TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, June 11, 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. 24CV01412, Chase v. City of Santa Rosa

Defendant City of Santa Rosa ("City") moves for an order pursuant to CCP sections 2023.010, 2023.030, 2030.290(c), and 2031.300(c) imposing further sanctions, including monetary, issue, evidence, and/or terminating sanctions against Plaintiff Justin Chase ("Plaintiff") for his ongoing and continued failure and refusal to comply with this Court's January 16, 2025, order granting the City's motion to compel discovery responses. **Appearances required.**

The City's request for judicial notice is granted.

This action was filed on February 23, 2024, and a first amended complaint was filed on June 28, 2024. The FAC alleges one cause of action for premises liability due to an injury from an unmarked pothole in a poorly lit street.

On May 30, 2024, the City propounded its first set of written discovery on Plaintiff by email, via Plaintiff's counsel, consisting of Form Interrogatories-General, Set One; Special Interrogatories, Set One; and Request for Production of Documents, Set One. (Putney decl., ¶¶5-8, Exhibits B-D.) Several extensions to respond were granted; however, when discovery was not forthcoming, the City filed its motion to compel production of discovery. (*Id.*, ¶¶10-14.) On January 16, 2025, this court granted the City's motion and ordered Plaintiff to serve verified responses within 30 days of the service of the order. (*Id.*, ¶15, Exhibit I.) The City served the order on Plaintiff's counsel on January 17, 2025. (*Ibid*.) As of the date of the motion, no responses have been forthcoming. (*Id.*, ¶16.) The City did not receive a return call or an email from Plaintiff's counsel in response to its meet and confer attempts. (*Id.*, ¶¶17-21.)

Plaintiff's counsel has a pending motion to withdraw as counsel for Plaintiff which is currently set for September 10, 2025. According to the City, Plaintiff's living situation is tenuous and he may be unhoused. (*Id.*, ¶22.) It is not clear whether Plaintiff has attempted to, or been able to, contact his counsel, whether he is aware of the need to provide discovery to advance this litigation, or if he desires to continue with it. If Plaintiff's circumstances are such that he is unable to contact his counsel, but he wishes to proceed with this action, it would be unjust to order additional sanctions against him if he is not aware of the outstanding discovery requests.

Appearances are required to determine if Plaintiff's whereabouts are known and whether he can be personally served with the motion.

2. <u>24CV06117, Nicolosi v. Lopez</u>

Attorney Gregory B. Orton moves to be relieved as counsel for Defendant Adrian N. Lopez. As of the date the court reviewed this motion, Mr. Orton has not filed proof of service of the motion on his client. Therefore, **the hearing on this motion is CONTINUED to July 9, 2025, at 3:00 p.m., in Department 16, to allow Mr. Orton to file proof of service of the motion on his client.**

3. <u>24CV07587, Bradley v. Laird</u>

1. Demurrer

Defendant Tracy Laird ("Defendant") demurs to each cause of action in the verified complaint filed by Plaintiff Kevin W. Bradley ("Plaintiff")(together the "Parties") on the grounds of failure to state facts sufficient to constitute a cause of action and for uncertainty. **The demurrers are OVERRULED.**

