TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, September 2, 2026, 3:00 p.m.
Courtroom 16 – Hon. Randy Rhodes 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

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. 24CV00168, Radelfinger v. Ivaldi

This matter is on calendar for the motion of Partition Referee, Amy Harrington ("Referee"), for Final Distribution of Proceeds of Sale, For Authority to Make Distribution, For Referee Fees and Costs, Request for Authority to Maintain a Closing Reserve, and Request to Be Discharged as Referee.

I. Complaint, Defendant's Default, Appointment of Referee, Sale of Property

On January 8, 2024, Plaintiff Catherine K. Radelfinger, as Trustee of the Catherine K. Radelfinger Revocable Trust, dated December 20, 2016 ("Plaintiff") filed her complaint for partition of property located at 9760 Willow Avenue, Cotati, California ("Subject Property"). On January 30, 2024, Defendant Tanya Ivaldi ("Defendant") was served with summons and complaint. On March 5, 2024, Plaintiff requested Defendant's default, which was entered as requested.

On April 7, 2025, an Interlocutory Judgment for Partition of Real Property and Appointment of Referee was entered. That order confirmed that the Subject Property was owned 50/50 by Plaintiff and Defendant. It appointed Referee for the partition.

Sale of the Subject Property was confirmed on December 3, 2025, for $1,518,000 to Lynette C. Rose, as Trustee of the Phillip H. Rose and Lynette C. Rose 2000 Revocable Trust dated 4/20/2000, and Ashlynn Rose, as joint tenants. The order was entered December 5, 2025. Referee fees were approved in the amount of $21,280 and costs in the amount of $2,335.65. Distribution of $100,000 was approved to each party.

The Subject Property now having been sold, the Referee has filed this motion for final distribution of the proceeds of sale, fees and costs, and for discharge.

II. Distribution and Allocation of Costs

The Referee lays out the costs and proposed 50/50 distribution of the proceeds of the sale. She recommends denying the request of Plaintiff for a 60/40 division of the proceeds due to alleged waste of the property by Defendant. The Referee determined that CCP sections 874.040 and 872.140 authorize the court to apportion costs and make compensatory adjustments according to principles of equity, but it does not support an arbitrary or punitive reallocation of ownership interests. The Referee determined that any claim of waste is more appropriately addressed through compensatory adjustments or allocation of specific costs tied to the "waste." Therefore, she recommends allocating specific costs to Defendant incurred to vacate Defendant from the Subject Property and preparing Defendant's unit for sale, including cleaning and junk removal. The Referee recommends $568,255.54 be distributed to Plaintiff and $459,863.49 to Defendant.

III. Referee Fees and Costs

Referee requests $14,867.50 in fees. She states she spent more than 31.30 hours in connection with the sale of the subject property and that her hourly rate is $475. She incurred $2,393.83 in costs.

IV. Opposition- Division of Proceeds

When it comes to the partition of real property, "The court may, in all cases, order allowance, accounting, contribution, or other compensatory adjustment among the parties according to the principles of equity." (CCP section 872.140.)

In opposition, Plaintiff objects to certain portions of the proposed distribution.

a. Condition of Property – Invoice 1212

In paragraph 12a of the Referee's report, she recommends that all costs associated with preparing Defendant's unit for sale be allocated to Defendant and 90 percent of the costs associated with preparing the barn. The referee allocated costs of $10,201.47 to Plaintiff and $13,414.18 to Defendant. The recommendations are based upon Invoice Numbers 1212 and 1213. These do not appear to be attached to either the motion or the opposition.

In her declaration, Plaintiff states various charges listed in Invoice Number 1212 were for conversations between her and the Referee that pertained to the issue of removing Defendant's personal property from the Subject Property, cleaning Defendant's portion of the Subject Property, and related to Defendant's Shellpoint mortgage. (Radelfinger decl., ¶2.)

