TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, January 28, 2026 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The 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, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 19 Hearings
MeetingID: 160-421-7577
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PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1. 24CV02049, Cederborg v. Hanford Applied Restoration & Conservation

Plaintiff Mark Cederborg ("Plaintiff") filed the complaint in this action against Hanford Applied Restoration and Conservation ("HARC"), Douglas Hanford ("Hanford", together with HARC "Defendants") and Does 1-10 with causes of action for breach of contract and declaratory relief (the "Complaint"). Defendants have in turn filed a cross-complaint against Plaintiff (the "Cross-Complaint"). Defendants had also filed an action in Solano County (case CU24-07002, the "Consolidated Action") now under the current operative first amended consolidated complaint (the "FACC") against EIP III Credit Co., LLC ("EIP"), Ecosystem Investment Partners III, LP ("Eco Investment"), EIP Partners III LP ("EIP Partners"), U.S. Specialty Insurance Company ("USS Insurance"), the State of California Department of Water Resources (the "DOWR", together with other Consolidated Action FACC defendants, "Consolidated Action Defendants"), and Does 1-100. EIP has in turn filed a cross-complaint in the Consolidated Action against Defendants (HARC and Hanford) and Does 1-10 (the "Consolidated Cross-Complaint", or "CXC".

This matter is on calendar for the application by Harrison K. Goo to appear pro hac vice on behalf of Defendants, in coordination with California-based counsel. Defendants bring this

motion pursuant to California Rule of Court("CRC"), Rule 9.40. There is no opposition. However, the court cannot locate a proof of service reflecting service of the motion after the clerk had assigned the hearing date. As such, there is no evidence State Bar has been served with notice of the hearing date, as is required by CRC Rule 9.40 (c)(1). That provision particularly requires notice of the hearing to be given in accordance with CCP § 1005. As such, the application is **DENIED without prejudice**.

Consolidated Action Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

2. 24CV03348, Shirwo v. Uhaul Moving & Storage of Santa Rosa

This matter is on calendar for plaintiff Owen Shirwo's (hereinafter "Plaintiff") motion for leave to set aside the dismissal entered as to the case against defendants UHaul Moving & Storage of Santa Rosa ("UHaul") pursuant to California Code of Civil Procedure ("CCP") § 473(b) on the basis of mistake, inadvertence or neglect of counsel.

Plaintiff seeks to set aside a dismissal which has not been entered. No dismissal order was issued under the September 11, 2025 OSC. Accordingly, Plaintiff's motion is MOOT.

3. 24CV04060, DiBari v. Morgan

Plaintiffs Jason Dibari, Sharon Rose, Raymond Tioseco, Marigrace Padilla, Monica Gallegos, Randy Gallegos, Ruby Rodriguez, Raul Rodriguez, Matthew Huizinghm Ashley Leveroni, Luis Sales, Marcus Kautz, Hannah Kautz, Daniel Matranga, Regniald Anderson, Olivia Stewart, Sonia Fraguela-Kalinski, Luis Carreno, Christian Hluz and Kiera Hluz (together "Plaintiffs") filed the currently operative fourth amended complaint (the "Complaint") in this action against defendants Daniel Morgan ("Morgan"), Morgan Properties, Inc. ("MPI"), Enclave Santa Rosa, LP ("Enclave", together with Morgan and MPI, "Defendants") and Does 1-1000 due to alleged construction defects in homes purchased by Plaintiffs.

This matter is on calendar for the motion by Plaintiffs to compel Defendants to produce responsive documents ("RPODs") under Code of Civil Procedure ("CCP") § 2031.320. The motion is **GRANTED**. The requests for sanctions thereon are **DENIED**.

I. Evidentiary Issues

On Reply, Plaintiffs assert a variety of objections to the Declaration of Christopher Nolin. On review, the disposition of the objections is immaterial to the result of the motion, and the Court finds that the objections regarding layperson opinion, foundation and hearsay are generally either unpersuasive or subject to a clear non-hearsay purpose. As such, they are **OVERRULED**.

II. Governing Law

A. Discovery Generally

The right to discovery is generally liberally construed. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 540. "California law provides parties with expansive discovery rights." *Lopez v. Watchtower Bible & Tract Society of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 590-591. Specifically, the Code provides that "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." CCP § 2017.010; see also, *Garamendi v. Golden Eagle Ins. Co*. (2004) 116 Cal.App.4th 694, 712, fn. 8. ("For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement…") See *Lopez, supra,* 246 Cal.App.4th at 590-591, citing *Garamendi, supra,* 116 Cal.App.4th at 712, fn. 8. "Admissibility is not the test and information[,] unless privileged, is discoverable if it might reasonably lead to admissible evidence." *Id*. "These rules are applied liberally in favor of discovery, and (contrary to popular belief), fishing expeditions are permissible in some cases." *Id.* Good cause can be met through showing specific facts of the case and the relevance of the requested information. *Associated Brewers Distributing Co. v. Superior Court of Los Angeles County* (1967) 65 Cal.2d 583, 586–587. "(T)he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. There is no requirement, or necessity, for a further showing." *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 388. As the right to discovery is liberally construed, so too is good cause. *Id* at 377-378. Generally, failure to assert a discovery objection in a response waives that objection later. *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1140.

Motions to compel further must generally be filed within 45 days of verified responses, but where responses are a combination of objections and unverified substantive responses, that time period does not begin to run until verifications are served. *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 134.

B. Requests for Production of Documents

Regarding the RPODs, a demand for production may request access to "documents, tangible things, land or other property, and electronically stored information in the possession, custody, or control" of another party. A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. CCP § 2031.210(a). If only part of an item or category demanded is objectionable, the response must contain an agreement to comply with the remainder, or a representation of the inability to comply. CCP § 2031.240(c)(1). If a responding party is not able to comply with a particular request, that party "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." CCP § 2031.230. "This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party" and "[t]he statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." *Id.* CCP § 2031.240(c)(1) provides that when asserting claims of privilege or attorney work product

protection, the objecting party must provide "sufficient factual information" to enable other parties to evaluate the merits of the claim, "including, if necessary, a privilege log."

