TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 8, 2026 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

TO JOIN ZOOM ONLINE:

Department 19 Hearings
MeetingID: 160-421-7577
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1. 23CV01246, Herbert v. Friedman's Home Improvement

THE PARTIES ARE REQUIRED TO APPEAR IN THE EVENT THAT THERE IS AN IN PERSON OBJECTOR TO THE SETTLEMENT. THE COURT'S TENTATIVE RULING IS BELOW.

Plaintiff Sharon Elizabeth Herbert ("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 Friedman's Home Improvement ("Defendant"), and Does 1-10 for causes of action arising out of Defendant's alleged Labor Code violations, and civil penalties thereon (the "Complaint"). This matter is on calendar for Plaintiff's unopposed motion for final approval of the class action settlement (the "Motion"). The Motion is **GRANTED**. The matter is also on for approval of attorney's fees and class representative enhancement. That motion is **GRANTED IN PART**.

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 Complaint contains causes of action for: (1) Failure to Pay All Wages; (2) Failure to Provide All Meal Periods; (3) Failure to Authorize and Permit All Paid Rest Periods; (4) Failure to Timely Provide Accurate Wage Statements; (5) Derivative Violations of Labor Code §§ 201-202; (6) Independent Violations of Labor Code §§ 201-202; (7) Penalties Pursuant to Labor Code §2699, et seq., for PAGA civil penalties on a representative basis for themselves and other employees; and (8) Unfair Business Practices, in Violation of Business and Professions Code Sections 17200, et *seq*.

II. The Settlement

According to the Preliminary Approval Motion, Plaintiff asserted multiple causes of action for various Labor Code and Business and Professions Code violations centered around Labor Code violations. Defendant contends that Plaintiff is unlikely to obtain class certification and the claims presented were based on individualized damages not easily proven in representative claims. *See generally* Manus Decl. in Support of Preliminary Approval ("Manus Prelim. Decl.") ¶¶ 13-32.

The Manus Declaration establishes that Plaintiffs' counsel engaged in exchange of information and investigation. Manus Prelim. Decl. ¶¶ 7, 17. On August 13, 2024, the parties mediated the matter before Steven J. Serratore, a mediator with extensive wage and hour class action experience. Manus Prelim. Decl. ¶ 5. Prior to the mediation, Defendant provided comprehensive discovery materials. Manus Prelim. Decl. ¶ 17. Plaintiff employed Berger Consulting Group to analyze the data and do an exposure analysis. *Ibid*. The class is defined in the Settlement Agreement and Release of Class Action [attached to Manus Prelim. Decl., Exhibit 1, hereinafter "Settlement Agreement"] as all non-exempt employees who were employed by Defendants in California during the Class Period from October 27, 2019 through July 14, 2025. Settlement Agreement § 5. Aggrieved Employees under PAGA are defined as all non-exempt employees who were employed by Defendants in California between October 27, 2022 through July 14, 2025. Settlement Agreement § 4.

Plaintiffs' counsel undertook a 20% sampling analysis of the data provided by Defendants. Manus Prelim. Decl. ¶ 17. Based on that data, Plaintiffs' counsel was able to undertake a thorough assessment of potential damages for the claims alleged in the Complaint, including the number of instances and the corresponding monetary claim for each late or missed meal break, each missed rest break, and each resulting wage statement violation. Plaintiffs' counsel was able to then extrapolate that information to the entire class.

The class data encompassed 1,438 class members and approximately 128,000 work weeks. There are 19,655 PAGA pay periods, and the submitted information does not state the number of Aggrieved Employees.

Plaintiff estimates that the maximum amount of potential damages across the class for the alleged underlying violations equals $25,584,503.00. However, having undertaken extensive analysis of the claims, Plaintiff believes that probable recovery is likely $3,758,703.60 ($875,533.80 in failure to pay wages, $123,772.10 in failure to provide meal periods, $815,577.00 for failure to provide paid rest periods, $1,299,153.00 for failure to timely furnish wage statements, $192,990.00 in derivative Labor Code §§ 201-202 violations, and $451,677.70 for independent Labor Code §§ 201-202 violations) with an additional $1,046,200.00 for civil penalties under PAGA. Manus Prelim. Decl. ¶¶ 22-31. The estimated probable damage per class member for the core class claims is therefore $2,613.84 per class member ($3,758,703.60 / 1,438 class members). Probable recovery of PAGA penalties are $261,550 to the aggrieved employees ($1,046,200x.25), with the other $784,650 going to the LWDA. At the mediation, the parties came to an agreement based on the assistance of the mediator. Manus Prelim. Decl. ¶ 17. Plaintiff provided a copy of the settlement agreement to the LWDA on August 13, 2025. Manus Prelim. Decl. ¶ 44.

Pursuant to the Settlement Agreement, Defendants will pay $2,200,000 as the Gross Settlement Fund. Settlement Agreement § 53. From that amount, the following may be deducted on court approval: 1) attorneys' fees of $733,333.33 (which is approximately 1/3 of the Gross Settlement Fund) and up to $30,000 of costs and expenses; 2) an incentive award to the Plaintiff of $10,000; 3) settlement administration costs, not to exceed $20,000; and 4) $30,000 in penalties under PAGA, 75% of which is paid to the California Labor and Workforce Development Agency (the remaining $7,500 of which is payable to the Aggrieved Employees). See Settlement Agreement §§ 56.1-56.3, 56.5. If these sums are all approved by the Court, this results in a Net Settlement Fund of $1,376,666.67 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 § 56.4. This results in an average Class settlement payment of approximately $957.35 ($1,376,666.67 / 1,438). This also leaves a PAGA settlement for distribution to an undetermined number of aggrieved employees of $7,500. Defendant will pay its share of payroll taxes for settlement funds classified as wages separate from the Gross Settlement Fund. Settlement Agreement §§ 53. The settlement is non-reversionary. Settlement Agreement § 53. For tax purposes, 10% is allocated to unpaid wages, and 90% is allocated to interest and penalties classified as miscellaneous income. Settlement Agreement § 56.4(a). Net settlement payments will be automatically sent to members of the class unless they opt out. See generally, Class Notice.

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 "all claims, rights, demands, liabilities, and causes of action that were alleged, or reasonably could have been alleged, based on the facts alleged in the Operative Complaint, which occurred during the Class

Period, including: failure to pay minimum wage; failure to pay overtime; failure to provide meal periods; failure to authorize and permit rest breaks; failure to timely pay wages during employment; failure to timely pay final wages upon separation from employment; failure to reimburse for business expenses; failure to provide complete and accurate wage statements; unfair business practices; California Labor Code sections 200-203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802; and IWC Wage Order Nos. 1, 3, 5, 7, 9, 12. Except as Set Forth in Paragraph 66 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Settlement Period." Settlement Agreement § 65.

Additionally, Plaintiff agrees to release "all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period ("Released PAGA Claims"), including those claims for civil penalties under PAGA for underlying violations of the California Labor Code for: failure to pay minimum wage; failure to pay overtime; failure to provide meal periods; failure to authorize and permit rest breaks; failure to timely pay wages during employment; failure to timely pay final wages upon separation from employment; failure to reimburse for business expenses; failure to provide complete and accurate wage statements; unfair business practices; California Labor Code sections 200-203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802; and IWC Wage Order Nos. 1, 3, 5, 7, 9, 12. The Released PAGA Claims apply to claims arising during the PAGA Period." Settlement Agreement § 66.

