December 19, 2025, Civil Law & Motion Tentative Rulings

1. CU0001224 Erin Dean v. Knight's Paint, Inc.

Plaintiff Erin Dean's motion for cost of proof expenses and fees pursuant to Code of Civil Procedure section 2033.420 is denied.

Under Code of Civil Procedure section 2033.420(a), "[i]f a party fails to admit the genuineness of any document or the truth of any matter when requested to do so ..., and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees." When requested, courts are required to impose such fees unless "(1) [a]n objection to the request was sustained or a response to it was waived ...."; "(2) [t]he admission sought was of no substantial importance[;]" "(3) [t]he party failing to make the admission had reasonable ground to believe that that party would prevail on the matter[;]" or "(4) [t]here was other good reason for the failure to admit. Code Civ. Proc. § 2033.420(b).

Attorney's fees under this statute are known as "cost-of-proof fees." They are intended to encourage efficient trials rather than reward a party for prevailing on a claim. *Gamo v. Merrell* (2025) 113 Cal.App.5th 565, 668. "The primary purpose of requests for admissions is to set at rest triable issues so that they will not have to be tried; they are aimed at expediting trial. The basis for imposing [cost-of-proof fees] is directly related to that purpose.... [They are] designed to reimburse reasonable expenses incurred by a party in proving the truth of a requested admission where the admission sought was 'of substantial importance' such that trial would have been expedited or shortened if the request had been admitted." *Orange County Water Dist. v. The Arnold Engineering Co.* (2018) 31 Cal.App.5th 96, 115 (citations omitted).

A number of factors are critical with respect to recovery of fees.

First, "[t]he trial judge [has] the authority to determine whether the party propounding the admission thereafter proved the truth of the matter which was denied." *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864. "Costs of proof are recoverable only where the moving party actually proves the matters that are the subject of the requests. This means evidence must be introduced." *Grace v. Mansourian* (2015) 240 Cal.App.4th 523, 529–530 (parentheses and citations omitted).

Second, cost-of-proof fees are not recoverable where a response to a request for admission was waived. *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618, 636 ("We agree Wimberly is not entitled to costs associated with the medical care issue, because he made no motion to compel a further response after Derby objected to the request for admission.").

Third, shifting of costs and expenses may be refused if the requested admission was "of no substantial importance" Code Civ. Proc. § 2033.420(b)(2). "[A]s a general rule a request for admission should have at least *some direct relationship* to one of the *central issues* in the case, i.e., an issue which, if not proven, would have *altered the results* in the case." *Brooks v. American Broadcasting Co.* (1986) 179 CA3d 500, 509, 224 CR 838, 843 (emphasis added).

Fourth, "[t]o justify denial of a request, a party must have a '*reasonable* ground' to believe he would prevail on the issue. *Grace v. Mansourian* (2015) 240 Cal.App.4th 523, 532. "Whether a party has a reasonable ground to believe he or she will prevail necessarily requires consideration of all the evidence, both for and against the party's position, known or reasonably available to the party at the time the RFA responses are served." *Orange County Water Dist.,* 31 Cal.App.5th at 118.

The party seeking to avoid sanctions has the burden of showing an exception applies under section 2033.420(b). *Samsky v. State Farm Mutual Automobile Ins. Co.* (2019) 37 Cal.App.5th 517, 523.

Lastly, a party moving for cost of proof sanctions is required to identify the attorney's fees and costs incurred in proving the matters that responding party unreasonably denied. *See In re Tobacco Cases II* (2015) 240 Cal. App. 4th 779, 807-808. The moving party cannot recover costs or fees for proving matters other than the matters covered by the improperly denied requests. *See Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724, 736-737. "The requested amounts must be segregated from costs and fees expended to prove other issues." *Grace v. Mansourian* (2015) 240 Cal.App.4th 523, 529. An accounting is required (*e.g.*, declarations from moving party's counsel) setting forth the hourly fees and time spent to "prove" the specific matters denied, as opposed to time spent on other matters not properly the subject of the section 2033 sanction such as preparation for trial generally or proving other matters at trial of the case. *Garcia,* 28 CA4th at 737.

With this in mind, the Court turns to the request for admissions (RFA) responses at issue.

