SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 06/05/2025

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-fcrepresented 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: C22-01372
CASE NAME: AMERICA MORALES VS. ACORN SOLUTIONS, LLC, DBA CHOCOLATE WORKS EAST BAY, A CALIFORNIA CORPORATION
***HEARING ON MOTION IN RE: FOR CLASS CERTIFICATION & APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**
FILED BY: MORALES, AMERICA
****TENTATIVE RULING:****

The Court continues the motion to June 12, 2025, at 9:00 a.m.

2. 9:00 AM CASE NUMBER: C22-02747
CASE NAME: JOHN KEYS VS. FRESCHI AIR SYSTEMS, LLC
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT**
FILED BY: KEYS, JOHN ANTHONY
TENTATIVE RULING:

Appearance required.

Plaintiffs John Keys and Shantell Jordan move for preliminary approval of their class action and PAGA settlement with defendant Freschi Air Systems LLC.

A. Background and Settlement Terms

The original complaint was filed by Mr. Keys on December 27, 2022, raising class action claims and PAGA claims on behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including misclassification of non-exempt workers, failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation. The currently operative complaint is a Second Amended Complaint filed on September 23, 2024, adding Ms. Jordan as a plaintiff.

The settlement would create a gross settlement fund of $480,000. The class representative payment to each plaintiff would be $7,500. Attorney's fees would be $160,000 (one-third of the settlement). Litigation costs would not exceed $35,000. The settlement administrator's costs would not exceed $6,990. PAGA penalties would be $50,000, resulting in a payment of $37,500 to the LWDA and $12,500 to plaintiffs. The net amount paid directly to the class members would be about $225,510. The fund is non-reversionary. Based on the estimated class size of 213 (86 PAGA employees), the average net payment for each class member is approximately $1,058.73.

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendants during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Checks undelivered or uncashed 180 days after mailing will be voided, and will be transmitted to the State Controller's Office Unclaimed Property fund.

The settlement contains release language covering "all claims against Released Parties under state federal, or local law, that were asserted or could have been asserted based on the facts, claims or theories raised in the Third Amended Complaint (to be filed) or any prior complaints; facts, claims or theories expressly raised in Plaintiff's amended notice to the LWDA (to be filed)[.]" Under recent appellate authority, the 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.)

The release of claims in two as yet unfiled documents—the Third Amended Complaint and the amended LWDA notice--potentially raised two issues. The first is solved by the fact that the Third Amended Complaint was filed on April 23, 2025, and therefore is no longer "to be filed." The amended LWDA letter has been provided to the Court. (March 10, 2025 LWDA letter, attached to Moon Dec.) Second, counsel must establish that their investigation and pursuit of the as yet unfiled claims was as diligent and thorough as that of the initially noticed and pled claims.

Informal and formal written discovery was undertaken. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel attest that they have analyzed the value of the case, and that the result achieved in this litigation is fair, adequate, and reasonable. The moving papers include an estimate of the potential value of the case, broken down by each type of claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced 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."])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra,* 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, 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 48, 63.)

C. Attorney 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.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative payment of $10,000 for plaintiffs will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. Conclusion

Appearance required.

Other than issue of the recently-added claims, the Court would find that there is sufficient evidence that the settlement is fair, reasonable, and adequate to warrant preliminary approval. The Court, however, requires that counsel submit a declaration establishing that those claims were investigated and pursued as thoroughly as the other claims. Counsel should be prepared to set a schedule for a supplemental declaration and a continued hearing.

If preliminary approval ultimately is granted, counsel will be directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

3. 9:00 AM CASE NUMBER: C23-00122
CASE NAME: ROBERTA NATIONS VS. SAS RETAIL SERVICES LLC
***HEARING ON MOTION IN RE: ORDER STAYING PROCEEDINGS PENDING APPEAL**
FILED BY: SAS RETAIL SERVICES LLC
TENTATIVE RULING:

Before the Court is a motion by SAS Retail Services, LLC for a stay pending its appeal of an order denying its motion to compel arbitration and a related order granting Plaintiff's motion for attorneys' fees. For the reasons set forth, the motion for a stay is **granted in part on the terms set forth below**.

Background

This case involves a consolidated action consisting of Case No. 23-00122, which was initiated by a complaint with a single cause of action by Plaintiff Roberta Nations against SAS Retail Services, LLC under the Private Attorney General Act, Labor Code section 2698 *et seq*. ("PAGA action"), and Case No. C23-01405, which was initiated by a complaint alleging various Labor Code violations by Nations against SAS ("Labor Code action"). The Court consolidated the actions by Minute Order entered October 17, 2023.

After the consolidation order, SAS filed separate two motions to compel arbitration on January 25, 2024 and February 6, 2024. On May 2, 2024, the Court heard concurrently a motion by defendant SAS Retail Services, LLC to compel arbitration of Plaintiff's claims filed in Plaintiff's PAGA action and a motion by Plaintiff for attorneys' fees and costs under Code of Civil Procedure sections 1281.97 and 1281.99. At issue was whether SAS had materially breached the Arbitration Agreement with Plaintiff and waived its right to compel arbitration of her claims when SAS failed to timely pay the arbitrator's invoice under Code of Civil Procedure section 1281.97. The Court denied the motions to compel arbitration based on SAS's default under Code of Civil Procedure section 1281.97 and the applicable case law, and the Court granted Plaintiff attorneys' fees and costs under Code of Civil Procedure section 1281.99. (5/2/2024 Min. Order; 5/16/2024 Min. Order.)

The Motion to Stay

SAS contends that the Court is required to stay the action pending the appeal under the U.S. Supreme Court's decision in *Coinbase, Inc. v. Bielski* (2023) 599 U.S. 736, arguing the procedural provisions of the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA") apply and that in any event, the FAA preempts Code of Civil Procedure section 1294(a) because it conflicts with the mandatory stay provision of the FAA (9 U.S.C. § 16) as construed by *Coinbase.* Alternatively, SAS argues that the Court has the inherent authority to issue a discretionary stay pending appeal and should do so to avoid the prejudice and costs that the parties would otherwise suffer by litigating in Court in the event the order denying the motion to compel arbitration is reversed on appeal.

Legal Standards for Granting Stay Pending Appeal

Under former law, an appeal of an order denying a motion to compel arbitration resulted in an automatic stay of the action pending resolution of the appeal. (*See* Code Civ. Proc. § 916(a); *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 190; *Prudential-Bache Securities, Inc. v. Superior Court* (1988) 201 Cal. App. 3d 924, 925.) In 2023, the California Legislature enacted AB 365 which amended Code of Civil Procedure section 1294 to add the following sentence to subdivision (a): "Notwithstanding Section 916, the perfecting of an appeal shall not automatically stay any proceedings in the trial court during the pendency of the appeal."

Though an appeal may no longer automatically stay the order denying the motion to compel arbitration, the Court has discretion in some circumstances to stay the action pending appeal based on the Court's inherent power to administer the cases before it. (Code Civ. Proc. § 918(a); *Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1039 ["Even when the statutes do not call for an automatic stay on appeal, the trial and appellate courts both have the power to issue

discretionary stays. (Code Civ. Proc., §§ 918, 923.) A discretionary writ of supersedeas is appropriate where 'difficult questions of law are involved and the fruits of a reversal would be irrevocably lost unless the status quo is maintained.' [Citations omitted.]"].) (*See also* Code Civ. Proc. § 128; *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 141 [addressing court's ability to stay administrative proceeding before Labor Commission pending arbitration, stating "[T]he court could have issued a stay under its inherent power. '[A] court ordinarily has inherent power, in its discretion, to stay proceedings when such a stay will accommodate the ends of justice.' [Citation omitted.] As the court in *Landis v. North American Co.* (1936) 299 U.S. 248, 254 explained, 'the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.' "]; *Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489 [*dicta*].)

Analysis

A. Coinbase

Coinbase involved a putative class action filed in the federal district court against the company alleging Coinbase failed to replace funds fraudulently taken from accounts of its customers who used the company's online platform to buy and sell cryptocurrencies and other currencies. (Coinbase, supra, 599 U.S. at 739.) The district court denied a motion by Coinbase to compel arbitration. (*Id.*) Coinbase filed an appeal and a motion to stay the action pending appeal, which the district court also denied. (*Id.*) The Ninth Circuit Court of Appeals also denied a stay of the order denying arbitration, and the United States Supreme Court reversed. (*Id.* at 739-740.) Addressing section 16(a) of the FAA, which allows an interlocutory appeal from an order denying arbitration, the U.S. Supreme Court held that "a district court must stay its proceedings while the interlocutory appeal on arbitrability is ongoing." (*Id.* at 740.) In reaching that conclusion, the Court explained the policies of the FAA that support its holding, including that allowing litigation to proceed defeats "the asserted benefits of arbitration" which would be "irretrievably lost" if on appeal the court concludes the case should have been sent to arbitration, and that allowing pre-trial litigation to proceed would potentially unfairly force settlements particularly in class actions. (*Id.* at 743.)

Defendant argues that the Court's prior order found the FAA applies to the Arbitration Agreement, making the holding in *Coinbase* also applicable. The Court in its May 2, 2025 order concluded that, while the substantive provisions of the FAA govern the Arbitration Agreement, the CAA's procedural provisions apply based on the language of the agreement and case law discussed in the ruling. (Min. Order 5/2/2024 adopting 5/2/2024 Tent. Rul. pp. 5-7.) SAS argues that in any event, the FAA preempts California law, including Code of Civil Procedure section 1294(a), to the extent it does not mandate a stay of the action because such a rule disfavors arbitration and in effect nullifies the benefits and purpose of interlocutory review of an order denying arbitration.

Plaintiff distinguishes *Coinbase* both because under the Court's prior order, the CAA procedural rules apply here, not the FAA procedural rules which applied in *Coinbase*, and because in *Coinbase* there was a legally operative arbitration agreement. Plaintiff argues the Arbitration Agreement in this case is no longer operative because of SAS's material breach of the agreement and waiver of the right to arbitrate by SAS's conduct (and by operation of Code of Civil Procedure section 1281.97). Plaintiff's arguments in a sense, however, beg one of the questions presented by the SAS appeal, specifically whether the FAA preempts Code of Civil Procedure sections 1281.97-1281.99 such that those statutes cannot be applied to defeat SAS's right to compel Plaintiff to arbitrate under the parties' mutual Arbitration Agreement.

B. Discretionary Stay

SAS concedes that there is no case authority that has held that the FAA and the rule of *Coinbase* preempt Code of Civil Procedure section 1294(a) or any contrary California law that does not require an action to be stayed while the arbitrability determination is subject to a pending appeal. (MPA ISO Mot. p. 12 ["The Court need not reach whether S.B. 365 as codified in Section 1294(a) is preempted by the FAA and *Coinbase* as a matter of first impression."].) SAS argues that even if a stay is not mandated based on FAA preemption and the *Coinbase* decision, a discretionary stay is warranted.

SAS argues that allowing pre-trial discovery and other litigation activities to proceed if no stay is issued will impair the relief SAS may obtain if the orders denying arbitration are reversed by the Court of Appeal. This argument is consistent with the rationale for the ruling in *Coinbase* mandating that an action be stayed when an order denying arbitration is appealed, as well as the rationale of California decisions for the automatic stay of the action prior to the 2023 amendment to Code of Civil Procedure section 1294(a).

Though both sides have filed declarations by counsel, neither declaration addresses the existence or absence of prejudice or the impact of a stay if the Court granted the pending motion. Nevertheless, the fact that the nature and scope of discovery and pre-trial matters in a civil action are likely to be different and more expansive than in arbitration, given that arbitration is supposed to be a more expedited, streamlined, and cost-effective dispute resolution process, seems clear to the Court without specific evidence to that effect, and that attorneys' fees and other expenses may be incurred if the civil action proceeds that may not otherwise be incurred if the Court's prior orders were reversed and the claims ordered to proceed in arbitration. Plaintiff does not dispute that if the Court of Appeal subsequently orders the case to arbitration, the parties may have incurred some significant litigation and discovery expenses that may have limited or no use in arbitration. Instead, Plaintiff argues that any harm SAS would suffer is "self-inflicted," based on SAS's failure to timely pay the arbitration fees as required under the Code of Civil Procedure.