III. Preliminary Approval and Class Notices

At preliminary approval, the Court granted preliminary approval. The maximum possible claims at settlement reflected 1438 Class Members might recover as much as $25,584,503. There were only 841[1] of PAGA Aggrieved Employees, with maximum penalties of $10,462,000. Probable recovery was far lower, estimated at $3,758,703.60. A further 1,046,200.00 in penalties for the PAGA claims were probable. The estimated recovery of $1,376,666.67 after attorneys' fees and costs was within the realm of reasonableness.

Additional data was received and notice was sent to 1499 class members. Notices were sent by the class administrator. After distribution of the class notices and remailing, 39 of the notices were undeliverable. Manus Declaration in Support of Final Approval ("Manus Final Decl."), ¶ 11-13. Five class members opted out of the settlement. Manus Final Decl. ¶ 15. No objections were received by the class administrator. *Ibid*.

IV. Final Approval

After preliminary approval, the Court determines whether a class action settlement is fair, adequate and reasonable in a final hearing, often referred to as a "fairness hearing." Cal. R. Ct.

[1] This number was only provided in the instant motion for Final Approval, not at Preliminary Approval. See Manus Final Dec. ¶ 20.

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

"The trial court has broad discretion to determine whether a class action settlement is fair and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. "Due regard should be given to what is otherwise a private consensual agreement between the parties" and "the court's inquiry must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Dunk,* 48 Cal.App.4th at 1801 (internal citations omitted). "When the following facts are established in the record, a class action settlement is presumed to be fair: '(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.'" *Chavez*, 162 Cal.App.4th at 52 *quoting Dunk*, 48 Cal.App.4th at 1802.

There are 1499 class members, five of which have opted out. See Manus Final Decl. ¶ 10-15. There were 841 Aggrieved Employees. *Id.* at ¶ 20. Workweeks came to a total of 133,419, which was a change insufficient to trigger the escalator clause. *Id*. at ¶ 18; Settlement § F. Thirty-nine notices were returned or unserved, no objections were received, and five requests for exclusion were received. Manus Final Decl. ¶ 11-15.

There are 1494 resulting class members. Based on a calculation that assumes that the requested attorneys' fees, costs, and incentive fee awards are approved (*i.e.* a $1,376,666.67 net settlement fund) the highest individual settlement payment to be paid is approximately $3,091.10 and an average of approximately $921.46. Manus Final Decl. ¶ 8. PAGA payments will average $8.92 per claimant ($30,000/841 Aggrieved Employees). Total maximum possible damages is unaddressed at final approval, in spite of the new number of work weeks. There is also no new evidence of probable recovery. All of these factors considered, the settlement amount initially appears fair and reasonable to the class.

There is one adjustment to the initial figures presented in the Preliminary Approval, which appears to increase the amount available for the settlement fund. Settlement administrator expenses did not reach the $30,000 amount estimated, instead coming to $27,366.03, adding $2,633.97 to the settlement fund.

In examining the total settlement amount, and whether it is reasonable, the Court notes that there were no objectors and only one request for exclusion, making up a mere quarter of a percent of the class. The settlement appears to be the result of arm's length bargaining. Substantial discovery appears to have occurred, and to the degree that there was any deficit in those disclosures, it appears to have not been of sufficient scale to prejudice the class members. Class counsel is experienced in this type of litigation.

Based on the foregoing, because the factors articulated in *Dunk* are met; because there is no indication of fraud, collusion or unfairness; and because the terms of the settlement appear to be fair and reasonable; and based on the lack of opposition or objection, Plaintiffs' motion for final approval of the terms of the settlement is approved.

V. Attorney's Fees and Class Representative Incentive

In this case, the underlying Settlement Agreement established a gross settlement fund fixed at $2,200,000, without any reversion to Defendants and with all settlement proceeds, net of specified fees and costs and $30,000 in PAGA penalties, going to pay claims for class members who did not opt out of the settlement. Plaintiffs' counsel requests an award of $733,333.33 which is around one third (33.33%) of the common fund.

Class Counsel Manus has provided information regarding the time billed in this case, his rates of each for the work performed for Plaintiffs. Class Counsel advances that the Court should adopt a percentage fee approach, arguing that there are several public policy reasons why percentage recovery is the modern and appropriate method of calculation here. Percentage recovery focuses on results achieved whereas the lodestar focuses on time spent.

Counsel is correct that the percentage approach offers substantive benefits in encouraging counsel to maximize recovery, rather than wasting time attempting to bill in order to justify lodestar amounts. However, that does not mean that Class Counsel's recovery may always remain unfettered by the hours actually expended. This Court maintains the capability to "double check the reasonableness of the percentage fee through a lodestar calculation." *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 504. Moreover, the common fund method is burdened by its own potential infirmities, encouraging counsel to settle otherwise meritorious cases quickly in order to make themselves available for the next case. The incentive to counsel, incongruous with that of their client and the class, is to settle the case for the maximum amount *relative to their time expended*. Accordingly, our high court has stated that California trial courts maintain the discretion to use lodestar amounts to ensure that the percentage figure reached is reasonable. *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 505. This is representative of the Court's obligations to the class as a whole, where the interests of Defendant and Plaintiff are no longer at odds.

Class Counsel asserts that fees of one third of the settlement amount is the appropriate figure. As an initial matter, the Court finds Plaintiff's recovery quite low based on the total calculable damages. Maximum class damages were $25,584,503.00, of which class settlement only represented 5.4%. Maximum PAGA penalties were $10,462,000.00, of which the $30,000 PAGA settlement only represented 0.29% (less than three tenths of one percent). Fortunately, probable recovery is far more reasonable. Plaintiff's evidence at preliminary approval indicated that the total probable class damages were $3,758,703.60. The claims presented in the FAC are generally of the type where Plaintiff would be entitled to recovery of attorney's fees. See, e.g., Labor Code § 2699(k)(1); Labor Code § 218.5; Labor Code § 1194; FAC. Even if the matter were fully litigated, should Plaintiff prevail, the cost of fully litigating the matter would not be borne by Plaintiff or the class. This means that against probable calculable damages for the class as presented at preliminary approval, the proposed distributable settlement amount ($1,376,666.67) represents 36.6%. However, this is not a complete picture of probable recovery.

Plaintiff estimated the **probable** value of the PAGA claims at $1,046,200, of which they only recovered $30,000. This represents less than a 3% recovery. Aggregating the probable damages of class and PAGA claims, Plaintiff recovered $1,406,666.67 of a probable $4,804,903.60. Recovery of all probable damages and penalties was 29.3%. While counsel in class action cases often opine that one-third is the benchmark for such requests, no California authority holds that the Court's determination is so anchored. The Ninth Circuit sets the benchmark far lower, finding that 25% is the appropriate starting point, with further deviations applied based on factual circumstances. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1047; *In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 942. This Court need not constrain itself in such a manner under California law, where common fund determinations are tendered to the Court's discretion. *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 494.

Based on the totality of the above circumstances, the Court finds 28% as the reasonable attorney's fees. The Court elects not to cross-check this against the hourly rates prevalent in the Sonoma County community. No case *compels* this Court to perform such a cross check, the process is merely a tool for determining what may be reasonable. *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503. Common fund alone appears sufficient at this time because the time invested in the case is not de minimus and the recovery is sufficiently reflective of probable recovery.

