TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, November 18, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

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) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

TO JOIN ZOOM ONLINE:

Department 18:
Meeting ID: **160—739—4368**
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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. 24CV01706, Contrarian Investors Fund, LLC v. Patoka

Patoka's motion for judicial notice is **GRANTED**.

Patoka's **unopposed** motion for summary adjudication of the First (breach of contract), Second (breach of fiduciary duty), and Fourth (common counts: money had and received) Causes of Action is **GRANTED.** Judgment is entered against Cross-defendant in the amount of $586,195.90. The Court will sign the amended proposed order filed by Patoka on November 2, 2026.

I. Background

A. Parties

Kathrina Patoka is a homeowner; Sean Lewis is a home renovator who worked on her home and became friends with her. This action springs from their agreement that Patoka would fund the purchase of residential property that Lewis would renovate and sell for a profit.

Custom Care Home Repair ("CCHR") is the fictitious business name of Lewis's sole proprietorship.

Contrarian Investors Fund, LLC ("Contrarian") is an LLC that was established on August 24, 2022. Its only members and co-managers are Patoka and Lewis.

Chad Hought is an individual who worked for CCHR and Contrarian. He is not a member of Contrarian.

Skye Builders is a California corporation licensed to perform residential construction work. They are involved in this matter because Lewis represented to Patoka that he was performing construction work under Skye's contractor's license.

B. The original complaint (no longer operative)

This lawsuit was commenced by a complaint filed on March 11, 2024 by Contrarian against Patoka. The complaint alleges several causes of action against Patoka in connection with her withdrawal of $333,807.69 from Contrarian's bank account.

Again, Patoka is a member and co-manager of Contrarian. The complaint was dismissed on July 9, 2024 on the basis that counsel for Contrarian, the Buchalter firm, had a conflict of interest in representing Contrarian in a lawsuit against one of its members. Buchalter withdrew as counsel for Contrarian on January 24, 2025. Contrarian remains unrepresented, and no further complaint has been filed.

C. The cross-complaint (the operative pleading)

On April 18, 2024, Patoka cross-complained against Lewis. (CCHR, Contrarian, Hought, and Skye Builders are also named as cross-defendants.) The cross-complaint alleges that Patoka loaned over a million dollars to Contrarian; that under Lewis's direction, Contrarian purchased, renovated, and sold two properties (the "Pinot" and "Ripley" properties), and purchased a third one (the "Cloverdale" property); that Contrarian never fully repaid Patoka's loans as agreed; that Lewis had misappropriated some of the funds; and that the bank withdrawal at the heart of the original complaint was justified as a partial payment of Patoka's outstanding loans to Contrarian.
Lewis and Hought answered the cross-complaint on June 13, 2024. At that time they were represented by attorney John Kelly. However, Kelly substituted out in favor of Lewis and Hought in pro. per. on August 19, 2024.

D. Cross-defendants have not been litigating this matter

Lewis and Hought remain unrepresented, and neither has filed anything at all in this matter since their counsel substituted out.

Lewis has not opposed the instant motion. On September 4, Patoka filed a Notice of Non-Opposition to that effect.

II. Judicial notice

All of Patoka's requests for judicial notice are granted. The Court will take judicial notice of a search result from the California Contractor Licensing Board showing that there is no licensed contractor named Sean Lewis and residing in Sonoma County; a similar search result showing that CCHR is not a licensed contractor; and a number of pleadings filed in the instant case.

On its own motion, the Court takes judicial notice of the Fictitious Business Name statement on the Sonoma County website showing that "CUSTOM CARE HOME REPAIR" is a fictitious business name registered by Sean Lewis as an individual. (Evid. Code § 452(h); <https://tinyurl.com/cchrfbn>.)

III. Governing law

A party moving for summary adjudication of a cause of action "bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) Thus, a plaintiff moving for summary adjudication of a cause of action bears the burden of persuasion that each element of the cause of action in question has been proved by undisputed evidence. (Rutter Group, California Practice Guide: Civil Procedure Before Trial ¶ 10:224.)

The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar, supra,* at p. 861.) If the moving party carries this burden, the burden shifts: the opposing party is then subject to its own burden of production to make a prima facie showing that a triable issue of material fact exists. (*Ibid;* CCP § 473c(p)(2).) However, the opposing party's failure to file timely opposition to a motion for summary adjudication does not oblige the Court to grant the motion. (*Harman v. Mono General Hospital* (1982) 131 Cal.App.3d 607, 613.)

IV. Analysis

A. Issue #1: Fourth Cause of Action for breach of fiduciary duty

The elements of a cause of action for fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach. (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 432-433.) With the exception noted below regarding the accrued-interest component of the damages, the undisputed evidence supports each element.

1. Existence of a fiduciary relationship

Whether a fiduciary relationship exists is a question of law. (*Marzec v. Public Employees' Retirement System* (2015) 236 Cal.App.4th 889, 915. Here, the relationship exists by virtue of Patoka and Lewis being co-managers of an LLC. (Corp. Code § 17704.09.)

LLCs have two distinct management structures: they may be member-managed or manager-managed. In a member-managed LLC, the fiduciary relationship runs between the member-managers; in a manager-managed one, it runs between the manager and each member, but not

between the members. Undisputed evidence shows that Contrarian is organized as a member-managed LLC. Its Articles of Organization, filed with the Secretary of State on August 24, 2022, indicate that it "will be managed by . . . More than One Manager." (Patoka Dec, Exh. A.) The Statement of Information filed on October 17, 2022 indicates that the only "Manager(s) or Member(s)" listed are Lewis and Patoka. Since there is more than one manager and there are only two members, the inescapable conclusion is that both members are co-managers.

2. Breach

"The fiduciary duties that a member owes to a member-managed limited liability company and the other members of the limited liability company are the duties of loyalty and care . . . ." (Corp. Code § 17704.09(a).)

a. Duty of loyalty

California courts have interpreted the duty of loyalty described in Corp. Code § 17704.09(b) to require that a member act with the utmost loyalty and in the highest good faith when dealing with any other member of the LLC. (*Feresi v. The Livery, LLC* (2014) 232 Cal.App.4th 419, 425.) A member subject to the duty of loyalty may not obtain any advantage over any other member by even the slightest misrepresentation or concealment. (*Ibid.*)

The list of ways in which Lewis failed to act in the highest good faith, as established by undisputed evidence, is a lengthy one. To begin with, Patoka's declaration establishes that Lewis failed to fully repay Patoka's loans after the Ripley and Pinot properties were sold. (Patoka Dec ¶¶ 15(i)-(iii), 21, 43-46, 62; see CCP § 437c(e) [witness declaration adequate to establish facts on summary judgment].) Both the declaration and Contrarian's bank records establish that Lewis routinely used Contrarian funds for personal expenditures, including for meals, sports memorabilia, and haircuts. (Patoka Dec ¶ 58; Separate Statement of Undisputed Facts ("SSUF") no. 62, pp. 12-14.) Lewis also transferred at least $94,530 from Contrarian's bank account to his own. (SSUF no. 63; Soldis Dec (RJN 7) ¶ 11.)

There are additional examples, but that will suffice to support the finding that Lewis breached his fiduciary duty to Patoka by violating his duty of loyalty.

b. Duty of care

"A member's duty of care to a limited liability company and the other members . . . is limited to refraining from grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law." (Corp. Code § 17704.09(c).)

Undisputed evidence shows that Lewis performed construction work on the Pinot and Ripley properties despite not being a licensed contractor, purporting to be working under a contractor's license issued to Skye Builders. (Patoka Dec, ¶¶ 6, 8.) The former would violate Bus. & Prof. Code § 7028, and the latter Bus. & Prof. Code § 7027.3, if the conduct was knowing and was intended to defraud. However, those states of mind are not supported by undisputed evidence. There is no evidence showing that Lewis knew that he could not legally be covered by Skye's license, or that he intended to defraud Patoka.

