SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1, Honorable Sunil R. Kulkarni Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2110

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department1@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: NOVEMBER 9, 2023 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	17CV314286	U.S. Bank National Association et al vs Fareed Sepehry-Fard	No tentative ruling. Rather, the Court wants the parties to appear (remotely is fine) for a *Vesco* hearing.
LINE 2	22CV399340	Jamie Komen Revocable Trust v. Page, et al. (Alphabet Inc.) [Shareholder Derivative]	Rescheduled at the parties' request to December 14, 2023 at 1:30 p.m.
LINE 3	21CV383975	Delgado v. Paramit Corporation, et al. (Class Action)	See tentative ruling. The Court will prepare the final order.
LINE 4	21CV385443	Garduno, et al. v. Paramit Corporation, et al. (Class Action)	See line 3.
LINE 5	22CV399353	Ocanas v. Catholic Charities of Santa Clara County (Class Action)	Rescheduled at the parties' request to November 16, 2023 at 1:30 p.m.

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	19CV347622	InESS Solutions, Inc. v. Cisco Systems, Inc. (Lead Case; Consolidated with Case No. 19CV350478)	See tentative ruling. The Court will prepare the final order.
LINE 7	20CV369179	Hone Capital, LLC, et al. v. Wu, et al. (Lead Case; Consolidated With 20CV369308)	Motion for Preliminary Injunction: The Court invites oral argument.
LINE 8	20CV369179	Hone Capital, LLC, et al. v. Wu, et al. (Lead Case; Consolidated With 20CV369308)	Motion for CCP Section 128 Sanctions: The Court invites oral argument.
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name:
Case No.:

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Calendar Line 2

Case Name:
Case No.:

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Calendar Line 3

Case Name: *Caroline Delgado v. Paramit Corporation, et al.*
Case No.: 21CV383975

Case Name: *Jose Garduno, et al. v. Paramit Corporation, et al.*
Case No.: 21CV385443

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Caroline Delgado, a former employee, alleges that her employers, Defendants Paramit Corporation and R & D Technical Services, Inc., failed to provide employees with compliant meal and rest breaks, failed to pay minimum and overtime wages, issued noncompliant wage statements, and committed other wage and hour violations. In related case no. 21CV3 85443, Plaintiffs Jose Garduno and Juan Padilla, also former employees of Defendants, make similar allegations against Defendants but also include a claim for unlawful wage deductions.

Before the Court is Plaintiffs' motion for final approval of a settlement, which is unopposed. As discussed below, if Plaintiffs provide satisfactory clarification of the disparity between the number of class members identified in the motion and the amount identified in the supporting declaration of the case manager for the administrator, the Court is inclined to GRANT the motion.

I. BACKGROUND

Ms. Delgado began employment as a non-exempt employee with Defendants in November 2020 and ended her employment in March 2021. Mr. Garduno was employed by Defendants as a non-exempt employee from May 3, 2021 to July 30, 2021. Mr. Padilla was employed by Defendants as a non-exempt employee from October 2020 to April 2021.

According to Ms. Delgado, she was not paid for all hours worked and Defendants failed to provide her and other class members with uninterrupted meal and rest periods. (First Amended Complaint ("FAC"), ¶¶ 16, 19, 20.) She alleges that employees were required to work off the clock and without compensation pre-shift as they were required to wait in line to clock in. (*Id.*, ¶ 17.) Defendants also required employees to use their personal cellular phones for work purposes without compensation and to purchase supplies, such as scissors, pens, and hand sanitizer, without reimbursement. (*Id.*, ¶ 21.) Employees were not paid for all wages, including overtime wages, meal period premium wages, and rest period premium wages, at the end of their employment with Defendants. (*Id.*, ¶ 22.) Plaintiffs also allege that Defendant failed to provide them with accurate wage statements. (*Id.*, ¶ 23.)