C. *Hohenshelt v. Superior Court* (2024) 99 Cal.App.5th 1319, rev. granted (2024) 321 Cal.Rptr.3d 633

The reply raises the impact of the pendency of the *Hohenshelt* case before the California Supreme Court, a case cited and relied on by the Court in its order denying the motion to compel arbitration for multiple propositions, including that the FAA does not preempt Code of Civil Procedure sections 1281-97-1281.99. Among other arguments advanced by SAS in support of its motions, SAS argued that the FAA preempted Code of Civil Procedure sections 1281.97-1281.99 in that the California statutes imposed unequal treatment on arbitration agreements and undermined rather than promoted arbitration, in violation of the policies and purposes of the FAA.

The issue presented for decision by the California Supreme Court in *Hohenshelt* as stated on the California Supreme Court pending issues summary is: "Does the Federal Arbitration Act (9 U.S.C. § 1 et seq.) preempt state statutes prescribing the procedures for paying arbitration fees and providing for forfeiture of the right to arbitrate if timely payment is not made by the party who drafted the arbitration agreement and who is required to pay such fees? The case was argued and submitted on May 21, 2025; a decision would generally be expected to be issued within approximately 90 days of that date, or by roughly August 19, 2025. (*See* Cal. Const. Art. VI, Sect. 19.) The issues encompassed in the California Supreme Court decision in *Hohenshelt* may likely address one or more of the arguments made by SAS in support of its motion to compel arbitration which this Court rejected based on *Hohenshelt* and other published case authority, including whether the FAA preempts the statutes on

which denial of the motions was based at least in part.

D. Conclusion and Ruling – Limited Temporary Stay and Continuance of Motion

The Court agrees with SAS that it need not determine whether *Coinbase* mandates a stay, given that the Court in its prior orders concluded that the FAA procedural provisions do not apply to the Arbitration Agreement. The Court nevertheless finds that a discretionary stay of the action for a limited duration, in the Court's discretion based on the Court's inherent authority, would promote the ends of justice for all parties, given the Court's reasonable expectation that the California Supreme Court's decision in *Hohenshelt* will be issued in the relatively near future and that the decision will likely have an effect on the potential outcome of the appeal of the Court's prior orders.

While the Court is not inclined to stay the action indefinitely during the pendency of the appeal where the time frame for resolution remains uncertain, in a matter of a few months, the parties and the Court will be in a far better position to assess at a minimum the likelihood of SAS prevailing on appeal and the potential prejudice if the action is not stayed for a longer duration. The Court finds that imposing a brief temporary stay of the action **through September 25, 2025** is appropriate, subject to revisiting whether an extension or termination of the stay is warranted at that time.

The hearing on the motion for a stay pending appeal shall be **continued to 9:00 a.m. on September 25, 2025.** The Court will also **continue and reschedule the July 1, 2025 case management conference to 9:00 a.m. on September 25, 2025** for the parties to address the effect of the decision issued in *Hohenshelt* on the pending appeal, and whether the stay of the action should be further extended or terminated. By **September 15, 2025**, the parties shall submit a joint statement setting forth their respective positions on the effect of the California Supreme Court's decision on *Hohenshelt* on the pending appeal and the pending motion.

Defendant's Evidentiary Objections to Sadat Declaration

Obj. Nos. 1 and 2 – **Overruled**. The Court accepts the statements as reflecting Plaintiff's version of the facts, which the Court understands Defendant disputes.

Obj. No. 3 – **Overruled.** The Court interprets the statement subject to the objection as restating the content of the Court's Minute Order.

4. 9:00 AM CASE NUMBER: C23-00342
CASE NAME: ROBERTO MEDEL VS. B & M TEAR OFF, INC.
***HEARING ON MOTION IN RE: COMPEL ARBITRATION**
FILED BY: B & M TEAR OFF, INC.
****TENTATIVE RULING:****

Defendant, B&M Tear Off, Inc., filed this motion to compel arbitration after plaintiff, Roberto Medel, filed his complaint for wage and hour violations. A court must order arbitration if it determines that a valid agreement to arbitrate exists. Here, one does. The motion is **granted**.

The case is stayed pending completion of the arbitration. Class claims are dismissed. The Court sets a case management conference on December 10, 2025 at 8:30 a.m. in this Department for a status update on arbitration.

Background

Plaintiff worked for defendant as an apprentice roofer from approximately June of 2019 through approximately November of 2021. (Declaration of Felipe Bernal in Support of Motion, hereinafter "Bernal Decl.," ¶6.) Plaintiff was responsible for installing and demolishing roofing, damp and waterproofing, and air barrier systems or products. (*Ibid*.)

Plaintiff filed this putative class action on February 10, 2023, alleging ten causes of action including: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to pay all wages due upon termination; (6) failure to provide accurate wage statements; (7) failure to timely pay wages during employment; (8) violation of Labor Code § 2802; (9) violation of Labor Code § 227.3; and (10) unfair competition.

In response, on March 8, 2024, defendants filed an answer asserting an arbitration agreement and class action waiver as the third affirmative defense. On September 20, 2024, at a case management conference, Judge Treat informed defendant that any motion to compel arbitration would need to be filed by the next case management conference, or otherwise the right would be waived. (Declaration of Calyn V. Hadlock in Support of Opposition, ¶4.) A minute order memorializing this instruction was issued the same day. (*Id*., Ex. A.) The next case management conference was held on January 29, 2025 and, while not on file at that time, this motion was filed after the conference concluded.

Defendant argues that plaintiff, a roofer, was employed pursuant to an agreement requiring parties to submit claims to arbitration. In support of the motion, defendant provides the Declaration of Felipe Bernal, its "founder and President." Mr. Bernal states that plaintiff was required to be a member of Local Union 81 as a condition of his employment with B&M Tearoff, and that the union entered into a collective bargaining agreement, which causes plaintiff's claims to be subject to arbitration. Bernal attaches a collective bargaining agreement effective August 1, 2020 to July 31, 2022, and a second agreement effective August 1, 2022 to July 31, 2024.

Plaintiff opposes the motion, arguing the motion should be denied based on waiver. He also argues that neither the collective bargaining agreement, nor the union referral document binding plaintiff to the collective bargaining agreement, are enforceable based on unconscionability. Plaintiff submits his own declaration stating that he was told he needed to join Local Union 81 in order to be hired. (Declaration of Roberto Medel in Support of Opposition, hereinafter "Medel Decl.," ¶4.) On the first day of the job, plaintiff was directed to fill out several forms, including after he left the job, while at his hotel room where his supervisors showed up with additional documents related to joining the union. (*Id*. at ¶¶4-5.) Plaintiff states his primary and preferred language is Spanish and that his employer was aware of that fact, but still provided English documents without translation. Plaintiff was not provided the documents for further review after signing. (*Id*. at ¶8.) He claims not to recall ever reviewing the collective bargaining agreements during employment. (*Id*. at ¶9-10.) Plaintiff attaches a document dated 6-15-19, the union "referral," that appears to be signed by him. (*Id*., Exhibit C.) The document is entitled "Roofers & Waterproofers / Local 81." It contains the following language:

> Note: By accepting this referral, the individual employer recognizes the Roofers, Waterproofers & Allied Workers Local No. 81 as the majority collective bargaining representative of his or its employees employed in the counties covered by the Working Agreement between Local 81 and the Associated Roofing Contractors of the Bay Area Counties and recognizes the Union as the exclusive collective bargaining

agent tor such employees and further agrees that it is bound to said Working Agreement including all the wages, hours, and all other terms and conditions of such Working Agreement including the payment of all wage scales and all trust fund contributions specific and required by said Working Agreement.

Plaintiff understood that the documents had to be signed immediately or he would not be permitted to continue to work for defendant. (Medel Declaration, ¶13.) He felt he "had no choice" but to agree. (*Id*., ¶14.)

On reply, defendant explains procedural issues related to the plaintiff's waiver argument and refutes plaintiff's unconscionability arguments.

In an initial tentative ruling, posted on May 7, 2025, the Court found that defendant had failed to meet its preliminary burden to show an agreement to arbitrate. This was based on the fact that defendant failed to submit any evidence that defendant was a member of the Associated Roofing Contractors of the Bay Area Counties ("ARCBAC"), or, alternatively, was individually a party to the collective bargaining agreement that governed the time period plaintiff was employed.

Defendant did not timely contact to Court to contest the tentative ruling, but plaintiff did. Accordingly, parties appeared for oral argument on May 8, 2025. The Court requested supplemental briefing by both sides with respect to whether defendant was a member of ARCBAC, or individually a party to the collective bargaining agreement. Both parties submitted supplemental papers.

Defendant submitted a declaration by Elizabeth Bernal, the Chief Financial Officer of defendant, who states that "B&M Tear Off, Inc. is a member of [ARCBAC]. B&M has been a member of ARCBAC during the entirety of Plaintiff Roberto Medel's employment with B&M from approximately June 2019 through November 2021." The declaration attaches a letter from Local Union 81 (not ARCBAC) representing defendant is a member and currently in good standing. Also attached to the declaration is a screenshot from a webpage of another entity, Roofing Contractors Association of California, apparently to show the manner in which defendant is listed in that organization's directory ("Membership level ARCBAC Contractors/ Platinum Sponsorship"). Plaintiff objects to the declaration and its attached documents.

Evidentiary Matters

Plaintiff's objections to the Declaration of Elizabeth Bernal are ruled upon as follows:

1. (Par. 3) Overruled
2. (Par. 6) Sustained (Improper Opinion - Evid. Code. § 800)
3. (Par. 7) Sustained (Improper Opinion - Evid. Code. § 800)
4. (Ex. 1) Sustained (Hearsay - Evid. Code. § 1200)

Standard

Whether the arbitration agreement is governed by the Federal Arbitration Act, 9 U.S.C. section 1, et seq. ("FAA") or by the California Arbitration Act, Code of Civil Procedure section 1280 et seq ("CAA"), the threshold issue of whether a valid and enforceable agreement to arbitrate exists is determined under California law and procedures. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413; Code Civ. Proc. §§ 1281, 1281.2, 1290.2.)

The moving party bears the burden of proving the existence of the arbitration agreement by a

preponderance of the evidence. (*Rosenthal, supra,* 14 Cal.4th at 413; *Alvarez v. Altamed Health Services Corp.* (2021) 60 Cal.App.5th 572, 580.) Once the existence of an arbitration agreement is established, the burden is on the party opposing arbitration to prove its defense. (*Alvarez, supra,* 60 Cal.App.5th at 580.) If a written arbitration agreement exists, it will be enforced unless there are grounds for its revocation. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 125; Code Civ. Proc. § 1281].)

Analysis

A. Existence of Agreement to Arbitrate

A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract. (Code Civ. Proc., § 1281.) The party seeking arbitration bears the burden of proving the existence of an arbitration agreement. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) In California, contract formation requires free and mutual consent communicated to each other. (Civ. Code, § 1565.) Mutual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties. (*Esparza v. Sand & Sea, Inc.* (2016) 2 Cal.App.5th 781, 788.)

Defendant, which bears the burden on the question of an agreement, provided evidence of two collective bargaining agreements with its moving papers. The agreements contain provisions requiring arbitration. (Bernal Decl., Ex. A, Article XXX, Section 8.) The first agreement, Exhibit A to the Bernal Declaration, was effective from August 1, 2020 to July 31, 2022, covering most of the time plaintiff was employed. The second agreement, Exhibit B, did not become effective until August 1, 2022 and would therefore only cover other members of the putative class, should the class be permitted to proceed.

Critically, however, the agreements are between plaintiff's collective bargaining representative, United Union of Roofers, Water Proofers and Allied Workers, AFLCIO, Local Union No. 81, on the one hand, and Associated Roofing Contractors of the Bay Area Counties (ARCBAC), on the other. Neither are parties to this case.

While the evidence presented in the moving papers indicated plaintiff was a member of the union, defendant did not present unequivocal evidence that defendant was a member of ARCBAC.

Because the Court initially viewed the evidence presented as insufficient to show defendant was a member of the Associated Roofing Contractors of the Bay Area Counties, or, alternatively, that defendant had individually bound itself to the first collective bargaining agreement (Exhibit A), at the time of plaintiff's employment, the Court tentatively ruled defendant had not met its burden, but allowed parties an opportunity to supplement their papers.