Plaintiff's complaint alleges causes of action for specific performance, partition and accounting, breach of oral contract, conversion, fraud-promise without intent to perform, and intentional misrepresentation. The action is based upon the parties' alleged agreement regarding property located at 2002 Marble Street in Santa Rosa ("the Property"). (Complaint ["C."] ¶3.) After the Parties got engaged, they agreed to take out a new $548,000 first mortgage with defendant CMG Mortgage, Inc. dba CMG Home Loans in order to pay off the existing $180,000 mortgage, buy Defendant's prior boyfriend's interest in the Property, and to remodel and upgrade the Property so that Plaintiff and his daughters could move in. (C., ¶¶10-13.) Plaintiff alleges he and Defendant agreed that $303,000 of the money from the new loan would be used exclusively for these purposes. (C., ¶13.F.) The Parties further agreed that when escrow on the refinance closed, Defendant would be on title as owning 99% of the Property and Plaintiff would own 1%; however, after the Property was remodeled and interest rates fell, Defendant agreed to execute a new Grant Deed whereby each would own 50% of the Property. (C., ¶13.I-J.) Plaintiff alleges that despite these agreements, Defendant diverted at least $86,000 for her own purposes, which caused Plaintiff to have to take out $126,000 from his retirement to continue to pay contractors for work being done on the Property. (C., ¶¶16-17.) Plaintiff alleges that interest rates fell below 7.49% but Defendant refused to refinance the Property and execute a new grant deed giving each a 50% interest therein. (C., ¶22.) While the Property was being remodeled, Plaintiff had readied his condominium for rent. (C., ¶19.) Plaintiff alleges that Defendant insisted upon being included in the rental agreement as a landlord and eventually diverted the renters' $2,900 security deposit and three months' rent, totaling approximately $8,925, for her own use. (C., ¶21.) The Parties' relationship deteriorated and

Defendant moved out. (C., ¶¶22.-25.) Plaintiff alleges that when Defendant left, she depleted their joint banking account and took various items of Plaintiff's personal property. (C., ¶25.)

A. Meet and Confer efforts

Plaintiff's counsel, Michael Villa, objects to Defendant's counsel's, Nicole Jaffee's, Declaration of Demurring Party. On February 3, 2025, Ms. Jaffee filed a Declaration of Demurring or Moving Party Regarding Meet and Confer. The declaration states that the party subject to the demurrer failed to respond to her request to meet and confer or otherwise failed to meet and confer in good faith. Mr. Villa wishes to correct the record and notify this court that Ms. Jaffee filed that declaration on the same day she sent her first meet and confer email. The court acknowledges that Ms. Jaffee's Declaration of Demurring or Moving Party is inaccurate. In addition, her declaration filed in conjunction with this motion is misleading as it states that she and Mr. Villa "were unable to connect to discuss the matter and, therefore, I filed a Declaration of Demurring [or Moving Party] Regarding Meet and Confer." (Jaffee decl., ¶4.) Ms. Jaffee does not state why she and Mr. Villa were unable to connect or how she attempted to connect with him. In this regard, Ms. Jaffee is directed to revisit CCP section 430.41(a) which provides: "Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer ***in person, by telephone, or by video conference*** with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer." (CCP section 430.41(a) [emphasis added].) The court hereby strikes Plaintiff's Declaration of Demurring or Moving Party Regarding Meet and Confer from the record.

B. First Cause of Action – Specific Performance

This cause of action alleges that despite Plaintiff's full and complete performance of his obligations pursuant to the Parties' oral contract, Defendant as failed and refused to make Plaintiff a 50% owner.

Defendant argues that this cause of action fails to allege an enforceable agreement as an oral contract for an interest in real property is invalid.

It is well known that the statute of frauds is not absolute. A party may be estopped from asserting the statute of frauds as a defense to the enforcement of a contract subject thereto when the failure to enforce it would itself result in fraud. *(Smyth v. Berman* (2019) 31 Cal.App.5th 183, 198) In order for the doctrine of estoppel to apply, the party asserting the estoppel must allege and prove that the refusal to enforce the contract will result in either of two things: (1) "unconscionable injury" on the part of the party pleading estoppel because said party "seriously change[d] its position in reliance on the oral] contract"; or (2) the "unjust enrichment that would result if a party who has received the benefits of the other's performance were allowed to rely upon the statute." (*Monarco* v. *Lo Greco* (1950) 35 Cal.2d 621, 623-624; *Smyth, supra.*, 31 Cal.App.5th at 198.)

Plaintiff's complaint alleges sufficient facts to support the application of equitable estoppel. He has alleged an unconscionable injury and changing his position in reliance on Defendant's promise. He has also alleged unjust enrichment if Defendant is allowed to assert the statute of frauds. Therefore, the demurrer to this cause of action is OVERRULED.