Based on these allegations, Ms. Delgado's FAC asserted putative class claims for: (1) failure to pay minimum wages, in violation of Labor Code sections 204, 1194, 1194.2, and 1197; (2) failure to pay overtime wages, in violation of Labor Code sections 1194 and 1198; (3) failure to provide meal breaks, in violation of Labor Code sections 226.7 and 512; (4) failure to provide rest breaks, in violation of Labor Code section 512; (5) failure to reimburse employees for required expenses under Labor Code section 2802; (6) failure to pay timely wages upon termination under Labor Code 201 through 203; (7) failure to provide accurate itemized wage statements under Labor Code section 226; and (8) violation of Business and Professions Code section 17200, et seq. As mentioned above, in docket 21CV385443, Messrs.

Garduno and Padilla raised the same claims plus an additional claim for unlawful wage deductions.

Plaintiffs now move for an order granting final approval of the settlement agreement, certifying the class for settlement purposes only and entering final judgment.

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) ___U.S.___, 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, Plaintiffs request the following class be certified:

> All current and former non-exempt employees who worked for Defendants in California from July 2, 2017 until January 31, 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 Plaintiffs 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 ADMINISTRATION OF SETTLEMENT

The non-revisionary gross settlement amount is $1,200,000. Attorney fees of up to $400,000 (one-third of the gross settlement), litigation costs of up to $30,000, and $14,095 in administration costs will be paid from the gross settlement. One hundred twenty thousand dollars of the gross settlement amount will be allocated to PAGA penalties, 75 percent of which ($90,000) will be paid to the LWDA. The named Plaintiffs will seek incentive awards of $7,500 each for a total of $22,500. The escalator clause discussed in the Court's order on preliminary approval of the settlement was not triggered.

The net settlement of approximately $613,405 will be allocated to 394 class members proportionally based on their pay periods worked during the class period of July 2, 2017 until January 31, 2023. The PAGA payment will be allocated to approximately 262 aggrieved employees on a pro rata basis based on their number of pay periods worked during the PAGA period of July 1, 2020 until January 31, 2023. Class members will not be required to submit a claim to receive their payments. For tax purposes, settlement payments will be allocated 30 percent to wages and 70 percent to penalties and interest. The PAGA payments will be treated as 100 percent penalties. The employer's share of payroll taxes will be paid in addition to the gross settlement. Funds associated with checks uncashed after 180 days will be paid to the State Bar Justice Gap Fund.

In exchange for the settlement, class members who do not opt out will release "all claims that were alleged, or reasonably could have been alleged, based on the same factual predicate as the claims stated in the Action and the Operative Complaint, including, but not limited to all wage and hour claims that could have been raised by Plaintiffs such as all claims and causes of action related to or arising out of meal periods, rest breaks, unpaid wages, unpaid overtime, shift premiums, bonuses/commissions, unreimbursed expenses, unlawful deductions, inaccurate wage statements, waiting time penalties, failure to maintain payroll records, failure to timely pay wages during employment, vacation pay, and sick leaves" for the class period.[1]

As the Court determined in its order preliminarily approving the settlement, the release is appropriately tailored to the factual allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) Further, the PAGA release is appropriately limited to claims that "were alleged or reasonably could have been alleged, based

[1] The term "Action" refers to both *Delgado, et al. v. Paramit Corporation, et al.*, 21CV383975 and *Garduno, et al. v. Paramit Corporation, et al.*, 21CV385443.

on the same factual predicate as the claims stated in the Action and Plaintiffs' LWDA Notice Letter …." 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. There were no objections to the settlement and one request for exclusion from the class. According to the declaration of the case manager for the administrator, of the 395 notice packets sent, 22 were returned to the administrator, two of which included forwarding addresses; these two were promptly re-mailed. A skip trace performed on the 20 packets returned without a forwarding address produced 11 updated addresses, to which the notice packets were re-mailed. Ultimately, nine notices remain undeliverable. The administrator estimates that the average payment will be $1,556.87, with a maximum payment of $6,388.27.