The Court is, however, compelled to address Plaintiff's request for multiplier, and particularly their citation to unpublished authority trying to argue for multipliers as high as 10 times. Use of unpublished authorities is a violation of the Rules of Court. Rules of Court, Rule 8.1115. Plaintiff cites to a case from an unidentified superior court, which is both prohibited and irrelevant. Plaintiff offers only one substantive published decision in support of such lofty multipliers. However, it is that citation which draws the deepest scrutiny and concern. Plaintiff cites *Glendora Community Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465, 479, stating that the case is "affirming [a] multiplier of 12". Plaintiff's Motion, pg. 11:18-20. That case stands for no legal principle related to multipliers. Instead, it addresses whether contingency fee amounts granted in coming to a post-judgment award were reasonable, argued by appellant to exceed the hourly result by a factor of 12 times. *Ibid*. It does not, in any manner, address a lodestar multiplier as applied to a class settlement. In fact, Plaintiff's citation to this case is inaccurate, averring that the pin cite for their proposition of law is at page 465, and the case starts at page 456. As is reflected in the Court's citation above, this is not accurate. Page 456 leads to an entirely different case. See *Los Angeles County-U.S.C. Medical Center v. Superior Court* (1984) 155 Cal.App.3d 454, 456.

The requested fees of $733,333.33 exceed what the Court finds reasonable. The Court approves fees of 28% of the gross fund, coming to $616,000. The Court approves Class Counsel Fees in the amount of $616,000.

Plaintiff's counsel also seeks $27,366.03 litigation-related costs and attaches a cost report and declarations substantiating that sum. Velez Decl. Ex. 5. This is the amount preliminarily approved and appears appropriate. The Court approves costs in the amount of $27,366.03.

Based on the foregoing, Plaintiff's request for attorney's fees and costs is granted in the amount of $616,000.00 for fees and $27,366.03 in costs. The amounts of the attorney's fees not approved will revert to the gross settlement fund, per the terms of the settlement agreement. Settlement Agreement, § 53.

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

Plaintiff argues that this award is reasonable in light of their role as representative of the class. In particular, Plaintiff cites their role in providing substantive information and documents to counsel and reviewing documents and the Settlement Agreement, and the risk of possibly bearing Defendant's costs if they did not prevail. See Manus Final Dec., Ex. 4, Declaration of Sharon Herbert. Plaintiff spent around 40 hours working on the case with Class Counsel. Their involvement is a matter of public record potentially affecting future employment prospects.

Based on the time expended, the exposure and risk, and the duration of the litigation, the request is for the reasonable award of $10,000 to Plaintiff under the factors described in *Cellphone Termination*, 186 Cal.App.4th at 1394-95. The Court finds the award, despite being on the high end of the normal range, reasonable.

Plaintiff's request for a personal representative enhancement award is approved in the amount of $10,000.

Therefore, the Court calculates the total gross settlement fund for the class action as $1,486,633.97. Payments to class members are to be adjusted accordingly

VI. Conclusion

Based on the foregoing:

1. The Court, for purposes of this Order, adopts all defined terms and conditions as set forth in the Settlement Agreement filed in this case.
2. The Court has jurisdiction over the subject matter of this litigation and the Class Representatives, the other members of the Class, and Defendants.
3. The Court finds that the dissemination of the Class Notice as disseminated to the Class Members, constituted the best notice practicable under the circumstances to all persons

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

4. The Court approves the Settlement of the above-captioned action, as set forth in the Settlement Agreement, as fair, just, reasonable, and adequate as to the Settling Parties. The Settling Parties are directed to perform in accordance with the terms set forth in the Settlement Agreement.
5. Except as otherwise provided in the Settlement Agreement, the Settling Parties are to bear their own costs and attorneys' fees.
6. The Court hereby certifies the following Class for settlement purposes only: all nonexempt employees employed by Defendant in California at any time from October 27, 2019, through July 14, 2025. The Court approves the class of Aggrieved Employees under the PAGA claims as all nonexempt employees employed by Defendant in California at any time from October 27, 2022, through July 14, 2025.
7. With respect to the Class and for purposes of approving the settlement only and for no other purpose, this Court finds and concludes that: (a) the members of the Class are ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Class, and there is a well-defined community of interest among members of the Class with respect to the subject matter of the claims in this litigation; (c) the claims of Class Representative is typical of the claims of the members of the Class; (d) the Class Representative has fairly and adequately protected the interests of the members of the Class; (e) a class action is superior to other available methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class Representative, i.e., Class Counsel, are qualified to serve as counsel for the Plaintiff in his individual and representative capacity and for the Class.
8. Defendant shall fund **$2,200,000** of the total Gross Settlement Fund pursuant to the terms of the Settlement Agreement. This amount includes all costs in ¶ 10 below.
9. The Court approves the Individual Settlement Payment amounts, which shall be distributed pursuant to the terms of the Settlement Agreement.
10. Defendant shall pay (a) to Class Counsel attorneys' fees in the amount of **$616,000** and reimbursement of litigation costs in the amount of **$27,366.03**; (b) enhancement payment to the Class Representative Sharon Herbert in the amount of **$10,000.00**; (c) the sum of **$30,000.00** to be paid to the LWDA ($22,500) and Aggrieved Employees ($7,500) for PAGA Penalties; and (d) **$20,000.00** to the Claims Administrator, Rust Consulting, Inc., for the costs relating to the claims administration process in this matter. The Court finds that these amounts are fair and reasonable. Defendant is directed to make such payments from the Gross Settlement Amount and in accordance with the terms of the Settlement Agreement.
11. The Court will enter final judgment in this case in accordance with the terms of the Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of the Settlement or judgment, this Court shall retain exclusive and continuing jurisdiction over the action and the Parties, including all Class Members, for purposes of enforcing and interpreting this Order and the Settlement.

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

2. 25CV01212, American Express National Bank v. Duval

Plaintiff American Express National Bank ("Plaintiff") filed the complaint in this action against defendant Samuel Duval ("Defendant") for damages based on breach of contract (the "Complaint"). This is on calendar for Plaintiff's motion for summary judgment or in the alternative summary adjudication in their favor on the grounds that each element of the causes of action have been proven by Plaintiff. Defendant has not filed an opposition to the motion. The motion is DENIED.

I. Facts

Defendant applied for two lines of credit from Plaintiff. Plaintiff's Separate Statement of Undisputed Facts (PSS), ¶ 1. The Cardmember Agreement set forth the terms of the line of credit, and that use of the credit card constituted acceptance of that agreement. PSS, ¶ 2. Plaintiff's separate statement avers that Defendant used the line of credit and incurred charges and debts thereon, totaling $12,118.65. PSS, ¶ 3. Plaintiff performed their conditions of the contract by paying vendors and extending the credit to Defendant. PSS, ¶ 3. Before the filing of this case, Defendant failed to repay borrowed funds and interest and had last made a payment on June 18, 2024. PSS, ¶ 7. Defendant made a payment of $544 on February 20, 2026. PSS ¶ 7; Proposed Judgment. Defendant has not disputed any of the underlying charges with Plaintiff internally. PSS, ¶ 5. Defendant's failure to make payments constituted default under the agreement, and as a result the entire amount has become due. PSS, ¶ 6. As a result of the above, Defendant's failure to repay Plaintiff results in an obligation of $11,574.65. PSS, ¶ 7, 8; Proposed Judgment. Plaintiff filed the Complaint February 18, 2025.

