

TENTATIVE RULINGS

LAW & MOTION CALENDAR

Wednesday, July 15, 2026, 3:00 p.m.

Courtroom 16 – Hon. John Tomberlin for 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. 24CV01487, Jasso v. Santa Rosaidence Opco, LLC.

This matter is being heard in **Dept. 19** before the **Hon. Oscar A. Pardo**. Please see Dept. 19's tentative ruling page. Any requests for oral argument are to be directed to Dept. 19's Judicial Assistant at (707) 521-6602.

2. 24CV01984, 458 Seb Ave LLC. v. Anderson

This matter is on calendar for the motion of Plaintiff 458 SEB AVE LLC (“Plaintiff”) for summary adjudication of Plaintiff's first through fifth causes of action on the grounds that there are no triable issues of material fact and Plaintiff is entitled to judgment as a matter of law. **The motion is GRANTED.**

1. Complaint

Plaintiff's complaint alleges causes of action for declaratory relief, an accounting, breach of fiduciary duty, conversion, and waste, and requests injunctive relief. Plaintiff alleges on or around August 14, 2015, the Operating Agreement for 458 SEB Ave LLC (the “Operating Agreement”) was executed by Andreas Pfanner (“Pfanner”) and by Defendant Anderson (on behalf of himself and on behalf of Defendant EA). Per the Operating Agreement, at that time Pfanner was a 75% member, Defendant EA was a 25% member, and Defendant Anderson was Plaintiff's manager. On April 27, 2017, and June 9, 2023, Pfanner and Defendant Anderson executed a first and second amendment to the Operating Agreement. Immediately upon the execution of the Second

Amendment, Pfanner invested additional capital into Plaintiff as described in the Second Amendment, effectively making Pfanner a 100% member and manager of Plaintiff as of June 9, 2023. Although the Second Amendment provided Defendant Anderson with the option to purchase Plaintiff, Defendant Anderson did not execute that option, which expired on December 31, 2023. Plaintiff alleges under the Second Amendment, notwithstanding Pfanner's role as manager and 100% membership in Plaintiff, Defendant Anderson refused to relinquish management control of Plaintiff and has not provided any accounting for the period when Defendant Anderson was manager. Plaintiff alleges neither Defendant Anderson nor Defendant EA have acknowledged Pfanner's role as manager or his 100% membership in Plaintiff. Plaintiff further alleges that during his tenure as Plaintiff's manager, Defendant Anderson failed to pay tax payments, misappropriated Plaintiff's capital and revenue, and failed to make distributions pursuant to the Operating Agreement.

2. Request for Judicial Notice

Plaintiff's requests for judicial notice are granted.

3. First Cause of Action – Declaratory Relief

Plaintiff's first cause of action seeks declaratory relief acknowledging Pfanner's 100% membership and role as manager since the execution of the Second Amendment on June 9, 2023.

Plaintiff has established that on or around August 14, 2015, Pfanner, Defendant Anderson, and Defendant EA executed Plaintiff's Operating Agreement pursuant to which Pfanner was Plaintiff's 75% member, Defendant EA was Plaintiff's 25% member, and Defendant Anderson was Plaintiff's Manager. (Undisputed Material Fact ["UMF"], No. 1.) On June 9, 2023, Pfanner and Defendants Anderson and EA executed the Second Amendment to the Operating Agreement for 458 SEB AVE LLC ("Second Amendment"), whereby Pfanner would become the 100% member and sole manager of Plaintiff upon an additional capital contribution of \$1,110,712.50. (UMF No. 2.)

Pfanner states that pursuant to the Second Amendment, he made an additional capital contribution to Plaintiff and became Plaintiff's 100% member and sole manager. In his declaration, Pfanner states: "The amount identified in the Second Amendment is \$1,110,712.50, but I was then informed by Plaintiff's lender, Parker Kline Finance & Investment dba Parker Mortgage & Investment Co., that the amount needed to pay off the loan was \$1,103,564.50 (as opposed to the foregoing \$1,110,712.50), and I therefore made the capital contribution in this amount, as evidenced by the partially redacted wire transfer confirmations attached hereto as **Exhibit D.**" (Pfanner decl., ¶6.)

Exhibit D is a wire transfer record from a Chase account showing that on June 16, 2023, \$500,000.00 was wired to Parker Kline. (Pfanner decl., Exhibit D.) The notes indicate it was to pay Loan 6-1217-36. (*Ibid.*) A second wire transfer record shows on July 21, 2023, \$603,564.50 was transferred to Parker Kline for Loan-1217-36 / 458 Seb Ave L. (*Ibid.*) Thus, pursuant to the Second Amendment, Pfanner paid the required capital contribution and became Plaintiff's 100% member and sole manager. (UMF No. 4.)

Although the Second Amendment gave Defendant Anderson the option to purchase Plaintiff from Pfanner by December 31, 2023, he did not do so. (Pfanner decl., ¶7.) Therefore, Pfanner remains Plaintiff's 100% member and sole manager.

Plaintiff has met his burden on this cause of action. Defendants have not filed opposition. Therefore, the motion for summary adjudication of this cause of action is GRANTED.

4. Second Cause of Action – Accounting

Plaintiff's second cause of action seeks an order requiring Defendant Anderson to provide Plaintiff with an accounting pursuant to Sections 6.6.6.2 and 6.13.1.1 and Article 9 of the Operating

Agreement during Defendant Anderson's tenure as manager between August 14, 2015, until June 9, 2023.

A cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting. (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179.) An action for accounting is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation. (*Ibid.*)

Between August 14, 2025, and June 9, 2023, Plaintiff was owned by Pfanner (75%) and Defendant EA (25%), and Defendant Anderson served as Plaintiff's manager. (UMF No. 6.)

The Operating Agreement contains requirements of Plaintiff's manager including, to account to the Company and hold as trustee for it any property, profit, or benefit derived by the Manager in the conduct of winding up the Company's business or derived from a use by the Manager of Company property. (RJN, Complaint, Exhibit A, sections 6.6.6.2, 6.13.1.1.) Article 9 lays out the method of accounting, annual statements, the maintenance of books and records, access to books and records, income tax information, and banking. (*Id.*, Article 9.) These provisions include the requirement of annual statements and to allow open access to the Company's books and records. (*Ibid.*)

The Operating Agreement provides that upon the request of a member or transferee, for purposes reasonably related to the interest of that person as a member or a transferee, a manager or, if the limited liability company is member-managed, a member in possession of the requested information, shall promptly deliver, in writing, to the member or transferee, at the expense of the limited liability company, a copy of the information required to be maintained by paragraphs (1), (2), and (4) of subdivision (d) of Section 17701.13, and any written operating agreement of the limited liability company.

Section 17701.3 subdivision (d)(1), (2), and (4) provide: "Each limited liability company shall maintain in writing or in any other form capable of being converted into clearly legible tangible form at the office referred to in subdivision (a) all of the following:

(1) A current list of the full name and last known business or residence address of each member and of each transferee set forth in alphabetical order, together with the contribution and the share in profits and losses of each member and transferee.

(2) If the limited liability company is a manager-managed limited liability company, a current list of the full name and business or residence address of each manager.

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(4) Copies of the limited liability company's federal, state, and local income tax or information returns and reports, if any, for the six most recent fiscal years.

Pfanner states: "During his tenure as Plaintiff's former manager, Defendant Anderson refused to provide me with an accounting of Plaintiff's revenue, expenses, profits, etc., and further refused to provide access to Plaintiff's books and records (including prior bank statements). After becoming Plaintiff's sole member and manager, I also discovered that Defendant Anderson supplied incorrect information to Plaintiff's accountant and also failed to pay the required tax payments, including real property taxes, on Plaintiff's behalf, notwithstanding my additional capital contributions which were made, in part, for that specific purpose. I have reviewed property tax bills issued by Sonoma County regarding the Investment Property during the period of 2018 through 2023. Based on these documents, I am informed and believe that as a result of Defendant Anderson's failure to timely pay real property taxes on Plaintiff's behalf, Plaintiff incurred late fees and penalties in the amount of \$3,062.40." (Pfanner decl., ¶13.)