Patoka also asserts that her signature was forged on an application for a $300,000 loan in connection with the purchase of the Cloverdale property. (Patoka Dec, ¶ 52 and Exh. G.) The Court agrees that the signature was likely forged. For one thing, it bears little resemblance to Patoka's signature on her declaration; for another, her typewritten name is misspelled under the signature line ("Katrina Patroka" rather than the correct "Kathrina Patoka"), and there is no sign of the letter 'h' in the first name in the signature, suggesting that whoever signed the document thought Patoka's first name was really Katrina. Certainly, forgery is a violation of the law. (Pen. Code § 470.) However, there is no evidence of who committed it. Patoka speculates that it was "Lewis or his romantic partner, Jami [Audelo]." (Patoka Dec ¶ 52.) But Audelo is not a party to this action. Lewis is, but no undisputed evidence suggests that he either committed or ratified this particular violation of the law.

Thus, Lewis's violation of his fiduciary duty of care is not supported by undisputed evidence. However, his violations of the duty of loyalty, discussed above, are sufficient to satisfy the breach element of the cause of action.

3. Damages

Undisputed evidence shows that Patoka made loans to Contrarian in the total amount of $1,225,962.03 (Patoka Dec ¶ 36; SSUF no. 52), broken down as follows:

- $65,400.00 for the purchase of the Pinot property (SSUF no. 11).
- $590,522.92 for the purchase of the Pinot property (SSUF no. 12).
- $210,850 for renovations to the Pinot property (SSUF nos. 13-34).
- $237,777.11 for the purchase of the Ripley property (SSUF no. 35).
- $121,412.00 for renovations to the Pinot and Ripley properties (SSUF nos. 36-51).

Patoka declares that her damages also include $73,000.00 in accrued interest on funds she borrowed from Morgan Stanley to fund her loans to Contrarian. (Patoka Dec ¶¶ 44, 62; SSUF nos. 58, 66, 72-75.) However, in a supplemental brief filed on November 2, 2026, Patoka elected to waive that component of her damages claim.

Undisputed evidence shows that Patoka has been repaid in the total amount of $639,766.13, broken down as follows:

- $250,000 from the proceeds of a loan obtained by Lewis, secured by the Pinot property (SSUF no. 53; Patoka Dec ¶ 39).
- $50,000 from the proceeds of the sale of the Ripley property (SSUF no. 59; Patoka Dec ¶ 45).
- $333,807.69 that Patoka transferred from the Contrarian bank account (SSUF no. 64; Patoka Dec ¶ 61). (This was the subject matter of the now-dismissed original complaint in this matter.)
- $5,958.44 that "Patoka has received . . . in writ of attachment proceeds during this litigation." (SSUF no. 71; Patoka Dec ¶ 63.)

Therefore, $586,195.90 remains unpaid. (Patoka Dec ¶ 63.)

B. Issue #2: First Cause of Action for breach of oral agreement

"To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.) With the exception of the accrued-interest component of the damages discussed above, undisputed evidence supports each element.

1. Formation

The contract between Patoka and Lewis was oral, but oral contracts are enforceable if the party seeking enforcement can prove their content. (Civ. Code § 1622.) Patoka's declaration shows that she and Lewis agreed to an arrangement wherein they would purchase, renovate, and sell homes. (Patoka Dec ¶ 10.) Patoka was to "assume the role of lender," clearly meaning that her performance was to consist of supplying the funds needed to purchase the properties. (Patoka Dec ¶ 12.) CCHR (Lewis's sole proprietorship) and Hought were to perform the renovations. (Patoka Dec ¶ 14.) Patoka was to be repaid the principal amount of all her loans in full, with no interest other than the interest she accrued in borrowing the funds. (Patoka Dec ¶ 15.) She was then to receive 25% of the profits on the sale of each property. (*Ibid.*) These declarations are sufficient to support the Court's finding that there was an enforceable oral contract between Patoka and Lewis.

Moreover, the existence of a contract may be inferred from the parties' conduct. (Civ. Code § 1621.) Here, Patoka did, in fact, make funds available to Lewis; Lewis did, in fact, use them to purchase two properties; and Lewis did, in fact, renovate both properties and sell them at a profit. This is not conduct that people typically engage in without an agreement for repayment of the funds in place. Thus, in addition to the contract being proved by Patoka's description of its terms in her declaration, the Court finds that it was implied in fact by Patoka's and Lewis's conduct.

The Court finds that undisputed evidence proves the existence of the contract.

2. Performance

There is no question that Patoka performed the duties required by the contract: as detailed above, she made a total of $1,225,962.03 available for Lewis's use in buying and renovating the Pinot and Ripley properties.

3. Breach

Under her agreement with Lewis, all of Patoka's loans to the LLC were to be repaid in full, along with any interest she had to pay on a line of credit she opened in order to fund the loans. (Patoka Dec, ¶ 15(i).) As detailed above, Lewis repaid some of the loaned funds, but not all of them. He therefore breached the contract.

4. Damages

The discussion of damages above under Issue #1 applies equally to this issue.

C. Issue #3: Second Cause of Action for money had and received

The elements of a claim under the common count of Money Had and Received are (1) that the defendant received money that was intended to be used for the benefit of the plaintiff; (2) that the money was not used for the benefit of the plaintiff; and (3) that the defendant has not returned the money to the plaintiff. (*Avidor v. Sutter's Place, Inc.* (2013) 212 Cal.App.4th 1439, 1454; see CACI no. 370.)

As discussed below, each element is supported by undisputed evidence. Accordingly, the Court will grant summary adjudication of the Second Cause of Action. The above discussion of the accrued-interest component of the damages in the First and Fourth Causes of Action does not apply here, since this cause of action seeks only the return of the principal amount of the loans. (MPA at p. 10; SSUF nos. 181, 182.)

1. The funds Patoka loaned to Lewis were intended to be used for Patoka's benefit.

Patoka's declaration establishes that she made a total of $1,225,962.03 available for Lewis's use in buying and renovating the Pinot and Ripley properties. (Patoka Dec ¶ 36; SSUF no. 52.) The money was intended to be used to renovate properties and re-sell them at a profit, which was to benefit Patoka by entitling her to 25% of the profit. (Patoka Dec ¶ 15(ii).)

2. The funds were not used for Patoka's benefit.

Patoka did not receive the expected benefit of providing the funds. If she had, she would have been repaid the full principal amount plus a 25% share in the profits from the sales of the Pinot and Ripley properties. Instead, she has received only a fraction of the principal amount.

Moreover, both Patoka's declaration and Contrarian's bank records establish that Lewis routinely used Contrarian funds for personal expenditures, including for meals, sports memorabilia, and haircuts. (Patoka Dec ¶ 58; Separate Statement of Undisputed Facts ("SSUF") no. 62, pp. 12-14.) Lewis also transferred at least $94,530 from Contrarian's bank account to his own. (SSUF no. 63; Soldis Dec (RJN 7) ¶ 11.) None of that was for Patoka's benefit.

These facts, supported by undisputed evidence, are sufficient to prove the "not for plaintiff's benefit" element of the cause of action.

3. The funds have not been repaid.

The funds have been partially repaid, as discussed above. (Patoka Dec ¶¶ 29, 46, 61, 63.) However, again, undisputed evidence shows that $586,195.90 remains unpaid. (Patoka Dec ¶ 63.)

