SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2170

To contest a tentative ruling, you must call (408) 808-6856 before 4:00 P.M. and leave a voicemail message containing the information described below.
PLEASE NOTE: Sending an email to the department or Complex Coordinator will no longer suffice to constitute notice to the Court of the need for a hearing regarding a tentative ruling.

In the voicemail message, 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: SEPTEMBER 12, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV399340	Jamie Komen Revocable Trust v. Page, et al. (Alphabet Inc.) [Shareholder Derivative]	This matter was previously re-noticed with a new hearing date of December 5, 2024.
LINE 2	23CV409763	Spencer v. National Builders & Services Inc. (Class Action/PAGA)	See Line 2 for tentative ruling.
LINE 3	23CV422393	Korbin v. Tata Consultancy Services Limited (PAGA)	See Line 3 for tentative ruling.
LINE 4	21CV385965	Frayle v. Barrita Corporation (Class Action)	See Line 4 for tentative ruling.
LINE 5	20CV372622	Temujin Labs Inc. v. Abittan, et al.	

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	21CV375422	Temujin Labs Inc. v. Fu	See Line 5 for tentative ruling.
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name:
Case No.:

- oo0oo -

Calendar Line 2

Case Name: *Sinuhe Nahkizi Spencer v. National Builders & Services, Inc.*
Case No.: 23CV409763

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Sinuhe Nahkizi Spencer alleges that Defendant National Builders & Services, Inc. committed various wage and hour violations. Before the Court is Mr. Spencer's demurrer to Defendant's answer to the operative First Amended Complaint ("FAC"). As discussed below, the Court SUSTAINS the demurrer WITH 10 DAYS' LEAVE TO AMEND.

I. BACKGROUND

A. Factual

According to the allegations of the operative FAC, Plaintiff was employed by Defendant as a non-exempt, hourly-paid employee. (FAC, ¶ 13.) Plaintiff alleges that Defendant failed to: pay all wages due, including minimum, regular, and overtime wages as a result of Defendant's policy of improperly paying its non-exempt hourly employees; provide meal periods; provide rest periods; reimburse him for necessary expenditures; provide accurate wage statements; and pay wages due upon ending employment of terminated or resigned employees. (*Id*., ¶ 4.)

B. Procedural

Plaintiff initiated this action with the filing of the complaint on January 10, 2023, and filed the operative FAC on March 16, 2023, asserting the following causes of action: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide rest periods and pay missed rest period premiums; (4) failure to provide meal periods and pay missed meal period premiums; (5) failure to maintain accurate employment records; (6) failure to pay wages timely during employment; (7) failure to pay all wages earned and unpaid at separation; (8) failure to indemnify all necessary business expenditures; (9) failure to furnish accurate itemized wage statements; (10) violation of Unfair Competition Law (Bus. & Prof. Code, § 17200, et seq.); and (11) civil penalties under PAGA. Defendant filed its answer to the FAC (the "Answer") on March 15, 2024.

II. PLAINTIFF'S DEMURRER TO ANSWER

Plaintiff demurs to Defendant's Answer and each of the affirmative defenses asserted therein on the grounds of uncertainty and failure to state sufficient facts to constitute a defense. (Code Civ. Proc., § 430.20, subds. (a) and (b).)

A. Legal Standard

Code of Civil Procedure section 430.20 provides: "A party against whom an answer has been filed may object, by demurrer … to the answer upon any one or more of the following grounds: (a) the answer does not state facts sufficient to constitute a defense, (b) the answer is uncertain; as used in this subdivision, 'uncertain' includes ambiguous and unintelligible, (c) where the answer pleads a contract, it cannot be ascertained from the answer

whether the contract is written or oral." A demurrer may be asserted against "the whole answer, or to any one or more of the several defenses set up in the answer." (Code Civ. Proc., § 430.50, subd. (b).)

A demurrer challenges only the legal sufficiency of the affected pleading, not the truth of the factual allegations in the pleading or the pleader's ability to prove those allegations. (*Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1404-05.) Questions of fact cannot be decided on demurrer. (*Berryman v. Merit Prop. Mgmt., Inc.* (2007) 152 Cal.App.4th 1544, 1556.) The court "treat[s] the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law … [and] consider[s] matters which may be judicially noticed." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591, citation omitted.)

B. Discussion

Plaintiff maintains that the Answer is deficient for the following reasons: (1) the affirmative defenses are not pleaded with sufficient facts to state a defense; (2) it fails to identify in each affirmative defense the causes of action to which the defense applies; and (3) it improperly contains matters pled as affirmative defenses that are not defenses at all, but are instead argumentative denials of claims made in the FAC. The first and third arguments are essentially the same. As for the second, it pertains to the alleged uncertainty of the defenses asserted in the Answer, as subdivision (g) of Code of Civil Procedure section 431.30 provides that such defenses "shall be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished."