RFA Nos. 2, 4-5, 7-9

First, the Court assumes, *arguendo,* Plaintiff has proven by sufficient persuasive evidence that she, in fact, proved the truth of each matter which was purportedly denied. Second, the Court assumes, *arguendo,* that if objections were interposed, the responses to the RFAs were not waived. Third, the Court assumes, *arguendo,* that each requested admission was of "substantial importance." That said, Plaintiff has failed to provide any sort of specific accounting for each of these requests so that the Court can reliably determine how much time was spent to prove *each* specific matter which she alleges was improperly denied.

RFA Nos.11-14

First, Plaintiff has failed to prove by sufficient persuasive evidence that she, in fact, proved the truth of the matter which was purportedly denied. No trial transcripts have been provided to establish what was or was not proven at trial and the declaration evidence provided is insufficient to reliably establish what was proven. Second, Defendant objected to the RFAs at issue and Plaintiff did not file any motion to compel. The responses to the RFAs were therefore waived. Third, the requested admissions were "of no substantial importance." These requests for admission did not have some direct relationship to one of the central issues in the case, *i.e.*, an

issue which, if not proven, would have altered the results in the case. Lastly, Plaintiff has failed to provide any sort of accounting so that the Court can reliably determine how much time was spent to prove each specific matter which she alleges was improperly denied.

RFA No. 24
Defendant had a reasonable ground to believe it would prevail on the issue raised. In addition, Plaintiff has failed to provide any sort of accounting so that the Court can reliably determine how much time was spent to prove this specific matter which she alleges was improperly denied.

2. CU0001237 Peter Lindley vs. Regional Emerg. Medical Services Authority, et al.

On its own motion, the Court continues Defendants' Request to Adjudicate Stipulated Legal Issues to January 30, 2026, at 10:00 a.m., in Department 6. The Court appreciates the supplemental briefing submitted by the parties.

3. CU0001661 Deborah Wagner vs. George McKnight et al

Plaintiff's motion to discover police officer personnel records is granted in part as set forth herein. An *in camera* hearing is set for February 20, 2025 at 1:30 p.m., in Department 6. The parties shall meet and confer in advance thereof regarding an appropriate protective order.

Evidence Code section 1043(a) requires that a party seeking disclosure of police officer "personnel records" file what is commonly known as a *Pitchess* motion. *See generally Pitchess v. Superior Court* (1974) 11 Cal.3d 531. "Personnel records" are defined as "primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline." Pen. Code § 832.5(d)(1). The *Pitchess* provisions "take precedence over the general discovery rules outlined in the Code of Civil Procedure." *Davis v. City of Sacramento* (1994) 24 Cal.App.4th 393, 400.

Evidence Code section 1043(b) details what a *Pitchess* motion shall include. "Section 1043 clearly requires a showing of 'good cause' for discovery in two general categories: (1) the 'materiality' of the information or records sought to the "subject matter involved in the pending litigation," and (2) a 'reasonable belief' that the governmental agency has the 'type' of information or records sought to be disclosed." *City of Santa Cruz v. Municipal Court (1989)* 49 Cal.3d 74, 83. Courts have described that as a "relatively low threshold" for discovery, but have also noted that section 1045's protective provisions offset that low threshold. *Id*. at 83–84. Although a declaration in support of a Pitchess motion may be made on "information and belief," it must at least provide a "specific factual scenario" establishing a "plausible factual foundation" to allow the trial court to assess whether the records are material to the subject matter involved in the litigation. *Santa Cruz,* 49 Cal.3d at 85-86; *City of San Jose v. Superior Court* (1998) 67 Cal.App.4th 1135, 1146.

"Once good cause for discovery has been established, section 1045 provides that the court shall then examine the information 'in chambers' in conformity with section 915 (*i.e.*, out of the presence of all persons except the person authorized to claim the privilege and such other persons as he or she is willing to have present), and shall exclude from disclosure several enumerated categories of information." *Santa Cruz,* 49 Cal.3d at 83.