Upon receipt of a response to a request for production, the propounding party may move for an order compelling further response if the propounding party deems that a statement of compliance with the demand is incomplete; a representation of inability to comply is inadequate, incomplete, or evasive; or an objection in the response is without merit or too general. CCP § 2031.310(a). A motion to compel further responses to a request for production of documents must "set forth specific facts showing 'good cause' justifying the discovery sought by the demand." CCP §2031.310(b)(1). Absent a claim of privilege or attorney work product, the party who seeks to compel production has met its burden of showing 'good cause' simply by showing that the requested documents are relevant to the case, *i.e.*, that it is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence under CCP § 2017.010. *See also Kirkland v. Sup. Ct.* (2002) 95 Cal.App.4th 92, 98. Once good cause is shown, the burden shifts to the responding party to justify its objections. *See Coy*, 58 Cal.2d at 220–221. It is insufficient to claim that a requested document is within the possession of another person if the party has control over that document. *Clark v. Superior Court of State In and For San Mateo County* (1960) 177 Cal.App.2d 577, 579.

In addition to responding to the requests for documents, a party responding to the demand shall produce the documents "on the date specified in the demand". CCP § 2031.280 (b). "If a party filing a response to a demand for inspection, copying, testing, or sampling under Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280 thereafter fails to permit the inspection, copying, testing, or sampling in accordance with that party's statement of compliance, the demanding party may move for an order compelling compliance." CCP § 2031.320 (a).

C. Sanctions

CCP § 2031.310(c) (relating to interrogatories), and CCP § 2031.320(b) (relating to failure to produce documents) provide that a monetary sanction "shall" be imposed against the party losing a motion to compel further responses unless the court finds "substantial justification" for that party's position or other circumstances making sanctions "unjust." There is no requirement that the failure to comply with discovery be willful for the court to impose monetary sanctions. *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878. For the court to order sanctions against an attorney, the Court must find that the attorney advised their client to engage in discovery misconduct. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81. Additionally, the motion must advise the attorney that joint and several liability against the attorney is sought for the sanctions. *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 319.

III. Analysis

Plaintiffs served RPODs Set One to Defendants on March 8, 2025, and Plaintiffs provided Defendants extensions to respond until June 9, 2025. Defendants provided responses on June 11, 2025. Defendants have served documents in response, but it is not contended that all responsive documents have as of yet been identified or produced. Plaintiff filed the instant motion to compel

on October 14, 2025. Since the filing of the motion, Defendants have retained a vendor to assist in the production of ESI responsive to the RPODs.

Defendants don't particularly aver that they should not be required to undergo additional production but rather attempt to delimit further production and argue that a court order has been rendered unnecessary. Defendants aver that the production in native format has been time consuming, but this is not a persuasive basis for deferring entry of orders compelling compliance. The discovery responses were served more than ten months prior to the hearing on this motion, and Defendants have only just engaged a vendor to assist in assembly of responsive documents. Defendants' delay is not a basis to find they have proceeded in unblemished good faith.

As Plaintiffs accurately argue on reply, simply complying with discovery demands after being served with a motion to compel is discovery abuse. *Deck v. Developers Investment Co., Inc.* (2023) 89 Cal.App.5th 808, 831. Here, Defendants have not even *performed* the full production as of yet, merely averring that such production is underway. This offers no persuasive reason why the Court should not exercise its jurisdiction to compel compliance, so that Plaintiffs may access enhanced remedies if further dilatory conduct occurs. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404; *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796–797.

Defendants also argue that production has in part been slowed because wholesale production of the Dropbox information would include trade secret information which needs to be maintained. This contention provides a fortuitous opening to address Defendants' objections. As Plaintiffs accurately argue in their moving papers, Defendants' objections were waived due to untimely responses. CCP § 2031.300(a). Before initial responses were due, Defendants obtained from Plaintiffs several extensions of time until June 9, 2025. Defendants' responses were not signed by counsel until June 11, 2025. While Plaintiffs' further argument regarding the effect of unverified responses is not accurate, it is also irrelevant. The objections were asserted in an untimely manner, and as such objections were waived. Accordingly, Defendants' trade secret assertions are improper. Failure to timely object waives all objections *up to and including attorney-client privilege* (CCP § 2031.300(a)), a privilege whose sanctity is paramount to the functioning of our system of law. Defendants present no cause for delay, because Defendants' objections that might allow them to withhold documents on this basis have been waived. Given that Defendants' objections were waived by untimely responses, wholesale production of the Dropbox information appears necessary, and Defendants are required to serve responses free of objections.

Plaintiffs also request that the Court order Defendants to produce the ESI requested in its native format. Defendants do not contend this is improper and it is clearly required by the Discovery Act. Defendants must produce all documents in the form requested, or if there is no request "in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable." CCP § 2031.280(d)(1). Plaintiffs' demand clearly requests that documents being "produced shall be maintained in their original format". RPOD ¶ G.

Plaintiffs' motion is GRANTED as to all production and responses. Defendants will produce all responsive documents within 45 days.

As to Plaintiff's request for sanctions, Defendants accurately articulate that the motion fails to comply with the notice requirements of CCP § 2023.040. Plaintiff elucidates *no* monetary amount anywhere in their motion, including but not limited to a complete lack of evidentiary support for what might be an amount of "reasonable attorney's fees". See CCP § 2023.040 (notice of motion for sanctions shall be "accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought."). The Declaration of Stephen Flynn contains no denotation of his time expended or hourly rate. Plaintiffs are the moving party for the motion, and it is their burden to show the propriety of any sanctions amount. They may not save novel issues for reply in an attempt to avoid Defendants' opportunity to respond. Generally, "new evidence is not permitted with reply papers." *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537. This is particularly true when examining the due process concerns associated with discovery sanctions. See, e.g., *Parker v. Wolters Kluwer United States, Inc.* (2007) 149 Cal.App.4th 285, 296 (sanctions issued based on ex parte request didn't meet CCP § 1005 requirements and were therefore void). The failure to specify a sanctions amount in the moving papers is not a matter which can reasonably be cured on reply.

Plaintiffs do provide time and hourly rates on reply, and relies on *Deck v. Developers Investment Co., Inc.* (2023) 89 Cal.App.5th 808, 831 in averring that sanctions remain appropriate. The Court concurs with that holding that were the sanctions request presented in proper form, they are absolutely justified here. However, that case provides a discovery truism which is equally applicable to the making of Plaintiff's motion, "Untimely compliance is not compliance.". *Id*. at 831. Plaintiffs Reply asserts a request for a hefty $37,590. The substantial nature of the amount requested further exemplifies the need for notice of the amount in the sanctions motion.

Plaintiffs' request for sanctions is DENIED.

IV. Conclusion

The Motions to compel are **GRANTED**. Defendants will produce all responsive documents within 45 days. Plaintiffs' requests for sanctions is **DENIED**.