As an initial procedural matter, in its opposition, Defendant asserts that Plaintiff failed to satisfy the meet and confer obligation mandated by Code of Procedure section 430.41, subdivision (a), which provides that prior to filing a demurrer, the demurring party "shall meet and confer in person, by telephone, or by video conference with the party who filed the pleading that is subject to the demurrer …." In support of his demurrer, Plaintiff submits the declaration of his counsel, Maria Burciaga, who states that on March 15, 2024, three days after Defendant filed the Answer, she sent a meet and confer email to opposing counsel articulating the reasons the Answer was deficient and requesting a time for a phone call to further meet and confer. (See Declaration of Maria Burciaga in Support of Demurrer to Answer, ¶ 4, Exhibits B and C.) Ms. Burciaga states that Defendant's counsel responded to her email that day, explaining that he would review the Answer and determine if any amendment was necessary. (*Id*.) Defendant did not file an amended Answer nor, according to Ms. Barciaga, did it substantively respond to Plaintiff's meet and confer attempts. In the opposition, Defendant states that the written correspondence Plaintiff refers to (dated March 18, 2024) is not in its files and thus asserts that Plaintiff has admitted to failing to comply with the meet and confer requirement.

Statements by Defendant's counsel belie the assertion that Plaintiff failed to satisfy the meet and confer requirement. A copy of the March 18, 2024 meet and confer email sent by Plaintiff's counsel to opposing counsel, which concluded with Plaintiff's counsel *specifically requesting* Defendant's counsel's availability in order to further discuss the alleged deficiencies in the Answer, is attached to Ms. Burciaga's declaration, as is the response to the email by Defendant's counsel. In that response, counsel stated "This appears to be a method to drive up attorneys' fees. There is no need for a meet and confer call with your firm- we will

review our answer and determine what if any causes of action we will amend, etc." This represents the *entirety* of counsel's response and no amended answer was filed. Given that no declaration has been submitted in support of the opposition attesting to the representation that Defendant's counsel did not receive the March 18th correspondence from Ms. Burciaga, the denial is, at best, unsupported by the evidence, and, at worst, specious. Plaintiff has clearly established that he complied with Code of Civil Procedure section 430.41, subdivision (a), and thus Defendant's argument does not compel denial of the motion.[1]

Turning to the substantive merits, Plaintiff argues that the affirmative defenses asserted by Defendants—95 in total—are deficient because they are boilerplate and completely devoid of facts. In its opposition, Defendant contends to the contrary, explaining that the FAC is unverified and thus its Answer has properly asserted a general denial.

While it is true that a general denial is effective to controvert all material allegations in an unverified complaint (see Code Civ. Proc., § 431.30, subd. (d)), which the FAC is, this has no bearing on a defendant's pleading burden with respect to "new matter." Generally speaking, in addition to denials, an answer should contain any and all affirmative defenses or objections to the complaint that the defendant may have, and that would otherwise not be in issue under a simple denial. Such defenses or objections are "new matter," i.e., "something relied on by a defendant which is not put in issue by the plaintiff." (*Walsh v. West Valley Mission Community College District* (1998) 66 Cal.App.4th 1532, 1546.) Unlike a denial in response to matters the plaintiff must prove, a defendant bears the burden of proving "new matter" and, consequently, must specifically plead such matter in the answer. (See *California Academy of Sciences v. County of Fresno* (1987) 192 Cal.App.3d 1436, 1442.) The answer must aver facts in support of each affirmative defenses as carefully and with as much detail as the facts which constitute the cause of action and which are alleged in the complaint. (See *FPI Development, Inc. v. Nakashimi* (1991) 231 Cal.App.3d 367, 384.) Further, as stated above, affirmative defenses must be separately stated and *must refer to the causes of action to which they relate* "in a manner by which they may be intelligently distinguished." (Code Civ. Proc., § 431.30, subd. (g).)

Defendant has failed to meet the foregoing standards. In the Answer, Defendant did not plead each affirmative defense with specific facts, instead alleging only conclusory allegations, and within each fails to refer to the causes of action to which it relates. Consequently, the demurrer must be sustained on the grounds of uncertainty and failure to state sufficient facts. However, the Court will grant Defendant leave to amend. Though Plaintiff also argues that some of the affirmative defenses do not actually qualify as such and are in fact mere denials such that leave to amend those defenses would not be appropriate, he does not specify which defenses are subject to this argument, thus depriving Defendant (and the Court) of adequate notice of his position.

[1] In any event, the Court notes that even if Plaintiff *had* failed to satisfy his meet and confer obligation in connection with the instant motion, which he did not, such a failure does not provide a basis upon which to overrule the demurrer. (See Code Civ. Proc., § 430.41, subd. (a)(4).)

III. CONCLUSION

Plaintiff's demurrer to the Answer on the grounds of uncertainty and failure to state sufficient facts is SUSTAINED WITH 10 DAYS' LEAVE TO AMEND.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 3

Case Name: *Marck Korbin v. Tata Consultancy Services Limited*
Case No.: 23CV422393

This is a representative action for civil penalties under the Private Attorneys General Act ("PAGA"). Plaintiff Marck Korbin alleges that Defendant Tata Consultancy Services Limited ("TCS" or "Defendant") committed various wage and hour violations. Before the Court is Defendant's motion to compel arbitration of Plaintiff's individual PAGA claim and to stay this case pending resolution of that arbitration. Plaintiff opposes the motion.[1] As discussed below, the Court GRANTS TCS's motion.

I. BACKGROUND

According to the allegations of the operative Complaint, Defendant failed to: calculate and pay all minimum and overtime wages; provide all meal periods and break periods and provide compensation in lieu thereof; timely pay wages during employment; timely pay wages upon termination; provide complete and accurate wage statements; and reimburse employees for all necessary business expenses incurred by them as a consequence of discharging their duties. Based on the foregoing, Plaintiff asserts a single cause of action for penalties under PAGA.