Pfanner further states: “In November of 2023, I was finally able to obtain access to Plaintiff’s bank account at Chase Bank. Upon reviewing the relevant financial documents, I discovered that Defendants had misappropriated Plaintiff’s capital and revenue generated by the Investment Property in an amount of no less than \$192,714.29, which remains due and owing to Plaintiff. My review of these financial documents also revealed that Defendant Anderson had improperly transferred or otherwise misdirected these funds to either himself, Defendant EA X, and/or other entities owned or controlled by Defendant Anderson, including, for example, Urban Green Goods, LLC, Urban Green Equities, LLC, and/or Urban Green Management, LLC.” (Pfanner decl., ¶12.)

Defendant Anderson was Plaintiff’s manager and owed a duty to account to members, including Pfanner. Pfanner has ascertained that some amount is owed back to Plaintiff; however, the actual amount due remains uncertain. Accordingly, an accounting is warranted.

Plaintiff has met his burden on this cause of action. Defendants have not filed opposition. Therefore, the motion for summary adjudication of this cause of action is GRANTED.

5. Third Cause of Action - Breach of Fiduciary Duty

Plaintiff alleges that between August 14, 2025, and June 9, 2023, Defendant Anderson was Plaintiff’s manager and owed fiduciary duties and obligations of the highest character to Plaintiff and its members, including those stated in Corporations Code section 17704.09. Plaintiff alleges Defendant Anderson breached these by failing to account to Plaintiff’s members; improperly diverting Plaintiff’s capital and revenue to himself and to Defendant EA; potentially entering into contracts and leases on behalf of Plaintiff in order to benefit himself and those around him, resulting in a diminution in value of and/or revenue from the Investment Property; and failing to timely pay Plaintiff’s obligations, including but not limited to real property taxes.

As to Defendant EA, Plaintiff alleges as a former 25% member of Plaintiff, it also owed a fiduciary duty to Plaintiff. Plaintiff alleges Defendant EA breached that duty by receiving and refusing to return capital and revenue that was improperly diverted to it by Defendant Anderson.

The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damages proximately caused by that breach. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 483.)

As determined above, Defendant Anderson refused to provide an accounting and continues to refuse to do so. (UMF No. 13.) Pfanner states that upon reviewing financial documents, he discovered Defendants had misappropriated Plaintiff’s capital and revenue and failed to pay Plaintiff’s obligations. (Pfanner decl., ¶¶11, 12.) This is a breach of Defendant Anderson’s fiduciary duty as the manager of Plaintiff.

Plaintiff has met his burden on this cause of action. Defendants have not filed opposition. Therefore, the motion for summary adjudication of this cause of action is GRANTED.

6. Fourth Cause of Action – Conversion

Plaintiff alleges Defendant Anderson and Defendant EA converted Plaintiff’s capital and revenue by improperly diverting it to themselves and other entities owned and/or controlled by Defendant Anderson.

The elements of a claim for conversion are: (1) the plaintiff’s ownership or right to possession of the property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages. (*IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 650.)

‘Money cannot be the subject of a cause of action for conversion unless there is a specific, identifiable sum involved, such as where an agent accepts a sum of money to be paid to another and fails to make the payment.’ A ‘generalized claim for money [is] not actionable as conversion.’ ” (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 395.)

Plaintiff is the owner of the Investment Property and is entitled to receive the rental income therefrom. (UMF No. 17.) Defendants misappropriated Plaintiff's capital and revenue generated by the Investment Property in an amount of no less than \$192,714.29, which remains due and owing to Plaintiff. (Pfanner decl., ¶12.) These funds were either transferred to Defendant Anderson, to Defendant EA, and/or to other entities owned or controlled by Defendant Anderson. (*Ibid.*)

Plaintiff has met his burden on this cause of action. Defendants have not filed opposition. Therefore, the motion for summary adjudication of this cause of action is GRANTED.

7. Fifth Cause of Action – Waste

Plaintiff alleges that Defendant Anderson has caused waste to the Investment Property by failing to timely and adequately pay Plaintiff's real property taxes.

A claim for failure to pay real property taxes constitutes a cause of action for Waste. (*Nippon Credit Bank v. 1333 N. Cal. Blvd.* (2001) 86 Cal.App.4th 486, 496.) As established above, Defendant Anderson failed to timely pay taxes own, constituting a waste.

Plaintiff has met his burden on this cause of action. Defendants have not filed opposition. Therefore, the motion for summary adjudication of this cause of action is GRANTED.

8. Conclusion and Order

Based upon the foregoing, the motion is GRANTED.

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

3. **24CV02971, Maverick Excavating, Inc. v. Dalk**

This matter is on calendar for the motion of Cross-Defendants Vincent Herring and Tiffanie Herring ("Cross-Defendants") demurrer to the entire cross-complaint filed by Cross-Complainant Jason Dalk, and to the second and third cause of action therein.

The same day as Cross-Defendants' demurrer was filed, Cross-Complaint Jason Dalk filed a motion for leave to amend his Cross-Complaint—the Cross-Complaint that is the subject of Cross-Defendants' demurrer.

Both the demurrer and motion for leave to amend are opposed.

Trial in this heavily litigated case has not yet been set. The cross-complaint is clearly in need of amendment to state multiple causes of action. While Cross-Complainant Dalk opposes the demurrer, he also acknowledges the need for amendment through his own motion for leave to amend. Therefore, this court will **SUSTAIN Cross-Defendants' Demurrer**. While Cross-Defendants' conclude that it cannot be remedied with amendment, they show nothing on the face of the pleading that would incline the Court to find amendment would be futile. The Court need only justify leave to amend after multiple demurrers have been sustained to the same pleading. CCP § 430.41(e)(1). The Court should, ordinarily, permit the party whose pleadings are attacked to amend if it so desires. *Hardy v. Admiral Oil Co.* (1961) 56 Cal.2d 836, 841–842. The Demurrer is **SUSTAINED with leave to amend**.

The Court would be granting leave to amend on the demurrer regardless, but shortly before the demurrer was filed, Cross-Complainant Dalk filed a motion for leave to amend. While Cross-Defendants aver that the leave to amend is futile, they point to nothing on the face of the pleading that would otherwise lead the Court to the same conclusion. The underlying merits of the proposed cause of action amendments are not relevant to determining whether amendment is appropriate, as long as they relate to the same general set of facts, as the amended pleadings may be attacked by demurrer, motion for judgment on the pleadings, or other similar proceedings. *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. While Cross-Defendants opine that Cross-

Complainant Dalk has delayed in bringing the motion, absent a showing of prejudice, delay alone is not a basis for denial of leave to amend. *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 563. There is no prejudice, because the pleading is otherwise being amended due to the demurrer. Cross-Complainant Dalk's motion for **leave to amend is GRANTED**. He may file his proposed First Amended Cross-Complaint within 10 days of this order.

The Court's minute order shall constitute the order of this court.

4. **24CV04975, Looney v. Amerigo, LLC.**

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff") moves for an order appointing Landon McPherson as receiver to take possession of and, if necessary, sell the liquor license of defendant Amerigo, LLC, dba Kirway Xpress ("Judgment Debtor") in order to carry out the judgment entered in this case in the amount of \$16,456.53.

Specific statutory procedures are established for enforcement of money judgments. This includes the appointment of a receiver after judgment to carry the judgment into effect. (CCP section 564(b)(3).) The judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment. (CCP § 708.630(a).)

A trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership. (*City & Cty. of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745.) In making this decision, the court must depend upon competent and admissible evidence submitted by the parties, and not conclusions and hearsay. (*McCaslin v. Kenney* (1950) 100 Cal.App.2d 87, 94.)

"California rigidly adheres to the principle that the power to appoint a receiver is a delicate one which is to be exercised sparingly and with caution." (*Morand v. Superior Ct.* (1974) 38 Cal.App.3d 347, 351.) "It is said by the state's courts that the appointment of a receiver is 'an extraordinary and harsh,' and 'delicate,' and 'drastic,' remedy to be used 'cautiously and only where less onerous remedies would be inadequate or unavailable...' " (*Ibid.*)

Mere difficulty in trying to collect a debt is not sufficient basis for the court to appoint a receiver. (*Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.* (2021) 60 Cal.App.5th 622, 628-629.) The *Medipro* Court explained, "Medipro's evidentiary showing demonstrated that it had, at most, encountered some difficulty in its initial efforts to collect on its money judgment. If this was sufficient to constitute the 'necessity' required to justify the 'extraordinary' remedy of the appointment of a receiver to take over a judgment debtor's business, it is difficult to see how the appointment of receivers would not become a routine part of the collection of judgments—a result at odds with the solid wall of precedent holding to the contrary."

