TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, June 2, 2023, 3:00 p.m.
Courtroom 16 –Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

PLEASE NOTE: Per order of the Court, any party or representative of a party must appear remotely through Zoom for this calendar, unless you request in person appearance by 4:00 p.m. the day before the hearing.

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 824-7526-7360
Passcode: 840359
https://us02web.zoom.us/j/82475267360?pwd=M0o4WVRSaysydlU5VWhBZEk1MEhpdz09

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 900-6833 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) 521-6729**, 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. SCV-265451, Maciel v Weintraub Tobin Chediak Coleman Grodin Coleman Law Corporation

This matter is on calendar for the motion of Defendant Weintraub Tobin Chediak Coleman Grodin Coleman Law Corporation ("Defendant") for an order compelling Plaintiff Michael Maciel ("Plaintiff") to serve further responses to Defendant's special interrogatories, form interrogatories, requests for admissions, and request for production of documents. Defendant requests sanctions in the amount of $1,550 for fees, plus the $60 motion fee. In reply, Defendant requests sanctions be increased to $2,895.00.

Defendant's motion to compel further responses to its form interrogatories and request for admissions, number 3, is GRANTED. The motion to compel further responses to Defendant's special interrogatories and requests for production of documents is DENIED. Sanctions are granted in the amount of $1,610.00.

This is a malpractice action. Plaintiff alleges that he retained Defendant on February 9, 2018, as legal counsel in SPR-090957, *In Re Joseph A. Gappa and Judith M. Gappa Trust.* In December 2018, Plaintiff substituted Defendant out in favor of attorney Kulvinkas. Plaintiff alleges that Defendant billed for more than $100,000 in legal fees without conducting much in the way of discovery or taking any depositions. He also argues that Defendant failed to turn over subpoenaed medical records. However, the majority of Plaintiff's complaint is over $414,755.76 in attorney fees Plaintiff claimed he earned as a trustee of the Gappa Trust—prior to being removed as the trustee of that trust. The trial court in the Gappa Trust case only awarded Plaintiff $62,828.75. Plaintiff alleges that Defendant took several missteps which caused him not to be awarded the full amount of attorney fees he claimed, including by failing to advise Plaintiff of his right to an immediate appeal; failing to advise that the order removing him as trustee would limit his recovery of attorney fees and costs; failing to advise him that he should seek the appointment of a guardian ad litem for Joseph Gappa; failing to advise him of the option to seek a court-appointed medical expert to review medical records and the report of the Gappas' capacity to execute certain documents; and, failing to advise Plaintiff regarding claims against attorney Mary Clare Lawrence for intentional interference with prospective advantage and/or contractual relationship. Plaintiff seeks $351,927.01 in damages.

Defendant's cross-complaint alleges that it performed services on Plaintiff's behalf and that Plaintiff breached the parties' contract by failing to pay for those services.

1. Form Interrogatories

Defendant argues that Plaintiff's responses to Form Interrogatory numbers 2.7, 9.1, 9.2, 12.1, 12.2, 12.3, 17.1, 50.1, 50.2, 50.3, 50.4, 50.5, and 50.6 are incomplete and require further responses. In reviewing Plaintiff's responses to form interrogatories, it is apparent that Plaintiff failed to address each part of the interrogatory, or he provided numerous unfounded objections.

In opposition, Plaintiff argues that the term "Incident" is not sufficiently defined and therefore he cannot adequately respond. Plaintiff goes on to state that, assuming he and Defendant can arrive at a workable definition of the term "Incident," he will respond further to the form interrogatories.

The form definition of INCIDENT states that it "includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding." (Miller decl., Exhibit A.) Therefore, for example, form interrogatory 9.1 requests, in part, to state whether there are any damages Plaintiff attributes to the INCIDENT. This would appear to be simple to answer as Plaintiff's amended complaint alleges $351,927.01 in damages. However, instead of providing a substantive response, Plaintiff objected on about 22 different grounds—none of which was due to the definition of "Incident." Without waiving the objections, Plaintiff then stated that he lacked sufficient information to respond. Plaintiff responded with these same objections, and then with a statement that he lacked sufficient information to respond, to each interrogatory (except the first) that is the subject of this motion. Plaintiff has not

justified these objections in his opposition. Accordingly, the motion as to Defendant's form interrogatories is GRANTED.

2. Special Interrogatories

Defendant served Plaintiff with 78 special interrogatories. In response to each interrogatory, Plaintiff listed a slew of boilerplate objections. Thereafter, Plaintiff stated that he lacked sufficient information to respond to the interrogatories.