Plaintiff filed a memorandum of costs on March 16, 2026, listing their costs as $870 in filing and motion fees and $72.61 in service costs, coming to a total of $942.61.

II. Burdens on Summary Judgment

A. Generally

Summary adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). All evidence and inferences drawn reasonably drawn therefrom must be viewed in the light most favorable to the party opposing summary adjudication. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.

"A plaintiff moving for summary judgment "bears the burden of persuasion that 'each element of' the 'cause of action' in question has been 'proved,' and hence that 'there is no defense' thereto." *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1195; citing *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.

If a plaintiff meets its initial burden moving for summary judgment, the burden shifts to the defendant to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(1). An issue of fact exists if "the evidence would allow a reasonable trier of fact

to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840. All the papers submitted must be considered in determining whether or not there is a triable issue of any material fact. CCP § 437c(c).

B. Breach of Contract

Breach of written contract has a four-year statute of limitations. Civ. Code § 337(a). A cause of action for breach of contract requires a Plaintiff to prove: 1) the existence of a contract; 2) plaintiff's performance or excuse for non-performance; 3) defendant's breach; and 4) the resulting damages. *Reichert v. General Ins. Co. of America* (1968) 68 Cal.2d 822, 830.

III. Plaintiffs Shift Their Burden

Plaintiff has presented facts addressing each element of their causes of action for breach of contract. However, Plaintiff's evidence does not make mathematical sense. The Complaint, proposed judgment, and separate statement all aver that Defendant owes $12,118.65. The claims for breach of contract address two credit accounts, which according to the evidence are debts of $4,756.27 (as of 2/3/2026) and $6,927.18 (as of 2/17/2026). This results in a total of $11,683.45, a number present nowhere in the pleadings, and significantly short of the sought $12,118.65. Nor is this explained by the $554 payment made on February 20, 2026, a fact that the Court had to extrapolate from the Proposed Judgment and the separate statement. Because Plaintiff does not address it, it is not clear which of the two accounts were credited with the $554, and based on the payment date, it is not reflected in the numbers presented to the Court. Plaintiff has not presented evidence sufficient that there is not a triable issue of fact as to each cause of action, as they do not provide cohesive evidence that supports their averred damages.

In each declaration Plaintiff also avers costs of 442.61. Plaintiff avers total costs of $942.61 in their memorandum of costs. Plaintiff fails to address whether these costs are overlapping, or separate and distinct. If overlapping, the additional $500 is unexplained. Separate, there is no way to account for the difference between the total of $885.22 and $942.61.

Plaintiff's motion for summary judgment is DENIED.

Plaintiff 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).

3-4. 25CV02465, Msalam v. Auto Car, Inc.

Plaintiff Ghassan Msalam ("Plaintiff") filed the complaint (the "Complaint") in this action against defendants American Honda Motor Co., Inc., ("Manufacturer"), Auto Car., Inc. ("Dealer", together with Manufacturer, "Defendants") and Does 1-10. The Complaint contains

causes of action for: 1) breach of express warranty under the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act"); and 2) breach of implied warranty under the Act.

This matter is on calendar for the motions by Plaintiff to compel further responses from Manufacturer and Dealer to form interrogatories ("FIs") under CCP § 2030.300. The motion is **GRANTED**. The requests for sanctions thereon are **GRANTED**.

I. Procedural Issues

Defendants have filed no timely opposition.

II. Governing Law

A. Discovery Generally

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

B. Interrogatories

Regarding interrogatories, a party responding to an interrogatory must provide a response that is "as complete and straightforward as the information reasonably available to the responding party permits" and "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." CCP §2030.220(a)-(b). "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make

a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." CCP §2030.220(c).

Upon receipt of a response, the propounding party may move to compel further response if it deems that an answer to a particular interrogatory is evasive or incomplete, an exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate, or an objection to an interrogatory is without merit or too general. CCP §2030.300(a). Any motion to compel further answers to interrogatories must be filed within 45 days of receipt of response unless the parties agree to extend the time in writing. CCP § 2030.300 (c). When such a motion is filed, the Court must determine whether responses are sufficient under the Code and the burden is on the responding party to justify any objections made and/or its failure to fully answer the interrogatories. *Coy v. Sup. Ct.* (1962) 58 Cal.2d 210, 220-21; *Fairmont Ins. Co. v. Sup. Ct.* (2000) 22 Cal.4th 245, 255.

C. Sanctions

CCP § 2030.300(d) (relating to interrogatories) provides that a monetary sanction "shall" be imposed against the party losing a motion to compel further responses unless the court finds "substantial justification" for that party's position or other circumstances making sanctions "unjust." There is no requirement that the failure to comply with discovery be willful for the court to impose monetary sanctions. *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878. For the court to order sanctions against an attorney, the Court must find that the attorney advised their client to engage in discovery misconduct. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81. Additionally, the motion must advise the attorney that joint and several liability against the attorney is sought for the sanctions. *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 319.

Once an order regarding discovery has been made, it is irrelevant on future hearings enforcing the order whether that order was erroneous, as the appropriate relief would be to appeal the erroneous order, not to ignore the efforts to enforce it. *In re Marriage of Niklas* (1989) 211 Cal.App.3d 28, 35-36.

Regarding evidentiary and issue sanctions, once a party or witness has been ordered to attend a deposition, or to answer discovery, or to produce documents, more severe sanctions are available for continued refusal to make discovery. CCP §§ 2023.010, 2031.310(i). Such sanctions include issue sanctions (CCP § 2023.030(b)) and evidentiary sanctions (CCP §§ 2023.030(b), (c)). "The penalty should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery. Where a motion to compel has previously been granted, the sanction should not operate in such a fashion as to put the prevailing party in a better position than he would have had if he had obtained the discovery sought and it had been completely favorable to his cause." *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 793. The purpose of discovery sanctions is not to punish an offending party for discovery abuses, but rather to undo the harm imposed by misuse of discovery. *McGinty v. Superior Court* (1994) 26 Cal.App.4th 204, 210.

When parties disobey discovery orders, a number of factors are relevant to the court's determination of the appropriate remedy, including:

> 1) the time which has elapsed since [discovery was] served, 2) whether the party served was previously given a voluntary extension of time, 3) the [amount of discovery] propounded, 4) whether the [responses] sought information which was difficult to obtain, 5) whether the answers supplied were evasive and incomplete, 6) the number of [requests] which remained [unfulfilled], 7) whether the [requests] which remain [unfulfilled] are material to a particular claim or defense, 8) whether the answering party has acted in good faith, and with reasonable diligence, 9) the existence of prior orders compelling discovery and the answering party's response thereto, 10) whether the party was unable to comply with the previous order of the court, 11) whether an order allowing more time to answer would enable the answering party to supply the necessary information, and, 12) whether a sanction short of dismissal or default would be appropriate to the dereliction.

Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 796–797.