As the subject invoice has not been provided, this court cannot assess whether the fees were actually allocated according to the Referee's intent to allocate costs attributable to Defendant to her.

b. Invoice 1335

Plaintiff objects to various charges appearing in Invoice 1335. Specifically, she argues that she is not responsible for the referee's correspondence regarding Defendant's storage charges, the Shellpoint Mortgage, and the Creams Towing charges. Plaintiff argues these were virtually all related to the removal of Defendant and her personal property from the Subject Property.

It is not clear from Plaintiff's opposition which entries she is objecting to and how much she thinks should be allocated solely to Defendant.

c. Concierge Capital Notable Loan

Plaintiff argues that no more than $500 with respect to the proposed allocation of the reimbursement of funds towards the Concierge Capital Notable Loan should be charged to her. The Referee took out the Concierge Capital Notable Loan to pay for property expenses to prepare for and sell the Subject Property. It is not clear to this court which invoices pertain to these expenses. However, a list of the expenses appears at subparagraph iii. under paragraph 12.a. The amounts paid for the loan origination fee, AllStarz Pumping and Engineering, well services, and building inspection all appear appropriately allocated to both parties. And Plaintiff does not dispute any of these charges. These expenses alone are thousands of dollars, indicating that more than $500 should be charged to Plaintiff.

With respect to the payment to Rodrigo Lopez to clean up the Subject Property, neither Plaintiff nor the Referee has explained what portion of the Subject Property Mr. Lopez cleaned up. Plaintiff argues she should not be charged any portion of the $2,750 listed as yard cleanup because she kept her gardener on payroll throughout the cleanup process to make the property more presentable for sale. She also states she and her daughter spent hours cleaning up Defendant's yard after the workers hired by the realtor, and paid for from the proceeds of the sale, left the property.

Plaintiff should be reimbursed for expenses paid to her gardener which lessened the need for Mr. Lopez's services. In addition, any amount of extra time required to clean up Defendant's portion of the Subject Property over and above what it took him to clean up Plaintiff's portion should be allocated to Defendant. However, Plaintiff's and her daughter's time spent cleaning the Subject Property must be viewed as voluntary.

d. Taxes

Plaintiff argues that after Defendant's parents died, Defendant continued to pay one-half of the tax bill until November 2023, when she stopped contributing to the account. Plaintiff states Defendant owes her $340.00 for the balance of the 2023 taxes; and, that Plaintiff paid all the property taxes for 2024 ($4,293.42) and for 2025 ($4,474.44), such that Defendant owes Plaintiff $4,723.93 for her share of the taxes.

Plaintiff states that she paid for all of the repairs of the well tank and well such that Defendant owes her half of those amounts, totaling $1,526.

Plaintiff argues she should be repaid $3,023.00 for the cost of the required title search as a recoverable cost of litigation.

It is not clear if the Referee took these requests for repayment into consideration.

V. Conclusion

Plaintiff's arguments are valid. However, based upon the information provided by her and the Referee, this court cannot determine if the amounts she seeks to have allocated to the Defendant are reasonable. Nor is there any evidence before this court regarding tax payments or whether the Referee had this information. Accordingly, this court directs the Plaintiff to meet and confer with the Referee to allow the Referee to recalculate the proposed distribution to take into account Plaintiff's objections. If the Referee determines Plaintiff should not be entitled to the requested amounts, she is directed to file an explanation with this court.

This matter will be CONTINUED to September 16, 2026, at 3:00 p.m., in Department 16. Any brief filed by the Referee must be filed and served by Wednesday, September 9, 2026, and any opposition thereto must be filed by September 11, 2026.

2. <u>25CV00572, Jai Mundi Incorporated v. Vape Craft, LLC</u>

Pursuant to Code of Civil Procedure section 473, Defendant Benjamin Osmanson ("Defendant") moves to set aside the default and default judgment entered against him on the grounds that the default judgment is void due to lack of service or, alternatively, Defendant's default and default judgment resulted from his mistake, inadvertence, surprise, and/or excusable neglect.

I. Legal Standards

This motion is brought pursuant to CCP section 473, but the memorandum also cites CCP section 473.5.