C. Second Cause of Action – Partition and Accounting; Third Cause of Action – Breach of Oral Agreement

These causes of action seek partition by sale of the Property and an accounting of all charges and credits. Plaintiff alleges he has fully and completely performed each of his obligations under the Parties' agreement and that Defendant has breached the agreement by taking the Parties' money for her own purposes and not for the Property improvements as agreed.

Defendant's argument against these causes of action is also based upon the statute of frauds. Therefore, it too fails. The demurrer to these causes of action is OVERRULED.

D. This cause of Fourth Cause of Action – Conversion

This cause of action alleges conversion of Plaintiff's tenants' property consisting of their security deposit, and by taking Plaintiff's personal property "including but not limited to power/hand tools, a bicycle, a knife, kitchenware, art supplies, and jewelry…." (Complaint, ¶25.)

Defendant makes the patently inaccurate argument that "Plaintiff fails to identify what Defendant allegedly converted. He only provided broad categories of personal property that fails to put Defendant on notice of what she allegedly has in her possession that belongs to Plaintiff." (Memo., 5:13-15.) The complaint clearly alleges Defendant took money which did not belong to her and Plaintiff's personal property, including, at least, power/hand tools, a bicycle, a knife, kitchenware, art supplies, and jewelry. Plaintiff does not need to identify each specific item in the complaint. The demurrer to this cause of action is OVERRULED.

E. Fifth Cause of Action – Fraud-Promise without Intent to Perform; Sixth Cause of Action – Intentional Misrepresentation

The cause of action for fraud-promise without intent to perform alleges that the joint plans, promises, and assurances Defendant made to Plaintiff were material to his decision to alter his position to his detriment. He alleges he would not have assumed the financial obligation of taking out a new mortgage, paying of Defendant's debt, and spending hundreds of thousands of dollars on the Property if not for such promises. Nor would he have deposited the $303,000 in cash from the loan into a joint checking account and would never have agreed to rent out his condominium with a year lease if not for Defendant's promises. Plaintiff alleges that despite Defendant's promises, she now denies the Parties had an agreement to go on title as 50-50 owners, claiming the Property is owned 99% by her.

The cause of action for intentional misrepresentation alleges Defendant made the above referenced promises fraudulently knowing that they were not true and that she never had any intention of performing as the Parties' agreed.

Defendant argues that these causes of action fail to comply with the strict pleading requirements of a cause of action for fraud. Defendant argues that the complaint fails to show how, when, where, to whom and by what means the representations were tendered and fails to put her on notice of Plaintiff's claims. This court disagrees.

The complaint does not need to allege every evidentiary fact that may support a cause of action, only the ultimate facts. However, the distinction between ultimate facts, conclusions of law, and evidentiary matter is one of degree only, and the decisions often appear to be haphazard and inconsistent. (See *Estate of Bixler* (1924) 194 Cal. 585, 589 ["The lines of demarkation between conclusions of fact, conclusions of law, and an admixture of the two, are not clearly defined. The allegation of an ultimate fact as distinguished from an evidentiary fact usually, if not always, involves one or more conclusions"]; *Krug v. Meeham* (1952) 109 Cal.App.2d 274, 277 ["If substantial facts which constitute a cause of action are averred in the complaint or can be inferred by reasonable intendment from the matters which are pleaded, although the allegations of these facts are intermingled with conclusions of law, the complaint is not subject to demurrer for insufficiency"]; *Dino v. Boreta Enterprises* (1964) 226 Cal.App.2d 336, 339, citing the text ["It is, of course, the rule that ultimate facts must be pleaded, rather than legal conclusions, yet the distinction between ultimate facts and conclusions of law is not always clear or easy to state"]. Regardless, the modern approach is illustrated by *Semole v. Sansoucie* (1972) 28 Cal.App.3d 714. In that case, the defendant demurred to Plaintiff's complaint for wrongful death citing cases that required a factual averment of "wilful misconduct," arguing this was a impermissible conclusion of law. The court held that the test for allegations of fact or conclusions of law is not absolute. Quoting *Jones v. Oxnard School Dist.* (1969) 270 Cal.App.2d 587, 593, it stated: "The applicable principle is that the 'conclusion of law—ultimate fact' dichotomy is not an absolute but that the fair import of

language used in the pleading must be received to determine whether the adversary has been fairly apprised of the factual basis of the claim against him." (*Semole, supra,* at 721.)