"The trial court may order a terminating sanction for discovery abuse 'after considering the totality of the circumstances: [the] conduct of the party to determine if the actions were willful; the detriment to the propounding party; and the number of formal and informal attempts to obtain the discovery.'" *Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 390. "Generally, '[a] decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, *and the evidence shows that less severe sanctions would not produce compliance with the discovery rules,* the trial court is justified in imposing the ultimate sanction.'" *Ibid*., citing *Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279–80 ([But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction.] Italics added.). Issue or evidence sanctions for failure to respond adequately to discovery requires that there be a prior order for production. *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1428; see also CCP § 2030.300(e) (party must "fail() to obey an order compelling further response to interrogatories" before issue, evidence or terminating sanctions are allowed for failure to adequately answer interrogatories.).

> "The discovery statutes evince an incremental approach to discovery sanctions, starting with monetary sanctions and ending with the ultimate sanction of termination. 'Discovery sanctions "should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery." ' [Citation.] If a lesser sanction fails to curb misuse, a greater sanction is warranted: continuing misuses of the discovery process warrant incrementally harsher sanctions until the sanction is reached that will curb the abuse.

Creed-21 v. City of Wildomar (2017) 18 Cal.App.5th 690, 701–02, *citing Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967.

III. Analysis

A. Motions to Compel

Plaintiff served the Form Interrogatories, Set Two, to Defendants on September 2, 2025. On October 20, 2025, Plaintiff filed a motion to compel responses to the interrogatories, as no responses had been received. Defendants provided responses to the interrogatories on January 9, 2026. The Court held a hearing on the motion, and issued an Order after Hearing on February 2, 2026. The Court found the motion to compel moot. Plaintiff asked that the Court find objections waived, to which the Court noted, "wavier [of objections] is by operation of law due to the untimely responses," and, "there is no court order relieving Defendants of that waiver." CCP § 2030.290(a)."

Plaintiff filed the motions moving to compel further responses to Form Interrogatories set two from Dealer on March 16, 2026. Each of the motions moves to compel further responses to Form Interrogatory 15.1, which requires the responding party to elucidate all evidence that supports their material allegations and affirmative defenses. The motion as to Manufacturer was filed the same day. Both Defendants provided the same response with only the party name changed:

> [Defendant] objects to the extent this interrogatory is vague, ambiguous, overly broad, oppressive, and asks for information protected by the attorney work-product doctrine or the attorney-client privilege. Subject to and without waiving these objections, [Defendant] set forth its denials and affirmative defenses in the answer on file and in Plaintiff's possession. [Defendant's] denial and affirmative defenses were raised at the beginning of this lawsuit, as required by law, before any discovery was allowed. [Defendant] filed them with the court to protect its legal rights, because if [Defendant] failed to assert them, they may have been waived. [Defendant's] investigation and discovery are ongoing. [Defendant's] general denial and affirmative defenses were prepared by its attorneys and reflect their legal analysis.

See Plaintiff's Separate Statement as Dealer; Plaintiff's Separate Statement as Manufacturer. Plaintiff moves to compel further responses. Defendants have filed no opposition. Plaintiff has shown good cause for compelling further responses. The interrogatories are relevant, and the answers are not substantive. Defendants' responses are insufficient for three reasons.

In the interrogatories, Defendants each object averring that these matters are protected by attorney client privilege. As an initial matter, Defendants have filed no opposition, and as such do not meet the shifted burden justifying their objections. Additionally, Plaintiff accurately states that attorney client privilege only protects communications, thoughts and impressions. "The attorney-client privilege attaches to a confidential communication between the attorney and the

client and bars discovery of the communication irrespective of whether it includes unprivileged material." *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 734. It also covers matters prepared for the purpose of the representation. *Holm v. Superior Court* (1954) 42 Cal.2d 500, 508. However, mere exposure to an attorney, or concluded relevance to the case, cannot convert evidence already in possession of a party into something protected by the privilege. *Suezaki v. Superior Court of Santa Clara County* (1962) 58 Cal.2d 166, 176. Defendants have provided no privilege log here, so what was withheld is not supported in any way, because *if* something was withheld, Defendants have failed to identify it. No objection predicated on privilege is supported.

Perhaps more fatally, late responses waive *all* objections, including attorney client. CCP § 2030.290(a). Defendants have never petitioned the Court for an order relieving them of their untimely responses. Even if there were any support for privilege here based on the facts and a privilege log, that would be irrelevant because the objection itself has been waived.

The balance of the response is equally lacking. Defendants' cannot bury their heads in the sand to avoid producing answers to discovery. The obligation once the interrogatory is served is to "make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations…" CCP, § 2030.220 (c). Nothing in the response affirms that Defendants have done anything **resembling** an inquiry. The responses to the interrogatories were served around six months after Defendants had both appeared in the case. It has been a *further six months*. Defendants' prevarication arguing that the Answer was served without the benefit of discovery does not substantively address the purpose of discovery. It also strains credulity that Defendants' affirmative defenses and factual denials are not supported by *any* evidence in their possession. The broad strokes denial of any evidence without addressing the substance of the Answer is indicative that Defendants have expended no effort in attempting to provide substantive answers to the interrogatories at issue.

Plaintiff's motion to compel further responses to FI ¶ 15.1 from Manufacturer is GRANTED. Further **substantive**, objection free responses will be provided to Plaintiff within 15 days of notice of this order.

Plaintiff's motion to compel further responses to FI ¶ 15.1 from Dealer is GRANTED. Further **substantive**, objection free responses will be provided to Plaintiff within 15 days of notice of this order.

B. Sanctions

Plaintiff requests both monetary and issue sanctions. Plaintiff, in each motion, requests $1,075 in sanctions against Manufacturer and Dealer separately. Plaintiff also requests that the Court strike all of Defendants' affirmative defenses.

Plaintiff's request for issue sanctions, and particularly striking every affirmative defense, is premature. "**If** a party then fails to obey an order **compelling further response** to interrogatories, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction…" CCP, § 2030.300 (emphasis

added); see also *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1428. Plaintiff's request neither comports with the incremental nature of discovery sanctions, nor the express language of the statute on which the motion is based.

This is not to say that this case is not increasingly ripe for elevated remedies. The docket evinces Defendants' recalcitrant attitude toward discovery statutes. Plaintiff has filed **nine** meritorious discovery motions in this case. Defendants' intransigence is of significant concern. The Court will consider future appropriate requests with the full context of the case considered.

Turning to the propriety of monetary sanctions, the motion is the result of Defendants' failure to produce sufficient responses, which necessitated Plaintiff's motion. Monetary discovery sanctions are intended to be compensatory for discovery abuse. Defendants have offered no opposition.

The notice of motion requests sanctions against Defendants and their counsel. Sanctions against counsel requires that the discovery abuse derive from the conduct of counsel. Here, the objections are purely the purview of counsel, and are frivolous at best. Counsel has contributed to the discovery abuse, and accordingly the imposition of sanctions against them is appropriate.

Plaintiff seeks $1,075 for each of the motions compelling further responses from Defendants. Plaintiff has prevailed in a similar manner as to both motions, and therefore sanctions as to each appears appropriate. Counsel requests a rate of $350 per hour, with 1.5 hours per motion. Counsel also requests 1.4 hours for reviewing the opposition, preparing the reply, and attending the hearing. This time is speculative, and no opposition was filed. Accordingly it is properly disallowed for both motions, as it is not actual. The motion also has a filing fee of $60. One and a half hours per motion appears reasonable. Counsel's fees are not excessive. The fees and costs related to filing are actual and reasonable. Fees of $525 per motion is appropriate based on the time expended and the rate requested.