In opposition, Plaintiff argues that Defendant improperly utilizes prefatory instructions and definitions in each of its special interrogatories. This objection was included in Plaintiff's objections to each special interrogatory.

CCP section 2030.060(d) provides: "Each interrogatory shall be full and complete in and of itself. No preface or instruction shall be included with a set of interrogatories unless it has been approved under Chapter 17 (commencing with Section 2033.710)."

Defendant's special interrogatories contain seven paragraphs of introductory definitions. These are not permitted except as specified in section 2033.710 with respect to official form interrogatories. Although definitions are permitted, they should appear in the body of the interrogatories, where the word to be defined first appears, in order to avoid the prohibition of instructions or preface.

In reviewing the 78 special interrogatories, each contains a reference to a prefatory definition. Therefore, they are not complete in and of themselves.

In addition, Defendant's special interrogatories do not contain a declaration for additional interrogatories above the limit of 35 special interrogatories. (See CCP § 2030.040.) However, it is not clear if the declaration was merely omitted for this motion.

As the special interrogatories do not comply with statutory requirements, the motion is DENIED.

3. Requests for Admissions

Defendant seeks further response to its requests for admissions, number 3. This request seeks to have Plaintiff admit that he owes Defendant legal fees for the work performed on his behalf.

Plaintiff provided the same lengthy list of objections. Without waiving said objections, Plaintiff stated: "Responding Party does not have information sufficient at this time to admit or deny whether I 'owe' Defendant legal fees though I admit that Defendant has made claim of filed complaint seeking such sums due and outstanding from me which have been denied in the pleadings." (Sep. Stmt.)

In his opposition, Plaintiff states that he will provide further response to request number 3 by the time of the hearing.

The motion as to this request is GRANTED.

4. Production of Documents

Defendant propounded 11 requests for production of documents. Request number 1 seeks all documents identified in Plaintiff's responses to special interrogatories. However, as Plaintiff is relieved of having to respond to Defendant's special interrogatories, Defendant cannot show good cause to compel production of these documents.

Request number 2 seeks all documents identified in response to Defendant's form interrogatories. Request number 3 seeks all documents that support Plaintiff's contention that Defendant breached its fiduciary duty to Plaintiff. Request number 4 seeks all documents that support Plaintiff's contention that Defendant committed professional negligence. Request number 5 seeks all communications that support Plaintiff's contention that Defendant breached its fiduciary duty to Plaintiff. Request number 6 seeks all communications that support Plaintiff's contention that Defendant committed professional negligence. Request number 7 seeks all "calendars, diaries, notebooks, journals, datebooks, or similar documents Plaintiff kept from February 1, 2018, through present that reflect, refer to, or relate to the allegations and/or events in Plaintiff's complaint. Request number 8 seeks all documents and communications obtained by Plaintiff or his representative or agents from any individual concerning the allegations in Plaintiff's complaint. Request number 9 seeks all documents that reflect, refer to, or relate to any and all damages claimed by Plaintiff due to the allegations in the complaint. Request number 10 seeks all communications between Plaintiff and any other person that relates to, refers to, or references the Defendant from January 1, 2018, to the present. Request number 11 seeks all communications between Plaintiff an any other person that reflect, refer to, or relate to Plaintiff's claims raised in Plaintiff's complaint[1] from January 1, 2018.

In response to Defendant's document requests, Plaintiff made the same slew of boilerplate objections, ending with Plaintiff's statement that he lacks sufficient information to respond.

In support of its motion, Defendant states that further response is required because CCP section 2031.210 requires a responding party to state either that the responding party will comply with the request, that they cannot comply with the request, or that they object to the request. In addition, section 2031.230 requires the party to state that they made a diligent search and reasonable inquiry when they claim an inability to comply.

Defendant argues that its document requests seek documents related to its interrogatories and Plaintiff's allegations that Defendant breached its fiduciary duty to him, committed professional

[1] Request for Production of Documents, Number 11 refers to Plaintiff's "Petition." The court assumes this is a typo and that Defendant meant to say "complaint."

negligence, and caused Plaintiff damage. Defendant concludes that the documents are all highly relevant.

In opposition, Plaintiff argues that Defendant has failed to provide him with a complete copy of his client file. Plaintiff argues that any requests should be limited to documents that are not in his client file possessed by Defendant.