On December 10, 2024, judgment was entered in this action for the above stated amount. According to Plaintiff's declaration, Joseph Esmail is the personal guarantor of Judgment Debtor. (Looney decl., ¶3.) Plaintiff states he has attempted to collect on the judgment by attempting to locate a bank or deposit account; mailing a letter requesting payment; serving post-judgment interrogatories and requests for production of documents; and mailing a letter requesting responses to the post-judgment discovery. (Looney decl., ¶¶6-10.) Based upon a web search, Judgment Debtor's business is open. (*Id.*, ¶7.)

According to Plaintiff, the sheriff's office will not sell liquor inventory; the installation of a sheriff's keeper is unavailable or ineffective; the size of the judgment makes it impractical to levy upon equipment, fixtures, or inventory; plus, the value of equipment and fixtures is depressed. Thus, Plaintiff concludes there is no other option but to appoint a receiver to seize and sell the liquor license to satisfy the judgment.

Plaintiff has not made a sufficient factual showing that appointing a receiver to seize and sell the liquor license is necessary. Plaintiff has failed to show the inadequacy of alternate remedies. Rather, as in *Medipro, supra*, Plaintiff has only shown that he has encountered some difficulties in his initial efforts to collect the judgment. While Plaintiff states in his declaration that he investigated Defendant's finances, there is no explanation regarding the depth of this investigation. Plaintiff's representations regarding the inadequacy of alternative remedies are not supported by foundation. Moreover, the number of motions filed by Plaintiff to appoint a receiver in various actions itself shows that this method of collection has become routine rather than being reserved for cases in which it is truly necessary.

In addition, Defendants Ismael Joseph and Amerigo, LLC have now appeared in this action. Defendant Joseph contested that he was served with the summons and complaint in this action and sought to set aside Defendants' defaults and the default judgment. Those requests were denied for procedural reasons. Defendants have now made themselves available through their attorney.

Mere difficulties in collecting the judgment are insufficient grounds for appointing a receiver. Plaintiff has failed to meet his burden of proving that a receiver is necessary in this matter. **The motion is DENIED.** Due to the lack of opposition, the court's minutes shall constitute the order of the court.

5. 24CV05458, Crisafulli v. Sonoma Media Investments, LLC

Motion for Final Approval of Class Action and PAGA Settlement GRANTED in full.

Facts

After Plaintiffs filed this putative class and representative employment action for violations of Labor Code wage-and-hour provisions and the Private Attorneys General Act ("PAGA"), the parties entered into a stipulation allowing Plaintiffs to file a first amended complaint ("FAC"). In the FAC, plaintiffs allege that when Defendants employed them, Defendants committed numerous wage-and-hour violations with respect to Plaintiffs and other similarly-situated employees, including, among others, meal-break violations, failure to pay overtime, and failure to pay minimum wage.

Settlement

On December 12, 2024, the parties took part in a formal mediation session before a neutral mediator and, although the parties initially were unable to reach an agreement, on December 16, 2024, they mutually agreed to accept the mediator's proposal. Declaration of Alexandra Rose ("Rose Dec."), ¶13. The parties eventually executed a final, written Joint Stipulation of Class Action and PAGA Settlement (the "Settlement") on August 25, 2025.

Plaintiffs filed a Motion for Preliminary Approval of Class Action and PAGA Settlement. There was no opposition. After the hearing of March 4, 2026, the court granted the motion in full, issuing a 12-page ruling explaining the applicable law and its findings.

The Settlement, as detailed in the court's order, covers a class about 157 current and former non-exempt employees (the "Class Members") employed by Defendant in California during the class period, defined as September 12, 2020, through March 15, 2025 (the "Class Period"). The PAGA Period is defined as September 12, 2023, through March 15, 2025, and those who worked during the PAGA Period are referred to as the PAGA Employees.

The parties have agreed to settle the class and PAGA claims in the FAC for a non-reversionary "Gross Settlement Amount" ("GSA") of \$350,000, exclusive of employer-side payroll taxes, a common fund which includes all costs, fees, and other allocations. Attorneys' fees will amount to 35% of the GSA while the attorneys will recover actual costs and expenses up to

\$25,000, from the GSA. Each named Plaintiff will receive an enhancement payment of \$7,500, a total of \$15,000, from the GSA. Another \$25,000 from the GSA will be allocated to the PAGA amount with 65% payable to the Labor and Workforce Development Agency (“LWDA”) and the remaining allocated to the PAGA Employees. Settlement administration costs will not exceed \$9,000 and will be paid from the GSA. As a result the net settlement amount (“Net Amount”) is estimated to be about \$153,000 and this will be distributed to the Class Members. Since this is non-reversionary, no amount will revert to Defendant and the full amount will be distributed to the members and LWDA. Any unclaimed portions will be distributed to the state Unclaimed Property Fund in the name of the employee. Individual shares will be apportioned with 20% as wages and the rest as penalties, interest, and non-wage damages. Wages will be reported on IRS Form W-2 and the rest on IRS Form 1099.

As set forth in detail in court order granting preliminary approval, the court specifically found “the Settlement to be potentially fair and reasonable for the purposes of preliminary approval” with the amount “substantial in total and not a de minimis amount for each member, on average”; the enhancement for named Plaintiffs to be reasonable, based on sufficiently detailed evidence and explanation, and in line with applicable authority; Plaintiffs had properly notified the LWDA; the payment to the LWDA to be sufficient; the attorneys’ fees at 35% of the GSA to be reasonable and in accordance with applicable authority; the costs capped at \$25,000 maximum to be reasonable; the proposed class notice (the “Notice”) to be sufficient; and the class and Settlement to meet the requirements for class certification.

The court set the matter for a hearing of July 15, 2026, regarding final approval. Plaintiffs filed their notice and Motion for Final Approval of Class Action and PAGA Settlement on June 22, 2026.

Motion

In their Motion for Final Approval of Class Action and PAGA Settlement, Plaintiffs move the court for final approval of the Settlement. They set forth the Settlement terms and procedures, contending that it is fair and reasonable in compliance with the applicable authority. They also explain that they have completed the notice requirements, serving the Notice, and

There is no opposition.

Authority Governing Approval of Class Settlements

Settlement of a class action requires court approval after a hearing. California Rule of Court (“CRC”) 3.769(a). The Court ultimately must determine that the settlement is fair, adequate and reasonable. CRC 3.769(g); *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785; *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 581. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; see also Fed. Rule of Civ. Proc., Rule 23(e). The trial court has broad powers and discretion to do so. *Clark, supra*, 175 Cal.App.4th 798; *Kullar v Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116; 127-128; *Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.

Court approval of a class action settlement is a two-step process. CRC 3.769; *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336. As explained in *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, at 336-337,

The trial court has broad discretion to determine whether a class action settlement is fair. It should consider 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. [Citations.]

But the “list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. [Citation.]” [Citation.] In sum, the trial court must determine that the settlement was not the product of fraud, overreaching or collusion, and that the settlement is fair, reasonable and adequate to all concerned.

The *Reed* court added, at 337, that the party seeking settlement approval has the burden of showing the settlement to be “fair and reasonable” but that 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.” See also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.

A trial court must nonetheless consider sufficient information to determine the value of the claims and strength of the case. *Kullar v Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, at 120, 130, 132; *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, at 798-801; *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399; and *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576. Accordingly, a trial court will abuse its discretion in finding a settlement to be fair and reasonable if it fails to “receive and consider sufficient information on a core legal issue, affecting the strength of the case for plaintiffs on the merits, to make the requisite independent assessment of the reasonableness of the terms of the settlement.” *Kullar v Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120, 130, 132; *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 798-801. The court must be able to form “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Kullar, supra*, 168 Cal.App.4th, 120, 132.

A party to the settlement agreement may bring a noticed motion for preliminary approval. CRC 3.769(c). If a party does so, it must file the settlement agreement and send notice to class members. *Ibid.* Rule 3.769(c) states, in full, “[a]ny party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.” Preliminary approval is appropriate as long as the proposed settlement falls within the range of reasonableness and may be appropriate for possible final approval. As the court stated in *Officers for Justice v. Civil Serv. Comm’n* (9th Cir.1982) 688 F.2d 615, at 628, “[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.” See also *In re Mego Financial Corp. Secs. Litig.* (9th Cir.2000) 213 F.3d 454, at 459. The court in *Mego Financial Corp.* found that a class settlement recovering about 16% of the total potential recovery was reasonable.

