TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, November 19, 2025 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.

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1. 24CV01008, Gewalt v. Gewalt

Plaintiffs Kendall Gewalt ("Kendall"[1]) and SKG Development, LLC ("SKG", together with Kendall, "Plaintiffs"), filed the complaint (the "Complaint") against defendants Gregory W Gewalt ("Greg"), High Desert Properties, LLC ("High Desert", together with Gregory, "Defendants"), along with Does 1-10, arising out of allegations of fraud derived from a series of loans. Greg has in turn filed the currently operative first amended cross-complaint against Kendall arising out of the same or related transactions. Kendall dismissed the Complaint on September 15, 2025.

This matter is on calendar for Greg's August 18, 2025, motion for sanctions against Plaintiffs and/or their counsel, under Code of Civil Procedure ("CCP") § 128.7. The motion is **DENIED**.

I. Facts and Procedure

[1] The Court preliminarily notes that the parties before the Court share a familial connection, and thereby surnames. First names are used for the sake of clarity, and no disrespect is intended.

The instant motion is predicated on Plaintiffs' fourth cause of action for violations of Penal Code § 502(c). Greg served a copy of the motion on July 25, 2025. On August 18, 2025, Greg filed the instant motion requesting sanctions for Kendall's purportedly frivolous position that the cause of action was improper, requesting sanctions of $3,250. Kendall dismissed her Complaint on September 15, 2025.

II. Governing Authorities

CCP Sec. 128.7(b) states:

> "By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:
>
> (1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.
>
> (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
>
> (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief."

Subsection(c) provides: "If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence."

A party seeking sanctions pursuant to 128.7 must first, before filing the motion, serve the offending party with a motion for sanctions commencing a 21-day "safe harbor" period during which the offending party may withdraw or correct the improper pleading and avoid sanctions. CCP § 128.7 (c)(1). If the pleading is not withdrawn during the "safe harbor" period, the motion for sanctions may be filed. *Malovec v Hamrell* (1999) 70 Cal. App. 4th 434, 440.

CCP § 128.7 (c)(1) requires that the motion for sanctions be served in compliance with CCP § 1010 twenty-one days before filing. Per CCP § 1010, "(n)otices must be in writing, and the notice of a motion, other than for a new trial, must state when, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based." The papers served to being the safe harbor period must be the same papers as those eventually filed with the court. *CPF Vaseo Associates, LLC v. Gray* (2018) 29 Cal.App.5th 997, 1007. "Section 128.7's incorporation of section 1010 is compulsory, not permissive." *Galleria Plus, Inc. v. Hanmi Bank* (2009) 179 Cal.App.4th 535, 538 ("*Galleria*"). A CCP § 128.7 motion served to the responding party to begin the safe harbor period must include the date the motion would be made, or it is fatally defective. *Id*. "'Close' is good enough in horseshoes and hand grenades, but not in the context of the sanctions statute." *Hart v. Avetoom* (2002) 95 Cal.App.4th 410, 414. In the same vein, the version of the motion served to start the safe harbor period may not later be supplemented or "improved", as that would violate the purpose of the safe harbor provisions. *Ibid*.

Sanctions for violations of CCP § 128.7(b) may be imposed as a penalty payable to the court, non-monetary sanctions in order to deter such conduct, or "if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation." CCP § 128.7(d). Self-represented attorneys do not incur fees as contemplated by the sanctions statute such that they can receive sanctions for attorney's fees incurred. *Musaelian v. Adams* (2009) 45 Cal.4th 512, 517.

III. Evidentiary and Procedural Issues

Plaintiffs submit an opposition peppered with redactions purportedly submitted under seal. There is no order sealing the material. See Cal. Rule of Court, Rule 2.551 (a) ("A record must not be filed under seal without a court order"). Plaintiffs' opposition does not contain a motion to do so, only a "Notice" that such material is "lodged". Plaintiffs have overlooked a basic requirement. "A party requesting that a record be filed under seal must file a motion or an application for an order sealing the record. The motion or application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing." Cal. Rule of Court, Rule 2.551(b)(1). Any veiled request to seal is therefore required to be denied. The Court has not and will not review the material purportedly filed under seal, and Plaintiffs can pick up the (unreviewed) lodged courtesy copies from this Department's judicial assistant. If Plaintiffs would like the unsealed copies to become part of the electronic record, they have 10 days from notice of this decision to do so. Cal. Rule of Court, Rule 2.551(b)(6). Otherwise, the clerk shall vacate and delete the filing from the record. *Ibid*.

Plaintiffs have also submitted an objection to Greg's Reply, averring that it contains a non-existent case. Plaintiffs ask that the Court deny the motion on this ground alone. This is not generally persuasive, but the use of fabricated citations merits a response by the Court. Parties and attorneys use of cases not certified for publication is prohibited under the California Rules of Court. See Rule of Court, Rule 8.1115(a); see *Rain Bird Sprinkler Mfg. Corp. v. Franchise Tax Bd.* (1991) 229 Cal.App.3d 784, 793 (trial court erred in relying on unpublished opinion, as that violated former rule 977 [now Rule 8.1115]); see also *Farmers Ins. Exchange v.*

Superior Court (2013) 218 Cal.App.4th 96, 109. Exceptions to this rule are incredibly limited. See, e.g., Rule 8.1115(b).

Fictionalized citations are a violation of Rule 8.1115. *People v. Alvarez* (2025) 114 Cal.App.5th 1115 (pin cite unavailable). Additionally, parties are required to provide citations to cases from the official report volume and page number and year of decision. Rule of Court, Rule 3.1113(c). Use of fabricated citations is "frivolous" conduct and is subject to sanctions under CCP § 128.7. *Noland v. Land of the Free, L.P.* (2025) 114 Cal.App.5th 426. Courts are empowered to sanction parties for violations of the Rules of Court. Rule of Court, Rule 2.30(b). Sanctions may only be imposed after a noticed motion or issuance of an order to show cause, and an opportunity to be heard. Rule 2.30 (c). Sanctions to the Court under Rule 2.30 must comply with the limits under CCP § 177.5. *Caldwell v. Samuels Jewelers* (1990) 222 Cal.App.3d 970, 977.

On October 2, 2025, attorney Suzanne M. Alvarez ("Alvarez") substituted in representing Greg. Greg, through Alvarez, filed his Reply on November 12, 2025. In his Reply, Greg cites to *Sunbelt Rentals, Inc. v. Victor* (2020) 43 Cal.App.5th 659, 668. See Greg's Reply, pg. 2:21-22. As Plaintiffs point out, the pin cite leads to *Safeway Wage & Hour Cases* (2019) 43 Cal.App.5th 665, 668, which has no application of Penal Code § 502(c) **at all**. The general case citation leads to the depublished case *Rall v. Tribune 365, LLC* (2019) 43 Cal.App.5th 638, 256 Cal.Rptr.3d 775[2]. Greg repeats the citation to the *Sunbelt* case (with the fictional California citation) on page 4:21. While *Sunbelt Rentals, Inc. v. Victor* (N.D. Cal. 2014) 43 F.Supp.3d 1026, 1032 **is** a real case dealing with Penal Code § 502 (c), Greg misstates the holdings of that case in a substantial manner. This is sufficient for the Court to find a significant probability that large language models were used in the preparation of the Reply. The utilization of fictional citations violates an attorney's ethical duties to their clients and the Court. *People v. Alvarez* (2025) 114 Cal.App.5th 1115. Given that the citations are fictional, and would otherwise mislead the Court both on the binding nature of the decision (citation to California reporter despite being a federal decision) and the holding thereon, the Court finds violations of Rules of Court, Rule 3.1113(c) and Rule 8.1115(a). For any sanctions to issue thereon, an order to show cause must issue, and present an opportunity to be heard.

Therefore, due to violations of Rules of Court, Rule 3.1113(c) and Rule 8.1115(a), the Court issues an order to show cause against Counsel Alvarez, why she should not be liable for $1,500 in sanctions to the Court under Rule of Court, Rule 2.30; and why a report as to Alvarez should not issue to the State Bar of California. See, e.g., The Order to Show Cause will be heard January 22, 2026, at 3:30 pm in Department 19.

