

**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](mailto: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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- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
- Members of the public who wish to observe can do so through Microsoft Teams (using the link discussed above) or in person. Please make sure to turn your camera off and mute yourself if you are observing the proceedings remotely.
- As a reminder, state and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while in the courtroom and while on Microsoft Teams.

**LAW AND MOTION TENTATIVE RULINGS**

**DATE: NOVEMBER 30, 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
<a href="#">LINE 1</a>	22CV395032	Nejat v. MTN Inc. Environmental Services, et al. (Class Action/PAGA)	See tentative ruling. The Court will prepare the final order.
<a href="#">LINE 2</a>	22CV404785	Lluen Liendo v. Mirapath, Inc. (Class Action/PAGA)	See tentative ruling. The Court will prepare the final order.
<a href="#">LINE 3</a>	23CV415833	Trace3, LLC v. Sycomp, A Technology Company, Inc., et al.	See tentative ruling. The Court will prepare the final order.
<a href="#">LINE 4</a>	23CV415833	Trace3, LLC v. Sycomp, A Technology Company, Inc., et al.	See line 3.

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**LAW AND MOTION TENTATIVE RULINGS**

<a href="#">LINE 5</a>	23CV415833	Trace3, LLC v. Sycomp, A Technology Company, Inc., et al.	See line 3.
<a href="#">LINE 6</a>			
<a href="#">LINE 7</a>			
<a href="#">LINE 8</a>			
<a href="#">LINE 9</a>			
<a href="#">LINE 10</a>			
<a href="#">LINE 11</a>			
<a href="#">LINE 12</a>			
<a href="#">LINE 13</a>			

## **Calendar Line 1**

**Case Name:** *Alexander Nejat v. MTN Inc. Environment Services, et al.*

**Case No.:** 22CV395032

This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiff Alexander Nejat alleges that Defendants MTN Inc Environment Services and MES Inc Mountain Environmental (collectively, “Defendants”), a construction company specializing in waterproofing and mitigation, failed to pay overtime and minimum wages, failed to provide compliant meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

Now before the Court is Plaintiff’s motion for preliminary approval of a settlement, which is unopposed. As discussed below, the Court GRANTS Plaintiff’s motion.

### **I. BACKGROUND**

Plaintiff was employed as a general laborer by Defendants, a non-exempt, hourly position, from December 28, 2018 through March 9, 2021. He initiated this action with the filing of the operative complaint on March 7, 2022, asserting the following causes of action: (1) failure to pay minimum and overtime wages; (2) failure to provide meal periods or compensation in lieu thereof; (3) failure to provide rest periods or compensation on lieu thereof; (4) failure to provide accurate wage statements; (5) failure to pay wages upon ending employment; (6) violation of unfair competition law; and (7) violation of PAGA.

Mr. Nejat now moves for an order preliminarily approving the settlement of the class and PAGA claims, provisionally certifying the settlement class, appointing him as class representative and counsel as class counsel, approving the form and method for providing notice to the class, and scheduling a final fairness hearing.

### **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 (1)(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 PROCESS**

According to Plaintiff, before engaging in protracted litigation, the parties agreed to explore resolution of this action through private mediation. In preparation for mediation, the parties agreed to an informal discovery process wherein information was exchanged relating to the applicable policies and procedures, payroll and timekeeping records, size of the class, compensation policies and practices, and potential value of the case.

On August 11, 2023, the parties participated in mediation with Tripper Ortman, Esq., an experienced mediator of wage and hour class and PAGA representative actions and were able to reach a settlement.

#### **IV. SETTLEMENT PROVISIONS**

The non-reversionary gross settlement is \$206,500. Attorney fees of up to \$68,833.33 (one-third of the gross settlement), litigation costs and expenses of up to \$15,000, and \$5,000 in administrative costs will be paid from the gross settlement. \$5,000 will be allocated to PAGA penalties, 75% of which (\$3,750) will be paid to the LWDA. Mr. Nejat will seek a service award of \$7,500.

The net settlement, approximately \$106,916.67, will be allocated to class members on a pro rata basis based on the number of weeks each member worked during the class period. The remaining 25% of the PAGA settlement amount will be distributed to aggrieved employees in the same manner except it will be based on the number of weeks worked during the PAGA period of August 13, 2020 through August 11, 2023. The average payment (including PAGA payments) will be approximately \$1,243, and the highest payment is estimated to be \$9,996. Class members will not be required to submit a claim to receive their payment. For tax purposes, settlement payments will be allocated 25% to wages, and 75% as interest and civil penalties from which no taxes will be withheld. Funds associated with the checks uncashed after 180 days will be donated to the State Bar of California- Justice Gap Fund.

In exchange for the settlement, class members who do not opt out will release:

[A]ll claims, actions or causes of action alleged or that reasonably could have been alleged against [Defendants] arising out of the facts, circumstances and primary rights at issue in the operative Complaint and any amendments thereto during the Class Period, including all claims for: 1) failure to pay all minimum and overtime wages; 2) meal period violations; 3) rest period variations; 4) wage statement violations; 5) failure to timely pay wages during employment and upon separation of employment; and 6) Unfair Competition Law violations.

The PAGA release is similar, but in addition to the Complaint refers to claims arising out of the “facts, circumstances, and primary rights” at issue in the LWDA notices. Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

The foregoing releases are both appropriately tailored to the allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

#### **V. FAIRNESS OF SETTLEMENT**

Plaintiff valued the claims in this action as follows<sup>1</sup>: failure to pay wages at \$28,270; waiting time penalties at \$157,950; failure to provide meal and rest periods at \$53,777 and \$35,492, respectively; failure to provide itemized wage statements at \$31,421; and PAGA penalties at \$8,379. These claims were therefore collectively valued at \$287,019. The settlement amount totals approximately 71% of this risk-adjusted amount.

Considering the portion of the case's value attributable to uncertain penalties, claims that could be difficult to certify for class treatment, and the multiple, dependent contingencies that Plaintiffs would have had to overcome to prevail on their claims, the settlement achieves a good result for the class. For purposes of preliminary approval, the Court finds that the settlement is fair and reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable in light of the statute's purposes.

Of course, the Court retains an independent right and responsibility to review the requested attorney fees and award only so much as it determines to be reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.) Counsel shall submit lodestar information prior to the final approval hearing in this matter so the Court can compare the lodestar information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee through a lodestar calculation].)

## **VI. PROPOSED SETTLEMENT CLASS**

Plaintiff requests that the following settlement class be provisionally certified:

[A]ll current and former non-exempt employees who worked for any Defendant within the State of California at any time during the period of time between March 7, 2018 and August 11, 2023.

### **A. Legal Standard for Certifying a Class for Settlement Purposes**

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

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<sup>1</sup> These are the total *risk-adjusted* values calculated by Plaintiff's counsel; these risks included the potential denial of class certification and the chance of success on the merits given the defenses at issue, among others.

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.)

### **B. Ascertainable Class**

A class is ascertainable “when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980 (*Noel*).) A class definition satisfying these requirements

puts members of the class on notice that their rights may be adjudicated in the proceeding, so they must decide whether to intervene, opt out, or do nothing and live with the consequences. This kind of class definition also advances due process by supplying a concrete basis for determining who will and will not be bound by (or benefit from) any judgment.

(*Noel, supra*, 7 Cal.5th at p. 980, citation omitted.)

“As a rule, a representative plaintiff in a class action need not introduce evidence establishing how notice of the action will be communicated to individual class members in order to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with objective characteristics and transactional parameters, and can be determined by DIRECTV’s own account records. No more is needed.”].)

Here, the estimated 86 class members are readily identifiable based on Defendants’ records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

### **C. Community of Interest**

The “community-of-interest” requirement encompasses three factors: (1) predominant questions of law or fact, (2) class representatives with claims or defenses typical of the class, and (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra*, 34 Cal.4th at pp. 326, 332.)