Plaintiff's opposition does not provide any supporting authority for his arguments. Regardless, on a motion to compel production of documents, the moving party has the burden to "set forth *specific facts* showing good cause justifying the discovery sought by the demand." (CCP § 2031.310(b)(1) (emphasis added); *Kirkland v. Sup.Ct. (Guess?, Inc.)* (2002) 95 Cal. App. 4th 92, 98.) Here, Defendant has only made general arguments that could apply to any request or any case. It has not even discussed the specific documents sought in each of its requests, let alone *specific* facts showing good cause to justify the discovery requests.

Defendant has failed to meet its burden on its request to compel further response to its request for production of documents. The motion as to this request is DENIED.

5. Sanctions

Defendant argues that sanctions are warranted against Plaintiff for failing to adequately respond to its discovery requests. Defendant requests $1,610.00 based upon counsel's hourly rate of $250 and the filing fee of $60.

Making unmeritorious objections to discovery, failing to respond to an authorized method of discovery and making evasive responses to discovery are all a misuse of the discovery process. (CCP §2023.010(d)-(f).)

While Defendant did not meet its burden on two portions of this motion, Plaintiff's responses consisting of the same long list of boilerplate objections is unjustified and constitutes a misuse of the discovery process. Accordingly, sanctions are GRANTED in the amount of $1,610.00.

6. Conclusion and Order

Defendant's motion to compel further responses to its form interrogatories and request for admissions, number 3, is GRANTED. The motion to compel further responses to Defendant's special interrogatories and requests for production of documents is DENIED. Sanctions are granted in the amount of $1,610.00.

Defendant'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. SCV-266907, Cutting Edge Solutions, LLC v Shimadzu Scientific Instruments, Inc.

This matter is on calendar for the motion of Defendant and Cross-complainant Shimadzu Scientific Instruments, Inc. ("Shimadzu") for an order pursuant to CCP section 1987.1 compelling compliance with its subpoenas served on First Republic Bank, Umpqua Bank, BC Consulting, LLC, and Cutting Edge Solutions International, Inc. ("CES International").**The motion is DENIED.**

1. Proof of Service

In support of a motion to compel compliance with a subpoena, the moving party must first establish that the subpoena was properly served. Personal service of a deposition subpoena obligates any resident of California to appear, testify and produce whatever documents or things are specified in the subpoena; and to appear in any proceedings to enforce discovery. (CCP § 2020.220(c).) Here, Shimadzu has not provided proof of service for any of the subpoenas that are the subject of this motion. (Jubelirer decl., Exhibits C-F.) In fact, in counsel's declaration, he states that he discovered in April 2023 that his process server had had not actually served the subpoena on BC Consulting. (*Id.*, at ¶7.)

2. Subpoenas

The subpoenas directed to CES International and BC Consulting seek records and testimony. (Jubelirer decl., Exhibits C, D.) The subpoenas directed to Umpqua Bank and First Republic Bank only seek business records. (*Id.*, Exhibit E, F.)

a. Categories of Documents
    i. CES International and BC Consulting

A testimony and records subpoena must contain either a specific description of each individual item to be produced or describe them by "reasonably particularizing" each category of item. (CCP § 2020.510(a)(2).)

The subpoena for CES International seeks an expansive array of documents. Read together, the subpoena seeks basically every document the company has except, perhaps, for employee records. It seeks all financial documents, every bank account record, every document "reflecting or regarding any and all corporate formalities," any document "reflecting or regarding any lease or loan of any asset (a defined term), and more. The "categories" of documents all pertain to the information contained within the document. Therefore, CES International would have to go through each and every document it keeps in order to determine, for example, whether it contains information that "identifies" an asset or product, or "reflects" any services CES California, LLC ("CES") performed for CES International.

The subpoena for BC Consulting is similarly expansive. BC Consulting would have to go through substantial amounts of documents to determine, for example, if it has anything that "reflects" business dealings with CES or its officers, directors, managing agents, members, or managers.

The categories must be "reasonably" particularized from the standpoint of the party on whom the demand is made. (*Calcor Space Facility, Inc. v. Sup.Ct. (Thiem Indus., Inc.)* (1997) 53 Cal. App. 4th 216, 222.) Subpoenas that essentially request every document relating to a particular subject do not satisfy this requirement. (*Ibid*.) Here, there is no indication the "categories" bear any relationship to the manner in which the companies maintain their records. The burden is sought to be imposed on CES International and BC Consulting to search their extensive files to see what they can find to fit Shimadzu's categories. "[P]articularly when dealing with an entity which is not even a party to the litigation, the court should attempt to structure discovery in a manner which is least burdensome to such an entity." (*Ibid*.)

ii. Umpqua Bank and First Republic Bank

The subpoenas for Umpqua Bank and First Republic Bank suffer from some of the same defects as Defendant's other subpoenas. For example, category 2 seeks all documents "showing the identities of all persons with signing authority for any account held by CES International Inc from 2017 to the present." While this request at first appears targeted, it can also be interpreted to encompass any document that contains the name of any person having signing authority.

