsman

Plaintiffs move pursuant to CCP section 2031.310(a) for an order compelling Dr. Katie Forsman, an employee of defendant VCA, Inc., to appear for deposition and to bring certain documentary evidence.

Plaintiffs have failed to set forth specific facts showing good cause justifying the discovery sought by their demand as required by CCP section 2031.310. Therefore, they have failed to meet their burden on this motion. The motion is DENIED.

5. Motion to Compel Compliance to plaintiff Hannah Philbin's discovery requests

Plaintiffs move to compel Dr. Saksen to comply with the parties' April 18, 2025, agreement whereby Dr. Saksen is stated to have agreed to produce verified responses without objections to plaintiff Hannah Philbin's 15 Requests for Production; 11 Special Interrogatories; and Nos. 1-7 and 15-16 of her Requests for Admission. Plaintiffs note that defendant VCA also agreed to send verified responses without objections to Hannah Philbin's 17 Requests for Production; 12 Special Interrogatories; and Nos. 1-6 of her Requests for Admission.

It appears from the declaration of Plaintiffs' counsel, Matthew Hamity, that responses were provided. (Hamity Decl., ¶¶3-6.)

Plaintiffs have failed to file a memorandum of points and authorities setting forth a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced. In addition, their separate statement does not address this issue. Accordingly, the motion is DENIED.

6. Motion to Compel Compliance – Plaintiff Dan Philbin's discovery requests

Plaintiffs move pursuant to CCP section 2031.320(a) compelling VCA to comply with its purported agreement to produce responsive records to plaintiff Dan Philbin's Request for Production, Set Two, Number One.

It appears from the declaration of Plaintiffs' counsel, Matthew Hamity, that responses were provided. (Hamity Decl., ¶¶3-6.)

Plaintiffs have failed to file a memorandum of points and authorities setting forth a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced. In addition, their separate statement does not address this issue. Accordingly, the motion is DENIED.

7. Motion for Sanctions

Plaintiffs move pursuant to CCP section 177.5 for an order imposing sanctions upon Defendants' counsel, payable to this court, on the grounds that Defendants refused to allow Plaintiffs to take depositions, which violated this court's July 28, 2025, order stating that Plaintiffs were entitled to take a third deposition.

Plaintiffs have failed to file a memorandum of points and authorities setting forth a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced. In addition, their separate statement does not address this issue. Accordingly, the motion is DENIED.

8. Defendants' request for sanctions in opposition

In opposition, Defendants argue that Plaintiffs' counsel failed to meet and confer in good faith to resolve the discovery disputes. Defendants cite CCP sections 2016.040 and 2023.010(i).

Section 2016.040 requires a meet and confer declaration to state facts showing a reasonable and good faith attempt to resolve each issue presented in a motion.

Section 2023.010(i) includes as an example of a misuse of the discovery process: "Failing to confer or to attempt to confer, in person, by telephone, or by videoconference with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made."

Plaintiffs' motion was made pursuant to CCP section 2031.310, which requires it to be accompanied by a meet and confer declaration under Section 2016.040. (Code Civ. Proc., § 2031.310(b)(2).)

In the declaration of Plaintiffs' counsel, Corey Page, Mr. Page states: "I met and conferred regarding this motion on October 6, 2025, by telephoning opposing counsel. We discussed Defendants' refusal to produce his deponents, and his refusal to produce documents. Opposing counsel continued to refuse to produce the discovery promised, but mentioned maybe allowing some limited deposition topics. I told opposing counsel that he needed to have produced his clients for deposition when we had it all arranged, and he was obviously free to make relevance objections at the deposition, but he is not entitled to simply refuse to produce the deponents and then tell me I can only do discovery on discrete topics – as discovery is intended for the purpose of gathering information to support existing claims, and also gathering information for potential claims." (Page decl., ¶2.)

Mr. Page's declaration includes additional details regarding his discussions with Defendants' counsel, his attempt to coordinate the requested depositions, and discussions of a forthcoming amended complaint with additional allegations and requests for relief. (See Page decl., ¶¶4-23.)

Defendants have not shown that Plaintiffs' counsel failed to sufficiently meet and confer prior to this motion.

Defendants also request sanctions pursuant to CCP section 2031.310. Subsection (h) of 2031.310 provides: "the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, 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." (Code Civ. Proc., § 2031.310(h).)