For the first community of interest factor, “[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be good for the judicial process and to the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105 (*Lockheed Martin*).) “As a general rule if the defendant’s liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.” (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

Here, common legal and factual issues predominate. Plaintiff’s claims all arise from Defendants’ wage and hour practices applied to the similarly-situated class members.

As for the second factor,

The typicality requirement is meant to ensure that the class representative is able to adequately represent the class and focus on common issues. It is only when a defense unique to the class representative will be a major focus of the litigation, or when the class representative’s interests are antagonistic to or in conflict with the objectives of those she purports to represent that denial of class certification is appropriate. But even then, the court should determine if it would be feasible to divide the class into subclasses to eliminate the conflict and allow the class action to be maintained.

(*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations, brackets, and quotation marks omitted.)

Like other members of the class, Plaintiff was employed by Defendants as a non-exempt, hourly-paid employee and alleges that he experienced the violations at issue. The anticipated defenses are not unique to Plaintiff, and there is no indication that Plaintiff’s interests are otherwise in conflict with those of the class.

Finally, adequacy of representation “depends on whether the plaintiff’s attorney is qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the class.” (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class representative does not necessarily have to incur all of the damages suffered by each different class member in order to provide adequate representation to the class. (*Wershba, supra*, 91 Cal.App.4th at p. 238.) “Differences in individual class members’ proof of damages [are] not fatal to class certification. Only a conflict that goes to the very subject matter of the litigation will defeat a party’s claim of representative status.” (*Ibid.*, internal citations and quotation marks omitted.)

Plaintiff has the same interest in maintaining this action as any class member would have. Further, he has hired experienced counsel. Plaintiff has sufficiently demonstrated adequacy of representation.



## **D. Substantial Benefits of Class Certification**

“[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . .” (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid.*) “Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp. 120–121, internal quotation marks omitted.)

Here, there are an estimated 86 class members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case.

## **VII. NOTICE**

The content of a class notice is subject to court approval. (Cal. Rules of Court, rule 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of relief requested; (3) The stake of the individual class members; (4) The cost of notifying class members; (5) The resources of the parties; (6) The possible prejudice to class members who do not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule 3.766(e).)

Here, the notice describes the lawsuit, explains the settlement, and instructs class members that they may opt out of the settlement (except the PAGA component) or object. The gross settlement amount and estimated deductions are provided. Class members are informed of their qualifying workweeks as reflected in Defendants’ records and are instructed how to dispute this information. Class members are given 45 days to request exclusion from the class or submit a written objection to the settlement.

The notice is generally adequate. Class members’ workweek information must be displayed in bold within a box set off from the rest of the text on the first page of the notice. And class members must be informed of how notice of final judgment will be provided (for example, by posting the judgment to a settlement web site).

Turning to the notice procedure, the parties have selected ILYM Group, Inc. as the settlement administrator. The administrator will mail the notice packet within seven calendar days following its receipt of the names and addresses of class members from Defendants and after updating these addresses using the National Change of Address Database; the Defendants must provide said information within seven days of entry of the preliminary approval order. Any returned notices will be re-mailed to any forwarding address provided or new address located through a skip trace or other

search. Class members who receive a re-mailed notice will have at least 15 days to respond. These notice procedures are appropriate and are approved.

### **VIII. CONCLUSION**

Plaintiff's motion for preliminary approval is GRANTED. The final approval hearing shall take place on **May 30, 2024** at 1:30 in Dept. 1. The following class is preliminarily certified for settlement purposes:

[A]ll current and former non-exempt employees who worked for any Defendant within the State of California at any time during the period of time between March 7, 2018 and August 11, 2023.

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.scsccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scsccourt.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 2

**Case Name:** *Liendo v. Mirapath, Inc.*

**Case No.:** 22CV404785

This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiff Diego Gonzalo Lluen Liendo alleges that Defendant Mirapath, Inc. failed to pay overtime and minimum wages, failed to provide compliant meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

Before the Court is Plaintiff’s motion for approval of PAGA settlement, which is unopposed. As discussed below, if Plaintiff provides the requested clarification on the procedures to be followed where checks mailed to Aggrieved Employees are returned to the administrator as undeliverable, the Court is inclined to GRANT the motion.

### I. BACKGROUND

According to the operative First Amended Complaint (“FAC”), Defendant employed Plaintiff and “Aggrieved Employees” as non-exempt, hourly employees in California during the relevant statutory period. Plaintiff alleges that Defendant failed to: pay minimum wages for all hours worked; compensate employees for all overtime hours worked; provide employees with all rest and meal breaks to which they were entitled, or provide the requisite compensation when those breaks were not provided; timely pay all wages due during employment and at separation of employment; reimburse employees for business expenses incurred by them during the course of the performance of their duties; provide code-compliant wage statements; and keep accurate employment records.

Based on the foregoing, Plaintiff initiated this action with the filing of the original complaint on October 17, 2022, asserting the following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to pay accrued vacation wages; (4) failure to provide rest periods and pay missed rest period premiums; (5) failure to provide meal periods and pay missed meal period premiums; (6) failure to maintain accurate employment records; (7) failure to pay wages timely during employment; (8) failure to pay all wages earned and unpaid at separation; (9) failure to indemnify all necessary business expenses; (10) failure to furnish accurate itemized wage statements; and (11) violations of California unfair competition law. The parties stipulated to allow Plaintiff to file the FAC adding a single cause of action for PAGA penalties based on the various Labor Code violations alleged therein.<sup>2</sup>

### II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) \_\_\_ U.S. \_\_\_, 2022 U.S. LEXIS 2940.)

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<sup>2</sup> On March 9, 2023, the Court dismissed all of the non-PAGA claims, without prejudice, pursuant to the request of the parties.

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

Labor Code section 2699, subdivision (1)(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.) “[C]lass certification is not required” in this context as in a class action. (*Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 (*Haralson*).)

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 (*Moniz*).) 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, supra*, 383 F. Supp. 3d at p. 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. PLAINTIFF’S INVESTIGATION, SETTLEMENT PROCESS, AND THE PARTIES’ AGREEMENT**

After the commencement of this action, the parties, in an effort to reach a resolution, exchanged various documents and information that allowed them to evaluate the potential exposure and risk, including Defendant’s policies relating to the claims at issue and potential appellate questions, among others. The parties concluded that, considering the sharply disputed factual and legal issues involved and the risks associated with further prosecution, settlement was in the best interests of both sides and reached the agreement now before the Court.

Pursuant to that agreement, Defendant will pay a gross amount of \$34,575, which is comprised of: \$11,410 in attorneys’ fees, litigation costs of \$1,000 and administration costs of \$1,761.35. The named Plaintiff, Mr. Liendo, also seeks an incentive payment of \$1,500 for serving as the PAGA representative. The net settlement amount of approximately \$18,903.65 will be distributed 75 percent (\$14,177.74) to the LWDA and 25 percent (\$4,725.91) to the

“Aggrieved Employees,” based on the number of pay periods that each of these individuals worked during the PAGA period, i.e., the period of time from October 17, 2021 to the date of entry of the order approving the parties’ settlement. The 18 Aggrieved Employees will receive an average payment of \$262.55.

In exchange for the settlement, Aggrieved Employees will release:

[A]ny and all known and unknown claims under PAGA, including but not limited to any and all claims for penalties, attorneys’ fees, and/or costs, that arise from or relate to the allegations in the Complaint and the allegations in Plaintiff’s letter to the LWDA dated June 24, 2022, including but not limited to alleged failure to provide meal and rest periods, alleged failure to provide complete and accurate wage statements, alleged failure to maintain accurate records, alleged failure to pay all overtime wages, alleged failure to pay all minimum wages, alleged failure to timely pay wages during employment, alleged failure to pay all wages on separation, and alleged failure to reimburse necessary expenditures and/or alleged violation of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1198, 1198.5, 1199, 2802, 2804 et seq., and/or violation of Industrial Welfare Commission Wage Order No. 4-2001.

