SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 05/15/2025

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties email or call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of their decision to appear and of the issues to be argued**.** Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (*Local Rule* 3.43(2).)

Note: In order to minimize the risk of miscommunication, parties are to provide an **EMAIL NOTIFICATION TO THE DEPARTMENT OF THE REQUEST TO ARGUE AND SPECIFICATION OF ISSUES TO BE ARGUED**. Dept. 39's email address is: dept39@contracosta.courts.ca.gov. Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

Submission of Orders After Hearing in Department 39 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

Law & Motion

1. 9:00 AM CASE NUMBER: C22-02096
CASE NAME: HOWARD HINES VS. SYNERGY GLOBAL HOUSING LLC
HEARING IN RE: COMPLIANCE HEARING
FILED BY:
TENTATIVE RULING:
The Settlement Administrator's declaration shows that the settlement terms have been implemented. Since the State Controller has directed the Settlement Administrator to retain the funds for some period of time, the Settlement Administrator shall comply with the Controller's direction. The Settlement Administrator may disburse the remaining 10% of attorney's fees to plaintiff's counsel. No

further proceedings are contemplated.

2. 9:00 AM CASE NUMBER: C22-02107
CASE NAME: BROWNE VS HYUNDAI
***HEARING ON MOTION FOR DISCOVERY COMPEL RESPONSES TO SPECIAL INTERROGATORIES, SET 2**
FILED BY: BROWNE, JANICE L.
****TENTATIVE RULING:****

Plaintiff Janice Browne moves to compel further answers to her Special Interrogatories, Set Two. The memorandum of points and authorities sets out only the general principles of discovery, rather than the specific responses and their alleged inadequacy. These are found in the Separate Statement. The parties engage in a lot of debate about the history of the case, previous proceedings before a different judge, and before more than one Discovery Facilitator. This Court, however, will limit the discussion to the pending motion, i.e., to compel further responses to Special Interrogatories 40-66.

In the underlying case, plaintiff alleges that she was injured when her 2017 Hyundai Sonata plug-in hybrid suddenly accelerated in her driveway, causing a collision with another car and a tree.

Other significant circumstance concern a recall by Hyundai of some models of cars, including plaintiff's car, and a class action, in which it is alleged that the vehicles in question have a defective connecting rod, which can cause engine seizure, engine stalling, engine failure, and/or engine fire.

A common theme of the interrogatories, and asserted basis for objections, is information concerning the defects at issue in the class action. Plaintiff says they are relevant and defendant says they are not. Plaintiff's theory of the case is that the accelerator was unintentionally engaged, causing the car to accelerate. The recall and class action concern alleged defects (in particular a connecting rod that could fail), which could make the engine fail. But is this defect "relevant to the subject matter of the action" when the problem is unintended acceleration? For some types of defects, the lack of a relationship would be obvious: if the class action involved defective tail lights, it clearly would be not relevant. Conversely, if the class action involved sticking accelerators, it would be relevant. As applied to this situation, a defect that could cause engine failure is not factually related to the issues in this case.

Of course, a party propounding discovery does not have the burden to produce evidence supporting a need for the material. Instead "while the party propounding interrogatories may have the burden of filing a motion to compel if it finds the answers it receives unsatisfactory, the burden of justifying any objection and failure to respond remains at all times with the party resisting an interrogatory." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 541.) Here, HMA has met this burden by simply explaining the apparent facial irrelevance of the class-action related information. Either side might have buttressed their case by submitting a declaration from a competent witness explaining why the connecting rod defect is or is not relevant to a sticking accelerator, but neither side has done so. Based on the limited record before the Court, HMA has met its burden.

Accordingly, the motion to compel is denied as to Special Interrogatories 40-48, 54-56, and 63-66.

As to Special Interrogatories 59-61, the exclusive method of obtaining discovery of intended expert witnesses is the expert disclosure provisions of Code of Civil Procedure sections 2034-2034.730. The motion is denied as to 59-61.

As to Special Interrogatories 49 and 57, plaintiff states that there is no reason to compel a further response.

As to Special Interrogatories 50-53, the question seeks information about "subject vehicle" reports of unintended acceleration, but HMA answers only with respect to plaintiff's model of car. Cars of another model with the same complaint report are relevant to the subject matter of the action, because they might lead to discovery of admissible evidence, particularly if all of the cars have similar accelerators. The motion to compel is granted as to interrogatories 50-53.

As to Special Interrogatory 58, the answer is sufficient, and the contact information is not appropriate for an employee of a party.

As to Special Interrogatory 62, the answer is complete. Disagreement with the answer is not ground to compel further responses.

As to plaintiff's requests for sanctions, the motion to compel is largely denied, and as to the matters on which it is granted, defendant's position was substantially justified. Accordingly, no sanctions are awarded.

3. 9:00 AM CASE NUMBER: C22-02212
CASE NAME: DOUGLAS RYAN VS. DONALD RYAN
HEARING ON DEMURRER TO: 3RD AMENDED COMPLAINT
FILED BY: RYAN, DONALD
TENTATIVE RULING:

The hearing on this matter is continued to May 22, 2025, at 9:00 a.m.

4. 9:00 AM CASE NUMBER: C23-01149
CASE NAME: MARIA MONDRAGON VS. OLVERA & SONS ENTERPRISES, INC.
HEARING IN RE: COMPLIANCE
FILED BY:
TENTATIVE RULING:

The Settlement Administrator's declaration shows that the settlement terms have been implemented. If the State Controller directs the Settlement Administrator to retain the funds for some period of time, the Settlement Administrator shall comply with the Controller's direction. The Settlement Administrator may disburse the remaining 5% of attorney's fees to plaintiff's counsel. No further proceedings are contemplated.