An action under the Labor Code PAGA, at Labor Code (“Lab.Code”) section 2698, et seq., is a representative action where plaintiff stands in the role of the Labor Commissioner to recover penalties for certain violations of California labor law. *Arias v. Sup.Ct.* (2009) 46 Cal.4th 969, 985-986; Lab.Code section 2699.

An employee may have a private right of action to sue directly and also a right to bring a PAGA action based on the same conduct. Lab.Code section 2699(g)(1); *Caliber Bodyworks, Inc. v. Sup.Ct.* (2005) 134 Cal.App.4th 365, 375.

PAGA does not indicate what factors a court must consider for approving a settlement but federal decisions addressing PAGA settlements have found it appropriate, but not necessarily required, to consider traditional class-action standards and those set forth in *Hanlon v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, or “any other coherent analysis.” *O’Connor v. Uber Technologies* (N.D. Cal.2016) 201 F.Supp.3d 1110, 1134. As set forth in *Hanlon*, courts have

considered factors such as the strength of the claim, risk, expense, complexity, amount and terms of settlement, discovery, and experience of counsel.

Incentive or enhancement awards to named plaintiffs as class representatives are allowable and even “fairly typical” in class actions. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1394; *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807; see also *Rodriguez v. West Publishing Corp.* (9th Cir.2009) 563 F.3d 948, 958. They are discretionary and they are intended to compensate the named representatives for work and effort as well as “financial or reputational risk” in being willing to bring the action. *In re Cellphone Fee Termination Cases, supra*; *Clark, supra*.

Under Lab. Code sections 226(e), 1194(a), and 2699(g), prevailing employees are entitled to an award of fees and costs.

The Supreme Court in *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480 noted that in settlement of class-action cases such as this, there are two different methods for determining a reasonable and appropriate award of attorney’s fees, both methods being acceptable and within the discretion of the court. One is the traditional lodestar approach and the other is the percentage method.

In figuring fees in such cases, courts generally use the “lodestar” approach, basing the decision on the number of hours reasonably expended multiplied by the reasonable hourly rate in the community for similar work. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136 (anti-SLAPP context); *Serrano v. Priest* (1977) 20 Cal.3d 25, 28 (*Serrano III*) (private attorney general doctrine, now CCP section 1021.5); *Robertson v. Fleetwood Travel Trailers of Cal., Inc.* (2006) 144 Cal.App.4th 785, 819 (under Song-Beverly Consumer Warranty Act). The court should consider a wide variety of factors, including the nature of the litigation, the difficulty, the amount involved, the skill, the success, the attorneys’ experience, the importance of the litigation, and the time consumed. *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 638-639; *Stokus v. Marsh* (1990) 217 Cal.App.3d 647, 656-657. Finally, the court may apply a fee enhancement modifier to take into account a risk in contingency situations of not being reimbursed due to the nature of the work. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1140. Courts under this approach multiply the time spent by the reasonable fee, rather than focusing on the fees “actually” charged. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094-1096.

The court must determine “whether under all the circumstances of the case the amount of actual time expended and the monetary charge being made for the time expended are reasonable.” *Karapetian v. Kia Motors Am., Inc.* (C.D. Cal. 2013) 970 F.Supp.2d 1032, 1036, quoting, *Nightingale v. Hyundai Motor Am.* (1994) 31 Cal.App.4th 99, 104; see also, *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, at 998. The prevailing party “bears the burden of demonstrating all of the following: ‘the [attorneys’] fees incurred were allowable, were reasonably necessary to the conduct of the litigation, and were reasonable in amount.’” *Karapetian*, citing, *Nightingale, supra*, 31 Cal.App. 4th at 104, quoting, *Levy, supra*, 4 Cal.App.4th at 816.

The court retains discretion to reduce the fee award where fees were not reasonably incurred. *Ibid*, citing, *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (“Padding’ in the form of inefficient or duplicative efforts is not subject to compensation.”); *Gorman v. Tassajara Dev. Corp.* (2009) 178 Cal.App.4th 44, 90-92 (“A reduced [attorneys’ fees] award might be fully justified by a general observation that an attorney...submitted a padded bill or that the opposing party has stated valid objections”). “If the time expended or the monetary charge being made for the time expended is not reasonable under all the circumstances, then the court must take this into account and award attorney fees in a lesser amount.” *Ibid*, citing, *Nightingale, supra*, 31 Cal.App.4th at 104; see also, *Levy v. Toyota Motor Sales, U.S.A., Inc.* (1992) 4 Cal.App.4th 807, 815-816.

The reasonable hourly rate is generally “that prevailing in the community for similar work.” *City of Santa Rosa v. Patel* (2010) 191 Cal.App.4th 65, 69, quoting *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; see also *Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223, 1241; see also, *Ketchum, supra*, 24 Cal.4th at 1132 (hourly rate used in lodestar calculation is “the basic fee for comparable legal services in the community;”); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 640, fn. 31 (lodestar calculation uses the “comparable salaries earned by private attorneys with similar experience and expertise in equivalent litigation,” or “hourly amount to which attorneys of like skill in the area would typically be entitled.”); *Children’s Hosp. & Med. Ctr. v. Bontá* (2002) 97 Cal.App.4th 740, 783 (the court is often called upon to determine reasonable hourly rates of attorneys who appear in front of it and in order to determine “reasonable market value” and must determine whether the requested rates are “within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work” in the community.).

In *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, employees brought a class action for wage-and-hour violations against their employer and eventually entered into a settlement with defendant. The trial court overruled a class member’s objections and approved the settlement, which included provision for the class attorneys to recover 1/3 of the settlement as attorneys’ fees. The court of appeal affirmed and ultimately the Supreme Court affirmed, holding that it was appropriate to employ a percentage method as the primary calculation for an award of attorneys’ fees. The court noted that awards of attorneys’ fees are reviewed for abuse of discretion on the basis that the trial judge is the best judge of the value of the services so the trial court’s decision is presumed to be reasonable and will not be overturned unless “clearly wrong.” *Laffitte*, 488. The court noted, at 490,

Two primary methods of determining a reasonable attorney fee in class action litigation have emerged and been elaborated in recent decades. The percentage method calculates the fee as a percentage share of a recovered common fund or the monetary value of plaintiffs’ recovery. The lodestar method, or more accurately the lodestar-multiplier method, calculates the fee “by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. 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.” [Citation.]

The two approaches to determining a fee contrast in their primary foci: “The lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the results achieved.” [Citation.]

The court then noted the various argument supporting and criticizing the two methods before concluding, at 503,

that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and

the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [Citations]—convince us the percentage method is a valuable tool that should not be denied our trial courts.

In the end, it found that the settlement term award up to 1/3 of the award as attorneys' fees was not an abuse of discretion.

A payment of attorneys' fees as high as roughly 1/3 of the total recovery is generally in line with class action fee awards based on the percentage of the benefit. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n11. As the court in *Chavez* stated, where an attorney's initial award was 30.3 percent of the benefit the final fee award was 27.9 percent of the benefit, this was 'not out of line with class action fee awards calculated using the percentage-of-the-benefit method: "Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." [Citation.]'

Awards even higher than 1/3 or 33% have sometimes been found appropriate and approved. See, e.g., *Roos v. Honeywell Int'l, Inc.* (2015) 241 Cal.App.4th 1472. In *Roos*, the court found a fee award in a class-action settlement of 37.5% not to be an abuse of discretion, noting that the settlement had allowed an award of up to 37.5% subject to a subsequent final determination of the amount, and that the award at the limit was ultimately approved based on the showing that was below the amount that could have been awarded using the lodestar method.

Service

Plaintiffs filed proof of service showing electronic service of the motion and online submission of the notice and moving papers to the LWDA.

Discussion

The court, as noted, has already granted preliminary approval, finding the Settlement to be fair and reasonable, and finding it and proposed class notice to comply with the applicable standards. The court's findings on all of the issues and factors for determining the Settlement to be fair and reasonable are set forth in this court's order granting preliminary approval.