Regardless, Defendant has not attempted to address the various objections and why, despite these objections, good cause exists to compel production of the documents.

3. Good Cause

As support for this deep dive into corporate records, Shimadzu discusses general discovery principles. It argues that discovery is broad and the documents are relevant to its claims of alter ego and UVTA, and/or that they are reasonably calculated to lead to the discovery of admissible evidence.

In addition, Shimadzu argues that the documents are related to its claim that CES transferred virtually all of its assets to CES International. However, Shimadzu fails to identify which subpoena category addresses CES's alleged transfer of assets. Nor does Shimadzu address how the discovery of documents in each category will help its case.

In its separate statements, Shimadzu merely denies the truth of CES's objections. For example, to CES's objection on the grounds of privacy, Shimadzu argues that it is not seeking tax returns or tax documents. To CES's objection that the time period is overbroad, Shimadzu concludes it is not. Shimadzu also improperly shifts the burden to CES arguing that CES has not identified what harm production of the documents would cause.

This motion requires Shimadzu to demonstrate facts that support its discovery requests. General references to discovery principles are insufficient.

4. Conclusion and Order

For the reasons stated above, the motion is DENIED.

As no opposition has been filed, Shimadzu's counsel is directed to submit a written order to the court consistent with this ruling.

3-6. <u>SCV- 270629, Wolf, Jr. v Westside Mechanical Incorporated</u>

1. Motion to Compel Further – Special Interrogatories, Requests for Production of Documents – Grus

This matter is on calendar for the motions of Plaintiff Joseph Scott Wolf, Jr., individually and on behalf of all others similarly situated ("Plaintiff") for an order compelling defendant Grus Inc. ("Grus"), to provide further responses to Plaintiff's special interrogatories, Set One, numbers 1 and 3; and to Plaintiff's Request for Production of Documents, Set One, numbers 3, 5, 7, and 9. Plaintiff requests sanctions in the amount of $2,060.00 on each motion. **The motion is GRANTED.** However, the court will order the parties to confer about the details of the *Belaire-West* process, including the timing and content of the notice to class members. **The court will set a Case Management Conference for June 27, 2023, at 3:00 p.m., in Department 16, to allow the parties to report their agreed or respective proposals. Sanctions are granted in the total amount of $2,060.00.**

As the two motions contain many of the same arguments, the court will address the two motions against Grus together.

a. Complaint

On April 19, 2022 Plaintiff filed his Class Action Complaint against defendants Westside Mechanical Incorporated ("Westside") and Grus alleging the following causes of action: (1) failure to pay minimum wage; (2) failure to pay overtime; (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 timely pay wages during employment (8) failure to pay all wages due upon separation of employment, and (9) violation of Business and Professions Code §§ 17200, et seq.

On September 20, 2022, Plaintiff amended his complaint to add a claim for penalties pursuant to California Labor Code section 2698, et seq. ("PAGA").

Plaintiff's complaint alleges that Grus provided workers, called "field employees" to Defendant Westside. Grus was responsible for keeping track of the field employees' time worked for purposes of payment. Defendant Westside was responsible for directing and controlling the job functions/responsibilities of the field employees.

On November 28, 2022, Plaintiff served his first set of Special Interrogatories ("SROG") and Requests for Production of Documents ("RPD") on Grus. (Ishu Decl., ¶ 5, Ex. A.) On January 26, 2023, Grus served its responses consisting only of boilerplate objections. (Ishu Decl., ¶¶ 6-7, Ex. B.) Despite meet and confer efforts, Grus refused to provide further responses. (*Id.*, ¶11.)

b. SROGs

SROG number 1 seeks the name, contact information, and employment information for each non-exempt employee who worked for Grus during the defined time period. Grus objected on the grounds that the SROG was overly broad, that it is beyond the applicable statutes of limitations for wage and hour claims, and is burdensome, oppressive, and harassing. Despite the objections, Grus provided a spreadsheet listing all California employees from September 1, 2017 through December 31, 2022, but redacted the names and addresses to preserve Grus's employee's privacy until such time as the matter is approved for class certification.