Plaintiffs shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. 24CV06419, Benedict v. The Ezralow Company, LLC

Plaintiffs Betsy Benedict, Megan Benedict, Anthony Piazza, Kimberly Piazza, Breezy Garcia, Faizah Patel, Loren Castillo, Donna Vue, Latasha Willimas, Patriana Scott, George Kozlov, and Rigoberto Lemus (all together "Plaintiffs") filed the complaint in this action against The Ezralow Company, LLC ("Defendant"), and Does 1-10 with causes of action of Civ. Code § 1786, invasion of privacy, and declaratory relief (the "Complaint"). This matter is on calendar for a motion by Plaintiffs to compel Defendants for deposition of their person most knowledgeable.

The Court appointed a discovery facilitator, William Fritz, who assisted the parties in meet and confer efforts. The Facilitator filed his report indicating that the parties had substantively resolved all issues, and that the motion would likely be rendered unnecessary by stipulation. Defendant filed no Opposition, and Plaintiff filed no reply or non-opposition. However, the Parties did execute a stipulation which effectively withdraws the present motion, consequently, the matter is now properly DROPPED from calendar.

5. 25CV00471, Holley v. Yates

Plaintiffs Amber Holley ("Plaintiff") filed the complaint (the "Complaint") against defendants United Cerebral Palsy of the North Bay ("UCP"), Cypress School ("Cypress"), Nathan Yates ("Yates", together with Cypress and UCP, "Defendants") and Does 1-25 for causes of action arising out of termination of Plaintiff's employment. The Complaint contains causes of action for wrongful termination in violation of public policy, violation of Labor Code ("LC")§ 1102.5, breach of the covenant of good faith and fair dealing, and intentional infliction of emotional distress. This matter is on calendar for UCP and Yate's ("Moving Defendants") motion to compel appearance and production of documents under subpoenas served upon non-parties Dr. Phillip Grob, M.D., and Clint Edwards, LCSW ("Deponents") under California Code of Civil Procedure ("CCP") §§ 2025.480, 1987.2 and 2023.030. The Motion is **GRANTED**.

I. Governing Law

Parties have a right to serve position notices to nonparties, for both appearance at deposition and production of records. CCP § 2020.510. CCP § 2025.450 states that if a party fails to attend a deposition and produce documents without serving valid objections, the party seeking the deposition may request a court order compelling attendance. This applies where a party, "without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce... any document or tangible thing described in the deposition notice...." *Id*. The party moving to compel deposition attendance need only inquire as to what happened, not attempt to meet and confer. CCP §2025.450. CCP § 2025.450 expressly apply to motions to compel attendance where the party fails to appear "without having served a valid objection." An objection to defects or errors in a deposition notice must be served at least 3 days before the deposition date. CCP § 2025.410(a), (b). If a party serves a timely objection, no deposition shall be used against the objecting party if that party does not attend the deposition and the objection was valid. CCP § 2025.410(b). If a nonparty disobeys a deposition subpoena, the subpoenaing party may seek a court order compelling the nonparty to comply with the subpoena within 60 days after completion of the deposition record. (CCP §2025.480(b).) The objections or other responses to a business records subpoena are the "deposition record" for purposes of measuring the 60-day period for a motion to compel. *Unzipped Apparel, LLC v. Bader* (2007)156 Cal.App.4th 123, at 132-133; *Rutledge v. Hewlett-Packard Co.* (2015) 238 Cal.App.4th 1164, 1192. A nonparty opposing such motion without substantial justification may be subject to sanctions per CCP §§1987.2(a), 2020.030, 2025.480; see *Person v. Farmers Ins. Group of Cos.* (1997) 52 Cal.App.4th 813, 818.

"California law provides parties with expansive discovery rights." *Lopez v. Watchtower Bible & Tract Society of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 590-591. Specifically, the Code provides

that "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." CCP § 2017.010; see also, *Garamendi v. Golden Eagle Ins. Co*. (2004) 116 Cal.App.4th 694, 712, fn. 8. "For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement…" See *Lopez, supra,* 246 Cal.App.4th at 590-591, citing *Garamendi, supra,* 116 Cal.App.4th at 712, fn. 8. "Admissibility is not the test and information[,] unless privileged, is discoverable if it might reasonably lead to admissible evidence." *Ibid*. "These rules are applied liberally in favor of discovery, and (contrary to popular belief), fishing expeditions are permissible in some cases." *Ibid.* The scope of discovery is one of reason, logic and common sense. *Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1612. The right to discovery is generally liberally construed. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 540.

Compelling need is not always the test to apply in determining whether discovery is permissible, as "Courts must instead place the burden on the party asserting a privacy interest to establish its extent and the seriousness of the prospective invasion, and against that showing must weigh the countervailing interests the opposing party identifies". *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557. Good cause should be shown on requests for production from non-parties as well as parties. *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223–224 ("*Calcor Space Facility*"). Good cause can be met through showing specific facts of the case and the relevance of the requested information. *Associated Brewers Distributing Co. v. Superior Court of Los Angeles County* (1967) 65 Cal.2d 583, 586–587. "(T)he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. There is no requirement, or necessity, for a further showing." *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 388. As the right to discovery is liberally construed, so too is good cause. *Id.* at 377-378. "(A) party seeking to compel production of records from a nonparty must articulate specific facts justifying the discovery sought; it may not rely on mere generalities. (citation). In assessing the party's proffered justification, courts must keep in mind the more limited scope of discovery available from nonparties." *Board of Registered Nursing v. Superior Court of Orange County* (2021) 59 Cal.App.5th 1011, 1039; citing *Calcor Space Facility* at 567; *see also Catholic Mutual Relief Society v. Superior Court* (2007) 42 Cal.4th 358, 366.

CCP § 2025.480(j) (relating to motions to compel deposition) provides that a monetary sanction "shall" be imposed against the party losing a motion to compel further responses unless the court finds "substantial justification" for that party's position or other circumstances making sanctions "unjust." For the court to order sanctions against an attorney, the Court must find that the attorney advised their client to engage in discovery misconduct. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81. Additionally, the motion must advise the attorney that joint and several liability against the attorney is sought for the sanctions. *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 319.

II. Analysis

Defendant moves the Court to compel compliance with subpoenas served on July 10, 2025, which request Plaintiff's records relating to treatment received from Dr. Grob and Mr. Edwards. Neither has filed an opposition to the motion, but Plaintiff has opposed the motion on various bases, primarily averring that her mental health records are private and therefore not discoverable. Given Plaintiff's extensive allegations of mental and emotional harm, the relevance of her records is obvious from the pleadings and discovery responses, and the remaining question is whether such information is so private that it should be constrained despite its relevance.