V. Conclusion

The motion for summary adjudication of the First, Second, and Fourth Causes of Action is **GRANTED**. Judgment will be entered against cross-defendant Sean Lewis, individually and doing business as Custom Care Home Repair, in the amount of $586,195.90.

2. 25CV07361, Pellegrino v. General Motors, LLC

APPEARANCES OF BOTH PARTIES ARE REQUIRED.

3. 26CV00850, Graton Church of Christ v. PCA

This matter comes on calendar for hearing on the motion of Graton Church of Christ ("GCC" or "Plaintiff") to compel further responses to the Request for Production of Documents, Set One ("RPOD") that it served on Pacific Christian Academy ("PCA" or "Defendant") on March 20, 2026.

The motion is **DENIED** as to demands no. 10 and 23 and **GRANTED IN PART** as to demands no. 7, 8, 9, 13, and 17 and the privilege log. Within 30 days of notice of this order, Defendant shall serve on Plaintiff supplemental code-compliant, verified responses to those five demands and an amended privilege log, as described herein. Sanctions are awarded to Defendant in the amount of $500.00.

Counsel for Defendant is instructed to provide a written order consistent with this ruling and compliant with California Rules of Court, rule 3.1312.

I. Background

A. Factual allegations in the Complaint

This section summarizes the allegations in GCC's complaint ("Complaint") filed on February 19, 2026.

GCC is a religious corporation with its offices in Graton. (Complaint ¶ 1.) PCA is a nonprofit public benefit corporation formed in 1919. (Complaint ¶ 15.) It owns two properties in Graton near GCC's location (collectively the "Charitable Trust Property"), which have historically housed a Christian private school. (Complaint ¶ **3.)** The parties have a "historical and ongoing interconnection." (Complaint ¶ 22; see ¶¶ 35-43.) Part of that interconnection involved a well (the "Well") on one of PCA's properties that is GCC's sole source of water. (Complaint ¶¶ 3, 44-49.)

In 1954, PCA amended its Articles of Incorporation ("AOI") to provide that upon its dissolution, all of its property, including the Charitable Trust Property, would be transferred to GCC. (Complaint ¶ 17.) That provision was reaffirmed by the amended AOI adopted in 1963, which provided that upon PCC's dissolution, all of its property "shall vest to the benefit of" GCC, so long as GCC was at that time "operated for religious, hospital, scientific, or charitable purposes." (Complaint ¶ 19.)

In November of 2025, the members of PCA's board of directors, all of whom are named as defendants in their official capacities, voted unanimously to dissolve the corporation and to close the school that was being operated on PCA's premises. (Complaint ¶¶ 26, 27.) On December 10, PCA notified GCC that it intended to terminate water service to GCC's properties. (Complaint ¶ 53.) In response to GCC's inquiries about how PCA intended to meet its obligation to pass its property to GCC upon dissolution, PCA informed GCC that it intended to amend its AOI and its bylaws to eliminate that obligation. (Complaint ¶¶ 30, 31, 52.) On January 9, 2026, the PCA board

voted to amend PCA's AOI to remove the provision that PCA's property was to pass to GCC upon PCA's dissolution. (Complaint ¶¶ 54, 55.) The Charitable Trust Property has been listed for sale for $1,000,000. (Complaint ¶ 32.)

On February 19, 2026, Plaintiff filed the Complaint, alleging causes of action for Breach of Charitable Trust, Prescriptive Easement (for the Well), Declaratory Relief, Accounting, Appointment of Receiver, and Quiet Title.

B. Prior litigation in this matter

1. Demurrer

Defendant demurred to the Complaint on April 10, 2026. After a hearing on August 19, 2026, the Court sustained the demurrer with respect to the Fifth Cause of Action for appointment of a receiver on the basis that appointment of a receiver is a remedy, not a cause of action. (See *Starbird v. Lane* (1962) 203 Cal.App.2d 247, 261.) The demurrer was overruled in all other respects. Plaintiff has not filed an amended complaint. Therefore, the Complaint, with the exception of the Fifth Cause of Action, is presently operative.

2. Motion to expunge lis pendens

On February 20, 2026, the day after filing the Complaint, Plaintiff recorded a Notice of Pendency of Action (lis pendens) relating to the Charitable Trust Property. On April 10, 2026, the same day it filed the demurrer, Defendant moved to expunge the lis pendens. The motion was heard on August 5, 2026, and a continued hearing was held on August 19, 2026 along with the hearing on the demurrer. On August 31, 2026, the Court issued an Order After Hearing denying the motion.

3. Cross-complaint

On September 28, 2026, Defendant filed a cross-complaint ("Cross-Complaint") against Plaintiff alleging causes of action for quiet title and declaratory relief. The Cross-Complaint alleges that PCA's board of directors validly amended its AOI in January 2026 to eliminate the provision requiring it to distribute its assets to GCC upon dissolution, and that GCC holds no prescriptive easement to the Well because its use of the Well has always been permissive. (Cross-Complaint ¶¶ 24-29, 34-39.) Plaintiff has not yet responded to the Cross-Complaint.

II. The discovery dispute

On March 20, 2026, Plaintiff served an RPOD on Defendant. (Terreri Dec ¶ 3 and Exh. A.) Defendant has served three responses to the RPOD: initially on April 24, 2026 (Terreri Dec ¶ 4 and Exh. B), a set of supplemental responses on May 29 (Terreri Dec ¶ 9 and Exh. F [misidentified in the declaration as Exh. E]), and a second set of supplemental responses on June 29, 2026, (Terreri Dec ¶ 14 and Exh. H). The level of detail increased with each supplemental response. Plaintiff concedes that "the later responses by PCA narrowed some issues," but filed the instant motion because, in Plaintiff's view, "PCA still improperly refuses or materially limits production as to RPD Nos. 7, 8, 9, 10, 13, 17, and 23." (MPA at p. 2.)

PCA also served a privilege log. (Terreri Dec ¶ 16 and Exh. I.) Plaintiff argues that Defendant's privilege log is insufficient, and asks the Court to order Defendant to produce "a further amended privilege log sufficient to evaluate remaining withholding claims." (MPA at pp. 7,8.)

III. Plaintiff's oversized reply brief

In this Court's order on Defendant's demurrer, it noted that Defendant's memorandum in support was 26 pages long, and that Cal. Rules of Court, Rule 3.1113(d) limits opening memoranda to 15 pages. Therefore, the Court declined to consider the last 11 pages of Defendant's memorandum.

In the instant motion, Plaintiff has filed a 13-page reply memorandum. The rule cited above limits reply memoranda to 10 pages. The Court will apply the same remedy to Plaintiff's oversized reply that it did to Defendant's oversized MPA in support of the demurrer: it has not considered the last three pages of Plaintiff's reply brief.

IV. Defendant's procedural objections

In its opposition, Defendant has characterized several aspects of the instant motion as procedurally defective. Each is addressed in detail below. Defendant is correct about all of them, and the Court cautions Plaintiff's counsel to copy-edit his filings more carefully in the future. However, the Court will not take any action in response to these errors. If it were to respond by denying the motion, there is little doubt that Plaintiff's counsel would simply correct them and re-file the motion, which would not be a good use of anyone's time.

A. Demand no. 7 in the Separate Statement

Plaintiff's Separate Statement contains a section for each of the seven disputed production demands. Each section contains a subsection setting forth the text of the demand, three more subsections with descriptions of each of Defendant's three responses, one subsection headed "Deficiencies Remaining / Grounds to Compel Further Response and Production" describing why Plaintiff regards the final response as inadequate, and one headed "Updated Relief Requested" describing the action Plaintiff would like the Court to take. In the section for Demand no. 7, the "Deficiencies Remaining" subsection is a verbatim copy of the preceding subsection describing Defendant's second supplemental response to Demand no. 7.