II. DEFENDANT'S MOTION TO COMPEL ARBITRATION AND FOR STAY

Defendant moves to compel arbitration of Plaintiff's individual PAGA claim based on an agreement purportedly signed by him on July 13, 2022 entitled "Confidentiality, Non-Disclosure and Ownership Agreement" (the "Agreement"), which is attached the declaration of Jeevak Sharma ("Sharma Declaration"). Plaintiff opposes this motion, asserting that he never agreed to arbitration and in fact expressly rejected the subject provision in the Agreement. Plaintiff also argues that the Agreement is unconscionable.

[1] When the Court re-set the hearing on this motion on May 30, 2024 to September 12, 2024, it issued specific instructions in its Order and Notice of Rescheduled Hearing regarding briefing, particularly that the opposition was due by August 9, 2024 and the reply by August 15, 2024. Defendant, however, did not file its reply until September 5, 2024, and Plaintiff filed a notice of non-reply asking the Court to disregard any untimely reply should Defendant filed one.

While the Court recognizes that Defendant failed to comply with the deadline, it declines to disregard the reply. According to papers filed by TCS with the Court on September 9, 2024, due to an inadvertent error by office staff, defense counsel was unaware that a different briefing schedule had been issued by the Court and therefore relied on the normal filing deadlines provided by Code of Civil Procedure section 1005 with respect to its reply brief. The Court cannot discern any distinct prejudice to Plaintiff from considering the reply, particularly since that brief is traditionally the final one filed in relation to a pending motion. Thus, the Court has considered the substantive contents of the reply.

A. Legal Standards

In ruling on a motion to compel arbitration, the Court must inquire as to (1) whether there is a valid agreement to arbitrate, and (2) if so, whether the scope of the agreement covers the claims alleged. (See *Howsan v. Dean Witter Reynolds* (2002) 537 U.S. 79, 84.) "Under both federal and state law, the threshold question presented by a petition to compel arbitration is whether there is an agreement to arbitrate. [Citations.] The threshold question requires a response because if such an agreement exists, then the court is statutorily required to order the matter to arbitration." (*Fleming v. Oliphant Financial, LLC* (2023) 88 Cal.App.5th 13, 19, internal quotation marks omitted.) The agreement at issue expressly provides that it is governed by the Federal Arbitration Act.

"The FAA [Federal Arbitration Act], which includes both procedural and substantive provisions, governs [arbitration] agreements involving interstate commerce." (*Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 840.) However, "[t]he procedural aspects of the FAA do not apply in state court absent an express provision in the arbitration agreement." (*Ibid*.) Here, the Agreement expressly provides that it "shall be interpreted and enforced in accordance with the [FAA]," and thus federal procedural and substantive law apply. (See *Rodriguez v. American Technologies, Inc*. (2006) 136 Cal.App.4th 1110, 1122 ["[t]he phrase 'pursuant to the FAA' is broad and unconditional," and unambiguously adopts both the procedural and substantive aspects of the FAA].)

Under the FAA, the Court must grant a motion to compel arbitration if any suit is brought upon "any issue referable to arbitration under an agreement for such arbitration" (9 U.S.C. § 3), subject to "such grounds as exist at law or in equity for the revocation of any contract…" (9 U.S.C. § 2). The moving party must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. (See *Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396 [under both federal and state law, "the threshold question presented by a petition to compel arbitration is whether there is an agreement to arbitrate"]; *Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413 (*Rosenthal*) [moving party's burden is a preponderance of evidence].) The burden then shifts to the resisting party to prove a ground for denial. (*Rosenthal, supra*, 14 Cal.4th at p. 413.)

"In determining the rights of parties to enforce an arbitration agreement within the FAA's scope, courts apply state contract law while giving due regard to the federal policy favoring arbitration." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.)

> But the FAA's policy favoring arbitration … is merely an acknowledgment of the FAA's commitment to overrule the judiciary's longstanding refusal to enforce agreements to arbitrate and to place such agreements upon the same footing as other contracts. Or in another formulation: The policy is to make arbitration agreements as enforceable as other contracts, but not more so. Accordingly, a court must hold a party to its arbitration contract just as the court would to any other kind.

(*Morgan v. Sundance, Inc*. (2022) 596 U.S. 411 (*Morgan*), internal citations and quotation marks omitted.)

B. Existence and Scope of Agreement to Arbitrate

In order to establish that Plaintiff consented to the Agreement, Defendant submits the Sharma Declaration, wherein Mr. Sharma explains that he has been employed by TCS since 2007 and, from March 2020 to present, has held the position of Head Employee Relations and HR Compliance, which grants him access to records pertaining to TCS's employees and contractors. (Sharma Decl., ¶ 3.) Mr. Sharma continues that staffing and technology solutions firm Next Level Business Services, Inc. ("NLBS") hired Plaintiff and assigned him to TCS to provide temporary services and, in connection with that assignment, Plaintiff signed the Agreement on July 13, 2022. (*Id*., ¶¶ 5-6, Attachment 1.) The arbitration provision of the Agreement provides, in pertinent part:

> I hereby agree to submit to binding arbitration before a neutral arbitrator all disputes and claims arising out of my provision of services as Contract Personnel to TCS, including without limitation any claims for co-employment, and/or discrimination. I understand and acknowledge that I am waiving my right to a jury trial. I further understand that any binding arbitration must be brought in my name as an individual and not as a plaintiff or a class member in any purported class or representative proceeding. The arbitrator may not consolidate more than one person's claim and may not otherwise preside over any form of a representative or class proceeding. Such arbitration shall be conducted in accordance with the rules of the Employment Arbitration Rules & Procedures of the American Arbitration Association ("AAA Rule") then in effect and will be governed by [the] Federal Arbitration Act (9 U.S.C. §2 et seq.). The AAA Rules are available at www.adr.org or will, upon my request, be provided by TCS. If employment is in California, California Code of Civil Procedure §1280 et seq. will also govern such arbitration to the extent that California law is not contradictory to or preempted by federal law.