First, to Plaintiff's assertion that the meet and confer efforts of Moving Defendants were insufficient, this is not persuasive. Moving Defendants were not in receipt of any objections from Plaintiff at the time the motion was filed, because Plaintiff never tendered any objections. Plaintiff avers that a meet and confer letter was sent *by mail* on November 10, 2025. This is the same day that the motion was filed. It is also undisputed that the letter was never actually delivered to Moving Defendants' counsel. The reason for such is irrelevant to the result. Moving Defendants *had* undergone meet and confer efforts with the Deponents, which were not fruitful. Plaintiff had not communicated any objection or substantive legal basis for opposition at the time Moving Defendants filed the motion.

To Plaintiff's claims that production should not be compelled due to her rights to privacy, those fare a little better. Plaintiff relies on *Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, opining that the production of mental health records must always be "narrowly drawn". In *Davis* the plaintiff had been physically injured in an auto accident and filed a complaint which alleged physical injuries and associated pain and suffering. *Id*. at 1016. The Court found that generalized pain and suffering did not waive protections for other, unrelated mental health records. *Id*. at 1017.

However, Plaintiff overreads *Davis*. In that case, the plaintiff had only requested pain and suffering damages, and as such any mental distress was "peripheral". The mental harms alleged were both "general" but narrow to a particular type of mental strain directly related to the physical injuries that occurred. There is nothing peripheral here about Plaintiff's claims of mental distress. The Complaint avers "humiliation, mental anguish, Post-Traumatic Stress Disorder, and emotionally … distress". Plaintiff's discovery responses further aver expansive mental injuries, adding "Major depressive disorder" and "anxiety. Plaintiff's FI responses ¶ 6.3. It is Plaintiff who determines the scope of her discoverable mental health through the allegations of the Complaint. "The patient thus is not obligated to sacrifice all privacy to seek redress for a specific mental or emotional injury; the scope of the inquiry permitted depends upon the nature of the injuries which the patient-litigant himself has brought before the court." *In re Lifschutz* (1970) 2 Cal.3d 415, 435. Plaintiff here puts at issue her "mental anguish", and "emotional and physical distress" associated with the termination of her employment.

In reading *In re Lifschutz* (1970) 2 Cal.3d 415, 435, it is apparent that Plaintiff misapprehends the scope of waiver under CCP § 1016. The waiver does not apply to Plaintiff's construed direct causation, but rather to those conditions which Plaintiff avers were caused by the Defendants' conduct. This is to say, the wavier applies to the records of the condition alleged, not those manifestations which Plaintiff may narrowly construe as being directly caused thereon. This is a logical conclusion from an evidentiary perspective. For example, Defendants are entitled to

evidence of Plaintiff's preceding history of Post-Traumatic Stress Disorder, because evidence thereon is salient for Defendants' ability to argue that the condition preceded Defendants' alleged conduct. Plaintiff's alleged mental harms are broad, not general. The distinction between otherwise similar terms is made apparent here.

Plaintiff also argues that they "expressly invited" Moving Defendants to narrow the scope of the subpoena and expected Moving Defendants to propose a protective order. Plaintiff served no objections to Moving Defendants. This misapprehends the burden on Plaintiff in making the assertions of privacy here. To obtain a protective order, the burden is on Plaintiff to do so, "promptly". CCP § 2025.420 (a). Plaintiff undertook no action to even address the issue before the motion to compel was filed. This misses the obligation on Plaintiff to move for relief where appropriate. As the supreme court has opined, "Even when the confidential communication is directly relevant to a mental condition tendered by the patient, and is therefore not privileged, the codes provide a variety of protections that remain available to aid in safeguarding the privacy of the patient. (22) When inquiry into the confidential relationship takes place before trial during discovery, as in the instant case, the patient or psychotherapist may apply to the trial court for a protective order to limit the scope of the inquiry or to regulate the procedure of the inquiry so as to best preserve the rights of the patient." *In re Lifschutz* (1970) 2 Cal.3d 415, 437. If the information is relevant but still requires protection, the burden is on Plaintiff to undertake the process for protective order.

So too does Plaintiff fail to make the required showing that preceding psychological records are not sufficiently relevant to overcome her privacy protections. As our Supreme Court stated: "Because only the patient, and not the party seeking disclosure, knows both the nature of the ailments for which recovery is sought and the general content of the psychotherapeutic communications, the burden rests upon the patient initially to submit some showing that a given confidential communication is not directly related to the issue he has tendered to the court." *In re Lifschutz* (1970) 2 Cal.3d 415, 436. Here, Plaintiff makes generalized assertions that the requests are overbroad but fails to present evidence that the confidential nature of the communication is not directly related to her averments of "humiliation, mental anguish, Post-Traumatic Stress Disorder, and emotional and physical distress". Complaint ¶ 55. These are claims of mental distress which are sufficiently opaque that neither Defendant nor the Court may understand how to narrow the scope of what is relevant. Plaintiff's discovery responses are similarly broad, averring "Major depressive disorder, anxiety, PTSD, Emotional burn-out and fear of returning to special education." Plaintiff's FI responses ¶ 6.3. It is not the burden of either Defendants or the Court to hypothesize why these records might be connected. Given Plaintiff's expansive allegations of mental harm, the burden is on Plaintiff to make the showing "that a given confidential communication is not directly related". She has not done so.

Plaintiff's mental health records, and medical records retained by Dr. Grob, all appear relevant to Plaintiff's mental conditions which she has tendered at issue in this case. Billing records appear more than salient to the action. The records are reflective of damages, and Plaintiff does not provide any salient authority that such materiality is outweighed by a privacy interest.

However, the timeframe for the requested materials may still be appropriately narrowed. Absent any substantial justification, Defendants request for records dating back ten (10) years appears

excessive. The Court limits the production to five (5) years preceding her date of hire as this timeframe may allow Defendants to identify any claimed pre-existing mental conditions. If Defendant's pre-existing mental conditions are found this may later serve as justification for a more expansive future request. Deponents are to produce all records from the subpoenaed categories from January 9, 2018 to present.

Moving Defendants' motion is GRANTED as modified above.

Sanctions against parties on motions to compel under CCP § 1987.1 are discretionary. CCP § 1987.2 (a). The Court may only grant "reasonable expenses". CCP § 2023.030(a). For sanctions to be granted, the notice of motion must "identify every person, party, and attorney against whom the sanction is sought". CCP § 2023.040.