CCP section 473(b) allows the court to relieve a party from a judgment, dismissal, order, or other proceeding taken against the party through the party's mistake inadvertence, surprise, or excusable neglect.

CCP section 473(d) allows the court to set aside any void judgment or order.

CCP section 473.5 allows a party to move to set aside a default or default judgment when service of a summons has "not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against the party in the action."

II. Timeliness

In opposition, Plaintiff Jai Mundi Incorporated, dba Kai's Virgin Vapor ("Plaintiff") argues that the motion is untimely. A motion under CCP section 473(b) to set aside a judgment, dismissal, order, or other proceeding taken against the party through the party's mistake, inadvertence, surprise, or excusable neglect must be brought within six months.

There is no time limit to set aside a void judgment. (CCP section 473(d).)

A motion pursuant to CCP section 473.5 allows a motion for relief to be brought 180 days after service of the default or default judgment. (CCP section 473.5(a).)

Defendant's default was entered on May 13, 2025. The default judgment was entered against Defendant and VapeCraft, LLC on October 23, 2025. This motion was filed on April 9, 2026. Thus, the motion is timely under sections 473.5 and subsection (d) of section 473. However, it is untimely under subsection (b) of section 473. More than six months has passed since the entry of Defendant's default and setting aside the default judgment without setting aside the default would be an "idle act." (*Pulte Homes Corp. v. Williams Mechanical, Inc.* (2016) 2 Cal.App.5th 267, 273.)

The cases cited by Defendant are distinguishable because they were not decided based upon the six-month time limit to bring a motion under CCP section 473.

III. Service of Summons and Complaint

Defendant argues he was not properly served with summons and complaint.

Proof of service of summons filed on April 10, 2025, states that Defendant was served by substituted service on April 2, 2025, at 3:50 p.m., by leaving the documents with Julia Franetusahova, Defendant's mother-in-law, at 15400 Mokete Trail in Smithfield, Virginia, and thereafter mailing a copy of the documents to Defendant at that address. The process server's declaration of diligence indicates the process server attempted to serve Defendant at the Virginia address three times prior to leaving the documents with Ms. Franetusahova.

In his declaration, Defendant states that from August 2016 to June 2025, his primary residence was located in Carlsbad, California. (Osmanson decl., ¶16.) He states he purchased the residence in Virginia in December 2022 and began the process of moving his family to the Virginia property in 2023, but he retained use and ownership of his California office space and his Carlsbad residence so that he could continue to operate his California businesses. (*Ibid.*) He states he traveled back and forth between the Virginia and California residences from December 2022 to June 2025, but his personal primary residence remained in California until June 2025. (*Ibid.*)

Defendant does not dispute that he lives at the Virginia property some of the time. In fact, he describes the Virginia property as a "home." (Osmanson decl., ¶16.) He attempts to distinguish the California home as his "personal" primary residence. No authority supports this distinction. Nor does he provide supporting facts that he only lived at the Carlsbad property. Rather, he only states that he retained the use and ownership of the Carlsbad residence "so that [he] could continue to operate [his] California businesses." (*Ibid.*)

Nor does Defendant actually state he was not aware of this lawsuit. He states: "After being served with the default judgment and learning of this lawsuit, I retained legal counsel to represent me, oppose the Order to Show Cause re contempt, and move to set aside the default and default judgment." (*Id.,* ¶18.) His statement does not require finding he was not aware of the lawsuit prior to being served with the default judgment. It only requires finding that he hired counsel sometime after both learning of this lawsuit and being served with the default judgment.

In opposition, Plaintiff argues Defendant was properly served because a defendant can have more than one dwelling place or abode.

Process server, David Vincent Larsen, states that he attempted service on Defendant's home in Carlsbad three times and did not find anyone at home. (Larsen decl.)

Plaintiff's evidence supports finding Defendant purchased the Virginia property and that he made representations on various occasions that he moved to Virginia. The deed to 15400 Mokete Trail, Smithfield, Virginia, shows it was transferred to Defendant on October 27, 2022. (Jablon decl., Exhibit B.)