(The Agreement at § 8.)

The copy of the Agreement submitted by TCS appears to bear Mr. Korbin's signature. As one Court of Appeal summarized,

> [T]he moving party bears the burden of producing "prima facie evidence of a written agreement to arbitrate the controversy." (*Rosenthal, supra*, 14 Cal.4th at p. 413.) The moving party "can meet its initial burden by attaching to the [motion or] petition a copy of the arbitration agreement purporting to bear the [opposing party's] signature." (*Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 543–544 [279 Cal. Rptr. 3d 112] (*Bannister*).) Alternatively, the moving party can meet its burden by setting forth the agreement's provisions in the motion. (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219 [105 Cal. Rptr. 2d 597] (*Condee*); see also Cal. Rules of Court, rule 3.1330 ["The provisions must be stated verbatim or a copy must be physically or electronically attached to the petition and incorporated by reference."].) For this step, "it is not necessary to follow the normal procedures of document authentication." (*Condee*, at p. 218.) If the moving party meets its initial prima facie burden and the opposing party does not dispute the existence of the

> arbitration agreement, then nothing more is required for the moving party to meet its burden of persuasion.
>
> If the moving party meets its initial prima facie burden and the opposing party disputes the agreement, then in the second step, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement. (See *Condee*, *supra*, 88 Cal.App.4th at p. 219.)

(*Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 165–166.)

Given the proffering of a copy of Agreement apparently signed by Mr. Korbin, the burden shifts to him to produce evidence to challenge its authenticity.[2]

To this end, Plaintiff does not dispute that his signature appears on the copy of the Agreement submitted by Defendant. But he explains that he verbally and expressly rejected the arbitration provision and that the Agreement only bears his signature because the digital onboarding platform utilized by TCS disabled him from otherwise rejecting it.

According to Plaintiff, he was contacted by a recruiter from NLBS in July 2022 for an open position at TCS to perform IT work and after undergoing a phone interview(s) with Chirag Syal at TCS, verbally accepted an offer of employment for that position. (Declaration of Marck Korbin in Support of Opposition to Motion to Compel Arbitration ("Korbin Decl."), ¶¶ 3-4.) Shortly thereafter, he continues, NLBS staff contacted him to begin the onboarding process, which included reviewing and digitally signing numerous documents on an online platform. (*Id*., ¶ 5.) Plaintiff explains that the platform sometimes required him to consent to, digitally sign, and/or acknowledge the document in front of him in order to proceed to the next one. (*Id*., ¶ 6.) One agreement he was required to digitally sign was titled "Confidentiality, Non-Solicitation & Non-Competition Agreement"; it did not contain an arbitration provision and the platform provided no option to modify or reject the agreement's terms. (*Id*., ¶ 7.) He continues that he was also presented with a document titled "Confidentiality, Non-Disclosure and Ownership Agreement (Standard Conduct)," which he understood to be an acknowledgment of the general standard of conduct imposed by TCS. (*Id*., ¶ 8.) Section 8 was titled "Mandatory Arbitration" and did not state that agreeing to arbitration was a condition of employment. (*Id*.) Plaintiff explains that he did not wish to consent to arbitration but the platform provided no option to reject the arbitration provision or any other aspect of it and, feeling pressure from NLBS to quickly complete the onboarding process in order to begin his job training, he decided that his best option was to digitally sign the document but also inform NLBS that he did not consent to arbitration with any employer. (*Id*., ¶ 9.)

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[2] While Plaintiff objects to portions of Mr. Sharma's declaration wherein he asserts that Mr. Korbin signed the Agreement, he does not challenge the fact that he digitally signed the agreement, i.e., the authenticity of his "signature." Although it is generally the case that the proponent of a writing must properly authenticate it in order from the court to receive it as evidence (see Evid. Code, § 1401), a party moving to compel arbitration is "not required to authenticate an opposing party's signature on an arbitration agreement *as a preliminary matter* in moving for arbitration *or* in the event the authenticity of the signature is not challenged." (*Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 846, citing *Condee, supra,* 88 Cal.App.4th 215, 218-219 [emphasis in original].)

Shortly after clicking through the documents, Plaintiff contacted NLBS recruiter Jatin Dhupar on the phone and informed him that he did not agree to arbitrate any employment-related claims. (Korbin Decl., ¶ 10.) According to Plaintiff, Mr. Dhupar understood and acknowledged what Plaintiff said, told him that the contract would not be enforced and confirmed that he could proceed with the onboarding. (*Id*.) Plaintiff explains that he concluded the conversation with the understanding that NLBS had documented his rejection of the arbitration provision and therefore did not believe it was necessary to follow up with Mr. Dhupar. (*Id*.)