5. 9:00 AM CASE NUMBER: C23-03279
CASE NAME: MARIA SILVA VS. TODD CURRY
***HEARING ON MOTION IN RE: TO QUASH DEF BUSINESS RECORDS**
FILED BY: SILVA, MARIA
****TENTATIVE RULING:****

Plaintiffs Maria Silva and Maricela Lopez sue defendants Todd Curry and Univar Solutions USA, Inc., for personal injuries arising from a motor vehicle accident. Defendant Univar issued a subpoena duces tecum to the California Department of Social Services (DSS) for records of plaintiff Lopez, and Lopez seeks to quash the subpoena on the grounds that production of the records would violate her right to privacy.

It appears that Lopez's connection to DSS is that she has been employed as an in-home caregiver through DSS. This would be relevant because it would show that she is, despite her alleged injuries, able to work.

The subpoena seeks "any and all documents related to investigations, examinations, testing, applications, enrollments, interviews and all records related to services provided by Maricela Lopez (DOB: July 16, 1971; driver's license no. [xxxxxxxx]) which qualify for benefits, wages or any form of payment issued by the Department of Social Services, from 01/21/2015 to and including the present."

Where a matter is relevant and a privacy interest is asserted, courts must "place the burden on the party asserting a privacy interest to establish its extent and the seriousness of the prospective invasion, and against that showing must weigh the countervailing interests the opposing party identifies[.]" (*Williams v. Superior Ct*. (2017) 3 Cal.5th 531, 557.) Lopez argues for a contrary rule, relying on *San Diego Trolley, Inc. v. Sup. Ct*. (2001) 87 Cal.App.4th 1083, 1095, and *Digital Music News, LLC v. Sup. Ct*. (2014) 226 Cal.App.4th 216, 229, but each of those cases was expressly disapproved by *Williams, supra*, 3 Cal.5th at 557, n. 8.)

Univar argues that, while Lopez has waived lost wages claims, she claims ongoing physical injuries that will require surgery, and that the DSS records relate to her ability to perform caretaking tasks, including lifting another person. It further argues that if Lopez asserts that there are no further limitations from her injuries, it will withdraw the subpoena.

Engaging in the balancing required by *Williams*, this information is clearly relevant to Lopez's contentions. It may support or conflict with her claims of ongoing disabilities. On the other hand, it is not information of a highly personal or sensitive nature.

In reply, Lopez points out that the opposition brief was due on a Friday, and was not served until Monday. While counsel is admonished to file promptly, there is no apparent prejudice to Lopez, and the opposition will be considered.

Given that she has waived lost wage claims, however, there is no relevance to the financial records establishing how much she was paid, or her social security number. Accordingly, the motion is

granted in part, specifically that the subpoena shall be amended to add "except for any records showing payment records, and that any social security numbers shall be redacted." In all other respects, the motion is denied.

6. 9:00 AM CASE NUMBER: C24-00053
CASE NAME: JESSICA ODEN VS. KAIYAH FOSTER
***HEARING ON MOTION IN RE: TO BE RELIEVED AS COUNSEL**
FILED BY: ODEN, JESSICA
****TENTATIVE RULING:****
The motion is granted. Counsel is directed to serve the order relieving counsel in compliance with CRC 3.1362(d). Counsel is not formally relieved until the order is served on the client and proof of service is filed with the court.

7. 9:00 AM CASE NUMBER: C24-01551
CASE NAME: KIANJ TOURE VS. WINTER HONDA
***HEARING ON MOTION IN RE: TO BE RELIEVED AS COUSEL FOR PLTF**
FILED BY: TOURE, KIANJ
****TENTATIVE RULING:****
The motion is granted. Counsel is directed to serve the order relieving counsel in compliance with CRC 3.1362(d). Counsel is not formally relieved until the order is served on the client and proof of service is filed with the court.

8. 9:00 AM CASE NUMBER: C24-02160
CASE NAME: KENNETH DURHAM VS. BELL-CARTER FOODS, LLC
HEARING IN RE: APPLICATION TO APPEAR PRO HAC VICE AS TO JARED W. CONNORS FOR PLTF
FILED BY: DURHAM, KENNETH
****TENTATIVE RULING:****

Granted.

9. 9:00 AM CASE NUMBER: C24-02554
CASE NAME: MILDRED RESER VS. KIA AMERICA, INC.
***HEARING ON MOTION FOR DISCOVERY COMPEL FURTHER RESPONSES TO PLTFS REQUEST FOR PROD OF DOCS, SET 1**
FILED BY: RESER, MILDRED L.
****TENTATIVE RULING:****

Withdrawn by moving party.

10. 9:00 AM CASE NUMBER: C24-03056
CASE NAME: GIOVANNI VERGA VS.A.W. CHESTERTON COMPANY,CHEVRON SHIPPING COMPANY LLC
***HEARING ON MOTION IN RE: STAY OR DISMISS FOR FORUM NON CONVENIENS**
FILED BY: CHEVRON SHIPPING COMPANY LLC

TENTATIVE RULING:

Continued by stipulated request of the parties to May 29, 2025, 9:00 a.m.

11. 9:00 AM CASE NUMBER: C25-00451
CASE NAME: JENNIFER CARRERA VS. PRUVIT VENTURES INC.
***HEARING ON MOTION IN RE: TO QUASH SERVICE OF SUMMONS AND COMPLAINT**
FILED BY: LACORE ENTERPRISES, LLC
TENTATIVE RULING:
Continued to June 12, 2025, 9:00 a.m., by stipulation and order.