While defendant's supplemental brief characterized the issue identified by the Court as a lack of its "signature," the problem is somewhat more fundamental. The agreement covers employees of "Employers," a defined term which is capitalized throughout the agreement. (See Bernal Decl., Ex. A, Article II.) Plaintiff, through his Local Union, agreed to arbitrate disputes with an "Employer" and "Individual Employers," as defined by the collective bargaining agreement, not with anyone. The only way defendant is such an "Employer" is if (1) defendant is a member of ARCBAC who authorized ARCBAC to represent it in labor negotiations, (2) defendant is a firm that authorized ARCBAC to represent it in labor negotiations, or (3) defendant otherwise became a party to the agreement. (See Bernal Decl., Ex. A, p. 2.)

Defendant's supplemental brief makes several arguments. First, defendant argues it is entitled

to enforce the collective bargaining agreement "as a member." Defendant's supplemental evidence, a declaration from CFO, Elizabeth Bernal, contains the *assertion* that defendant *is* and has been, at all relevant times, a member. This assertion is not supported by any admissible documentation. (See above rulings on plaintiff's objections.) On the other hand, plaintiff's supplemental evidence (in the form of screenshots showing "relevant portions" of purported online directories) is similarly not particularly demonstrative of defendant's lack of member status at the time of plaintiff's employment. (See Declaration of Sareen K. Khakh, filed May 29, 2025, ¶Ex. C-D.) The Court concludes upon further review that an evidentiary showing of membership status is not necessary in light of other evidence.

Defendant also argues in its supplemental brief that the agreement covers employers who "hired through the union." The union referral slip attached to the Declaration of Roberto Medel as Exhibit C, includes language that states, in relevant part, "the individual employer […] further agrees that it is bound to said Working Agreement […]." This language is sufficient to amount to the third category of employers described in the Working Agreement: those that "otherwise became a party."

The defendant has met its burden to show an agreement to arbitrate by a preponderance of the evidence.

B. Waiver

Assuming a right to compel arbitration existed, plaintiff here argues defendant waived such right by delaying in bringing this motion.

Waiver "is the intentional relinquishment or abandonment of a known right." (*Morgan v. Sundance, Inc*. (2022) 596 U.S. 411, 417.) "Accordingly, regardless of whether the procedural requirements of the FAA or the CAA apply in these proceedings, our determination of whether [a party moving to compel arbitration] has lost its right to compel arbitration as a result of its litigation-related conduct is governed by generally applicable state law contract principles." (*Quach v. California Commerce Club, Inc*. (2024) 16 Cal.5th 562, 572.) "To decide whether a waiver has occurred, the court focuses on the actions of the person who held the right; the court seldom considers the effects of those actions on the opposing party." (*Morgan, supra*, 596 U.S. at 417.)

Defendant delayed several months in bringing this motion and also delayed several hours past the January CMC, a deadline set by Judge Treat to have this motion on file. Plaintiff urges a finding of waiver based on the delay, citing *Davis v. Shiekh Shoes, LLC* (2022) 84 Cal.App.5th 956. The *Davis* case is distinguishable. There, defendant had requested a trial, actively participated in discovery, and acquiesced to the trial and discovery schedule. (*Id*. at 970.)

Plaintiff also argues that defendant's citation to one of two possible agreements indicates an intent to waive rights under the other. As noted above, only one of the agreements (the one primarily cited by defendant) covers the time period plaintiff was employed and whether other class members would be bound under the other agreement is not the subject of this motion.

On reply, defendant argues there is no waiver because the matter was passed from one attorney to another, no filing deadline was entered into the firm's calendar, and the motion was *completed* prior to the CMC, if not filed. Defendant contends the delay was not intentional. Counsel for defendant represents, albeit without foundation, that the attorney who appeared at the January CMC, stating the motion was filed, believed in good faith that it had been filed.

Setting aside the delay, defendant took no action that reveals an intent to abandon the right to arbitration. Delay alone does not suffice. Defendant repeatedly stated it intended to bring this motion. It raised the defense in the answer and at CMCs. In light of the circumstances, the Court does

not view this as waiver of the right to arbitrate and proceeds to the other grounds raised in the papers.

C. Enforceability

1. Application of the Federal Arbitration Act

Defendant asserts the agreement here is governed by the Federal Arbitration Act, 9 U.S.C. section 1, et seq. ("FAA"), which applies broadly to contracts of employment except for those specifically exempted in the statute. (*Circuit City Stores v. Adams* (2001) 532 U.S. 105, 119.) Plaintiff does not dispute the point.

Defendant submits evidence (in the Declaration of Felipe Bernal) that the roofing materials installed by plaintiff were obtained from other countries or from states other than California. This is sufficient to support that defendant's business involves interstate commerce for purposes of the FAA. (*Allied-Bruce Terminix Cos., Inc. v. Dobson* (1995) 513 U.S. 265, 273-274, 277 [broadly construing "involving interstate commerce" to mean "affecting" interstate commerce, and holding the FAA governed an arbitration agreement between a homeowner and local pest control company where the treatment products and repair materials were shipped from out of state]; *Citizens Bank v. Alafabco, Inc*. (2003) 539 U.S. 52, 55-57 [FAA applies to transactions encompassed by the Commerce Clause, holding FAA applied to debt restructuring agreements even though the individual transactions in that case may not have actually been in interstate commerce].)

To the extent California law differs from that of the FAA, the FAA would govern.

2. Class Claims

Defendant argues that plaintiff has waived the right to bring a class action suit, as permitted under the controlling authorities. (See *Epic Systems Corp. v. Lewis* (2018) 584 U.S. 497 [FAA provides for enforcement of employment arbitration agreements in accordance with their terms, including waiver of right to bring class claims]; *Franco v. Arakelian Enterprises, Inc*. (2015) 234 Cal.App.4th 947, 956-957 [waivers of a plaintiff's right to pursue non-PAGA claims as a class representative are enforceable, precluding prosecution of those claims in any forum].) Plaintiff does not specifically respond to this argument, relying instead on waiver, which has been rejected, and on unconscionability, discussed below. The class waiver is enforceable, requiring dismissal of the class claims.

3. Unconscionability

Plaintiff contends the arbitration agreement is unconscionable and therefore unenforceable. Plaintiff bears the burden of proving unconscionability. (*Pinnacle Museum Tower Assn., supra,* 55 Cal.4th at 236.) To briefly recapitulate the principles of unconscionability, the doctrine has both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results. The procedural element of an unconscionable contract generally takes the form of a contract of adhesion, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it. (*Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1071, citing *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 113-114.)

While both procedural and substantive unconscionability must be present in order to declare a contract term unconscionable, they need not be present in the same degree. (*Sanchez v. Valencia Holding Co. LLC* (2015) 61 Cal.4th 899, 910.) "'[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term

is unenforceable, and vice versa.'" (*Id.,* quoting *Armendariz* at 114.)

a) Procedural Unconscionability

Plaintiff argues the arbitration agreement is procedurally unconscionable. Defendant attempts to argue that it is not, but this particular characteristic of arbitration agreements executed as a condition to employment is difficult to avoid.

The procedural unconscionability analysis is laid out in *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111. The analysis begins with an inquiry into whether the contract is one of adhesion. (*Id*. at pp. 126-127, citations omitted.) An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power on a take-it-or-leave-it basis. (*Ibid*.) Arbitration contracts imposed as a condition of employment are typically adhesive. (*Ibid*.) The pertinent question, then, is whether circumstances of the contract's formation created such oppression or surprise that closer scrutiny of its overall fairness is required. (*Ibid*.) Oppression occurs where a contract involves lack of negotiation and meaningful choice, and surprise occurs where the allegedly unconscionable provision is hidden within a prolix printed form. (*Ibid*.)

i. Plaintiff's lack of English Proficiency

Plaintiff asserts that he is "not able to fluently read or communicate in English," that his employer was aware of this, and that he "would not have been able to read or understand it without a translator." (Medel Decl., ¶¶8, 12.) Still, mutual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties and where a party to an agreement does not speak or understand English sufficiently to comprehend the agreement, he should have it read or explained to him. (*Ramos v. Westlake Services LLC* (2015) 242 Cal.App.4th 674, 687.) There is no evidence that plaintiff requested assistance in understanding the document or was prevented from obtaining such assistance. (See *Caballero v. Premier Care Simi Valley LLC* (2021) 69 Cal.App.5th 512, 515.)

Plaintiff states he was given multiple documents on his first day of work. He was told the documents "included information on the job description and pay rate." (*Id*. at ¶7.) Whether plaintiff read and received the full collective bargaining agreement is not clear. At least as to reading, it is doubtful given the language barrier. But this portrayal of the union referral slip is accurate, if not complete. He apparently opted to sign the union referral slip, an objective manifestation of assent upon which his employer was justified in relying.

ii. Adhesive Nature of Referral Slip and Collective Bargaining Agreement

Plaintiff argues the union referral slip is procedurally unconscionable in combination with the collective bargaining agreement entered into by the union. The slip is attached to his declaration and appears to bear his signature. It is a one-page document outlining certain rates of pay, the company he will be working for ("B M"), and noting the person requesting his membership ("Jose"). There is a "Note" right above the signature line which contains approximately 100 words. The sentence is perhaps made slightly complex based on the naming of the entities involved, but is otherwise a straightforward commitment to allow the union to act as the employee's bargaining agent. Unlike the agreement at issue in *OTO*, the Note here does not address arbitration whatsoever. The referral slip alone is not substantively unconscionable. Plaintiff's arguments against the slip and the collective bargaining agreement would negate his having legitimately joined the union altogether.

Plaintiff's citation to recent appellate case *Alberto v. Cambrian Homecare* (2023) 91 Cal.App.5th 482, does not assist his argument. That decision analyzed the issue of multiple documents

being construed together to show the lack of mutuality in an arbitration agreement. The court stated:

> Here, we have no difficulty concluding that the Arbitration Agreement and the Confidentiality Agreement should be read together. They were executed on the same day. They were both separate aspects of a single primary transaction—[plaintiff]'s hiring. They both governed, ultimately, the same issue—how to resolve disputes arising between [plaintiff] and [employer] arising from [plaintiff]'s employment. Failing to read them together artificially segments the parties' contractual relationship. Treating them separately fails to account for the overall dispute resolution process the parties agreed upon.
>
> So, unconscionability in the Confidentiality Agreement can, and does, affect whether the Arbitration Agreement is also unconscionable. To hold otherwise would let [employer] impose unconscionable arbitration terms, and then avoid a finding of unconscionability because it put the objectionable terms in a (formally) separate document. That is contrary to Civil Code section 1642.

(*Alberto, supra,* 91 Cal.App.5th at 490-491, citations omitted.)

The case is easily distinguished. The referral slip for the union is not an agreement between the plaintiff and defendant. Further, the slip itself, as compared to the Confidentiality Agreement in *Alberto*, does not contain unconscionable terms.

As for the adhesive nature of the collective bargaining agreement itself, defendant's position that the agreement is the product of an arms'-length negotiation by two sides with relatively equal bargaining power, undermines any attack based on unconscionability. "As in any contractual negotiation, a union may agree to the inclusion of an arbitration provision in a collective-bargaining agreement in return for other concessions from the employer." (*14 Penn Plaza LLC v. Pyett* (2009) 556 U.S. 247, 257.)

iii. Lack of Rules

Plaintiff argues there is procedural unconscionability because there are no arbitration rules in the collective bargaining agreement. Plaintiff has not submitted any evidence that he did not receive the rules or was not provided with information on how to obtain the rules (whether prior to joining, at the time of joining, or later). In any event, "the failure to provide a copy of the arbitration rules generally raises procedural unconscionability concerns only if there is a substantively unconscionable provision in the omitted rules." (*Alvarez v. Altamed Health Services Corp.* (2021) 60 Cal.App.5th 572, 590 [relying on *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237]; see also *Davis v. Kozak* (2020) 53 Cal.App.5th 897, 910.) Plaintiff has not presented any evidence that any of the arbitration rules is substantively unconscionable.