After onboarding, Plaintiff proceeded with his new employment, and no one from NLBS or TCS ever communicated to him about the arbitration provision. (Korbin Decl., ¶ 11.) Plaintiff continues that NLBS never provided him with a copy of the Agreement bearing the signatures of *all* parties, including TCS. (*Id*.) For these reasons, he explains, he concluded that Dr. Dhupar had recorded his verbal rejection of the arbitration agreement.

In its reply, TCS responds that Plaintiff is conflating his onboarding process with NLBS (which utilizes a digital platform for signing documents) with his onboarding related to his assignment with TCS, during which he signed the Agreement. It explains that the Agreement was *not* presented to Plaintiff using a "digital platform" or bulk process requiring him to click through and sign/consent before moving on to the next document; instead, the Agreement was provided to Plaintiff via email as a standalone attachment (along with five other standalone documents requiring his signature). (See Declaration of Jagriti Kumar in Support of Reply ("Kumar Decl."), ¶¶ 8, 10.) Plaintiff responded to the email with a zipfile containing the requested signed documents, including the Agreement, as well as additional requested information. (*Id*., ¶ 11, Attachment 3.) While in his email response Plaintiff expressed that he was "more than a little uncomfortable about sending all that sensitive information in a single, unencrypted document," TCS explains, he expressed no other reservations about any of the documents he signed, including the arbitration provision of the Agreement. (*Id*.) Defendant continues that NLBS has no record of Plaintiff's alleged notification to Mr. Dhupar of his intent to "renege" on the Agreement and further, contrary to what Plaintiff has stated, the opening paragraph of the Agreement made it clear that agreeing to the arbitration provision *was* a condition of his assignment to TCS:

> I recognize that my agreement and undertaking to comply with this Standard of Conduct is a precondition for my assignment to provide Services to TCS and I acknowledge and agree that this opportunity to provide Services and receive compensation therefore constitute adequate and valuable consideration for my promise and undertaking to comply with and be obligated in accordance with this Standard of Conduct.

(Kumar Decl., ¶ 15, Attachment 4.)

What is the Court to make of the foregoing showings by the parties? On the one hand, the Court is troubled that TCS has not directly addressed Plaintiff's representation that he spoke with Mr. Dhupar to express that he did not agree to arbitrate any employment-related claims, despite his signature on the Agreement. That is, while TCS states that NLBS has no record of Plaintiff objecting or otherwise expressing his non-consent to the arbitration provision, it offers

nothing, such as a declaration from Mr. Dhupar, contradicting Mr. Korbin's statement, made under penalty of perjury, that such a conversation took place.

On the other hand, the evidence submitted with TCS's reply plainly contradicts portions of Mr. Korbin's description of his onboarding process and the alleged lack of choice with regard to completing that process on the digital platform without executing the Agreement. The materials attached to Mr. Kumar's declaration demonstrate that, in contrast to Plaintiff's statement, the Agreement was executed by Plaintiff as a *standalone* document and not as part of a series of documents in digital form that could not be moved through without executing each one in succession. Such a showing completely undercuts the entire rationale offered by Plaintiff as to why his signature is on the Agreement—that is, this evidence does not support Plaintiff's claim that he could not complete the onboarding process while objecting to the arbitration provision. But if the Agreement was presented to him as a standalone document, as the evidence presented by TCS shows it was, he did not need to execute *that* document in particular in order to finish executing the other documents that were sent to him.

Weighing the evidence before it, the Court concludes that TCS has demonstrated, by a preponderance of evidence, that a valid agreement to arbitrate all employment-related claims exists between Plaintiff and TCS based on the former's execution of the Agreement. Accordingly, the burden shifts to Plaintiff to establish a ground for denial of Defendant's motion. (See *Rosenthal, supra,* 14 Cal.4th at 413.)

C. Unconscionability

In opposition, Plaintiff maintains that the Agreement is unconscionable. Unconscionability has both procedural and substantive elements. (*Armendariz v. Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th 83, 114 (*Armendariz*); *Jones v. Wells Fargo Bank* (2003) 112 Cal.App.4th 1527, 1539 (*Jones*).) *Both* must appear for a court to invalidate a contract or one of its individual terms (*Armendariz, supra*, 24 Cal.4th at p. 114; *Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 174), but they need not be present in the same degree: "the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa" (*Armendariz, supra*, 24 Cal.4th at 114).

Procedural unconscionability focuses on the elements of oppression and surprise. (*Armendariz, supra,* 24 Cal.4th at p. 114.) "Oppression arises from an inequality of bargaining power which results in no real negotiation and an absence of meaningful choice," while "[s]urprise involves the extent to which the terms of the bargain are hidden in a prolix printed form drafted by a party is a superior bargaining position." (*Davis v. TWC Dealer Group, Inc*. (2019) 41 Cal.App.5th 662, 671, internal citation and quotation marks omitted