Therefore, the Court finds appropriate sanctions of $585 against Manufacturer. Separately, sanctions of $585 against Dealer are also appropriate.

The motions are GRANTED as to sanctions. Plaintiff's requests for sanctions against Manufacturer and their counsel is GRANTED in the amount of $585. Manufacturer and/or their counsel are to pay this amount to Plaintiff within 30 days. Plaintiff's requests for sanctions against Dealer and their counsel is GRANTED in the amount of $585. Dealer and/or their counsel are to pay this amount to Plaintiff within 30 days.

IV. Conclusion

The Motion to compel further responses to FIs is **GRANTED** as to FIs ¶ 15.1. Further substantive, objection free responses will be provided by Dealer and Manufacturer to Plaintiff within 15 days of notice of this order.

The requests for sanctions thereon are **GRANTED**. Plaintiff's requests for sanctions against Dealer and their counsel is **GRANTED** in the amount of $585. Dealer and/or their counsel is to

pay this amount within 30 days. Plaintiff's requests for sanctions against Manufacturer and their counsel is **GRANTED** in the amount of $585. Manufacturer and/or their counsel is to pay this amount within 30 days.

Plaintiff 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).

5. 25CV06504, Vistajet US, Inc. v. Malvesta

Plaintiff Vistajet US, Inc. ("Plaintiff") filed the complaint against defendant Stephen Malvesta ("Defendant") and Does 1-50 for causes of action arising out of alleged contractual breach (the "Complaint").

This matter is on calendar for the motion by non-parties Bridgepoint Air Advisors, LLC ("Bridgepoint"), Bond Aviation Holdings, LLC ("Aviation Holdings"), and Bond Opco, LLC ("Opco", all together "Nonparties") to Correct the Court's May 8, 2026, Order compelling responses to Plaintiff's subpoenas.

I. Underlying Facts

Plaintiff filed motions to compel further responses to Deposition Subpoenas against each of the Nonparties on December 29, 2025. The matter was fully briefed and set for hearing on April 22, 2026. The day before, pursuant to local rule, the Court issued a tentative ruling denying Requests 1, 2 and 3 in their entirety, and granting as to Request ¶ 4. Plaintiff called to request oral argument at the hearing. The parties appeared and argued the motion. See. Declaration of Ryan Landes, Ex. A (the "Transcript"). The Court took the matter under submission, and on May 8, 2026, issued an order after hearing granting the motion to compel as to Request 1 in part. Court's 5/8/2026 RULING ISSUED ON SUBMITTED MATTERS RE: MOTIONS TO COMPEL (the "Order"). In so doing, the Court imposed a time limitation on Request 1, only compelling as to documents from September 2025 to present. Nonparties filed the current motion on June 10, 2026, along with an ex parte to advance the matter. The ex parte was granted and the motion was set for the instant date.

II. Governing Law

A. Reconsideration

CCP §1008 reads in relevant part:

> (a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and **based upon new or different facts, circumstances, or law**, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall

> state by affidavit what application was made before, when and to what judge, what order or decisions were made, **and what new or different facts, circumstances, or law are claimed to be shown**.

Code Civ. Proc., § 1008 (emphasis added)

"[A] trial court has inherent power to reconsider an interim ruling on its own motion." *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1248. The court's power to reconsider its own rulings is constitutionally derived. *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1105. "We cannot prevent a party from communicating the view to a court that it should reconsider a prior ruling… [I]t should not matter whether the judge has an unprovoked flash of understanding in the middle of the night (citation) or acts in response to a party's suggestion. If a court believes one of its prior interim orders was erroneous, it should be able to correct that error no matter how it came to acquire that belief." *Id*. at 1108. "(A) party's filing of a motion for reconsideration in violation of the reconsideration statutes does not erect a permanent, insurmountable barrier to reconsideration by the trial court on its own motion." *In re Marriage of Barthold* (2008) 158 Cal.App.4th 1301, 1309. Therefore, "the trial court's inherent authority to correct its errors applies even when the trial court was prompted to reconsider its prior ruling by a motion filed in violation of section 1008." *Id*. at 1303-1304. "If the trial court believes reconsideration is warranted, it can amend, modify or revoke its previous order." *Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1457.

B. Correction of Clerical Error

Generally, a court's power to amend judgment is very limited unless the error in the judgment was "clerical." CCP section 473(d); 7 Witkin, Cal.Proc. (6th Ed.2021, March 2022 Update) Judgment §§67-73; 7 Witkin, Cal.Proc. (5th Ed.2008, March 2020 Update) Judgment §§67-70. The court "may... correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed...." CCP § 473(d). "It is elementary that '[a] court can always correct a clerical, as distinguished from a judicial error which appears on the face of a decree by a *nunc pro tunc* order.'" *Bell v. Farmers Ins. Exchange* (2006) 135 Cal.App.4th 1138, 1144. Clerical errors subject to correction under CCP § 473(d) are those errors through inadvertence which are made by either the clerk, a judge, or the court. *Young v. Gardner-Denver Co.* (1966) 244 Cal.App.2d 915, 919.

III. Analysis

First, correction under CCP § 473(d) appears improper. This matter appears to exceed what is correctable through clerical error. While the result comes from a scrivener's error in the Court's notes, the resulting Order exceeds a typographical or scrivener's error. It does not require a change of a few words, but the erroneous analysis resulting therefrom. The error is judicial in nature. The request to correct clerical error is DENIED.

However, the Court maintains the ability to correct its own orders under CCP § 1008. CCP § 1008; *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107. The Court's ability to do so is not fettered by the 10-day limitation applicable to parties. *Case v. Lazben Financial Co.* (2002) 99

Cal.App.4th 172, 186. Whether a party brought the matter to the Court's attention through an untimely reconsideration motion is irrelevant if the Court finds it appropriate to correct the matter on its own motion. *In re Marriage of Barthold* (2008) 158 Cal.App.4th 1301, 1309. Here, once the matter was brought back to Court's review, the nature of the error was obvious to the Court. The Court's very concerns (evidenced by the tentative ruling and final ruling on Request 2 and 3) were that the time period exceeded what was necessary to relate to the claims in the Complaint, and that the scope of the documents requested was impermissibly broad. Recollection refreshed, the error was apparent from reading the Order. The transcript attached to the Declaration of Ryan Landes, Ex. A further supports this, reflecting that the discussion at the hearing was about overlapping employment periods.

Plaintiff's opposition in this regard is perplexing. The Order as written does not provide them with the very information they strenuously argued was relevant to their claims of Defendant's collusion while in their employ. Conceivably if the discovery served was anything more than the fishing expedition the Court rebuked in the tentative ruling, Plaintiff would be the *most* interested party in correction of the order. This is consistent with Plaintiff's counsel's statements during the hearing, on which the Court relied in deciding to partially grant Request 1. "We're seeking business communications while he was employed with us. Because if he's discussing business while he's our employee, that would seem to be relevant or very potentially relevant." Transcript, pg. 15:11-15; see also Transcript, pg. 6:21-26. That the Order reflects a time period that *starts* after employment with Plaintiff ended would seem contrary to what Plaintiff was seeking.

Therefore, the matter having been brought to the Court's attention by a party, the Court on its own motion will reconsider the May 8, 2026, Order. The Court's order was in error, and Request 1 should have been granted with the time period limitation of August 25, 2023, to August 13, 2025. The order should therefore be amended.