The Court requests clarification of the disparity between the number of class members identified in the memorandum filed by Plaintiffs in support of their motion and the number set forth in the declaration of the case manager for the administrator. The former states that there are 394 class members, while the latter states that the class list it received from Defendants' counsel contained 395 individuals. Absent such clarification, the Court will not grant Plaintiffs' motion.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiffs' 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. The Court finds that the settlement is fair and reasonable for the purposes of final approval.

V. ATTORNEYS FEES, COSTS AND INCENTIVE AWARD

Plaintiffs seek a fee award of $400,000, or one-third of the gross settlement, which is not an uncommon contingency fee allocation in a wage and hour action. This award is facially reasonable under the "common fund" doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiffs also provide a lodestar figure of $207,236.50, based on 241.3 hours spent on the case by counsel with a billing rate of $375-$795 per hour, resulting in a reasonable multiplier of 1.85. As a cross-check, the lodestar supports the percentage fee requested, particularly given the lack of objections to the attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1 Cal.5th 480, 488, 503-504 [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].)

Plaintiffs also request $23,192.99 in litigation costs, which appear reasonable based on the summaries provided and are approved. The $14,095 in administrative costs are also approved.

Finally, Plaintiffs request service payments of $7,500 each. To support their requests, they submit declarations describing their efforts on the case. The Court finds that the class representatives are entitled to enhancement awards and the amount requested is reasonable.

VI. CONCLUSION

If Plaintiffs provide satisfactory clarification as to the actual number of class members, the Court will GRANT their motion for final approval and will certify the following class for settlement purposes:

> All current and former non-exempt employees who worked for Defendants in California from July 2, 2017 until January 31, 2023.

Excluded from the class will be the one individual who submitted a timely request for exclusion.

Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiffs and the members of the class will take from their complaint only the relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court will retain jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment.

If the motion is granted, the Court will set a compliance hearing for **June 27, 2024 at 2:30 P.M.** in Department 1. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

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 4

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Calendar Line 5

Case Name:
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Calendar Line 6

Case Name: *InESS Solutions, Inc. v. Cisco Systems, Inc.*
Case No.: 19CV347622 (consolidated with Case No. 19CV350478)

These consolidated actions arise from a dispute between Plaintiff and Cross-Defendant InESS Solutions, Inc. and Defendant and Cross-Complainant Cisco Systems, Inc., which Cisco claims grew out of a fraud perpetuated by its former employee, Cross-Defendant Prithviraj R. Bhikha a/k/a Roger Bhikha, and his wife, former Cross-Defendant Lin Teng.

Before the Court is InESS's motion for reconsideration of the Court's August 14, 2023 order granting Cisco's renewed motion for summary judgment/adjudication of both causes of action asserted in InESS's First Amended Complaint in Case No. 19CV347622.[2] As discussed below, the Court DENIES InESS's motion.

I. MOTION FOR RECONSIDERATION

A. Legal Standard and Propriety of Motion

Motions for reconsideration are generally governed by Code of Civil Procedure section 1008 ("Section 1008"), which represents the Legislature's attempt to regulate what the Supreme Court has referred to as "repetitive motions." (See *Standard Microsystems Corp. v. Winbond Electronics Corp.* (2009) 179 Cal.App.4th 868, 885.) Section 1008, subdivision (a), "requires that any such motion be (1) filed within 10 days after service upon the party of written notice of entry of the order of which reconsideration is sought, (2) supported by new additional facts, circumstances or law, and (3) accompanied by an affidavit detailing the circumstances of the first motion and the respects in which the new motion differs from it." (*Id*.) The legislative intent was to restrict motions for reconsideration to circumstances where a party offers the court some fact or circumstance not previously considered, and some valid reason for not offering it earlier. (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500; see *Baldwin v. Home Sav. Of America* (1997) 59 Cal.App.4th 1192, 1198.)