Analyzing procedural unconscionability "begins with an inquiry into whether the contract is one of adhesion" (*Armendariz*, 24 Cal.4th at p. 113) i.e., one that is "standardized, generally on a preprinted form, and offered by the party with superior bargaining power 'on a take-it-or-leave-it basis'" (*OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 126.) Arbitration agreements imposed as a condition of employment are typically deemed to be adhesive and the pertinent situation in such a circumstance is "whether circumstances of the contract's formation created such oppression or surprise that closer scrutiny of its overall fairness is required." (*Id*.) "Oppression occurs where a contract involves lack of negotiation and

meaningful choice, surprise where the allegedly unconscionable provision is hidden within a prolix printed form." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247.) Circumstances relevant to establishing oppression include: the amount of time the party is given to consider the agreement; the amount and type of pressure exerted on them to sign; the length of the proposed contract and the length and complexity of the challenged provision; the education and experience of the party; and whether the party's review of the agreement was aided by an attorney. (*Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.* (2015) 232 Cal.App.4th 1332, 1348.) In pre-hiring settings, such as the one at bar, courts must be "particularly attuned" to the danger of oppression and overreaching. (*Armendariz, supra,* 24 Cal.4th at p. 115.)

Here, Plaintiff insists that the Agreement is procedurally unconscionable because it is a contract of adhesion, i.e., pre-drafted, standardized, and presented to him on a take-it-or-leave it basis. It is also procedurally unconscionable, he argues, because during the onboarding process, NLBS required him to review and click through a large number of documents, while emphasizing the importance of doing so as quickly as possible, and the platform provided him with no option or ability to reject or modify a document in whole or in part if he wished to complete his onboarding. Finally, he explains, the arbitration provision is procedurally unconscionable because it was contained in a single paragraph buried on the fourth page of a document whose title did not indicate that it contained any terms relating to arbitration. None of these arguments are well taken.

First, as TCS responds, the fact that a contract is adhesive is insufficient by itself to render an arbitration clause unenforceable, and California courts recognize that contracts of adhesion "are indispensable facts of modern life that are generally enforced." (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1244.) Second, as discussed above, TCS's evidence shows that the Agreement was *not* presented to Plaintiff in an online platform that provided him no option or ability to reject or modify the document and forced him to consent if he wished to complete his onboarding. Instead, it was sent to him via email as a standalone document. Finally, the arbitration provision was not hidden, but contained in its own clearly labeled section under the heading in bold, capital letters "MANDATORY ARBITRATION." (See Sharma Decl., Attachment 1 at 4.)

Furthermore, the terms contained in the Agreement were presented in normal font, without uncomplicated or unnecessary verbiage, and clearly and unambiguously informed Plaintiff that by entering the Agreement he was "waiving [his] right to a jury trial." (*Id.*) Finally, by explaining the objection to the arbitration provision he purportedly had at the time of its execution, Plaintiff essentially admits that he understood the provision such that there was no element of surprise. Given the foregoing, the Court rejects Plaintiff's contention that the Agreement was procedural unconscionable. As *both* procedural and substantive unconscionability must be found in order to find a term unconscionable (see *Armendariz, supra,* 24 Cal.4th at 114), the Court need not evaluate whether there is any substantive unconscionability and must conclude that the Agreement and the arbitration provision contained therein do not qualify as unconscionable.

As TCS has demonstrated the existence of an enforceable agreement to arbitrate and Plaintiff has not established a basis to deny Defendant's motion, it must be granted. The Court will stay the representative action until arbitration of Plaintiff's individual PAGA claim is completed.

III. CONCLUSION

TCS's motion to compel arbitration is GRANTED. This action is stayed pending the completion of arbitration of Plaintiff's individual PAGA claim.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

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Calendar Line 4

Case Name: *Cecilia Estrada Frayle v. Barrita Corporation*
Case No.: 21CV385965

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Cecilia Estrada Frayle alleges that Defendant Barrita Corporation ("Barrita"), which operates a chain of Mexican restaurants, failed to provide employees with compliant meal and rest breaks and failed to pay required premiums, failed to pay all wages due to improper "rounding" policies, issued noncompliant wage statements, and committed other wage and hour violations.

Before the Court is Ms. Frayle's motion for final approval of settlement, which is unopposed. As discussed below, if Plaintiff provides the requested confirmation regarding the settlement administration costs, the Court will GRANT her motion for final approval.

I. BACKGROUND

Ms. Frayle was employed by Barrita from April 2008 to October 2020 as a non-exempt employee in various positions. (Declaration of Cecilia Estrada Frayle In Support of Motion for Preliminary Approval of Class Action Settlement, ¶¶ 3-4.) According to Ms. Frayle, Barrita failed to pay employees for all time worked due to an unfair "rounding" policy. (First Amended Class Action Complaint ("FAC"), ¶ 16.) Barrita failed to provide timely, work free meal and rest periods. (*Id*., ¶ 19.) Barrita failed to timely pay wages during employment and upon separation and failed to provide accurate, itemized wage statements. (*Id*., ¶¶ 18, 20.) Barrita also failed to reimburse employees for required business expenses, including the purchase and use of cell phones. (*Id*., ¶ 21.)

Based on these allegations, Ms. Frayle asserts, in the operative First Amended Complaint, putative class claims for: (1) failure to pay minimum and overtime wages; (2) failure to provide meal periods; (3) failure to provide rest breaks; (4) failure to reimburse for necessary expenditures; (5) failure to provide accurate wage statements; 6) failure to provide timely wages upon separation of employment; (7) violation of Business and Professions Code section 17200; et seq.; and (8) representative claim for PAGA penalties.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

Generally, "questions whether a [class action] settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of

> maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

(*Wershba, supra,* 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra,* 91 Cal.App.4th at p. 245.) The trial court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, citation and internal quotation marks omitted.) The trial court also must independently confirm that "the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar, supra,* 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be "provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Id.* at pp. 130, 133.)