The Court will issue a "CORRECTED RULING ISSUED ON SUBMITTED MATTERS RE: MOTIONS TO COMPEL".

IV. Conclusion

The Motion is **DENIED. Nonetheless, the Court, on its own motion, moves to correct the May 8, 2026, Order. The Court will issue a "CORRECTED RULING ISSUED ON SUBMITTED MATTERS RE: MOTIONS TO COMPEL".**

Nonparties' 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).

6. 25CV07999, Tunkle v. Ghiradelli Associates, Inc.

Petitioner Raymond Tunkel ("Petitioner"), individually and on behalf of other all other similarly situated, filed the petition in this action against Ghirardelli Associates, Inc. ("Respondent") for confirmation of the class action arbitration award (the "Petition").

This matter is on calendar for the application by Richard M. Schreiber to appear pro hac vice on behalf of Plaintiff, in coordination with California-based counsel. Plaintiff brings this motion pursuant to California Rule of Court("CRC"), Rule 9.40. There is no opposition. However, the Court cannot locate a proof of service reflecting service of the motion to anyone, either before or after the clerk had assigned the hearing date. As such, there is no evidence State Bar has been served with notice of the hearing date, as is required by CRC Rule 9.40 (c)(1). That provision particularly requires notice of the hearing be given in accordance with CCP § 1005. The declaration attached to the motion only notes that it "will" be forwarded to the state bar with the required fees. As such, the application is **DENIED without prejudice**.

7-8. SCV-265109, County of Sonoma v. Stavrinides

In this property abatement action, the County of Sonoma (the "County" or "Plaintiff") obtained a Judgment against defendants Elias Stavrinides ("Stavrinides"), Sean C. Musgrove ("Musgrove"), and Does 1-30, as owners of the property commonly known as 970 Butler Avenue, Santa Rosa, California (the "Property"), in the County of Sonoma.

This matter is on calendar for two motions filed by Stavrinides, a motion for his removal from the statewide list of vexatious litigants subject to prefiling orders, and a motion for issuance of an order to show cause re: contempt against Plaintiff's counsel.

I. Governing Law

A. Vexatious Litigant

Vexatious litigant statutes were created to curb misuse of the court system by those acting in pro per who repeatedly relitigate the same issues. *Hupp v. Solera Oak Valley Greens Ass'n*. (2017) 12 Cal.App.5th 1300, 1311. "These persistent and obsessive litigants' abuse of the legal system 'not only wastes court time and resources but also prejudices other parties waiting their turn before the courts.'" *Id. citing In re Bittaker* (1997) 55 Cal.App.4th 1004, 1008. Vexatious litigant statutes are constitutional and do not deprive a litigant of due process of law. *See, e.g. Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 220-21.

"A court exercises its discretion in determining whether a person is a vexatious litigant." *Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 219. Appellate courts will uphold the trial court's ruling if it is supported by substantial evidence, and the trial court's order is presumed to be correct with any findings of fact implied as necessary to support the trial court's determination. *Holcomb v. U.S. Bank Nat. Assn.* (2005) 129 Cal.App.4th 1494, 1498.

CCP § 391(b) defines "vexatious litigant" as a person who does any of the following: "(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing. (2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom

the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined. (3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay. (4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence."

"What constitutes 'repeatedly' and 'unmeritorious' under subdivision (b)(3), in any given case, is left to the sound discretion of the trial court." *Morton v. Wagner* (2007) 156 Cal.App.4th 963, 971. "Not all failed motions can support a vexatious litigant designation. The repeated motions must be so devoid of merit and be so frivolous that they can be described as a 'flagrant abuse of the system,' have 'no reasonable probability of success,' lack 'reasonable or probable cause or excuse' and are clearly meant to 'abuse the processes of the courts and to harass the adverse party than other litigants.'" *Id.* at 972 (internal quotations omitted). As few as three motions might be sufficient to meet the standard under CCP § 391(b)(2), where the three motions all see the same relief that has already been denied, or all relate to the same judgment. *Goodrich v. Sierra Vista Regional Medical Center* (2016) 246 Cal.App.4th 1260, 1266.

"A vexatious litigant subject to a prefiling order under Section 391.7 may file an application to vacate the prefiling order and remove his or her name from the Judicial Council's list of vexatious litigants subject to prefiling orders." CCP § 391.8 (a). "A court may vacate a prefiling order and order removal of a vexatious litigant's name from the Judicial Council's list of vexatious litigants subject to prefiling orders upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order." CCP § 391.8 (c)

B. 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.

II. Withdrawal of Stavrinides From Vexatious Litigant List

A. Underlying Procedural History

Judgment was entered against Defendants on March 21, 2022. On January 21, 2025, the court issued an Order After Hearing finding that Stavrinides was a vexatious litigant, but not issuing a prefiling order ("January 21, 2025 Order"). Stavrinides sent a letter to the court's administration on August 19, 2025, requesting to be removed from the vexatious litigant list. Thereafter, Stavrinides filed a motion to be removed from the vexatious litigant list on August 28, 2025. The August 28, 2025, motion was set by the clerk for January 14, 2026. The presiding judge issued

an order addressing Stavrinides's letter on August 29, 2025, setting a hearing thereon for September 10, 2025. On September 9, 2025, the Court issued a tentative ruling for the hearing the following day advancing the August 25, 2025, motion because it addressed the same issue raised by the letter. Stavrinides appeared on the calendar to argue, but because no notice had been given to Plaintiff, the Court disallowed oral argument. The court addressed both the letter and the motion, acknowledging that the failure to previously issue a prefiling order was error once Stavrinides was determined to be a vexatious litigant. The court reissued the vexatious litigant finding with an order for inclusion of prefiling requirements on October 1, 2025 ("October 1, 2025 Order"). The October 1, 2025, Order was served by mail the following day. On January 14, 2026, the Court issued a tentative that the August 25, 2025, motion was moot, as it had been addressed in the October 1, 2025, Order. Stavrinides appeared and objected. The motion was nonetheless dropped from calendar as moot. Stavrinides filed the instant motion on January 26, 2026, arguing that he must be removed from the vexatious litigant list. Thereafter, the judge previously handling the case recused from the matter, and the case was transferred to this Department. Upon being made aware of the present motion and pursuant to CCP §391.8(a), on July 2, 2026, Presiding Judge, Hon. Christopher Honigsberg, designated this judicial officer to preside and determine this matter.

B. Analysis

Stavrinides asks that this Court issue an order taking him off the vexatious litigant list. Such motions, much like a motion for reconsideration, must be before the judge who entered the order "if reasonably available". CCP § 391.8. The Court reviews the issuance of the prefiling order because the issuing judge is no longer capable of hearing this case due to recusal. This judicial officer has been designated by the presiding judge for consideration of the instant motion.

The Court does not find that the motion is fully redundant of Stavrinides's August 28, 2025, motion, and the matter appears ripe for consideration. While the January 21, 2025 order did find that Stavrinides was a vexatious litigant, it declined to issue a prefiling order. The effect of vexatious litigant determination is not clear absent issuance of either a pre-filing order under CCP § 391.7, or an order requiring security under CCP § 391.1. The Court's October 1, 2025 order conceded as much and issued a pre-filing requirement, it also addressed Stavrinides's August 28, 2025 motion. However, because CCP § 391.8 sets the method to "vacate the prefiling order" (CCP § 391.8(a)), and no prefiling order was properly in effect when Stavrinides filed the motion, the motion is not redundant in requesting that the Court vacate the prefiling order. With that said, Stavrinides's contention that the January 14, 2026 hearing was not moot is not persuasive. The Court fully disposed of the August 25, 2025 Motion in the October 1, 2025 Order.