Defendant's CEO received a text from Defendant on January 30, 2023, wherein Defendant stated he had moved to Virginia. (Jones decl., ¶2, Exhibit A.)

An article dated August 19, 2024, from the Smithfield Times discusses a Virginia business owned by Defendant. The article states Defendant represented that he "is a transplant from California." (*Id.,* Exhibit C.)

Another article dated January 22, 2025, states that Defendant, the owner of another Smithfield, Virginia, business is an "isle of Wight County" resident. (*Id.,* Exhibit D.) Another article dated November 3, 2025, quotes Defendant discussing one of his Smithfield, Virginia, businesses stating: "We do a little bit of work each day and open for the evening," discussing how he and his wife intend to be positive members of the community in Smithfield, and that they represented to the paper that they relocated to Smithfield from California in 2022. (*Id.,* Exhibit E.)

Even if this court did not consider Plaintiff's evidence, Defendant himself does not dispute that the Virginia residence was one of his homes. Moreover, Ms. Franetusahova informed the process server that Defendant was not present—not that he did not live at the property.

Zirbes v. Stratton (1986) 187 Cal.App.3d 1407, cited by Defendant, is distinguishable because the defendant in that case was served at her mother's address, where she did not live.

IV. Objections in Reply

Defendant's objection, number 1 to the declaration of Shawnee Jones, is overruled.

Defendant's objections, numbers 1 and 2 to the declaration of David Vincent Larsen, are overruled. Mr. Larsen's phraseology cited in objection number 1, stating "after due and diligent effort" is not taken by this court as a legal determination but rather the process server's understanding of his own attempts to serve Defendant.

Defendant's objections, numbers 1 and 2 to the declaration of Andrew Jablon, are sustained.

Defendant's objections, numbers 3 and 4 to the declaration of Andrew Jablon, are overruled.

V. Conclusion

Defendant was properly served by substituted service at his home in Virginia. He provides no evidence that he was not actually aware of this lawsuit in time to defend against the action before his default or the default judgment was entered against him. Defendant's motion to set aside his default under CCP section 473(b) is untimely.

The motion is DENIED.

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

3. <u>25CV01525, Gutierrez v. Home Depot U.S.A., Inc.</u>

Pursuant to CCP section 473(b), Plaintiff Rosalba Gutierrez ("Plaintiff") moves to vacate the dismissal of Plaintiff's complaint and to reinstate this action.

I. Procedural Background

Plaintiff filed this action on February 28, 2025, based upon an alleged slip and fall that occurred at a Home Depot located in Rohnert Park.

The first Case Management Conference was held on August 5, 2025. Plaintiff's Case Management Statement was filed late on July 24, 2025. There were no appearances. The court continued the hearing to the Order to Show Cause Calendar on October 28, 2025, and issued an Order to Show Cause Re: Dismissal for Failure to Prosecute and Failure to Timely File a CMC Statement.

Defendant Home Depot U.S.A., Inc. was served and it filed its answer on September 22, 2025.

On October 28, 2025, as no request for an appearance was made at the OSC hearing, despite counsel for Plaintiff appearing, the action was dismissed.

This motion was filed on March 27, 2026.

II. Legal Standards

CCP section 473(b) provides, in relevant part: "Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to the attorney's mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against the attorney's client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against the attorney's client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties."