Thus, the burden under Section 1008 "is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial." (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212-213.) Parties may *only* move for reconsideration as authorized by Section 1008. Cisco asserts that InESS has not complied with the timing requirements of Section 1008 and therefore its motion must be denied on procedural grounds. InESS maintains that its counsel was never served with the August 14 order and therefore the 10-day period was never triggered.

As stated above, a motion for reconsideration must be filed within "10 days after service upon the party of written notice of entry of the order." (Code Civ. Proc., § 1008, subd. (a).) The Court entered its order granting Cisco's motion for summary judgment/adjudication on August 14, 2023, and Cisco understands that the order was electronically served on InESS's

[2] In this order, the Court also denied InESS's second motion for summary adjudication of its fifth cause of action in Case No. 19CV350478. However, this ruling is not the target of InESS's motion.

former counsel, Philip D. Minter, on August 14, 2023. The Court granted Mr. Minter's motion to withdraw on June 15, 2023 and included the following notice to InESS:

> The court needs to know how to contact you. If you do not keep the court and other parties informed of your current address and telephone number, they will not be able to send you notices of actions that may affect you, including actions that may adversely affect your interests or result in your losing the case.

Cisco states that it is not aware of whether InESS provided its contact information to the Court as required. According to Cisco, InESS's new counsel, Gregory Cavallo, wrote to its attorney on September 7, 2023, indicating that he had retrieved and reviewed the August 14 order. On September 8, 2023, Mr. Cavallo filed a letter with the Court informally requesting a "rehearing" on Cisco's motion for summary adjudication and conceded therein that he had received and reviewed the order. Mr. Cavallo again confirmed that he had received the order during the parties' case management conference ("CMC") on September 21, 2023.

Cisco maintains that a lack of service of the MSA order on InESS's counsel (thereby triggering the 10-day period to file the motion for reconsideration) is purely the result of Mr. Cavallo's failure to formally submit a substitution of counsel or other notice to the Court indicating that he was now InESS's attorney of record prior to the issuance of the order, and InESS should not be permitted to benefit from this failure by having its motion deemed timely. This should especially be the case, Cisco continues, when it is undisputed that InESS and Mr. Cavallo have had actual knowledge of the August 14 order since no later than September 7, 2023. Consequently, it argues, the 10-day period constructively closed on September 17, 2023.[3]

The Court agrees. To deem InESS's motion for reconsideration timely would be allowing it to benefit from its own failures and would ultimately result in prejudice to Cisco. Seemingly in recognition of the fact that its motion might not be timely, InESS notes that the Court also has the inherent authority to reconsider its August 14 order. While it is generally true that a court possesses the ability, "on its own motion, to reconsider its prior interim orders so it may correct its own errors" (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107), and also has the inherent power to correct such errors when they are called to the court's attention by way of an *improperly* filed motion (see *Marriage v. Barthold* (2008) 158 Cal.App.4th 1301, 1308) like InESS's here, a motion asking the court to reconsider a ruling on its own motion after the 10-day period is *ineffective* and not only is the court not obliged to rule on it, but opposing counsel need not respond. (*Le Francois*, *supra*, 35 Cal.4th at 1108; see also *Farmers Ins. Exch. v. Superior Court* (2013) 29 Cal.App.4th 96, 102.) While the Court does not believe that it is obligated to rule on this motion, it will nevertheless do so in the interests of being thorough.