Plaintiff brings the present Pitchess motion seeking documents from the personnel file of Defendant Captain Mike Walsh from the Nevada County Sheriff's Office. Plaintiff contends as follows:

> The FAC alleges that after Plaintiff Deborah Wagner was assigned to provide nursing care at Wayne Brown Correctional Facility ("WBCF") by her employers, Defendants Wellpath Management, Inc. and California Forensic Medical Group, Inc., Ms. Wagner repeatedly reported, inter alia, unsafe conditions for inmates/patients (including the systematic misapplication of medication) and nursing staff, harassment from employees towards her directly, favoritism towards employees based on her supervisor's sexual and romantic interests, and an overall environment of severe and pervasive harassment. (See, generally, Plaintiff's First Amended Complaint for Damages [the "FAC"] at ¶¶ 17, 19, 21-23, 27, 30-31, 33-37, 40, 42, 49-50); Declaration of Karen M. Goodman ¶9). To silence her, Ms. Wagner's supervisor, Defendant George D. McKnight, conspired with Defendant Captain Mike Walsh to illegally terminate Plaintiff from her employment. (Affidavit of Deborah Wagner at ¶5). Without notice, warning, cause, or any justification, Captain Walsh suddenly revoked Ms. Wagner's security clearance to the WCBF facility. (Ibid). Mr. McKnight then used the revocation as a pretext to fire Ms. Wagner; however, the true reason for Ms. Wagner's termination was to try to cover up the appalling conditions at WCBF for both employees and prisoners. (Affidavit of Deborah Wagner at ¶6).

Motion, 5:24-6:10.

Plaintiff requests:

> Any and all DOCUMENTS reflecting WALSH's personnel file with NEVADA COUNTY, including applications, evaluations, contracts, pay changes, job descriptions, employee handbooks, and any DOCUMENTS signed by WALSH." Motion, 5:6-9. However, Plaintiff argues, "Walsh's personnel file may include prior complaints or investigations into Captain Walsh for (1) abuse of authority in revoking or denying security clearances or access without valid cause; (2) dishonesty or falsification of records to justify adverse action; (3) retaliation against employees who reported misconduct, unsafe conditions, or discrimination; (4) gender discrimination or harassment; or (5) collusion with supervisors to target employees for termination.

Motion, 11:16-20.

Plaintiff argues good cause supports the above categories of documents because his personnel file may include prior complaints or investigations into Defendant Walsh for the types of behavior Plaintiff alleges, and are relevant to Plaintiff's theory of the case. In addition, Plaintiff argues that personnel records regarding Defendant Walsh's advancement, appraisal, or discipline are relevant because they may reveal prior allegations or concerns, or that he was rewarded for any retaliatory conduct. In opposition, Defendant argues Plaintiff's requests are overbroad and she has not provided a specific factual scenario justifying each category of complaint requested. The Court agrees, in part, with both parties.

Because the causes of action directed towards Defendant Walsh are for aiding and abetting retaliation and wrongful discharge, there is no good cause for examination by the Court of Walsh's entire personnel file. That said, there is good cause for examination of those portions of the personnel file that potentially contain any of the following: Any prior complaints or investigations into Captain Walsh for (1) abuse of authority in revoking or denying security clearances or access; (2) dishonesty or falsification of records to justify adverse employee action; (3) retaliation against employees who reported misconduct, unsafe conditions, or discrimination; (4) employee harassment; or (5) collusion with supervisors to target employees for termination.

The custodian of records shall present all personnel records that potentially include the noted types of documents for *in camera* review. The court shall conduct the review including consideration of the exclusion factors set forth in Evidence Code section 1045. Records disclosed or discovered "may not be used for any purpose other than a court proceeding pursuant to applicable law." Evid. Code § 1045(e). Moreover, any produced records shall be subject to a protective order.

4. CU0002001 Bruce Lee Allen Construction, Inc. vs. Tobin Dougherty, et al.

Plaintiff Bruce Lee Allen Construction Inc.'s motion to compel discovery responses by defendants is granted; the request for sanctions is denied. Defendants Gilded Springs Partners, LLC and Tobin Dougherty shall provide further verified responses to Form Interrogatories 12.2 and 15.1. Defendants shall serve further responses to Requests for Production Nos. 3-7 reflecting statements of compliance or inability to comply consistent with the requirements of Code of Civil Procedure sections 2031.220 and 2031.230, as well as corresponding documents. All further responses shall be served on Plaintiff within 15 days of notice of the Court's order.

