SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1, Honorable Theodore C. Zayner Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2310

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department19@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

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LAW AND MOTION TENTATIVE RULINGS
DATE: MARCH 13, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV424785	Sagemcom Broadband SAS v. DIVX, LLC, et al.	See Line 1 for tentative ruling.
LINE 2	23CV423999	Rodriguez v. Facility Masters, Inc. (PAGA)	See Line 2 for tentative ruling.
LINE 3	20CV363666	Teyssier v. Diversified Staffing Services Inc. dba Core Staffing Solutions, et al. (Class Action)	See Line 3 for tentative ruling.
LINE 4	20CV363666	Teyssier v. Diversified Staffing Services Inc. dba Core Staffing Solutions, et al. (Class Action)	See Line 3 for tentative ruling.
LINE 5	23CV424785	Sagemcom Broadband SAS v. DIVX, LLC, et al.	Unopposed motion for admission pro hac vice is GRANTED. No appearance necessary. Court will sign proposed order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	23CV424785	Sagemcom Broadband SAS v. DIVX, LLC, et al.	Unopposed motion for admission pro hac vice is GRANTED. No appearance necessary. Court will sign proposed order.
LINE 7	21CV376397	Spencer v. Monsanto Company, et al. (WAS included in JCCP4953; assigned to Alameda)	Off calendar; heard and granted on 2/28/24.
LINE 8	21CV390701	Aguilar v. Seaside Dining Group, Inc.	See Line 8 for tentative ruling.
LINE 9	22CV405663	Pineda v. Super Clean Custodial, LLC, et al. (Class Action/PAGA)	See Line 9 for tentative ruling.
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: Sagemcom Broadband SAS v. DIVX, LLC, et al.
Case No.: 23CV424785

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on March 13, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This action arises out of contracts entered into between plaintiff Sagemcom Broadband SAS ("Plaintiff") and DivX, LLC ("Old DivX"). Plaintiff alleges that in 2007, it entered into a contract with Old DivX to license Old DivX's codec software. (Complaint, ¶ 1.) In 2013, Plaintiff and Old DivX allegedly amended the contract so Plaintiff could purchase a perpetual license to the Old DivX decoder software. (*Id.* at ¶ 2.) Plaintiff subsequently paid the perpetual license fee. (*Ibid.*) Plaintiff alleges that it continued using, and reporting its use of, the perpetually licensed Old DivX software for the next eight years without any issues or disputes. (Complaint, ¶ 4.)

Old DivX eventually sold its assets to a new entity also called DivxX, LLC ("New DivX"). (Complaint, ¶ 4.) On June 30, 2022, New DivX sent Plaintiff a letter asserting that it was a party to the license agreement and demanding an audit of Plaintiff's records based on an audit provision in the license agreement. (*Id.* at ¶ 5.) New DivX also represented that the audit would be conducted by an independent certified public accounting firm. (*Ibid.*) New DivX engaged KPMG, LLP ("KPMG") to conduct the audit. (*Id.* at ¶ 6.) In its introductory letter to Plaintiff, KPMG represented that it would be conducting an audit of Plaintiff. (*Ibid.*)

However, it was later revealed that New DivX's and KPMG's (collectively, "Defendants") representations were false as KPMG was not engaged to serve as an independent auditor, but instead was engaged to conduct a license review as an advisor to New DivX. (Complaint, ¶ 6.) Plaintiff alleges that it relied on Defendants' false representations that an audit was being conducted under the surviving audit term of the license agreement by an independent certified public accounting firm and Plaintiff was induced to participate and

share confidential information about its business and products that it would not have otherwise agreed to share. (*Id.* at ¶¶ 5-7.)

Additionally, KPMG prepared and sent "preliminary findings" to New DivX, over Plaintiff's objections and in violation of a non-disclosure agreement, that were inconsistent with the terms of the license agreement and contained confidential information about Plaintiff's product components. (Complaint, ¶¶ 8-10.) KPMG also prepared a second set of "preliminary findings" that were based on erroneous findings regarding the license agreement, Plaintiff's quarterly reports, and Plaintiff's product components and functionality. (*Id.* at ¶ 12.)

Plaintiff seeks judicial declarations that: (1) the license agreement expired on June 30, 2014, except as to the perpetual license; and (2) Plaintiff does not owe any unpaid royalties or other compensation to New DivX. (Complaint, ¶ 17.) Plaintiff further seeks an injunction ordering: (1) Defendants to return or permanently destroy all information obtained from or through Plaintiff; (2) KPMG to retract its "preliminary findings" or any reports created in connection with its review of Plaintiff; and (3) New DivX to refrain from relying on information obtained from Plaintiff in this action or in any other proceeding. (Complaint, ¶ 17.)

Based on the foregoing allegations, the Complaint filed on October 16, 2023, sets forth causes of action for: (1) Declaratory Judgment; (2) Fraud; (3) Unfair Competition; (4) Breach of Contract; (5) Breach of Contract; (6) Breach of Implied Covenant of Good Faith and Fair Dealing; and (7) Breach of Implied Covenant of Good Faith and Fair Dealing.

Now before the court are: (1) Plaintiff's motion to seal portions of the Complaint and portions of certain exhibits attached thereto; and (2) New DivX's joinder to the motion to seal. The motion to seal is unopposed.

II. LEGAL STANDARD

"The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve

the overriding interest." (Cal. Rules of Court, rule 2.550(d).) Pleadings, in particular, should be open to public inspection "as a general rule," although they may be filed under seal in appropriate circumstances. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 104, fn. 35.)

"Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute overriding interests." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn. 3 (*Providian*).) "[A] binding contractual agreement not to disclose" may suffice. (*Huffy Corp. v. Superior Court* (2003) 112 Cal.App.4th 97, 107.) In addition, confidential matters relating to the business operations of a party may be sealed where public revelation of the information would interfere with the party's ability to effectively compete in the marketplace. (See *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1285–1286 (*Universal*).)

Where some material within a document warrants sealing, but other material does not, the document should be edited or redacted if possible, to accommodate both the moving party's overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court, rule 2.550(d)(4), (5).) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*Providian, supra*, 96 Cal.App.4th at p. 309.)