SROG number 3 requested that Grus list all job titles or job positions held by non-exempt employees during the defined time period. Grus objected on the same grounds as it did for SROG number 1 and directed Plaintiff to the provided spreadsheet.

c. Request for Production of Documents

RFP number 3 seeks all time-keeping records for Grus's non-exempt employees. RFP number 5 seeks non-exempt employee's records, and/or writings stating or evidencing all wage, overtime, and/or double-time payments. RFP numbers 7 and 9 seek training materials, employment manuals, handbooks and/or other policy documents related to meal periods, rest breaks, timekeeping, compensation, and expense reimbursements provided to non-exempt employees and to supervisors.

Grus objected on the grounds that the requests are over broad, burdensome, oppressive and harassing because they seek information outside of the applicable statute of limitations, and that it seeks private, personal information regarding non-party employees.

d. Waiver of Class Action Suit

In opposition, Grus argues that Plaintiff is not entitled to class action information, including the name and contact information for Grus's other employees, because Plaintiff signed an employment agreement in which he waived his right to participate in any class or collective action or to serve as a class representative. The signed employment agreement provides:

> EMPLOYEE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES HIS/HER RIGHT TO A JURY TRIAL IN ANY LAWSUIT BETWEEN EMPLOYEE, ON THE ONE HAND, AND GRUS, INC., ON THE OTHER HAND, THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR EMPLOYEE'S EMPLOYMENT, WHETHER AT LAW OR IN EQUITY, WHETHER BASED ON A CLAIM OR COUNTERCLAIM ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM OR

> COUNTERCLAIM AND, INCLUDING BUT NOT LIMITED TO, TORT, CONTRACT, CORPORATE AND EMPLOYMENT CLAIMS. AS TO ANY LAWSUIT BETWEEN EMPLOYEE AND GRUS, INC., THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR EMPLOYEE'S EMPLOYMENT, EMPLOYEE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES EMPLOYEE'S RIGHT TO LEAD, JOIN, PARTICIPATE IN OR SERVE AS A MEMBER OF ANY CLASS OR COLLECTIVE ACTION; AGREES TO PURSUE ALL SUCH CLAIMS ON AN INDIVIDUAL RATHER THAN CLASS OR COLLECTIVE BASIS; AND EXPRESSLY WAIVES ANY LAW OR RIGHT TO PURSUE SUCH CLAIMS ON A CLASS OR COLLECTIVE BASIS.

In meet and confer efforts, Grus's counsel, Marc Hurd, stated his contention that Plaintiff expressly waived his right to serve as a class representative, and was therefore not entitled to discover class information. (Ishu decl., Exhibit D.)

In response to Mr. Hurd's meet and confer letter, Plaintiff's counsel., Daniel Ishu, argued that the class action waiver is not enforceable due to its prohibition on Plaintiff's right to bring a PAGA case, citing *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 382–383. He argued that the waiver applies to PAGA cases by virtue of the terms "collective action." In addition, he argued that the class action waiver is not enforceable as it is against California public policy, citing *Gentry v. Superior Court* (2007) 42 Cal.4th 443, 455 – 457. He noted that while subsequent decisions after *Gentry* and *Iskanian* have held that such waivers are enforceable, those decisions were in the context of arbitration agreements. He concluded that, because there is no arbitration agreement in the waiver or elsewhere in the document, *Iskanian* and *Gentry* are good law.

Grus addresses this issue in its opposition, citing *Viking River Cruises, Inc. v. Moriana* (June 15, 2022) 142 S.Ct. 1906 ("*Viking*"). In *Viking,* the issue was whether the Federal Arbitration Act, 9 U.S.C. § 1 et seq., preempts a rule of California law that invalidates contractual waivers of the right to assert representative claims under California's Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq. (*Viking River Cruises, Inc*., *supra,* at 1910.) In *Viking,* the plaintiff's employment agreement contained a mandatory arbitration clause, which contained a class action waiver—providing that the parties could not bring any dispute as a class, collective, or representative action under PAGA—and a severability clause—specifying that if the waiver was found invalid, such a dispute would presumptively be litigated in court. Under the severability clause, any "portion" of the waiver that remained valid would be "enforced in arbitration." The California courts applied the rule of *Iskanian*—holding that categorical waivers of PAGA standing are contrary to California policy and that PAGA claims cannot be split into arbitrable "individual" claims and nonarbitrable "representative" claims. (*Iskanian v. CLS Transp. Los Angeles LLC* (2014) 59 Cal.4th 348.) The Supreme Court held that the FAA preempts the rule of *Iskanian* insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate.