IV. The Motion is Fatally Defective

First, the motion for sanctions is procedurally defective. Greg, despite his averment to the contrary, has failed to serve a motion compliant with the safe harbor provision for two reasons. As was noted by the Second District Court of Appeal in *Galleria Plus, Inc. v. Hanmi Bank*, the notice of motion must contain a hearing date to comply with the notice requirements of CCP § 1010, and any sanctions motion under CCP § 128.7 failing to meet the requirements under CCP § 1010 is fatally defective. In *Galleria*, the copy of the notice of motion served to start the safe-

[2] This case does not address Penal Code § 502 either, but that is less relevant given its unpublished status.

harbor period contained no notice of the date of the hearing, but instead stated that the hearing would occur on "AAA at BBB". *Id*. at 537. The notice included that the sanctions motion could be filed "on and after May 23. *Id*. The motion was re-served after filing and assignment of a date and time by the court at the conclusion of the safe harbor period. *Id*. The court of appeal found that the utilization of "AAA at BBB" rendered the motion fatally defective due to its failure to comply with CCP § 1010. *Id*. at 538. CCP § 1010 requires that motions state when motions will be made, and a failure to provide when a motion will be made renders it fatally defective. *Id*. at 537-538.

The fact that Greg has not included any date on the notice of motion when it was served to Plaintiffs on July 25, 2025 is dispositive of the motion. The copy of motion served on Plaintiffs contained no date informing Plaintiffs when Greg would move the court for sanctions. This omission undercuts the remedial purpose of the statute by ignoring its strict notice provisions. See *Galleria, supra,* 179 Cal.App.4th 535, 538. Notice served under CCP § 128.7 (c)(1) must comply with CCP § 1010. Failure to include this information is fatal defect, and the motion must be denied. *Galleria, supra,* 179 Cal.App.4th 535, 537-538.

In the same vein of deficiency, Plaintiffs argue that Greg has also impermissibly supplemented his version of the motion served under the safe harbor notice, resulting in a procedurally deficient motion. Specifically, Plaintiffs aver that the version of the motion served to start the safe harbor provision did not contain ¶ 6 of Greg's Declaration. This is further supported by the face of that same filing with the Court, as Greg purportedly signed the version submitted on August 18, 2025, the same day he filed the motion. This being the case, Greg has materially altered the motion in contravention of CCP § 1010, and no sanctions under CCP § 128.7 may issue as a result. *Hart v. Avetoom* (2002) 95 Cal.App.4th 410, 414.

Second, Greg cannot recover attorney's fees not actually incurred, and as a self-represented party, he incurs no fees. *Musaelian v. Adams* (2009) 45 Cal.4th 512, 517. Greg avers that sanctions of $3,250 should be imposed for "attorney's fees and expenses", for "evaluating and responding to this claim". See Greg's Notice of Motion, filed 8/18/2025, pg. 2:13-15. Greg cannot recover costs he cannot display were actually incurred. Even, assuming arguendo, that Greg has incurred actual fees for consulting an attorney, those fees are not supported by the declaration which accompanied the motion. As such, there is no evidence to support the request, and any such fees are not recoverable due to the failure to provide notice of this evidence in accordance with the safe harbor provision. On this basis, Greg's motion also fails.

Given the various, incurable procedural deficiencies, the Court need not attempt to parse whether Plaintiffs' claim had merit, based only on her redacted showings.

While the Court has already addressed Plaintiff's post-reply objection, Plaintiffs also argue in their opposition that the Court should otherwise deny the motion for Greg's misstatement of the holding in *Facebook, Inc. v. ConnectU LLC* (N.D. Cal. 2007) 489 F.Supp.2d 1087, 1090. Plaintiff's citation to *Noland v. Land of the Free, L.P.* (2025) 114 Cal.App.5th 426 ("*Noland*"), while arguing that Greg has used generative artificial intelligence, is not persuasive. The Court is

acutely aware of the rise in false citations with the advent of generative large language models[3]. Greg's misattribution of legal authority is incorrect, improper, and generally errant conduct. However, unsubstantiated claims of use of artificial intelligence dilutes such claims when they apply. As the Court has addressed above, where there are indications of misuse of large language models, it is willing to take appropriate corrective action. The motion itself does not appear to contain the markers the Court would otherwise look for in identifying large language model generated content. The memorandum comes in at a scant 3 pages of briefing. It contains only a single case citation (which Plaintiffs rightly contend is a misstatement of the holding). It does not purport to rely on quotes which otherwise do not exist in the underlying decision. *Contra Noland, supra*, 114 Cal.App.5th 426 (21 of 23 quotations were fabricated). The case cited by Greg exists and contains a citation which properly leads to the case (though no pin cite). This appears to be nothing more than a layman's failed effort to parse the holding of a dense legal decision, and as such the appropriate course is to simply ignore the argument as unpersuasive and proceed to other issues.

Therefore, due to the procedural deficiencies elucidated above, Greg's motion is **DENIED**.

V. Conclusion

Based on the foregoing, the motion is **DENIED**.

The Court has now set an Order to Show Cause ("OSC") Re: Sanctions as to Counsel Alvarez for January 22, 2026, at 3:30 pm in Department 19. Counsel Alvarez may file a declaration in opposition to the OSC no later than ten (10) days before this hearing date.

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).

2-3. 24CV02169, Habtom v. The Permanente Medical Group

Plaintiff, Sabir Habtom ("Plaintiff"), has filed the currently operative first amended complaint (the "FAC") against defendants The Permanente Medical Group ("TPMG"), Allied Universal Security Services Universal Protection Service, LLP ("Allied"), Rachel Brauer ("Brauer"), Kent Pena ("Pena", together with all other defendants, "Defendants"), and Does 1-20 with seven causes of action.

This matter is on calendar for demurrer to the FAC filed by Allied for failure to state a cause of action as to the Second and Fourth causes of action, and the motion to strike particular allegations from the FAC.

I. Governing Law

A. Motions to Strike

[3] While the Court recognizes that the term "AI" is prevalently used when referring to such content generative engines, it also somewhat overstates the nature of the algorithmic technology. The Court therefore relies on the more generalized term of "large language model" for clarity and accuracy.

A motion to strike lies where a pleading contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." CCP § 436(b). However, "falsity," must be demonstrated by reference to the pleading itself or of judicially noticeable matters, not extraneous facts. *See* CCP § 437. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632.). A motion to strike is properly directed to unauthorized claims for damages, meaning damages which are not allowable as a matter of law. *See, e.g., Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 (motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law). Punitive damages may be stricken where the facts alleged do not rise to the level of "malice, fraud or oppression" required to support a punitive damages award. *See, e.g. Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.

Civil Code § 3294 authorizes the recovery of punitive damages in noncontract cases "where the defendant has been guilty of oppression, fraud, or malice…" "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294. A conscious disregard for the safety of others may constitute malice. *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 28 ("*Searle*"). "When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice." *Id.* at 29. "The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone." *Id.* at 32. "Conscious disregard of safety as an appropriate description of the Animus malus which may justify an exemplary damage award when nondeliberate injury is alleged." *Ibid.* "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632 (superseded by statute on other grounds).

B. Demurrers Generally

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

C. Agency and Ratification

"An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency." Civ. Code, § 2295. An agent may bind a principle under their actual or ostensible authority, and any rights or liabilities derived from the actions of the agent under that authority are also attributable to the principal. Civ. Code, § 2330. "An agent's authority may be proved by circumstantial evidence." *Tomerlin v. Canadian Indemnity Co.* (1964) 61 Cal.2d 638, 644. The burden of proving agency is upon the party asserting that relationship. *Oswald Machine & Equipment, Inc. v. Yip* (1992) 10 Cal.App.4th 1238, 1247; *Aspen Pictures, Inc. v. Oceanic S.S. Co.* (1957) 148 Cal.App.2d 238, 253; *Hill v. Citizens Nat. Trust & Sav. Bk.* (1937) 9 Cal.2d 172, 177. Although the existence of an agency relationship is usually a question of fact, it "becomes a question of law when the facts can be viewed in only one way." *Metropolitan Life Ins. Co. v. State Bd. of Equalization* (1982) 32 Cal.3d 649, 658; *Angelotti v. The Walt Disney Co.* (2011) 192 Cal.App.4th 1394, 1404. Agency may be either actual or ostensible. Cal. Civ. Code ("CC") § 2298; *Vallely Investments v. BancAmerica Commercial Corp.* (2001) 88 Cal.App.4th 816, 826. Actual agency exists "when the agent is really employed by the principal." CC § 2299.