B. DISCUSSION

In its moving papers, Plaintiff seeks to seal portions of the Complaint, and portions of Exhibits J-M, O-Q, S, T, V, and W to the Complaint, which discuss KPMG's "preliminary findings." Plaintiff asserts that the "preliminary findings," and the information that Plaintiff provided to KPMG, contain highly sensitive and non-public information about Plaintiff's products and operations. Specifically, Plaintiff states that the "preliminary findings" include information about Plaintiff's product shipments and purported product and component functionality. Plaintiff asserts that it does not release its shipped products information publicly in the regular course of business. Plaintiff states that "[a]dditional supporting information describing the commercial sensitivity of the redacted information is available at the request of

the [c]ourt." Plaintiff also contends that sealing of information regarding the "preliminary findings" is warranted because the "preliminary findings" are purportedly inaccurate.

To support its request for sealing, Plaintiff submits a declaration from its counsel Kourtney Mueller Merrill ("Merill"). Merrill declares that Plaintiff provided commercially sensitive and non-public information to KPMG, including "information regarding [Plaintiff] product shipments and purported product and component functionality." (Declaration of Kourtney Mueller Merrill in Support of Motion to File Complaint Under Seal, ¶ 4.) Merrill further declares that Plaintiff "has a strong interest in maintaining the confidentiality of this information, particularly as it relates to its suppliers, customers, competitors, who would obtain an unfair advantage should they have access to this information." (*Id.* at ¶ 5.)

In addition to information regarding KPMG's "preliminary findings," Plaintiff seeks to seal Exhibits C-F to the Complaint, in their entirety, as well as references to those exhibits. Exhibits C-F are the license agreement, and amendments thereto, between Plaintiff and Old DivX. Plaintiff states that it does not believe that all of the terms and conditions of the license agreement satisfy the requirements for sealing, but it is obligated under the terms of the license agreement to keep the documents confidential. Plaintiff states that it cannot disclose the documents without giving the other party prior notice and an opportunity to request a protective order or other appropriate remedy. Plaintiff asks the court to conditionally seal the quotations from and discussions of the parties' agreements pending New DivX's appearance in this case and an opportunity to address the confidentiality of the documents.

In its joinder, New DivX asks the court to seal Exhibits C-F to the Complaint, in their entirety. New DivX asserts that there is good cause to seal the license agreement, and the amendments thereto, because they contain confidential business information, the public disclosure of which would pose competitive harm to New DivX. Specifically, New DivX contends that its pricing strategies are insider knowledge that would give licensees and other competitors a competitive advantage over New DivX. Notably, New DivX expressly states that it does not seek to seal references to, and quotations from, the license agreements and amendments that are set forth in the body of the Complaint. Rather, New DivX only seeks to seal the exhibits themselves.

To support its request for sealing, New DivX submits a declaration from its counsel, TJ Fox ("Fox"). Fox declares that Exhibits C-F to the Complaint contain confidentiality provisions requiring the parties to maintain the agreements in confidence and New DivX considers the agreements to contain sensitive and confidential business information reflecting its licensing strategies and practices. (Declaration of TJ Fox in Support of DIVX, LLC's Notice of Joinder to Sagemcom Broadband SAS's Motion to File Complaint Under Seal, ¶ 6.) Fox further declares that New DivX believes it is probable that it will suffer prejudice and competitive harm if the agreements are publicly disclosed because its licensees and competitors can use this information over New DivX "by understanding pricing terms with [Plaintiff] as a licensee." (*Id.* at ¶ 7.) Notably, Fox's declaration is signed under penalty of perjury, but does not identify the place where it was executed or recite that it was executed "under the laws of the State of California."

At this point in time, the court finds that the parties have not adequately justified the request for sealing. With respect to Plaintiff's request to seal portions of the Complaint, and portions of Exhibits J-M, O-Q, S, T, V, and W, which discuss KPMG's "preliminary findings," the evidence presented by Plaintiff merely demonstrates that information regarding Plaintiff's product shipments and product and component functionality is confidential business information that should be sealed. However, much of the material redacted by Plaintiff does not discuss Plaintiff's product shipments and/or product and component functionality. For example, Plaintiff seeks to seal portions of paragraphs 64 and 65 of the Complaint, which discuss in general terms additional information demanded by, and provided to, KPMG. None of the redacted portions of paragraphs 64 and 65 actually reveal information about product shipments or product and component functionality. Thus, Plaintiff's request for sealing portions of the Complaint, and portions of Exhibits J-M, O-Q, S, T, V, and W to the Complaint, is not narrowly tailored.

Moreover, Plaintiff does not cite any legal authority, and the court is aware of none, providing that information—such as the "preliminary findings"—may be sealed because it is purportedly inaccurate.

Prior to the continued hearing, Plaintiff shall submit a supplemental declaration setting forth in greater detail the factual basis for Plaintiff's claim that all of the information redacted in the Complaint and the subject exhibits constitutes confidential business information warranting sealing. The supplemental declaration must address all of the material redacted from the Complaint and the subject exhibits . Alternatively, Plaintiff must amend its request for sealing so that it is narrowly tailored to information regarding Plaintiff's product shipments and product and component functionality.

Turning to New DivX's request to seal Exhibits C-F to the Complaint, the court finds that New DivX has not presented any admissible evidence supporting its request for sealing. As noted above, Fox's declaration does not identify the place where it was executed or recite that it was executed "under the laws of the State of California." Consequently, Fox's declaration is inadmissible. (See *Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 941 ["Although not mentioned in the SLAPP Act, the Code of Civil Procedure also allows a court to consider, in lieu of an affidavit, certain written declarations. To qualify as an alternative to an affidavit, a declaration must be signed and recite that the person making it certifies it to be true under penalty of perjury. The document must reflect the date and place of execution, if signed in California, or recite that it is executed 'under the laws of the State of California.' [Citations.]"].)

Moreover, even if Fox's declaration was admissible, at best it demonstrates that information regarding pricing terms with Plaintiff is confidential business information that should be sealed. However, New DivX's request for sealing is not narrowly tailored to pricing terms, but seeks to seal the agreement, and amendments thereto, as a whole. No evidence has been presented showing New DivX will be harmed if any of the agreements' nonfinancial terms are made public. Thus, the request for sealing is not narrowly tailored. (See *Universal, supra,* 110 Cal.App.4th at p. 1284.)