While, when alleging fraud, the pleading must be more specific; here, the complaint clearly states who—Defendant; what—theft of money and property; when, where, and by what means—during the Parties' relationship when Defendant allegedly professed her love and devotion to Defendant and the Parties took out a mortgage to refinance the Property and put the loan proceeds into a joint account, all of which she now denies having agreed to. These allegations are sufficient. The demurrer to these causes of action is OVERRULED.

F. Conclusion and Order

The demurrer to each cause of action is OVERRULED.

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 Strike

Defendant Tracy Laird ("Defendant") moves to strike language in Plaintiff's complaint alleging intentional and malicious intent, Plaintiff's request for punitive damages, and Plaintiff's request for attorney fees. **The motion is DENIED.**

A. Punitive Damages

Defendant argues that the allegations, "Plaintiff contends that [Defendant's] tortious actions were perpetrated with fraudulent calculation, malicious and vexatious intent, all in complete knowing disregard for the rights and well being of Plaintiff such that an award of exemplary damages is fully warranted," are conclusions of law unsupported by factual allegations.

Plaintiff's complaint alleges two variations of fraud. The conclusions that Defendant's actions were malicious reference the underlying allegations that support those causes of action. A cause of action for fraud supports a punitive damage award under CCP section 3294(c)(3).

B. Attorney Fees

Defendant argues that there are no allegations in the complaint supporting an award of attorney fees under CCP section 1033.5.

In opposition, Plaintiff explains that the attorney fee request is supported by the second cause of action for partition. Under CCP section 874.010 the "costs of partition" include "reasonable attorney fees incurred or paid by a party for the common benefit." (CCP section 874.010(a).)

C. Conclusion and Order

Defendant's 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 California Rules of Court, Rule 3.1312.

4. <u>24CV07690, Mariani v. Proven Optics, LLC</u>

1. Application of Jared M. Klaus

The application of Jared M. Klaus to be admitted pro hac vice as co-counsel for defendants Proven Optics, LLC, and Silversmith Management LP dba Silversmith Capital Partners, is **GRANTED.**

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

2. Application of C. Darcy Jalandoni

The application of C. Darcy Jalandoni to be admitted pro hac vice as co-counsel for defendants Proven Optics, LLC, and Silversmith Management LP dba Silversmith Capital Partners, is **GRANTED.**

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

5. SCV-267534, Garcia v. Rustic Bakery, Inc.

Plaintiffs Jeferson Garcia, Wilson Garcia, and Alicia Rueda De Lara ("Plaintiffs") move for an order approving: 1. The Parties' Joint Stipulation of Class and PAGA Action Settlement and Release ("Settlement Agreement") that includes a Gross Settlement Amount of $4,000,000 that results in a Net Settlement Amount of $2,229,593.58 available to Class Members who did not opt out of the Settlement; 2. Attorney fees in the amount of $1,400,000 to Macias Rodriguez Adams LLP ("Class Counsel"), representing thirty-five (35%) of the Gross Settlement Amount; 3. Payment in the amount of $56,847.46 to Class Counsel for reimbursement of litigation costs and expenses; 4. Payment in the amount of $18,950 to the Settlement Administrator, Phoenix Settlement Administrators ("Phoenix") for Settlement Administration costs; 5. Payment in the amount of $15,000 to each named Plaintiff for their time and effort in representing the Class for a total of $45,000; 6. Payment in the amount of approximately $99,608.96 for employer-side payroll taxes; and 7. Allocation of the penalties pursuant to the Private Attorneys General Act of 2004 California Labor Code section 2698 et seq., in the amount of $200,000, of which seventy-five percent (75%), or $150,000, will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%), or $50,000, will be part of the Net Settlement Amount for distribution to the Class Members. **The motion is GRANTED.**