This is an obvious clerical error, and the Court tries whenever possible to avoid penalizing litigants for such errors by their counsel. It is possible here. Despite the lack of a description of what Plaintiff considers to be wrong with the second supplemental response to Demand no. 7, the Court feels confident in inferring it from the "Updated Relief Requested" subsection and from Plaintiff's briefing. As Plaintiff points out in its reply brief, "[t]he substantive factual and legal justification for compelling Request no. 7 was not omitted from the moving papers." (Reply at p. 5.)

B. Defects in the Notice of Motion

1. Lack of the hearing date and time

Defendant notes that "[t]he Notice of Motion states no hearing date and no hearing time; both were left blank." (Oppo at p. 9.) The only Proof of Service filed in connection with the instant motion is dated July 15, 2026 and was filed on July 27, 2026 characteristics it shares with the Notice of

Motion. There is no question that the hearing date was not set at that time. The Court's records contain no Proof of Service of an updated Notice of Motion showing the hearing date.

A party filing a motion is required to notify the adverse party of the hearing date and time. (CCP § 1010; Cal. Rules of Court, rule 3.1110(b)(1); see *Galleria Plus, Inc. v. Hanmi Bank* (2009) 179 Cal.App.4th 535, 537-538.) Therefore, the instant motion is procedurally defective.

It appears that Defendant initially filed its opposition papers on September 4, 2026, on the assumption that the hearing was set for September 23, 2026, and then re-filed them on September 28, 2026, upon learning the correct hearing date. That was admittedly inconvenient for Defendant. However, in light of the fact that Defendant filed timely opposition, the Court finds that Defendant has waived the notice requirement for purposes of this motion only. The waiver will not apply to any further litigation in this case, and the Court is unlikely to be as lenient if this issue arises again.

2. Incorrect statute

Defendant points out that the Notice of Motion states that the motion is brought pursuant to CCP § 2031.300, which addresses motions to compel *initial* responses, rather than CCP § 2031.310, which addresses motions to compel *further* responses. (Oppo at p. 9.) Thus far, Defendant is correct. However, the Court disagrees with Defendant's assertion that "[t]he misdesignation is not clerical." (*Ibid.*) This strikes the Court as another clerical error, likely the result of using a Notice of Motion from another case as a template. Again, the Court is unwilling to penalize Plaintiff for its lawyer's clerical errors. The Court understands, and is confident that Defendant understands, that this motion, captioned "MOTION TO COMPEL FURTHER RESPONSES," is brought pursuant to CCP § 2031.310.

3. Inconsistency in relief sought

Defendant notes that the Notice of Motion "seeks an order compelling further responses to 'RFD Set One, Nos. 1-24,' while the Memorandum and Separate Statement address only seven requests (Nos. 7, 8, 9, 10, 13, 17, and 23), leaving PCA to guess at the relief actually sought as to the other seventeen requests . . . ." (Oppo at p. 9.) The reference to guesswork is somewhat hyperbolic. It is clear to the Court, and the Court believes it was clear to Defendant, that the motion does not address the other seventeen requests.

4. References to superseded discovery responses

Along similar lines, the Notice of Motion describes the grounds for the motion as "PCA's April 24, 2026 responses are evasive, incomplete, and/or unjustified by the objections asserted," which appears to overlook the point that the motion addresses the responses served on June 29, 2026. (Terreri Dec ¶¶ 9, 14.) Again, this is an unfortunate error and the Court urges counsel to do better in the future, but in light of the details about the supplemental responses set forth in Plaintiff's Separate Statement, the thrust of the motion is clear.

V. Plaintiff's counsel's failure to meet and confer

The section of Plaintiff's Separate Statement headed "Meet and Confer" states that "GCC met and conferred in writing on May 6, 2026. PCA thereafter served supplemental responses on May 29, 2026. GCC sent a second meet and confer letter on June 15, 2026. PCC served second supplemental

responses on June 29, 2026." (Sep. Stmt. at p. 3.) What it does not say is that the parties met and conferred after the second supplemental responses but before the instant motion was filed. That is because they did not.

Plaintiff filed the motion on July 27, 2026, but served it on Defendant on July 15, 2026 approximately two weeks after receiving the June 29, 2026 supplemental response. During those two weeks, the only communication between the parties consisted of an email from Plaintiff's counsel to Defendant's counsel, dated July 6, 2026 and reading in its entirety as follows, and a one-word email reply on the same date:

> Good afternoon Mr. Reese.
> I have reviewed the discovery responses served last Monday [i.e. June 29] as promised.
> There remain several deficiencies, which may require the filing of a motion to compel.
> In light of the dispositive motion on Wednesday this week [i.e. the demurrer, originally set for hearing on July 8] would you extend the time to file Motions to Compel for each of the written discovery responses to the following Wednesday [i.e. July 15]. I would not request further extension if the hearing is continued.
> This is efficient, in the event that your clients demurrer is granted.
> Thank you, Bert Terreri

(Reese Dec filed 9/4/26 ¶ 15 and Exh. D (at p. 77 of the PDF).) Defendant's counsel responded "Granted" approximately a half hour later. (*Ibid.*)

Plaintiff served the instant motion on Defendant on the day of the extended deadline granted in the above-quoted exchange. That must have surprised Defendant's counsel, who had likely assumed that Plaintiff was requesting a deadline extension for the purpose of discussing how to resolve the deficiencies alluded to, but not identified, in the July 6 email. That interpretation would have been supported by the comment that the deficiencies "*may* require the filing of a motion to compel," which suggests that they also may not. The email certainly did not suggest that Plaintiff intended to file a motion to compel on the new deadline date with no further discussion.

A motion to compel discovery must be preceded by "a reasonable and good faith attempt . . . to informally resolve each issue presented by the motion." (CCP § 2016.040.) Plaintiff's counsel's above-quoted July 6 email was far from sufficient to satisfy that requirement, since the issues presented by the instant motion overwhelmingly relate to the June 29 responses. (Despite the obviously erroneous comment in the Notice of Motion, discussed above, that it addresses "PCA's April 24, 2026 responses.") That is particularly true because previous meet-and-confer efforts had, as Plaintiff concedes, resulted in responses that were moving in the right direction: the May 29 supplemental responses "complied in part [but] did not fully resolve GCC's concerns" and the June 29 supplemental responses "improve[d] certain responses but [did] not fully resolve the disputes as to the narrowed requests now at issue in this motion." (Terreri Dec ¶¶ 10, 15.) It is difficult to understand why, under those circumstances, Plaintiff did not persist in the course it had followed up to then: identify the perceived deficiencies in the responses, narrow the requests, provide Defendant an opportunity to serve another set of supplemental responses, and generally continue attempting to resolve the disagreements without resort to this Court.

A court may deny a discovery motion outright based on insufficient meet-and-confer efforts, but only in egregious circumstances. "[N]ot every finding that additional informal resolution efforts are

required can be categorized as a failure so egregious as to justify summary denial of discovery. Such categorical rulings should be reserved for cases of clear intent to burden or harass, cases of clear flaunting of statutory responsibilities, cases of established track records of lack of good faith, and the like." (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 434.) The Court finds no evidence of such an intent on Plaintiff's counsel's part, and will therefore not deny the motion on the basis of the inadequate meet-and-confer process. However, "[t]he failure to participate in the meet-and-confer process in good faith is an independent discovery abuse 'for which sanctions are statutorily authorized.'" (*Moore v. Mercer* (2016) 4 Cal.App.5th 424, 448-449, quoting *Liberty Mutual Fire Ins. Co v. LcL Administrators* (2008) 163 Cal.App.4th 1093, 1104.) Sanctions are discussed below.