The release is appropriately tailored to the allegations at issue, and does not release any claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra*, 72 Cal.App.5th at p. 82 [release of “all known and unknown claims under PAGA ... that were or could have been pled based on the allegations of the Complaint” was appropriately approved].)

## **IV. DISCUSSION**

### **A. Potential Verdict Value**

Based on the data provided by Defendant, particularly that there were 431 pay periods during the covered period, Plaintiff calculated the maximum exposure of the PAGA claim to be \$43,100 (431 x \$100 penalty/period).

A court can decline to award the full amount of PAGA penalties where, “if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (See, e.g., *Carrington v. Starbucks Corp.* (2018) 390 Cal.App.5th 504, 517 [affirming trial court’s 90% reduction of maximum PAGA penalty amount given employer’s good faith attempt at complying with the law].) Here, while Plaintiff maintains no reason exists to reduce the PAGA penalties, it acknowledges that Defendant could make compelling arguments to the contrary, including that it complied with all applicable Labor Code provisions. In consideration of this, the history of various similar PAGA decisions and the risk that Plaintiff may recover nothing, the Court finds that the proposed settlement, which represents over 80% of the total possible liability for PAGA penalties in this case, is fair to those affected and is genuine, meaningful, and reasonable in light of the statute’s purposes.

### **B. Attorney Fees**

While the PAGA statute does not expressly require judicial review of claimed attorney fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties associated with PAGA settlements without also considering attorney fees. The Court thus finds that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is consistent with the observation of many courts that PAGA claims are analogous to “*qui tam*” suits like those under the federal False Claims Act: when reviewing settlements of *qui tam* claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v. Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be considered by the trial court as part of its review of the “entire settlement arrangement”].)

Plaintiff seeks a fee award of \$11,410, one-third of the gross settlement, which is not an uncommon contingency fee allocation in a wage and hour class 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. Plaintiff also submits a lodestar figure of \$19,004.40, based on 27.2 hours spent on this case by counsel billing at rates of \$225 to \$997 per hour. This amount exceeds the fees requested by Plaintiff here, resulting in negative multiplier. Accordingly, the lodestar cross check supports the percentage fee actually requested and this amount is approved. (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].)

### **C. Other Costs and Expenses**

Counsel’s request for litigation costs of \$1,000 appear reasonable based on the supporting declarations provided which establish that counsel actually incurred \$1,930.33 in total costs and is approved, as is the request for \$1,761.35 in administrative costs.

Finally, the Court finds that the named plaintiff is entitled to the incentive payment totaling \$1,500 as agreed by the parties. The rationale for such awards in class actions is that named plaintiffs “should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class,” considering “1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394–1395, internal citations and quotations omitted.) These considerations apply equally in the PAGA context.

### **V. ADMINISTRATION PROCESS**

The parties have agreed that Defendant will deposit the gross settlement amount with the settlement administrator, ILYM Group, Inc., within 20 days after the “Effective Date,” which is defined as two courts days after: (a) sixty-one (61) calendar days after the entry of the Court’s order granting approval of the settlement, if no motions for reconsideration and no appeals or other efforts to obtain review have been filed; or (b) in the event of an appeal or other effort to obtain reconsideration or review has been initiated, the date sixty-one (61) calendar days after the foregoing has been concluded in favor of the order granting approval of the settlement and the order is no longer subject to review. Within 10 business days after the

Effective Date, Defendant is to provide the administrator with a list of all members of the PAGA group, i.e., the Aggrieved Employees, and their last known mailing address.

Within 10 business days after receiving the gross settlement amount, the administrator shall distribute the payments to each member of the PAGA group by check via U.S Mail. Any checks that remain uncashed after 180 days will be transmitted to the California State Controller's Office Unclaimed Property Fund.

Problematically, there are no terms in the settlement which address what will happen if any of these checks are returned as non-deliverable to the administrator. Will the administrator attempt to obtain an undated address? If so, how will they go about doing that? In the absence of such information, the Court will not approve the administrative procedures, but is inclined to do so if Plaintiff provides clarification on this issue.

## **VI. ORDER AND JUDGMENT**

If Plaintiff provides the requested clarification on the procedures to be followed where checks mailed to Aggrieved Employees are returned to the administrator as undeliverable, the Court is inclined to rule thusly:

Plaintiff's motion for approval of the parties' PAGA settlement is GRANTED. The Aggrieved Employees are: non-exempt employees employed by Defendant in California during the period of October 17, 2021, to the date of entry of the order granting approval of the settlement.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff and Aggrieved Employees shall take from the PAGA claim in their FAC only the relief set forth in the parties' settlement agreement and this order and judgment. The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **August 1, 2024 at 2:30 P.M.** in Department 1. At least ten court days before the hearing, Plaintiff's 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 to the Controller's Office; the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. 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.scsccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scsccourt.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:** *Trace3, LLC v. Sycomp a Technology Company, Inc., et al.*

**Case No.:** 23CV415833

This is a trade secret misappropriation action brought pursuant to the California Uniform Trade Secrets Act. Plaintiff Trace3, LLC seeks statutory damages and injunctions against corporate Defendant Sycomp a Technology Company, Inc. (“Sycomp”) and individual Defendants Timothy Cordell, Geoffrey Peterson, and Devin Tomchik (collectively, the “Individual Defendants”).<sup>3</sup> Trace3 alleges that the Individual Defendants, all of whom are former Trace3 employees, joined Sycomp, a competitor, after abusing and exploiting their privileged access to Trace3’s computer networks and devices to misappropriate Trace3’s trade secret and confidential information to the benefit of Sycomp.

Before the Court are two motions to seal by Trace3, as well as Sycomp’s motion to compel further responses to expedited discovery, all of which are opposed. For the reasons discussed below, the Court GRANTS IN PART and deems MOOT IN PART the motion to compel, GRANTS Trace3’s sixth motion to seal and GRANTS, as modified, Trace3’s seventh motion to seal.

#### I. SYCOMP’S MOTION TO COMPEL

With the instant motion, Sycomp moves to compel further responses from Trace3 to the following expedited sets of discovery: (1) RFA, Set One, Nos. 1-35; (2) SI, Set One, Nos. 1-28; (3) RPD, Set One, Nos. 1-14; and (4) FI, Set One, No. 17.1. Trace3 provided responses on June 2, refusing to respond in substance of many of the requests based on its contention that the expedited discovery was intended to be narrow and responding to the requests would be burdensome. Trace3 produced responsive documents on June 6 and provided supplemental responses to RPD Nos. 1, 2, 7 and 9-13 on June 7, and unverified supplemental responses to FI No. 17.1 and SI Nos. 1, 7, 11 and 12 on June 13. Trace3 refused to produce documents in response to RPD Nos. 3-6, 8 and 14.

Believing Trace3’s responses to be inadequate, Sycomp initiated the meet and confer process and the parties engaged in a video conference on June 5 in advance of an IDC. Trace3 claimed it would supplement its responses, and Sycomp agreed that if such supplementation was full and complete, it would not move to compel further responses to those requests. Trace3 argued that the expedited discovery was intended to be narrow.

At the June 9 IDC, the Court seemingly clarified that the expedited discovery was limited to discovery issues raised in Trace3’s application for a TRO. On June 14, the parties participated in further meet and confer concerning Trace3’s discovery responses. Subsequent to this, Trace3 requested another IDC, which was held on June 23. At the conference, the Court invited the subject motions to compel and tolled the deadline to file them to October 31.