At this stage, therefore, the issues remaining for the court to address are any final outstanding fairness issues, compliance with the notice requirements and the other terms of the court order granting preliminary approval, and consideration of the number of class members who have objected, opted out, or disputed the amounts.

Plaintiffs provide declarations of both named Plaintiffs ("Giovacchini" and "Crisafulli"), attorney Alexandra Rose ("Rose") and Case Manager for the settlement administrator, Ilym Group, Inc. ("Ilym"), Amanda Howard ("Howard"). These detail the notice process and demonstrate that this has been completed according to the court's order. In her declaration (the "Rose Dec."), Rose once again details the history and terms of the Settlement, shows that the attorney's fees of \$122,500 amount to 35% of the GSA as approved; shows that actual fees based on the hours worked would exceed the fee award; and shows that costs are at the approved limit of \$25,000. Rose Dec., ¶¶10-34, 36-37. At ¶35, she explains that the administration costs to Ilym amount to only \$7,250, below the \$9,000 which the court approved in the order for preliminary approval.

In her declaration (the "Howard Dec."), Howard details the assembly of the class list, distribution of the approved class notice, responses from the class members, and specific plan for distributing the settlement funds following approval. She states, among other things, that after Ilym received the class list of 157 members, it updated the mailing addresses of the members using the National Change of Address ("NCOA") database; Ilym received 30 notices returned from the USPS as undeliverable and performed an advanced search for those, obtaining an updated address for 27. It successfully mailed a new notice to the updated addresses. It was unable to find a new address

for the remaining three, leaving only those three, out of the Notices for 157 members, being undeliverable. Howard also explains that no member has submitted an objection, request for exclusion, or a dispute of the computation for hours and settlement allocation. She notes that the deadline for submitting any objection, exclusion request, or dispute had expired by the date of the declaration. Howard also explains that the Net Settlement Amount is about \$155,250, after subtracting the attorneys' fees, costs, administration expenses, and the enhancement payments for the named Plaintiffs. This, she explains, results in an average payment to members of about \$988.85 with the highest being about \$2,770.64 and the lowest about \$11.74. She also details the individual PAGA payments to PAGA employees, with the average being about \$119.86, the highest about \$182.86, and the lowest about \$4.57.

The court finds that settlement notice has been completed according to the court's order and no member has objected to the settlement, disputed the calculations, or sought to be excluded. There are no other outstanding issues, based on this court's prior findings resolving all other issues for fairness and compliance with applicable authority.

The court GRANTS the motion. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

6. 24CV06214, Midland Credit Management Inc. v. Alton

This matter is on calendar for the motion of Defendant Elisha Alton ("Alton") to vacate the entry of default entered on January 28, 2025, and the default judgment entered on February 4, 2025. This motion was initially heard on March 4, 2026. At that time, this court continued the hearing to allow Alton to provide proof of service demonstrating service of *notice of the hearing*.

On July 10, 2026, Alton filed a supplemental declaration and proof of service that supplemental declaration was served, prior to it being filed, on July 9.

Proof of service for *notice of the hearing* remains defective. As noted in this court's prior ruling, "Defendant filed proof of service for the moving papers but this was attached to the moving papers and shows service prior to filing and obtain a hearing date. Accordingly, there is no proof of service for anything showing notice of the hearing."

This court will continue the hearing on this matter one final time to allow Alton to file proof of service of the *new hearing date on this motion*. **The hearing is CONTINUED to August 26, 2026, at 3:00 p.m., in Department 16. If proof of service of the August 26, 2026, hearing date is not filed for that date, the motion will be denied.**

This court's minute order shall constitute the order of the court.

7. 25CV02737, Looney v. C Casa Napa, LLC

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff") moves for an order appointing Landon McPherson as receiver to take possession of and, if necessary, sell the liquor license of defendant C Casa Napa ("Judgment Debtor") in order to carry out the judgment entered in this case in the amount of \$15,397.81.

Specific statutory procedures are established for enforcement of money judgments. This includes the appointment of a receiver after judgment to carry the judgment into effect. (CCP section 564(b)(3).) The judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment. (CCP § 708.630(a).)

A trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership. (*City & Cty. of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745.) In making this decision, the court must depend upon competent and admissible evidence submitted by the parties, and not conclusions and hearsay. (*McCaslin v. Kenney* (1950) 100 Cal.App.2d 87, 94.)

“California rigidly adheres to the principle that the power to appoint a receiver is a delicate one which is to be exercised sparingly and with caution.” (*Morand v. Superior Ct.* (1974) 38 Cal.App.3d 347, 351.) “It is said by the state's courts that the appointment of a receiver is ‘an extraordinary and harsh,’ and ‘delicate,’ and ‘drastic,’ remedy to be used ‘cautiously and only where less onerous remedies would be inadequate or unavailable...’” (*Ibid.*)

Mere difficulty in trying to collect a debt is not sufficient basis for the court to appoint a receiver. (*Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.* (2021) 60 Cal.App.5th 622, 628-629.) The *Medipro* Court explained, “Medipro's evidentiary showing demonstrated that it had, at most, encountered some difficulty in its initial efforts to collect on its money judgment. If this was sufficient to constitute the ‘necessity’ required to justify the ‘extraordinary’ remedy of the appointment of a receiver to take over a judgment debtor's business, it is difficult to see how the appointment of receivers would not become a routine part of the collection of judgments—a result at odds with the solid wall of precedent holding to the contrary.”

On September 19, 2025, judgment was entered in this action for the above stated amount. According to Plaintiff's declaration, defendants Ryan Post, Chris O'Malley, and Catherine Bergen are the personal guarantors of Judgment Debtor. (Looney decl., ¶3.) Plaintiff states he has attempted to collect on the judgment by attempting to locate a bank or deposit account; mailing a letter to the personal guarantors requesting payment; making phone calls to “the responsible parties” on various dates; serving post-judgment interrogatories and requests for production of documents, and mailing a letter to the personal guarantors requesting responses to the post-judgment discovery. (Looney decl., ¶¶6-10, 16.) Based upon a web search, Judgment Debtor's business is closed. (*Id.*, ¶7.)

According to Plaintiff, the sheriff's office will not sell liquor inventory; the installation of a sheriff's keeper is unavailable or ineffective; the size of the judgment makes it impractical to levy upon equipment, fixtures, or inventory; plus, the value of equipment and fixtures is depressed. Thus, Plaintiff concludes there is no other option but to appoint a receiver to seize and sell the liquor license to satisfy the judgment.

Plaintiff has not made a sufficient factual showing that appointing a receiver to seize and sell the liquor license is necessary. Plaintiff has failed to show the inadequacy of alternate remedies. Rather, as in *Medipro, supra*, Plaintiff has only shown that he has encountered some difficulties in his initial efforts to collect the judgment. While Plaintiff states in his declaration that he investigated Defendant's finances, there is no explanation regarding the depth of this investigation. Plaintiff's representations regarding the inadequacy of alternative remedies are not supported by foundation. Plaintiff has not provided evidence that the phone numbers he called were valid numbers to reach any of the personal guarantors. Moreover, the number of motions filed by Plaintiff to appoint a receiver in various actions itself shows that this method of collection has become routine rather than being reserved for cases in which it is truly necessary.

Mere difficulties in collecting the judgment are insufficient grounds for appointing a receiver. Plaintiff has failed to meet his burden of proving that a receiver is necessary in this matter. In addition, proof of service only shows that defendant C Casa Napa was served with the motion.

No proof of service is provided for defendant personal guarantors. **The motion is DENIED.** Due to the lack of opposition, the court's minutes shall constitute the order of the court.

8. 25CV08672, Hemphill v. Levine

This matter is on calendar for the petition of Robert Hemphill ("Petitioner" or "Hemphill") to confirm an arbitration award dated October 8, 2025, and later amended on November 25, 2025 ("the Award"). It is also on calendar for the cross-petition of Respondents Brandon Levine ("Levine") and Lierre, Inc. ("Respondents").

The dispute involved a commercial landlord tenant lease, with Hemphill as the landlord, and Respondents as the tenant. As reflected in the Award, Petitioner prevailed in the arbitration proceedings before arbitrator Robert Murray ("Arbitrator").