A motion to compel lies where the responses to the interrogatories or request for production are deemed improper by the propounding party. Code Civ. Proc. § 2031.310. A motion to compel further answers must be served within 45 days after the responses in question, or any supplemental responses were served. Code Civ. Proc. § 2031.310(c). The motion to compel must be accompanied by a declaration stating facts showing a "reasonable and good faith attempt" to resolve informally the issues presented by the motion before filing the motion. Code Civ. Proc. §§ 2016.040; 2031.310(b)(2).

On September 9, 2025, Plaintiff filed his motion to compel further responses to Defendants' initial responses served July 30, 2025. Plaintiff sent a meet and confer letter on August 7, 2025, to which he received no response. Plaintiff sent follow-up emails on August 12, 2025, August 13, 2025, August 14, 2025, and August 19, 2025, to which Defendants did not respond. Initially, Defendants failed to file a substantive opposition to the motion. With leave of Court, certain Defendants ultimately filed amended responses.

<u>Form Interrogatories</u>

The answer to each interrogatory must be "as complete and straightforward as the information reasonably available to the responding party permits." Code Civ. Proc. § 2030.220 (a); *Collin v CalPortland Co.* (2014) 228 Cal.App.4th 582, 590. When an interrogatory cannot be answered completely, it must be answered to the extent possible. Code Civ. Proc. § 2030.220 (b). An answer is incomplete if it merely refers to other documents without summarizing them (e.g.,

"See my deposition," or "See the financial statement."). *Deyo v Kilbourne* (1978) 84 Cal.App.3d 771, 783–784. Because the duty to answer extends beyond personal knowledge, where a party lacks personal knowledge sufficient to respond fully, the party must make "a reasonable and good faith effort to obtain the information" from other sources. Code Civ. Proc. § 2030.220(c); *see Sinaiko Healthcare Consulting, Inc. v Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 406.

A motion to compel further responses lies where the responses to the interrogatories are deemed improper by the propounding party, *i.e.*, meritless or overly general objections, evasive or incomplete answers. Code Civ. Proc. § 2030.300. A motion to compel further responses is addressed to the sound discretion of the trial court; the court considers the opposing party's objections; the relationship of the information sought to the issues framed in the pleadings; the likelihood that disclosure will be of practical benefit to the party seeking discovery; and the burden or expense likely to be encountered by the responding party in furnishing the information sought. *Columbia Broadcasting System, Inc. v. Superior Court* (1968) 263 Cal.App.2d 12, 19.

At bar, Defendant Tobin Dougherty has not served amended responses. Defendant had no objections to Form Interrogatories 12.2 and 15.1. As to Form Interrogatory 12.2, Defendants' response contains a list of three witnesses but includes Defendants' contact information rather than the witnesses'. Because the answer is not complete, a further response is warranted. As to Form Interrogatory 15.1, Defendant's response merely refers to other documents without summarizing them, including Defendant's Answer and Defendant's Response to Request for Production of Documents. This response is insufficient. Thus, a further response to both interrogatories is warranted from Defendant Dougherty.

Defendant Gilded Springs Partners, LLC's ("Gilded Springs") served amended responses to the Form Interrogatories at issue. Gilded Springs had no objections to Form Interrogatories 12.2 and 15.1. As to Form Interrogatory 12.2, Gilded Springs has sufficiently updated its response. As to Form Interrogatory 15.1, Defendant Gilded Springs' response merely refers to other documents without summarizing them. Such response is insufficient; a further response is warranted.

Requests for Production of Documents

"The party to whom a demand for inspection ... has been directed shall respond separately to each item or category of item by any of the following: [¶] (1) A statement that the party will comply with the particular demand for inspection ... and any related activities. [¶] (2) A representation that the party lacks the ability to comply with the demand for inspection ... of a particular item or category of item. [¶] (3) An objection to the particular demand ...." Code Civ. Proc. § 2031.210(a).

A response stating the party will comply in whole or in part with a demand shall so state and shall include a statement "that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production." Code Civ. Proc. § 2031.220. "Any documents … produced in response to a demand … shall be identified with the specific request number to which the documents respond." Code Civ. Proc. § 2031.280(a). However, there is no requirement that a

document be Bates labeled, or that a response identify a document with the specific request to which the document applies. *Pollock v. Superior Court* (2023) 93 Cal.App.5th 1348, 1358.