VI. Discussion

Both parties seem open to the Court "narrowing" or "tailoring" the scope of the production demands. (See, e.g., Sep. Stmt. at pp. 8 ["proper remedy is a tailored order"], 11 ["within a reasonable tailored scope to be set by the Court"], 13 [order compelling PCA to serve responses "within a clarified and tailored scope"]; Oppo at p. 14 [denial of motion for protective order "did not limit the Court's authority, in resolving this Motion, to impose terms, conditions, and safeguards on any production it orders"]; Reply at p. 7 ["tailoring the scope and balancing the equities"].) The Court will do so. If the parties are unhappy with the outcome, the Court will be amenable to a motion to vacate the order on the instant motion if the parties file notice of their agreement to appoint a discovery referee. (CCP § 638; Cal. Rules of Court, rules 3.920 et seq.)

C. General considerations

1. Overbreadth of timeframe

With the exception of demand no. 23, all of the disputed demands seek information going back to January 1, 2010, almost 17 years ago. Plaintiff does not explain why it needs information that old. The Complaint alleges three primary causes of action: breach of charitable trust, prescriptive easement for use of the Well, and accounting. (The declaratory relief cause of action effectively duplicates the one for breach of charitable trust, and the Court sustained Defendant's demurrer to the one for appointment of a receiver.) The limitation period for breach of charitable trust is three years. (Prob. Code § 16460; *Noggle v. Bank of America* (1999) 70 Cal.App.4th 853, 859.) A prescriptive easement is established by open, notorious, uninterrupted, and adverse use for five years. (*Warsaw v. Chicago Metallic Ceilings* (1984) 35 Cal.3d 564, 570.) The limitation period on an action for accounting is four years. (*Manok v. Fishman* (1973) 31 Cal.App.3d 208, 211; CCP § 343.) It is not obvious how any information about PCC's activities more than five years ago can be "reasonably calculated to lead to discovery of admissible evidence." (CCP § 2017.010.)

The Court will limit the timeframe on all of the demands to the period from February 19, 2021 to the date of the response.

2. Redaction of identifying information

With respect to all records produced, Defendant may redact any information that might identify any individual who is not named as a defendant in this matter and who was not a member of the PCA board during the relevant time period defined above. If there is any record where such redaction

would not afford adequate privacy protection, Defendant's response may describe the record generally and explain in detail why redaction is insufficient.

B. Demand for production no. 7

The demand is for "All DOCUMENTS RELATING TO PCA's financial condition from January 1, 2010 to the date of your response, including but not limited to accounting books and records, general ledgers, trial balances, profit and loss, balance sheets, and cash flow statements, financial statements, loan applications, bank statements, cancelled checks, deposit slips, wire/ACH records, donation receipts, loan documents, and tax returns."

Plaintiff explains that it needs this information "to evaluate its expectancy as the sole beneficiary of PCA upon dissolution." (MPA at p. 4.) That is a curious assertion, since Plaintiff's position seems to be that it is the sole beneficiary of PCA upon dissolution as a pure matter of law due to the provisions of PCC's AOI prior to the purported January, 2026 amendments. However, Plaintiff goes on to explain that it seeks to determine "whether [PCC] engaged in insider reimbursements or loans, and whether its asset-disposition decisions were motivated by real financial necessity or other considerations." (*Ibid.*) Plaintiff, that is, seeks to discover whether Defendant's board members have expended or hidden PCC assets in order to deprive GCC of them. This is adequately connected to Plaintiff's allegation that the defendant board members have breached the charitable trust by "us[ing] the school property, and assets for their own personal benefit." (Complaint ¶ 66(e).)

Defendant has already produced its tax returns for 2021 through 2025. Defendant is ordered to either produce additional financial records described by demand no. 7 or to state that such records are unavailable after a diligent search. The time period is restricted to February 19, 2021 through the present. Defendant may redact the records as described above.

C. Demand for production no. 8

The demand is for "All DOCUMENTS RELATING to the transfer of any funds between PCA and any board member of PCA from 2010 to the present."

Again, Plaintiff is seeking to discover whether PCA's directors have diminished PCA's assets, which Plaintiff maintains would otherwise be due to GCC, through self-dealing. Defendant correctly notes that this "captures every paycheck, expense reimbursement, and charitable contribution touching any person who held any board title over" the designated time period (Response to Sep. Stmt. at p. 5), but does not explain why that is unacceptable. If, hypothetically, board members received paychecks for tens of thousands of dollars per week, or expense reimbursements for trips to Disneyland, that information would be reasonably calculated to lead to discovery of evidence of a breach of charitable trust.

Defendant is ordered to either produce documents described by demand no. 8 or to state that such documents are unavailable after a diligent search. The time period is restricted to February 19, 2021 through the present. Defendant may redact the records as described above.

D. Demand for production no. 9

The demand is for "All COMMUNICATIONS between PCA (including any director/officer/agent) and any PERSON RELATING TO the management of PCA, including but not limited to: (a) PCA governance, (b) PCA membership, (c) PCA amendments to governing documents, (d) PCA dissolution, (e) PCA asset distribution, (f) PCA REAL PROPERTY, or (g) the well on PCA REAL PROPERTY or (h) Water Rights RELATING TO PCA REAL PROPERTY, from January 1, 2010 to the present."

Plaintiff complains that PCA is attempting to "be the sole judge of which internal communications . . . are discoverable" (Sep. Stmt. at p. 11), but the Court does not take PCA's objections to this demand that way. The demand lists a number of topics that the demanded documents must be "RELATED TO"; PCC is therefore at liberty to decline to produce documents that do not relate to those topics, which is what PCC has done.

Plaintiff also asserts that "governance, amendments, dissolution, asset distribution, real property, and water rights are the core issues in this action." (Sep. Stmt. at p. 11.) The Court agrees about everything except "governance." The allegations of the Complaint do not justify Plaintiff in seeking to review every aspect of PCA's governance; the Complaint faults PCA's governance only to the extent that it led to PCA violating its charitable trust and GCC's alleged prescriptive easement to the Well. Information about other aspects of PCA's governance is not reasonably calculated to lead to the discovery of admissible evidence.

Defendant is ordered to produce documents described by demand no. 8, with the exception of items (a) and (b) on the list of topics, or to state that such documents are unavailable after a diligent search. The time period is restricted to February 19, 2021 through the present. Defendant may redact the records as described above.

E. Demand for production no. 10

The demand is for "All DOCUMENTS RELATING TO any in kind exchange of value between PCA (including by any director/officer/agent) and any PERSON from January 1, 2010 to the present."

Defendant objects that "in kind exchange of value" is "unintelligible as a production instruction." (Response to Sep. Stmt. at p. 8.) The objection is sustained. The Court notes that Plaintiff has, as is customary, introduced its RPOD with definitions of terms such as "YOU," "PERSON," and "RELATING TO." (Terreri Dec Exh. A at pp. 2-4.) If those terms require definitions in order to be comprehensible, "in kind exchange of value" requires it no less.

The motion is denied as to demand no. 10.

F. Demand for production no. 13

The demand is for "All COMMUNICATIONS RELATING TO any transfer of any loan made between of value between [sic] PCA and any PERSON, including the Forestville Church of Christ, from January 1, 2010, through the present." This is incomprehensible as drafted. (See Response to Sep. Stmt. at p. 9.) "Transfer of any loan" suggests that the demand relates to something like

refinancing, and "between of value between" does not mean anything at all. The Court joins Defendant in assuming that Plaintiff intended "RELATING TO any loan made between PCA and any PERSON." (*Ibid.* ["loans, including the specifically named Forestville Church of Christ"].)