In sum, to the extent plaintiff can show any procedural unconscionability, the degree of any surprise or oppression is minimal, particularly in light of the benefits conferred by union membership.

b) Substantive Unconscionability

Substantive unconscionability focuses on the actual terms of the agreement and evaluates whether they create overly harsh or one-sided results. (*Armendariz, supra*, 24 Cal.4th at 114.) A contract term is not substantively unconscionable when it merely gives one side a greater benefit. (*Pinnacle, supra*, 55 Cal.4th at 246.) "Not all one-sided contract provisions are unconscionable; hence the various intensifiers in our formulations: '*overly* harsh,' '*unduly* oppressive,' '*unreasonably*

favorable.'" (*Sanchez, supra,* 61 Cal.4th at 911, emphasis in original.) To be substantively unconscionable, the agreement must be something more than a mere "bad bargain." (*Id.*)

In evaluating substantive unconscionability, courts often look to whether an arbitration agreement meets certain minimum levels of fairness. At a minimum, a mandatory employment arbitration agreement must (1) provide for neutral arbitrators, (2) provide for more than minimal discovery, (3) require a written award that permits limited judicial review, (4) provide for all of the types of relief that would otherwise be available in court, and (5) require the employer to pay the arbitrator's fees and all costs unique to arbitration. Elimination of or interference with any of these basic provisions makes an arbitration agreement substantively unconscionable. (*Armendariz,* 24 Cal.4th at 102-103.)

Defendant implies *Armendariz* does not contain the relevant standards for determining unconscionability in light of *Quach v. California Commerce Club, Inc*. (2024) 16 Cal.5th 562. Such implication is incorrect. Still, plaintiff does not challenge most of the requirements set forth above, and the collective bargaining agreement generally meets these standards. Plaintiff's challenge is to (1) the liquidated damages provision contained at Article XXX, Section 7; (2) to the PAGA waiver contained in Section 9; and (3) to the statute of limitations outlined in the second paragraph of Section 8.

iv. Liquidated Damages Provision

Plaintiff argues that the liquidated damages provision is substantively unconscionable because it limits the amount employees are able to recover to $100 per day, which is payable to the Bay Area Counties Roofing Industry Apprenticeship Training Fund, even if the violation is continuous over multiple days or applies to a group of multiple employees. In *Armendariz*, the California Supreme Court held arbitration agreements which purport to compel arbitration of statutory claims without affording the full range of statutory remedies to a prevailing plaintiff, are contrary to public policy and unlawful. (*Armendariz, supra,* 24 Cal.4th at 103-104.)

On reply, defendant argues the provision does not bar statutory recovery, but only represents an additional item of damages consistent with the union's role in representing workers' interests. Defendant is correct in its interpretation. The third paragraph of Section 7(a) clarifies that that the Section 7 liquidated damages "shall be in addition to any sums of money due any employee […]."

The liquidated damages provision is not unconscionable pursuant to *Armendariz.*

v. PAGA Waiver

Plaintiff argues the PAGA waiver in Article XXX is substantively unconscionable. Labor Code section 2699.6 expressly exempts from the PAGA statutory scheme employees in the construction industry who are subject to a collective bargaining agreement "in effect any time before January 1, 2025," that meets the criteria of the statute. (Lab. Code § 2699.6(a).)

Despite not citing this statute in the reply, defendant relies on *Oswald v. Murray Plumbing & Heating Corp.* (2022) 82 Cal.App.5th 938, which discusses the provision. No PAGA claim is alleged in this case, and plaintiff's opposition does not address the statute, but based on the statute, the Court does not find the inclusion of a PAGA waiver unconscionable under the circumstances. Even if it were, the provision would be severable.

vi. 7-Day Statute of Limitations

Plaintiff argues the collective bargaining agreement contains an unreasonably short statute of

limitations period for bringing these disputes, and that term is substantively unconscionable. The selective quotations of Article XXX, Section 8 are inadequate to persuade the Court that the statute of limitations is as short as plaintiff contends, or that the time limitations in Section 5 apply to any claims at issue here. To the extent that the collective bargaining agreement "shortens" the time to the "shortest time limit permitted by applicable law, as determined by the Arbitrator," (see Bernal Decl., Ex. A, Article XXX, Section 8), the Arbitrator is still constrained by "applicable law." This provision is not therefore unconscionable.

Conclusion

Because there is evidence that parties agreed to arbitration, and the Court does not find that the agreement is unenforceable based on unconscionability, the motion must be granted.

5. 9:00 AM CASE NUMBER: C23-02179
CASE NAME: DMITRIY SHORNIKOV VS. LAKE ALHAMBRA PROPERTY OWNERS ASSOCIATION
HEARING ON DEMURRER TO: DEF 4TH AMENDED ANSWER
FILED BY: SHORNIKOV, DMITRIY
TENTATIVE RULING:

On the Court's own motion, the hearing is continued to 9:00 a.m. on June 26, 2025.

6. 9:00 AM CASE NUMBER: C24-00194
CASE NAME: VAHID HAGHIRI VS. NATIONSTAR MORTGAGE LLC
HEARING ON SUMMARY MOTION
FILED BY: NATIONSTAR MORTGAGE LLC
TENTATIVE RULING:

Defendants Nationstar Mortgage LLC dba Mr. Cooper and Deutsche Bank National Trust Company, as trustee for Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-9 [Defendants] bring this Motion for Summary Judgment [Motin]. The Motion is opposed by Plaintiffs Vahid Haghiri and Soussan Haghiri [Plaintiffs].

For the following reasons, the Motion is **granted**.

I. Legal Standard

"It is well established that the pleadings determine the scope of relevant issues on a summary judgment motion." (*Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74.)

The party moving for summary judgment carries both the burden of persuasion and the burden of production of evidence. (Evid. Code, § 500; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

"The initial burden is always on the moving party to make a prima facie showing that there are no triable issues of material fact." (*Scalf v. D. B. Log Homes, Inc*. (2005) 128 Cal.App.4th 1510, 1519.) "A

party cannot succeed without disproving even those claims on which the opponent would have the burden of proof at trial." (*AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1065.)

In moving for summary adjudication, a defendant must demonstrate that it is more likely than not that a cause of action has no merit. A defendant meets his burden of proof if he shows that one or more elements of the cause of action cannot be established, or that there is a complete defense to the cause of action. (*Aguilar*, *supra*, 25 Cal.4th at 849, 855; Code Civ. Proc., § 437c, subd. (o)(2).) Once the defendant meets that burden, the burden shifts to the Plaintiffs to show by preponderance of the evidence that a triable issue of one or more material facts exists. (*Aguilar*, *supra,* 25 Cal.4th at 852.) The Plaintiffs must set forth specific facts. (*Ibid*.)

"In ruling on the motion, the court must consider all of the evidence and all of the inferences reasonably drawn therefrom ..., in the light most favorable to the opposing party." (*Id.* at 843, internal citations and quotes omitted.) The court must grant the motion if all the papers show that there is no triable issue as to any material fact such that the moving party is entitled to a judgment as a matter of law. (*Ibid*., citing Cal. Code Civ. Proc. §437c(c).)

II. Background

Plaintiffs' First Amended Complaint [FAC] states seven causes of action for claims arising from foreclosure proceedings for their home in Danville. (FAC, ¶ 1.) Their claims are based on Defendants' alleged failure to comply with Civil Code § 2924b. (*Id*., ¶¶ 10, 18, 20, 28, 30, 38, 47, 48, 49, 57, 58, 59, 64, 72, 73, 74, 81.) Defendants present evidence to refute such allegations. (Defendants' Separate Statement of Undisputed Material Facts and Plaintiffs' Response thereto [SS], # 8.)

Plaintiffs contend that Defendants violated Civ. Code § 2924b when they failed to send the Notice of Default [NOD] and Notice of Trustee's Sale [NOTS] by registered or certified mail. (*Ibid*.) Each cause of action rests on this alleged defect in the foreclosure proceedings.

Defendant presents evidence to show that the NOD and NOTS were properly mailed to Plaintiffs on October 13, 2021. (SS # 8; Dec. D. Ormonde, ¶ 14; Dec. K. Winchester, ¶ 15; Notice of Lodgment of Exhibits [LOE], Ex. 8, see pp. 65-66, 84-85.) Specifically, the declaration of Devon Ormonde of The Mortgage Law Firm and the declaration of Kelly Winchester of Nationstar provide facts regarding the foundation for the authenticity of the Declaration of Mailing for the Notice of Default showing the document was mailed on October 13, 2021, to Plaintiffs at the address of the subject property via certified mail. (*Ibid*.) Defendants also present evidence that the Notice of Trustee Sale was mailed on January 5, 2024, and the Trustee Sale was cancelled on December 30, 2024. (SS #14, 21; Decl. D. Ormonde, ¶ 20, 27; Decl. K. Winchester, ¶¶ 19-21; LOE, Ex. 13, see pp. 120-121, 131-134.) Defendants also present evidence that the loan remains in default. (SS # 25; Decl. K. Winchester, ¶ 22; LOE, Ex. 20.)

Plaintiffs attempt to dispute the evidence discussed above with their own declarations. Plaintiffs declare that they "did not receive that NOD" and they "did not receive the NOTS by registered or certified mail as required by Civil Code Section 2924b." (Decl. S. Haghiri, ¶¶ 34, 42; Decl. V. Haghiri, ¶¶ 34, 42.) Plaintiffs declare additional facts with respect to the foreclosure and loan modification processes for the subject property, but they do not provide additional evidence to dispute the authenticity of or the facts stated in the Declarations of Mailing. Plaintiffs do not explain how they

became aware of the default or pending sale sufficient to file suit shortly after the dates the Declarations of Mailings state such documents were mailed to Plaintiffs at their residence. (Decl. S. Haghiri, ¶¶ 34-35, 42-43; Decl. V. Haghiri, ¶¶ 34-35, 42-43.) Plaintiffs do not dispute that the loan remains in default. (SS # 25.)

III. **Analysis**

A. First Cause of Action – Violation of Civil Code § 2924b

The first cause of action addresses the allegations that are at the heart of each cause of action and the key to this Motion: whether the NOD and NOTS were mailed by certified mail as stated in the Declarations of Mailing presented by Defendants, discussed above.

Civil Code 2924b provides the standard for necessary notice for foreclosure processes. Plaintiffs' claim and the remaining causes of action rest on whether the mailing of the NOD and NOTS occurred via certified or registered mail. (Civil Code § 2924b (b), (c).)

As discussed above, Defendants presented two declarations that included foundation for the declaration with respect to the maintenance and review of business records, along with the Declarations of Mailing for the NOD on October 13, 2021, and the NOTS on January 5, 2024. This evidence clearly refutes the allegation that Defendants failed to mail the NOD and NTS via certified mail.

Plaintiffs' declarations state Plaintiffs did not receive the mailings, but do not refute the statement by Defendants that they did mail the documents. Defendants' obligation ends at the time they "deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to" Plaintiffs at the subject property. (Civ. Code § 2924b (b), (c).) Plaintiffs' declarations do not contain supporting facts regarding the manner they obtained notice, and do not provide evidence that the Declarations of Mailing were fraudulent or otherwise not authentic. Plaintiffs also do not present a separate objection to the evidence. (Rules of Court, Rule 3.1354; Code of Civ. Proc. § 437c (q).)

Plaintiffs did not file a separate objection pleading but their Opposition argument disputes the strength of the evidence presented by Defendants to support the facts stated in the Declarations of Mailing for the NOD and NOTS. Plaintiffs contend that their own declarations are sufficient to create a triable issue of fact. Plaintiffs do not explain if or when they received the Notices in any manner, or how they received notice to timely challenge the default and sale, if they did not receive the Notices.

Plaintiffs only state that they did not receive the mailings of the NOD and NOTS via registered or certified mail. It is unclear if they received the NOD and NOTS via mail but dispute that certified mail was used or if they contend they never received the NOD and NOTS. Their declarations evidence that they commenced their two lawsuits relatively shortly after the dates that the Declarations of Mailing show the NOD and NOTS were mailed via certified mail. Plaintiffs' prior matter, following the NOD, was filed less than three months after the date of service in the Declaration of Mailing. (Dec. D. Ormonde, ¶ 14, 16; Dec. K. Winchester, ¶ 15; LOE], Ex. 8, see pp. 65-66, 84-85.) Plaintiffs' instant matter was filed within 20 days of the date of mailing of the NOTS. (Decl. D. Ormonde, ¶ 20-21; Decl.

K. Winchester, ¶ 19; LOE, Ex. 13, see pp. 120-121, 131-134.)

Apart from their own lack of receipt, Plaintiffs have not presented evidence to dispute Defendants' evidence of the material facts discussed above. Plaintiffs do not explain what other events or notice caused them to file suit if they did not receive the NOD and NOTS. Plaintiffs also do not present evidence to dispute the authenticity of the Declarations of Mailing or demonstrate such evidence is inadmissible.