Defendants' counsel states he spent 6 hours reviewing Plaintiffs' motion and drafting opposition. (Scott decl., ¶10.) His hourly rate is $300. (*Ibid*.)

9. Conclusion and Order

The motions are DENIED. Sanctions are granted in the amount of $1,800 in Defendants' favor and against Plaintiffs Hannah Philbin and Dan Philbin and their counsel of record, Corey Page and Matthew Hamity.

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

3. <u>24CV01464, Bartlett v. Gross</u>

I. Demurrer

Defendants Artisan Realty Group, Inc. ("Sotheby's") and Charlene Schnall ("Schnall")(together "Defendants") demur to portions of the Third Amended Complaint ("TAC") filed by Plaintiff Dylan Bartlett ("Plaintiff.) **Defendants' demurrer to Plaintiff's first cause of action for breach of contract is SUSTAINED with leave to amend. The demurrer to Plaintiff's second and third causes of action is OVERRULED. Plaintiff may file a fourth amended complaint within 20 days of the service of this order.**

On May 19, 2025, Plaintiff filed a complaint for Breach of Contract, Breach of Fiduciary Duty of Care, Breach of Fiduciary Duty of Loyalty, and Negligence. Plaintiff alleges in October 2018 he purchased real property located at 600 Hiatt Road and 875 Hiatt Road in Cloverdale. On October 5, 2021, Plaintiff and defendants Gross, Schnall, and Sotheby's entered into a Residential Listing Agreement ("Agreement") for defendants to list and sell 600 Hiatt Road (the "Property"). Plaintiff alleged he hired defendants to get the Property sold by April 2, 2022, at which time a loan on the Property was coming due. Plaintiff alleges the agreement was to begin listing the Property on the MLS and third-party sites from October 4, 2021, onward. However, due to a "glitch," the Property was not posted to the MLS's public feed. By the time this was discovered, Plaintiff alleges interest rates had risen substantially and there was a perception that the listing was stale, indicating something was wrong with the Property. The Property was eventually relisted in July 2023, after removing a lis pendens. Plaintiff alleges in October 2023 he was forced to sell both 600 Hiatt and 875 Hiatt to repay the debts that had been accumulated on them. He also alleges his business that was located on the Property failed at least in part due to the financial consequences of the failure to sell prior to April 2, 2022.

1. Breach of Contract

Plaintiff's cause of action for breach of contract alleges that Defendants were informed at the outset that it was imperative for Plaintiff to sell the Property before April 2, 2022. Plaintiff alleges Defendants failed to market the Property to the public as agreed, in part by failing to list the Property publicly on the MLS and to publish the listing to third-party sites including Zillow. Plaintiff alleges damages due to Defendants' failure to sell the Property within the critical window of opportunity as contemplated and negotiated for under the Agreement.

Defendants argue that the Agreement does not contain the requirement that the Property be sold by April 2022. They argue this is alleged to have only been expressed orally and cannot be added as a term of the written Agreement.

The terms set forth in a written agreement, which is intended by the parties to be the final expression of their agreement, may not be explained or supplemented by extrinsic evidence unless the terms of that agreement are ambiguous. (Code Civ. Proc., § 1856.)

Plaintiff does not address this precise issue in his opposition. Rather, he focuses on the argument that the damage was the failure to make the Property listing public on the MLS and third-party sites. However, the TAC specifies that the damage arose from Defendants' alleged failure to market the Property starting October 2021.

The TAC states that "Defendants failed to list the Property publicly on the MLS and to publish the listing to third-party sites, including Zillow, beginning in October 2021" and that "Defendants did not correct the issue and publish the listing as agreed until around March 1, 2022." (TAC, ¶¶36, 37.) Plaintiff alleged he "was harmed in that he was denied the full opportunity to sell his Property within a critical window of opportunity as contemplated and negotiated for under the contract, which then caused a cascade of adverse financial consequences and other damages." (TAC, ¶ 38.) Thus, as alleged, it was the failure to promptly market the Property starting in October 2021 that constitutes the Plaintiff's damage.

The Agreement consists of standard real estate listing forms. (TAC, Exhibits A-C.) It does not appear to contain any language that Defendants were required to attempt to sell the Property by April 2022.

Paragraph 23 of the Agreement states that it is the entire agreement between the parties. Therefore, the alleged oral agreement that the Property must be sold prior to April 2022 cannot be made part of that Agreement. Thus, as alleged, the TAC does not allege sufficient facts to constitute a cause of action for breach of contract. The demurrer is therefore SUSTAINED with leave to amend.