In their motion, Moving Defendants request $780 of sanctions against Dr. Grob for his complete failure to respond, communicate, or meet and confer regarding the subpoena. This appears necessary and appropriate to abrogate the costs incurred by Moving Defendants in addressing Dr. Grob's noncompliance. In contrast, Moving Defendants request sanctions against Plaintiff and her counsel on Reply for their opposition to the motion. Moving Defendants' counsel is unpersuasive that sanctions may be pivoted to Plaintiff at this juncture. The notice of motion does not put Plaintiff or counsel on notice that they may be liable for sanctions as required by CCP § 2023.040.

In their request for sanctions, Moving Defendants request one half of the costs incurred for six hours on the motion (one of which was prospective) at $250 per hour, plus $60 in filing fees. The Court finds $780 as the reasonably incurred attorney's fees and costs is reasonable and actual. Moving Defendants' request for sanctions is GRANTED in the amount of $780 against Dr. Grob.

III. Conclusion

The Motion to Compel is **GRANTED in part**. Deponents will produce all responsive documents outlined above within 30 days of notice of this order.

Dr. Grob shall pay $780 in sanctions to Moving Defendants within 30 days of notice of this order.

Moving Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

6. 25CV03686, Capital One N.A. v. Prado

Plaintiff Capital One, N.A. ("Plaintiff") filed the presently operative complaint ("Complaint") against defendants Melissa S Prado ("Defendant"), as well as and Does 1-20. This matter is on calendar for the motion by Defendant under Code Civ. Proc. ("CCP") § 473 (d) to set aside the judgment.

There is no opposition or proof of service in the Court's file, and as such there is no proof that the Plaintiff has notice of Defendant's motion. Proof of service was due five court days prior to the hearing. Cal. Rule of Court, Rule 1.300(c). The matter is properly DROPPED from calendar.

7. SCV-272870, Martin v. Aurora Behavioral HealthCare Santa Rosa

Plaintiff Deborah Martin ("Plaintiff"), individually and on behalf of other all other similarly situated, including employees pursuant to the California Private Attorney General Act, filed the currently operative first amended complaint against defendant Aurora Behavioral Healthcare-Santa Rose, LLC, Signature Healthcare Services, LLC (together "Defendants"), and Does 1-100 for causes of action arising out of Defendants' alleged Labor Code violations, and civil penalties thereon (the "FAC"). This matter is on calendar for Plaintiff's unopposed motion for final approval of the class action settlement (the "Motion"). The Motion is **GRANTED as modified below**.

I. The Complaint

The presently operative First Amended Complaint ("Complaint") alleges that Defendant failed to comply with California Labor Code ("LC") provisions during the course of Plaintiff's employment with Defendant and alleges on information and belief that these policies were also enforced on other employees.

The First Amended Complaint contains causes of action for: (1) Failure to Pay Wages For All Hours Worked At Minimum Wage in Violation of Labor Code Sections 1194 and 1197, (2) Failure to Pay Overtime Wages for Daily Overtime, all hours worked, and failure to include additional remuneration when calculating overtime wages in Violation Of Labor Code Section 510, 1194, and 1198 (3) Failure to Authorize or Permit Meal Periods In Violation of Labor Code Sections 512 and 226.7, (4) Failure to Authorize or Permit Rest Periods in Violation of Labor Code Section 226.7, (5) Failure to pay all accrued and vested vacation/PTO wages in Violation of Labor Code 227.3;(6) Failure to provide sick pay in Violation of Labor Code Section 246; (7) Indemnify Employees for Employment-Related Losses/Expenditures in Violation of Labor Code section 2802; (8) Failure to Timely Pay Earned Wages During Employment in Violation of Labor Code Section 204, (9) Failure to Provide Complete and Accurate Wage Statements in Violation of Labor Code Section 226, (10) Failure to Timely Pay All Earned Wages and Final Paychecks Due at Time of Separation of Employment in Violation of Labor Code Sections 201, 202, and 203, and (11) Unfair Business Practices, in Violation of Business and Professions Code Sections 17200, et *seq*. Plaintiff seeks to collect on a representative basis PAGA civil penalties for themselves and other employees and collect on a class-wide basis missed break wages, unpaid wages, waiting time penalties, and wage statement damages.

II. The Settlement and Preliminary Approval

According to the Motion, Plaintiff asserted multiple causes of action for various Labor Code and Business and Professions Code violations centered around Labor Code violations. Defendant contends that Plaintiff is unlikely to obtain class certification and the claims presented were

based on individualized damages not easily proven in representative claims. *See generally* Naessig Decl. ¶¶ 9-33.

The Naessig Declaration in Support of Preliminary Approval established that Plaintiff's counsel engaged in informal discovery and investigation. Naessig Decl. ¶¶ 7, 9, 11-12, 36. On June 11, 2024, the parties mediated the matter before Jeffrey Ross, a mediator with extensive wage and hour class action experience. Naessig Decl. ¶ 6. Prior to the mediation, Defendant had provided documents responsive to the informal discovery requests, including payroll information covering the applicable statutory period. (The class is defined in the Settlement Agreement and Release of Class Action [attached to Naessig Decl., Exhibit 1, hereinafter "Settlement Agreement"] as all current and former non-exempt employees who were employed by Defendant in California at any time from January 6, 2019, through December 11, 2024. Settlement Agreement §§ 1.5, 1.12. Aggrieved Employees under PAGA are defined as all individuals who are or were employed by Defendant as non-exempt employees in California between January 11, 2022, through December 11, 2024. Settlement Agreement §§ 1.30-1.31.

Plaintiff undertook an expert analysis of the data provided by Defendant. Naessig Decl. ¶ 5. Based on that data, Plaintiff's counsel was able to undertake an analysis of potential damages for the claims alleged in the Complaint, including the number of instances and the corresponding monetary claim for each late or missed meal break, each missed rest break, and each resulting wage statement violation. Plaintiff's counsel was able to then extrapolate that information to the entire class. Plaintiff estimates that the maximum amount of potential damages across the class for the alleged underlying violations equals $15,278,171.40 ($3,060,900 in meal break claims + $888,181.56 in unpaid wages+ $7,652,250 in rest break claims, $574,088.80 in accrued and vested vacation/PTO claims, $374,884.62 in sick pay claims, $90,000 in unreimbursed business expenses, $43,600 in timely wages claims, $872,00 in wage statement claims, $1,722,266.40 in waiting time penalties) along with $169,400 in "probable" PAGA penalties. Naessig Decl. ¶¶ 12-29. The estimated maximum damage per class member for the core class claims is therefore $70,083.36 per class member ($15,278,171.40 / 218 class members). At the mediation, the parties came to an agreement based on the assistance of the mediator. Naessig Decl. ¶ 7.