Defendant's response states that after a diligent search, it has been unable to find any documents related to loans between PCA and the Forestville Church of Christ. Plaintiff protests that this is incomplete because the demand identified "any PERSON," not just Forestville Church of Christ. (Sep. Stmt. at p. 14.) Plaintiff is correct.

Defendant is ordered to produce documents related to *any* loans involving PCA and *anyone* else, or to state that no such documents are available after a diligent search. The order encompasses only loans finalized between February 19, 2021 and the present. Defendant may redact the documents it produces as described above.

G. Demand for production no. 17

The demand is for "All DOCUMENTS RELATING TO any loans, advances, reimbursements, or in-kind exchanges of value between PCA and any affiliated individual or any person claiming board member status including promissory notes, repayment schedules, and accounting entries, at any time between January 1, 2010 to the present."

Defendant argues that Plaintiff's "stated purpose, to test 'whether' insider transactions occurred, is a fishing license, not good cause." (Response to Sep. Stmt. at p. 11.) The Court disagrees. Again, the Complaint alleges that the defendant board members "have used the school property, and assets for their own personal benefit, and to the benefit of other board members in violation of their fiduciary duties to the PCA." (Complaint ¶ 66(e).) Plaintiff is entitled to discovery on the issue of whether or not that allegation is true.

Defendant also objects that the phrases "affiliated individual," "person claiming board member status," and "in-kind exchanges of value" are vague and ambiguous. That objection is sustained. "In-kind exchanges" is discussed above. "Affiliated individual" could mean anything from an accountant hired by PCA to the parents of a student enrolled in the PCA school. As to "person claiming board member status," a person either is a board member or is not. Information about loans to, for example, someone who is not but claimed to be in a social media posting 20 years ago is not reasonably calculated to lead to admissible evidence.

Demand no. 8 seeks documents relating to "the transfer of any funds between PCA and any board member of PCA." Loans, advances, and reimbursements all involve the transfer of funds, and are therefore encompassed in demand no. 8 and need not be revisited in no. 17. However, neither demand no. 8 nor demand no. 13, which specifically addresses loans, encompasses promissory notes. Promissory notes are the only item sought by demand no. 17 that is not duplicative of other demands.

Defendant is ordered to produce documents related to any promissory notes executed by PCA in favor of a board member, or executed by a board member in favor of PCA, between February 19, 2021 and the present, or to state that no such documents exist after a diligent search. Defendant may redact the documents it produces as described above.

H. Demand for production no. 23

The demand is for "All DOCUMENTS RELATING TO any COMMUNICATION between PCA, its board members, officers, members, agents, or employees and any PERSON RELATING TO the PCA."

This is extraordinarily overbroad. It basically seeks every single piece of paper, every fax, every email, between any PCA actor and anyone else that says anything about PCA. That could include, for example, a letter from a PCA teacher to the parents of a student describing problems with their child's academic performance. Unlike the other disputed requests, it is not even limited to a time period, so it could also include a letter from whomever founded PCA in 1919 to a relative saying "I am about to start a Christian school in Graton."

Plaintiff suggests that "[t]he Court should compel a further response and production within a defined narrow scope by custodian, time period, and subject matter." (MPA at p. 6; Sep. Stmt. at p. 19.) The Court might do that, as it has done above with some of the other demands, if it had any basis for inferring what exactly Plaintiff is after here. But Plaintiff says only that it seeks to discover "governance decisions, board actions, property issues, dissolution steps and related dispute communications that are not captured by narrower requests." (Sep. Stmt. at p. 19.) That amounts to "and also, tell me anything else I should know."

This demand goes so far beyond "reasonably calculated to lead to the discovery of admissible evidence" that no judicial modification can save it. The motion is denied as to demand no. 23.

I. The privilege log

In its reply, Plaintiff specifically identifies the entries in Defendant's amended privilege log (Terreri Dec, Exh. I) it finds objectionable. Plaintiff does not explain why the initial briefing did not include that level of detail. There was room for it; the argument occupies four pages of the reply brief, and Plaintiff's MPA, at eight pages long, was seven short of the 15-page limit imposed by CRC 3.1113(d). Plaintiff's introduction of the specifics of its privilege log argument at this point in the process, when Defendant no longer has the opportunity to respond, comes close to violating the rule against introducing new arguments at the reply stage, particularly arguments that counsel knew about before filing the motion. (See, e.g., *Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 227-228.) "It is a serious mistake to leave key arguments for the reply brief on the theory that it will give you the last word with the court. The court is likely to *refuse to consider new evidence or arguments first raised in reply papers* . . . ." (Rutter Group, *Civil Procedure Before Trial* ¶ 9:106.1, original emphasis.) Moreover, the bulk of Plaintiff's privilege-log argument appears in the last three pages of the reply brief, which, as discussed above, the Court is not considering due to the brief's excessive size.

That said, Plaintiff did argue in the original motion filing that the amended privilege log is inadequate. (MPA at pp. 7-8.) The Court will address that argument, and will identify any defects it sees in the log.

To begin with, the Court agrees with Plaintiff that while the attorney-client and work product privileges are valid reasons to withhold production of a document, the same is not true of "Potential attorney-client" and "Potential attorney-client / work product." (MPA at p. 7.) Plaintiff so

designates three emails between himself and PCA board member Cindy LaNier, dated January 8 and 9, 2026, which were also sent to third parties. Disclosure to a third party waives the privilege unless such disclosure is reasonably necessary to either transmit the information (such as when the third party is an interpreter) or to accomplish the purpose for which the lawyer was consulted (e.g. an investigator). (Evid. Code § 912(d).) Defendant's counsel is surely aware of whether the third parties involved in the three email chains at issue fell into one of those categories. If they did, the privilege log entry can just identify the applicable privilege. If they did not, the items are not privileged.

The privilege log identifies three items as transmittals of third-party documents between Ms. LaNier and counsel. (Entries for Dec. 15, 2025 at 10:32 AM ["Client forwards third-party communication to counsel and seeks legal advice"], Feb. 2, 2026 at 10:28 AM ["Attorney transmits third-party correspondence to client and communicates regarding legal matter"], and Feb. 23 at 3:28 PM ["Client transmits received correspondence to counsel and provides contextual information"].) While those emails may have contained legal questions or legal advice that is subject to the attorney-client privilege, the third-party communications themselves are not. (*Wellpoint Health Networks v. Superior Court* (1997) 59 Cal.App.4th 110, 119.) The same may or may not apply to the entry on Dec. 29 at 10:49 AM ("Client alerts counsel to third-party communications and seeks legal advice") that seems to be merely *about* third-party communications.

Plaintiff takes issue with the inclusion in the log of two emails to the Internal Revenue Service, which are designated as work product (Oct. 18, 2024) and attorney-client privilege (Apr. 28, 2026). (MPA at p. 7.) The Court recognizes that disclosure of otherwise privileged material to the IRS may be essential to accomplishing the purpose of the representation, in which case it does not waive the privilege. (Evid. Code § 912.) However, again, that does not necessarily render the entire communication privileged.

Defendant is ordered to provide an amended privilege log that identifies only actually privileged items, does not depend on the nonexistent principle of "potential privilege," and identifies items which contain both privileged and non-privileged material as such. If items in the latter category are responsive to any discovery demand, they may be produced with the privileged passages redacted.

VII. Sanctions

A. Sanctions are not awarded to Plaintiff

A request for sanctions in a discovery motion must be "accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought." (CCP § 2023.040.) Plaintiff not only fails to provide such a declaration but also fails to say what amount *is* being sought. (NOM at p. 2 ["monetary sanctions in the amount of $_____"].) Accordingly, sanctions are not awarded to Plaintiff.