Furthermore, New DivX has expressly stated that it does not seek to seal references to, and quotations from, the license agreements and amendments that are set forth in the body of the Complaint. To the extent New DivX consents to the disclosure of the contents of the license agreement, and the amendments thereto, in the actual allegations the Complaint, any

confidentiality interests identified by New DivX would be outweighed by the voluntary disclosure of the same information in the public portions of the Complaint. (See *Universal, supra,* 110 Cal.App.4th at p. 1286.)

Prior to the continued hearing, New DivX shall submit a supplemental, admissible declaration setting forth in greater detail the factual basis for New DivX's claim that the entirety of Exhibits C-F to the Complaint constitutes confidential business information warranting sealing. The supplemental declaration must address all of the material contained in the subject exhibits. Alternatively, New DivX must amend its request for sealing so that it is narrowly tailored to information regarding the price terms in the agreements with Plaintiff.

C. CONCLUSION

Accordingly, the motion to seal is CONTINUED to April 24, 2024, at 1:30 p.m. in Department 19. The parties shall file supplemental declarations with the additional information requested by the court no later than April 10, 2024. No additional filings are permitted.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 2

Case Name: Rodriguez v. Facility Masters, Inc. (PAGA)
Case No.: 23CV423999

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on March 13, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

II. INTRODUCTION

This representative action arises out of alleged wage and hour violations. Plaintiff Iris Rodriguez ("Plaintiff") filed a Complaint on October 9, 2023, which set forth a single cause of action for Civil Penalties Under the Private Attorneys General Act ("PAGA"). Plaintiff alleges that defendant Facility Masters, Inc. ("Defendant") had an unlawful rounding policy, failed to compensate employees for "off the clock" time, failed to compensate employees when they worked through meal periods, failed to accurately calculate employees' regular rate of pay, failed to provide employees with accurate and complete itemized wage statements, failed to keep accurate records, failed to pay all wages due upon termination, and failed to reimburse employees for necessary business expenses. (Complaint, ¶¶ 9-15.)

The parties have reached a settlement of the PAGA claim. Plaintiff now moves for approval of the PAGA settlement. The motion is unopposed.

III. LEGAL STANDARD

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.) 75 percent of any penalties recovered go to the Labor and Workforce Development Agency ("LWDA"), leaving the remaining 25 percent for the employees. (*Ibid*.) PAGA is intended "to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id*. at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699, subd. (l)(2).) The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) The proposed settlement must be submitted to the LWDA at the same time it is submitted to the court. (*Ibid*.)

> As discussed by one court:
> PAGA does not establish a clear standard for evaluating PAGA settlements.
> …
> Accordingly, certain courts have been willing to approve PAGA settlements only if (1) the statutory requirements set forth by PAGA have been satisfied, and (2) the settlement agreement is fair, reasonable, and adequate in view of PAGA's public policy goals.

(*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061 at *2.)

As part of this analysis, these courts have evaluated proposed PAGA settlements under the relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel v. Nike Retail Services, Inc.*, *supra*, 2019 WL 2029061 at *2.) "Of the *Hanlon* factors, the following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and views of counsel. (*Ibid*.)

"[W]hen a PAGA claim is settled, the relief provided … [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …." (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at *13.) The settlement must be reasonable in light of the potential verdict value. (See *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

IV. DISCUSSION

The proposed settlement has been made with regard to the following aggrieved employees: "a non-exempt California employee who worked for [Defendant] during the PAGA Period." (Declaration of Harout Messrelian in Support of Plaintiff's Motion for Approval of PAGA Settlement ("Messrelian Dec."), Ex. 1 ("Settlement Agreement"), ¶ 1.4.) The PAGA Period is defined as the period from December 1, 2021 to August 24, 2023. (Settlement Agreement, ¶ 1.19.)

Pursuant to the terms of the settlement, Defendant will pay a non-reversionary, maximum settlement amount of $220,000. (Settlement Agreement, ¶¶ 1.10, 3.1.) This amount includes attorney fees in the amount of $77,000 (35 percent of the gross settlement amount), litigation costs up to $10,000, and settlement administration costs not to exceed $3,500. (Settlement Agreement, ¶¶ 1.3, 1.10, 1.15, 1.17, 3.2.) Of the remaining net settlement amount (estimated to be $1,29,500), 75 percent will be paid to the LWDA and 25 percent will be distributed to aggrieved employees based on the pro rata number of pay periods worked by each aggrieved employee during the PAGA Period. (Settlement Agreement, ¶¶ 1.11, 1.14, 1.15, 1.22, 3.2.) Funds from checks that are not cashed within 180 days from the date of mailing will be sent to the California Controller's Unclaimed Property Fund in the names of the aggrieved employees to whom the checks were issued. (Settlement Agreement, ¶ 4.4.)

In exchange for the settlement, the aggrieved employees agree to release Defendant, and related persons and entities, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Complaint and the PAGA notice letter. (Settlement Agreement, ¶¶ 1.25, 1.26, 5.2.) Plaintiff also agrees to a general release. (Settlement Agreement, ¶ 5.1.)

Plaintiff contends the PAGA settlement is fair, reasonable, and adequate. Plaintiff indicates that the settlement resolves PAGA claims on behalf of approximately 219 aggrieved employees who collectively worked 7,200 pay periods during the PAGA Period. (Messrelian Dec., ¶ 16.) Plaintiff conducted informal discovery, and received and reviewed policy documents relating to aggrieved employees' employment, Plaintiff's personnel file, and sampling of 20 percent of aggrieved employees' time and wage records within the PAGA

Period. (*Id.* at ¶ 15.) Plaintiff determined that Defendant's maximum potential exposure for the PAGA claim is $4,429,500. (*Id.* at ¶¶ 16-24.) The parties participated in mediation with JJ Johnston, Esq. and reached a settlement agreement thereafter. (*Id.* at ¶ 8.) The average estimated individual PAGA payment for each aggrieved employee is approximately $148.60. (*Id.* at ¶ 26.)