2. Breach of Fiduciary Duty

Defendants argue that Plaintiff's two causes of action for breach of fiduciary duty are identical, duplicative, and should be combined.

Plaintiff's second cause of action for breach of fiduciary duty is based upon a breach of the duty of care. His third cause of action is based upon a breach of the duty of loyalty. Defendants have not cited any authority that these two types of fiduciary duties cannot be pled separately. Accordingly, the demurrer to these causes of action is OVERRULED.

3. Conclusion and Order

The demurrer to Plaintiff's first cause of action for breach of contract is SUSTAINED with leave to amend. The demurrer to Plaintiff's second and third causes of action is OVERRULED.

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

II. Motion to Strike

Defendants Artisan Realty Group, Inc. and Charlene Schnall ("Defendants") move to strike various portions of the Third Amended Complaint ("TAC") filed by Plaintiff Dylan Bartlett ("Plaintiff"). **Defendants' motion to strike is DENIED.**

1. Plaintiff's objections

This court declines to rule on Plaintiff's objections as not necessary to the outcome of this motion.

2. Breach of Contract

In their memorandum, Defendants argue Plaintiff's entire cause of action for breach of contract should be stricken. Due to this court's ruling on Defendants' demurrer, the motion to strike Plaintiff's cause of action for breach of contract is moot.

3. Paragraphs 14 and 15 of the TAC:

Defendants seek to strike Paragraphs 14 and 15 of the TAC. Paragraph 14 provides: "On entering into the Agreement, Plaintiff informed Defendants Gross and Schnall that a loan was due on the Property in April 2022, in addition to other financial obligations that had to be satisfied at the time, and thus, it was imperative for him to sell the Property before April 2, 2022." Paragraph 15 provides: "Plaintiff also expressed to Defendants Gross and Schnall that he wished for the listing to be published to third-party sites, including Zillow."

While Defendants do not specifically address paragraphs 14 and 15 in their memorandum, they argue that all terms that are not contained in the parties' written agreement must be stricken.

Plaintiff has alleged more than just a cause of action for breach of contract. Paragraphs 14 and 15 are part of Plaintiff's initial factual allegations of the circumstances giving rise to this action. The factual allegations that Plaintiff informed Defendants of the need to have the subject property sold by April 2022 may support Plaintiff's other causes of action, which Defendants have not been addressed.

4. Claims for Damages

Defendants argue that the following language in the TAC should be stricken: Page 8, Prayer §1, wherein Plaintiff prays for "actual damages;" Page 8, Prayer §2, wherein Plaintiff prays for "statutory damages and penalties;" Page 8, Prayer 3, wherein Plaintiff prays for "the costs of the suit herein;" and, Page 8, Prayer 4, wherein Plaintiff prays for "such other and further relieve as the court deems just and proper."

a. MLS Listing

Defendants argue the merits of Plaintiff's claims. They first argue that the subject property was, in fact, placed on the MLS in accordance with the listing agreement. Defendants request this court take judicial notice of a Residential Agent One-Page report indicating that the subject property was placed on the market on October 19, 2021. Defendants have not provided authority that this court make take judicial notice of this document. The request for judicial notice is denied.

b. Marketable Title

Defendants also argue that the subject property did not have marketable title until December 21, 2021, such that no damages could have accrued prior to that date. Defendants only address this argument with one sentence, which is insufficient to meet their burden on this motion.

It appears that the basis of this argument is that because the subject property was undergoing a lot-line adjustment, it could not be sold prior to December 2021. However, the allegation is that the subject property needed to be sold by April 2022. Defendants have not provided authority that the subject property could not be marketed prior to the lot line adjustment.

c. Refinance

Defendants argue that Plaintiff failed to disclose that he refinanced the debt secured against the subject property in March 2022, which raises the issue of a sham pleading. Defendants argue that Plaintiff should not be allowed to allege inconsistent allegations.

The March 2022 refinance does not appear to be part of the TAC or determinable from a document subject to judicial notice. Therefore, this argument may not be addressed on a motion to strike.

d. Speculative damages

Defendants argue that Plaintiff cannot assert a claim for speculative damages, which were not actually caused by Defendants.