1. Procedural Issue

This court's records indicate that the hearing on Plaintiffs' Motion for Final Approval of Class Action Settlement was inadvertently set twice. This court previously reviewed this motion for this department's May 21, 2025, law and motion calendar as this court's order on Plaintiff's motion for preliminary approval of the class action settlement ordered the final fairness hearing for May 21, 2025. However, the Notice to Class Members lists the hearing date as June 11, 2025, which was scheduled based upon the hearing date provided by Class Counsel in its Motion for Final Approval filed on May 9, 2025. Therefore, as Class Members were given notice of the June 11, 2025, calendar date, this court's prior May 21, 2025, order is hereby STRICKEN and is replaced by this ruling.

2. Plaintiffs' Action

Plaintiffs' complaint alleges that Defendants violated the California Labor Code by failing to pay minimum and overtime wages; failing to provide compliant meal and rest periods; failing to pay reporting time pay; failing to timely pay wages during employment and at separation; failing to provide accurate wage statements; failing to reimburse business expenses; and failing to provide notice of material terms of employment upon hire.

3. Preliminary Approval

On January 24, 2025, this court preliminarily approved a settlement class defined as "all individuals who were employed by one or more of the Defendants as non-exempt employees in the State of California, from December 9, 2016, through the date the Court preliminary approves the Settlement Agreement."

4. Final Fairness Hearing

After preliminary approval, the court determines whether the settlement is fair, adequate, and reasonable in a final hearing. (CRC 3.769(g); *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801; see also *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F. 2d 615, 625; Fed. Rule of Civ. Proc., Rule 23(e).) The trial court has broad powers to determine whether the settlement is fair. (*Dunk v. Ford, supra,* at 1801; *Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.) The purpose of this 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." (*Officers for Justice v. Civil Service Com., supra,* 688 F. 2d at 624.)

At this hearing, the Court should consider relevant factors, such as the strength of Plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. However, the list is not fixed and the factors which the court considers must be tailored to each case. (*Dunk v. Ford, supra*, at 1801.) Ultimately, "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.]" (*Ibid*.) The determination is in the end '"an amalgam of delicate balancing, gross approximations and rough justice." (*Officers for Justice v. Civil Service Com*. (9th Cir.1982) 688 F.2d 615, 625; see also *Dunk v. Ford, supra,* at 1801, quoting *Officers for Justice, supra*.) However, while the party seeking settlement approval has the burden of showing the settlement is "fair and reasonable," nevertheless "there is a presumption of fairness when: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the trial court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; see also *Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43; *Dunk v. Ford, supra,* at 1801.)

5. Notice; Objectors; Presumption of Fairness

On April 3, 2025, Phoenix received a data file from defense counsel that contained names, last known mailing addresses, Social Security numbers, dates of employment, and workweeks for each Class Member during the Class Period. The final mailing list contained two thousand one hundred sixty-nine (2,169) individuals identified as Class Members. (Burns decl., ¶3.) On April 17, 2025, Phoenix mailed the Notice in English and Spanish, via U.S. first class mail to all Class Members on the class list. (*Id.,* ¶5.) No notices were returned, and there were no requests for exclusion, no notices of objections, and no workweek disputes. (*Id.,* ¶¶6-9; Burns supp. Decl., ¶¶3-6.)

The 2,169 Class Members have worked a collective total of one hundred fifteen thousand seven hundred ninety (115,790) Workweeks during the Class Period. (*Id.,* ¶11.) Each Workweek is valued at approximately $18.83. (*Ibid*.)

The Net Settlement Amount of $2,229,593.58 that is available to pay Settlement Class Members was determined by subtracting the requested Class Counsel attorneys' fees ($1,400,000.00), Class Counsel costs ($56,847.46), requested Class Representative Service Payments of $15,000.00 each ($45,000.00), the LWDA Amount ($150,00.00), estimated employer-side tax portion ($99,608.96) and the requested Settlement Administration Costs ($18,950.00) from the Gross Settlement Amount ($4,000,000.00). (*Id.,* ¶12.)