The settlement represents approximately 4.9 percent of the maximum potential value of Plaintiff's PAGA claim. The proposed settlement amount is within the general range (albeit on the very low end) of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc*. (E.D.Ca|. Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201, at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

Overall, the court finds the settlement is fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co*. (2004) 118 Cal.App.4th 123, 127-128; see also Lab. Code § 2699(g) ["Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorneys' fees and costs."].) Plaintiff's counsel seeks attorney fees of $77,000 (35 percent of the maximum settlement fund). Plaintiff's counsel provides evidence demonstrating a lodestar of $32,575. (Messrelian Dec., ¶ 33.) This results in a multiplier of 2.364.

Here, the percentage of the settlement sought by counsel is higher than the 33.33 percent typically awarded in wage and hour cases. Moreover, to reach the requested fee award, a significant multiplier is required. The court finds no reason to award counsel in this matter more than the typical one-third of the common fund considering the relevant factors. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [in order to reflect the fair market value of attorney services, lodestar may be adjusted with a multiplier based on factors including the extent to which the nature of the litigation precluded other employment by the attorneys and the contingent nature of the fee award].) Notably, the recovery achieved for the class is modest and not an unusually good result. Consequently, the court approves attorney fees in the

amount of $73,333.33 (1/3 of the gross settlement amount). The unapproved portion of the fee request shall become part of the net settlement to be distributed to the LWDA and aggrieved employees.

Plaintiff's counsel requests litigation costs in the total amount of $9,329.71 and provides evidence of incurred costs in that amount. (Messrelian Dec., ¶ 34 & Ex. 6.) Consequently, the court finds costs in the amount of $9,329.71 to be reasonable and approves that amount.

Lastly, Plaintiff's counsel requests up to $4,250 for the claims administration fee. However, the settlement agreement only provides for settlement administration costs up to $3,500. Additionally, the declaration from the claims administrator only supports an award of settlement administration costs in the amount of $3,500. (Declaration of Lisa Mullins in Support of Plaintiff's Motion for Approval of PAGA Settlement, ¶ 7.) Thus, the settlement administration costs are approved in the lesser amount of $3,500.

Accordingly, the motion to approve PAGA settlement is GRANTED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Lines 3 – 4

Case Name: Teyssier v. Diversified Staffing Services Inc. dba Core Staffing Solutions, et al. (Class Action)
Case No.: 20CV363666

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on March 13, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

V. INTRODUCTION

This is a putative class action arising out of various alleged wage and hour violations Plaintiff Pedro Castillo Teyssier's ("Plaintiff") complaint, filed on February 18, 2020, sets forth the following causes of action: (1) Failure to Pay All Hours Worked; (2) Failure to Pay All Overtime Hours; (3) Meal Period Violations; (4) Rest Period Violations; (5) Failure to Reimburse Business Expenses; (6) Wage Statement Violations; (7) Waiting Time Penalties; (8) Private Attorney General Act; and (9) Unfair Competition in Violation of Cal. Business and Professions Code § 17200, et seq.

On April 22, 2022, Plaintiff served a deposition notice for defendant Marquez Brothers International, Inc.'s ("MBI") person most knowledge ("PMK"). Subsequently, MBI served an objection to the deposition notice.

On August 17, 2022, Plaintiff served an amended deposition notice, which narrowed the subject of examination to two categories: (1) MBI's business relationship with defendant Diversified Staffing Service, Inc. ("Diversified")—specifically, information related to the business arrangement between the two entities whereby Diversified provided employees to MBI; and (2) contractual agreements between MBI and Diversified regarding the provision of employees to MBI. Subsequently, MBI served an objection to the amended deposition notice.

Thereafter, MBI produced a PMK witness—Rene Acevedo ("Acevedo")—on two occasions for deposition. However, Plaintiff asserted that the witness lacked sufficient knowledge to testify adequately as to both categories of information. Additionally, Plaintiff asserted that MBI's counsel inappropriately made repeated objections, instructed the witness not to answer, and coached the witness during Acevedo's second deposition,

Plaintiff and MBI participated in informal discovery conferences ("IDC") regarding the deposition of MBI's PMK on November 4, 2022, May 19, 2023, and November 30, 2023.

Following the November 30, 2023 IDC, the parties filed a Joint Meet and Confer Declaration, stating that in order to resolve issues related to the discovery dispute: MBI offered to produce the supervisor of the prior PMK; the parties agreed that the deposition would be noticed in an individual capacity to address prior objections that questions posed to the PMK witness fell outside the scope of the designation categories; and the parties agreed the deposition would take place in February 2024. The parties further stated that "[g]iven the successful meet and confer discussions," the parties would filed a joint stipulation to change the current briefing schedule for discovery motions "in the hopes that further motion practice will not be necessary."

On January 12, 2024, the court entered the Joint Stipulation to Change Briefing Schedule.

On February 13, 2024, MBI produced and Plaintiff took the deposition of MBI's new PMK, Hannia Parrales ("Parrales").

Now before the court are: (1) Plaintiff's motion pursuant to Code of Civil Procedure section 2025.450 to compel MBI to produce a suitable PMK for deposition and for an award of monetary sanctions; and (2) Plaintiff's motion pursuant to Code of Civil Procedure section 2025.420 for a protective order excluding MBI's counsel, Yvonne Arvanits Fossati, from participating in the deposition of MBI's PMK and for an award of monetary sanctions. MBI opposes both motions.

VI. MOTION TO COMPEL PRODUCTION OF SUITABLE PMK

A. LEGAL STANDARD

Code of Civil Procedure section 2025.450, subdivision (a) provides that if, after service of a deposition notice, a party to the action without having served a valid objection fails to appear for examination or to proceed with it, the party giving the notice may move for an order compelling the deponent's attendance and testimony. (See Code Civ. Proc., § 2025.450, subd. (a).) The moving party is not required to demonstrate good cause for an order compelling a party to attend a deposition and provide testimony in accordance with a deposition notice. (See

Code Civ. Proc., § 2025.450, subd. (b)(1).) Thus, the moving party need only show that he or she served the responding party with the deposition notice and that the party failed to appear or proceed. (See *Leko v. Cornerstone Bldg. Inspection Service* (2001) 86 Cal.App.4th 1109, 1124.)