In opposition, Respondents request this court review the Award for legal errors as the underlying contract allowing for arbitration contained a provision that the arbitrator did not have the power to commit errors of law or legal reasoning and that any such errors could be corrected by a petition to correct or vacate the award under the Code of Civil Procedure sections 1286.2 or 1286.6. (Attachment 4(b) to Petition, Commercial Lease, section 12.28.3, pp. 27-28.)

1. Timeliness

The above Codes of Civil Procedure are part of the statutory scheme for confirming, vacating, or correcting an arbitration award. This statutory scheme contains time limits for filing a petition to vacate or correct an award: "A petition to vacate an award or to correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner." (CCP section 1288.)

The Award is dated October 8, 2025. Allowing for 100 days to file a petition results in finding that any petition to vacate or correct the award must have been filed by January 16, 2026. Respondents' Opposition to Petition to Confirm Arbitration Award and Counter Petition to Vacate Arbitration was filed on December 18, 2025, within the statutory timeframe and is therefore timely.

2. Merits of the Award

The Award imposed damages of \$575,000 to rebuild the offices and bathrooms; \$200,112 to restore the mezzanine, and \$1,400 to dispose of the mezzanine debris, for a total gross recovery of \$775,512. (Attachment 8(c) to Petition.) Levine was granted a credit of \$15,000 for the security deposit retained by Hemphill. (*Ibid.*) Therefore, the net award to Petition was determined to be \$761,512. (*Ibid.*)

The parties agree that this court may review the Award for legal error.

a. Lease Expiration, Surrender, Acceptance, and Waiver

i. Acceptance of Premises without Reservation

Respondents argue the Arbitrator failed to apply mandatory law governing lease expiration, surrender, acceptance, and waiver. They argue Hemphill's conduct accepting the subject premises after expiration of the parties' Lease without reservation operated as a waiver of post-termination claims based upon restoration or continued performance.

1. The Lease

The Lease granted the Tenant the right, during the Lease term, to remove two specific categories of improvements: (1) the mezzanine and (2) the existing interior office structures, which included bathrooms constructed within those offices.

Section 4.04(a) permitted removal of the mezzanine and required that, "At the end of the Lease, the tenant shall restore the mezzanine back to its original location."

Section 4.04(b) permitted removal of the offices and required restoration of those offices “to its original condition” at the end of the Lease, with an option to restore them to an alternative location with the landlord’s prior written approval.

2. Breach of Lease

The first issue addressed in the Award is whether Levine breached the Lease. The Arbitrator found: “In late 2018, with proper permit, Levine removed the offices, bathrooms and mezzanine. (T:108 L.14-17.) He did not restore them upon termination of the Lease or vacation of the premises and has not performed any restorations to date. Those facts are at the core of this dispute.” (Award, p. 2.)

The Arbitrator stated it was Respondents’ position that Hemphill, with full knowledge, waived his right to performance; i.e., his restoration rights under the Lease, based on his conduct during the final months of the Lease term and following termination of the Lease. Respondents argued that during those time periods Hemphill relisted the premises for lease “as is”; rented to another tenant; submitted an insurance claim for the loss of the offices; accepted reconstruction plans created by Levine; and, finally, waited more than two years before serving Levine with the Arbitration Demand and claiming damages. (Award, p. 3.)

In reviewing the voluminous record presented to him, the Arbitrator determined respondent Levine breached the Lease based upon the provision therein that Levine was to restore the offices, bathrooms, and mezzanine to “its original condition upon the end of the lease.” (Award, p. 4.) Levine was aware of that and “clearly expressed his intent not to comply.” (*Id.* p.5.)

3. Defense to Enforcement

The Arbitrator next considered whether Levine had a viable defense to breach of the Lease. The Arbitrator considered a statute of limitations defense and stated that Levine raised the defenses of waiver and estoppel. (Award, p. 5.) The Arbitrator determined that Levine failed to meet his burden on the issues.

The Arbitrator found: “Mr. Levine’s denial that Mr. Hemphill ever asked him to restore the mezzanine is not accurate. (T-1 1 12, 1113.)” (Award, p. 4.) “Hemphill repeatedly reminded Levine of his obligations under the Lease to restore or purchase the mezzanine. (For example, see Exh.46.)” (*Ibid.*) These reminders occurred prior to Levine vacating the premises. The Arbitrator noted: “within 19 minutes of receiving the September 9, 2024, email from Levine stating, ‘I do not plan to undertake any construction’, Hemphill responded, ‘Thanks for the update but you have torn out my offices. You are responsible for this. You have also told me that you would rebuild. I cannot rent the building out without the offices.’ (Exh.32.) (See the 12: 18 p.m. email from Levine and Hemphill’s response at 12:37 p.m.).” (Award, pp. 5-6.)

The Arbitrator also found that Hemphill did not make any demands to Levine after the latter vacated the premises. The Arbitrator states: “The fact that neither party contacted nor communicated with the other after September 30, 2022, to discuss restoration or mitigation is troublesome and curious to the arbitrator.” (Award, p. 5.) Levine vacated the premises on September 30, 2022. (*Ibid.*) “[I]t is understandable Levine could have felt ‘blindsided’ when he eventually received the demand two years after termination.” (*Ibid.*) The Arbitrator decided that, despite the two-year silence, Hemphill retained his right to pursue Levine for breach of contract; and, that Levine still had corresponding duties to fulfill his legal obligations under the Lease. (*Ibid.*)

“There are no writings in evidence- texts, emails or otherwise - indicating Mr. Hemphill would waive his rights. Levine argues his email at 2:13 p.m. on September 9, 2022, noting in part, ‘If I can be released of any other liabilities, I can sign over the engineered set of plans for the project to use if that will help bring even more value to your new tenants.’ (Exh. 1 19 -0000193.) There is no evidence that Hemphill ever responded to that email. The contention that Hemphill did not ‘disavow’ the proposal is neither acquiescence to releasing Levine of his liabilities nor

supportive of waiver. Simply put, there was no meeting of the minds between these parties that Hemphill agreed to release Levine from any liabilities under the Lease, in exchange for the plans or otherwise. Hence, defense number 19, Release of Obligation, fails. (Exh.9, page 3.) Moreover, the plans had already been provided to Hemphill on August 5, 2022, without any conditions placed on their use by Hemphill. (Exh.41.) On August 12, 2022, a set of final approved plans were sent to Hemphill via email, again without any conditions or reference to a release or waiver of Levine's obligations under the Lease. (Exh.38-00768.)" (Award, p. 6.)

With respect to the issue of waiver, the Arbitrator wrote: "The same facts and lack of evidence convincing this arbitrator that waiver does not apply, serve to inform on estoppel and laches. Levine chose not to restore; he chose not to even address those obligations, other than, according to Hemphill, to state during the walk through, 'I know I owe you for this', which Levine adamantly denied. (T-1 8 1, 1 164) To the extent Levine argues he has been prejudiced by the passage of time and an increase in the cost to restore, he chose to ignore his responsibilities and had no communication with Hemphill after September 30, 2022. (T-1 165:3.). He chose not to purchase the mezzanine for \$60,000. While a tenant, he obviously knew the mezzanine materials were sitting in the parking lot, rusting. (T-1 1 14.) The record is void of any evidence to support a finding Levine was legally prejudiced by Hemphill waiting until October 2024 to pursue the claim." (Award, p. 7.)

The Arbitrator found that the arguments of surrender and abandonment were not applicable to the subject matter. (*Ibid.*) "Once Levine chose not to extend the Lease and notified Hemphill in May 2022, and the Lease terminated September 30, 2022, his tenancy ended. There was no surrender, abandonment or change in the positions of Hemphill and Levine except their commercial landlord/tenant relationship ended. Levine no longer had any rights to the property or how it would or should be managed by Hemphill. The rights and duties of the parties set forth in the subject Lease and applicable contract law governed their relationship from that point forward. Hemphill rightly took possession of the premises and dealt with it as he saw fit, which included finding another tenant, seeking compensation from the insurance carrier, and ultimately obtaining refinancing to hire counsel. At the same time, Levine's corresponding duties to restore were not extinguished when the Lease ended. He further made no attempt to minimize his continuing exposure under the Lease." (Award, p. 7.)

In Respondents' opposition and cross-petition, Levine again cites cases with different scenarios—where the tenant left prior to the end of the lease terms—and a different type of damages—the right to collect rent.