Based upon the calculations stipulated in the Settlement, the highest Individual Settlement Share to be paid is approximately $7,978.53, the lowest Individual Settlement Share to be paid is approximately $10.76, while the average Individual Settlement Share to be paid is approximately

$1,004.88. (*Id.*, ¶13.) Settlement Class Members will be issued payment of their Individual Settlement Shares subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share (the net payment is their "Individual Settlement Payment"). (*Ibid*.)

Additionally, $200,000.00 of the Gross Settlement Amount has been allocated toward penalties under the Private Attorneys General Act ("PAGA Amount"), of which 75%, or $150,000.00, shall be paid to the Labor and Workforce Development Agency ("LWDA"), and 25%, or $50,000.00, of which shall be paid to all current and former hourly non-exempt individuals who are or were employed by Defendants during the PAGA Period. (*Id.*, ¶14.) There are eight hundred (800) Aggrieved Employees who worked a total of seventy-five thousand one hundred fifty-eight (75,158) pay periods during the PAGA Period. The highest Individual PAGA Payment to be paid is approximately $184.09, and the average Individual PAGA Payment to be paid is approximately $45.58. (*Ibid*.)

As recognized by the preliminary motion for approval, the reasonableness and fairness will be presumed in this case due to the settlement through arms-length bargaining, sufficient investigation and discovery, and experienced counsel; and, as there were no objectors. (*Dunk v. Ford Motor Co., supra,* 48 Cal. App. 4th at p. 1802.)

6. Attorney Fees

A finding that the settlement is fair is not dispositive of the attorney fees issue. This court assumes a fiduciary role for the class members in evaluating a request for an award of attorney's fees from the common fund. (*In re Mercury Interactive Corp. Securities Litigation* (9th Cir. 2010) 618 F.3d 988, 994.) The distribution of fees must bear some relationship to the services rendered. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1142.)

Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254.) The former method is most commonly used in statutory fee-shifting schemes to reward attorneys for engaging in socially useful litigation. (*Ibid*.) It is also applied when the type of recovery does not allow easy calculation of the settlement's value. (*Ibid*.)

Use of the percentage method is particularly appropriate in "common fund" cases such as this one, as it simply awards counsel some percentage of the settlement fund. (*In re Ikon Office Solutions, Inc. Secur. Litig, supra,* at p. 193.) This method theoretically aligns the interests of counsel and class more closely than does the lodestar method: a larger recovery with fewer hours expended benefits all parties. (*Ibid*.)

Here, Class Counsel request $1,400,000 in attorney fees, which is 35% of the common fund. Plaintiff's counsel states they spent 1,542.20 hours thus far and expect to spend another 20 hours subsequent to this motion. (Macias decl., ¶16.) Class Counsel estimate their lodestar is $1,156,963.00. (*Ibid*.) This is based upon hourly rates of six attorneys ranging from $400 to $880. (*Ibid*.)

The question is whether thirty-five percent is an appropriate percentage for class counsel in this matter. This determination is somewhat elastic and depends largely on the facts of a given case, but certain factors are commonly considered. Specifically, the court may address the percentage likely to have been negotiated between private parties in a similar case, percentages applied in other class actions, the quality of class counsel, and the size of the award. (*See In re Ikon Office Solutions, supra,* at p. 193.)

The Ninth Circuit has consistently approved a "benchmark" award of 25 percent of the common fund. (*Bellinghausen v. Tractor Supply Company* (N.D. Cal. 2015) 306 F.R.D. 245, 260.) However, that percentage is often higher for smaller cases where recovery is under $10 million.

(*Haro v. Walmart, Inc.* (E.D. Cal., Jan. 10, 2025, No. 1:21-CV-00239-KES-SKO) 2025 WL 73109, at *13.)