12. 9:00 AM CASE NUMBER: MSC21-00238
CASE NAME: BARGAS VS SUBARU OF AMERICA
***HEARING ON MOTION IN RE: FOR PAYMENT OF ATTORNEY FEES**
FILED BY: BARGAS, RICHARD
TENTATIVE RULING:
Background

In February of 2022, Plaintiff brought this "lemon law" action against Subaru of America, seeking repurchase of the vehicle. He had paid $43,011.75 for the car. In October of 2023, Plaintiff sold the car for $36,000, a difference with the purchase price of $7,011.75. In November of 2024, after three years of litigation, the parties settled with Subaru agreeing to pay plaintiff $7,500. The settlement provided that Plaintiff is the prevailing party, and that attorney's fees and costs would be paid "based on actual time expended determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action pursuant to Civil Code Section 1794(d)." As the prevailing party in a lemon law case, plaintiff is entitled to a reasonable attorney's fee. The amount is the issue.

Reduction Due to Unreasonable Settlement Position

Subaru argues that the fee should be reduced because the case only took so long because plaintiff refused to engage in reasonable settlement negotiations. At least one court has ruled that when a plaintiff refuses a settlement offer, vigorously litigates, and then obtains less relief than was originally offered in settlement by the defendant, post-offer attorneys fees are not "reasonable" and the trial court does not err in refusing to award them (*Meister v. Regents of University of California* (1998) 67 Cal. App. 4th 437, 449–453.) The parties stipulated that plaintiff is the prevailing party, but these issues are relevant only to whether the fees are reasonable in amount.

Subaru points out that the case settled for $7,500, when plaintiff had sought 45,000. It is difficult to compare the two numbers, because one was for a repurchase of the car (a much higher number), while the other was after the car was sold for $36,000. Subaru's initial offer of $6,443.48, including fees and costs, without a repurchase, was very close to what plaintiff ultimately obtained ($7,500 without a repurchase), except for the attorney's fees, which is a big exception. In summer of 2021, plaintiff offered $22,500 cash (with no repurchase), including attorney's fees. Thus, Plaintiff offered substantially less in attorney's fees than it now seeks. The offers went up from there. The

attorney's fee issue appears to be the primary reason why the case did not settle much sooner. On these facts, the Court cannot say that plaintiff was unjustified in his overall approach to the extent that it would find plaintiff's fees were not "reasonably incurred."

Subaru also argues that developments in appellate case law affected the value of the case (one hurting it, the other helping it). But the test of whether fees were "reasonably incurred" does not require the parties to dramatically change their position every time a new case is decided, and least not in the circumstances of this case.

(Although neither party has raised it, the consideration by the Court of settlement negotiations is permissible under the circumstances of this case. Evidence Code section 1152 makes settlement communications inadmissible to prove liability, it does not make anything confidential. (*Covell v. Superior Ct. (Drasin)* (1984) 159 Cal. App. 3d 39, 42.) Moreover, section 1152 "has no application where the evidence is not tendered as an admission of weakness by the party who settled or offered to settle, but for some other purpose." (*Lemer v. Boise Cascade* (1980) 107 Cal. App. 3d 1, 9.) As described in *Meister, supra*, introduction of settlement discussions can be permissible in an attorney's fee motion.

Lodestar Fee

Plaintiff seeks a lodestar fee of $51,908.50, based on 105.3 hours spent to date, with another 4 hours expected on the reply, plus 1.5 on defendant's motion to tax costs. Plaintiff also seeks $4,114.22 in recoverable costs. Thus, the total requested lodestar is $56,541 in fees and $4,114.22 in costs.

Hourly Rates

As to hourly rates, the rates for Aaron Fhima are either $565 or $600 per hour. For Sarah Torki, who did most of the work (a 2018 bar admittee), the rates were $425 or $450. For another associate, Tate Casey, the rates were $500 or $515. For Chelsea Hollins, who prepared the motion for fees, the rates were $500 or $545. Subaru contends that the hourly rates charged are too high. Rates are required to be based on "the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work." (*Children's Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal.App.4th 740, 783.) Proper hourly rates are a matter "in which the trial court has its own expertise" and on which it "may make its own determination of the value of the services contrary to, or without the necessity for expert testimony." (*PCLM Group v. Drexler, supra,* 22 Cal.4th 1at 1096.) Based on the Court's experience with fees in lemon law cases, and for attorneys in this county, the hourly rates are reasonable.

Particular Items

Subaru challenges particular items:

A $3,300 block billing claim, for prefiling investigation and administration. While there is nothing wrong with charging for services provided before filing the complaint, the flat fee of $3,300 with no breakdown of the time spent is not reasonable in this case. The amount is reduced by half,

i.e., to $1,650

Leaving voice mails. Subaru contests this, but voice mails can be as necessary as any other activity.

Drafting discovery motions that were never filed. ($2,167.50.) Especially given the deadlines on discovery motions, the fact that a motion was not ultimately filed, does not mean that its preparation was not reasonably necessary.

Time spent on review of timeslips. ($654.) This was a necessary part of preparing the fee motion.

19.7 hours for preparing the fee motion. Subaru calls this "extreme," but given the detail necessary in a fee motion, while it is on the high side, it is not unreasonable.

Subaru also produces a spread sheet (see Goerlinger Declaration, Ex. A) of costs it finds "could have and should have been avoided," totaling $12,178. On the Court's review, they are reasonable.