"[T]he principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 350. "(T)he right to exercise complete or authoritative control must be shown, rather than mere suggestion as to detail. A worker is an independent contractor when he or she follows the employer's desires only in the result of the work, and not the means by which it is achieved." *Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1179. Additional factors which merit consideration are: "(a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities,

tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee." *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 351. Some jurisprudence on the issue elects to "focus upon the principle that a principal may oversee the results, but not the means, of the work in question." *Beaumont-Jacques v. Farmers Group, Inc.* (2013) 217 Cal.App.4th 1138, 1143. To be under respondeat superior, the conduct must be "typical of, or broadly incidental, to their duties." *Juarez v. San Bernardino City Unified School Dist.* (2024) 106 Cal.App.5th 1213, 1226.

> The nexus required for respondeat superior liability—that the tort be engendered by or arise from the work—is to be distinguished from "but for" causation.[4] That the employment brought tortfeasor and victim together in time and place is not enough. We have used varied language to describe the nature of the required additional link (which, in theory, is the same for intentional and negligent torts): the incident leading to injury must be an "outgrowth" of the employment.

Lisa M. v. Henry Mayo Newhall Memorial Hospital (1995) 12 Cal.4th 291, 298.

For an employer to be liable for punitive damages for the actions of an employee, it must be shown that "the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice." Civ. Code § 3294(b). "With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." *Ibid*. An employer's failure to discipline an employee after the employee commits an intentional tort, can be found to be ratification of that tortious conduct. *Iverson v. Atlas Pacific Engineering* (1983) 143 Cal.App.3d 219, 228. Where punitive damages are alleged against an employer under Civ. Code § 3294 (b), the knowledge on the part of the employer stands as their equivalent of oppression, fraud or malice otherwise required under Civ. Code § 3294 (a); no oppression, fraud or malice on the part of the employer need be shown. *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1154.

D. Defamation

To constitute an action for libel, a plaintiff must show that the defendant made a false and unprivileged publication which causes damage to plaintiff's reputation. Civ. Code, § 45. In pleading libel, a plaintiff must confer the exact statement which is claimed to be false. *Des Granges v. Crall* (1915) 27 Cal.App. 313, 315.

"Defamation is an invasion of the interest in reputation. The tort involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage." *Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645.

Publication means communication to any third person who understands the defamatory meaning of the statement and the application to whom reference is made. *Vedovi v. Watson & Taylor* (1930) 104 Cal.App. 80, 83. A plaintiff cannot publish the defendant's statements in order to manufacture the publication requirement; defendant must be responsible for the publication leading to libel claims. *Live Oak Publishing Co. v. Cohagan* (1991) 234 Cal.App.3d 1277, 1284. Only where plaintiff is compelled to re-publish the statements in aid of disproving them is the defendant's publication not required. *Ibid*.

In contrast, slander is an allegation of spoken defamatory statements falsely averring any of the following:

> "1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
> 2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
> 3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;
> 4. Imputes to him impotence or a want of chastity; or
> 5. Which, by natural consequence, causes actual damage."

Civ. Code, § 46.

In contrast to the specificity required for libel claims, "slander can be charged by alleging the substance of the defamatory statement. *Okun v. Superior Court* (1981) 29 Cal.3d 442, 458.

E. Intentional Infliction of Emotional Distress

Claims of intentional infliction of emotional destress require: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. Whether treated as an element of the prima facie case or as a matter of defense, it must also appear that the defendants' conduct was unprivileged. Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209 internal citations and quotations omitted. To constitute a basis for emotional distress, the alleged conduct must extend beyond mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051. The conduct must be such that on hearing of the alleged conduct an average member of the community would resent the defendant and lead the community member to exclaim, "Outrageous!" *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494. "In order to avoid a demurrer, the plaintiff must allege with great specificity the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832 (Internal

quotations omitted). "Without such pleading, no cause of action for intentional infliction of emotional distress will stand." *Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 536.

"Severe emotional distress means 'emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.'" *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1004, quoting *Girard v. Ball* (1981) 125 Cal.App.3d 772, 787–788. "(T)he requisite emotional distress may consist of any highly unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worry." *Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 397. "It is for the court to determine whether on the evidence severe emotional distress can be found; it is for the jury to determine whether, on the evidence, it has in fact existed." *Ibid*.

II. Evidentiary and Procedural Issues

Plaintiff avers that the motions below are so frivolous that the Court should sanction Allied. As Allied notes on reply, any request for sanctions **must** come in the form of a separate motion. CCP § 128.5 (f)(1)(A); CCP § 128.7 (c)(1). In addition, the results below show that while Allied may assert the defenses predicated on some improvident argument, they accurately identify deficiencies in the FAC.

III. Motion to Strike

Allied argues that Plaintiff has not adequately pled ratification, as he has not identified a corporate officer under CCP § 3294, nor has he pled facts sufficient to support malice, fraud or oppression on the part of a corporate officer. Plaintiff argues that the FAC is subject to liberal construal, and as such is sufficiently pled.

The Court first notes that Allied's notice of motion does not accurately state the punitive damages paragraphs at issue. While Allied cites to FAC ¶ 39 and 68, the appropriate paragraphs appear to be FAC ¶ 41 and 70. Given that Plaintiff fails to raise this issue, the Court finds no prejudice in interpreting the motion as going to the correct paragraphs.

Plaintiff avers that respondeat superior applies because Brauer was acting within the scope of her employment. The FAC contains a single, conclusory statement that Brauer was within the scope of her employment. FAC ¶ 4. He provides no factual basis to support this contention. To be under respondeat superior, the conduct must be "typical of, or broadly incidental, to their duties." *Juarez v. San Bernardino City Unified School Dist.* (2024) 106 Cal.App.5th 1213, 1226. More expansively stated:

> The nexus required for respondeat superior liability—that the tort be engendered by or arise from the work—is to be distinguished from "but for" causation.[4] That the employment brought tortfeasor and victim together in time and place is not enough. We have used varied language to describe the nature of the required additional link (which, in theory, is the same for

> intentional and negligent torts): the incident leading to injury must be an "outgrowth" of the employment.

Lisa M. v. Henry Mayo Newhall Memorial Hospital (1995) 12 Cal.4th 291, 298.

It is not enough that the conduct merely occurred at a place of employment. *Borg-Warner Protective Services Corp. v. Superior Court* (1999) 75 Cal.App.4th 1203, 1206 (summary adjudication for employer properly granted where security guard performed arson, which was outside the scope of employment). At demurrer, Plaintiff must plead facts to support the theory that Brauer's conduct was an "outgrowth of the employment", not merely that the issues occurred related to workplace relationships. Moreover, for the purposes of punitive damages, this is only one aspect of the requirement. Plaintiff pleads no facts which would tie Brauer's conduct to the required involvement of an officer, director or corporate manager. Accordingly, Plaintiff has failed to plead facts sufficient to support respondeat superior liability for punitive damages for multiple reasons.

As to ratification, the Court is not generally persuaded by the narrow construal advanced by Allied. As Plaintiff points out in the Opposition, Allied relies upon various authorities which come after jury verdict, and as such offer almost no illumination as to the pleading standards related to ratification issues. See, *Morgan v. J-M Manufacturing Co., Inc.* (2021) 60 Cal.App.5th 1078, 1089; *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 568. The applicability of these decisions must be weighed against the factor that they were reviewed on a full record after trial, and not at demurrer only on pleadings subject to liberal construal. Allied avers that Plaintiff has not pled malice, oppression or fraud on the part of an officer. This understates the applicable standard for agency. Plaintiff does not need to plead malice, fraud or oppression by an officer if he adequately pleads ratification. If Plaintiff can show Allied ratified the conduct, that is sufficient to impute any alleged malice, fraud or oppression by Brauer to Allied. Plaintiff need only plead such facts that may lead to such a conclusion, as ratification extends authority back to the tortious act. "The effect of a ratification is that the authority which is given to the purported agent relates back to the time when he performed the act." *Dickinson v. Cosby* (2019) 37 Cal.App.5th 1138, 1158.