With respect to the contingent nature of litigation, courts tend to find above-market-value fee awards more appropriate in this context given the need to encourage counsel to take on contingency-fee cases for plaintiffs who otherwise could not afford to pay hourly fees. (*Bellinghausen v. Tractor Supply Company* (N.D. Cal. 2015) 306 F.R.D. 245, 260.) Moreover, when counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award. (*Ibid.*)

In determining whether the request is reasonable, this court will apply the percentage method, cross-checked against the lodestar. The percentage will be based on the net settlement fund after deducting the costs of litigation, as this approach increases the incentives for cautious expenditure and, again, helps align the interests of the class more closely with those of counsel. (*See In re Ikon Office Solutions, supra,* at p. 193.)

Subtracting expenses of $56,847.46 from the Gross Settlement Amount of $4,000,000.00 leaves a Net Settlement Amount of $3,943,152.54. Thirty-five percent of that amount is $1,380,103.39.

In cross-checking the attorney fee request, "the 'lodestar' is calculated by multiplying the number of hours ... reasonably expended on the litigation by a reasonable hourly rate." (*Id.* at p. 261.) In determining the reasonable hourly rate, the [] court should be guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation. (*Ibid.*) "Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative 'multiplier' to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." (*Ibid.*)

Here, the attorney's hourly rates are excessive for this area. Adjusting the hourly rates to more appropriate rates based upon the work performed and the difficulty of the issues the lodestar is closer to $682,000.

Adding a lodestar multiplier of 2.05 for the contingency nature of the case, raises the rates to approximately $1,400,000. As explained below, a 2.05 multiplier is reasonable for this case.

This action was heavily contested and litigated for more than three and a half years. As part of Plaintiffs' investigation, Plaintiffs propounded lengthy written discovery, participated in various informal discovery conferences to advance their investigation, argued various discovery motions, and reviewed thousands of records of putative class members and aggrieved employees. (Macias decl. in support of preliminary approval, ¶9.) Plaintiffs conducted extensive interviews of putative class members and aggrieved employees and obtained more than forty signed declarations to support the class claims and underlying liability in this matter. (*Ibid.*) Plaintiffs took the deposition of Defendant's Person Most Qualified and Human Resource personnel to explore Defendants' record keeping, wage statements, meal periods, rest periods, overtime pay, and global employment practices. (*Ibid.*) This included taking the deposition of Defendants' former owner and former Chief Executive Officer. (*Ibid.*)

Prior to mediating the action, the Parties also engaged in extensive informal discovery, including the exchange of documents and data related to the employment of putative Class Members, their time and pay records, and Defendants' corporate-wide policies. Defendants produced, and Plaintiffs' Counsel reviewed, thousands of pages of documents and electronic data including employment onboarding records, work calendars, alternative work week arrangements, time records, earnings statements, company policies and employee handbooks. (*Id.*, ¶10.) Discovery and investigation involved inspection and analysis of thousands of pages of documents and data, including extensive time and scheduling records, pay records, and policy documents; in-depth

analysis of potential class-wide damages; and extensive research of the applicable law with respect to the claims asserted in the action and the potential defenses thereto. (*Id.,* ¶10.)

In preparation for mediation, Defendants produced payroll data for putative class members that worked for them during the relevant time period, including dates of employment, rates of pay, total earnings, and regular and overtime hours worked, among other data points. (*Id.,* ¶11.) Defendants produced time and payroll records for a significant sample portion of putative class members. (*Id.,* ¶11.) Plaintiffs' counsel compiled the data produced by Defendants and estimated class-wide damages for approximately 1,900 putative class members. (*Id.,* ¶11.) This included: (1) reviewing and analyzing work schedules, timekeeping and payroll records as well as employment handbooks, Plaintiffs' personnel files, relevant policies, and other documentation; (2) researching the applicable law and potential defenses; and (3) constructing extensive excel damage models based on interpretations of California law. (*Id.,* ¶11.)