Multiplier

Plaintiff also seeks a multiplier of 1.1, which would add $5,654.10 to the request. The leading authority on multipliers is *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1135. The most significant factor in considering a multiplier is where the lawyer "bears the risk of not being paid." Plaintiff does not assert that the work was done on a contingent fee basis. A number of factors are relevant to the multiplier request, even if they would not be considered in deciding entitlement to a fee: the extent to which the litigation precluded other employment of the attorneys (*Serrano v. Priest (Serrano III)* 1977) 20 Cal.3d 25, 49); the fact that the award would fall on the taxpayers [but only as a factor to consider, not by itself a justification for refusal of a multiplier] *Horsford v. Board of Trustees* (2005) 132 Cal.App.4th 359, 400); if the money would accrue not to the individual attorneys but to their organizations. (*Serrano III*, at 48.) Some courts have found that basing a multiplier on particular difficulties and complexities in the case would constitute "double counting." (Compare *Sonoma Land Trust v. Thompson* (2021) 63 Cal.App.5th 978, 986 with *Edgerton v. State Pers. Bd.* (2000) 83 Cal.App.4th 1350, 1363. In this instance, the hourly rates adequately account for the skill of counsel and complexity of the case. In this case, none of the *Ketchum* factors are present. No multiplier will be awarded.

Costs

Statutory costs will be considered as part of the bill of costs/motion to tax procedure.

Conclusion

The motion is granted, in part. The fee is granted in the lodestar amount, i.e., $51,908.50, minus the disallowance of $1,650 from the pre-complaint services, which equals $50,258.50.

13. 9:00 AM CASE NUMBER: MSC21-01164

CASE NAME: KIRK PATRICK ANTHONY JONES, JR. VS. REAL TIME STAFFING SERVICES, LLC
***HEARING ON MOTION IN RE: APPROVAL OF PAGA SETTLEMENT**
FILED BY: JONES, KIRK PATRICK ANTHONY, JR.
TENTATIVE RULING:

Kirk Patrick Anthony Jones, Jr., moves for approval of the settlement of his PAGA suit against defendant Real Time Staffing Services, LLC.

A. Background of the Case and Terms of Settlement

This is (now) a PAGA case, based on a notice to the LWDA from June 5, 2021, alleging a variety of violations of the Labor Code concerning failure to provide rest and meal breaks, failure to pay for off-the-clock work, failure to reimburse business expenses, and cascading derivative violations. The original complaint. filed June 9, 2021, as a non-PAGA class action, was amended to include PAGA claims. Plaintiff later dismissed the class claims.

The total settlement payment is $360,000. This is composed of attorney's fees of $120,000 (one-third of the settlement), litigation costs of up to $28,000 (which are currently $26,857.62), $6,000 in costs to the settlement administrator. The remaining amount (at least $206,000) would be a PAGA penalty, which would be apportioned 75% to the LWDA and 25% to the aggrieved employees, i.e., $154,500 to the LWDA and $51,500 to the aggrieved employees. The estimated 1,365 aggrieved employees will receive an estimated average payment of $37.73.

The payments from the employee share of the penalty will be distributed among the employees based on the number of pay periods each individual worked during the PAGA period.

Plaintiff's counsel attests that they engaged in extensive arms-length settlement negotiations, including a session with an experienced mediator. Informal discovery was undertaken. Counsel's declaration provides a general discussion of the strengths and weaknesses of the case, including an estimate of the percentage of breaks that were violative. He estimates the maximum and "risk adjusted" value of the claims

Plaintiff provided required notices to the LWDA of the initial claims and of the proposed settlement.

The settlement provides a process for mailing the notices to the aggrieved employees, who will not have to submit a claim, along with a process for following up on returned mail. Because this is a PAGA settlement, not a class action, there is no opportunity to object or opt out.

The settlement provides that the value of checks uncashed after 180 days will be turned over to the State Controller's Office Unclaimed Property Division in the names of the aggrieved employees.

The settlement releases any claims under PAGA that "that were alleged, or reasonably could have been alleged, or could have been sought by the Labor Commissioner for the violations identified in Plaintiff's Operative Complaint, and Plaintiff's PAGA Notice that accrued at any time during the PAGA Period." Under recent appellate authority, limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations

in the operative complaint' is impermissible." (*Id*., quoting *Marshall v. Northrop Grumman Corp*. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.) Similarly, in a PAGA case, the release is limited to claims set forth in the LWDA notice. The language here, however, purports to bar anything that "could have been sought by the Labor Commissioner for the violations in …Plaintiff's PAGA Notice." This language is somewhat ambiguous: it can be interpreted to release any claim that could be brought by the Labor Commissioner, or only claims by the Labor Commissioner that were included in plaintiff's PAGA notice. The former would be impermissible. The Court's approval is conditioned upon the latter interpretation of the language.

B. Standards for Review of a PAGA Settlement

Settlements in PAGA cases must be approved by the court. (Labor Code § 2699(s)(2).) The Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id*., at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.)

C. Application to this settlement

Plaintiff indicates that the settlement is fair and was evaluated by counsel based on adequate information and arms-length negotiation. Even assuming success on the merits of each claim, PAGA gives the court discretion to reduce penalties for a variety of reasons, including where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory." (Labor Code, § 2699(e)(2).) These factors make the result hard to predict. Considering counsel's analysis, the Court finds that the recovery is fair, reasonable, and adequate.

Labor Code section 2699(k)(1) provides that a prevailing employee in a PAGA action may recover attorney's fees. Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id*., at 505.) Although *Lafitte* concerns a class

action, not a PAGA-only case, this Court views the use of a lodestar cross-check as appropriate here. Based on one-third of the recovery, plaintiff seeks $120,000.

Plaintiff has conducted a lodestar cross-check. Counsel calculate 166.6 hours, at a blended hourly rate of $676. (Hours are billed at $950, $900, $550, and $700.) This results in a lodestar of approximately $112,735, with an implied multiplier of less than 1.1. Without necessarily endorsing every individual component of the lodestar, no adjustment is required.