B. Substantive Merits

As explained above, in the August 14 order, the Court granted Cisco's motion for summary judgment/adjudication as to claims asserted against it by InESS for breach of oral

[3] Cisco asserts that at the outer bounds of InESS's argument, Mr. Cavallo received formal permission from the Court to submit its motion at the parties' September 21, 2023 CMC and yet did not file the motion until nearly a month later on October 16.

agreement and a common count for work, labor, services and materials provided in case no. 19CV347622. These claims were based on a 2017 Statement of Work called "Productivity & Component Costing of Tail Spend" ("2017 SOW"). InESS alleged that the essential terms of the oral contract "[W]ere those set forth in [the 2017 SOW] excepting only, there was never a P.O. issued by Cisco Systems, Inc. although there was a usual, typical procedure of ordering the supplier to proceed with its work before a P.O. was issued. That Order was typically followed, as it was followed in this case. Plaintiff had completed a majority of the work required to earn its compensation and would have completed all of the work but Defendant breached."

In its motion for summary judgment, Cisco argued that the Master Services Agreement ("MSA") entered into by itself and InESS before the 2017 SOW required a valid Purchase Order be issued before InESS could do work or be paid for such work and because no such order was ever issued, it had no obligation to perform by paying InESS. The Court agreed, finding, as Cisco maintained, that the MSA constituted a fully integrated agreement that superseded the alleged oral agreement and thus InESS was bound by its terms, including that it had to issue a Purchase Order before Cisco had any duty to pay for work performed by the company. In reaching this conclusion, the Court refused to consider evidence proffered by InESS that purportedly showed the parties' true intentions, course of performance, or that Cisco acted in contravention to the "no work before a purchase order is issued" requirement found in the subsequently signed MSA and SOW, deeming it inadmissible based on the parol evidence rule.

In this motion, InESS challenges the Court's conclusion that the MSA was fully integrated, arguing that it was not because its own terms demonstrate that it was not a "final expression" of the parties' agreement as required by the parol evidence rule.

To the extent InESS is bound by the requirements of Section 1008, the foregoing argument does not represent "new facts, circumstances, or law" within the meaning of the statute. What InESS is doing is merely rehashing the same facts and law that it presented to the Court in its opposition to Cisco's motion for summary judgment/adjudication. The only thing that is purportedly "new" is the supplemental declaration of Souvami Sundareson, but as Cisco contends, everything in this declaration was included in Mr. Sundareson's original declaration filed in support of InESS's opposition. (See Cisco's Opp. at 6:11-27.) In any event, even if any of the facts presented by InESS in its motion could be considered "new," InESS fails to provide any explanation for why they were not presented in its original opposition, as is its burden. (See *Torres v. Design Group Facility Solutions, Inc.* (2020) 45 Cal.App.5th 239, 243 ["If the motion to reconsider is based on new facts, the moving party must provide a satisfactory explanation for its failure to produce the evidence at an earlier time."].)

InESS seemingly recognizes that there are no new facts for which it can provide a satisfactory explanation for not presenting earlier by stating, "[w]hat was not *adequately* presented in InESS's opposition papers, […] is explained in the accompanying Supplemental declaration of Souvami Sundareson and "[a]lthough InESS could have perhaps better anticipated where the summary adjudication argument was going, InESS and its counsel did not understand how these pieces fit together as it relates to the parol evidence rule and summary adjudication." (Motion at 10:14-17; 12:8-10.) As Cisco asserts, a motion for reconsideration is not intended to serve as a mechanism for a party to re-brief unsuccessful

arguments, i.e. a "do-over." Thus, InESS has not demonstrated a statutorily approved basis for the Court to reconsider its order.

The Court also is not persuaded that its ruling was erroneous such that there is anything to correct *sua sponte* by using its own inherent authority to reach a different conclusion on Cisco's motion. Cisco's evidence established that the MSA was the only operative written agreement, stood on its own terms and was fully integrated, and any evidence to the contrary offered by InESS could not be considered due to the parol evidence rule. Because the MSA required the issuance of a Purchase Order to trigger any obligation on the part of Cisco to pay for work performed by InESS, and no order was issued, InESS could not succeed on its claims for breach of contract and common counts. The Court will not reverse its ruling and therefore denies InESS's motion.

II. CONCLUSION

InESS's motion for reconsideration is DENIED.

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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