Defendants argue that this court has already evaluated Plaintiff's claim for damages on a motion for summary judgment in the *Sol Rise* matter and that Plaintiff seeks the same damages in this action. Defendants request judicial notice of their Motion to Consolidate filed in SCV-271112, *Sol Rise Farms, et al. v. Bartlett.* Defendants conclude that Plaintiff has failed to articulate any legally recoverable claim for damages.

While this court may take judicial notice of court documents, Defendants have not provided authority that this court can take judicial notice of any legal effect of the Motion to Consolidate filed in the *Sol Rise* action on Plaintiff's TAC in this action.

No authority is cited establishing that the damages requested in Plaintiff's TAC are not recoverable as being speculative.

e. Statutory Penalties

Due to the parties' stipulation, Defendants' argument regarding Plaintiff's request for statutory penalties is moot.

5. Conclusion and Order

For the reasons stated above, Defendants' motion to strike is DENIED.

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

4. 24CV03671, Hercules v. Pacific States Industries, Inc.

Plaintiff Elmer Hercules ("Plaintiff") moves on behalf of himself and those similarly situated for the following: 1) Preliminarily certifying the settlement class for purposes of settlement pursuant to California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769; 2) Preliminarily appointing Plaintiff as class representative for purposes of settlement; 3) Preliminarily appointing Jonathan Melmed, Kyle D. Smith, and Jaqueline Antillon of Melmed Law Group P.C. as class counsel for purposes of settlement; 4) Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the parties' Settlement Agreement and Release of Class and PAGA Action (the "Settlement Agreement"), including payment by Defendant Pacific States Industries, Inc. ("Defendant") of the non-reversionary gross settlement amount of $312,500.00 ("Gross Settlement Amount"); 5) Preliminarily approving payment of reasonable attorneys' fees from the Gross Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to $104,166.67), plus necessary litigation costs not to exceed $20,000.00; 6) Preliminarily approving a class representative service payment in an amount of up to $5,000.00 for Elmer Hercules from the Gross Settlement Amount to compensate him for the responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class; 7) Preliminarily approving the allocation of $31,250.00 for penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, of which 65% (i.e., $20,312.50) shall be paid to the California Labor and Workforce Development Agency ("LWDA") from the Gross Settlement Amount, with the remaining 35% (i.e., $10,937.50) payable to the aggrieved employees; 8) Appointing Simpluris, Inc. (the "Settlement Administrator") as the settlement administrator to handle the notice and administration process and preliminarily approving settlement administration costs estimated to be $8,000.00; 9) Approving the proposed class notice and ordering it be disseminated to the class members as provided in the Settlement Agreement; 10) Directing the Settlement Administrator to mail the class notice to the proposed class in accordance with the terms set forth in the Settlement Agreement; 11) Approving the proposed deadlines for the notice and administration process as reflected in this motion and in the Settlement Agreement; and 12) Setting a date for a final fairness hearing to determine, following dissemination of the proposed class notice packet, whether to grant final approval of the settlement.

This motion was initially heard on October 15, 2025, and was continued to this date to allow Plaintiff to provide details supporting the Settlement Agreement.

1. Pleadings

On June 20, 2024, Plaintiff filed a complaint against Defendant Pacific States Industries, Inc. for: 1) Failure to Pay All Minimum Wages; 2) Failure to Pay All Overtime Wages; 3) Failure to Provide Rest Periods and Pay Missed Rest Period Premiums; 4) Failure to Provide Meal Periods and Pay Missed Meal Period Premiums; 5) Failure to Maintain Accurate Employment Records; 6) Failure to Pay Wages Timely during Employment; 7) Failure to Pay All Wages Earned and Unpaid at Separation; 8) Failure to Indemnify All Necessary Business Expenditures; 9) Failure to Furnish Accurate Itemized Wage Statements; and, 10) Violations of California's Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.).

On August 26, 2024, Plaintiff filed a first amended complaint which added an eleventh cause of action for Penalties Pursuant to Labor Code Private Attorneys General Act of 2004.

Defendant's answer to the first amended complaint contains a general denial and lists ninety-two affirmative defenses.