The statute does not expressly address how the 25% plaintiff's share of the penalties is to be allocated among all of the aggrieved employees. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) One court has held, however, that the entire 25% share of penalties could not be awarded to the plaintiff. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-743.) In *Moorer*, the plaintiff had a claim worth about $9,500, yet was collecting penalties of $148,000, and keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of the fact that the purpose of the action is to benefit the public, not private parties. Allocation based on pay periods is reasonable here.

Litigation costs of $26,857.62 (less than the maximum of $28,000 provided in the agreement), are sought. They are reasonable and are approved.

The administrator's costs of $6,000, are reasonable and are approved.

D. Conclusion

The Court finds that the settlement is fair, reasonable, and adequate, and grants the motion to approve.

Counsel are directed to prepare an order incorporating the provisions of this ruling.

In addition, the order should include a compliance hearing for a suitable date (after the settlement has been implemented), chosen in consultation with the Department's clerk. One week before the compliance hearing, counsel shall file a compliance statement. 5% of the attorney's fees shall be withheld by the Administrator pending the compliance hearing.

14. 9:00 AM CASE NUMBER: MSC21-01952
CASE NAME: TARA STARR VS. THOMAS STARR
***HEARING ON MOTION IN RE: LEAVE TO FILE A CROSS COMPLAINT**
FILED BY: STARR, THOMAS
****TENTATIVE RULING:****

Defendant Thomas Starr brings this motion for leave to file a cross-complaint. Parties shall appear to discuss the trial date in light of the below discussion.

I. Background

Plaintiff Tara Starr and defendant Thomas Starr were married and are currently involved in divorce proceedings. After this suit, alleging intentional torts, was filed on September 16, 2021, defendant's default was taken. The default was later set aside based on a motion filed by prior counsel for defendant. An answer was filed, but not a cross-complaint. Counsel withdrew shortly thereafter. Defendant contends his prior counsel did not inform him of the need to file any cross-complaint at that time and that he was under the impression his answer was sufficient to assert the

claims in the proposed cross-complaint. (Declaration of Thomas Starr in Support of Motion, ¶¶3-5.) In representing himself, defendant failed to ask permission to file the cross-complaint. He retained Mark Skeels in March 2025, who filed this motion on defendant's behalf shortly thereafter. The proposed cross-complaint is attached to the Declaration of Mark Skeels as Exhibit A. Plaintiff opposes the motion.

II. Standard

While Code of Civil Procedure, § 428.50, subdivision (a) provides that a defendant's cross-complaint against a plaintiff must be filed against the plaintiff before or at the same time as the answer, subdivision (c) of that same statute, provides a mechanism for filing such cross-complaint later. "Leave may be granted in the interest of justice at any time during the course of the action."

Code of Civil Procedure, § 426.50 provides that a party who initially fails to bring a compulsory cross-complaint, "whether through oversight, inadvertence, mistake, neglect, or other cause," may seek leave from the court to file a cross-complaint at any time during the course of the action. If such leave is sought, and upon notice to the other party, the court must grant such leave "if the party who failed to plead the cause acted in good faith." The statute further provides that it must be liberally construed to avoid forfeiture of causes of action. (*Ibid*.) The sort of "forfeiture" mentioned in § 426.50 is also addressed in Code of Civil Procedure, § 426.30, subd. (a), which clarifies that a defendant who fails to allege related causes of action in a cross-complaint against plaintiff may not thereafter assert those claims in any other action.

"The legislative mandate is clear. A policy of liberal construction of section 426.50 to avoid forfeiture of causes of action is imposed on the trial court. A motion to file a cross-complaint at any time during the course of the action *must* be granted unless bad faith of the moving party is demonstrated where forfeiture would otherwise result. Factors such as oversight, inadvertence, neglect, mistake or other cause, are insufficient grounds to deny the motion unless accompanied by bad faith." (*Silver Orgs. v. Frank* (1990) 217 Cal.App.3d 94, 98-99, emphasis added.)

III. Discussion

Defendant's motion seeks to file a cross-complaint based on allegations that plaintiff was the aggressor in a certain physical altercation that is also the subject of plaintiff's complaint.

Plaintiff opposes the motion, submitting a declaration by her counsel, Paulo S. Kline. Kline states these claims were never raised throughout the pendency of this case. (Declaration of Paulo S. Kline in Support of Opposition, ¶5.) Counsel's representation overlooks the answer that was filed. Counsel for plaintiff substituted into the case in December of 2022. Prior to that date, on February 2, 2022, defendant filed a declaration in support of his motion to set aside the default, attaching his proposed answer. In that answer, defendant asserts the same (or substantially the same) facts reflected in the proposed cross-complaint. Specifically, he alleges that plaintiff was the aggressor in an altercation that occurred in September 2020, leading to plaintiff's arrest.

Under these circumstances, the Court finds no bad faith and must grant the motion.

The case is currently set for an upcoming jury trial on June 23, 2025. This date does not permit adequate time for plaintiff to conduct written discovery with respect to the cross-complaint. Because of this, plaintiff seeks a continuance of the trial date, but also notes the five-year statute will run on September 6, 2026. Plaintiff requests different deadlines be imposed for discovery on the complaint and discovery on the cross-complaint, depending also on whether the discovery is expert in nature.

Because this motion was set on a shortened time basis, no reply was permitted that might have addressed defendant's position with respect to the trial date, though the motion argues no new witnesses will be necessary.

This Court does not have dates available for a jury trial within the (July/August) window of time plaintiff has identified.