Here, it is not clear how *Viking* is applicable to this case as there does not appear to be any arbitration agreement between the parties to this action and thus no preemption by the FAA. Part of the Supreme Court's reasoning in *Viking* was that arbitration is a matter of consent and the FAA's mandate is to enforce arbitration agreements. The agreement in *Viking* between the employer and employee, which purported to waive "representative" claims under California's PAGA, was invalid insofar as it was a wholesale waiver of PAGA claims. However, pursuant to the severability clause in the parties' employment agreement, the former employer was entitled to enforce the agreement insofar as it mandated arbitration of former employee's individual PAGA claim. In light of the determination that the FAA preempted California state law precluding waiver of arbitration of representative claims under California's PAGA, the former employee lacked statutory standing to maintain her non-individual claims under PAGA, and thus non-individual claims were subject to dismissal, even though the FAA did not preempt the rule prohibiting wholesale waiver of arbitration of PAGA claims.

The cases cited by Grus are based upon specific language in those parties' arbitration agreements: *EFund Capital Partners v. Pless* (2007) 150 Cal.App.4th 1311; *Victoria v. Superior Court* (1985) 40 Cal.3d 734; *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148, abrogated by *AT&T Mobility LLC v. Concepcion* (2011) 131 S.Ct. 1740; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175. As noted above, no arbitration agreement has been presented in this case.

e. Statute of Limitations

Grus also argues that the applicable statute of limitations for Plaintiff's wage and hour claims is three years and that any claim that arose prior to April 19, 2019, is time barred. Therefore, it argues that discovery of wage and hour violations prior to April 19, 2019, is over broad.

In reply, Plaintiff argues that his discovery properly seeks records within the relevant time period as defined in his interrogatories, which are based upon the allegations in his complaint. Plaintiff argues that, since Grus provided its responses on January 26, 2023, the relevant time period is defined as October 10, 2017 to January 26, 2023. Plaintiff concedes that CCP section 338 creates a three-year statute of limitations; however, he argues that the UCL extends liability to four years. He also argues that the statute of limitations was tolled between April 6, 2020 and October 1, 2020 due to Emergency Rule 9. Plaintiff argues that the practical effect of Emergency Rule 9 is to extend the statute of limitations by 178 days.

Effective May 29, 2020, Emergency Rule 9 tolled statute of limitations that exceed 180 days from April 6, 2020, until October 1, 2020 (178 days). The advisory committee comment indicates that the rule is intended to apply broadly to toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action. Subtracting 4 years and 178 days from the date of filing, April 19, 2022, results in a potential liability period starting October 23, 2017. However, as employees are paid subsequent to work performed, most frequently over two weeks thereafter, discovery starting on October 10, 2017, appears reasonable.

f. Good Cause

Where a response has been made, but the demanding party is not satisfied with it, the remedy is a motion to compel further responses. (CCP § 2031.310.) The motion for order compelling further responses "shall set forth specific facts showing good cause justifying the discovery sought by the demand." (CCP § 2031.310(b)(1); *Kirkland v. Sup.Ct. (Guess?, Inc.)* (2002) 95 Cal. App. 4th 92, 98.)

Plaintiff first argues that it is entitled to seek evidence related to class certification requirements. Whether the common questions are sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits cannot realistically be made until the parties have had a chance to conduct reasonable investigation through discovery. (*Bartold v. Glendale Fed. Bank* (2000) 81 Cal. App. 4th 816, 836, overturned on other grounds due to legislative action.)

In addition, Plaintiff argues that these requests will tend to prove whether Class Members were subject to the same allegedly illegal meal period policies as Plaintiff. The document provided by Grus only contains a summary of hours worked, overtime hours, and double-time hours on an annual basis. Plaintiff argues his requests are the most basic components of class action discovery.

Defendant has established good cause to compel further production of documents. Plaintiff is seeking information to determine whether the allegations may apply to additional employees.

g. Privacy

While not raised in its opposition, Grus objected, in part, on the grounds that the discovery invaded third-party privacy rights. As discussed more fully in the court's tentative ruling with regard to Plaintiff's motions against Westside, the court will order the parties to confer about the details of the *Belaire-West* process, including the timing and content of the notice to class members. The court will set a Case Management Conference for **June 27, 2023, at 3:00 p.m., in Department 16,** to allow the parties to report their agreed or respective proposals.

h. Sanctions

CCP section 2030.300(d) and 2031.310 requires the court to impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response, 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. Sanctions are awarded in the total amount of $2,060.00.

i. Conclusion and Order

Plaintiff's motions to compel further responses to Plaintiff's SROG, Set One, Numbers 1 and 3, and Requests for Production of Documents, Set One, numbers 3, 5, 7, and 9, are GRANTED, subject to the *Belaire-West* notice. Sanctions are granted in the amount of $2,060.00.