A response stating inability to comply with the demand shall include "[a] representation of inability to comply with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." Code Civ. Proc. § 2031.230. Such a statement must "also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party." Code Civ. Proc. § 2031.230.

"On receipt of a response to an inspection demand, the party demanding an inspection may move for an order compelling further response to the demand if the demanding party deems that [¶] (1) A statement of compliance with the demand is incomplete [¶] (2) A representation of inability to comply is inadequate, incomplete, or evasive [¶] (3) An objection in the response is without merit or too general. Code Civ. Proc. § 2031.310 (b)(3).

At bar, Plaintiff is generally not seeking the production of additional documents by challenging a privilege or other objection to production. He is instead moving the Court for an order compelling Defendants to provide statements of compliance as to their ability to comply in whole or in part or their inability to comply with a given demand with respect to Code of Civil Procedure sections 2031.220 or 2031.230. Defendant Gilded Springs' responses to Requests for Production (RFP) No. 1 indicates an inability to produce documents, but the statement of compliance used is not code compliant. RFP Nos. 2-5 and 7 have no objections and only indicate responsive documents have been fully produced; the statement of compliance is also not code compliant. Therefore, a further statement of compliance is ordered. Code Civ. Proc. § 2031.310(a)(1). Additionally, any documents produced shall identify the specific request number to which they correspond. Code Civ. Proc. § 2031.280(a).

Defendant Gilded Spring's response to RFP No. 6 indicates all responsive documents have been produced except communications with counsel for Defendant. While Defendant apparently withheld documents due to privilege, it does not identify with particularity the document(s) withheld or set fort the extent of the privilege asserted. Code Civ. Proc. § 2031.240(b). Moreover, Defendant fails to "provide sufficient factual information…to evaluate the merits of that claim, including, if necessary, a privilege log." Code Civ. Proc. § 2031.240(c)(1). Therefore, a further code compliant response is ordered.

Defendant Tobin Dougherty's responses to the RFPs only assert an inability to comply with the request, indicating no documents in his possession. As discussed above, these responses are inadequate as they lack a statement of compliance. Code Civ. Proc. § 2031.230.

Sanctions

Defendants ultimately did not oppose Plaintiff's motion and served amended responses. That being the case, given that Plaintiff solely sought sanctions for unsuccessful opposition to a motion to compel under Code of Civ. Proc. § 2023.290(c) (interrogatories) and § 2031.310(h) (requests for production), those sanctions are denied.

5. CU21-085893 Tom Amesbury, et al. vs. Barbara Heger, et al.

Motion to Set Aside Default

The Court, on its own motion, sets aside the default entered on October 3, 2025, against defendant Barbara Heger as Trustee (Trustee). A responsive pleading shall be served and filed within 10 calendar days. Defendant Trustee's motion to set aside the default is denied as moot.

Defendant Trustee requests relief from default entered on October 3, 2025 arguing that she was never served with the First Amended Complaint ("FAC"). Plaintiffs argue Barbara Heger agreed to accept service electronically as both Heger individually and as Trustee; has failed to demonstrate any mistake, surprise, or excusable neglect; and has actively participated in the litigation for years as Trustee. The Court is not persuaded by either side.

On October 3, 2025, Plaintiffs, in fact, requested entry of default on the *original* complaint filed November 4, 2021. The FAC was filed on December 2, 2021 and, by law, superseded the original complaint. *See, e.g., Roberts v. Los Angeles County Bar Assn.* (2003) 105 Cal.App.4th 604, 612 (Generally, '[a]n amended complaint "supersedes the original and furnishes the sole basis for the cause of action. The original complaint is dropped out of the case and ceases to have any effect as a pleading, or as a basis for a judgment. ")(citations omitted). That being the case, the Deputy Clerk, erroneously entered the default on October 3, 2025 *after* the FAC was filed. Accordingly, on its own motion, the Court sets aside the default entered on October 3, 2025.

Motion for Stay of Broker-Related Discovery

Defendant's motion for stay of broker-related discovery pending resolution of motion for summary adjudication is denied.

Defendant Heger moves to stay *all* discovery related to her broker activities pending resolution of her motion for summary adjudication. She argues that "continuing discovery into broker-related issues will subject Defendant to unnecessary burden, and potentially duplicative discovery where a dispositive motion will soon be filed addressing and potentially disposing of those claims." The Court is not persuaded.