B. DISCUSSION

In his moving papers, Plaintiff argues that the court should compel MBI to produce a more appropriate PMK because Acevedo testified that he had not read the contract between MBI and Diversified, the contract did not affect his day-to-day duties, and he did not know if there was any other contract that affected the business relationship between MBI and Diversified.

In opposition, MBI argues that the motion is procedurally deficient due to Plaintiff's failure to adequately meet and confer, particularly after the deposition of Parrales. MBI further argues that the motion is moot given the recent deposition of Parrales.

In reply, Plaintiff asserts that he was not required to engage in further meet and confer efforts following Parrales' deposition given the parties' previous efforts. Plaintiff also contends that Parrales was an inadequate PMK witness.

Here, MBI has neither failed to produce a PMK witness for deposition nor has the OMK witness refused to testify. Rather, MBI produced Acevedo on two occasions and, most recently, MBI produced Parrales when Acevedo's testimony was insufficient. The sole ground for the instant motion raised in Plaintiff's moving papers is that Acevedo is not a suitable PMK. However, MBI subsequently produced Parrales for deposition. Now, for the first time in reply, Plaintiff contends that Parrales is also an inadequate PMK witness. However, Plaintiff did not, and in fact could not, meet and confer with MBI regarding Parrales' suitability prior to filing the instant motion. Similarly, Plaintiff did not request or participate in an IDC regarding Parrales' testimony as required by the Santa Clara Complex Civil Guidelines, Section VI.2.

In light of the foregoing, the court finds that the motion to compel a suitable PMK other than Acevedo is moot and Plaintiff failed to adequately meet and confer to the extent he seeks to compel the production of a PMK other than Parrales.

Finally, Plaintiff's request for an award of monetary sanctions in connection with the instant motion is not code-compliant. Plaintiff's notice of motion does not state that any type of sanctions are being sought in connection with the instant motion or identify the person against whom sanctions are sought. (See Code Civ. Proc., § 2023.040 ["A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. Thus, Plaintiff's request for an award of monetary sanctions is fatally defective.

Accordingly, the motion to compel MBI to produce a suitable PMK is DENIED.

VII. MOTION FOR PROTECTIVE ORDER

A. LEGAL STANDARD

Code Civil Procedure section 2025.420 provides that "[b]efore, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order." (Code Civ. Proc., § 2025.420, subd. (a).) Upon the filing of a motion for protective order, "[t]he court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense," including an order that the deposition be taken on certain specified terms and conditions. (Code Civ. Proc., § 2025.420, subd. (b)(5).) The party moving for a protective order bears the burden of demonstrating good cause for the order by explaining and justifying its objections. (See *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255, citing *Goodman v. Citizens Life & Cas. Ins. Co.* (1967) 253 Cal.App.2d 807, 819.)

B. DISCUSSION

In his moving papers, Plaintiff argues that the court should enter the requested protective order because MBI's counsel engaged in disruptive conduct (i.e., speaking objections, instructing the witness not to answer, coaching the witness, and instructing Plaintiff's counsel) during Acevedo's second deposition.

In opposition, MBI argues that the motion is procedurally deficient due to Plaintiff's failure to adequately meet and confer, particularly after the deposition of Parrales. MBI further argues that the motion is moot given the recent deposition of Parrales.

In reply, Plaintiff does not address the conduct of MBI's counsel during Parrales' deposition or otherwise explain whether her exclusion from the PMK deposition remains necessary.

Here, the sole ground for the instant motion raised in Plaintiff's moving papers was MBI's conduct during Acevedo's second deposition. However, MBI subsequently produced Parrales for deposition. Plaintiff has not argued or otherwise shown that MBI's counsel engaged in any objectionable conduct during the most recent PMK deposition. Moreover, Plaintiff did not, and in fact could not, meet and confer with MBI regarding its counsel's participation in Parrales' deposition or the future deposition of some other PMK witness. Plaintiff has not established that the participation of MBI's counsel in future PMK deposition poses an unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. Consequently, the motion lacks merit.

Finally, Plaintiff's request for an award of monetary sanctions in connection with the instant motion is not code-compliant. Plaintiff's notice of motion does not state that any type of sanctions are being sought in connection with the instant motion or identify the person against whom sanctions are sought. (See Code Civ. Proc., § 2023.040 ["A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. Thus, Plaintiff's request for an award of monetary sanctions is fatally defective.

Accordingly, the motion for a protective order is DENIED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 4

Case Name: Teyssier v. Diversified Staffing Services Inc. dba Core Staffing Solutions, et al. (Class Action)
Case No.: 20CV363666

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Calendar Line 5

Case Name:
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Case Name:
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Calendar Line 8

Case Name: Aguilar v. Seaside Dining Group, Inc.
Case No.: 21CV390701

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on March 13, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VIII. INTRODUCTION

This is a representative action arising out of various alleged wage and hour violations. The Complaint, filed by plaintiff Norma Aguilar ("Plaintiff") on November 22, 2021, sets forth a single cause of action for Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq. ("PAGA").

The parties reached a settlement of the PAGA claim.

Plaintiff moved for approval of the PAGA settlement. The motion was unopposed.

On February 7, 2024, the court continued the motion for approval of the PAGA settlement to March 13, 2024. The court explained that it had multiple concerns regarding the fairness of the settlement. First, the list of "Released Parties" (as defined in the settlement agreement) was not exhaustive. Second, the proposed settlement amount was below the general range of percentage recoveries that California courts have found to be reasonable. Third, no declaration was provided from the settlement administrator justifying the request for settlement administration costs. The court directed Plaintiff to file supplemental declarations with the additional information requested by the court no later than February 26, 2024.

On February 26, 2024, Plaintiff filed supplemental declarations in support of her motion.

Now before the court is Plaintiff's motion for approval of the PAGA settlement.