Accordingly, Defendants presented evidence that they complied with Civil Code § 2924(b). Plaintiffs have not presented evidence to refute the authenticity of the Declarations of Mailing despite sufficient time to conduct discovery to obtain such information.

For such reasons, summary adjudication of the First Cause of Action is granted.

B. Remaining Causes of Action

1. Generally

Each of Plaintiffs' remaining claims rely on the allegation that Defendants violated Civil Code § 2924b by not mailing the NOD and NOTS by certified mail. Defendants have presented evidence that has not been refuted by Plaintiffs to show that Defendants mailed the NOD and NOTS via certified mail to Plaintiffs at the subject property, and that the foreclosure sale was cancelled.

Certain claims also allege wrongful foreclosure. Defendants presented evidence that they have not sold the home and the sale was cancelled. Plaintiffs do not present evidence to dispute this fact.

As discussed in further detail below, Defendants have demonstrated that it is more likely than not that a cause of action has no merit, and Plaintiffs have not submitted evidence to support facts to show by preponderance of the evidence that a triable issue of one or more material facts exists with respect to the remaining causes of action.

2. Second Cause of Action – Negligence

The material allegations in the Second Cause of Action are that Defendants had a duty under Civil Code § 2924b to mail the NOD and NOTS via registered or certified mail to the Plaintiffs, and breached that duty. (FAC, ¶¶ 37-39.) Plaintiffs also allege that Defendants breached their duty to Plaintiffs when they failed to "carry out the Trustee's Sale with duty care … in compliance with operative law." (*Id.*, ¶ 41.)

As discussed above, Defendants met their burden by presenting evidence that they did comply with the notice and mailing provisions of Civil Code § 2924b, and that they cancelled the Trustee's Sale. Plaintiffs did not submit evidence to show a triable issue of fact with respect to the element of breach.

For such reasons, summary adjudication of the Second Cause of Action is granted.

3. Third Cause of Action – Breach of Covenant of Good Faith and Fair Dealing

The material allegations in the Third Cause of Action are that every contract has an implied covenant

of good faith and fair dealing, and that Defendants breached that contractual duty by failing to mail the NOD and NOTS as required by Civil Code § 2924b. (FAC, ¶¶ 45-48.)

As discussed above, Defendants presented evidence to show that they did comply with the notice and mailing provisions of Civil Code § 2924b. Plaintiffs have not presented evidence to demonstrate there is a triable issue of fact with respect to the element of breach.

For such reasons, summary adjudication of the Third Cause of Action is granted.

4. Fourth Cause of Action – Wrongful Foreclosure

The material allegations in the Fourth Cause of Action are that Defendants "caused an illegal, fraudulent, or willfully oppressive sale of property," when Defendant did not mail the NOD and NOTS via registered or certified mail to the Plaintiffs as required under Civil Code § 2924b, and that "their home is being foreclosed." (FAC, ¶¶ 55-60.)

As discussed above, Defendants have presented evidence to show that they did comply with the notice and mailing provisions of Civil Code § 2924b, and that they cancelled the Trustee's Sale. Plaintiffs did not submit evidence to demonstrate there is a triable issue of fact with respect to this issue.

For such reasons, summary adjudication of the Fourth Cause of Action is granted.

5. Fifth Cause of Action – Violation of Business and Professions Code § 17200 et seq.

The material allegations in the Fifth Cause of Action are that "Defendants' violation of California Civil Code $ 2924b, constitutes unfair business practices in violation of California Business and Professions Code § 17200 et seq. (FAC, ¶¶ 64.)

As discussed above, Defendants presented evidence showing they did comply with the notice and mailing provisions of Civil Code § 2924b, and that they cancelled the Trustee's Sale. Plaintiffs did not submit evidence that creates a triable issue of fact with respect to this issue.

For such reasons, summary adjudication of the Fifth Cause of Action is granted.

6. Sixth Cause of Action – Cancellation of Instruments

The material allegations in the Sixth Cause of Action are that the NOD and NOTS should be cancelled because Defendants failed to provide proper notice via registered or certified mail pursuant to Civil Code § 2924b. (FAC, ¶¶ 71-73, 78.)

As discussed above, Defendants presented evidence to show they complied with the mailing requirements of Civil Code § 2924b, and they cancelled the Trustee's Sale. Plaintiffs did not submit evidence to demonstrate there is a triable issue of fact with respect to these issues. Accordingly, Defendants have shown that there is no basis to cancel these instruments under Civil Code § 3412

For such reasons, summary adjudication of the Sixth Cause of Action is granted.

7. Seventh Cause of Action – Declaratory Relief

The material dispute at issue in the Seventh Cause of Action are that Defendants recorded the NOD and NOTS in violation Civil Code § 2924b and. (FAC, ¶ 80.) Plaintiffs also allege that Defendants the Trustee's Sale was carried out without properly notifying Plaintiffs. (*Id*., ¶ 81.) Plaintiffs rely on their contentions related to the First and Sixth Causes of Action, discussed above, to support this claim. (Opposition, at 19:22-20:3.)

As discussed above, Defendants presented competent evidence showing that they complied with notice and mailing provisions of Civil Code § 2924b, and they cancelled the Trustee's Sale. Defendants' evidence is sufficient to meet their burden on summary adjudication as to the issues of Violation of Civil Code § 2924b and Cancellation of Instruments. Where factual underpinnings of the declaratory relief claim involve the same issues as the main causes of action, the issues can be decided for all purposes in other causes of action before the court. (See General of America Ins. Co. v. Lilly (1968) 258 Cal.App.2d 465, 470-471.) Thus, for the reasons discussed above, Defendants have demonstrated sufficient evidence to find that there is no present controversy not addressed by the findings above.

For such reasons, summary adjudication of the Seventh Cause of Action is granted.

IV. Objections

No formal objections were presented by either side. (Rules of Court, Rule 3.1354; Code of Civ. Proc. § 437c (q).)

7. 9:00 AM CASE NUMBER: C24-02031
CASE NAME: LEIGHA SCHARSCH VS. VICI COLLECTION, LLC
***HEARING ON MOTION IN RE: APPROVAL OF PAGA SETTLEMENT**
FILED BY:
****TENTATIVE RULING:****

Leigha Scharsch moves for approval of the settlement of her PAGA suit against defendant VICI Collection, LLC.

A. Background of the Case and Terms of Settlement

This is a PAGA case, alleging a variety of violations of the Labor Code concerning failure to pay for all hours worked, failure to correctly calculate overtime, failure to provide compliant meal periods, failure to pay for all accrued vacation time, and cascading derivative violations. Plaintiff has given notice to the LWDA. The complaint was filed August 1, 2024.

The total settlement payment is $200,000. This is composed of attorney's fees of $66,666.67 (one-third of the settlement), litigation costs of $13,795.20, costs to the settlement administrator of $4,000, and a $10,000 incentive award to plaintiff. The remaining amount ($105,538.13) would be a PAGA penalty, which would be apportioned 75% to the LWDA and 25% to the aggrieved employees.

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. The average employee share will be about $175.

Plaintiff's counsel attests that they engaged in extensive arms-length settlement negotiations,

and settled after a session with an experienced mediator. Written discovery was undertaken. Counsel's declaration provides a general discussion of the strengths and weaknesses of the case.

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 are asserted in this action or in any letter to the LWDA relating to this action, or arise from "all claims for PAGA penalties during the PAGA Period that were alleged, or reasonably could have been alleged, based on the alleged facts and Labor Code violations stated in the operative complaint, and the PAGA Notice." 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.

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 $66,666.67.

Plaintiff has conducted a lodestar cross-check. Counsel calculate 91 hours, applying hourly rates for different attorneys of $650, $750, and $900. This results in a lodestar of approximately $69,005, with an implied multiplier of 1.03. 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 $13,795.20, are sought. They are reasonable and are approved.

The administrator's costs of $4,000 are reasonable and are approved.

Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807. Plaintiff attests that she spent about 20 hours of her time on this matter. Moreover, because it is a PAGA-only action, she does not receive back wages. Finally, she released additional claims, although there is no indication that she had other claims of significant value. All things considered, the Court reduces the representative payment to $7,500.

D. Conclusion

The Court finds that the settlement is fair, reasonable, and adequate, and grants the motion to approve, with the plaintiff's representative payment reduced to $7,500 (with the difference to be added to the PAGA penalty amount).

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.

8. 9:00 AM CASE NUMBER: C24-02653
CASE NAME: PAULA FROST VS. ROLLING HILLS MEMORIAL PARK, A CALIFORNIA CORPORATION
***FURTHER CASE MANAGEMENT CONFERENCE**
FILED BY:
TENTATIVE RULING:
Continued to July 9, 2025, 8:30 a.m.

9. 9:00 AM CASE NUMBER: C24-02653
CASE NAME: PAULA FROST VS. ROLLING HILLS MEMORIAL PARK, A CALIFORNIA CORPORATION
***HEARING ON MOTION IN RE: COMPEL ARBITRATION AND STAY PROCEEDINGS**
FILED BY: ROLLING HILLS MEMORIAL PARK, A CALIFORNIA CORPORATION
TENTATIVE RULING:

Defendant, Rolling Hills Memorial Park, filed this motion to compel arbitration after plaintiff, Paula Frost, filed her complaint against it. A court must order arbitration if it determines that a valid agreement to arbitrate exists. Here, such agreement does not exist, as discussed below. The motion is **denied**.

Background

In this putative class action, plaintiff alleges that she purchased burial plots from defendant in September 2009. (Complaint, ¶8.) She later purchased a marker for the plot in December 2021. (Complaint, ¶¶8; 32.)

When plaintiff's husband passed away in 2021, he was buried in the plot plaintiff purchased, but at some point in time, his headstone was placed incorrectly on the grave of another putative Class member. (Complaint, ¶34.) As a result, his site was without the ordered headstone for many months. (*Ibid*.) This was not discovered until much later on April 14, 2023, when another putative Class member went to Rolling Hills to visit the gravesite of a loved one, but the only site they could locate in the location where they would usually visit was the gravesite with the headstone purchased by plaintiff. (*Ibid*.)

Plaintiff filed this lawsuit on October 4, 2024, alleging seven causes of action including: (1) Breach of Contract; (2) Negligence; (3) Violations Of Business & Professions Code § 17200, Et Seq.; (4) Violations Of Business & Professions Code § 17500, Et Seq.; (5) Nuisance; (6) Trespass; and (7) Intentional and/or Negligent Infliction Of Emotional Distress.

In response, defendants moved to compel arbitration under the 2009 agreement, arguing that plaintiff signed an agreement containing an enforceable arbitration provision. Rolling Hills also argues the Federal Arbitration Act governs enforceability, and that the agreement is enforceable.

In support of the motion, defendants submit a declaration from John C. Barr ("Barr Decl."), the Director of Operations of Rolling Hills Memorial Park, describing the procedures defendant uses

to obtain and store contracts such as those signed by plaintiff.

The declaration attaches the 2009 agreement signed by plaintiff which includes an arbitration provision. The arbitration provision is in bold, but is in small font and couched in a longer paragraph that relates to other matters as well. The provision states, in relevant part:

> IN THE EVENT OF A DISPUTE IN ANY MATTER RELATING TO OR ARISING OUT OF THIS AGREEMENT, THE PARTIES SHALL MEET, CONFER AND NEGOTIATE IN GOOD FAITH IN AN ATTEMPT TO RESOLVE THE DISPUTE. IN THE EVENT THE PARTIES ARE UNABLE TO RESOLVE THE DISPUTE THEMSELVES, THE DISPUTE SHALL BE RESOLVED THROUGH BINDING ARBITRATION CONDUCTED BY JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. IN CONTRA COSTA COUNTY, CALIFORNIA.

Plaintiff opposes the motion, not disputing that she executed the 2009 contract attached by Mr. Barr, or that its arbitration provision is governed by the FAA, but instead arguing that she was pressured to sign the agreement without explanation of its terms, and that the arbitration agreement is unconscionable.

Evidentiary Matters

Defendant requests judicial notice of an excerpt from its parent company's SEC filing showing its subsidiaries, one of which is defendant, and their respective locations. The request goes to applicability of the FAA and is **granted**.

Plaintiff's objections to the Barr Declaration are **overruled**, except for the final objection (no. 5, though they are not numbered), which is **sustained** for lack of personal knowledge / foundation.