III. Argument

Plaintiff's counsel, Justin Renge, states that his failure to appear at the CMC hearing and his failure to inform the court and opposing counsel of his intent to appear at the OSC hearing was due to his mistake, inadvertence, surprise, or neglect. He states Plaintiff's failure to file a timely Case Management Statement was due to a clerical error on the part of his office. (Renge decl., ¶5.) He states he mistakenly believed that the CMC had been rescheduled, which resulted in his failure to appear for the August 5, 2025, CMC hearing. (*Id.,* ¶6.) He states that while the court's file shows notice of the October 28, 2025, OSC hearing was mailed and electronically served on his office, his office did not receive the notice, or it did not properly record the date of the hearing. (*Id.,* ¶¶8, 20-23.) Despite searching office cases and emails, he was unable to find notice of the August CMC hearing. (*Id.,* ¶¶20-23.) He states he became aware of the October 28, 2025, OSC hearing when he conducted an audit of his files and from a search of the court's docket. (*Id.,* ¶9.) Plaintiff's counsel states he was unaware that the court posted a tentative ruling in advance of the OSC hearing and that he was required to request to be heard at least 24 hours prior to the hearing. (*Id.,* ¶11.) Plaintiff's counsel appeared at the OSC hearing. He attempted to explain his failure to appear at the CMC hearing and his failure to provide notice to the court of his intent to appear at the OSC hearing. (*Id.,* ¶¶12, 13, 16, 17.) Defendant's counsel did not appear at the OSC hearing, and Plaintiff's counsel could not confirm that Defendant's counsel had been notified of Plaintiff's intent to appear. (*Id.,* at ¶15.) The court dismissed the action without prejudice.

Defendant argues that Plaintiff seeks the same type of relief as in *Peltier v. McCloud River R.R. Co.* (1995) 34 Cal.App.4th 1809, that this case was dismissed based upon Plaintiff's counsel's series of procedural failures, and that this action was dismissed after hearing from Plaintiff's counsel.

In *Peltier v. McCloud River R.R. Co.* (1995) 34 Cal.App.4th 1809, the trial court dismissed the case for failing to bring it to trial within three years under CCP section 583.410, which gives a court discretion to dismiss an action for delay in prosecution. The plaintiff moved for relief under CCP section 473, asserting that his attorney's decision not to move the case forward until plaintiff's condition had stabilized constituted mistake or neglect within the meaning of that provision. (*Id.,* at p. 1812.) The CCP section 473 motion was made after the plaintiff filed opposition to the defendant's motion to dismiss, and after a motion for reconsideration under CCP section 1008. (*Id.,* at p. 1813.) In support of the section 473(b) motion, the plaintiff had provided a statement from his prior attorney who stated: "the decision to proceed at the pace and as plaintiff did [*sic*] was solely mine." (*Id.,* at p. 1814.) In upholding the trial court's denial of the CCP section 473(b) motion, the appellate court noted that "when the Legislature amended section 473 to include this provision, it left the discretionary dismissal statutes (§ 583.410 et seq.) intact. Under these statutes, the trial court may dismiss an action for failure to serve the complaint within two years or to bring the case to trial within three years (§ 583.420, subd. (a)), exercising its discretion according to the criteria prescribed by the Judicial Council. (§ 583.410, subd. (b); Cal. Rules of Court, rule 373(e).)." (*Id.* at p. 1816.) The appellate court noted that the vast majority of plaintiffs whose actions are dismissed under section 583.410 are due to attorney neglect such that section 473(b) would nearly nullify the discretionary dismissal statutes. (*Ibid*.)

Here, this court discussed Plaintiff's untimely request for a hearing on the tentative ruling published for the OSC calendar. But this court did not consider the merits of Plaintiff's counsel's explanation regarding his failure to appear at the CMC hearing. Defendant's counsel was not present at the OSC hearing and Plaintiff's counsel could not confirm notice was given to Defendant of Plaintiff's counsel's intent to appear at the OSC hearing. In short, the action was dismissed for failing to timely request a hearing on the OSC tentative ruling. This court has not previously considered a formal motion or explanation of Plaintiff's failure to appear at the August 5, 2025, CMC hearing.

IV. Attorney Fees and Costs

CCP section 473(b) states that when a motion is granted pursuant to an attorney affidavit of fault this court should "direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties." Neither party has addressed this issue.

V. Conclusion

This court finds that the requested relief is mandatory based upon Plaintiff's former counsel's mistake, inadvertence, surprise, or neglect. **The motion is GRANTED.** The dismissal entered on October 28, 2025, is hereby vacated and set aside.

This court will sign the proposed order.

4. 25CV01793, Lorenzini v. Volkswagen Group of America Inc.