IX. LEGAL STANDARD

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.) 75 percent of any penalties recovered go to the Labor and Workforce Development Agency ("LWDA"), leaving

the remaining 25 percent for the employees. (*Ibid*.) PAGA is intended "to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id*. at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

A superior court must review and approve any PAGA settlement. (Lab. Code, § 2699, subd. (l)(2).) The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) The proposed settlement must be submitted to the LWDA at the same time it is submitted to the court. (*Ibid*.)

> As discussed by one court:
> PAGA does not establish a clear standard for evaluating PAGA settlements.
> …
> Accordingly, certain courts have been willing to approve PAGA settlements only if (1) the statutory requirements set forth by PAGA have been satisfied, and (2) the settlement agreement is fair, reasonable, and adequate in view of PAGA's public policy goals.

(*Patel v. Nike Retail Services, Inc.* (N.D. Cal. 2019) 2019 WL 2029061 at *2.)

As part of this analysis, these courts have evaluated proposed PAGA settlements under the relevant factors from *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. (*Patel v. Nike Retail Services, Inc.*, *supra*, 2019 WL 2029061 at *2.) "Of the *Hanlon* factors, the following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and views of counsel. (*Ibid*.)

"[W]hen a PAGA claim is settled, the relief provided … [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …." (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at *13.) The settlement must be reasonable in light of the potential verdict value. (See *O'Connor v. Uber Technologies, Inc*. (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135 [rejecting settlement of less than one percent of the potential verdict].) But a

permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc*. (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

X. DISCUSSION

The proposed settlement has been made with regard to the following aggrieved employees: "all persons who, during the Representative Period, have previously been or currently are employed in California by Defendant [Seaside Dining Group, Inc. ('Defendant')], as a non-exempt employee." (Declaration of Raul Perez in Support of Motion for Court Approval of the Parties' PAGA Settlement ("Perez Dec."), Ex. 1 ("Settlement Agreement"), ¶ 2.) The "Representative Period" is defined as the period of time from September 15, 2020 through February 26, 2023. (Settlement Agreement, ¶ 18.)

Pursuant to the terms of the settlement, Defendant will pay a non-reversionary, maximum settlement amount of $775,000. (Settlement Agreement, ¶¶ 11, 48.) This amount includes attorney fees in the amount of $258,333.33 (1/3 of the maximum settlement amount), litigation costs not to exceed $25,000, a service award up to $10,000 for Plaintiff, reasonable settlement administration costs (estimated to be $10,000), and other unspecified fees and expenses. (Settlement Agreement, ¶¶ 13, 15, 16, 19, 21, 49.) Of the remaining net settlement amount, 75 percent will be paid to the LWDA and 25 percent will be distributed to aggrieved employees based on the pro rata number of pay periods worked by each aggrieved employee during the Representative Period. (Settlement Agreement, ¶¶ 4, 5, 8, 10, 13, 17, 18, 46, 49.) Funds from checks that are not cashed within 180 days from the date of mailing will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law. (Settlement Agreement, ¶¶ 42, 43.)

> In exchange for the settlement, the aggrieved employees agree to release Released Parties and the State of California from claims for civil penalties pursuant to PAGA based upon all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and matters contained in the Action, and/or the LWDA Exhaustion Letter, including all of the following claims for relief: (i) failure to pay all regular wages, minimum wages and overtime wages due (Lab. Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii) failure to pay split shift premiums (IWC Wage Order No. I-15(4)); (iii) failure to provide one day's rest in seven (Lab. Code § 552); (iv) failure to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (v) failure to provide compliant rest breaks (Lab. Code § 226.7);

> (vi) failure to timely pay wages during employment (Lab. Code §§ 204 & 210); (vii) failure to provide complete, accurate wage statements (Lab. Code § 226); (viii) failure to maintain accurate employment and payroll records (Lab. Code §§ 1174 & 1174.5); (ix) failure to pay wages timely at time of termination or resignation (Lab. Code §§ 201-203); (x) failure to indemnify all necessary business expenses (Lab. Code §§ 2800, et seq.); and (xi) any claim for costs and attorney's and expenses arising out of the foregoing claims (collectively, the "PAGA Released Claims"). PAGA Released Claims for Aggrieved Employees who worked for Defendant in California during the Representative Period shall have their claims released during the Representative Period.

(Settlement Agreement, ¶ 53.) "Released Parties includes Defendant and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers." (Settlement Agreement, ¶ 54.)

Plaintiff also agrees to a general release. (Settlement Agreement, ¶¶ 51, 52.)

Plaintiff contends the PAGA settlement is fair, reasonable, and adequate. Plaintiff indicates that the settlement resolves PAGA claims on behalf of 2,300 aggrieved employees who collectively worked 42,188 pay periods during the Representative Period. Prior to mediation, Plaintiff's counsel conducted several interviews with Plaintiff, reviewed Plaintiff's employment records, and analyzed and reviewed employee demographic data, human resource documents, labor policies, time records, and payroll data. The parties participated in a full-day mediation with Louis Marlin, Esq. on December 20, 2022, and reached a settlement. The average estimated individual settlement payment is $52.63. Defendant's maximum potential exposure for the PAGA claim is $24,016,100. Plaintiff's counsel provides a breakdown of the potential exposure based on the underlying Labor Code violations. Plaintiff's counsel generally explains that the value of the claims was discounted due to the strength of Defendant's defenses on the merits, the risk that the court would exercise its discretion to significantly reduce any PAGA penalties available, the chance that a favorable verdict could be reversed on appeal, and the difficulties attendant to collecting on a judgment. The settlement is approximately 3.2 percent of the maximum potential value of the PAGA claim.

The court continues to have multiple concerns regarding the fairness of the settlement. First, as noted in the minute order dated February 7, 2024, the term "Released Parties" as defined in the settlement agreement is overbroad. The settlement agreement provides that

"Released Parties includes Defendant and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers." (Settlement Agreement, ¶ 54.) Thus, as currently drafted, the list of persons and entities that are included in the term "Released Parties" is not exhaustive. No other definition is provided for the term "Released Parties." Consequently, that court cannot determine with certainty who is, and is not, a released party under the settlement agreement.