Pursuant to the Settlement Agreement, Defendant will pay $1,910,000 as the Gross Settlement Fund. Settlement Agreement § 1.22. From that amount, the following will be deducted: 1) attorneys' fees of $636,666.67 (which is 1/3 of the Gross Settlement Fund) and up to $19,000 of costs and expenses; 2) an incentive award to the Plaintiff of $15,000; 3) settlement administration costs, not to exceed $12,000; and 4) $100,000 in penalties under PAGA, 75% of which is paid to the California Labor and Workforce Development Agency ($25,000 of which is payable to the Aggrieved Employees). See Settlement Agreement §§ 3.2, *et seq*. If these sums are all approved by the Court, this results in a Net Settlement Fund of $1,127,333.33 to be distributed to the members of the class. The Net Settlement Fund will be distributed pro rata to the members of the class who do not opt out, based on the number of workweeks worked by such individuals as compared to the total number of aggregate number of workweeks by all such individuals during the Class Period. Settlement Agreement § 3.2.4. This results in an average Class settlement payment of approximately $5,171.25 ($1,127,333.33 / 218). This also leaves a PAGA settlement for distribution of $25,000. Defendant will pay its share of payroll taxes for settlement funds classified as wages separate from the Gross Settlement Fund. Settlement

Agreement §§ 3.2.4.1, 4.3. The settlement is non-reversionary. Settlement Agreement § 3.1. For tax purposes, 20% is allocated to unpaid wages, and 80% is allocated to interest and penalties classified as miscellaneous income. Settlement Agreement § 3.2.4.1. Net settlement payments will be automatically sent to members of the class unless they opt out. See generally, Settlement Agreement §§ 4.4.1, 7.5.3.

The Settlement Agreement and proposed notice to the Class (the "Proposed Notice") (Settlement Agreement, Ex. A) also set forth the procedure and timeline for providing notice to the class members (which will be sent by the administrator via first class mail), which includes a detailed explanation of the claims and defenses, terms of the settlement, opt out and objection procedures, an estimate of the individual class member's settlement payment and a description of how it was calculated, and that all participating members of the class will be paid without the need to submit a claim. The Class Members who do not opt-out of the settlement releases Defendant from "(i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint." Settlement Agreement § 5.1.

Additionally, aggrieved employees under the PAGA claims agree to release "are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice" Settlement Agreement § 5.2. No copy of the PAGA notice was provided.

The Court found that the proposed settlement appeared generally within the reasonable range of settlement. The total possible claims based on the 218 Class Members is $15,278,171.40 (with only 100 of those being PAGA members). Recovery of $1,127,333.33 after attorneys' fees and costs appeared to be sufficiently reasonable return for the relative strength of the case, the risks inherent to litigation, and the possible defenses asserted by Defendant at the preliminary approval stage. The Court issued the preliminary approval and ordered Plaintiff to file their motions for final approval now at issue.

III. Final Approval

The Court has continued this matter for supplemental declarations addressing discrepancies between preliminary approval and the application for final approval. From preliminary approval to final approval, the number of class members rose from 218 to 387. This represented an increase of over 77%. Aggrieved Employees increased from 100 to 244[1]. Counsel has filed a supplemental declaration making clear that the number of workweeks has actually been found to be *lower* than those initially approved, and accordingly the maximum calculable damages are lower. The Supplemental Declaration of Malcolm Clayton makes clear that maximum calculable damages for the class are actually $10,89,721.05, based on a reduction of workweeks from 45,000 to 25,375.

[1] It is also worth noting that the administrator's declaration contains a typographical error identifying 387 Aggrieved Employees. See Montanez Declaration, ¶ 17. The Court has not determined whether this impacts the math in the subsequent paragraph, but the continuance here offers the opportunity for errors to be corrected before the Court reaches the merits of the settlement.

After preliminary approval, the Court determines whether a class action settlement is fair, adequate and reasonable in a final hearing, often referred to as a "fairness hearing." Cal. R. Ct. 3.769(g); *see also Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The purpose of this requirement is "the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties" and to "prevent fraud, collusion or unfairness to the class…" *Dunk,* 48 Cal.App.4th at 1800-01, citing *Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79; *see also Marcarelli v. Cabell* (1976) 58 Cal.App.3d 51, 55.

"The trial court has broad discretion to determine whether a class action settlement is fair and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. "Due regard should be given to what is otherwise a private consensual agreement between the parties" and "the court's 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." *Dunk,* 48 Cal.App.4th at 1801 (internal citations omitted). "When the following facts are established in the record, a class action settlement is presumed to be fair: '(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.'" *Chavez*, 162 Cal.App.4th at 52 *quoting Dunk*, 48 Cal.App.4th at 1802. There are 387 eligible class members. Clayton Declaration ¶ 7. Based on a calculation that assumes that the requested attorneys' fees, costs, and incentive fee awards are approved (*i.e.* a $1,127,333.33 net settlement fund) the highest individual settlement payment to be paid is approximately $13,779.32 and an average of approximately $2,918.51 Clayton Decl. ¶ 13-14. PAGA payments will average $102.46 per claimant ($25,000/244 Aggrieved Employees). Montanez Declaration ¶ 14; Supplemental Declaration of Montanez, ¶ 3.

There are several adjustments to these initial figures presented in the Preliminary Approval, each of which appear to increase the amount available for the settlement fund. Counsel's litigation expenses did not reach the $19,000 amount estimated, instead coming to $15,860.87, adding $3,139.13 to the settlement fund. Already included above is the adjustment of the class administrator reflecting that their actual fees were $9,871.00, not the $12,000 which received preliminary approval. This adds $2,129.00 to the settlement fund available for distribution to class members.

In examining the total settlement amount, and whether it is reasonable, the Court notes that there were no objectors or requests for exclusion. The supplemental declarations provided by counsel providing adjustments to the workweeks (and therefore possible damages) have increased the percentage recovery compared to preliminary approval. Therefore, the settlement appears to be the result of arm's length bargaining. Substantial discovery appears to have occurred, and to the degree that there was any deficit in those disclosures, final data has only worked to the advantage of class members.