To the degree that Plaintiff must show that the ratification was by an officer, the identity of the officer (for both ratification and respondeat superior) appears to be something properly consigned to discovery so long as Plaintiff has pled sufficient facts to support the underlying theory. See, e.g., *Shaterian v. Wells Fargo Bank, N.A.* (N.D. Cal. 2011) 829 F.Supp.2d 873, 888 (Under Federal Rules of Civil Procedure interpreting § 3294, allegations that the policy at issue had to involve a corporate officer was sufficiently pled without identifying particular corporate officers). This is the type of intensely fact-oriented issue which requires discovery to elucidate with specificity.

Turning to the allegations of fact, the Court notes that theories of ratification are broad, only requiring that Allied have undertaken such action that they have confirmed and accepted Brauer's conduct. *Cruz v. HomeBase* (2000) 83 Cal.App.4th 160, 168. Allied's averment that Brauer's conduct was outside the scope of employment is not determinative of the scope of the agency if Plaintiff can present subsequent ratification of the conduct. *Nolin v. National*

Convenience Stores, Inc. (1979) 95 Cal.App.3d 279, 289 (Ratification is an alternative theory to performance in scope of employment). Ratification may be proven in a variety of ways. See, e.g., *Iverson v. Atlas Pacific Engineering* (1983) 143 Cal.App.3d 219, 228; see also . However, the Court still comes to the conclusion that the ratification is not sufficiently pled because Plaintiff avers no actual fact related to ratification, only that the conduct was ratified. This is not sufficient. Given that Plaintiff makes almost no factual allegations against Allied directly, there are no facts sufficient to approach the punitive damages requirement. According

The motion to strike is **GRANTED with leave to amend.**

IV. Demurrer

A. Defamation

The Court's analysis on agency issues above remains largely applicable in determining the sufficiency of the defamation allegation against Allied. Respondeat superior fails for not tying Brauer's conduct to the scope of her employment. Plaintiff has not pled any facts sufficient to show that Allied ratified Brauer's conduct, nor does the FAC provide any factual allegations related to Allied making or republishing Brauer's statements in anything except generally pled, conclusory terms.

As to direct allegations against Allied, Plaintiff alleges republication by "Defendants" in general and conclusory terms. Given that libel must be pled with specificity (*Des Granges v. Crall* (1915) 27 Cal.App. 313, 315) while slander is subject to more liberal pleading practices (*Okun v. Superior Court* (1981) 29 Cal.3d 442, 458), allegations of republication must at least be sufficiently specific that Allied can identify the cause of action alleged, whether libel or slander. Without such allegations, it is impossible to even determine what pleading standard to which Plaintiff's allegations must be held.

The Demurrer to the Second cause of action is SUSTAINED with leave to amend.

B. Intentional Infliction of Emotional Distress

Again, it is impossible to attribute Brauer's conduct to Allied based on the minimal factual allegations leveled against them in the FAC. Again, there is not sufficient factual basis to ascribe Brauer's conduct to Allied. Pleading intentional infliction of emotional distress requires Plaintiff to describe the outrageous conduct. Given that no outrageous conduct is directly alleged against Allied, the claim fails due to inadequate allegations to support agency. Accordingly, there are not facts alleged sufficient to state a claim for intentional infliction of emotional distress against Allied.

Defendants also demur to this cause of action averring that Plaintiff has failed to allege sufficient harm to meet the pleading standard of distress capable of recovery for this tort. Plaintiff alleges "severe emotional distress, humiliation, embarrassment, mental anguish, sickness, physical injuries including insomnia, headaches, and gastrointestinal distress, and the loss of other employment benefits." FAC ¶ 80. Plaintiff alleges both physical and emotional symptoms related

to his distress. Allied asks that the Court construe what the damages do not say against Plaintiff, but that is not the lens with which the pleadings are examined at demurrer. The alleged symptoms *may* be sufficient to state the type of distress required, and that is sufficient at this stage. *Contra*, *Girard v. Ball* (1981) 125 Cal.App.3d 772, 788 (At summary judgment, plaintiff's vague discovery responses and failure to seek medical treatment for his alleged distress was sufficient to show that the emotional distress was not severe).

The Demurrer to the Fourth cause of action is **SUSTAINED with leave to amend**.

V. Leave to Amend

The Court notes that the demurrer to each cause of action above have been sustained with leave to amend. While Allied argues that Plaintiff cannot amend the Complaint, the jurisprudence in California overwhelmingly supports leave to amend absent some affirmative indication that Plaintiff cannot cure the defects. It does not appear appropriate to hypothesize what Plaintiff may or may not allege in amending. Leave to amend appears necessary at this early juncture.

VI. Conclusion

Based on the foregoing, the Demurrer is **SUSTAINED with leave to amend as to the Second and Fourth causes of action.**

The motion to strike is **GRANTED as corrected above with leave to amend**.

Allied 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).

4-5. SCV-245783, Liebling v. Goodrich

This matter is the subject of an enormous record, containing innumerable plaintiffs and defendants. As is relevant here, plaintiffs prevailed in the action and obtained the August 4, 2021 judgment (the "Judgment") against defendant Robert E. Zuckerman ("Zuckerman"). Among the plaintiffs/judgment creditors is Richard Abel ("Abel").

This matter is on calendar for a motion by Abel for an order to show cause re: contempt against Zuckerman for failure to comply with the Court's November 18, 2024, Turnover order. Abel has also filed a motion to hold a third party, Capital One, N.A. ("Capital One"), liable under CCP § 701.020, or in the alternative for the Court to issue an Order to Show Cause re: Contempt as to Capital One's non-compliance with an assignment order.

Both the motions are CONTINUED.

I. Facts and Procedural History

Abel was among the plaintiffs who obtained the Judgment against Zuckerman on August 4, 2021. Zuckerman has thus far not satisfied the amount owed to Abel under the Judgment. Abel obtained an order for Assignment on January 25, 2018 (the "Assignment"). Thereafter, he contacted Capital One in an effort to serve the Assignment, and did so on July 21, 2023, again on August 13, 2023, a third time on January 18, 2024, and most recently on December 26, 2024. These notices have produced intermittent seizures of funds.

On November 18, 2024, Abel obtained an order for Turnover in Aid of Execution ("Turnover Order") requiring Zuckerman to turn over substantial amounts of documentary evidence regarding specific alleged business interests. The Turnover Order was personally served to Zuckerman on March 20, 2025. See Abel's Proof of Service, filed 4/7/2025.

Abel contends that Capital One has violated the Assignment by failing to either freeze accounts or remit all funds not otherwise exempt, including a credit rewards account. He also alleges that Zuckerman has not turned over the documents required by the Turnover Order.

II. Governing Law

A. Legal Authority for Contempt

Contempt includes "[d]isobedience of any lawful judgment, order, or process of the court." Cal. Code Civ. Proc. ("CCP") § 1209(a)(5). When contempt is committed in the court's immediate view and presence, it is termed "direct contempt" and may be treated summarily and no affidavit or order to show cause is required. All that is needed is that an order be made reciting the facts, the person adjudged guilty, and the punishment prescribed. CCP § 1211; *see also In re Hallinan* (1969) 71 Cal.2d 1179, 1180. By contrast, when the contempt is not committed in the immediate presence of the court, it is termed an "indirect contempt," and the procedural requirements are more complex. *See* CCP §§ 1211-1218. "[A]n affidavit must be presented to the court stating the facts constituting the contempt, an order to show cause must be issued, and hearing on the facts must be held by the judge." *Arthur v. Sup.Ct.* (1965) 62 Cal.2d 404, 407-08; *see also* CCP §§ 1211-1212.