2. Informal Discovery, Mediation, and Defendant's Estimated Exposure

Plaintiff's counsel initially stated they conducted informal discovery prior to mediation. (Melmed decl., ¶ 20.) Discovery, investigation, and prosecution included, among other things,

"numerous telephonic conferences with Plaintiff; inspection and analysis of hundreds of pages of documents, including Defendant's relevant policies and employee handbook, and other information produced by Plaintiff and Defendant; analysis of work-related data from a sample of Class Members and Aggrieved Employees; an analysis of the legal positions taken by Defendant; investigation into the viability of class treatment of the claims asserted in the action; analysis of potential class-wide damages, including information sufficient to understand Defendant's potential defenses to Plaintiff's claims; research of the applicable law with respect to the claims asserted in the Operative Complaint and the potential defenses thereto; and assembling and analyzing of data for calculating damages." (*Id*., ¶ 20.)

Plaintiff's counsel received wage statements and time records for a statistically significant sample size of Class Members during the Class Period. (Melmed Decl., ¶ 21.) Defendant produced approximately a 13.1% sampling of randomly-selected employees, which Plaintiff's counsel determined provides a statistically significant sample size with a high-degree of confidence for Plaintiff's expert's statistical analysis. (*Id*., ¶ 21.) This sampling included payroll records and timesheets for the Class Members' shifts during the Class Period. (*Id*., ¶ 21.) From these records, Plaintiff's expert carefully crafted a damages model for each of the categories of alleged claims for which the data would reflect violations. (*Id*., ¶ 21.)

On April 28, 2025, the parties engaged in a full-day mediation with mediator Lisa Klerman, resulting in the settlement. (Melmed Decl., ¶ 22.) Following further discussions, the parties executed the longform Settlement Agreement on May 12, 2025. (*Id.*, ¶ 23.)

Based upon Plaintiff's counsel's informal discovery and sampling, Plaintiff's statistical analysis expert estimates Defendant's maximum exposure—if Defendant did not prevail on any of its defenses—is approximately $144,637 for off-the-clock rounding practices; $422,748.60 for unpaid meal break premiums; $9,708 for unpaid overtime wages; $107,341.90 for waiting time penalties; $1,535,000.00 for wage statement violations; and $1,560,000 in PAGA penalties. (Melmed Decl., ¶¶26-35, 39-41, 47-49.) Maximum exposure amounts to $3,779,435.50.

Plaintiff's counsel stated that this maximum exposure is not realistic due to the possibility that Defendant would prevail on its defenses and for difficulties in obtaining class certification. Plaintiff's counsel reduced recovery for meal break periods by 90% to $43,274.86; recovery for waiting time penalties by 90% to $107,341.90; recovery for wage statement violations by 90% to $153,500; and recovery of PAGA penalties to $77,800. (Melmed decl., ¶¶33, 38, 42.) In the initial motion, Plaintiff's counsel did not explain why he chose 90% as the percentage by which to reduce the maximum exposure to come to a more realistic recovery amount. Plaintiff's counsel's "realistic, risk-adjusted exposure" is calculated as $536,567.00.

3. Settlement Agreement

The "Gross Settlement Amount" is the agreed upon non-reversionary settlement amount totaling $312,500.00. (Melmed Decl., Exhibit A, §1.21.) The Settlement Class is all individuals who are or were employed by Defendant as non-exempt employees in California during the Class Period from May 18, 2023, through May 28, 2025. (*Id.,* §1.40.) The Settlement Class consists of approximately 420 individuals. (*Ibid*.)

Of the Gross Settlement Amount, $31,250.00 is for settlement of PAGA claims. (*Id.,* §1.28.) Sixty-five percent ($20,312.50) will go to LWDA and 35% ($10,937.50) will go to the PAGA Settlement Class. (*Ibid*.) The PAGA Settlement Class consists of approximately 420 employees who worked a total of approximately 15,560 pay periods during the PAGA Period, defined as May 18, 2023, through May 28, 2025. (*Id.,* §§1.29-1.30.)

Plaintiff is requesting an incentive award of $5,000. (Melmed Decl., Exhibit A, §5.2)

The Settlement Agreement states that 25% of each Individual Settlement Amount shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form W-

2 for such payment to him or her), and 75% of each Individual Settlement Amount shall constitute penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants' anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant to separately fund these tax obligations/withholdings. (Melmed Decl., Exhibit A, §5.5.)

Simpluris, Inc. has been chosen as the settlement administrator. (Melmed Decl., Exhibit A, §1.2.) Its expenses are estimated not to exceed $8,000. (*Id.,* §§1.2, 6.1.)