However, the motion nonetheless fails because it does not present a reason to vacate the prefiling order. Stavrinides misunderstands *John v. Superior Court* (2016) 63 Cal.4th 91, 93 ("*John*") arguing that he cannot be a vexatious litigant because he is the defendant in this case. This is not *John*'s holding. Particularly, the California Supreme Court found that vexatious litigant status does not preclude a party from filing an appeal under CCP § 391.7 as a defendant. *Id*. at 97. A vexatious litigant may not file a "new litigation" without complying with the pre-filing process. CCP § 391.7(a-c). Appeals are "new litigation". *In re Kinney* (2011) 201 Cal.App.4th 951, 961.

The holding of *John* is that a defendant has a right to appeal, regardless of vexatious litigant status. However, the *John* court also stated that this does not prevent the Court of Appeal from determining that said defendant was a vexatious litigant. *Id*. at 99. Stavrinides argues that his status as a defendant in the case means he cannot be labelled a vexatious litigant from his conduct in this case. However, this misses the *John* court's holding. Stavrinides need only meet one of the standards set in CCP § 391 to be labelled a vexatious litigant. The *John* case says nothing to the contrary. Stavrinides was found to be a vexatious litigant not because of adverse determinations under CCP § 391(b)(2), but his filing of twelve unmeritorious motions under CCP § 391 (b)(3). See Court's October 1, 2025 Order After Hearing. This is sufficient basis for issuance of a prefiling order. There is no legal error in the designation of Stavrinides as a vexatious litigant.

Second, even if *John* did apply, the motion for removal of designation is under CCP § 391.8. That motion does not contemplate review due to legal error of the issuing judge. Instead, Stavrinides may only be removed "upon a showing of a material change in the facts upon which the order was granted and that the ends of justice would be served by vacating the order." CCP., § 391.8 (c). Stavrinides legal argument fails to establish any of these factors.

Nor can Stavrinides's motion be construed as a viable motion for reconsideration under CCP § 1008 of the October 1, 2025 order. First the motion is fatally untimely. Second, Stavrinides does not present new law or facts as would be required for the Court to even have jurisdiction to consider such a motion. Stavrinides makes no mention of CCP § 1008 or the term "reconsideration", and accordingly, there is no reason to further analyze that line of argument.

Therefore, *John* does not present a new authority which would be relevant to removal of Stavrinides designation as a vexatious litigant. There is no material change of facts, and removal of the designation would not serve the ends of justice. The determination of the Court that Stavrinides is a vexatious litigant remains in place. Stavrinides's motion is DENIED.

III. Motion for Order to Show Cause re; Contempt

A. Underlying Procedure and Affidavit

Stavrinides has filed a motion requesting that the Court issue an order to show cause, and find the attorney representing Plaintiff, Michael King ("Counsel King"), is in contempt of court. Accompanying the motion is Stavrinides's affidavit (the "Affidavit"), comprised of two paragraphs and two exhibits. Stavrinides states that Counsel King served him the letter and notice of motion attached as exhibits with the intent to threaten, intimidate, coerce and dissuade him from participating in his motion for reconsideration also addressed in this decision. The exhibits demand that Stavrinides drop the January 26, 2026, motion as a frivolous filing, threatening sanctions under CCP §§ 128.5 and 128.7.

B. Analysis

Stavrinides's request fails for two reasons. First, Stavrinides motion relies on averred violation of Penal Code statutes, and not any order of the Court. Contempt is a function of violation of a

court order, or other conduct damaging to the court proceedings. Stavrinides alleges that Counsel King violated various Penal Code sections in relation to a court proceeding, but this is insufficient. Contempt is at its core a civil proceeding, properly separated from Penal Code violations. *Safer v. Superior Court* (1975) 15 Cal.3d 230, 236–237. Stavrinides alleges that Counsel King's conduct violated Penal Code §§ 136.1 (a)(2), 136.1 (c)(1), 133, 134, and 96.5. Penal Code statutes do not create private rights of action unless they expressly state so. *Animal Legal Defense Fund v. Mendes* (2008) 160 Cal.App.4th 136, 142.

Stavrinides has no standing to assert claims based on the cited Penal Code sections. Stavrinides identifies no particular court order which Counsel King has violated. The Affidavit does not establish contempt and asks the Court to address matters not contemplated by the Court's contempt power.

Second, even if the Court reached the merits, the Affidavit does not allege facts which constitute criminal violations of the statutes cited. The letters, both by their title and their content, are intended to comply with the "safe harbor" requirements of CCP §§ 128.5 and 128.7. These are statutorily authorized motions for sanctions which *require* that Stavrinides be given notice 21 days before they are filed. Given that the safe harbor notice is required by law to file the statutory motion, a finding that performing the conduct required by the statute would be an absurd result. The reason for this becomes apparent on examination of the criminal statutes on which Stavrinides relies. Each of the averred violations under Penal Code §§ 136.1 (a)(2), 136.1 (c)(1), 133, and 134 require that the intimidation be directed to a "witness" or "victim". A witness is defined as:

> "Witness" means any natural person, (i) having knowledge of the existence or nonexistence of facts relating to any crime, or (ii) whose declaration under oath is received or has been received as evidence for any purpose, or (iii) who has reported any crime to any peace officer, prosecutor, probation or parole officer, correctional officer or judicial officer, or (iv) who has been served with a subpoena issued under the authority of any court in the state, or of any other state or of the United States, or (v) who would be believed by any reasonable person to be an individual described in subparagraphs (i) to (iv), inclusive.

Pen. Code, § 136(2).

The term "victim" is equally problematic, meaning "any natural person with respect to whom there is reason to believe that any crime as defined under the laws of this state or any other state or of the United States is being or has been perpetrated or attempted to be perpetrated." Pen. Code, § 136 (3). There is no indication that Stavrinides is a witness in a criminal action. The only criminal allegations here are the violations of the witness tampering statute. "Tampering" with a person not yet meeting the definition of victim or witness cannot be the crime which then allows them to become a victim.

Penal Code § 96.5 is equally inapplicable, only applying to a "judicial officer, court commissioner, or referee who commits any act that he or she knows perverts or obstructs justice"

Pen. Code, § 96.5 (a). Nothing in the Affidavit or record supports the finding that Counsel King falls under this statute.

Finally, there is nothing in the record to indicate that the communications described in the affidavit were not at least good faith warnings of a sanctions motion under CCP §§ 128.5 and 128.7 statute. While the Court did not find the motion redundant, the argument thereon was reasonable based on the ambiguity of the Court's January 21, 2025 Order. The January 26, 2026 motion was lacking in merit for the reasons described above.

Therefore, both because Stavrinides lacks standing to assert the alleged statutory violations, and because the Affidavit does not allege facts amounting to contempt, the request for an order to show cause re: contempt is DENIED.

IV. Conclusion

Stavrinides's motion to be removed from the vexatious litigant list is **DENIED.**

Stavrinides's request for an order to show cause re: contempt is **DENIED.**

Plaintiff 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.*****