Still, granting the motion would be extremely prejudicial to plaintiff if it could lead to the dismissal of the action for failure to bring the matter to trial within five years. This would be ameliorated if defendant were to agree to an extension of that time. The parties are ordered to appear to discuss whether defendant is willing to extend the time period beyond the five-year statute.

15. 9:00 AM CASE NUMBER: MSC21-02503
CASE NAME: GRANDE VS. SHARJO, INC
***HEARING ON MOTION IN RE: COMPLIANCE**
FILED BY:
****TENTATIVE RULING:****
The Settlement Administrator's declaration shows that the settlement terms have been implemented. If the State Controller directs the Settlement Administrator to retain the funds for some period of time, the Settlement Administrator shall comply with the Controller's direction. The Settlement Administrator may disburse the remaining 5% of attorney's fees to plaintiff's counsel. No further proceedings are contemplated.

16. 9:00 AM CASE NUMBER: MSC22-00052
CASE NAME: SHADELANDS PARK LLC CALIFORNIA LIMITED LIABILITY COMPANY VS. LOWNEY ARCHITECTURE UNKNOWN BUSINESS ENTITY
***HEARING ON MOTION FOR DISCOVERY COMPEL RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET 1**
FILED BY: SHADELANDS PARK LLC CALIFORNIA LIMITED LIABILITY COMPANY
****TENTATIVE RULING:****
Shadelands Park LLC moves to compel responses, without objection, by Lowney Architecture, to Shadelands Park's first set of requests for production of documents, and for sanctions. Without opposition, the motion is granted.

The moving papers show that the request was properly served, and Lowney did not respond. Upon a meet and confer effort, counsel for Lowney stated that "he believed Lowney had previously produced its entire project file." (Unlike most discovery motions, a motion under CCP section 2031.300(b) does not require a declaration showing a meet and confer effort.) (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390.)

Assuming the project file was produced, it does not constitute a proper verified response to each request for production of documents. A response under oath is required. (CCP §2031.250(a).) Moreover, the party must "respond separately to each item or category of item[.]" (CCP § 2031.210(a).) Finally, a failure to respond waives all objections. (CCP § 2032.260.) (Relief from the

waiver may be sought under CCP section 2031.300(a).)

Moving party requests sanctions of $7,747. First, the fact that Lowney did not file an opposition to the motion is not dispositive. Rule of Court 3.1348(a) specifically addresses this situation, providing: "The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed." Failure to oppose or filing of a supplemental response "shall not be deemed an admission that the motion was proper or that sanctions should be awarded." (CRC 3.1348(b).)

(The Court is aware that there is a case management order (No. 1) providing for certain discovery, signed by the parties and approved by Judge Treat March 17, 2025. If Lowney claims that the case management order precludes any other discovery or this motion, counsel should appear and cite to the Court how it applies.)

In the absence of any opposition or apparent justification of the failure to respond, the awards sanctions as an attorney's fee. Based on the declarations, the amount "expected" to be spent reviewing the opposition and preparing a reply, and the hourly rates, the Court reduces the sanctions to $2,500, payable within 30 days of this order.

17. 9:00 AM CASE NUMBER: MSN14-1889
CASE NAME: JOHN SRAMEK VS. ROBERT JACOBSEN
***HEARING ON MOTION IN RE: TO DENY RENEWAL OF JUDGMENT**
FILED BY: JACOBSEN, ROBERT E.
****TENTATIVE RULING:****

Before the Court is a motion by defendant and judgment debtor Robert Jacobsen "to deny renewal, or vacate renewal, of judgment if already renewed." For the reasons set forth, the motion is **granted**. The judgment entered December 19, 2014, is vacated and shall not be renewed.

Background

Jacobsen is a debtor under a judgment entered on October 28, 2011, in the United States Bankruptcy Court for the Eastern District of Texas ("Texas federal judgment"). The Texas federal judgment was entered in the amount of $1,735,208.20, plus "prejudgment interest thereon from and after July 20, 2007, through the date of this Judgment at the applicable contractual rate of 7% per annum (i.e. $410.90 per diem)" and with post-judgment interest at the then-applicable federal post-judgment rate of .12 percent. (Mot. Exh. A.) After appeals, the judgment was affirmed by the Fifth Circuit Court of Appeals on April 7, 2014. (Mot. Exh. B [12/19/2014 App. for Sister State Judg. Att. 1 and Exh. 3].)

Judgment creditors/plaintiffs John Sramek, and Bernadette Sramek, individually and as trustees of their revocable living trust ("Plaintiffs" or "Srameks") applied for registration of the Texas federal judgment as a sister state judgment in this Court. (Mot. Exh. B.) Judgment was entered on December 19, 2014, in the amount of $2,377,058.10, which includes prejudgment interest allowed in the Texas Judgment, post-judgment interest at the post-judgment federal rate of .12 percent until the date of the application for entry of the sister state judgment ($2,376,623.10), plus a $435 filing fee in this Court. (Mot. Exh. B; Opp. p. 2, ll. 4-9 [explaining mathematical calculation].) Jacobsen did not contest

entry of the sister state judgment, including the amount.

On October 28, 2024, Plaintiffs filed and served an application for renewal of the judgment and a notice of renewal of the judgment. On December 30, 2024, Jacobsen filed an objection to the renewal of the judgment. Jacobsen filed a motion to deny renewal of the judgment, or vacate the renewal of the judgment, on January 21, 2025.