Based on the foregoing, because the factors articulated in *Dunk* are met; because there is no indication of fraud, collusion or unfairness; and because the terms of the settlement appear to be

fair and reasonable; and based on the lack of opposition or objection, Plaintiffs' motion for final approval of the terms of the settlement is approved.

IV. Attorney's Fees and Class Representative Incentive

In this case, the underlying Settlement Agreement established a gross settlement fund fixed at $1.91 million, without any reversion to Defendants and with all settlement proceeds, net of specified fees and costs and $100,000 in PAGA penalties, going to pay claims for class members who did not opt out of the settlement (and none did). Plaintiffs' counsel requests an award of $636,666.67 which is one third (33.33%) of the common fund.

Class Counsel Clayton (who has four years of experience) has provided information regarding the time billed in this case and the relative rates of each individual who performed work for Plaintiff. Class Counsel advances that the Court should adopt a percentage fee approach, arguing that there are several public policy reasons why percentage recovery is the modern and appropriate method of calculation here. Percentage recovery focuses on results achieved whereas the lodestar focuses on time spent.
Counsel is correct that the percentage approach offers substantive benefits in encouraging counsel to maximize recovery, rather than wasting time attempting to bill in order to justify lodestar amounts. However, that does not mean that Class Counsel's recovery should remain unfettered by the hours actually expended. This Court maintains the capability to "double check the reasonableness of the percentage fee through a lodestar calculation." *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 504. Moreover, the common fund method is burdened by its own potential infirmities, encouraging counsel to settle otherwise meritorious cases quickly in order to make themselves available for the next case. The incentive to counsel, incongruous with that of their client and the class, is to settle the case for the maximum amount *relative to their time expended*. Accordingly, our high court has stated that California trial courts maintain the discretion to use lodestar amounts to ensure that the percentage figure reached is reasonable. *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 505. This is representative of the Court's obligations to the class as a whole, where the interests of Defendant and Plaintiff are no longer at odds.

Class Counsel asserts that fees of one third of the settlement amount is the appropriate figure. As an initial matter, the Court finds Plaintiff's recovery lower than expected based on the total calculable damages. Plaintiff's evidence at preliminary approval indicated that the total possible class damages were $10,278,171.40, with an additional probable $169,400 of PAGA penalties.[2] The claims presented in the FAC are generally of the type where Plaintiff would be entitled to recovery of attorney's fees. See, e.g., Labor Code § 2699(k)(1); Labor Code § 218.5; Labor Code § 1194; CCP § 1021.5; FAC. Even if the matter were fully litigated, should Plaintiff prevail, the cost of fully litigating the matter would not be borne by Plaintiff or the class. This means that against maximum calculable damages, the distributable settlement amount represents 11.02%. Counsel touts their exceptional quality legal of work, but this does not appear reflected in attention to detail. See, Court's 12/3/2025 Continuance Order. It is not clear to the Court that the

[2] The Court notes that PAGA pay periods were substantially lower than those included in the motion for PAGA approval, and this figure was not updated by Plaintiff in the Supplemental Declarations provided. See Further Declaration of Malcolm Clayton, ¶ 6, fn. 2.

settlement is sufficiently reflective of probable recovery that the relatively "standardized" one third settlement is appropriate. Class counsel fails to display the propriety of a one third fee under such circumstances. The Court finds seventeen percent (17%) to be the appropriate amount under these circumstances. This results in allowable fees of $324,700.

This is properly checked against the lodestar analysis provided. The "lodestar" is the number of hours reasonably expended multiplied by the reasonable hourly rate prevailing in the community for similar services by an attorney with similar skill and experience. *See, e.g. PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. The trial court may adjust the lodestar amount based on various factors specific to the case to fix the attorney fees at fair market value for the services provided, including: "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award." *Ketchum*, 24 Cal.4th at 1132. *See also Gorman v. Tassajara Dev. Corp.* (2009) 178 Cal.App.4th 44, 92 ("The first step involves the lodestar figure—a calculation based on the number of hours reasonably expended multiplied by the lawyer's hourly rate. 'The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided.'…The factors to be considered include the nature and difficulty of the litigation, the amount involved, the skill required and employed to handle the case, the attention given, the success or failure, and other circumstances in the case." (internal citations omitted).

The Court finds that the 355.6 hours expended is likely reasonable but notes that there is no evidentiary support attached to the Clayton Declaration sufficient for the Court to determine the specific reasonableness of the hours. The Court notes Counsel David Lavi has submitted billing entries of sufficient specificity that his substantial expenditure of the time in the case appears fully justified. However, given the relaxed standards for such hours expended in a cross-check context, the Court turns to the hourly rates requested.

What is apparent is that the hourly rate requested for each attorney far exceeds the expected rates for counsel in the county of Sonoma. "The reasonable hourly rate is that prevailing *in the community* for similar work." *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (emphasis added). Plaintiff has cited the reasonableness of their fees for the Los Angeles area. This case was filed and is based on Plaintiff's employment within the county of Sonoma, and that is the appropriate locale to consider when determining fees within this venue. The court may consider various other factors when determining a reasonable hourly rate, including the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *See, e.g. Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632-633; *Stratton v. Beck* (2017) 9 Cal.App.5th 483, 496. The Court does not, however, find that these factors justify paying Plaintiff's counsel market rate fees for the Southern California area. It is only where a plaintiff has made a good faith but unsuccessful effort to find local counsel that out-of-town counsel is not limited to fees determined at local hourly rates. *See, e.g. Horsford v. Board of Trustees of Calif. State Univ.* (2005) 132 Cal.App.4th 359, 398-399 (hiring local counsel was attempted numerous times and deemed to be impracticable); *Center For Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 608, 614-615 (trial court erred in setting lodestar based

on local hourly rates, rather than rates of competent attorneys outside local market, where evidence showed local counsel was unavailable for appellate work). There is no such evidence here. Rather, Plaintiff chose to retain a lawyer from outside the community; that is their right, but it does not make the fees incurred "reasonable" for purposes of the fee award. The fees are resultingly far beyond what is expected in the local legal market.

The Court finds that with the qualifications and experience set forth in the Clayton Declaration[3], fees in line with similarly qualified attorneys in the Sonoma County community are $650 as to Mr. Joseph Lavi, $600 as to Mr. Bello, $525 as to Mr. David Lavi and Mr. Granberry, and $400 as to Mr. Clayton, Ms. Bliznets, and $375 for Mr. Naessig based on their years of experience and time practicing law.