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 Further – Special Interrogatories, Document Production – Westside

This matter is also on calendar for the motions of Plaintiff Joseph Scott Wolf, Jr., individually and on behalf of all others similarly situated ("Plaintiff") for an order compelling defendant Westside Mechanical Inc. ("Westside"), to provide further responses to Plaintiff's Special Interrogatories, Set One, number 1, and Request for Production of Documents, Set One, numbers 3, 5, 7, and 9. Plaintiff requests sanctions in the amount of $1,660.00 on the first motion and $2060.00 on the second. **The motion is GRANTED.** However, the court will order the parties to confer about the details of the *Belaire-West* process, including the timing and content of the notice to class members. **The court will set a Case Management Conference for June 27, 2023, at 3:00 p.m., in Department 16, to allow the parties to report their agreed or respective proposals.** Sanctions are granted in the total amount of $2,060.00.

As the two motions contain the same arguments, the court will address the two motions against Westside together.

On November 28, 2022, Plaintiff served his first set of Special Interrogatories ("SROG") and Requests for Production of Documents ("RPDs") on Westside. (Ishu Decl., ¶ 5, Ex. A.)

a. Privacy Rights

In response to Plaintiff's discovery requests, Westside objected on the grounds of third-party privacy rights, citing *Puerto v. Superior Court* (2008) 158 Cal.App.4th 1242 ("*Puerto*").

In *Puerto*, the petitioners sought the names and contact information of witnesses pursuant to Form Interrogatory No. 12.1. Respondent Wild Oats disgorged a massive list of names of employees who worked with petitioners at Wild Oats, but refused to provide contact information on the ground that the employees' right to privacy would be compromised. (*Puerto, supra,* at 1247.) The court found petitioners had a statutory entitlement to the contact information. (*Id.*, at 1249.) The right of privacy in the California Constitution (art. I, § 1), "protects the individual's *reasonable* expectation of privacy against a *serious* invasion." (*Id.*, at 1250.) The *Puerto* court went on to state that, the fact that we generally consider residential telephone and address information private does not mean that the individuals would not want it disclosed under circumstances where plaintiffs are seeking relief for violations of employment laws in the workplace that they shared. (*Id.*, at 1252-1253.) The court reasoned that if any of the current and former Wild Oats employees are similarly situated to the plaintiffs, they may reasonably be supposed to want their information disclosed to counsel whose communications in the course of investigating the claims asserted in this lawsuit may alert them to similar claims they may be able to assert. (*Id.*, at 1253.) The *Puerto* court also noted that the requested information, while personal, is not particularly sensitive, as it is merely contact information, not medical or financial details, political affiliations, sexual relationships, or personnel information. (*Ibid*.) Home addresses and telephone numbers are routinely produced during discovery. (*Id.*, at 1254.)

PAGA authorizes an employee who has been the subject of particular Labor Code violations to file a representative action on behalf of himself or herself and other aggrieved employees. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 538-539, citing Lab. Code, § 2699.) The default position regarding obtaining contact information for those sought to be represented in a PAGA

action is that such information is within the proper scope of discovery. (*Williams, supra,* at 544.) That the eventual proper scope of a putative representative action is as yet uncertain is no obstacle to discovery; a party may proceed with interrogatories and other discovery methods precisely in order to ascertain that scope. (*Id.* at 551.) "Doubts as to whether particular matters will aid in a party's preparation for trial should generally be resolved in favor of permitting discovery; this is especially true when the precise issues of the litigation or the governing legal standards are not clearly established." (*Ibid.* citing case.) Moreover, mere contact information is not particularly sensitive so as to defeat a discovery request based upon an allegation of privacy. (*Id.* at 553.)