The facts that must be established by the "initiating affidavit" include: (1) the rendition of a valid order; (2) actual knowledge of the order; (3) ability to comply; and, (4) willful disobedience of the order. *Anderson v. Sup. Ct.* (1998) 68 Cal.App.4th 1240, 1245; *see also Conn v. Sup. Ct.* (1987) 196 Cal.App.3d 774, 784. Although an affidavit stating all facts constituting guilt of the offense is a jurisdictional prerequisite (*Groves v. Sup. Ct*. (1944) 62 Cal.App.2d 559, 568), a court "may order or permit amendment of such affidavit or statement for any defect or insufficiency at any stage of the proceedings" (CCP § 1211.5(b)) and non-prejudicial defects in form do not provide any basis to set aside a conviction of contempt. CCP § 1211.5(c). However, the affidavit must be supported by factual statements. CCP § 1211.5(a). The initiating affidavit and warrant or OSC must be personally served**.** CCP §§ 1015-1016.

Moreover, because of the penalties imposed, a proceeding to punish an accused for contempt is criminal in nature, and guilt must be established beyond a reasonable doubt. *Bridges v. Sup. Ct.* (1939) 14 Cal.2d 464, 485 (rev'd. on other grounds sub nom. *Bridges v. State of California*

(1941) 314 U.S. 252). A party charged with contempt is entitled to the same protections as a criminal defendant, including an advisement of rights and access to counsel if a party is indigent. *In re Kreitman* (1995) 40 Cal.App.4th 750, 753; *County of Santa Clara v. Superior Court* (1992) 2 Cal.App.4th 1686, 1697; *see also* Gov. Code, § 27706. The Court may not find the respondents in contempt in their absence unless the court finds, based on evidence presented, that the absence is voluntary. *Farace v. Sup.Ct*. (1983) 148 Cal.App.3d 915, 918.

A party charged with civil contempt is entitled to a trial. CCP § 1217. The right to a jury trial for civil contempt only applies if the proposed sentence exceeds 180 days. *Mitchell v. Superior Court* (1989) 49 Cal.3d 1230, 1239; *In re Kreitman* (1995) 40 Cal.App.4th 750, 753. "(A)ffirmative allegations contained in an affidavit of the defendant in contempt proceedings for the disobedience of an injunction **cannot be deemed established without a trial** to determine the issues so joined". *Lindsley v. Superior Court of Cal., in and for Humboldt County* (1926) 76 Cal.App. 419, 426 (emphasis added).

> "The affidavits upon which the orders to show cause were issued served as the complaint charging the contempt. They might also serve as evidence at the hearing but they did not constitute such evidence until offered and received by the court, and upon their being offered petitioner would have the right to object to any matter stated therein upon any proper legal ground as to its relevancy or competency. In the proceedings here he would also have the right, if the evidence was offered and received, to cross-examine the affiant (Citation)"

Collins v. Superior Court In and For Los Angeles County (1957) 150 Cal.App.2d 354.

III. Motion to Hold Capital One Liable, or Issue an OSC

Capital One has not responded to the motion. However, Abel seeks to hold Capital One liable for those debts despite not being a party to the case, because the service occurred at the "same location where the Sheriff previously served Capital One with bank levies". See, Plaintiff's Reply, § II. This does not appear sufficient. Abel seeks to hold Capital One liable for Zuckerman's debts. This is a direct form of liability which seems analogous to a fresh lawsuit. Indeed, courts are within their discretion to defer such motions to their own case. *Ilshin Investment Co., Ltd. v. Buena Vista Home Entertainment, Inc.* (2011) 195 Cal.App.4th 612, 627.

Service of process to a corporation must be made to either an officer, or to a person designated as agent for service of process. CCP § 416.10. This appears proper here, as Abel attempts to impose liability on Capital One irrespective of their status as a non-party. To quote a secondary source on which Abel appears to rely for other propositions, "Such a motion should be personally served on the third party." Rutter Cal. Practice Guide Enforcing Judgments & Debts § 6:577. While Abel's reply argues that service was personal, Abel's proof of service only avers that it was served by "Substitute service" and does not state that the served individual was either a corporate officer or an agent for service of process. Service on Capital One has therefore not been sufficiently accomplished.

Therefore, the motion is CONTINUED to March 4, 2026. Abel is required to serve notice of the continued date to all parties.

IV. Issuance of an Order to Show Cause re: Contempt as to Zuckerman

As to Zuckerman, the motion also appears inadequately served. In his reply, Abel avers that the service to Zuckerman occurred as is shown in his Declaration in Support, Exhibit B, which avers service of the motion on August 19, 2025. This is the same day that Abel filed the motion. This raises a concern that the motion was served without the hearing date, as the original version of the motion did not yet have a date assigned by the clerk. The clerk assigned the hearing date at time of filing in accordance with the local rules. Abel has averred that it was served that day, but the proof of service is attached to the motion, which means the version served could not have contained the date assigned by the clerk. The Court cannot find that Zuckerman was given notice of the motion date as a result.

Therefore, the motion is CONTINUED to March 4, 2026. Abel is required to serve notice of the continued date to all parties.

V. Conclusion

Both motions are CONTINUED to March 4, 2026 at 3:00 pm in Department 19.

6. SCV-269230, Fidelity National Title Company v. Darling

Plaintiff Fidelity National Title Company ("Fidelity" or "Plaintiff") initiated this action on August 6, 2021 filing the interpleader action for disbursement of escrow funds against defendants Heidi Darling ("Darling"), Debbie Darlene Shimon ("Shimon"), William McCarty, Jr. ("McCarty, Jr." or "Cross-Complainant") and Does 1-10, related to McCarty, Jr.'s objection to the sale of the property located at 6881 Day Road, Windsor, California (the "Property"). McCarty, Jr. has in turn filed the currently operative first amended cross-complaint (the "FAXC") against Fidelity, Anthony Haberthur ("Haberthur"), Shimon, Sherri Cooper Johnston ("Cooper"), Darling (all together "Cross-Defendants") Richard Carnation (now dismissed), and Does 1-20 alleging causes of action arising out of the sale of the Property.

This matter is on calendar for the motion by McCarty, Jr. for discovery into Darling's financial condition under Civ. Code § 3295(c). The motion is **DENIED**.

I. Procedural Issues

Darling has filed a late opposition to the motion. McCarty, Jr. does not object to the late opposition, nor does he aver any prejudice thereon. Accordingly, the Court considers the opposition.

II. Governing Law

A. *Discovery Generally*

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. "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.* "When discovery requests are grossly overbroad on their face, and hence do not appear reasonably related to a legitimate discovery need, a reasonable inference can be drawn of an intent to harass and improperly burden." *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 431.

The right of privacy is an "inalienable right" secured by article I, section 1 of the California Constitution. *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 656. It protects against the unwarranted, compelled disclosure of private or personal information and "extends to one's confidential financial affairs as well as to the details of one's personal life." *Ibid*. However, even the constitutional right of privacy does not provide absolute protection "but may yield in the furtherance of compelling state interests." *People v. Wharton* (1991) 53 Cal.3d 522, 563. Thus, "when the constitutional right of privacy is involved, the party seeking discovery of private matter must do more than satisfy the section 2017[.010] standard [and] the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced." *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853–1854. A discovery proponent may demonstrate compelling need by establishing the discovery sought is directly relevant and essential to the fair resolution of the underlying lawsuit. *Planned Parenthood Golden Gate v. Superior Court* (2000) 83 Cal.App.4th 347, 367; see also, *Britt v. Superior Court* (1978) 20 Cal.3d 844, 859-862; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 552-555; *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1071.