On June 30, Trace3 filed its own motions to compel discovery responses from Sycomp to all of its requests and its Person Most Knowledgeable (“PMK”) deposition notice; Sycomp maintains that by doing so Trace3 abandoned any legitimate burden and scope objections to its

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<sup>3</sup> On July 21, 2023, Trace3 dismissed Liliana Elias as a defendant.

own discovery requests. The Court overruled Sycomp's objections (other than its objection to the adequacy of Trace3's trade secret disclosure) and ordered that after service of a new Code of Civil Procedure section 2019.210 disclosure, Sycomp would have seven days to respond to all of Trace3's 130 plus discovery requests and then sit for a PMK deposition before the preliminary injunction hearing. After an amended disclosure was served by Trace3 on August 7, Sycomp provided supplemental responses, without objections (except privilege). The instant motion was filed a month later.

Shortly thereafter, in late October, Trace3 served supplemental responses to some of the (expedited) discovery requests, particularly (expedited) SI, Set One, No. 8, RFA, Set One, No. 23 and FI, Set One, No. 17.1 as to RFA Nos. 1-18, 20 and 21.

### **A. Legal Standard**

A party propounding a request for production may move for an order compelling a further response if it deems that a statement of compliance is incomplete, a representation of inability to comply is inadequate, or an objection is without merit. (Code Civ. Proc., § 2031.310, subd. (a).) The motion must set forth "specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310, subd. (b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98 ("*Kirkland*").) Good cause is established simply by a fact-specific showing of relevance. (*Kirkland, supra*, 95 Cal.App.4th at p. 98.) If good cause is shown, the burden shifts to the responding party to justify any objections. (*Ibid.*)

A party propounding interrogatories and requests for admission may also move for an order compelling further responses if it deems an answer is evasive or incomplete and/or an objection is without merit or too general. (Code Civ. Proc., §§ 2030.300, subd. (a) and 2033.290, subd. (a).) The statutes do not require any showing of good cause in support of such a motion. (See *id.*, §§ 2030.300 and 2033.290; see also *Coy v. Superior Court* (1962) 58 Cal.2d 210, 220–221 ("*Coy*").) The burden is on the responding party to justify any objections or failure to fully answer.<sup>4</sup> (*Coy, supra*, 58 Cal.2d at pp. 220–221.)

### **B. RFA, Set One, Nos. 1-35<sup>5</sup>**

#### **1. Nos. 1-2, 20, 21 and 24-30**

These requests for admission request that Trace3 admit the following: it does not have evidence that Sycomp used or received (from any former Trace3 employee) any Trace3 trade secret (RFA Nos. 1-2); it does not have evidence that any former employee who joined Sycomp in April 2023 disclosed (or used) any trade secret to the company (RFA Nos. 20, 21);

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<sup>4</sup> Trace3's responses to each set of discovery are preceded by a preliminary statement and "general objections," the latter of which is comprised of a plethora of individual objections. This is improper because a party is to respond *separately* to each request with objections or a substantive response. (See Code Civ. Proc., §§ 2030.210, subd. (a), 2031.210, subd. (a), 2033.210, subd. (a).) Thus, any supplemental responses ordered by the Court must be provided without the foregoing.

<sup>5</sup> The Court has grouped requests in the manner used by Sycomp in its motion, which is purportedly by subject matter.

some Trace3 employees kept personal files on their Trace3-issued data storage devices (RFA Nos. 24) and it does not penalize employees for doing so (RFA No. 25); and particular employees did not disclose any Trace3 data to Sycomp (RFA Nos. 26-30).

A party responding to a request for admission must: (1) admit so much of the matter as is true; (2) deny so much of the matter as is untrue; or (3) specify so much of the matter as to which the responding party lacks sufficient information or knowledge of its truth. (Code Civ. Proc., § 2033.220, subd. (b).) If the responding party gives lack of information or knowledge as a reason for failure to admit or part of a request for admission, it must state in the answer that a reasonable inquiry has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter. (Code Civ. Proc., § 2033.220, subd. (c).)

Trace3 responded nearly identically to most of the requests asserted in the expedited first set of RFA, asserting numerous objections (attorney-client privilege, attorney work product, joint defendant or common interest privilege, “any other constitutional, statutory, common law or regulatory protection, immunity, or proscription from disclosure,” “to the extent it seeks confidential or proprietary business information, trade secrets, or commercially sensitive information without and appropriate protective order,” overly broad and unduly burdensome and seeks information on matters outside the scope of expedited discovery) and then, “subject to and without waiving the foregoing objections,” denying the request. Trace3 did admit RFA No. 24, subject to the same objections. In its responses to RFA Nos. 26-30, Trace3 responded that it lacked sufficient information to respond and on that basis, subject to the various objections, denied the requests.

Sycomp maintains that further responses to each of these RFA is warranted because Trace3’s objections are without merit. Indeed, if these objections lack merit, the responses are not code-compliant because each answer to a request for admission “shall be as complete and straightforward as the information reasonably available to the responding party permits.” (Code Civ. Proc., § 2033.220, subd. (a).)

Trace3 contends that its responses to these RFA are code-compliant because it responded to them with a “flat” denial, admission or statement that it lacked sufficient information and on that basis, denied the requests. But this is not true because these denials, admissions, etc. were made “subject to” various objections. As the party asserting objections to discovery requests, it is Trace3’s burden to justify those objections. (See *Coy, supra*, 58 Cal.2d at pp. 220–221.)

Here, Trace3 fails to adequately do so. It insists that responding to such expedited discovery is overly burdensome and Sycomp is foreclosed from arguing to the contrary because it made a similar argument with regards to its obligation to respond to discovery propounded by Trace3. But Trace3 fails to substantiate its objection, i.e., make a particularized showing of the burden and expense; merely asserting that responding to the requests is overly burdensome does not establish as much. (See *West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417-418 [because “some burden is inherent in all demands for discovery,” a party claiming that requested discovery is unduly burdensome must make a particularized showing of facts demonstrating hardship, including *evidence* showing the quantum of work required to respond].) Moreover, Trace3 by now has had ample time to respond to this “expedited” discovery.

Thus, this objection and all others asserted in response to these interrogatories are overruled and Trace3 must provide code-compliant further responses *without* objections except for privilege.

2. *Nos. 3-18*

These requests for admission request that Trace3 admit the following: that various, specified documents do not contain any Trace3 trade secret (RFA Nos. 3-4, 6, 7, 9, 11, 13, 15, 17); any trade secrets in certain documents belong to Magnite (RFA Nos. 5, 8, 10, 12, 14, 16, 18).

As an initial matter, given that Trace3 provided a supplemental response to RFA No. 8, the motion to compel is moot with respect to that request. Trace3 otherwise responded identically to these requests, asserting numerous objections (attorney-client privilege, attorney work product, joint defendant or common interest privilege, “any other constitutional, statutory, common law or regulatory protection, immunity, or proscription from disclosure,” “to the extent it seeks confidential or proprietary business information, trade secrets, or commercially sensitive information without and appropriate protective order,” overly broad and unduly burdensome and seeks information on matters outside the scope of expedited discovery) and then, “subject to and without waiving the foregoing objections,” denying the request.

As Trace3 fails to justify these objections, the Court agrees with Sycomp that they lack merit and therefore that further responses to these RFA, *without* objections (except for privilege if applicable), are warranted.

3. *Nos. 19, 22, 31-35*

These requests for admission request that Trace3 admit the following: in its May 18, 2023 ex parte application Trace3 contends its trade secrets will inevitably be disclosed to Sycomp (RFA No. 19); California law applies to the employment relationship between Trace3 and its former employees who joined Sycomp in April 2023 (RFA No. 22); it knew prior to April 1, 2023, that certain entities were customers of Sycomp (RFA Nos. 31-34); and Dawn McCale is a resident of California and not Arizona (RFA No. 35).