On October 25, 2023, the parties attended an all-day private mediation before Tripper Ortman, a respected wage and hour employment law neutral. (*Id.,* ¶ 14.) After mediation failed, settlement discussions continued for about eight months with Mr. Ortman's assistance. (*Ibid*.) A Memorandum of Understanding was eventually memorialized and signed on August 8, 2024, through October 9, 2024. (*Ibid*.).

Overall, Class Counsel estimates that it obtained 70% of the $5,710,019.00 estimate of risk-adjusted recovery, excluding interest. (Macias decl., ¶8; Macias decl. in support of preliminary approval motion, ¶¶34-35.)

Based upon the above, attorney fees of 35% of the Gross Settlement Amount are reasonable.

7. Costs

Phoenix's costs associated with the administration of this matter are $18,950.00. (Burns decl., ¶15, Exhibit B.) Class Counsel's costs are $56,847.46. (Macias decl., ¶21, Exhibit 2.) Both are reasonable.

8. Service Award

Each plaintiff requests a service award of $15,000. Whether to reward class representatives for their efforts is within the Court's discretion. Courts generally consider the following factors, among others, in determining whether to pay an incentive or enhancement award to the class representative: whether an incentive was necessary to induce the class representative to participate in the case; actions, if any, taken by the class representative to protect the interests of the class; the degree to which the class benefited from those actions; the amount of time and effort the class representative expended in pursuing the litigation; the risk to the class representative in commencing suit, both financial and otherwise; the notoriety and personal difficulties encountered by the class representative; the duration of the litigation; and the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. (See *Clark v. American Residential Services LLC* (2009) 175 Cal. App. 4th 785, 804.) Plaintiffs' declarations support the requested fee award based upon the number of hours expended and the risk associated with litigating the action.

9. Conclusion and Order

Based on this court's review of the motion and the terms of the settlement, the settlement is "fair, adequate and reasonable" and the rights of the class members have been protected such that there is no sign of fraud, collusion, or unfairness. Accordingly, the motion for final approval of the class action settlement is GRANTED. The court will sign the proposed order.

6. <u>SCV-272918, Duarte v. Packard Pacifica, Inc.</u>

Defendant Packard Pacifica, Inc. ("Defendant") moves for an order pursuant to Cal. Rules of Court, Rule 3.770 dismissing the class allegations for failure to prosecute. **The motion is DENIED.**

Cal. Rules of Court, Rule 3.770 is not supportive of Defendant's request. It requires court approval to dismiss a class action. Such approval was meant to prevent fraud, collusion, or unfairness to the class. (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 534.)

The five-year mark to dismiss an action for not bringing it to trial is still over two and a half years away. In *Massey v. Bank of America* (1976) 56 Cal.App.3d 29, the appellate court upheld the dismissal of the class action when there were only 34 days before the full five-year period expired, when dismissal would be mandatory under former CCP section 583(b). This action is not close to the five-year mark.

The concern raised by Defendant appears to be based mostly on the closeness of the prior trial date of June 6, 2025, which was continued to January 23, 2026, and may be continued further depending upon when the California Supreme Court provides its ruling in *Camp v. Home Depot*, S277518 (H049033; 84 Cal.App.5th 638 (Santa Clara County Superior Court, Case No. 19CV344872). The trial date is now seven months away.

Defendant complains that Plaintiff has not filed her motion for class certification and her second amended complaint. However, since the filing of this motion, Plaintiff has filed the parties' stipulation and order to allow Plaintiff to file the second amended complaint, and she has filed the second amended complaint itself.

As acknowledged by Defendant, the parties have been actively working on this case through discovery and mediation and that the case has numerous issues and putative class members. Plaintiff's counsel states he is still waiting for further discovery responses from Defendant and the parties are working towards scheduling deposition dates for Defendant's Person Most Knowledgeable. (Kramer decl., ¶¶9-11.) In addition, Plaintiff is waiting for the newly added and recently served defendant, Poppy Bank, to file its responsive pleading. (*Id.* ¶13.)

Based upon the foregoing, the motion is DENIED.

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.