The court must "carefully balance" the interests involved - *i.e.* the right of privacy versus the public interest in obtaining just results in litigation. *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 714; see also, *Valley Bank of Nevada, supra,* 15 Cal.3d at 657; *Pioneer Electronics (USA), Inc., supra,* 40 Cal.4th at 371. In balancing these interests, "[t]he court must consider the purpose of the information sought, the effect that disclosure will have on the affected persons and parties, the nature of the objections urged by the party resisting disclosure and availability of alternative, less intrusive means for obtaining the requested information." *SCC Acquisitions, Inc., supra,* 243 Cal.App.4th at 754–755. "[T]he more sensitive the nature of the personal information that is

sought to be discovered, the more substantial the showing of the need for the discovery that will be required before disclosure will be permitted." *Ibid.*

B. *Protections Under Civ. Code § 3295*

"No pretrial discovery by the plaintiff shall be permitted with respect to (the profits the defendant has gained by virtue of the wrongful course of conduct of the nature and type shown by the evidence or the financial condition of the defendant) unless the court enters an order permitting such discovery pursuant to this subdivision." Civ. Code, § 3295 (c). "Upon motion by the plaintiff supported by appropriate affidavits and after a hearing, if the court deems a hearing to be necessary, the court may at any time enter an order permitting the discovery otherwise prohibited by this subdivision if the court finds, on the basis of the supporting and opposing affidavits presented, that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294." CCP § 3295 (c). Civ. Code § 3295 is, at its heart, an objection rooted in privacy concerns. See *Kerner v. Superior Court* (2012) 206 Cal.App.4th 84, 120. "The purpose of [requiring plaintiffs to make a prima facie case under §3295] is to protect defendants' financial privacy and prevent defendants from being pressured into settling nonmeritorious cases in order to avoid disclosure of their financial information." *Ibid.*

"(B)efore a trial court may enter an order allowing discovery of financial condition information under Civil Code section 3295, subdivision (c) …, it must (1) weigh the evidence presented by both sides, and (2) make a finding that it is very likely the plaintiff will prevail on his claim for punitive damages." *Jabro v. Superior Court* (2002) 95 Cal.App.4th 754, 755; *Guardado v. Superior Court* (2008) 163 Cal.App.4th 91, 98. To meet the required burden of showing a "substantial probability" of prevailing, a plaintiff must show it is "very likely" or "a strong likelihood" that they will prevail at trial on the punitive damages claims. *Id*. at 758.

C. *Conversion*

The elements of conversion are: 1) plaintiff's ownership or right to possession of the property; 2) defendant's conversion through a wrongful act; and 3) damages. *Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208. "(C)onversion is a strict liability tort. It does not require bad faith, knowledge, or even negligence; it requires only that the defendant have intentionally done the act depriving the plaintiff of his or her rightful possession." *Voris v. Lampert* (2019) 7 Cal.5th 1141, 1158. "A successful plaintiff in a conversion action is entitled to recover '[t]he value of the property at the time of the conversion, with the interest from that time, or, an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his part would not have averted' plus 'fair compensation for the time and money properly expended in pursuit of the property.'" *Id*. at 1150–1151. Intentional conversion may support a claim for punitive damages, so long as the plaintiff can show the conversion was executed with "oppression, fraud or malice". *Haigler v. Donnelly* (1941) 18 Cal.2d 674, 681, quoting Civ. Code § 3294.

D. *Punitive Damages*

Civil Code § 3294 authorizes the recovery of punitive damages in noncontract cases "where the defendant has been guilty of oppression, fraud, or malice…" "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294. A conscious disregard for the safety of others may constitute malice. *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 28 ("*Searle*"). "When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice." *Id.* at 29. "The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone." *Id.* at 32. "Conscious disregard of safety as an appropriate description of the Animus malus which may justify an exemplary damage award when nondeliberate injury is alleged." *Ibid.* "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632 (superseded by statute on other grounds).

III. Analysis

McCarty, Jr, alleges causes of action against Darling for Intentional Tort, Fraud, Negligence, and Declaratory relief. Darling's demurrer to the cause of action for fraud was sustained without leave to amend. McCarty, Jr. avers that he requires discovery into Darling's financial condition given the strength of his claims for punitive damages.

A. The Evidence Presented

In arguing against the possibility of punitive damages, Darling misapprehends the standards associated with her authority. Darling presents evidence regarding her authority to list the Property due to McCarty Jr.'s assent thereto. This does not appear to change the question at issue, which is whether Darling had the authority to sign the sale documents on behalf of the DM 2019 Trust. Darling argues various reasons why her liability may be abrogated, but they are either unpersuasive or constitute admissions to facts which only damage her case. Darling provides her deposition testimony where it states that she told the notary that she was not the trustee for the 2019 DM Trust, and yet concedes that she signed anyway. Phair Declaration in Opposition, Ex. 2. This is more of an admission than evidence in opposition.

However, the burden here is on McCarty, Jr. to produce *evidence* of a substantial probability of prevailing. More precisely, the Court may only grant the motion on submission of "appropriate

affidavits". In support of the motion, McCarty, Jr. submits a brief declaration affirming his identity, his interest in the Property, and that he never signed the sale contract for the Property. See, Martel Declaration in Support, Ex. 2. Meanwhile, the only other evidence offered is McCarty, Jr.'s "verified" complaint, which does not contain a verification by McCarty Jr. under penalty of perjury. Martel Declaration, Ex. 1; CCP § 446; CCP § 2015.5. As such, it doesn't carry its own evidentiary value. *Sheard v. Superior Court* (1974) 40 Cal.App.3d 207, 212 (an unverified complaint cannot serve as an affidavit.). To the degree that there are various documents attached thereon, no foundation is laid. McCarty, Jr. therefore presents minimal evidence in support, only the brief declaration mentioned above.

B. Theories of Liability

Both parties spend substantial time arguing about theories not at issue based on the active version of the cross-complaint, the FAXC. As was noted, the cause of action at issue for the purposes of punitive damages appears to be one for "intentional tort". As the prior order on demurrer noted, there is no cause of action for intentional tort, and it interpreted the cause of action as one for intentional conversion. Conversion is a strict liability tort, intended to compel return of the mislaid property. Intent is only relevant for establishing the possibility of punitive damages. Punitive damages revolve largely around intentionality, as they function as a punishment. The Court must find that McCarty, Jr. has a "substantial probability" of prevailing on his punitive damage claims. Given that McCarty, Jr. has submitted *de minimus* evidence in support of his motion, the Court cannot find that he has carried his burden to display a "substantial probability" of prevailing on the punitive damages claims.

McCarty, Jr.'s motion is DENIED.

None of the above is a determination of the eventual merits on the claims for punitive damages, or the case itself. Similarly, this is without prejudice to McCarty, Jr.'s ability to subpoena the required information to be available at trial. *Ibid* ("[T]he plaintiff may subpoena documents or witnesses to be available at the trial for the purpose of establishing the profits or financial condition referred to in subdivision (a), and the defendant may be required to identify documents in the defendant's possession which are relevant and admissible for that purpose and the witnesses employed by or related to the defendant who would be most competent to testify to those facts."). Darling's contention regarding non-discoverability due to privacy essentially restates the objection under Civ. Code § 3295. To the degree McCarty, Jr. may have presented evidence to overcome the protections of Civ. Code § 3295, Darling's right to privacy elucidates no additional protection. At the point where McCarty, Jr. makes the required showing under Civ. Code § 3295(c), the relevance of the information becomes too great to be capable of privacy protections within the privacy balancing test. Put another way, Civ. Code § 3295 makes clear that financial information *is* per se discoverable, despite being private, once the required showing is made.

V. Conclusion

Based on the foregoing, McCarty, Jr.'s motion for discovery into Darling's financial condition under Civ. Code § 3295 is DENIED.

Darling shall submit a written order for that motion to the court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Thereafter, Darling shall provide notice of the order per CCP § 1019.5.

7. SCV-272909, Manzo Cortes v. Boyrie Enterprises, Inc.

Plaintiff Rafael Manzo Cortes ("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 Pahal Food Service Inc., F.H. Berry Enterprises, Inc. (together "Defendants"), and Does 1-50 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 conditional certification of the class and preliminary approval of the class action settlement (the "Motion"). The Motion is **GRANTED**.

I. The Complaint

The presently operative First Amended Complaint ("Complaint") alleges that Defendants failed to comply with California Labor Code ("LC") provisions during the course of Plaintiff's employment with Defendants, 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 Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512; (2) Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7; (3) Failure to Reimburse Expenses Pursuant to Labor Code § 2802; (4) Violation of Labor Code § 226(a); (5) Penalties Pursuant to Labor Code § 203; (6) Failure to Provide Employment Records Pursuant to Labor Code §§ 226 and 1198.5; (7) Unfair Business Practices, in Violation of Business and Professions Code Sections 17200, et *seq*.; and (8) Penalties Pursuant to Labor Code §2699, et seq., for PAGA civil penalties on a representative basis for themselves and other employees.