"A trial court 'shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.' " *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549–550, *citing* Code Civ. Proc. § 2017.020, subd. (a). "However, … the party opposing discovery has an obligation to supply the basis for this determination." *Ibid.* An " ' objection based upon burden must be sustained by evidence showing the quantum of work required.' " *Ibid.* Heger "had the burden of supplying supporting evidence, but … offered none." *Ibid.* Given this, the [Court has] nothing in the record upon which to base a comparative judgment that any responsive burden would be undue or excessive, relative to the likelihood of admissible evidence being discovered." *Id. at 551.* No good cause has been demonstrated to stay discovery.

6. CU0001207 Amanda Powell vs. Briarpatch Cooperative Of Nevada, Inc., et al.

Appearances are required by counsel for all parties. The matter is before the Court on Plaintiff's motion for final approval of the settlement, and Plaintiff's motion for class counsel attorneys' fees and expenses and service awards. The Court is favorably inclined to grant both motions provided Plaintiff addresses the issues noted below and the outcome of the required fairness hearing under California Rules of Court, Rule 3.769(g).

As part of the Court's evaluation of the fairness of the settlement, the Court notes that the number of class members has decreased from 675 Class Members and 442 Aggrieved Employees at the time of preliminary approval to 711 Settlement Class Members at present, and the Class Period decreased from February 5, 2020 – June 30, 2024 to August 2021 – January 2023. Counsel shall briefly address the reason for this decrease in class members and length of class period. Counsel shall also address how the notice of final judgment will be given to class members. California Rules of Court, Rule 3.771(b). Finally, Counsel is directed to provide the Court with proposed dates for a final status hearing regarding accounting and distribution of the settlement funds. Plaintiff will be required to timely submit its report of compliance before the final status hearing.

Counsel are directed to prepare and submit an order reflecting this tentative ruling, including the other findings contained in Plaintiff's previously submitted proposed order. That order must reflect the agreed-upon date for the final status hearing, which will be determined at the hearing.

Factual Background

On or about February 5, 2024, Plaintiff commenced the present action alleging various claims against Defendants both as an individual and as a class action and a representative action under the Private Attorney General Act ("PAGA"). The Complaint alleges causes of action for all of the following: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code 226(a) (Non-compliant Wage Statements); (8) Violation of California Labor Code 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code §§ 17200 *et seq.*; and (11) Violation of California Labor Code § 2698 *et seq.* (California Labor Code Private Attorneys General Act of 2004). Defendants allegedly: failed to include non-discretionary compensation into the regular rate of pay for purposes of calculating overtime, meal period premiums, and sick pay compensation; failed to provide legally compliant meal and rest periods; failed to pay for all hours worked; and failed to reimburse for necessary business expenses.

Plaintiff now seeks final approval of their settlement agreement in the amount of $982,500.00, which will be subject to deductions for attorneys' fees and costs, class incentive payment,

payment to the Labor and Workforce Development Agency, and payment to the settlement administrator.

Analysis

California Rules of Court, Rule 3.769(a) mandates court approval for the dismissal, compromise, or settlement of a state class action case. The approval procedure has three distinct steps: (1) preliminary settlement; (2) dissemination of notice to class members; and (3) the final settlement approval hearing. The present motion concerns the final step.

1. *Settlement Class Certification*

Code of Civil Procedure section 382 has two minimum requirements to sustain a class action: (1) an "ascertainable" class; and (2) a well-defined "community of interest" in questions of law and fact. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1806; *see also Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.

As to the first element, for a class to be "ascertainable," it must be sufficiently numerous such that it would be impractical to bring them all before the Court. *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. It also requires class members to be readily and easily identifiable. *Archer v. United Rentals, Inc.* (2011) 195 Cal.App.4th 807, 828.

The second element – the existence of a well-defined "community of interest" – embodies three separate factors: (1) predominant common questions of law or fact; (2) the class representative has claims or defenses typical of class members; and (3) the class representative can adequately represent the class. *Richmond*, 29 Cal.3d at 470. The standards for satisfying this standard vary based on whether the class being certified is a settlement class or a litigation class. A settlement class, which is at issue here, is held to a lower standard of scrutiny. *Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859; *Dunk*, 48 Cal.App.4th at 1807.