Per the request of submitted party, both the Motion for Protective Order and the Motion to Impose Terminating and Monetary Sanctions have been **DROPPED** from calendar.

5. 25CV04758, Garcia v. LCS Community Employment, LLC

This matter is on calendar for the motion of Defendant LCS Community Employment LLC ("Defendant") to sever the claims of Plaintiffs Claudia Garcia and Veronica Elizabeth Cortes Ruiz ("Plaintiffs") or, in the alternative, to order separate trials. This matter was originally heard on March 25, 2026, and was continued for proof of service showing service of the motion after it was filed or of notice of the hearing. Proof of service was filed on March 27, 2026, along with Defendant's proof of service of Notice of Entry of Court's Minute Order.

On August 27, 2026, the parties filed a Joint Stipulation RE Severance and Consolidation of Plaintiff Garcia's Claims and [Proposed] Order wherein the parties stipulate to the severance of the Plaintiffs' claims. Accordingly, **the motion is taken off calendar as MOOT.**

6. <u>25CV05371, Ashby v. California Department of Transportation, a public entity</u>

Pursuant to Code of Civil Procedure section 396b and Government Code section 955.2, defendant State of California, acting by and through the Department of Transportation ("Caltrans"), moves for an order transferring this action to the County of Sacramento.

The complaint filed by Plaintiffs Quinton Wesley Ashby, an individual, and Laura Ashby, a minor by and through her Guardian ad Litem, Quinton Wesley Ashby ("Plaintiffs"), arises out of an automobile accident that occurred on May 11, 2024. Plaintiffs were driving near SR-160 and Sherman Island East Levee Road in an unincorporated area of Sacramento County on a roadway allegedly negligently owned, managed, and/or operated by Caltrans, when a vehicle owned by defendant Emma Leticia Recinos, and driven by defendant John Patrick Malley, collided with Plaintiffs' vehicle causing them substantial injuries.

Government Code section 955.2 provides: "Notwithstanding any other provision of law, where the State is named as a defendant in any action or proceeding for death or injury to person or personal property and the injury or the injury causing death occurred within this State, the proper court for the trial of the action is a court of competent jurisdiction in the county where the injury occurred or where the injury causing death occurred. The court may, on motion, change the place of the trial in the same manner and under the same circumstances as the place of trial may be changed where an action is between private parties."

As the State of California is a defendant in this action and the injury is alleged to have occurred in Sacramento County, the proper venue for this action is in Sacramento County.

The motion is GRANTED. This action shall be transferred to the Superior Court of California, County of Sacramento.

The court will sign the proposed order.

7. <u>SCV-269300, Garcia v. RAC Acceptance East, LLC</u>

On August 26, 2026, this court granted the ex parte application of Defendant RAC Acceptance East, LLC ("Defendant") to advance hearing dates on the applications of Stephanie Quincy and Lindsay Fiore to be admitted pro hac vice. The court set the hearing on the pro hac vice applications on this calendar.

I. Proof of Service

"A person desiring to appear as counsel *pro hac vice* in a superior court must file with the court a verified application together with proof of service by mail in accordance with Code of Civil Procedure section 1013a of a copy of the application and of the notice of hearing of the application on all parties who have appeared in the *cause and on the State Bar at its San Francisco office.* The notice of hearing must be given at the time prescribed in Code of Civil Procedure section 1005 unless the court has prescribed a shorter period." (Cal. Rules of Court, Rule 9.40(c)(1) [Italics added.])

II. Stephanie Qunicy

Ms. Quincy states in her declaration that the application and supporting documents will be submitted to the State Bar of California on the same date the application is filed. However, as of the time the court reviewed Ms. Quincy's application, proof of service of the application on the State Bar's San Francisco office had not been filed.

III. Lindsay Fiore

Similarly, Ms. Fiore also states in her declaration that the application and supporting documents will be submitted to the State Bar of California on the same date the application is filed. However, as of the time the court reviewed this matter, proof of service of the application on the State Bar's San Francisco office had not been filed.