In *Dorcich v. Time Oil Co.* (1951) 103 Cal.App.2d 677, the plaintiffs sued to recover the balance of rentals due under a lease of a gasoline service station. The appellate court affirmed the trial court's determination. After abandonment of the lease by defendant, when plaintiffs rented premises to a sub-lessee for the remainder of defendant's lease term and accepted rent from the sub-lessee for four months without notifying defendant, and did not notify defendant until lease was executed, such acts were inconsistent with defendant's absolute dominion over leased premises and resulted in surrender by operation of law.

In *Rehkopf v. Wirz* (1916) 31 Cal.App. 695, the lease was for three years. Defendants paid rent in advance for one year and vacated the premises a few days prior to the end of the first year, informing the lessor of their intent to abandon the premises. The lessor accepted the premises back by taking possession and not informing the lessees of any planned course of action but, instead, finding a new lessee. To avoid a surrender, the landlord must notify the tenant that possession is retaken on behalf of the tenant and that the landlord intends to sublet to another on behalf of the tenant in order to mitigate damages. (*Id.*, at p. 696; *Dorchich, supra*, at p. 683-684.)

This court finds no fault with the Arbitrator's reasoning. In this case, the Lease terminated due to the end of its term. Hemphill recovered dominion over the premises due to the end of the contract period. Thus, the theories of surrender and abandonment do not apply.

ii. Civil Code section 1951.2

Respondents argue Civil Code section 1951.2 provides a limited statutory exception to the common-law surrender doctrine, permitting recovery of certain damages following termination for breach if—and only if—the landlord terminates the lease for breach and satisfies the statute's mitigation and damages requirements. The statute does not apply automatically, and it does not apply where a lease simply expires by its own terms and the landlord accepts surrender without reservation. Civil Code section 1951.2 is inapplicable to this case.

iii. Doctrine of Impossibility and Prevention of Performance –
Mezzanine Damages

Respondents argue, even assuming that any restoration obligation survived surrender, California law independently discharges performance where the obligee's conduct renders performance impossible. Civil Code sections 1511 and 1512 codify this principle.

There is no mention of these doctrines in the Award and Respondents cite no evidence supporting finding that they raised this issue before the Arbitrator. Nor do they cite any evidence that Levine could not have complied with his contractual obligations within the time frame they were contemplated for under the Lease. Rather, the only evidence is that Levine informed Hemphill he would not do any construction on the premises.

b. Arbitrator's additions to Lease

Respondents argue the Arbitrator rewrote the Lease by imposing restoration and reconstruction obligations that do not exist. The gist of their argument is that despite Levine not complying with his obligations under the contract, Hemphill should be burdened with the extra cost of not only the delay in putting the building back to its original condition, but the added burdens imposed by the delay due to code compliance requirements. Respondents' authority does not support this position.

c. Speculative Damages Methodology; Material Evidence

Respondents argue the Arbitrator applied an unlawful and speculative damages methodology because he rejected all estimates in the record and selected a damages figure untethered to any evidence or methodology rejecting expert testimony by Cantu, Gemperline, and Eschoo without a rationale for doing so. Respondents argue that by disregarding all the rebuild estimates and substituting an unsupported figure, the Arbitrator effectively refused to consider material evidence central to the measure of damages, substantially prejudicing Respondents' rights.

Review of the Award shows the contrary. The Award dedicates six pages to Hemphill's damages. It discusses expert testimony and the cost to make Hemphill whole.

The Arbitrator did not wholeheartedly side with Hemphill. Rather, he correctly determined that Hemphill was not entitled to an upgrade of the offices, bathrooms, and mezzanine beyond what had been in place for 16 and 14 years, respectively; he was not entitled to loss rent based upon the lack of offices and bathrooms on the premises; and damages were offset by Levine's security deposit. This court finds the Arbitrator thoughtfully considered the testimony presented to come to a fair and reasonable damage calculation based upon correct legal standards.

d. Attorney Fees

Respondents argue that the November 25, 2025, Amended Final Award awarding attorney fees and costs is entirely derivative of the invalid merits award. Independently, they argue that the arbitrator failed to apply the California Evidence Code and the lodestar methodology required by California law. They argue that because the merits award must be vacated, the fee award necessarily falls with it.

As this court has upheld the Arbitrator's findings, Respondents' arguments regarding attorney fees fail. Moreover, no authority is provided that this court may override the Arbitrator's discretion in determining the reasonable amount of attorney fees to award the prevailing party.

3. Conclusion and Order

Based upon the foregoing, **the Petition of Hemphill to confirm the arbitration Award is GRANTED. Respondents' counter-petition to vacate the Award is DENIED.**

Petitioner'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.

9. **25CV08803, Capri Mobile Villa LLC v. City of Petaluma**

Defendant City of Petaluma ("City") demurs to the complaint filed by Plaintiff Capri Mobile Villa, LLC, ("Plaintiff") on the grounds the cause of action for declaratory relief fails to allege facts sufficient to constitute a cause of action.

Specifically, the City argues Plaintiff's claims are not ripe because the City has charged only interim, nonfinal amounts to prepare an Impact Report, which Plaintiff has not yet paid, and the final amounts of which remain undetermined; Plaintiff cannot state a takings claim because the challenged fees are user fees imposed to recover the cost of government services and are non-compensable under the Fifth Amendment; Even if the fees were monetary exactions, they are not unconstitutional conditions because they satisfy the essential nexus and rough proportionality requirements of *Nollan* and *Dolan*; Plaintiff's challenges to the fees are time-barred because Plaintiff failed to bring a reverse validation action within 120 days of their adoption; The fees are imposed for specific government services that are provided directly and solely to Plaintiff and do not exceed the reasonable costs to the City of providing those services; The charges are not "taxes" under article XIII C because they fall within the express fee exclusions; Article XIII A, section (3) applies to the State, not local governments; The fees do not deprive Plaintiff of opportunity to petition the government or to seek redress of grievances, which Plaintiff is actively doing through this lawsuit and otherwise; and, Plaintiff cannot state a claim under Section 1983 because there is no violation of a federally protected right.

1. Complaint

On December 19, 2025, Capri Mobile Villa, Inc. ("Capri" or "Plaintiff") filed a complaint for declaratory and injunctive relief. Capri owns a mobilehome park, Capri Mobile Villa, located at 717 N. McDowell Blvd., City of Petaluma, California ("Park"). Capri's complaint seeks declaratory relief alleging that the City of Petaluma's allegedly increasingly burdensome requirements on mobilehome parks has made Capri unable to continue to operate for profit. It therefore seeks to cease operations. However, in order to do so, the City informed Capri that its application required the preparation of an Impact Report, at an estimated total cost of \$239,050. That included \$75,000 for appraisals of the mobile homes along with related administrative costs. The City required Plaintiff to deposit that amount before it would start on an Impact Report. Capri alleges it is unable to afford this payment and asserts a cause of action for declaratory relief under Code of Civil Procedure section 1060 and 42 U.S.C. section 1983. Plaintiff alleges the Impact Report charges (1) are an unconstitutional exaction and taking under the Fifth Amendment; (2) burden its First Amendment right to petition; (3) are unlawful "taxes" under articles XIII A and XIII C of the California Constitution; and (4) are "unreasonable" under section 65863.7, subdivision (g). Plaintiff seeks a declaration that the charges are unlawful and seeks an injunction preventing the City from collecting the \$239,050 as a precondition of processing Plaintiff's application to cease operations.

2. City's Arguments

As a whole, the City's arguments do not establish a failure by Capri to allege facts sufficient to constitute a cause of action under any theory. The demurrer to a complaint must be overruled if the complaint states any valid claim entitling Plaintiff to relief. (*Quelimane Co., Inc. v. Stewart Title Guaranty Co.* (1998) 19 Cal. 4th 26, 38-39.)

With respect to the City's argument that the controversy is unripe, it has not shown that Capri's alleged inability to afford payment of the required fee causes Capri's claims to be unripe because the exact amount of the fee is yet to be determined. The complaint alleges the City's November 10, 2025 "decision" conditioned the processing of Capri's closure application on the payment of \$239,050 and that Capri must make this "minimum" payment. Capri alleges it cannot pay the charge such that its application to close will not be processed, and it will be forced to continue operating the Park in the red and against its will. The controversy became sufficiently concrete at the time of the City's imposition of the application processing fee, the amount of which is not stated in the government code. The City has not shown the claims are unripe.