Even if the rates requested were not widely in excess of what would be expected in this locality, Counsel's requested rate significantly exceeds that which would be supported by their evidence. Counsel avers that their rates are supported by the attached Laffey Matrix, with a 2.4% adjustment for locality. However, the requested rates for the junior attorneys on the case are more than 20% over the resulting figure ($550.91 per hour).

Plaintiff also argues for a multiplier of ~2.38. In a pure lodestar analysis, the Court would only find a multiplier of 1.6 as appropriate here. The obvious factor which merits application is the contingent nature of the case. Class Counsel's qualifications neither fall short of or exceed the counsel which normally appear in these types of cases. Counsel's work as filed with the Court does not contain indicia that would cause to the Court to find exceptional skill in the litigation. Counsel offers no evidence that the case precluded them from taking other work. As is covered above, the Court does not find the recovery exceptional. However, given that the question is whether the lodestar may reasonably be multiplied to reach the amount in the percentage recovery method, the required multiplier would be ~1.76.

Based on these adjustments, the Court comes to base fees of $184,840.00, which after application of a 1.6 multiplier, comes to a lodestar of $295,744.00. To reach the percentage recovery the Court found appropriate, application of a ~1.76 multiplier must be used. While this is not the Court's first inclination, it is reasonable and therefore merits approval.

Plaintiff's counsel also seeks $15,860.87 litigation-related costs and attaches a cost report and declarations substantiating most of that sum. Lavi Decl. Ex. D. This is below the amounts preliminarily approved, and appears appropriate. The Court approves costs in the amount of $15,860.87.

Based on the foregoing, Plaintiffs' request for attorneys' fees and costs is granted in the amount of $324,700 for fees and $15,860.87 in costs. The amounts of the attorney's fees not approved will revert to the gross settlement fund, per the terms of the settlement agreement. Settlement Agreement, Section 3.2.2.

[3] Mr. Clayton omits any reference to his own qualifications. However, due to the previous bar number error mentioned in the continuance order to this date, the Court became aware that Mr. Clayton has been practicing since 2021.

Plaintiff also seeks a service award in the amount of $15,000 for Plaintiff's participation in the case. "'[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.' [citation] These 'incentive awards' to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit." *See Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-95. *See also Ridgeway v. Wal-Mart Stores Inc*. (N.D. Cal. 2017) 269 F. Supp. 3d 975, 1003 (citing *Bellinghausen v. Tractor Supply Co*. (N.D. Cal. 2015) 306 F.R.D. 245, 266-67, which in turn collected cases and explained that a $5,000 incentive award is presumptively reasonable in that district and that awards typically range from $2,000–$10,000).

Plaintiff argues that this award is reasonable in light of her role as representative of the class. In particular, Plaintiff cites her role in providing substantive information and documents to counsel and reviewing documents and the Settlement Agreement, and the risk of possibly bearing Defendant's costs if she did not prevail. See Declaration of Deborah Martin. Plaintiff filed a declaration generally describing her participation and establishing that she participated as the class representative, and estimated that she "helped and (has) been willing to support the lawsuit" performing her responsibilities as class representative. *Ibid.*

Based on the time expended, the exposure and risk, and the duration of the litigation, the request is for the reasonable award of $15,000 under the factors described in *Cellphone Termination*, 186 Cal.App.4th at 1394-95. The Court finds the award, despite being on the high end of the normal range, reasonable.

Plaintiff's request for a personal representative enhancement award is approved in the amount of $15,000 to Plaintiff.

Therefore, the Court calculates the total gross settlement fund for the class action as $1,444,568.13. Payments to class members should be adjusted accordingly.

V. Conclusion

Based on the foregoing:

1. The Court, for purposes of this Order, adopts all defined terms and conditions as set forth in the Settlement Agreement filed in this case.

2. The Court has jurisdiction over the subject matter of this litigation and the Class Representatives, the other members of the Class, and Defendants.

3. The Court finds that the dissemination of the Class Notice as disseminated to the Class Members, constituted the best notice practicable under the circumstances to

all persons within the definition of the Class, and fully met the requirements of California law and due process under the United States Constitution.

4. The Court approves the Settlement of the above-captioned action, as set forth in the Settlement Agreement, as fair, just, reasonable, and adequate as to the Settling Parties. The Settling Parties are directed to perform in accordance with the terms set forth in the Settlement Agreement.

5. Except as otherwise provided in the Settlement Agreement, the Settling Parties are to bear their own costs and attorneys' fees.

6. The Court hereby certifies the following Class for settlement purposes only: all current and former non-exempt employees who were employed by Defendant in California at any time from January 6, 2019 through December 11, 2024. The Court approves the class of Aggrieved Employees under the PAGA claims as all individuals who are or were employed by Defendant as non-exempt employees in California between January 11, 2022, through December 11, 2024.

7. With respect to the Class and for purposes of approving the settlement only and for no other purpose, this Court finds and concludes that: (a) the members of the Class are ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Class, and there is a well-defined community of interest among members of the Class with respect to the subject matter of the claims in this litigation; (c) the claims of Class Representative is typical of the claims of the members of the Class; (d) the Class Representative has fairly and adequately protected the interests of the members of the Class; (e) a class action is superior to other available methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class Representative, i.e., Class Counsel, are qualified to serve as counsel for the Plaintiff in his individual and representative capacity and for the Class.

8. Defendant shall fund **$1,910,000.00** of the total Gross Settlement Fund pursuant to the terms of the Settlement Agreement. This amount includes all costs in ¶ 10 below.

9. The Court approves the Individual Settlement Payment amounts, which shall be distributed pursuant to the terms of the Settlement Agreement.

10. Defendant shall pay (a) to Class Counsel attorneys' fees in the amount of **$324,700** and reimbursement of litigation costs in the amount of **$15,860.87**; (b) enhancement payment to the Class Representative Deborah Martin in the amount of **$15,000.00**; (c) the sum of **$75,000.00** to be paid to the LWDA for PAGA Penalties; and (d) **$9,871.00** to the Claims Administrator, Simpluris, Inc., for the costs relating to the claims administration process in this matter. The Court finds that these amounts are fair and reasonable. Defendant is directed to make such payments from the Gross Settlement Amount and in accordance with the terms of the Settlement Agreement.

11. The Court will enter final judgment in this case in accordance with the terms of the Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of the Settlement or judgment, this Court shall retain exclusive and continuing jurisdiction over the action and the Parties, including all Class Members, for purposes of enforcing and interpreting this Order and the Settlement.

Plaintiff's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312

****This is the end of the Tentative Rulings.*****