Subject to the same objections listed above, Trace3 denied RFA Nos. 19, 22 and 35 and stated in its responses to RFA Nos. 31-34 that it lacks sufficient information to respond and on that basis denied the requests. As with the preceding group of requests discussed above, Sycomp insists that further responses are warranted because the objections asserted by Trace3 lack merit. As Trace3 fails to justify these objections, the Court agrees with Sycomp that they lack merit and therefore that further responses to these RFA, *without* objections (except for privilege if applicable), are warranted.

4. *No. 23*

This request ask Trace3 to admit that files referenced during a particular portion of the May 22, 2023 hearing on Trace3’s ex parte application are personal files of former Trace3

employees who joined Sycomp in April 2023 (RFA Nos. 23). Subject to the same objections asserted in response to every other request, Trace3 denied this request. Again, Sycomp insists that a further response is warranted because the objections lack merit. As Trace3 fails to justify these objections, the Court agrees with Sycomp that they lack merit and therefore that a further responses to this RFA, *without* objections (except for privilege if warranted), is warranted.

### **C. FI, Set One, No. 17.1**

Sycomp moves to compel a further response to FI No. 17.1 in connection with RFA Nos. 1-35. This interrogatory asks Trace3 to: (a) identify all responses to the RFA that are not unqualified admissions; (b) state all facts on which an identified response is based; (c) identify all persons with knowledge of those facts and provide their contact information; and (d) identify all documents that support each response and provide the contact information of the person who has each document.

According to the materials submitted by Trace3 in support of its opposition, it served supplemental responses to FI No. 17.1 in connection with RFA Nos. 1, 2-18, 20 and 21 on October 25. Consequently, Sycomp's motion to compel is moot with respect to these requests. Turning the remaining requests, Trace3 did not provide *any* responses to FI No. 17.1 in relation to RFA Nos. 26-35 and thus Trace3 is compelled to provide such responses.

RFA Nos. 19, 22, 23 and 25 (the remaining requests at issue) were not unqualified admissions, and Sycomp asserts that further responses to FI No. 17.1 relative to these request are warranted because the specific objections asserted (attorney-client privilege, attorney work product, joint defendant or common interest privilege, "any other constitutional, statutory, common law or regulatory protection, immunity, or proscription from disclosure," "to the extent it seeks confidential or proprietary business information, trade secrets, or commercially sensitive information without and appropriate protective order," overly broad and unduly burdensome and seeks information on matters outside the scope of expedited discovery) and the general objections and preliminary statement which are incorporated by reference into each are without merit, and the substantive responses are not compete and straightforward.

The Court agrees. Trace3 broadly refers to "evidence" submitted in support of its ex parte application for a TRO when asked to state all facts and identify all documents that support their responses, and states that its investigation is ongoing. This is not a complete response. Trace3 also fails to justify its objections to these requests. Thus, further responses are warranted, without objection (except for privilege if warranted).

### **D. RPD, Set One, Nos. 1-14**

#### *1. Nos. 1, 7, 9 and 13*

The requests at issue seek materials (documents, communications) relating to: any of Trace3's responses to the first sets of SI, FI or RFA served with the RPD (RPD No. 1); or between Trace3 and its customers whose relationship with the company was disrupted by any unlawful action by Sycomp from April 16, 2023 to present (RPD No. 7); evidence any Trace3 trade secret was disclosed to/used by Sycomp from January 1, 2023 to present (RPD No. 9);

and disruption or interference by Sycomp of Trace3's client relationships at issue in this lawsuit based on unlawful conduct by Sycomp (RPD No. 13).

As stated above, a party moving to compel further responses to production requests is required to make a threshold showing of good cause for the discovery sought. (Code Civ. Proc., § 2031.310, subd. (b)(1).) To satisfy the burden of demonstrating good cause for the discovery sought, the moving party must make "a fact-specific showing of relevance." (*Glenfeld Development Corp. v. Superior Court* (1997) 53 Cal.App.4<sup>th</sup> 1113, 1117.) Discovery is allowed for any matters not privileged that are either relevant to the subject matter involved in the action or reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc., § 2017.0101.) Information is relevant to the subject matter if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating settlement. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4<sup>th</sup> 1539, 1546.) "Admissibility is *not* the test and information, unless privileged, is discoverable if it might reasonably *lead* to admissible evidence." (*Ibid.*, original in italics.) Courts liberally construe the relevance standard, and any doubts as to whether a request seeks information within the scope of discovery are generally resolved in favor of discovery. (*Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790.)

If a party has demonstrated good cause, the Court will then evaluate the adequacy of the response. A party responding to an inspection demand must respond by stating one of the following: (1) an agreement to comply; (2) a representation of inability to comply; or (3) objections. (Code Civ. Proc., § 2031.210, subd. (a).)

Sycomp persuasively demonstrates that good cause exists for the subject items because they directly relate to Trace3's factual support for its contention that Sycomp actually misappropriated its trade secrets resulting in injury to Trace3.

In its initial responses to these requests, Trace3 asserted numerous objections (attorney-client privilege, attorney work product, joint defendant or common interest privilege, "any other constitutional, statutory, common law or regulatory protection, immunity, or proscription from disclosure," "to the extent it seeks confidential or proprietary business information, trade secrets, or commercially sensitive information without and appropriate protective order," overly broad and unduly burdensome and seeks information on matters outside the scope of expedited discovery for the motion for a preliminary injunction) and then, subject to those objections, stated its intention to produce "responsive, non-privileged documents to this Request upon entry of a two-tiered protective order." Trace3 then provided supplemental responses which referred to the Court entering a two-tiered protective order effective June 5, stated that Trace3 "was not withholding any documents" on the basis of the entry of this order and "has now produced additional non-privileged responsive documents in its possession, custody, and or control in addition to documents previously produced and bates stamped ..., and Responding Party directs Defendants to the documents produced on June 6, 2023, bates stamped ..., and the documents produced on June 7, 2023, bates stamped ...."

Sycomp insists that further responses *and* production are warranted, arguing that the responses are not code-compliant because they contain unmeritorious objections and fail to state that Trace3 agrees to comply with the requests. Under the Discovery Act, a statement of compliance shall indicate whether the production will be allowed in whole or in part, and state that all documents in that party's possession, custody, or control will be produced. (Code Civ.

Proc., § 2031.220.) Here, Trace3 has not made such a statement and thus further responses are warranted for that reason alone. Additionally, the Court finds that Trace3 has failed to substantiate its objections and therefore further responses, *without objections* (except for privilege if applicable) must be provided.

With regard to the actual production made by Trace3, Sycomp asserts that it is insufficient because Trace3 has not produced the trade secret or confidential files, the production lacks metadata contrary to the RPD instructions (including the MD5HASH metadata field that would allow it to search the production by hash value), and the production is not fully responsive to the requests because it is comprised almost entirely of form company documents, offer and resignation letters of the Individual Defendants and their performance reports, but not meaningful communications relevant to the issues. In its opposition, Trace3 appears to concede that all metadata has yet to be provided, but explains that this was because it was prioritizing immediate production and there was metadata (TS/CI Lists created for litigation) that Sycomp was not entitled to and it will reproduce its production with metadata, to the extent possible. It further concedes that complete production has not been made by explaining that after the preliminary injunction deadline passed, it indicated to Sycomp that “it would be undertaking a document review and production, which it is in the process of completing.” (Opp. at 17:21-23.) Given the foregoing, it is undisputed that further production is warranted.