The Settlement Agreement states that Class Counsel may apply for an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross Settlement Amount (i.e., $104,166.67) and the award of costs and expenses up to an additional $20,000.00. (Melmed Decl., Exhibit A, §5.7.)

The Settlement Agreement contains opt-out and objection procedures for class members. (*Id.,* §§7.3, 7.4.)

4. Legal Standards and Discussion

To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) The court must determine the settlement is fair, adequate, and reasonable. (*Id.,* at p. 1801.) The purpose of the requirement is "the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." (*Ibid*.)

"The trial court has broad discretion to determine whether the settlement is fair. [Citation.] It should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. [Citation.] The list of factors is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." [Citation.] "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.' [Citation.]" (*Dunk v. Ford Motor Co*., supra, at p. 1801.)

A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Id.,* p. 1802.)

Plaintiff proposes to settle for $312,500.00, which is approximately 8% of Defendant's maximum exposure and 58% of Plaintiff's counsel's estimated reasonable recovery. After the proposed reductions for fees and costs, the Net Settlement Amount left for distribution to class members would be $155,020.83. Ignoring the tax withholding, if this amount is divided equally between all 420 class members, each would receive approximately $369.

The initial memorandum and declaration filed in support of this motion was very vague. Plaintiff's counsel discussed what was done in generic terms. He repeated "discovery and

investigations were extensive," lamented "the potential risk, expense, and complexity posed by litigation," that "continued litigation would be costly," of the "uncertainties of class certification and litigation," and of the potential "unfavorable decisions on class certification, summary judgment, at trial and/or on damages."

The only reason given for accepting just 8% of the maximum exposure was that the issues in this case are contested. Plaintiff's counsel did not explain what all was considered in evaluating how he determined 8% represented a reasonable recovery for the settlement of this case.

In Plaintiff's further briefing, Plaintiff's counsel discusses the data sample of approximately 13.1% of the Class Members from Defendant. Plaintiff's expert used that data to extrapolate a damages model for the entire class, which was used as a preliminary basis for determining Defendant's maximum and realistic exposure. (Smith decl., ¶5.)

With respect to Plaintiff's allegations of unlawful rounding, Defendant's maximum exposure was calculated to be $144,637. Plaintiff's counsel explains that only 3.4 minutes, on average, were underpaid per shift—a low number likely to lead to reductions in any penalty awarded. (*Id.,* at ¶9.) In addition, only 46.6% of all pay periods were found to have contained this category of underpayment. (*Ibid*.) Again, a relatively low number likely to lead to reductions in any penalty awarded, and supportive of a good faith defense. (*Ibid*.)

With respect to Plaintiff's meal period allegations, Defendant argued that those meal periods were not required to be recorded because all operations cease during meal periods. (*Id.,* ¶10.) In addition, for those shifts in which a meal period was tracked, the Defendant's records show an overwhelmingly compliant meal period system. (*Id.,* ¶11.) Only approximately 3.85% of all shifts with tracked meal periods contained a meal period that was either late, short, or missed. (*Ibid*.) Extrapolated to the class, who worked a total of approximately 122,732 shifts greater than six hours in length, Plaintiff alleged that at least 4,720 shifts involved a meal period violation for which no meal period premium was paid. (*Ibid*.) However, the auto-deductions covered 70.1% of all shifts over five hours. (*Id.,* ¶12.) And, approximately 13.5% of all alleged meal period violations involved a paid meal period premium, thus negating any violation. (*Id.,* ¶13.)

Plaintiff's counsel also states that Defendant's evidence, including a signed attestation clause that employees received all meal and rest periods, would require Plaintiff to establish each entry was inaccurate. Other evidentiary burdens were also considered, such as signed second meal break waivers and Defendant's good faith defenses.

5. Conclusion and Order

Plaintiff's further brief establishes the likelihood that the settlement is fair, adequate, and reasonable. Therefore, **the motion is GRANTED. The final fairness hearing is hereby set for June 17, 2026, at 3:00 p.m., in Department 16.** This court will sign the proposed order.

5. <u>25CV01338, Sahagun v. Ford Motor Company</u>

Plaintiffs Jesus Sahagun and Irma Cabrera Aguilar ("Plaintiffs") move pursuant to CCP section 473(b) for an order setting aside the August 26, 2025, dismissal of this case. **The motion is GRANTED.**

This action arises out of alleged violations of the Song-Beverly Consumer Warranty Act. On July 29, 2025, a case management conference was set. Plaintiffs' counsel failed to appear at the case management conference so this court set the matter for an Order to Show Cause on August 26, 2025. When Plaintiffs failed to appear on August 26, Plaintiffs' action was dismissed.