At bar, the class is comprised of seven hundred eleven (711) individuals defined as "all individuals who are or were employed by Defendants as non-exempt employees in the State of California during the Class Period. Plaintiff was employed by Defendants as a non-exempt employee, from approximately August of 2021 to January of 2023." Motion, 2:16-19. In connection with the motion for preliminary approval, Plaintiff indicated the class contained six hundred seventy-five (675) Class Members and four hundred forty-two (442) Aggrieved Employees, and the Class Period was the "period of time from February 5, 2020, until June 30, 2024". Agreement, ¶¶ 3, 7.

Given the foregoing, the Court finds the proposed class, as previously approved, is ascertainable, sufficiently numerous, and readily identifiable. The Court also finds there is a well-defined "community of interest." Therefore, the Court confirms that this action is properly certified as a class action on behalf of the settlement class.

2. *The Settlement*

    a. *The Legal Standard*

With respect to the settlement, it is "the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. The Court is effectively a "guardian of the class" and has "a fiduciary responsibility … [to safeguard] the rights of the absentee class members when deciding whether to approve a settlement agreement." *Id*. The Court may not give rubber-stamp approval, but must instead "independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished." *Id*. at 130.

b. *Fairness and Reasonableness of the Settlement*

As part of the Court's approval process, the moving party must demonstrate that the settlement is "fair, reasonable and adequate." *Dunk,* 48 Cal.App.4th at 1801. This determination of settlement fairness is ultimately left to the "broad discretion" of the reviewing trial court. *Id*. at 1801-1802; *see also Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234.

In making its assessment, the Court considers the factors outlined in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, including, but not limited to: (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and the likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence (or lack thereof) of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *Id.* at 1803.

At the time of final approval, the Court also assesses whether the PAGA portion of the settlement is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 64-65.

Plaintiff asserts that prior to arriving at the settlement the parties thoroughly investigated the facts relating to the class and PAGA claims and engaged in a review of the related legal principles. Lapuyade Decl. ISO Final Approval, ¶¶ 23-30. Plaintiff contends that an exchange of informal discovery occurred in connection with mediation and that Defendant provided data pertaining to the putative class members, including time, payroll, policy records, data regarding the number of Class Members, workweeks, and average rates of pay. *Ibid.*

Based on the class data provided by Defendant, Plaintiff estimates that Defendant would face potential liability of approximately $3,000,000.00 for the class claims if Plaintiff were to prevail at trial. Lapuyade Decl. ISO Final Approval, ¶ 41. Plaintiff calculated the final Settlement Class of 711 Settlement Class Members who worked a total of 41,665 Compensable Workweeks during the Class Period, but notes analysis for the complete data set showed a higher number of compensable workweeks than estimated by the request for preliminary approval, resulting in a truncation of the class period. Apex Dec., ¶ 15; Lapuyade Decl. ISO Final Approval, ¶ 20.

The Parties engaged in two full days of mediation on November 11, 2024 and December 2, 2024, with mediator Brandon McKelvey, Esq.. The second mediation concluded with a settlement with the assistance of Mr. McKelvey Lapuyade Decl., ISO Final Approval ¶ 31; St. John Decl. ISO Final Approval, ¶ 7.

As to risks, expenses, complexity, liability, and further duration, Plaintiff indicates a belief that Defendants' maximum possible liability exposure of approximately $3 million, excluding PAGA penalties, "represents approximately 33.33% of Defendants' class-wide liability exposure." Lapuyade Decl., ISO Final Approval ¶ 41. Plaintiff acknowledges Defendant may have viable factual and legal defenses to its claims and notes that the proposed settlement amount was arrived at with such considerations in mind. *Id*. at ¶ 46. Plaintiff also acknowledges possible issues related to possible class certification, as well as inevitable post-trial motions and appeals. *Id*. at ¶ 47.

In connection with the fairness determination, the Court also notes that there have not been *any* requests for exclusion, notices of objection, or class count disputes. Apex Decl., ¶¶ 11-12.

For all the foregoing reasons, the Court finds that the settlement is "fair, reasonable, and adequate" within the meaning of *Dunk* and *Kullar*.