## *2. Nos. 2-6, 8 and 14*

The requests at issue seek materials (documents, communications) relating to: the employment status of the 10 specific employees (referred to as the “Individual Employees”) from January 1, 2023 to the present (RPD No. 2); the Individual Employees being solicited, hired or recruited by Sycomp from January 1, 2023 to present (RPD No. 3); any effort by Trace3 to prevent the Individual Employees from being recruited, hired, solicited or employed by Sycomp from January 1, 2023 to present (RPD No. 4); the Individual Employees’ purported obligations not to compete with Trace3 (RPD No. 5) and/or Trace3’s effort to enforce the obligation (RPD No. 6); Sycomp from April 16, 2023 to present (RPD No. 8); and any purported solicitation by Sycomp of Trace3’s customers from April 16, 2023 to present (RPD No. 14).

Sycomp sufficiently demonstrates that good cause exists for these requests because they specifically pertain to its defense that Trace3 is relying on the sanctionable inevitable disclosure theory and trying to stifle competition and employee mobility rather than protect *actual* trade secrets. In response to these requests, Trace3 asserted numerous objections (attorney-client privilege, attorney work product, joint defendant or common interest privilege, “any other constitutional, statutory, common law or regulatory protection, immunity, or proscription from disclosure,” “to the extent it seeks confidential or proprietary business information, trade secrets, or commercially sensitive information without and appropriate protective order,” overly broad and unduly burdensome and seeks information on matters outside the scope of expedited discovery for the motion for a preliminary injunction). Subject to those objections, it then responded to No. 2 by stating its intention to produce “responsive, non-privileged documents to this Request upon entry of a two-tiered protective order.” Trace3 then provided supplemental responses which referred to the Court entering a two-tiered protective order effective June 5, stated that Trace3 “was not withholding any documents” on the basis of the entry of this order and “has now produced additional non-privileged responsive

documents in its possession, custody, and or control in addition to documents previously produced and bates stamped ..., and Responding Party directs Defendants to the documents produced on June 6, 2023, bates stamped ..., and the documents produced on June 7, 2023, bates stamped ....” In response to Nos. 3-6 and 8, subject to the objections, it stated that the requests appeared outside the scope of expedited discovery and would meet and confer with Sycomp “as to the relevance of [the] Request[s] to the pending motion for preliminary injunction.” Finally, in response to No. 14, Trace3 asserted only objections and did not provide a substantive response.

The Court finds that further responses to these requests are warranted because the supplemental response indicating compliance are not code-compliant, the objections asserted (barring privilege) lack merit, and complete production has not been made for the reasons explained above. This includes the objection that these requests seek information outside the scope of the expedited discovery. Notably, there is currently no motion for a preliminary injunction pending, and the Court believes it would be a waste of resources to require Sycomp to propound new “merits-based” discovery when the instant “expedited” sets of requests can be used to obtain the same information, particularly when the Court will be giving Trace3 additional time to provide code-compliant responses and full production of responsive documents.

### *3. Nos. 10-12*

The requests at issue seek materials (documents, communications) relating to: any training Trace3 provided to the Individual Employees concerning the protection of its trade secrets (RPD No. 10); and Trace3’s policies and procedures regarding the protection of its trade secrets (RPD No. 11); Trace3’s effort to maintain the secrecy of the alleged trade secrets at issue (RPD No. 12).

Sycomp maintains, and the Court finds, that good cause for these items exists because they pertain to the factual basis of Trace3’s claim that its alleged trade secrets do in fact so qualify; as the party alleging misappropriation, it is Trace3’s burden to establish that it derives independent economic value from the claimed trade secrets and that it takes reasonable efforts to maintain their secrecy. (Civ. Code, § 3426.1, subd. (d).) RPD Nos. 10-12 relate directly to the second element.

In response to these requests, Trace3 asserted numerous objections (attorney-client privilege, attorney work product, joint defendant or common interest privilege, “any other constitutional, statutory, common law or regulatory protection, immunity, or proscription from disclosure,” “to the extent it seeks confidential or proprietary business information, trade secrets, or commercially sensitive information without and appropriate protective order,” overly broad and unduly burdensome and seeks information on matters outside the scope of expedited discovery for the motion for a preliminary injunction) and then, subject to those objections, stated its intention to produce “responsive, non-privileged documents to this Request upon entry of a two-tiered protective order.” Trace3 then provided supplemental responses which referred to the Court entering a two-tiered protective order effective June 5, stated that Trace3 “was not withholding any documents” on the basis of the entry of this order and “has now produced additional non-privileged responsive documents in its possession, custody, and or control in addition to documents previously produced and bates stamped ...,



and Responding Party directs Defendants to the documents produced on June 6, 2023, bates stamped ..., and the documents produced on June 7, 2023, bates stamped ....”

As with the preceding grouping of RPDs, The Court finds that further responses to these requests are warranted because the supplemental response indicating compliance are not code-compliant, the objections asserted (barring privilege) lack merit, and complete production (including all metadata) has not been made.

#### **E. SI, Set One, Nos. 1-28**

##### *1. Nos. 1-8, 21*

The interrogatories request the following: identification by file name or hash value each of the 100,000 plus files that Trace3 contends is one of its trade secrets (SI No. 1) and for each so identified, all measures it took to maintain its confidentiality (SI No. 2), the economic value derived (SI No. 3), the trade secret the individual employees disclosed/threatened to disclose (No. 4), the trade secret Trace3 contends Sycomp has used or threatened to use and supporting facts (SI No. 6); identification of the trade secrets listed in response to the preceding SI those whose disclosure/threatened disclosure to Sycomp caused or may cause Trace3 irreparable harm (SI No. 5); of those identified in response to SI No. 6, the trade secret Trace3 contends the use/threatened use of by Sycomp has caused or may cause irreparable harm if a preliminary injunction is not issue and supporting facts (SI No. 7); identification by file name or hash value each of the 100,000 plus files that is personal property of the Individual Employees (SI No. 8); and all facts in support of Trace3’s contention that hash values associated with its files constitute its trade secrets (SI No. 21).

Subject to numerous objections (attorney-client privilege, attorney work product, joint defendant or common interest privilege, “any other constitutional, statutory, common law or regulatory protection, immunity, or proscription from disclosure,” “to the extent it seeks confidential or proprietary business information, trade secrets, or commercially sensitive information without and appropriate protective order,” overly broad and unduly burdensome and seeks information on matters outside the scope of expedited discovery for the motion for a preliminary injunction), Trace3 provided a substantive response to each of these interrogatories, which itself was preceded by language construing the requests as relating to confidential and/or trade secret information.

Generally, when responding to an interrogatory, each answer must be as complete and straightforward as the information reasonably available to the responding party permits. (See Code Civ. Proc. § 2030.220, subd. (a).) If the responding party lacks sufficient knowledge to respond to an interrogatory, it shall so state “but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.” (Code Civ. Proc. § 2030.220, subd. (c).)

Here, Sycomp maintains that further responses to the foregoing requests are warranted because none of the objections have merit and the substantive responses are evasive and incomplete due to Trace3 “improperly” rewriting (i.e., construing) the interrogatories as seeking information pertaining to Trace3’s “*confidential and/or trade secrets*.” Indeed, in actuality these requests only refer to Trace3’s *trade secrets*, and nothing beyond that, e.g.,

confidential information, and thus Trace3 has not directly responded to the call of the interrogatories. Further responses to these requests are therefore warranted on this basis alone.

As for the objections, Trace3 insists that it did not withhold any information on the basis of its burden objection, but also argues that the objection is well-founded given the expeditious nature of the discovery. Trace3, however, fails to make the particularized showing necessary to justify this objection, and thus it lacks merit. The only other objection that Trace3 attempts to justify is that regarding the requests as seeking information outside the scope of the expedited discovery, i.e., materials relating to a motion for a preliminary injunction by Trace3. Notably, there is currently no motion for a preliminary injunction pending, and the Court believes it would be a waste of resources to require Sycomp to propound new “merits-based” discovery when the instant “expedited” sets of requests can be used to obtain the same information, particularly when the Court is amenable to providing Trace3 with the necessary time to provide code-compliant responses. Thus, the Court finds that further responses are also warranted due to the non-meritorious objections.