Plaintiff expressed a willingness to engage in the *Belaire-West* process and proposed the use of a Protective Order. The Court in *Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4th 554 ordered disclosure of contact information, subject to employees being given notice of the action, assurance they were under no obligation to talk to the plaintiffs' counsel, and an opportunity to opt out of disclosure by returning an enclosed postcard. Courts subsequent to *Belaire-West* have uniformly applied the same analysis to reach the same conclusion: In wage and hour collective actions, fellow employees would not be expected to want to conceal their contact information from plaintiffs asserting employment law violations, the state policies in favor of effective enforcement of these laws weigh on the side of disclosure, and any residual privacy concerns can be protected by issuing so-called *Belaire-West* notices affording notice and an opportunity to opt out from disclosure. (*Williams, supra,* at 553.)

b. Factual issues

Westside also argues that Plaintiff is the only individual Grus referred to it. It argues that Plaintiff does not provide his timesheets to Westside, nor does Westside pay him wages. Westside concludes that Westside employees do not have similar claims as the Plaintiff. These are factual claims, the merits of which are not currently before the court. Discovery is based upon the allegations in the complaint, which are broad and encompass other employees.

c. Class Action Waiver/Estoppel/Third Party Beneficiary

As noted in the court's tentative ruling with respect to Plaintiff's motions against defendant Grus, no arbitration agreement has been presented in this case. Therefore, *Iskanian v. CLS Transp. Los Angeles LLC* (2014) 59 Cal.4th 348 controls.

d. Sanctions

CCP section 2030.300(d) and 2031.310 requires the court to impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response, 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.

Westside argues that Plaintiff must demonstrate that its objections were insubstantial to obtain sanctions on this motion. In other words, that Westside acted "without substantial justification." (*Union Mut. Life Ins. Co. v. Superior Court* (1978) 80 Cal.App.3d 1, 15.) Citing prior

code section 2034(a), the *Union Mut. Life* court determined that sanctions were inappropriate in that case because the questions presented therein were novel. (*Ibid*.)

Belaire-West was decided 16 years ago. Since then, the use of a *Belaire-West* notice in wage and hour class actions has become routine. (*Williams, supra,* 3 cal. 5th at 553.) Unlike in *Union Mut. Life,* no novel questions were present here.

Sanctions are awarded in the total amount of $2,060.00.

e. Conclusion and Order

The motions are GRANTED. However, the court will order the parties to confer about the details of the *Belaire-West* process, including the timing and content of the notice to class members. The court will set a Case Management Conference for June 27, 2023, at 3:00 p.m., in Department 16, to allow the parties to report their agreed or respective proposals.

Sanctions are granted in the total amount of $2,060.00.

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.

7. <u>SCV-272706, Alger v CSAA Insurance Exchange</u>

This matter is on calendar for the motion of defendant CSAA Insurance Exchange ("CSAA") for an order compelling arbitration and staying further proceedings in this action pending completion of the arbitration. The motion is made pursuant to Insurance Code section 11580.2(f) and the subject CSAA Policy. **Pursuant to CCP section 1281.2, the motion is GRANTED and the parties are ordered to arbitration. Pursuant to CCP section 1281.4, this action is STAYED pending completion of arbitration.**

This action was filed as the result of an automobile accident pursuant to which Plaintiff John W. Alger ("Plaintiff") sustained serious injuries. At the time of the accident, Plaintiff had an insurance policy with CSAA which provided underinsured motorist coverage in the amount of $100,000.

On March 1, 2022, Plaintiff settled his claim against the Underinsured Motorist for $15,000.00, the limit of her insurance policy.

On June 22, 2022, written demand was made by Plaintiff to CSAA for payment of the $85,000.00 available limit of the Policy ($100,000.00 Policy limit - $ 15,000.00 payment from the Underinsured Motorist = $85,000.00 available limit of the Policy). CSAA's insurance adjuster responded with increasing offers, the last totaling $34,661.65.

Plaintiff's complaint alleges causes of action for breach of insurance contract and breach of good faith and fair dealing.

1. Requirement of Arbitration

Disputes regarding "whether the insured shall be legally entitled to recover damages, and if so entitled, the amount thereof" must be determined by arbitration by a single neutral arbitrator. (Cal. Ins. Code section 11580.2(f); see also *Bouton v. USAA Cas. Ins. Co*. (2008) 43 Cal.4th 1190, 1193; *Quinano v Mercury Cas. Co*.(1995) 11 Cal.4th 1049, 1053.)

In addition, CSAA's policy requires arbitration to determine whether the policy holder is entitled to recover as the result of injury due to an underinsured motor vehicle. (Declaration of Peters, Ex. 1, p. 12.)

2. Conclusion and Order

Pursuant to CCP section 1281.2, the motion is GRANTED and the parties are ordered to arbitration. Pursuant to CCP section 1281.4, this action is STAYED pending completion of arbitration.

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