Notably, Plaintiff has not filed any supplemental declaration addressing this issue. There is no evidence in the record that the parties met and conferred regarding the scope of the term "Released Parties" as directed by the court or that they amended the settlement agreement to cure the overbreadth. Consequently, this issue alone prevents approval of the settlement agreement at this time.

The court will give Plaintiff one more chance to address and cure this defect. Prior to the continued hearing, the parties are directed to meet and confer to determine whether they can amend the definition of the term "Released Parties" to cure the overbreadth. Plaintiff shall file a supplemental declaration addressing what steps, if any, have been taken to cure the overbreadth.

Second, as noted in the minute order dated February 7, 2024, the proposed settlement amount is below the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc*. (E.D.Ca|. Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201 (*Cavazos*), at *41-42, 46-47 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

Although Plaintiff generally highlights the risks of continued litigation and trial court's ability to reduce PAGA penalties, Plaintiff does not adequately explain why this warrants such a steep discount of the PAGA claims. (See *O'Connor v. Uber Techs., Inc*. (N.D.Cal. 2016) 201 F. Supp. 3d 1110, 1133- [holding that the PAGA settlement was not fair and adequate when the plaintiffs sought to settle a PAGA claim for $1 million, despite conceding that the PAGA claim could potentially result in penalties over $1 billion (i.e., settling the PAGA claim for 0.1% of

its estimated full worth; a 99.9 percent reduction in the potential maximum value of the claim)].)

Plaintiff cites to *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (*Carrington*) and *Fleming v. Covidien, Inc.* (C.D.Cal. Aug. 12, 2011, No. ED CV10-01487 RGK (OPx)) 2011 U.S.Dist.LEXIS 154590 (*Fleming*) to support her position that the settlement is reasonable. But in *Carrington*, the appellate court affirmed the trial court's grant of 10 percent of the potential PAGA penalties when the trial court found that "imposing the maximum penalty would be unjust, arbitrary, and oppressive based on [the defendant's] 'good faith attempts' to comply with meal break obligations" and because "the violations were minimal." (*Carrington, supra*, 30 Cal.App.5th at pp. 507,508, 517, 529; see *Cavazos, supra*, 2022 U.S.Dist.LEXIS 30201, at *46 [describing the result in *Carrington*].) Similarly, in *Fleming*, the trial court awarded 17.8 percent of the potential PAGA penalties in light of the fact that the aggrieved employees suffered no injury due to the erroneous wage statements, the aggrieved employees made no complaint of the errors or omissions contained therein prior to filing suit, the defendants were not aware that the wage statements violated the law, and the defendants took prompt steps to correct all violations once notified. (*Fleming, supra*, 2011 U.S.Dist.LEXIS 154590, at *1-2 & 8-9.)

Here, Plaintiff has not presented any evidence regarding whether the aggrieved employees suffered any harm as a result of the alleged violations, Defendant's knowledge of the alleged violations prior to the action being filed, and whether Defendant made good faith attempts to comply with the law.

In the minute order dated February 7, 2024, the court directed Plaintiff to submit a supplemental declaration explaining in greater detail the factual basis for the discount applied to the PAGA claim and addressing whether the aggrieved employees suffered any harm as a result of the alleged violations, Defendant's knowledge of the alleged violations prior to the action being filed, and whether Defendant made good faith attempts to comply with the law. Plaintiff has not done so.

The court will give Plaintiff one more chance to address this defect. Prior to the continued hearing, Plaintiff shall file a supplemental declaration explaining in greater detail the

factual basis for the discount applied to the PAGA claim and addressing whether the aggrieved employees suffered any harm as a result of the alleged violations, Defendant's knowledge of the alleged violations prior to the action being filed, and whether Defendant made good faith attempts to comply with the law. Notably, without further information justifying the significant reduction of the value of the claims, the court is not inclined to approve the PAGA settlement.

As part of the settlement, Plaintiff seeks a service award in the amount of $10,000. Although service awards are common in class actions, there is less authority regarding the propriety of service awards in PAGA cases. Nevertheless, a PAGA case is a representative action like a class action and it has been recognized that an individual's willingness to act as a private attorney general may merit a service award. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 959.) Plaintiff has submitted a declaration detailing her participation in the action. Plaintiff declares that she spent approximately 71.5 hours on this case, including discussing the case with counsel, reviewing the complaint, gathering facts and documents for counsel, preparing and being available for mediation, and reviewing settlement documents. (Declaration of Norma Aguilar in Support of Motion for Court Approval of the Parties' PAGA Settlement, ¶¶ 4-13.) Plaintiff acted as representative for the aggrieved employees and, moreover, has agreed to a broader release.

Plaintiff now submits a supplemental declaration stating that she also filed a wrongful termination complaint against Defendant in Los Angeles County Superior Court (*Norma Aguilar v. Seaside Dining Group, Inc.*, Case No. 23STCV07876). (Supplemental Declaration of Norma Aguilar in Support of Motion for Court Approval of the Parties' PAGA Settlement, ¶¶ 4-5 & Ex. A.) Plaintiff states that as a condition of the settlement of the PAGA action, Defendant required her to generally release all claims arising out of her employment and she filed a request for dismissal of her wrongful termination claims, which was entered on August 31, 2023. (*Id.* at ¶¶ 6-7 & Ex. B.)

In light of the supplemental information Plaintiff has submitted, the court now finds that a service award in the amount of $10,000 is merited and it is approved.

Plaintiff's counsel seeks attorney fees of $258,333.33 (1/3 of the maximum settlement amount). Plaintiff's counsel provides evidence demonstrating a lodestar of $261,800. (Perez Dec., ¶¶ 20-23.) This results in a negative multiplier. The court finds that the fees requested are reasonable as a percentage of the total recovery. The fees are therefore approved.

Plaintiff's counsel also requests litigation costs in the total amount of $12,717.84 and provides evidence of incurred costs in that amount. (Perez Dec., ¶ 24.) Consequently, the court finds costs in the amount of $12,717.84 to be reasonable and approves that amount.

Plaintiff also asks for settlement administration costs in the amount of $10,000. Plaintiff has now provided a declaration from the settlement administrator demonstrating that costs associated with settlement administration do not exceed $9,000. (Declaration of Julie Green on Behalf of CPT Group, Inc., ¶ 11 & Ex. B.) Consequently, the court approves settlement administration costs in the amount of $9,000.