Standard

"A petition to compel arbitration should be granted if the court determines that an agreement to arbitrate the controversy exists. (Code of Civil Procedure § 1281.2.) The threshold issue of whether a valid and enforceable agreement to arbitrate exists is determined under California law and procedures. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413; Code of Civil Procedure §§ 1281.2, 1290.2.) The moving parties bear the burden of proving the existence of the arbitration agreement by a preponderance of the evidence. (*Rosenthal,* 14 Cal.4th at 413; *Alvarez v. Altamed Health Services Corp.* (2021) 60 Cal.App.5th 572, 580.) Once the existence of an arbitration agreement is established, the burden is on the party opposing arbitration to prove its defense. (*Alvarez,* 60 Cal.App.5th at 580.)

Discussion

A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract. (Code Civ. Proc., § 1281.) The party seeking arbitration bears the burden of proving the existence of an arbitration agreement. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) In California, contract formation requires free and mutual consent communicated to each other. (Civ. Code, § 1565.) Mutual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties. (*Esparza v. Sand & Sea, Inc.* (2016) 2 Cal.App.5th 781, 788.)

Here, defendant provides a copy of a contract allegedly signed by plaintiff in 2009. The contract contains an Arbitration Agreement. (Exhibit A to Barr Decl.) Plaintiff does not deny the contract is one that she signed, instead confirming the document is what defendant purports it is.

(See Declaration of Paula Frost in Support of Opposition, hereinafter "Frost Decl.," ¶2 [stating representative provided plaintiff with the same document as that attached to the Declaration of John C. Barr as Exhibit A, and that she signed it on September 28, 2009].) Defendant's agreement, however, is not the most recent version of parties' agreement.

In opposition, plaintiff presents forms she signed in 2021, including one entitled "Specific Terms, Conditions, & Agreements." The first provision of this form states: "BY INITIALING BELOW, PURCHASER AGREES THAT ALL DISPUTES ARISING OUT OF OR RELATING TO THE AGREEMENT SHALL BE SUBMITTED TO AND DECIDED BY MANDATORY AND BINDING ARBITRATION UNDER THE FEDERAL ARBITRATION ACT." (Frost Decl. in Support of Opposition, Ex. 1, "Specific Terms, Conditions, & Agreements," ¶1.) The definition of "dispute" is no less broad than in 2009 terms.

In 2021, plaintiff deliberately chose not to initial it. (*Ibid*., Frost Decl., ¶10.) Plaintiff argues that the lack of initials beneath the 2021 arbitration provision means she did not agree to arbitrate her claims. She further argues that the arbitration provision was not explained or highlighted such that it was easy to read. The latter point is not determinative of the effect. Assent is determined based on an objective standard. Nor does plaintiff claim she asked for clarification as to any terms and "[a] party cannot use his own lack of diligence to avoid an arbitration agreement." (*Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1674, citations omitted.)

Plaintiff's decision not to initial the provision, however, is more persuasive. Defendant does not dispute that it consented to the 2021 agreement. Plaintiff's decision not to initial the provision, indicating lack of arbitration requirements, directly conflicts with the earlier agreement with respect to requiring arbitration.

In response to the modification argument, defendant cites cases that are not particularly on point. *Rent-A-Center, W., Inc. v. Jackson* (2010) 561 U.S. 63 considered the severability of an agreement that included a delegation clause which required the arbitrator to determine validity. *Prima Paint Corp. v. Flood & Conklin Mfg. Co*. (1967) 388 U.S. 395 addressed whether the arbitrator had the power to decide fraud in the inducement. Such threshold questions, and whether they are in the scope of the arbitrator's authority, are not present here. Defendant's citation to *Jackpot Harvesting, Inc. v. Applied Underwriters, Inc*. (2019) 33 Cal.App.5th 719, confirms this Court's authority to determine the validity of the arbitration agreement pursuant to general principles of contract formation law.

Plaintiff raises the question of whether there was a valid modification to a contract under California law. "Modification is a change in the obligation by a modifying agreement which requires mutual assent." (*Wade v. Diamond A Cattle Co.* (1975) 44 Cal.App.3d 453, 457.) "It is axiomatic that the parties to an agreement may modify it." (*Vella v. Hudgins* (1984) 151 Cal.App.3d 515, 519.) In California, "a contract in writing may be modified by a contract in writing." (Civ. Code, § 1698, subd. (a).)

Here, the 2021 agreement refers to the earlier agreement. Because the terms in the later agreement reflect an affirmative decision not to agree to arbitration, this directly conflicts with the earlier requirement to submit all disputes to arbitration. Accordingly, the later agreement changed this requirement. Finding modification / revocation of the arbitration agreement, as one aspect of a broader agreement here, does nothing more than apply a general principle of California contract law.

Because the Court finds that defendant has not met its burden to show the existence of a valid agreement to arbitrate, it is not necessary to reach the other arguments raised by the parties.

10. 9:00 AM CASE NUMBER: C24-03254
CASE NAME: MAJERRIS WALKER VS. CITY OF PITTSBURG
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: CITY OF PITTSBURG
TENTATIVE RULING:

Hearing vacated. First Amended Complaint filed.

11. 9:00 AM CASE NUMBER: C24-03544
CASE NAME: LORENA BAYLESS VS. MG MARIS APARTMENTS GG PKS LLC,
***HEARING ON MOTION IN RE: STRIKE PORTIONS OF PLTFS COMPLAINT**
FILED BY: MG MARIS APARTMENTS GG PKS LLC,
TENTATIVE RULING:

The Motion of Defendants MG Maris Apartments GG PKS LLC, MG Maris Apartments GG BLK LLC and Monica Manchego to Strike Portions of Plaintiffs' Complaint is denied.

Background

Plaintiffs Lorena Bayless, Jasmine Bayless, Shannon Bayless, and Scott Kinard, a minor, allege that they leased an apartment at 142 Fig Tree Lane in Martinez from Defendants MG Maris Apartments GG PKS LLC and MG Maris Apartments GG BLK LLC beginning in April 2021. Plaintiffs claim that the unit suffered from persistent and serious habitability defects, including frequent flooding, mold, carbon monoxide exposure, radon gas, and raw sewage intrusion. Despite repeated complaints, Defendants allegedly failed to remediate these conditions and instead attempted to conceal them, such as by instructing workers to cover the mold rather than properly abate it. Among the hazards identified in the complaint, Plaintiffs allege that the stairs leading to the Property were improperly maintained and fell below the standard of care. As a result, Plaintiff Lorena Bayless fell on the stairs and suffered a fractured pelvis.

Plaintiffs further allege that Defendants engaged in retaliatory conduct after Plaintiffs raised concerns about these conditions. Specifically, Plaintiffs contend that in August 2022, Defendants filed an unlawful detainer action against them based on false allegations of lease violations. The parties entered into a stipulation for judgment that allowed Plaintiffs to remain in the unit subject to certain terms. Plaintiffs allege that Defendants thereafter falsely accused them of violating the stipulation and filed an application to enforce the judgment. As a result, Plaintiffs were compelled to vacate the unit in November 2022.

Following their displacement, Plaintiffs allege that Defendants referred a disputed claim of more than $32,000 to collections, refused to return their security deposit, and provided negative housing references to prospective landlords. Plaintiffs claim these actions were taken intentionally to punish and harm them and were part of a broader pattern of retaliation and misrepresentation aimed at tenants who complained about unsafe living conditions.

Based on these events, Plaintiffs assert twelve causes of action, including claims for breach of contract, negligence, fraud, nuisance, intentional infliction of emotional distress and violations of the Civil Code. Plaintiffs seek general and special damages, attorney fees, and punitive damages.

Defendants now move to strike punitive damages allegations. Plaintiffs oppose.

Legal Standards

"The court may, upon a motion ... or at any time in its discretion, and upon terms it deems proper: (a) [s]trike out any irrelevant, false, or improper matter inserted in any pleading[;]... [and/or] (b) [s]trike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (CCP § 436.) An "irrelevant matter," or "immaterial allegation," means: (1) an allegation that is not essential to the statement of a claim or defense; (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense; or (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (CCP § 431.10(b).)

A plaintiff may seek punitive damages only "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Cal. Civ. Code § 3294(a).) "In order to survive a motion to strike an allegation of punitive damages, the ultimate facts showing an entitlement to such relief must be pled by a plaintiff." (*Clauson v. Superior Court* (1998) 67 Cal. App. 4th 1253, 1255 [internal citations omitted].) "In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." (*Id*.)

In the case of a corporation acting through its employees or agents, punitive damages will not lie unless (1) an officer, director, or managing agent of the corporate employer is guilty of malice, oppression, or fraud; (2) an officer, director, or managing agent of the corporate employer authorized or ratified the wrongful conduct for which punitive damages are awarded, or (3) an officer, director, or managing agent of the corporate employer had advance knowledge of the unfitness of an employee but nevertheless chose to hire him or her. (Civil Code § 3294(b).) "Managing agent" under Civil Code § 3294(b) means "only those corporate employees who exercise substantial independent authority and judgment in their corporate decision making so that their decisions ultimately determine corporate policy." (*White v. Ultratmar. Inc.* (1999) 21 Cal.4th 563, 566-67.)

Discussion

Defendants argue the allegations are conclusory and fail to plead specific facts establishing malice, oppression, or fraud as required by Civil Code section 3294. They also argue that Plaintiffs do not allege conduct by any officer, director, or managing agent sufficient to support corporate liability for punitive damages under Civil Code section 3294(b).

Having reviewed the allegations of the complaint, the Court finds that Plaintiffs have alleged sufficient facts describing oppressive, malicious, or fraudulent conduct. First, Plaintiffs allege that Defendants were notified and aware of mold, leaking windows, flooding, feces backing up into the sink, radon and carbon monoxide exposure. (See, e.g., Complaint ¶¶ 12-3, 15-18.)

Next, Plaintiffs allege that Defendants made the deliberate choice to not repair the issues and “instead of repairing the issues, Defendants engaged in their pattern and practice of blaming tenants, including Plaintiffs, for the defects of their units, attempt[ing] to extort the money from the tenants

for repairs, and threaten[ing] [to] effectuate eviction proceeding[s]." Further, "Defendants, in retaliation for complaining about the water intrusion and failure to pay for their hotel while repairs were made, invented false reasons for terminating Plaintiffs' lease and issued a 3-day notice to quit." Plaintiffs allege this was "part of a pattern and practice circumvent the Tenant Act and evict tenants in order to reduce complaints and/or raise the rent for the apartment complex which included the Property." (Complaint ¶¶ 19-20.) Plaintiffs allege that as a result of their complaints about the property, Defendants made false statements to obtain an eviction judgment in the parties' unlawful detainer and then made it difficult for Plaintiffs to get new housing by engaging in action to dissuade landlords from approving them. (Complaint ¶¶ 22-25.)

As for corporate liability, Plaintiffs allege at paragraph 2 that MG Maris Apartments GG PKS LLC and MG Maris Apartments GG BLK LLC, along with Does 1–50, owned the property. Paragraph three identifies Defendants and Does 51–100 as the property managers. Paragraph four names Monica Manchego as an employee of both corporate entities. Paragraph eight states "At all relevant times, each Defendant, including DOES 1 through 100, acted as an authorized agent, employee or other representative of each other Defendant. Each act of Defendants complained of herein was committed within the scope of said agency, employment or other representation, and/or each act was ratified by each other Defendant. Each Defendant is liable, in whole or in part, for the damages and injuries Plaintiffs suffered." (Complaint, ¶ 8.)

Defendants argue this allegation is insufficient, but less specificity is required if it appears from the nature of allegations that defendant must necessarily possess full information, or if the facts lie more in the knowledge of opposing parties. (See, e.g., A*lfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384-1385; *Bushell v. JPMorgan Chase Bank, N.A.* (2013) 220 Cal.App.4th 915, 931.) Plaintiffs would be hard pressed, at the pleading stage, to allege who within the defendant corporations ratified employee conduct, much less a specific officer, director or managing agent.

The complaint sets forth facts that, if proven, constitute deliberate conduct carried out with conscious disregard of Plaintiffs' rights. Plaintiffs also allege that each defendant engaged in or ratified the wrongs alleged. At the pleading stage, these allegations are sufficient to support punitive damages and corporate liability under Civil Code § 3294(a) and (b).

Accordingly, Defendants' motion to strike punitive damages allegations is denied.