## 2. Nos. 9-20

These interrogatories request the following: each of the trade secrets Trace3 contends Sycomp intentionally acquired from the Individual Employees (SI No. 9) and used (SI No. 10) and all supporting facts; identification of all of its customers Trace3 claims it lost business to Sycomp due to its misappropriation of Trace3’s trade secrets (SI No. 11); for each customer identified in response to SI No. 11, identification of the trade secret and facts supporting the alleged loss of business (SI No. 12); identification of the customer referenced in paragraph 61 of the Complaint and facts supporting the contention the customer may or has moved a Trace3 project to Sycomp (SI No. 13); all facts to support the statement in paragraph 69 of the Complaint (SI No. 14); identification of any file on any data storage device returned to Trace3 by the Individual Employees that it contends was disclosed or transmitted to Sycomp (SI No. 15) and the facts in support (SI No. 16); and all facts in support of Trace3’s contention that Lilian Elias (SI No. 18), Gregory Peterson (SI No. 18), Timothy Cordell (SI No. 17) and Devin Tomcik (SI No. 20) committed any act on Sycomp’s behalf that caused it to suffer injury.

In response to each of the foregoing, Trace3 asserted numerous objections and then, subject to and without waiving these objections, provided a substantive response. Sycomp contends that further responses are warranted because the objections lack merit and the substantive responses are not complete and straightforward. The Court agrees. In response to Nos. 9 and 10, Trace3 failed to identify specific trade secrets, instead broadly referring to “the declaration of Sergio Kopelev and the underlying exhibits filed in support of Responding Party’s Application for Temporary Restraining Order and Order to Show Cause re Preliminary Injunction.” This is not a complete response. Additionally, as Sycomp maintains, rather than state facts in support of its contention that *Sycomp* acquired its trade secrets from the Individual Employees, Trace3 references its purported evidence that the Individual Employees acquired its trade secrets *while still employed* at Trace3. This is not straightforward. Further, Trace3 fails to adequately justify its various objections to these requests. Consequently, further responses to SI Nos. 9 and 10 are warranted.

Turning to SI Nos. 11 and 12, the Court believes that Trace3’s *substantive* response to the former is adequate as it has identified various entities that it maintains it lost business to as a result of alleged misappropriation of its trade secrets by Sycomp. However, the objections

that the response is provided subject to lack merit, and thus a further response is warranted. As for the latter request, Trace3 has not directly responded to the call of interrogatory because it has not, for each customer identified in response to the preceding request, identified the specific trade secret misappropriated and *all facts* in support of its contention that it lost business as a result. Consequently, for this reason, and because the objections asserted lack merit, a further response to SI No. 12 is also warranted.

Further responses are also warranted to Nos. 13-20. With respect to No. 13, the Court believes that Trace3's substantive response is adequate because it has responded to the direct call of the question which, contrary to what Sycomp appears to suggest, does *not* ask Trace3 to state facts concerning a contention that the project at issue was moved *as a result of* wrongful conduct as opposed to lawful competition. However, the objections asserted prior to the substantive response lack merit and thus a further response to this request is warranted, without objections. For Nos. 14-16, which ask for the evidence Trace3 has *against Sycomp*, Trace3 only provides facts relating to the Individual Defendants, thereby making the responses incomplete. For Nos. 17-20, while Trace3 is asked to identify all facts in support of its contention that the Individual Defendants acted on behalf of Sycomp, it only responds with alleged wrongdoing that occurred *before the individuals joined* the company, rendering these responses similarly incomplete. The substantive responses to Nos. 14-20 are also made subject to objections that lack merit. For all of these reasons, further responses to these requests, without objection, are warranted.

### 3. Nos. 22-28

These interrogatories all seek facts in support of the following contentions by Trace3: it has a good faith basis to maintain this lawsuit and its separate lawsuit against Sycomp in Maricopa County in Arizona (SI No. 22); it has a good faith basis to maintain this action against Lilian Elias (SI No. 23); it has not asserted inevitable disclosure in this action (SI No. 24); any non-compete (SI No. 25) or non-solicit (SI No. 26) provision in any contract Trace3 has with any of the Individual Employees is valid and enforceable; and Dawn McCale is not a California resident (SI No. 27) or employed by Sycomp in California (SI No. 28).

Trace3 asserted only objections in response to SI Nos. 22, 25-28 (attorney-client privilege, attorney work product, joint defendant or common interest privilege, "any other constitutional, statutory, common law or regulatory protection, immunity, or proscription from disclosure," "to the extent it seeks confidential or proprietary business information, trade secrets, or commercially sensitive information without and appropriate protective order," overly broad and unduly burdensome and seeks information on matters outside the scope of expedited discovery for the motion for a preliminary injunction). For the reasons stated above, the Court does not believe that it is improper for Sycomp to obtain "merits-based" discovery given that there is currently no motion for preliminary injunction pending, and the remaining objections lack merit. Consequently, further responses to these requests, without objections except for privilege if applicable, are warranted.

The Court agrees that further responses are also warranted for Nos. 23 and 24. While the Court disagrees with Sycomp's contention that Trace3's substantive responses to these requests are deficient (disagreeing with or disbelieving a response does not equate to noncompliance), as it has asserted unmeritorious objections (barring privilege) in connection with the substantive responses, further responses are warranted.

## **F. REQUESTS FOR SANCTIONS**

Both parties make requests for monetary sanctions.

First, because the bulk of Sycomp's motion to compel is successful, there is no basis to impose sanctions against it. Accordingly, Trace3's request for sanctions is DENIED.

Sycomp makes a code-compliant request for sanctions in the amount of \$32,728.50, based on the following: 3 hours of attorney Rajiv Dharnidharka's time at a rate of \$1,228.50 per hour, 6 hours of attorney Jeanette Barzelay time at a rate of \$1,053 per hour, and 25 hours of attorney Micah Chavin's time at a rate of \$909 per hour. As Sycomp has substantially prevailed on this motion, and the Court is not persuaded that Trace3 acted with substantial justification in opposing it nor that other circumstances exist which would render an award of sanctions unjust, the Court will award sanctions. (Code Civ. Proc., §§ 2030.300, subd. (d), 2031.310, subd. (h) and 2033.290, subd. (d).) Considering the repetitive nature of motion papers, particularly the separate statement, and the responses themselves (allowing them to be addressed in groups) the Court finds that the amount of time upon which Sycomp's request for sanctions is predicated is excessive. The Court finds that \$8,000 is an appropriate amount of sanctions.

## **II. TRACE3'S MOTIONS TO SEAL**

### **A. Legal Standard**

"Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, rule 2.550(c).) "The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." (Cal. Rules of Court, rule 2.550(d).) Pleadings, in particular, should be open to public inspection "as a general rule," although they may be filed under seal in appropriate circumstances. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 104, fn. 35.)

A party moving to seal a record must file a memorandum and a declaration containing facts sufficient to justify the sealing. (Cal. Rules of Court, rule 2.551(b)(1).) A declaration supporting a motion to seal should be specific, not conclusory, as to the facts supporting the overriding interest. If the court finds that the supporting declarations are conclusory or otherwise unpersuasive, it may conclude that the moving party has failed to demonstrate an overriding interest that overcomes the right of public access. (See *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 305.)