Accordingly, the motion to approve PAGA settlement is CONTINUED to April 24, 2024, at 1:30 p.m. in Department 19. Plaintiff shall file supplemental declarations with the additional information requested by the court no later than April 10, 2024. No additional filings are permitted.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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Calendar Line 9

Case Name: Pineda v. Super Clean Custodial, LLC, et al. (Class Action/PAGA)
Case No.: 22CV405663

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on March 13, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

XI. INTRODUCTION

This is a putative class and representative action arising out of alleged wage and hour violations. The Class Action Complaint, filed by Plaintiff Leonarda Pineda ("Plaintiff") on October 31, 2022, sets forth the following causes of action: (1) Willful Misclassification of Employees as Independent Contractors; (2) Failure to Provide Required Meal Periods; (3) Failure to Provide Required Rest Breaks; (4) Failure to Pay Overtime Wages; (5) Failure to Pay Minimum Wages; (6) Failure to Pay Timely Wages; (7) Failure to Pay All Wages Due to Discharged and Quitting Employees; (8) Failure to Maintain Required Records; (9) Failure to Furnish Accurate Itemized Statements; (10) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (11) Failure to Produce or Make Available Requested Records; (12) Unfair and Unlawful Business Practices; and (13) Penalties Under the Labor Code Private Attorneys General Act.

Blake M. Wells ("Wells") of the Small Business Law Firm, P.C. moved to be relieved as counsel of record for defendants Clean Site Environmental LLC and Super Clean Custodial LLC (collectively, "Defendants"). The motion was unopposed.

On February 28, 2024, the court continued the motion to be relieved as counsel to March 13, 2024. In its ruling, the court noted that Wells did not file a proposed order relieving counsel on the Order Granting Attorney's Motion to Be Relieved as Counsel-Civil (form MC-053) in compliance with California Rules of Court, rule 3.1362. The court directed Wells to file the requisite proposed order no later than March 4, 2024.

On March 1, 2024, Wells filed a proposed order relieving counsel on the Order Granting Attorney's Motion to Be Relieved as Counsel-Civil (form MC-053).

Now before the court is Wells' motion to be relieved as counsel.

II. LEGAL STANDARD

California Rules of Court, rule 3.1362 sets forth the requirements for a motion to be relieved as counsel. That rule provides that "[a] notice of motion and motion to be relieved as counsel under Code of Civil Procedure section 284(2) must be directed to the client and must be made on the Notice of Motion and Motion to Be Relieved as Counsel-Civil (form MC-051)." (Cal. Rules of Ct., rule 3.1362(a).) "[N]o memorandum is required to be filed or served with a motion to be relieved as counsel." (Cal. Rules of Ct., rule 3.1362(b).) "The motion to be relieved as counsel must be accompanied by a declaration on the Declaration in Support of Attorney's Motion to Be Relieved as Counsel-Civil (form MC-052)," which "must state in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1)." (Cal. Rules of Ct., rule 3.1362(c).)

"The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case. The notice may be by personal service, electronic service, or mail." (Cal. Rules of Ct., rule 3.1362(d).) If the notice is served on the client by mail, it must be accompanied by a declaration stating facts showing that either: (1) the service address is the current residence or business address of the client; or (2) the service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved. (Cal. Rules of Ct., rule 3.1362(d)(1).) "If the notice is served on the client by electronic service under Code of Civil Procedure section 1010.6 and rule 2.251, it must be accompanied by a declaration stating that the electronic service address is the client's current electronic service address." (Cal. Rules of Ct., rule 3.1362(d)(2).) As used in the rule, "current" means that the address was confirmed within 30 days before the filing of the motion to be relieved. (*Ibid.*)

"The proposed order relieving counsel must be prepared on the Order Granting Attorney's Motion to Be Relieved as Counsel-Civil (form MC-053) and must be lodged with the court with the moving papers." (Cal. Rules of Ct., rule 3.1362(e).) "The order must specify all hearing dates scheduled in the action or proceeding, including the date of trial, if

known. If no hearing date is presently scheduled, the court may set one and specify the date in the order." (*Ibid.*)

The determination of whether to grant a motion to withdraw as counsel lies in the sound discretion of the trial court. (See *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1133; see also *People v. Horton* (1995) 11 Cal.4th 1068, 1106.)

III. DISCUSSION

Wells seeks to be relieved as counsel of record for Defendants on the ground that Defendants breached obligations under their written retainer agreement with the Small Business Law Firm, P.C. and, consequently, the attorney-client relationship is unworkable.

In support of the motion, Wells initially filed a motion to be relieved as counsel on the Notice of Motion and Motion to Be Relieved as Counsel-Civil (form MC-051) and a declaration on the Declaration in Support of Attorney's Motion to Be Relieved as Counsel-Civil (form MC-052) in compliance with California Rules of Court, rule 3.1362. Wells has now also filed a proposed order relieving counsel on the Order Granting Attorney's Motion to Be Relieved as Counsel-Civil (form MC-053). Wells declares that he has informed Defendants about the reasons requiring withdrawal and of the need for counsel for the limited liability companies. (Declaration in Support of Attorney's Motion to be Relieved as Counsel - Civil, ¶ 2.) Wells further declares that Defendants have acknowledged the termination of the attorney-client relationship and consented to the firm's withdrawal, but Defendants have not returned a signed substitution of counsel form. (*Ibid.*) Wells states that Defendants were served by mail at their last known address with copies of the moving papers. (*Id.* at ¶ 3(a)(2).) Wells further states that he confirmed that the address is current within the past 30 days by telephone. (*Id.* at ¶ 3(b)(1)(b).) Additionally, Wells filed a Proof of Service demonstrating that the moving papers were served on Plaintiff and Defendants by mail or email in compliance with Code of Civil Procedure section 1013.

Based on the foregoing, the court finds that Wells has justified the request to be relieved as counsel. Furthermore, the proposed order relieving counsel complies with California Rules of Court, rule 3.1362.

Accordingly, the motion to be relieved as counsel is GRANTED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

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