3. *Attorney's Fees and Costs*

There are two primary methods for determining whether attorneys' fees are "fair and reasonable" in the context of class action litigation: (1) the percentage method; or (2) the lodestar method. *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506. The former method is most appropriate when the settlement amount is clearly defined. *Id*. at 503-504; *see also Lealao v. Beneficial Cal., Inc*. (2000) 82 Cal.App.4th 19, 49. The trial court also can provide a "lodestar cross-check" to further confirm reasonableness. *Laffitte,* 1 Cal.5th at 503. Ultimately, however, it is left to the trial court's sound discretion as to which method to employ in assessing reasonableness. *Id.* at 506.

Plaintiff's class counsel seeks approval of attorneys' fees in the amount of up to $367,500.00, comprised of $327,500 for attorneys' fees and up to $40,000 for reimbursable litigation costs (approximately one third of the total recovery). Lapuyade Decl. ISO Counsel Award, ¶¶ 7-8, 17. *See e.g., Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 67, fn. 11.

As to the attorney's fees, Counsel indicates that at present approximately 303 hours have been expended by class counsel in this matter. Lapuyade Decl. ISO Counsel Award, ¶¶ 47-50; St. John Decl. ISO Counsel Award, ¶¶ 10-12; Zakay Decl. ISO Counsel Award, ¶ 3. Counsel anticipates an additional 20-30 hours will be necessary to finalize the settlement, including attending the hearing on final settlement approval, administering the settlement, filing post distribution settlement declarations, and drafting an amended judgment. Supporting declarations and detailed summaries of tasks have been filed in support of this request by Attorneys Jean-Claude Lapuyade, Shani O. Zakay, and Brian J. St. John. In applying a lodestar cross-check, counsel declares the lodestar to date is $238,780.00, exclusive of costs, with work remaining, and thus the requested attorneys' fees of $327,500.00 are equal to Class Counsel's lodestar with a multiplier of 1.37. Lapuyade Decl. ISO Counsel Award, ¶¶ 47-52.

Once the lodestar has been calculated, the Court may, as requested, adjust it through use of a multiplier "based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135. Contingent risk alone may justify a lodestar enhancement. *Sonoma Land Trust v. Thompson* (2021) 63 Cal.App.5th 978, 988; *see also Ketchum,* 24 Cal.4th at 1138.

At bar, no adjustment of the fee is requested.

Given the above, the Court finds the hours worked, the rates of compensation, and the proposed lodestar multiplier are all reasonable and supported by the accompanying declarations. As to the requested costs, the amount is less than the amount for which preliminary approval was granted and is adequately supported.

Accordingly, the requests for attorneys' fees and costs are approved as prayed.

4. *Payment to Class Representative*

"[I]t is established that named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottle Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412; *see also Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807. Those incentive payments, however, may not be summarily granted without due regard to the provided evidence; the propriety of such payments is to be assessed on the evidence presented in the competent declarations in support thereof. *See Clark,* 175 Cal.App.4th at 806-807.

Here, proposed class representative, Amanda Powell, has provided an additional declaration with the motion for final approval attesting to her involvement and the work she has performed on the case. Powell Decl. ISO Final Approval, ¶¶ 6, 11, 13. The $10,000 payment requested is reasonable and is granted as prayed.

5. *Class Administrator*

The Court previously authorized an estimated payment of no more than $9,990.00 to the approved settlement administrator, Apex Class Action, LLC ("Apex"). Apex is tasked with sending class notices and generally administering this settlement. The Court is in receipt of a declaration from Apex case manager, Madely Nava, which contains a detailed description of Apex's activities in connection with this administration. *See generally* Apex Declaration. Apex asserts its comprehensive fees and costs for administering the Settlement, both incurred and anticipated, is $9,990.00. Apex Decl., ¶ 19. Class administrator fees are approved in the amount of $9,990.00, subject to Apex filing a detailed breakdown of costs.

6. *PAGA Penalties*

The proposed settlement includes a good faith PAGA Payment of $50,000, which is approximately 5.1% of the Maximum Settlement Fund. Lapuyade Decl. ISO Final Approval, ¶

49. Notice of the settlement and payment was given to the Labor and Workforce Development Agency (LWDA), noting 75% of the payment will be paid to LWDA and 25% distributed to the PAGA Covered Employees. LWDA did not register an objection. *Id*. Therefore, the proposed PAGA payment is approved as prayed.