B. Sanctions are awarded to Defendant in the amount of $500.00

Defendant requests $4,787.00 in sanctions. (Oppo at p. 17; Reese Dec ¶ 20.) Defendant's counsel declares that his billing rate is $525/hour and that his paralegal's is $325/hour. (*Ibid.*) Counsel also declares that "[his] office" has spent one hour reviewing the motion, 11 hours preparing the opposition papers, and anticipates spending five hours reviewing any reply and appearing at the

hearing. (*Ibid.*) Counsel does not break down the time spent by "[his] office" between himself and the paralegal, but even if, hypothetically, all 17 hours represent the paralegal's time, the total amount would be $5,525.00, not $4,787.00. It is impossible to tell whether the total amount, the number of hours, or the billing rates are incorrect, but some or all of them must be. Therefore, although Defendant, unlike Plaintiff, did supply a declaration in support of his sanction request, it does not adequately "set[] forth facts supporting the amount of [the] monetary sanction sought." (CCP § 2023.040.)

However, as discussed above, Plaintiff's counsel's failure to meet and confer before filing the instant motion is independent discovery abuse that justifies the imposition of sanctions. (*Moore v. Mercer, supra,* 4 Cal.App.5th at pp. 448-449.) On its own motion, the court awards sanctions to Defendant in the amount of $500.00.

VIII. Conclusion

The motion is **DENIED** as to demands no. 10 and 23. The motion is **GRANTED IN PART** as to demands no. 7, 8, 9, 13, and 17 and the privilege log. Within 30 days of notice of this order, Defendant shall serve on Plaintiff supplemental verified responses to those five demands and an amended privilege log, as described herein. Sanctions are awarded to Defendant in the amount of $500.00.

4. 24CV07008, Ochoa v. LABCON, North America

Plaintiffs' **unopposed** motion for preliminary approval of class action settlement is **GRANTED.** The final approval hearing is set for May 19, 2027 at 3:00 p.m. in Department 18. The Court will sign the proposed order lodged with the moving papers.

I. Background

Plaintiff Rosa Ochoa filed this putative class and PAGA representative action against Defendant Labcon North America, alleging a wide variety of wage and hour claims on behalf of a putative class of non-exempt employees who had allegedly been denied legally compliant meal periods, rest breaks, overtime, minimum wages, and final paychecks during the four years preceding the filing of the complaint, four years being the applicable limitations period.

Plaintiff's counsel conducted an independent investigation of the allegations and significant discovery. (Wand Dec ¶¶ 9-13.) On June 9, 2025, the parties engaged in mediation with mediator Steve Pearl, but the case did not settle. (Wand Dec ¶ 14.) After further discovery, the parties conducted another mediation with Judge Ronald Sabraw (Ret.). (Wand Dec ¶ 15.) On August 28, 2026, the parties "accepted a proposal from the mediator regarding the material terms of a settlement." (*Ibid.*)

II. The settlement

Plaintiff seeks preliminary approval of the settlement agreement. The settlement is for a total amount of $1,050,000. (Wand Dec Exh. A ("Agreement") ¶ 21.) The net settlement amount will be calculated by deducting class counsel's fees and expenses of up to $425,000 and an award to the class representative of up to $10,000, both to be determined by the Court at the final approval hearing, and payment to settlement administrator Xpand Legal Consulting LLC not to exceed $9,000. (Agreement ¶¶ 4, 26, 67.) $200,000 of the net amount will be set aside to pay to class members who worked for Defendant during the PAGA limitations period beginning on November 13, 2023 ("PAGA Members"). (Agreement ¶¶ 29, 30.) Of that amount, 65% ($130,000) will be paid to the Labor and Workforce Development Agency as provided by Lab. Code § 2699(m); the remaining 35% will be paid to the PAGA Members. (Agreement ¶ 67(i).) The balance of the net amount available to be paid to class members will be in the neighborhood of $406,000, which will be paid to the class members, pro-rated by the number of weeks worked by each member.

Plaintiff concedes that the total settlement amount is substantially less than amount that might have been recovered at trial. (Wand Dec ¶ 27.) Plaintiff calculates the settlement amount to be approximately 14% of Defendant's maximum exposure at trial. (Wand Dec ¶ 28.) However, "the test is not the maximum amount plaintiffs might have obtained at trial on the complaint but rather whether the settlement is reasonable under all of the circumstances." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 250.) The Court finds that the amount is reasonable in light of the inherent risks of litigation, the likelihood of appeal of whatever judgment resulted from trial, and the amount of time those processes would consume.

"[A] presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Here, class counsel is unquestionably experienced in similar litigation. (Wand Dec ¶¶ 32-47.) Counsel has conducted "a substantial pre-filing investigation" and "substantial class discovery." (Wand Dec ¶¶ 5, 8; see also ¶¶ 11, 15.) The settlement was reached through arm's-length bargaining, consisting in pertinent part of one mediation session that did not result in settlement, and a second one before a retired judge after which the parties accepted the mediator's proposal of the settlement terms. (Wand Dec ¶¶ 14, 15.) There are no known objectors at this time.

In light of these factors, the settlement appears to the Court to be reasonable under all of the applicable circumstances.

III. The class

Plaintiff seeks certification of the provisional settlement class 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. (CCP § 382; see also *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809.) "In determining whether a class is ascertainable, the court examines the class definition, the size of the class, and the means of

identifying class members." (*Bufil v. Dollar Financial Group* (2008) 162 Cal.App.4th 1193, 1207.) The community-of-interest requirement is met where there are 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 Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

Here, the class is defined as "all non-exempt employees who were employed by Defendant in the State of California during the Class Period" and the "Class Period" is defined as November 20, 2020 (the beginning of the limitation period) through August 28, 2026 (the date the parties agreed on settlement terms). (Agreement, ¶¶ 2, 8, 15.) Class counsel declares that the class size is 593 employees, which amply satisfies the numerosity component of the ascertainability analysis. (Wand Dec ¶ 4.) The Court agrees that "the identity of Class Members is readily ascertainable through Defendant'[s] personnel records." (MPA at p. 11.) The class members, including the putative class representative, share a common interest in compensation for rest breaks and meal breaks denied to them by Defendant; the Court finds that the community-of-interest requirement is satisfied. (*Brinker, supra,* 53 Cal.4th at p. 1021.)

Accordingly, the Court approves the class.

IV. Notice

"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 Federal Savings & 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. (*Ibid.)*

CRC 3.766(d) provides that if class members are to be given the right to opt out of the class, notice must include (1) a brief explanation of the case; (2) a statement that the court will exclude members of the class who request exclusion by a specified date; (3) a procedure whereby members may request exclusion; (4) a statement that the judgment will bind all members who do not request exclusion; and (5) a statement that members who do not request exclusion may enter an appearance through counsel.

Here, item (1) on the CRC 3.766(d) list is satisfied by the section of the proposed Class Notice headed "*What is this case about?*" (Agreement Exh. 1 ("Notice") at pp. 1-2.) Items (2) and (3) are satisfied by the paragraph headed "OPTION B" in the section headed "*What are my options?*" (Notice at p. 4.) Item (4) is satisfied by the paragraph headed "OPTION A" in the same section, as well as the row designated "DO NOTHING" in the "SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT" table. (Notice at pp. 1, 4.) Item (5) is satisfied by the paragraph headed "OPTION C" in the "*What are my options?*" section. (Notice at p. 4.)

Thus, the proposed notice fully apprises the class members of the relevant considerations. The Court finds the proposed class notice complaint with CRC 3.766.