12. 9:00 AM CASE NUMBER: C24-03552
CASE NAME: CESAR CAPRISTO VS. HYUNDAI MOTOR AMERICA
***HEARING ON MOTION IN RE: COMPEL BINDING ARBITRATION**
FILED BY: HYUNDAI MOTOR AMERICA
****TENTATIVE RULING:****

Before the Court is a motion to compel binding arbitration filed by defendant Hyundai Motor America. The motion also seeks an order staying the action pending completion of the arbitration. For the reasons set forth, the motion is **granted**, and the action shall be **stayed** pending the arbitration, except that the hearing on the Order to Show Cause **set for 8:30 a.m. on June 9, 2025 shall remain on calendar**.

Plaintiff's complaint alleges Plaintiff purchased a 2024 Hyundai vehicle as to which Hyundai gave Plaintiff an express written warranty. (Compl. ¶¶ 3, 5, 7, 11, 12.) Plaintiff's complaint alleges causes of action for breach of implied warranties under the Song-Beverly Consumer Warranty Act, Civil Code section 1790, *et seq.* and for breach of express warranty. (Cranford Decl. Exh. 1.) Hyundai's moving papers quote and attach a copy of Hyundai's 2024 Owner's Handbook and Warranty Information (Cranford Decl. Exh. 2) (the "Handbook") which includes a binding arbitration provision requiring the parties to arbitrate disputes, among other things, related to the use, performance, service, or warranty for the vehicle, or representations or advertising related to the vehicle. (Cranford Decl. Exh. 2, Section 4.)

Hyundai has proven the existence of an arbitration agreement covering Plaintiff's claims. (Code Civ. Proc. § 1281.2; *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) Plaintiff has not opposed the motion, though the moving papers include proofs of service of the moving papers on Plaintiff's counsel. Hyundai is therefore entitled to compel Plaintiff's claims to be determined in arbitration pursuant to the arbitration provisions of the Handbook. (*See, e.g., JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1239-1240.) (*See also Dardashty v. Hyundai Motor Am.* (C.D.Cal. 2024) 745 F. Supp. 3d 986, 995-996.)

Code of Civil Procedure section 1281.4 provides that the Court may stay the action pending an arbitration when a motion or petition to compel arbitration is granted. (*See also* 9 U.S.C. § 3.) The Court finds it is appropriate to stay the action as requested in the motion until the arbitration is completed, except as set forth above.

13. 9:00 AM CASE NUMBER: MSC10-02872
CASE NAME: GROTH V. GILAD ET AL
***HEARING ON MOTION IN RE: FOR ATTORNEYS FEES AND COSTS**
FILED BY:
****TENTATIVE RULING:****

Continued on the Court's own motion to June 26, 2025, 9:00 a.m. No further briefing is requested or permitted.

14. 9:00 AM CASE NUMBER: MSC21-00018
CASE NAME: CLARK CONSTRUCTION VS VICTAULIC COMPANY
HEARING ON DEMURRER TO: 3RD AMENDED COMPLAINT
FILED BY: HAJOCA CORPORATION
****TENTATIVE RULING:****

Defendants Victaulic Company and Keenan Supply's demurrer to the third amended complaint is **sustained with leave to amend as to causes of action 7 and 8, sustained without leave to amend as to causes of action 5 and 6, and otherwise overruled.** Plaintiff is given leave to amend that the contracts were written.

Defendants demur to causes of action 1 through 10. As to the breach of contract claims (7 and 8) the demurrer is based on section 430.10(g). The demurrer does not specify the grounds for the demurrer to the other causes of action, but based upon arguments the ground is the "pleading does

not state facts sufficient to constitute a cause of action". (Code of Civil Procedure section 430.10(e).)

Plaintiff argues that Defendants did not engage in the required meet and confer before filing this demurrer. Defendants did not provide any evidence showing that they did in fact attempt to meet and confer. The meet and confer is required by Code of Civil Procedure section 430.41, however, the failure to comply is not a ground to overrule the demurrer. Trial in this case is set for September 8, 2025, and while there are issues the parties could solve through a meet and confer process, it seems unlikely that all issues raised in this demurrer will be solved. Therefore, the Court will rule on this demurrer now rather than requiring the parties to meet and confer.

Negligence (C/A 5 and 6):

Previously this Court overruled Defendants' demurrer to the negligence claims based on the statute of limitations on the understanding that the claims were Plaintiff's claims. However, in the last challenge to the pleadings, Defendants argued that the economic loss rule barred Plaintiff's claims for negligence. The Court agreed. Plaintiff argued that it could amend the claim to clarify that their negligence claims were assigned from John Muir.

The Court gave Plaintiff leave to amend, stating "The proposed amendment may allow Plaintiff to avoid application of the economic loss rule, but it will require the Court to consider whether JMH's claims expired before this case was filed, which is one of the arguments Defendants raised in this motion. The SAC alleges that, according to the arbitration demand, JMH learned of problems with the water system in 2016. (SAC ¶¶20, 22 and SAC ex. A.) This case was not filed until January 2021, which is more than two years after JMH may have learned of the problem with Victaulic's product. Thus, there is a potential statute of limitations issue with claims assigned from JMH. In amending their complaint, Plaintiff should allege whatever additional facts they can that will address the potential statute of limitations issue with the assigned claims." (Order After Hearing, filed March 7, 2025.)

Plaintiff has amended its complaint and Defendants now raise their statute of limitations argument. Defendants argue for a two-year statute of limitations, however there is a three-year statute of limitations for injury to real property. (Code of Civil Procedure section 338(b).) Whether there is a two or three year statute of limitations for these claims does not change the analysis in this case.

As an assignee, Plaintiff stands in the shoes of John Muir and is subject to defenses, including statute of limitations that apply to John Muir's claim. "An assignment carries with it all the rights of the assignor. [Citations.] 'The assignment merely transfers the interest of the assignor. The assignee "stands in the shoes" of the assignor, taking his rights and remedies, subject to *any defenses* which the *obligor* has against the assignor prior to notice of the assignment.' [Citation.]"(*Johnson v. County of Fresno* (2003) 111 Cal.App.4th 1087, 1096.) Here, the statute of limitation analysis focuses on John Muir's knowledge and conduct.

Further, when the statute of limitations might apply, the plaintiff can allege delayed discovery. " 'Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her. … [T]he limitations period begins once the plaintiff '"'has notice or information of circumstances to put a reasonable person *on inquiry* … .'"' [Citations.] A plaintiff need

not be aware of the specific 'facts' necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her.' (*Jolly v. Eli Lilly & Co.* [1988] 44 Cal.3d 1103, 1110–1111, fn. omitted.)" (*Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 642-643.)

"In order to rely on the discovery rule for delayed accrual of a cause of action, '[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence.' [Citation.] In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to 'show diligence'; 'conclusory allegations will not withstand demurrer.' [Citation.]" (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808.)

Here, the TAC alleges that the John Muir medical center started noticing black particular matter in their water system on April 6, 2016. (TAC ¶20.) The next day, John Muir contacted Lescure to inspect the water piping system. (TAC ¶21.) Filters were installed in the water system over the next two months. (TAC ¶21.) Plaintiff alleges that "[a]ccording to John Muir's arbitration demand, in the fall of 2016, the Medical Center and Lescure discovered a leak in a Victaulic coupling in the basement… [and they] noticed black residue on the basement floor underneath other Victaulic pipe couplings." The Medical Center and Lescure "investigated the leak and traced it to a deteriorated gasket within a Victaulic coupling in the domestic water piping system… [Plaintiff] was not aware of these specific investigations in 2016." (TAC ¶22.) Plaintiff also alleges that "in the fall of 2016, [John Muir] did not suspect, nor could it reasonably suspect, that the damage was due to wrongdoing." (TAC ¶75.)

These allegations show that the statute of limitations began to run in 2016. As to delayed discovery, there is a reasonable argument for delayed discovery from April 2016 to the fall of 2016, but by the fall of 2016 John Muir was aware of a leak in the Victaulic couplings and of black residue near the Victaulic couplings. Thus, by the fall of 2016, John Muir had sufficient knowledge that there was a problem with the Victaulic couplings to end any delayed discovery. Plaintiff's argument that these facts do not show knowledge of "wrongdoing" is unpersuasive. These facts are sufficient to show that John Muir knew, or should have known, that there was a problem with the Victaulic couplings and that they were failing much sooner than expected. Those facts are sufficient to start the running of the statute of limitations. Thus, the statute of limitations ran by the fall of 2019 (assuming the three-year statute of limitations applies), which was two years before this case was filed. Therefore, the Court finds that the demurrer to the negligence causes of action are sustained.

The next question is whether Plaintiff should be given leave to amend. Unlike the other issues raised in this demurrer, this exact issue was highlighted in the last attack on the pleadings. Plaintiff now offers to allege that a Victaulic representative observed the removal of the Victaulic products and advised John Muir that it may be a warranty event and offered to replace the couplings. Plaintiff can also allege that Victaulic did not advise John Muir that there was a known defect with this product. (Opposition p. 14-15.) These facts appear to show that Victaulic agreed that there was some sort of problem with its product. Further, the proffered facts do not include facts showing the time and manner of discovery of wrongdoing and John Muir's inability to have made earlier discovery

despite reasonable diligence. Plaintiff has not explained how these facts would change the analysis on the statute of limitations. (*Medina v. Safe-Guard Products, Internat., Inc.* (2008) 164 Cal.App.4th 105 112, fn. 8 ["the burden is on the plaintiff to show in what manner he or she can amend the complaint, and how that amendment will change the legal effect of the pleading"].) Therefore, the court denies leave to amend the negligence causes of action.

Breach of Contract (C/A 7 and 8)

Defendants raise several issues regarding the breach of contract claims. Plaintiff argues that these issues could have been raised in a prior demurrer. (Code of Civil Procedure section 430.41(b).) But the breach of contract claims have been amended and until this version of the complaint, Victaulic was not a defendant in either breach of contract claim. Thus, Victaulic may raise any challenge to cause of action eight as this is the first time they were named in that claim. For consistency, the Court has considered the arguments as to both causes of action 7 and 8.

First they argue that Plaintiff did not allege if the underlying contract was written or oral. Plaintiff did not clearly allege that the contracts at issue were written. Thus, the demurrer is sustained. While this is the third amended complaint, this is the first time this issue was raised and it should have been addressed in the meet and confer required before the filing of a demurrer. (Code of Civil Procedure section 430.41.) Finally, Plaintiff's opposition makes it clear that they can allege the contracts were written. Therefore, Plaintiff is given leave to amend.

Next, Defendants argue that Plaintiff did not attach or set out the language of the contract. However, Plaintiff has alleged the legal effect of the contracts and thus, has satisfied this requirement. (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 402 [" 'a plaintiff may plead the legal effect of the contract rather than its precise language.' "].)

Finally, Defendants argue that Plaintiff has not alleged sufficient facts for its third party beneficiary breach of contract claims. In order to bring a third party beneficiary claim, the plaintiff must show "(1) whether the third party would in fact benefit from the contract, but also (2) whether a motivating purpose of the contracting parties was to provide a benefit to the third party, and (3) whether permitting a third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties. All three elements must be satisfied to permit the third party action to go forward." (*Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817, 830.)

Here, Plaintiff has alleged that Keenan entered into a contract with Victaulic to supply products for the Medical Center and that they knew they were supplying those products for the benefit of Plaintiff. (TAC ¶¶14; 99) Plaintiff also alleges that Lescure entered into a contract with Keenan to supply the products on Plaintiff's behalf. (TAC ¶89.) These allegations are sufficient to meet all the *Goonewardene* elements. The allegations show that the products were purchased to benefit Plaintiff in its construction project. Further, the allegations show that Keenan and Victaulic knew the products were to be used by Plaintiff, which shows that they knew Plaintiff would benefit from their contracts. Finally, allowing Plaintiff to bring these claims is consistent with the alleged contracts and the reasonable expectations of the parties. Thus, Plaintiff has alleged sufficient facts to meet the *Goonewardene* elements.

Defendants argue that Plaintiff must also allege an express indemnity agreement, citing to

Kramer v. Cedu Found., Inc. (1979) 93 Cal.App.3d 1. However, *Kramer* was not a third-party beneficiary case and instead was discussing a claim for indemnity.