The hearing on Jacobsen's motion to deny renewal of the judgment or vacate the renewal was set for hearing on April 24, 2025. The Court issued a tentative ruling which was to deny the motion. Jacobsen timely contested the tentative ruling and appeared at the hearing to argue based on supplemental legal authority that the entry of the sister state judgment was improper. Jacobsen attempted to file a reply to the plaintiffs/judgment creditors' opposition to the motion prior to the hearing, but the reply was rejected by the clerk's office based on the form of the documents submitted.

The Court issued a Minute Order on the April 24, 2025 hearing stating that the tentative ruling was not adopted, and that the hearing was continued to this date. On April 25, 2025, the day following the hearing, Jacobsen filed a document labeled a supplemental objection to the renewal of the judgment with additional authority and exhibits in support of his argument contesting the prior tentative ruling.

Law Applicable to Vacating Renewed Judgment

Code of Civil Procedure section 683.170 sets forth the procedure for vacating a renewed judgment. In pertinent part, it provides that renewal of a judgment "may be vacated on any ground that would be a defense to an action on the judgment, including the ground that the amount of the renewed judgment as entered pursuant to this article is incorrect," and that the judgment debtor may apply to vacate the judgment by noticed motion "not later than 60 days after service of the notice of renewal pursuant to Section 683.160." (Code Civ. Proc. § 683.170(a) and (b).) As to the relief available on the motion, the statute also provides: "(c) Upon the hearing of the motion, the renewal may be ordered vacated upon any ground provided in subdivision (a), and another and different renewal may be entered, including, but not limited to, the renewal of the judgment in a different amount if the decision of the court is that the judgment creditor is entitled to renewal in a different amount." (Code Civ. Proc. § 683.170(c) [emphasis added].)

Grounds Asserted for Vacating Renewed Judgment and Analysis

Preliminarily, the Court observes that Jacobsen's motion was untimely as it was filed on January 21, 2025, approximately 85 days after the service of the notice of renewal on October 28, 2024. (Code Civ. Proc. § 685.170(b).) Jacobsen did not seek relief from default for his untimely filing under Code of Civil Procedure section 473(b) or other applicable law. Jacobsen states he received the notice of renewed judgment on December 23, 2024, when it was forwarded to him, which was within the 60-day deadline, extended by five days for service by mail, for a timely motion to vacate.

Nevertheless, the Court will consider the motion, the objection to the renewal, and the supplemental objection on their merits. While the Court found that the grounds for denying renewal of the judgment made in the motion lacked merit for the reasons set forth in that tentative ruling, the Court is persuaded that Jacobsen has demonstrated the sister state judgment entered by the Court in 2014 was improper under the factual circumstances and authority cited in Jacobsen's supplemental objection.

A. The Texas Federal Judgment Does Not Qualify for Entry as A Sister State Judgment

Code of Civil Procedure section 1710.10(c) defines a sister state judgment as "that part of any judgment, decree, or order of a court of a state of the United States, other than California, which

requires the payment of money . . . ." (Emphasis added.) The 1974 Law Revision Commission comments to the statute explain that California's version of this provision is derived from the revised Uniform Enforcement of Foreign Judgments Act of 1964 but is different from the uniform version in the respect that is critical here: "[U]nlike the Uniform Act which applies to all state and federal judgments entitled to full faith and credit, Section 1710.10(c) applies only to judgments of sister state courts which require the payment of money." Jacobsen cites *Richard A. Viguerire Co. v. Noble* (1980) 101 Cal.App.3d 62, a case which held that a judgment entered by the superior court for the District of Columbia qualifies as a judgment entered by a sister "state" as the District of Columbia is treated as a state for certain purposes. (*Id.* at 64.) By implication based on the Court's reasoning in the decision, the result would have been different if the judgment had been entered in the federal district court for the District of Columbia or if the Court had not concluded based on the authorities cited that the superior court for the District of Columbia is a "state court." (*Id.* at 64.) There can be no dispute that the Texas federal judgment, entered by the bankruptcy court in Texas, is a federal judgment and not a judgment entered by a sister state court. The Texas federal judgment does not qualify as a sister state judgment and should not have been entered by this Court when presented in 2014.

In addition, Code of Civil Procedure section 1710.55 provides in pertinent part: "No judgment based on a sister state judgment may be entered pursuant to this chapter in any of the following cases: . . . [¶] (b) An action based on the sister state judgment is currently pending in any court in this state. [¶] (c) A judgment based on the sister state judgment has previously been entered in any proceeding in this state." (Code Civ. Proc. § 1710.55(b) and (c).) The phrase used in these provisions is a court or proceeding "in this state" not a court "of this state."

Jacobsen attaches to his supplemental filing a "Filed" conformed copy of a "Notice of Filing of Out of State Federal Judgment and Order Granting Plaintiffs' Motion to Register Judgment" ("Federal Registration Notice") filed in the United States District Court for the Northern District of California on June 15, 2012, two years before the judgment was entered in this Court. (Suppl. Obj. Exh. B.) (*See also* Mot. Exh. B [12/19/2014 App. for Sister State Judg. Att. 1 and Exh. 2].) Plaintiffs' Federal Registration Notice gives notice that the Plaintiffs "hereby register" the Texas federal judgment in that federal court located in California. (Suppl. Obj. Exh. B.) A judgment in the U.S. District Court for the Northern District of California, a "court in this state," was therefore pending when Plaintiffs asked this Court to register the Texas federal judgment as a sister state judgment. Registration of the judgment in this Court was also prohibited under Code of Civil Procedure section 1710.55.