II. The Settlement

According to the Motion, Plaintiff asserted multiple causes of action for various Labor Code and Business and Professions 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* Szamet Decl. ¶¶ 50-127.

The Szamet Declaration establishes that Plaintiff's counsel engaged in limited exchange of information and investigation. Szamet Decl. ¶¶ 10-12. On October 17, 2024, the parties mediated the matter before Russ Wunderli, a mediator with extensive wage and hour class action experience. Szamet Decl. ¶ 8. Prior to the mediation, Defendant had provided "Plaintiff's personnel file, as well as sample time and pay record, as well as Defendant's recent financial statements". Szamet Decl. ¶¶ 10. The class is defined in the Settlement Agreement and Release of Class Action [attached to Szamet Decl., Exhibit 1, hereinafter "Settlement Agreement"] as all persons who worked one or more pay periods employed by Defendants in California as a non-

exempt employee during the Class Period from March 23, 2019, through December 31, 2024. Settlement Agreement §§ 1.5, 1.12. Aggrieved Employees under PAGA are defined as all persons who worked one or more pay periods employed by Defendants in California as a non-exempt employee between March 23, 2022, through December 31, 2024. Settlement Agreement §§ 1.4 and 1.31.

Plaintiff undertook an expert analysis of the data provided by Defendants. Spivak Decl. ¶ 18. Based on that data, Plaintiff's counsel was able to undertake a thorough analysis of potential damages for the claims alleged in the FAC, 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 $6,327,518.07 ($1,260,293.00 in missed meal period premium wages, $1,260,293.00 in missed rest break premium wages, $84,355.00 in unreimbursed expenses, $713,600.00 for wage statement penalties, and $2,213,136.00 for waiting time penalties) with $651,400.00 for civil penalties under PAGA. Szamet Decl. ¶¶ 103-121. The estimated maximum damage per class member for the core class claims is therefore $10,678.90 per class member ($ 5,531,677.00 / 518 class members). Maximum recovery of PAGA penalties are $1,507.87 per aggrieved employee ([$162,850/108]x.25), with the other $488,550 going to the LWDA. At the mediation, the parties came to an agreement based on the assistance of the mediator. Szamet Decl. ¶ 102.

Pursuant to the Settlement Agreement, Defendants will pay $200,000 as the Gross Settlement Fund. Settlement Agreement § 1.22. From that amount, the following will be deducted: 1) attorneys' fees of $66,666.67 (which is 1/3 of the Gross Settlement Fund) and up to $18,000 of costs and expenses; 2) an incentive award to the Plaintiff of $5,000; 3) settlement administration costs, not to exceed $10,000; and 4) $10,000 in penalties under PAGA, 75% of which is paid to the California Labor and Workforce Development Agency ($2,500 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 $90,333.33 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 individual 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 $174.39 ($90,333.33 / 518). This also leaves a PAGA settlement for distribution of $2,500. 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 and ascertained in the course of the Action, including (1) failure to provide meal breaks pursuant to Labor Code sections 226.7 and 512; (2) failure to provide rest breaks pursuant to Labor Code section 226.7; (3) failure to reimburse expenses pursuant to Labor Code section 2802; (4) failure to issue accurate itemized wage statements pursuant to Labor Code section 226(a); (5) penalties under Labor Code section 203; (6) failure to provide employment records pursuant to Labor Code section 226 and 1198.5; and (7) violation of Business & Professions Code section 17200." Settlement Agreement § 5.2.

Additionally, Plaintiff agrees to release "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, Plaintiff's PAGA Notice dated March 23, 2023, and ascertained in the course of the Action, including, violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 512, and 2802." Settlement Agreement § 5.3.

III. Analysis

The purpose of evaluating a proposed class action settlement on a preliminary basis is to determine whether the proposed settlement is within the "range of reasonableness" for possible approval, and whether it is worthwhile to issue notice to the class and schedule a formal hearing. *See* Cabraser, Cal. Class Actions and Coordinated Proceedings §14.02 (2d ed. 2011). A presumption of fairness applies if there has been arm's length bargaining; investigation and discovery have been sufficient to allow counsel and the court to act intelligently; class counsel is experienced in similar litigation; and the percentage of class members who object to the settlement is small. *Id. See also Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. The notice need only appraise a class member of the factors within Cal. Rule of Court, Rule 3.766(d), and need not disclose the estimated dollar value of the possible damages. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 56-57. However, trial courts maintain "virtually complete discretion as to the manner of giving notice to the class members." *Ibid* (internal quotations omitted). "The notice must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members." *Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 746 (internal quotations omitted).

The Court previously continued the matter after expressing substantial concern as to whether the numbers provided are within the reasonable range of settlement. Plaintiff provided evidence that the maximum calculable damages are $6,183,077.00. Of this, the Class has maximum recovery of $5,531,677.00. The net recovery of the Class after costs, fees and incentives is $90,333.33. This results in an average recovery per class member of $174.39, less than 1.7 percent of what they would recover if they were to fully prevail at trial. Plaintiff also stated that Defendant cannot pay more, but this was presented in vague terms. See, Szamet Declaration ¶ 122-123; see also, Boyrie Declaration.

It was also not apparent how Plaintiff came to their calculation of maximum possible damages given that the only discovery produced per the Declaration was "Plaintiff's personnel file, as well as sample time and pay record, as well as Defendant's recent financial statements". Szamet Declaration ¶ 10. Plaintiff mentioned an expert in Szamet Declaration ¶¶ 103, 111, and 115, but no expert was identified, and the information on which the expert relied was not clarified. The Court continued the matter for Plaintiff to provide supplemental evidence to address these concerns.

Having reviewed Plaintiff's supplemental declaration, it provides *some* of the information which addresses the Court's concerns. First, the supplemental declaration does *not* provide identification of Plaintiff's expert or their qualifications, or any additional indication of what amount of discount derives from Defendant's averred financial distress. Plaintiff does provide additional elucidation of their calculated damages. Plaintiff provides evidence that Defendant produced "over 20,000 pages of employees' handwritten timecards and paystubs". Supplemental Declaration of Kelsey Szamet ("Supplemental Declaration") ¶ 3. Plaintiff thereafter performed a random sampling of this information. Plaintiff does not provide the size of the random sample. Plaintiff came to an "adjusted maximum exposure" for class claims of $1,491,930.80.

While the Court still has unaddressed concerns, the settlement appears to sufficiently approach the reasonable range of settlement that the matter should be tendered to the class. The estimated claims based on the 518 Class Members is $1,491,930.80 (with only 108 of those being PAGA aggrieved employees). Recovery of $90,333.33 after attorneys' fees appears to be sufficiently "in the ballpark" 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 proposed costs appear reasonable.

The Court does want to draw counsel's attention to the issue of attorney's fees, which Plaintiff's counsel already strenuously argues toward the common fund theory, as opposed to lodestar. Given that the Court is required at final approval to review the fees *independently* for fairness (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801), counsel should be prepared for analysis on either the lodestar or the common fund theory.

No class has yet been certified, and Plaintiff seeks conditional certification in connection with approval of the settlement. The two basic requirements to sustain a class action are an ascertainable class and a well-defined community of interest in the questions of law and fact involved. Cal. Code Civ. Proc. ("CCP") §382; *see also Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 809. In this case the proposed class is defined as "all persons who worked one or more pay periods employed by Defendants in California as a non-exempt employee during the Class Period from March 23, 2019 through December 31, 2024. Settlement Agreement §§ 1.5, 1.12. Members of the class can be ascertained from Defendant's records, and a class with an estimated 518 members is sufficiently numerous. The community-of-interest requirement embodies common questions of law or fact, a class representative with claims or defenses typical of the class, and a class representative who can adequately represent the class. *Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021. The Court concludes that these requirements are met, the Court would approve the class.

"Notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn*. (1975) 48 Cal.App.3d 134, 151-152. The purpose of a class notice in the context of a settlement is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id.*

The notice appears to fully apprise the class members of the relevant considerations. Therefore, preliminary approval appears appropriate.