With respect to the takings argument, the City argues a regulatory taking occurs only if regulation of property is "so onerous that its effect is tantamount to a direct appropriation or ouster." The City argues that the obligation to pay money in the tax and government services user fee context is not generally compensable under the Fifth Amendment because taxes and user fees are collected in exchange for government benefits to the payor. However, this is precisely the allegation. Plaintiff alleges the regulations are so onerous that their effect is an appropriation and that the fee benefits third parties—not Capri. Capri alleges the City's \$239,050 cost is not a "user fee" because lacks this distinguishing feature of a benefit to the payor.

The City argues Government Code section 65863.7 and Municipal Code section 8.34.120 authorize local government's reasonable administrative and processing costs to implement the statute and does not require cities to fund them with public money. While the City cites numerous cases on the issue, none establishes as a matter of law that the City's \$239,050 fee to process an application is reasonable. The issues the City seeks to resolve, whether the costs are reasonable and necessary to cover the benefits supplied to Capri, are fact intensive and not appropriate for resolution on demurrer.

The City argues that even if the challenged deposit is an exaction subject to the *Nollan/Dolan* analysis, the exaction has an "essential nexus" to the government's land-use interest and have "rough proportionality" to the development's impact on that interest. Making such a determination is a factual issue not appropriate on a demurrer.

The City also argues that such fee is necessary to allow the City to obtain the information it needs to determine whether it will grant Capri's application to cease operations. Inherent in this argument is that the City can require Capri to continue operating the Park—even if it cannot afford to do so.

The City argues that requiring Plaintiff to pay for the City's consultant's services to process Plaintiff's application—including the Impact Report—avoids subsidizing any of the government services provided solely because of Plaintiff's choice to seek to close the Park. However, the allegations are that the tenants receive a large benefit from the fee. The City appears to concede this as it agrees the fee supports efforts to relocate and subsidize the tenants. In addition, the allegations are such that the Park cannot operate but at a loss due to the City's regulations such that it was the City who caused the Park to have to close.

Capri argues that the possibility that Park operations may cease—and that tenants may therefore need to relocate—is a background condition of that tenancy relationship, not an externalized public impact generated by wrongful or unexpected conduct. It argues that the City therefore cannot recast the ordinary consequences of a landowner's lawful exercise of contractual and constitutional rights as a compensable "harm" or "social costs" warranting a monetary exaction.

Capri argues its decision does not cause a *Nollan/Dolan*-cognizable harm and the “essential nexus” requirement is not met such that the \$239,050 lacks rough proportionality.

The City also argues Capri’s claim is time-barred. It argues Plaintiff was required to challenge the deposit and ultimate Impact Report fee in a reverse validation action by December 3, 2024, and its failure to do so bars this action. However, Capri challenges the \$239,050 processing cost, not the ordinance allowing the City to charge a reasonable fee. The ordinance’s resolution merely announced the City’s intent to recover costs and pointed to general, citywide internal hourly rates, delegating to staff the critical acts that gave rise to the burdens Capri challenges, such as which non-City-provided costs would be charged at all and which third-party consultants would be hired to provide them and on what terms or cost. In short, the resolution did not enact the fee; it simply purported to authorize the City to charge an unknown fee in the future, allegedly contrary to Government Code section 66016(a) and (b).

The City argues that the challenged fees are not unlawful taxes and do not violate Capri’s first amendment right to petition and thus fail to allege sufficient facts under this theory. Regardless of the ultimate legality of these issues, the Plaintiff need only allege a cause of action under *any* theory.

The City argues Plaintiff also fails to allege sufficient facts to establish that the challenged fee is unreasonable under section 65863.7(g). To be “reasonable,” the City’s fees cannot “exceed[] the estimated amount required to provide the service for which the fee or service charge is levied.” (Gov. Code, § 66016, subd. (a).) The determination of reasonableness is a factual dispute not appropriate for demurrer.

3. Conclusion and Order

The City fails to establish that Plaintiff’s complaint fails on each and every theory such that there are no facts alleged to support Capri’s single cause of action for declaratory relief. Accordingly, the **demurrer is OVERRULED**.

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.

10. SCV-270338, Salazar v. Moreno Consulting Group Inc.

Pursuant to Code of Civil Procedure section 2023.010, et seq., Plaintiff Olegario Santino Salazar (“Plaintiff”) moves for terminating sanctions against Defendant Moreno Consulting Group, Inc. (“MCG” or “Defendant”).

“The discovery statutes evince an incremental approach to discovery sanctions, starting with monetary sanctions and ending with the ultimate sanction of termination. ‘Discovery sanctions “should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery.”’ [Citation.] If a lesser sanction fails to curb misuse, a greater sanction is warranted: continuing misuses of the discovery process warrant incrementally harsher sanctions until the sanction is reached that will curb the abuse. ‘A decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction.’” (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 992.)

Due to MGC’s refusal to provide responses to Plaintiff’s discovery requests, on December 11, 2025, this Court ordered Defendant MCG to provide responses, without objections, to Plaintiff’s Form Interrogatories, Set Two, Special Interrogatories, Set Two, and Demands for Production of Documents, Set Two, and deemed Plaintiff’s Requests for Admission, Set Two, against Defendant

MCG admitted. (Chou-Chan decl., ¶5.) Plaintiff's counsel electronically served notice of the Court Order on January 5, 2026, and MCG's discovery responses and production of documents were due within twenty (20) days of service of the notice. (*Id.*, at ¶6.) Defendant's Court-ordered deadline to comply was January 27, 2026, and on February 10, 2026, Defendant MCG responded to Plaintiff's counsel's email that it could not comply with the Court Order. (*Id.*, ¶7.)

On May 23, 2023, Defendant's counsel withdrew as MCG could no longer afford to pay for legal counsel. (*Id.*, Ex. 1.) Michelle Moreno and Jose Moreno have been the contact for MCG after its counsel withdrew representation. (*Id.*, ¶8.) Michelle Moreno has informed Plaintiff's counsel that MCG cannot afford an attorney and therefore cannot participate in this lawsuit. (*Id.*, Ex. 1.)

Notice of this motion having been provided to MCG, Michelle Moreno, and Jose Moreno, and MCG's inability or unwillingness to participate in this lawsuit including in complying with its obligations to provide discovery having been shown, **the motion is GRANTED. Terminating sanctions are hereby imposed against Defendant Moreno Consulting Group, Inc. Defendant MCG's answer will be stricken and default entered against Defendant MCG.**

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

11. SCV-273938, Din v. Thuesen

This matter is on calendar for the motion of Kenneth E. Bacon, Mastagni Holstedt, A.P.C., to be relieved as counsel for Plaintiff Adnan Din ("Plaintiff").

Plaintiff has filed a limited opposition requesting that this court condition any order granting withdrawal on reasonable transition protections to avoid significant and foreseeable prejudice. Plaintiff does not oppose the actual withdrawal of Mr. Bacon; rather, he merely seeks to avoid prejudice from it. In response to Plaintiff's limited opposition, Mr. Bacon states that he has prepared a memorandum to Plaintiff addressing the issues Plaintiff presents in his limited opposition.

The jury trial in this matter is set for October 9, 2026. Defendants Victor Thuesen and the Law Offices of Victor C. Thuesen have filed a Notice of Motion for Summary Judgment or Adjudication. The hearing was set for November 18, 2026. Thus, it appears likely that Defendants will request that the Motion for Summary Judgment/Adjudication be advanced or the trial be continued. Advancing the motion would create difficulties for Plaintiff who would be left without counsel.

In addition, Mr. Bacon has asserted an attorney lien against Plaintiff. Plaintiff does not ask this court to adjudicate the lien in connection with this motion. Plaintiff requests that any order relieving counsel expressly preserve Plaintiff's right to contest the validity, enforceability, amount, scope, and priority of any asserted attorney lien or quantum meruit claim. Mr. Bacon is not opposed to this request.

Based upon the foregoing, **the motion to be relieved as counsel is GRANTED. This court hereby vacates the trial set for October 9, 2026, and sets a Case Management Conference for trial setting on August 11, 2026, at 3:00 p.m., in Department 16.**

The court will sign the proposed order.