Plaintiffs' counsel, Colby Meagle, states that due to an inadvertent calendaring error by the litigation assistant who was tasked with calendaring hearings, no attorney appeared at the July 29

case management conference. (Meagle decl., ¶4.) Mr. Meagle states that, due to the scheduling error for the July 29 hearing, no attorney was aware of the future OSC hearing date. (*Id.,* ¶¶4-6.) As a result, Plaintiffs' counsel failed to appear for the OSC hearing. (*Ibid*.)

CCP section 473(b) provides, in relevant part: "The court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to the attorney's mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against the attorney's client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against the attorney's client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect." (Code Civ. Proc., § 473(b).)

This court finds the motion was timely filed and that this action was dismissed as a result of Plaintiffs' attorney's mistake. The motion is GRANTED.

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

6. 25CV04578, Capital One, N.A. v. Brown

Defendant Robert B. Brown ("Defendant") moves for an order setting aside and vacating his default entered on September 23, 2025. The motion is brought pursuant to CCP section 473.5 or, in the alternative, CCP section 473(d). **The motion is GRANTED.**

Plaintiff Capital One, N.A. ("Plaintiff") filed this action on June 30, 2025. The complaint alleges breach of contract based upon a credit card agreement.

On September 23, 2025, Plaintiff filed proof of service of summons. That document states Defendant was personally served with summons and complaint on August 3, 2025, at 6:45 p.m.

On September 23, 2025, Plaintiff filed a request, and the court entered, Defendant's default.

1. Lack of Notice/ Void Judgment

Defendant first argues that relief from default is warranted pursuant to CCP section 473.5 on the grounds that Defendant did not receive actual notice in time to defend against this action. Alternatively, Defendant argues that pursuant to CCP section 473(d) the default and subsequent default judgment are void for lack of personal jurisdiction.

CCP section 473.5 provides: "When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against the party in the action, the party may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against the party; or (ii) 180 days after service on the party of a written notice that the default or default judgment has been entered." (Code Civ. Proc., § 473.5(a).)

CCP section 473(d) provides: "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order." (Code Civ. Proc., § 473(d).)

2. Proof of Service of Summons

Proof of service of summons states Defendant was personally served on August 3, 2025. The process server stated: "I delivered the documents to Robert Brown with identity confirmed by subject nodding when named. The individual tried to refuse service by not opening door and did not

state reason for refusal (documents left, seen by subject). The individual appeared to be a bald white male contact over 65 years of age, 6'0"-6'2" tall and weighing 200-240 lbs." (POS of Summons, ¶5.)

3. Defendant's declaration

In his declaration, Defendant states, "[o]n On August 4, 2025, I discovered documents on my front porch; no one handed me papers; no competent adult at my residence accepted service; and I received no follow-up mailing." (Brown decl., ¶3.)

Defendant goes on to state: "A footer on one page stated "CA DFPI Debt Collector License Number 10223-99," which led me to believe the papers were from a bill collector rather than a court process." (*Id.,* ¶4.)

In subsequent declarations, Defendant states that the process server came to the door at the time indicated on the proof of service of summons but that his wife, Jennifer Brown, answered the door while Defendant was in the kitchen. (Supp. Decl., ¶2.) Defendant states that he did not hear anyone call his name and that he does not fit the description on the proof of service of process document. (*Id.,* ¶¶4-8.)

Ms. Brown states that she answered the door on August 3, 2025, at approximately 6:45 p.m. (J. Brown Decl., ¶2.) Ms. Brown states the process server asked for Robert Brown. (*Ibid*.) Ms. Brown thought the process server was a solicitor so she closed the door. (*Ibid*.) She states she did not accept any documents for Defendant and that the process server did not identify the nature of the papers. (*Id.,* ¶4.) The process server then left the documents on the doormat. (*Ibid*.)

4. Conclusion and Order

Defendant's evidence contradicts the statements made in the proof of service of process. Therefore, Defendant has rebutted the presumption of proper proof of service. Defendant has filed proof of service of the motion on the Plaintiff but no opposition has been filed. Accordingly, the motion is GRANTED.

Defendant is directed to submit a written order to the court consistent with this ruling.