Indemnity (C/A 1, 2 and 3), Contribution (C/A 4) and Declaratory Relief (C/A 9 and 10)

As to Defendants' demur to the indemnification, contribution and declaratory relief claims, Plaintiff argues that these claims have not changed since the initial complaint and that Defendants are barred from raising arguments that could have been raised previously. Plaintiff points out that there were several demurrers that this Court sustained and thus, it is too late for Defendants to demur to these causes of action.

Code of Civil Procedure section 430.41(b) states that "[a] party demurring to a pleading that has been amended after a demurrer to an earlier version of the pleading was sustained shall not demur to any portion of the amended complaint… on grounds that could have been raised by demurrer to the earlier version of the complaint… ."

These claims have not changed since the original complaint. There have been three previous demurrers and a motion for judgment on the pleadings in which Defendants could have raised these issues. Yet, Defendants waited until their fifth attack on the pleadings to raise these issues. This is a violation of section 430.41(b) and on that ground that demurrer to these causes of action is overruled.

15. 9:00 AM CASE NUMBER: MSC21-00637
CASE NAME: OSCAR CORONA VS. JOSHUA WARD
***HEARING ON MOTION IN RE: APPROVAL OF PAGA SETTLEMENT AND MOTION FOR ATTORNEY FEES AND COSTS**
FILED BY: CORONA, OSCAR
****TENTATIVE RULING:****

Hearing required.

Plaintiffs Oscar Corona, Favian Gomez, Jose Gonzalez, and Alberto Loya move for approval of the settlement of their PAGA claims against defendants Sausal Corporation, James E. Ward, Leslie L Ward, Joshua L. Ward, and Kevin Hallas. Defendants Robert Ross Hazard and Hazard Concrete, Inc., are not settling.

A. Background of the Case and Terms of Settlement

This is a PAGA case, alleging (as to the settling defendants) a variety of violations of the Labor Code concerning failure to pay for all hours worked, including overtime, failure to provide compliant meal and rest periods, misclassification of workers, and cascading derivative violations. The complaint was filed June 5, 2018. Due to disputes about whether arbitration was compelled, the resolution of the matter was delayed.

The total settlement payment is $139,213.92. This is composed of attorney's fees of $46,213.91(one-third of the settlement), litigation costs not to exceed $5,000, and costs to the settlement administrator of $3,000. The remaining amount ($105,538.13) would be a PAGA penalty, which would be apportioned 75% to the LWDA and 25% to the aggrieved employees.

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. There are an estimated 89 aggrieved employees.

Plaintiff's counsel attests that they engaged in extensive arms-length settlement negotiations, and settled after a session with an experienced mediator. Written discovery was undertaken. Counsel's declaration provides a general discussion of the strengths and weaknesses of the case, including quantification of their value.

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 reasonably could have been alleged in the Action based on the allegations contained in the LWDA Letter and the Operative Complaint[.]" 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 settlement includes a Confidential Individual Settlement Agreement, which releases individual claims by the individual plaintiffs. This raises the issue of whether the individual plaintiffs have "traded" private relief for relief that ought to be given to the aggrieved employees. (Counsel's declaration estimates the value of the plaintiffs' individual claims, but does not indicate how much they were compromised in the settlement.) Counsel offer to submit the agreement for review in camera by the Court. The only method for in camera review in this case is for Plaintiffs to submit an application to seal records under California Rules of Court, Rule 2.550. If counsel wish to submit such an application, the application must comply with all requirements of Rules 2.550 and 2.551, including providing the factual basis for the required findings set forth in Rule 2.550(d). Otherwise, the settlement would have to be added to the public file.

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.

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 $46,213.91.

Plaintiff has conducted a lodestar cross-check. Counsel calculate 268.8 hours by Mr. Rusnak at $535 per hour for a total of $143,808 and 225 hours by Mr. Margain at an hourly rate of $819, for a total of $184,684. The total fees are $328,492.50, far in excess of the amount sought in this settlement. Counsel are also seeking fees in the private settlements, and attest that they "will get a negative multiplier on the aggregate fees from the settlements." (Margain Dec., Par. 64.) Whether the fees for the PAGA case are appropriate can be determined only with judicial review of the private portions of the settlement, as discussed above.

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 $13,795.20, are sought. They are reasonable and are approved.

The administrator's costs of $4,000 are reasonable and are approved.

D. Conclusion

Given that the PAGA claims are being settled along with the individual claims, as the Court noted above, plaintiffs' counsel must submit the private settlements either in the public court file, or through an application to seal records under Rule of Court 2.550.

Hearing required. Counsel are to appear in order to schedule submission of the private settlements and a continued hearing date on this motion.

If the motion ultimately is granted, 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.

16. 9:00 AM CASE NUMBER: MSC22-00343
CASE NAME: JOEL ROBLES VS. GLOBAL SECURITY MANAGEMENT AGENCY INC A CALIFORNIA CORPORATION
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
FILED BY: ROBLES, JOEL
****TENTATIVE RULING:****

Plaintiff Joel Robles moves for preliminary approval of his class action and PAGA settlement with defendant Global Security Management Agency, Inc.

A. Background and Settlement Terms

The original complaint was filed on February 23, 2022, raising class action claims on behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation. The operative complaint is a First Amended Complaint filed on February 24, 2025, which added the PAGA claims.

The settlement would create a gross settlement fund of $750,000. The class representative payment to the plaintiff would be $10,000. Attorney's fees would be $262,500 (35% of the settlement). Litigation costs would not exceed $25,000. The settlement administrator's costs would not exceed $15,000. PAGA penalties would be $115,000, resulting in a payment of $86,250 to the LWDA and $28,750 to plaintiffs. The class size is estimated at 577 individuals. The net amount paid directly to the class members would be about $347,500. The average payment would be about $602.

Payment will be made in two equal installments, one year apart. The parties have submitted a declaration from Richard Sparks, CEO of defendant, explaining their financial situation and why deferred payment is necessary.

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendants during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Checks undelivered or uncashed 180 days after mailing will be voided, and will be transmitted to the State Controller's Office Unclaimed Property fund.

The settlement contains release language covering all claims "that were pled or could have been pled, based on the factual allegations pled in the Operative Complaint[.]"Under recent appellate authority, the 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.)

Informal and formal written discovery was undertaken. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel attest that they have analyzed the value of the case, and that the result achieved in this litigation is fair, adequate, and reasonable. Counsel's declaration includes an estimate of the potential value of the case, broken down by each type of claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced 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."])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (See also

Amaro v. Anaheim Arena Mgmt., LLC, supra, 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, 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 48, 63.)

C. Attorney fees

Plaintiff seeks 35% 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.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative payment of $10,000 for plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

D. Conclusion

The Court finds that there is sufficient evidence that the settlement is fair, reasonable, and adequate to warrant preliminary approval. The motion is granted.

Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

17. 9:00 AM CASE NUMBER: N25-0542
CASE NAME: WANAG TAHATAN-BEY VS. SECRETARY OF VETERANS AFFAIRS
HEARING IN RE: PETITION FOR NUNC PRO TUNC WRIT OF ERROR CORAM NOBIS FOR EQUITABLE RELIEF
FILED BY: TAHATAN-BEY, WANAG
TENTATIVE RULING:
Introduction

Before the Court is Petitioner's petition seeking an order to correct procedural error and fraud on the court in a trial proceeding in case no. PS-22-0501.

The **Court rules that the Petition is denied because of lack of personal jurisdiction due to the Petition not being properly served.**

Procedural Background

On March 17, 2025, Petitioners filed this instant Petition with the Court. On May 27, 2025, Petitioners filed a Request for Judicial Notice and two proofs of service, one proof of service for the Petition and one for the Request for Judicial Notice.

Legal Standard for Proper Service of Summons

Code of Civil Procedure section 410.50, subdivision (a) provides, "Except as otherwise provided by statute, the court in which an action is pending has jurisdiction over a party from the time summons is served on him as provided by Chapter 4 (commencing with Section 413.10). A general appearance by a party is equivalent to personal service of summons on such party." As shall be discussed, fulfilling the statutory requirements of service of process—i.e., service of a summons—is necessary to obtain personal jurisdiction over a party. (*Renoir v. Redstar Corp.* (2004) 123 Cal.App.4th 1145, 1149-50.)

Knowledge by a defendant of a plaintiff's action does not satisfy the requirement of adequate service of a summons and complaint. (*Waller v. Weston* (1899) 125 Cal. 201; *Kuchins v. Hawes* (1990) 226 Cal. App. 3d 535, 540; *Honda Motor Co. v. Superior Court* (1992) 10 Cal.App.4th 1043, 1048; *Kappel v. Bartlett* (1988) 200 Cal. App. 3d 1457, 1466–1467.) When, as here, there is a complete failure to comply with statutory requirements, there can be no substantial compliance with those statutory or due process requirements. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439, fn. 12.)

"The writ statutes are somewhat ambiguous on the issue of the manner of service of the petition. (See CCP §1107.) However, because the petition is the initiating pleading, due process demands that it be served in the same manner as a regular civil summons and complaint. (See CCP §§413.10–417.40.)" (Abbot et al., Cal. Civil Writ Practice (CEB 2024) ¶ 5.83(3).)

Analysis

Petitioners' Service of the Summons and Petition is Defective

" '[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction.' " (*Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544.) "Process" is "a writ or

summons issued in the course of judicial proceedings." (Code Civ. Proc., § 17, subd. (b)(6); see Govt. Code, §§ 22, 26660.) Unless otherwise provided by statute, notice of a claim against a defendant in a civil action is given by service of a summons on the person. (Code Civ. Proc., § 413.10.) As noted, Code of Civil Procedure section 410.50, subdivision (a) provides that except as otherwise provided by statute, the court obtains "jurisdiction over a party from the time summons is served on him. …" (*Renoir v. Redstar Corp.* (2004) 123 Cal.App.4th 1145, 1152.)

Here, Petitioners' filed a Certificate of Service for Petitioners' Writ of Error Coram Nobis on May 27, 2025, purporting to serve Judge Palvir Kaur Shoker and the Office of Veterans Affairs. Attached as Exhibit A to the Certificate of Service is a printout of USPS tracking website. The first two pages seem to indicate as of May 25, 2025, at 8:18 am the Office of Veterans Affairs did not receive the copy of Petitioners' Writ of Error Coram Nobis. The third and fourth pages seem to indicate as of May 25, 2025, at 8:19 am the copy of Petitioners' Writ of Error Coram Nobis was delivered to Palvir Kaur Shoker on May 19, 2025, at 12:12 pm.

This method of delivery is not in accordance with the statutory requirements for proof of service. (See CCP §§ 417.10-417.40 [personal delivery of copy of summons and complaint/writ; leaving copies at person's dwelling or usual place of business].) A summons may be served by any person who is at least 18 years of age and not a party to the action. (CCP §§ 414.10.)

By not properly serving the Summons and Petition, Petitioners failed to take the required steps to obtain personal jurisdiction over Respondents.

Names on the Pleadings

The Court raises an issue concerning who is filing the papers for petitioner. Some of the papers state that they are filed as "Wanag Tahatan-Bey for Kevin Paul Woodruff." This would require that Wanag Tahatan-Bey be an attorney. Others state "Petitioner Wanag Tahatan-Bey d/b/a Kevin Paul Woodruff." The Court believes Wanag Tahatan-Bey and Kevin Paul Woodruff to be the same person and thus it is proper to allow an individual to represent himself. However, the Court understands Kevin Woodruff and Tanya Stutson to be two separate individuals. Therefore, Wanag Tahatan-Bey cannot represent Tanya Stutson in this action because Wanag Tahatan-Bey does not purport to be an attorney and only an attorney can represent another person or entity in a lawsuit. Practicing law without an active license of the State Bar is the unlawful practice of law. (BPC §§6125-6133.) Thus, the pleadings and moving papers must be brought by both Wanag Tahatan-Bey and/or Kevin Paul Woodruff, and Tanya Stutson as individuals to sustain the Petition as to both Kevin Woodruff and Tanya Stutson.

Conclusion

For the reasons analyzed above, Court **rules that the Petition is denied because of lack of personal jurisdiction due to the Petition not being properly served.**

Courtroom Clerk's Calendar

18. 1:30 PM CASE NUMBER: C24-01508
CASE NAME: DAVID PARKS VS. CARL MAST
HEARING IN RE: EVIDENTIARY HEARING SET BY THE COURT AT 04.03.2025 HEARING
FILED BY:
TENTATIVE RULING:

Counsel is requesting a continuance at a later date. Hearing is vacated.