Protection of alleged trade secrets and confidential information are overriding interests that can support a sealing request. (See *McGuan v. Endovascular Technologies, Inc.* (2010) 182 Cal.App.4th 974, 988; *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1281.) Civil Code section 3426.5 provides that "a court shall preserve the

secrecy of an alleged trade secret by reasonable means, which may include ... sealing the records of the action ....”

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

## **B. Sixth Motion to Seal**

In its sixth motion to seal, Trace3 moves to seal designated portions of (1) Exhibits A and B to the Declaration of Nicole Phillis (“Phillis Decl.”) and accompanying exhibits in support of Trace3’s Supplemental Joint Status Report regarding Stacy Thompson Spousal Privilege Objections, (2) Exhibit B to the Declaration of Sergio Kopelev (“Kopelev Decl.”) and supporting exhibits in support of the foregoing Joint Status Report and (3) references in the foregoing Joint Status Report that refer to the contents of Exhibits A and B to the Phillis Decl. and Exhibit B to the Kopelev Decl.

Trace3 maintains that the foregoing information identifies customer and vendor names which are confidential, proprietary or trade secret information the public disclosure of which would jeopardize its legitimate competitive and commercial interests. Sycomp counters that Trace3 has not satisfied the standards for sealing because it has not *specified* the facts or information within the lodged materials that warrant sealing, explain *why* is public disclosure would subject Trace3 to harm sufficient to override the presumption of public access, or establish that there is no less restrictive means to protect any confidential information. It maintains that Trace3’s motion is improper and overbroad, arguing that it fails to demonstrate how disclosure of only a customer or vendor’s name is somehow secret or commercially sensitive, particularly when employees have never been instructed to keep this information secret and many are already known to and working with Sycomp. It also insists that Trace3 has made no attempt to justify sealing the *entirety* of Exhibit B to the Kopelev Decl. and argues it cannot because there are several portions of it where Mr. Kopelev simply describes the steps and tools he used to analyze Stacy Thompson’s laptop and this findings on the files and folder paths reviewed, none of which are confidential.

The Court has previously sealed Trace3 customer names in this action and sees no reason to depart from this precedent here (see, e.g., August 7, 2023 Order at 2:24-3:1). Moreover, as Trace3 responds, the materials it seeks to seal are not limited to mere customer names; they also reveal information concerning the customer’s purchases from the company and Trace3’s internal procedures for tracking such information. Courts have recognized consumer purchasing information as warranting trade secret protection. (See, e.g., *Morlife, Inc. v. Perry* (1997) 56 Cal.App.4<sup>th</sup> 1514, 1522.) The Court also does not find the request to seal the entirety of Exhibit B to the Kopelev Decl. to be overbroad; the exhibit consists of 14 messages on one page and with the purported trade secret and confidential information redacted, leaves four lines of ambiguous pleasantries between coworkers. As the Court can discern no public interest in the disclosure of such pleasantries, it finds that sealing the entirety of Exhibit B, which contains information about the specific software and technology used by Trac3 employees, confidential and/or trade secret filed names and the identities of related

clients and vendors, is appropriate. The Court otherwise finds that Trace3 has met the standard for sealing.

In accordance with the foregoing, Trace3's sixth motion to seal is GRANTED.

### **C. Seventh Motion to Seal**

In its seventh motion to seal, Trace3 moves to seal (1) Sycomp's "Opposition to Plaintiff Trace3, LLC's Third Motion to File Documents Under Seal and Motion to Uphold Confidentiality Designations" at 4:17-19, 6:4-15, 8:9-25, 10:24-28, 11:1-8, 12:18-22; (2) Sycomp's "Opposition to Plaintiff Trace3, LLC's Fourth and Fifth Motions to File Documents Under Seal" at 4:4-5, 12, 14-17, 19-20, 7:28-8:5, 10:2-4, 12, 22-26, 11:13, 18-19, 22, 26, 12:4, 13:18-19, 15:4-8; and (3) Declaration of Rajiv Dharnidharka in Support of Sycomp's "Oppositions to Trace3's Third, Fourth, and Fifth Motions to Seal and Motion to Uphold Confidentiality Designations" at Ex. 3, pp. 2, 3, Ex. 5, p. 9, Ex. 6, pp. 1-6, Ex. 7, Ex. 8, Ex. 9, Ex. 12, pp. 4, 5.

Trace3 makes this motion on the grounds that the information cited above identifies or describes its TS/CI List, its customer and vendor names, and other non-public, proprietary, and trade secret information that has been designated as either confidential or highly confidential pursuant to the parties' Stipulated Protective Order or prior sealing orders. Disclosure of such information, Trace3 argues, would jeopardize its legitimate competitive and commercial interests. In opposition, Sycomp insists, as it did in opposition to Trace3's sixth motion to seal, that Trace3 has not satisfied the standards for sealing. It explains that much of the information sought to be sealed from Trace3's TS/CI List is not worthy of sealing because it includes generic file names and the personal photos of videos of former employees. It continues that while Trace3 requests to seal excerpts of the deposition transcripts of Messrs. Cordell, Peterson and Tomcik, it has not designated any portion of these transcripts as Confidential or AEO pursuant to the SPO, and *none* of the testimony reveals confidential information.

Per its reply, and consistent with the Court's October 2 and November 7, 2023 Orders, Trace3 has narrowed the scope of documents to be sealed to the following<sup>6</sup>: (1) Sycomp's "Opposition to Plaintiff Trace3, LLC's Fourth and Fifth Motions to File Documents Under Seal" at 4:4-5, 4:12, 4:14-17, 4:19-20, 10:2-4, 10:12, 10:22-26, 11:13, 11:18-19, 11:22 and 13:18-19; and (2) Pages 2-3 of Exhibit 6 and Exhibit 8 (118:19-25) to the Declaration of Rajiv Dharnidharka in Support of Sycomp's "Oppositions to Trace3's Third, Fourth, and Fifth Motions to Seal and Motion to Uphold Confidentiality Designations." Upon review, the Court agrees that the foregoing contain materials, particularly customer names associated with specific, non-public business opportunities, project and pricing information, and other

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<sup>6</sup> Thus, Trace3 has withdrawn the confidentiality designations as to the entirety of Sycomp's Opposition to Trace3's Third Motion to File Under Seal and Motion to Uphold Confidentiality Designations; the deposition testimony included in Sycomp's Opposition to Trace3's Fourth and Fifth Motions to File Under Seal (7:28-8:5, 15:4-8); and Exhibits 3, 5, 7, and 9 of the Dharnidharka Declaration in Support of Sycomp's Oppositions to Trace3's Third, Fourth, and Fifth Motions to Seal and Motion to Uphold Confidentiality Designations. Trace3 has also withdrawn the confidentiality designations as to Ex. 6 to the Dharnidharka Declaration with the exception of pages 2-3, which include Trace3 customer names and confidential deal information.

competitively sensitive information, that meet the standard for sealing and are in line with what had already been ordered to be sealed in this action. Accordingly, as modified, Trace3's seventh motion to seal is GRANTED.

### **III. CONCLUSION**

Sycomp's motion to compel is MOOT IN PART and GRANTED IN PART. The motion is MOOT as to Expedited RFA, Set One, No. 8 and Expedited FI, Set One, No. 17.1 as to RFA Nos. 1, 2-18, 20 and 21. The motion is otherwise GRANTED. Sycomp's request for monetary sanctions is GRANTED IN PART in the amount of \$8,000. Trace3's request for sanctions is DENIED.

Trace3's sixth motion to seal and seventh motion to seal, as modified, are GRANTED.

Trace3 has 30 days from the date of this order to pay the sanctions amount and provided supplemental discovery responses, and has 45 days from the date of this order to provide additional documents and/or metadata, as discussed above.

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](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**

See line 3.

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## **Calendar Line 5**

See line 5.

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## **Calendar Line 6**

Case Name:

Case No.:

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## **Calendar Line 7**

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