5. 25CV00611, American Agcredit, PCA v. KCOE ISOM, LLP

This matter is on calendar for Plaintiff's **unopposed** application for an order permitting Ryan Falkenberg to appear as counsel *pro hac vice* on behalf of Plaintiff pursuant to California Rules of Court, Rule 9.40.

The application is accompanied by Mr. Falkenberg's declaration showing that he is an attorney in good standing and a member of the Illinois bar. (Falkenberg Dec ¶ 4.) The declaration satisfies all of the requirements set forth in rule 9.40(d). All moving papers have been served on all parties and on the State Bar's Pro Hac Vice Program. (POS filed 9/28/2026.) The State Bar has also been served with a file-stamped copy of the notice of hearing on the instant motion both by mail and electronically via its applicant portal. (POS filed 10/16/2026.) The declaration of attorney of record Mitchell Greenberg accompanying the motion indicates that the required fee will be paid to the State Bar. (Greenberg Dec ¶ 6.)

The motion is **GRANTED**. The Court will sign the proposed order submitted by Plaintiff.

6. 24CV06926, Hill v. Philips Holding, USA Inc.

The hearing is **CONTINUED** to December 18, 2026 at 8:30 a.m. in Department 18, to afford Plaintiff and Philips time to amend the stipulated order as described herein, and to secure the signatures of all counsel, including counsel for defendants Walkham Townhomes and Medical, on the stipulation. If a copy of the amended stipulation bearing the signatures of all counsel is on file by five court days before the new hearing date, the Court will sign the order.

I. Background

This premises liability and product liability action springs from a residential fire on July 15, 2023, in which Deangelo Hill ("Plaintiff") sustained serious burn injuries. Prior to the fire, Plaintiff was bedridden and used a portable ventilator, the Philips Trilogy 100 ("Ventilator"), which was manufactured by defendant Philips Holding and/or its subsidiaries Respironics California and Philips RS North America. Plaintiff alleges that the Ventilator "malfunctioned and/or ignited," thereby causing the fire that injured him. (See Caspino Dec Exh. A.)

The Ventilator contained an internal memory component (the "SD Card"). Plaintiff and Philips agreed that Philips would attempt to recover data from the SD Card that might be relevant to the case. Philips proposed that the SD Card would be removed from the Ventilator by BEAR Labs, who would provide it to a neutral forensic laboratory, and that any data recovered by that laboratory would be provided to all parties. (Caspino Dec Exh. A.) Plaintiffs objected to this procedure, noting the need for "Philips

engineering documents that lay out specifically what information can be retrieved from the download" and "[a]ccess to software necessary to view the information." (Caspino Dec Exh. B.) Because the parties were "unable to agree on a protocol for recovering and distributing the SD Card data or for testing the swab samples taken of the [Ventilator]" (Caspino Dec ¶ 4), Philips filed the instant motion ("Motion") on July 31, 2026. Defendant Medical Depot joined in the motion on August 10, 2026; defendant My Best Homecare followed suit on August 13, 2026.

The Motion asserts that Berkeley Engineering and Research ("BEAR") "destructively tested" the Ventilator, and in the process removed the SD Card from the Ventilator and took swab samples from the Ventilator. (MPA at p. 3.) The Motion requests the Court to resolve the dispute over the manner of extracting data from the SD Card, and to order BEAR to release the swab samples to a laboratory to be tested for the presence of accelerants. (Proposed Order at pp. 2-3.) Philips' interest in the accelerant analysis is motivated by its supposition that the Ventilator might have been deliberately set on fire, rather than being defective or malfunctioning. (MPA at p. 6.)

On November 4, 2026, Plaintiff filed a response ("Response") to the Motion indicating that "[t]he disputes addressed in Philips' Motion have been resolved." (Response at p. 2.) At the same time, Plaintiff filed a Stipulation Regarding SD Card Download Protocol and [Proposed] Order Thereon ("Stipulated Order"). The Stipulated Order provides that Philips will provide online access to software which can read data from the SD Card; that "Philips will produce a comprehensive list of categories, fields, descriptions, and parameters of the data stored on the SD Card"; that "Drivesavers, a third party data extraction firm, will perform non-destructive initial evaluation on the SD Card . . . to determine whether recovery of data is possible"; that "Burgess Forensic, a partner lab specializing in forensics, will perform the data recovery"; and that "[t]he data retrieved from the SD card will be provided to all Parties."

The Stipulated Order is signed by counsel for all parties except Waltham Townhouses and Medical Depot. Plaintiff's Response avers that the parties who have not signed the Stipulated Order "expressed agreement with the terms but . . . are still awaiting final carrier/client approval to use Drivesavers, the third-party recovery company." (Response at p. 2.)

II. Discussion

A. The Stipulated Order does not address the swab samples.

The Motion has two components: "(1) establishing a protocol for the recovery of the SD Card's data by a neutral third party, and the copying and distribution of that data to all parties, and (2) compelling the testing of the previously-collected swab samples from the [Ventilator] for accelerants." (MPA at p. 3.) The Motion originally sought this Court's order that "Within 30 days of this Order, BEAR shall release the swab samples previously collected from the Subject Drive . . . ." (Proposed Order ¶ 5.)

The Stipulated Order is silent on the subject of the swab samples. Since Philips has made no contrary assertion, the Court will take Plaintiff at his word that "[t]he disputes addressed in Philips' Motion," including the one over testing the swab samples, "have been resolved." (Response at p. 2.)

B. The Court has no jurisdiction over non-parties.

The Stipulated Order provides that Philips "will" provide access to certain software and produce documentation about the data stored on the SD Card. (Stipulated Order ¶¶ 1, 2.) The Court is willing to order Philips to do those things if all of the parties stipulate to it, but as noted above, two parties have not.

The Stipulated Order also provides that "Drivesavers, a third party data extraction firm, will perform non-destructive initial evaluation on the SD Card," and that "Burgess Forensics, a partner lab specializing in forensics, will perform the data recovery" (Stipulated Order ¶ 3). The use of the same verb, "will," makes those sound very much like orders to Drivesavers and Burgess Forensics, in the same sense that "Philips will" is an order to Philips. But the Court lacks jurisdiction to order Drivesavers or Burgess Forensics to do those things, or anything else, because they are not parties to this action. The Court assumes that what was intended was "The parties will engage Drivesavers, a third party data extraction firm, to perform . . ." and "The parties will then engage Burgess Forensics, a partner lab specializing in forensics, to perform . . . ."

The Court will continue this matter in order to permit the parties to amend the Stipulated Order as described above, and to secure the stipulation of all counsel to the amended order.

7. <u>25CV02835, Aspire General Insurance Co. v. Ramirez</u>

This matter comes on calendar for Plaintiff's **<u>unopposed</u>** motion to enforce the settlement agreement it entered into with Defendant on July 2, 2025. Defendant has never appeared in this action and is unrepresented.

Plaintiff's moving papers reflect that the moving papers in the instant motion were served on Defendant by postal mail on July 27, 2026, two days before the motion was filed. However, the Court's records do not reflect that Plaintiff has served Defendant with an amended copy of the notice of motion showing the hearing date. Such notice is required. (CCP § 1010.) A notice of motion that fails to specify when the motion will be heard is "fatally defective." (*Galleria Plus, Inc. v. Hanmi Bank* (2009) 179 Cal.App.4th 535, 537-538; Cal. Rules of Court, rule 3.1110(b)(1).)

The hearing is **CONTINUED** to January 13, 2027 at 3:00 p.m. in Department 18, in order to afford Plaintiff an opportunity to serve such an amended copy on Defendant reflecting the new hearing date, time, and location, and to file a Proof of Service declaring that it has done so.

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