1. The Sister State Judgment Entered in This Court Is Void for Lack of Fundamental Jurisdiction

" '[][F]undamental jurisdiction cannot be conferred by waiver, estoppel, or consent. Rather, an act beyond a court's jurisdiction in the fundamental sense is null and void' ab initio. [Citation.] 'Therefore, a claim based on a lack of . . . fundamental jurisdiction[] may be raised for the first time on appeal. [Citation.]' [Citation, some internal quotation marks omitted.] The lack of fundamental jurisdiction is defined as 'an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.' [Citation.] [Citation, some internal quotation marks omitted.]" (*Cal. Correctional Peace Officers Assn. Etc v. Workers' Comp. Appeals Bd.* (2022) 74 Cal.App.5th 525, 535.)

"Although the term 'jurisdiction' is sometimes used as if it had a single meaning, we have long recognized two different ways in which a court may lack jurisdiction. [Citation omitted.] A court lacks jurisdiction in a fundamental sense when it has no authority at all over the subject matter or the parties, or when it lacks any power to hear or determine the case. [Citation omitted.] If a court lacks such ' "fundamental" ' jurisdiction, its ruling is void. [Citation omitted.] A claim based on a lack of

fundamental jurisdiction may be raised for the first time on appeal. [Citation omitted.]" (*People v. Ford* (2015) 61 Cal.4th 282, 286.) (*See also People v. American Contractors Indemnity Company* (2004) 33 Cal.4th 653, 660 [court lacks fundamental jurisdiction when there is " 'an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.' [Citation omitted.]"].)

The Texas federal judgment did not qualify for registration by the Court under the sister state judgment statutes as a matter of law. Jacobsen argues the judgment entered in this Court in 2014 was "void ab initio." The Court interprets the argument as an argument that the sister state judgment is void because the Court lacked fundamental jurisdiction to enter the sister state judgment under the foregoing statutes. The Court concludes that the restrictions in the statutes defining what constitutes a "sister state judgment" entitled to entry in a California state court gave the Court no power to enter the Texas federal judgment and does not give the Court power to allow the renewal of the judgment now. For these reasons and based on the foregoing authority, the Court denies renewal of the judgment, and to the extent the judgment was renewed by Plaintiffs' filing on October 28, 2024, the renewal is vacated. The Court did not have authority over the subject matter of the Texas federal court judgment presented by Plaintiffs to the Court for registration because it was not a sister state judgment as defined by the California statutes, the only basis for registering the judgment in this Court.

2. Plaintiffs' Supplemental Opposition Arguments and Authorities Do Not Support that the Sister State Judgment Could Be Entered in This Court or that the Court Had Fundamental Jurisdiction

The Court has reviewed all of the authorities cited in the Sramek's supplemental response. First, the Texas federal judgment was affirmed on appeal on April 7, 2014. (Mot. Exh. B [12/19/2014 App. for Sister State Judg. Att. 1, Exh. 3].) Code of Civil Procedure section 1710.50 is inapposite; that statute addresses motions for a stay of enforcement of a sister state judgment. The fact that a request for a stay of enforcement could have been granted while the Texas federal judgment was on appeal (Code Civ. Proc. § 1710.50(a)(1)) does not change the fact the Texas federal judgment does not qualify as a sister state judgment subject to registration and enforcement in this Court under the California version of the Uniform Enforcement of Foreign Judgments Act, as well as Code of Civil Procedure section 1710.55.

Plaintiffs cite *Benitez v. Williams* (2013) 219 Cal.App.4th 270 and *Wilton v. Seven Falls Co.* (1995) 515 U.S. 277. Those decisions are factually and legally inapposite. Neither case addressed the registration of a federal court judgment in a California state court under the California version of the Uniform Enforcement of Foreign Judgments Act. Each involved the issue of concurrent state and federal court jurisdiction over civil actions initiated and pending at the same time in a state court and a federal court arising out of the same facts and circumstances. The Court in *Benitez, supra,* held the trial court erred in dismissing the action in its entirety, that it properly dismissed a copyright infringement claim which was subject to exclusive federal jurisdiction, but the court improperly dismissed the plaintiff's state law claims over which the Court had jurisdiction. (*Benitez, supra*, 219 Cal.App.4th at 272, 273, 276 [party can maintain concurrent state and federal court actions arising from the same facts, but risks application of res judicata if judgment is first entered in the other case].) *Wilton, supra,* involved concurrent state and federal court actions for declaratory relief, and the Court upheld the district court's stay of the federal declaratory relief action under the Declaratory Judgment Act (28 U.S.C. § 2201) while the parties litigated the parallel state court action, applying an abuse of discretion review standard. (*Wilton, supra,* 515 U.S. at 279, 288-290.)

Plaintiffs cite *Conservatorship of O'Connor* (1996) 48 Cal.App.4th 1076 for the proposition that a party may be estopped from contesting action by the court that exceeds its jurisdiction. That case involved a conservatorship and guardianship over which there was no dispute the superior court had jurisdiction under the applicable statutory provisions of the Probate Code, which makes that case distinguishable. (*Id.* at 1088.) As the Court indicated in that case, judicial estoppel may apply when the court has jurisdiction over the subject of the action. (*Id.* at 1092.) For the reasons set forth above, the Court has concluded the entry of the Texas federal judgment as a sister state judgment is void for lack of fundamental jurisdiction of the Court to enter the judgment, as the judgment does not qualify for entry as a sister state judgment.

B. <u>Other Grounds Raised for Denying Renewal Do Not Have Merit</u>

In connection with the April 24, 2025, hearing on the motion, the Court issued a detailed tentative ruling rejecting other arguments made by Jacobsen for denying or vacating the renewal of the judgment. The grounds raised by Jacobsen and the basis for rejection of those arguments are detailed in the Court's April 24, 2025, Minute Order. The Court will not repeat its analysis of the other grounds and why they lacked merit in this ruling given its conclusions above.