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. 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.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 2022 U.S. LEXIS 2940.)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77.) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp*. (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 ["when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 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.)

III. SETTLEMENT CLASS

For settlement purposes only, Plaintiff requests the following Class be certified:

> All persons who are or were previously employed by Barrita in California classified as a nonexempt, hourly employee during August 18, 2017 through March 1, 2023.

Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court …."

Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence: (1) an ascertainable class and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On Drug Stores*).) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the ascertainable class determination need not be confronted, and the court's review is more lenient in this respect. (*Id.* at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

At preliminary approval, the Court provisionally certified the above-described class, determining that Plaintiff had demonstrated by a preponderance of the evidence (1) an ascertainable class, (2) a well-defined community of interest among the class members and (3) that a class action provides substantial benefits to both litigants and the Court. Consequently, the Court will certify the class for settlement purposes as requested.

IV. TERMS AND ADMINISTATION OF SETTLEMENT

The non-reversionary gross settlement amount in the Court's order preliminarily approving the parties' settlement was $490,000. However, under the terms of the settlement agreement, in the event that the actual number of workweeks worked by all Class members during the Class Period increased by more than 5% of 25,000 total workweek, then there was to be a pro-rata upward adjustment to the gross settlement amount. Based on new data received

by the settlement administrator, there were 26,982 workweeks during the Class Period, resulting in an increase to the gross settlement of $14,347.20, resulting in new total gross settlement amount of $504.347.20. Attorney fees of up to $168,115.73 (one-third of the gross settlement), litigation costs of $6,570, and $11,350 in administration costs will be paid from the gross settlement. Ten thousand dollars of the gross settlement amount will be allocated to PAGA penalties, 75 percent of which ($7,500) will be paid to the LWDA, leaving 25 percent ($2,500) for the aggrieved employees. The named plaintiff will seek an incentive award of $10,000.

The PAGA payment will be allocated to aggrieved employees on a pro rata basis based on their number of pay periods worked during the PAGA period of August 14, 2020, through March l, 2023. Participating Class members will receive an estimated average gross payment of $583.78, with the highest gross payment being $3,294.67. For tax purposes, settlement payments will be allocated 33 percent to wages, 33 percent to interest, and 34 percent to penalties. PAGA settlement payments will be allocated 100 percent to penalties. The employer's share of payroll taxes will be paid in addition to the gross settlement. Checks uncashed after 180 days will be cancelled and the funds will be transferred to the *cy pres* recipient, Katherine and George Alexander Community Law Center at the Santa Clara University School of Law.

In exchange for the settlement, class members who do not opt out will release "all claims that were pled in the First Amended Complaint based on the facts alleged therein, or that could have been alleged based upon the facts asserted therein, except the claim under the PAGA, including," specified wage and hour claims. As the Court concluded in its order preliminarily approving the settlement, the release is appropriately tailored to the factual allegations at issue. (See *Amara v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) And the PAGA release is appropriately limited to "any and all claims for civil and statutory penalties pursuant to PAGA based on the allegations stated in the PAGA Notice and that were or could have been pled in the Complaint, as defined above, based on the facts alleged therein," including specified wage and hour claims. Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

The notice period has now been completed. According to the declaration of case manager Nathalie Hernandez with settlement administrator ILYM Group, Inc. ("ILYM") submitted in support of the instant motion, on September 6, 2023, ILYM received from Defendant's counsel the data files containing the names, social security numbers, last known mailing addresses, and the total number of relevant workweeks worked for each of the 470 individuals contained in the Class list. ILYM processed the addresses it had against the National Change of Address database to confirm and update this information and then mailed the notice packet to Class members, in both English and Spanish, on November 7, 2023 via first class mail. As of the date of Ms. Hernandez's declaration, August 12, 2024, ILYM has received 70 returned notice packets as undeliverable. ILYM conducted a skip trace and located 44 updated addresses, to which notice packets were re-mailed. At present, 27 notice packets have been deemed undeliverable as no updated addresses have been located.

The deadline to submit a request for exclusion, a challenge to the amount of work weeks listed, or an objection to the settlement was December 22, 2023. As of date of Ms. Hernandez's declaration, ILYM has received none of the foregoing.

On February 12, 2024, Defendant's counsel provided data for Class members who were inadvertently omitted from the original Class list; the addition of these individuals brought the Class list up to 511 settlement class members. On March 8, 2023, the notice packet was mailed via first class mail to all 511 individuals. As of the date of Ms. Hernandez's declaration, 97 notice packets have been returned to ILYM as undeliverable. ILYM conducted a skip trace and located 63 updated addresses, to which notice packets were promptly re-mailed. At present, 34 notice packets have been deemed undeliverable as no updated addresses have been located.

The deadline to submit a request for exclusion, a challenge to the amount of work weeks listed, or an objection to the settlement was April 22, 2024. As of the date of Ms. Hernandez's declaration, ILYM has received none of the foregoing, resulting in a total of 511 participating Class members.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiff's claims, and that the PAGA settlement is genuine, meaningful, and fair to those affected. It finds no reason to depart from these findings now, especially considering that there are no objections. Therefore, the Court finds that the settlement is fair and reasonable for the purposes of final approval.

V. ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS

As set forth above, Plaintiff's counsel seeks a fee award of $168,115.73, or one-third of the gross settlement amount, which is not an uncommon contingency fee allocation in a wage and hour class action. Plaintiff also provides a lodestar figure of $142,525, which is based on 207 hours of work at billing rates of $675 to $700 per hour, resulting in a modest multiplier of 1.17. This is well within the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra,* 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

"While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable by refining the choice of a percentage or by checking the percentage result against a lodestar- multiplier calculation." (*Laffitte, supra*, 1 Cal.5th 480, 494-495.) Applying this latter approach,

> [T]he percentage-based fee will typically be larger than the lodestar based fee. Assuming that one expects rough parity between the results of the percentage method and the lodestar method, the difference between the two computed fees will be attributable solely to a multiplier that has yet to be applied. Stated another way, the ratio of the percentage-based fee to the lodestar-based fee implies a multiplier, and that implied multiplier can be evaluated for reasonableness. If the implied multiplier is reasonable, then the cross-check confirms the

> reasonableness of the percentage-based fee; if the implied multiplier is unreasonable, the court should revisit its assumptions.

(*Laffitte, supra*, 1 Cal.5th at p. 496, quoting Walker & Horwich, *The Ethical Imperative of a Lodestar Cross-check: Judicial Misgivings About "Reasonable Percentage" Fees in Common Fund Cases* (2005) 18 Geo. J. Legal Ethics 1453, 1463.) As described by the California Supreme Court, "[i]f the multiplier calculated by means of a lodestar crosscheck is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Laffitte, supra*, 1 Cal.5th at 505.)

Here, as the multiplier sought by Plaintiff's counsel is relatively modest, well within the range of modifiers typically approved by courts and is supported by the percentage cross-check, the Court finds counsel's requested fee award is reasonable and thus is approved.

Plaintiff's counsel also seeks $6,570.21 in litigation costs, which is well short of the maximum amount ($15,000) permitted under the settlement agreement. Based on the information contained in the declarations of Plaintiff's counsel, this amount is reasonable and is therefore approved. Plaintiff also requests settlement administration costs in the amount of $11,350. Under the parties' settlement agreement, settlement administration costs are "not to exceed $10,000 subject to Court approval, unless approved by all Parties and the Court." (See Declaration of Mehrdad Bokhour in Support of Motion for Final Approval, ¶ 23, Exhibit A at ¶ C, sub. (h).) Here, the Court does not take issue with the final amount requested, but there is no indication that *all* parties have approved this amount as is required for settlement costs which exceed $10,000. If Plaintiff demonstrates that all of the parties agree to settlement costs of $11,350, the Court will approve them.

Finally, Plaintiff requests an incentive award of $10,000. To support this request, Ms. Frayle submits a declaration describing her efforts in this action. The Courts finds that she is entitled to an incentive award and the amount requested is reasonable and therefore is approved.

VI. CONCLUSION

If Plaintiff provides the requested confirmation regarding the settlement administration costs, the Court will GRANT her motion for final approval.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

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Calendar Line 5

Case Name: *Temujin Labs Inc. et al. v. Arial Abittan et al.*
Case No.: 20CV372622

Presently before the Court is a motion filed by Ye & Associates, P.C. in response to a *sua sponte* order issued on July 25, 2024, addressing a purported Notice of Withdrawal of representation for certain parties. There, the Court explained that the Notice of Withdrawal did not effectuate the termination of Ye & Associates's representation because it was not evident whether such termination was by mutual assent or whether a court order was necessary to permit the withdrawal. Ye & Associates now requests the Court reconsider and revoke that order in light of new information or, in the alternative, vacate the order upon the filing of signed Forms MC-050.

While the Court does not find that the authority for reconsideration cited by Ye & Associates—Code of Civil Procedure section 1008—applies under these circumstances since it presumes the making of an "application" that was "refused in whole or in part," it is nonetheless true that there is no limitation on "the court's authority to reconsider its prior interim rulings on its own motion." (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108.)

As such, the Court construes the motion as one inviting the Court to reconsider its prior order on its own motion based on the signed Forms MC-050 attached to the Declaration of Jianrong Wang. As so construed, the motion is GRANTED as follows: the July 25th order is vacated to the extent it found the withdrawal of Ye & Associates ineffective as to Temujin Labs Inc. (a Delaware corporation) and Temujin Labs Inc. (a Cayman Islands corporation) since evidence has been presented that those entities have consented to the withdrawal.

However, as the Court noted in the July 25th order, Jingjing Ye was also admitted to represent Cross-Defendant Discreet Labs Ltd. It does not appear that Ye & Associates addressed the status of this party in the motion, but both the Court and the other parties must know whether Discreet Labs continues to be represented by Ye & Associates or whether it consents (or not) to a withdrawal of representation.

The Court therefore invites Ye & Associates to address this issue by filing and serving a supplement to the motion along with any supporting declarations or other evidence on or before **September 26, 2024,** after which the Court will issue an additional order.

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Calendar Line 6

Case Name: *Temujin Labs Inc v. Franklin Fu et al.*
Case No.: 21CV375422

See Calendar Line 5 for tentative ruling.

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Calendar Line 7

Case Name:
Case No.:

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Calendar Line 8

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