IV. Conclusion

Except for the failure to file proof of service on the State Bar, the applications comply with Cal. Rules of Court, Rule 9.40 and this court finds no reason not to grant the applications. Therefore, **the hearings on the applications are CONTINUED to September 11, 2026, at 3:00 p.m., in Department 16, to allow applicants Stephany Quincy and Lindsay Fiore to file proof of service of the applications on the State Bar of California at the San Francisco office.**

8. <u>SCV-273893, Cruz Lopez v. JKT Associates, Inc., a California Corporation</u>

Plaintiff Jose Luis Cruz Lopez ("Plaintiff") moves for an order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant JKT Associates, Inc. ("Defendant"). Specifically, Plaintiff moves the Court for an order: (1) Granting preliminary approval of the Class Action and PAGA Settlement Agreement; (2) Certifying a Class, for settlement purposes only; (3) Approving the Class Notice and plan for its distribution; (4) Appointing Plaintiff as the Class Representative, for settlement purposes only; (5) Appointing Moon Law Group, PC as Class Counsel, for settlement purposes only; (6) Appointing ILYM Group, Inc. ("Administrator") as the Administrator; and (7) Scheduling a Final Approval Hearing no earlier than 120 days from the date of preliminary approval.

I. Legal Standards

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

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

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

Preliminary approval is warranted if the settlement falls within a “reasonable range.” (*See North County Contractor’s Ass’n., Inc. v. Touchstone Ins. Servs.* (1994) 27 Cal. App. 4th 1085, 1089-90.) Compromise is inherent and necessary. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 250.)

II. Allegations and Mediation

Plaintiff alleges Defendant failed to compensate him and others for off-the-clock work, failed to incorporate all renumeration into employees’ regular rate of pay for purposes of paying overtime, meal break premium, and sick pay, and that Defendant failed to accurately record employees’ time, resulting in underpayment to the Class. Plaintiff’s meal and rest period claims are based on allegations that, due to Defendant’s policies and practice, Class Members’ breaks were often short, late, interrupted, and sometimes missed altogether, and that Defendant did not pay all premium wages for non-compliant breaks. Plaintiff further brings a claim for unreimbursed necessary business expenses based on allegations that Class Members were required to maintain purchase steel-toed boots and incur cellphone usage expenses for work-related purposes, without reimbursement from Defendant. Finally, Plaintiff also brings derivative claims for waiting time penalties, wage statement violations, unfair business practices, and civil penalties under PAGA.

On November 18, 2025, the Parties participated in a full day of private mediation with Darren M. Cohen, Esq., an experienced class and PAGA action mediator. In preparation for mediation, the Parties agreed to a protocol for an informal production of documents and information before mediation. Prior to mediation, Plaintiff obtained from Defendant, through informal discovery, documents, testimony, electronic time and pay records, policy documents and data that were necessary and helpful to evaluate the claims asserted in this action. Defendant produced a statistically sound sample of time and pay records for approximately 26.62% of the putative Class. Defendant also provided information regarding the estimated number of current and formerly employed Class Members, Aggrieved Employees, and PAGA Pay Periods.

In preparation for mediation, Plaintiff’s Counsel reviewed and analyzed all the information Defendant provided, including the sample records and documents regarding Defendant’s wage-and-hour policies. Plaintiff’s Counsel retained a statistics expert to analyze the sample records and prepare a damage analysis prior to the mediation. The sample time and pay records analyzed contained 5,036 actual shifts worked (representing roughly 14.80% of total shifts worked in the Class Period), which allowed Plaintiff’s expert to prepare an analysis with a reasonable degree of certainty. In conjunction with their extensive factual investigation, Plaintiff’s Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. Accordingly, Plaintiff’s Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant’s maximum and realistic monetary exposure for all claims. Thus, Plaintiff’s and his Counsel’s familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement.

III. Settlement

The Parties reached resolution at the mediation. The Gross Settlement Amount (“GSA”) is $250,000.00, subject to potential increase under an Escalator Clause, and is non-reversionary. (Settlement, ¶ 3.1.) Defendant will separately pay its employer-side payroll taxes owed on the Wage

Portion of Individual Class Payments. (*Id.*) Defendant shall fully fund the Gross Settlement Amount of $250,000.00 and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date. (*Id*. at ¶ 4.1.)