IV. Conclusion

1. The Motion is **GRANTED**. For the purpose of the Settlement only, the Court finds that certification of the Class is appropriate because (a) the Class is ascertainable and sufficiently numerous, (b) a well-defined community of interest exists, and (c) there are substantial benefits from certification that render proceeding on a class-wide basis superior to any alternatives. Furthermore, the Court finds that (a) the terms of the Settlement appear to be fair and reasonable to the Class when balanced against the probable outcome of further litigation relating to class certification, liability and damage issues, and potential appeals; (b) Class Counsel is experienced in wage-and-hour class-action litigation; (c) significant investigation was undertaken, and significant information was exchanged, enabling Plaintiff and Defendant to reasonably evaluate one another's positions; (d) approving the Settlement will avoid the substantial costs, delay, and risks that would be presented by further litigation; and (e) the terms of the Settlement were the result of intensive, serious, and non-collusive negotiations between Plaintiff and Defendant, including a private mediation. Accordingly, the Court preliminarily finds that the Settlement falls within the range of possible approval and therefore meets the requirements for preliminary approval.

2. The Court conditionally certifies the following Class for the purpose of the Settlement only: all persons who worked one or more pay periods employed by Defendants in California as a non-exempt employee during the Class Period from March 23, 2019, through December 31, 2024. The Court preliminarily approves the class of Aggrieved Employees under the PAGA claims as all persons who worked one or more pay periods employed by Defendants in California as a non-exempt employee between March 23, 2022, through December 31, 2024.
3. The Court conditionally appoints Eric. B. Kingsley and Kelsey M. Szamet of Kingsley Szamet Employment Lawyers, as Class Counsel.

4. The Court conditionally appoints Rafael Manzo Cortes as the Class Representative.

5. The Court conditionally appoints Phoenix Class Action Administration Solutions, as the Claims Administrator.

6. The Court conditionally approves, as to form and content, the Notice contemplated by the Settlement. The Court finds that the Notice and the notification procedures contemplated

by the Settlement constitute the best notice practicable under the circumstances, and that the Notice and the notification procedures contemplated by the Settlement are in full compliance with the laws of the State of California, the laws of the United States (to the extent applicable), and the requirements of due process. The Court further finds that the Notice appears to fully and accurately inform Class Members of all material terms of the Settlement, including the manner in which Individual Settlement Payments will be calculated; the right to request, and procedure for requesting, exclusion from the Settlement Class, and the right to object, and procedure for objecting to the Settlement.

7. Because the Settlement is within the range of possible final approval, the Court adopts and incorporates the provisions of the Settlement, including, but not limited to, the dates for performance contemplated by the Settlement. Those dates include the following:

    a. No later than thirty (30) days after the date of Preliminary Approval, Defendant shall provide the Claims Administrator with the Class Data for purposes of preparing and mailing Notice to the Class.

    b. No later than fourteen (14) calendar days after receipt of the class data, the Claims Administrator shall mail Notice to the Class. Settlement Class Members do not need to submit any claim forms to receive their respective Individual Settlement Payments. Any Notices returned undelivered must be re-mailed within 3 business days of return of the packet to the Claims Administrator. Claims Administrator shall either use any forwarding address provided by the USPS, or conduct a Class Member Address Search, and re-mail the Notice Packet to the most current address obtained. The time for objections, exclusions, or workweek challenges is extended by 14 days for any Class Member to whom the Notice Packet requires re-mailing.

    c. Class Members shall have until forty-five (45) calendar days after the Claims Administrator mails Notice to submit requests for exclusion or challenge to workweek calculations to the Claims Administrator. To be considered valid, a request for exclusion must contain the name, address, and telephone number of the Class Member requesting exclusion; must be signed and dated by the Class Member; and must include a statement from the Class Member reciting, in substance, that he or she wishes to exclude himself or herself from the Settlement and that he or she understands that, by doing so, he or she will not receive any settlement proceeds. Any Class Member who validly requests to be excluded will not be entitled to any recovery under the Settlement; will not be bound by the terms of the Settlement; and will not have any right to object to, appeal from, or comment on the Settlement.

    d. Class Members shall have until sixty (60) calendar days after the Claims Administrator mails Notice to submit written objections to the Claims Administrator. A written objection must contain the objecting Class Member's full name and current address, must specifically state all objections and the

reasons supporting the objections, and must include any and all supporting papers. A Class Member may also object by appearing at the Final Approval Hearing.

e. The Final Approval Hearing will be held on May 13, 2026 at 3:00 p.m. in Courtroom 19 of the above-captioned Court. Plaintiff shall file a motion for final approval by April 3, 2026. Plaintiff also shall file a motion for approval of any Fee and Expense Award, as well as any Incentive Award to the Class Representative, by April 3, 2026, to be heard at the same time as the motion for final approval.

8. Other than the proceedings contemplated herein, all discovery and other proceedings in the Action are stayed and suspended until further order of the Court.

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

8. SCV-273262, Saldivar v. Wheelcare Express, Inc.

Plaintiff Reyna Saldivar ("Plaintiff") filed the currently operative first amended complaint ("FAC") against Wheelcare Express, Inc. ("Wheelcare"), Teresa Flatt ("Flatt", together with Wheelcare, "Defendants"), and Does 2-20. Plaintiff died on May 12, 2023. This matter is on calendar for the motion by Plaintiff's husband Jaime Garcia Correa ("Substitute Plaintiff") to substitute himself in place of Plaintiff as her successor in interest pursuant to Cal. Code Civ. Proc. ("CCP") § 377.31. The motion is **CONTINUED**.

I. Governing Law

CCP § 377.21 provides that "[a] pending action or proceeding does not abate by the death of a party if the cause of action survives." CCP § 377.11 provides that the term "decedent's successor in interest" means "the beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action." CCP § 377.31 provides that on motion after the death of a person who commenced an action or proceeding, "the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest." CCP § 377.33 provides that upon the death of a party, the court may make appropriate orders substituting the decedent's personal representative or successor in interest as plaintiff on claims belonging to the decedent or, alternatively, it may appoint the successor in interest as a special administrator or guardian ad litem on such claims.

A successor in interest who seeks to be substituted as plaintiff in place of the decedent must execute and file a declaration in the form required by CCP § 377.32. CCP § 377.32(a) provides that the person who seeks to commence an action or proceeding or to continue a pending action or proceeding as the decedent's successor in interest shall execute and file an affidavit or a declaration under penalty of perjury stating all of the following: the decedent's name; the date and place of the decedent's death; "[n]o proceeding is now pending in California for

administration of the decedent's estate" (and if the estate was administered, a copy of the final order showing the distribution of the decedent's cause of action to the successor in interest); either of the following, as appropriate, with facts in support thereof: 1) that the declarant "is the decedent's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) and succeeds to the decedent's interest in the action or proceeding"; or 2) that he "is authorized to act on behalf of the decedent's successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) with respect to the decedent's interest in the action or proceeding"; and that no other person has a superior right to commence the action or proceeding or to be substituted for the decedent in the pending action or proceeding. It also requires that a certified copy of the death certificate be attached. CCP § 337.32(c).

II. Analysis

Plaintiff's husband Jaime Garcia Correa ("Substitute Plaintiff") filed a declaration under penalty of perjury attaching a copy of Plaintiff's death certificate and setting forth Plaintiff's name and date and place of death, stating that no proceeding is now pending in California for the administration of her estate, that Plaintiff died intestate and that he is her successor in interest as defined in Code of Civil Procedure Section 377.11) and succeeds to her interest in the action or proceeding, and that no other person has a superior right to commence the action or to be substituted for the decedent in the pending action or proceeding.

However, the declaration filed by Substitute Plaintiff is submitted entirely in Spanish. Substitute Plaintiff has submitted a translated version of the declaration, but that translation is not certified under oath as required by Cal. Rule of Court, Rule 3.1110 (g). Accordingly, Substitute Plaintiff's declaration cannot be accorded any evidentiary value at this time. The Court must continue the matter for Plaintiff to supplement the declaration with a translation "certified under oath". *Ibid*.

Additionally, there is no proof of service reflecting that Defendants have been served with the hearing date for the motion.

The motion is therefore continued to March 4, 2026, at 3:00 pm in Department 19. Substitute Plaintiff will provide notice of the new date to Defendants.

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(a) and (b).

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