The Settlement includes a payment up to $2,500.00 payable from the GSA, subject to the Court's approval, to Plaintiff as the Class Representative, in addition to the amount he is eligible to receive as a Class Member and Aggrieved Employee. (*Id*. at ¶¶ 1.14, 3.2.1.) This award is for initiating the Action and providing services in support of the Action. (*Id*. at ¶ 1.14.) In the event the award finally approved is less, the difference will revert to Participating Class Members. (*Id*. at ¶ 3.2.1.)

The Settlement allocates $24,000.00 from the GSA for settlement of the Released PAGA Claims, which will be distributed 75% ($18,000.00) to the LWDA and 25% ($6,000.00) to Aggrieved Employees pursuant to PAGA law governing Plaintiff's claims. (*Id*. at ¶ 1.33.) Each Aggrieved Employee will be entitled to a pro rata share of the 25% share of the PAGA Penalties directly proportional to their number of PAGA Pay Periods. (*Id*. at ¶ 3.2.5.1.) This results in an average Individual PAGA Payment of roughly $75.95 for each of the estimated 79 Aggrieved Employees ($6,000.00 / 79), and a PAGA Pay Period value of roughly $1.27 for each of the 4,724 estimated Pay Periods in the PAGA Period ($6,000.00 / 4,724).

After deducting the Class Representative Enhancement Award, the Class Counsel Attorneys' Fees and Litigation Costs Payments, the PAGA Penalties allocation, and the Administration Expenses Payment from the GSA, in the amounts specifically approved by the Court, any difference in the amounts requested and the amounts awarded will be allocated to the Net Settlement Amount for distribution to Participating Class Members. (*Id*. at ¶ 1.27.) Accordingly, the Net Settlement Amount will be no less than $110,166.67 for an estimated Class of 139 individuals. (Moon decl., ¶19.)

Each Class Member who does not opt-out will be entitled to a pro rata share of the Net Settlement Amount that is directly proportional to the number of Workweeks worked during the Class Period. (Id. at ¶ 3.2.4.) The estimated $110,116.67 Net Settlement Amount results in an average Individual Class Payment of roughly $792.57 for each of the estimated 139 Class Members ($110,116.67 / 139), and a Workweek value of roughly $13.77 for each of the 8,000 estimated Workweeks in the Class Period ($110,116.67 / 8,000). (Moon decl., ¶21.)

The Settlement releases Defendant and its former and present shareholders, predecessors, successors, assigns, partners, subsidiaries, parents, and each of its owners, managerial employees, agents, directors, and/or officers, and any individual or entity that could be liable for any of the released class and PAGA claims. (Settlement, ¶ 1.40.)

IV. Attorney Fees and Costs

The Settlement permits a fee application of not more than 33 1/3% of the GSA (currently estimated to be $83,333.33) for reasonable attorneys' fees, plus reimbursement for actual litigation costs not to exceed $20,000.00, payable to Class Counsel from the GSA. (Settlement. ¶ 3.2.2.)

V. Administration Costs

The Settlement provides an Administration Expenses Payment to the Administrator, payable from the GSA, in an amount not to exceed $10,000.00, except for on a showing of good cause and as approved by the Court. (Settlement, ¶ 3.2.3.)

VI. Class Certification and Notice

Plaintiff has established that class certification for settlement purposes is appropriate. The class is sufficiently ascertained and numerous. Common questions of law or fact predominate. Plaintiff's claims are typical of the class. Plaintiff can adequately represent the class and Class Counsel are experienced in wage and hour and employment class action cases.

The proposed notice to class members is sufficient to enable class members to make an informed decision about their participation.

VII. Conclusion

Based upon the foregoing, the **motion is GRANTED**. **The final fairness hearing is hereby set for the next available hearing date of February 19, 2027, at 3:00 p.m., in Department 16.** The court will sign the proposed order.