SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1, Honorable Theodore C. Zayner Presiding

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

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LAW AND MOTION TENTATIVE RULINGS
DATE: FEBRUARY 28, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	21CV376397	Spencer v. Monsanto Company, et al. (WAS included in JCCP4953; assigned to Alameda)	See Line 1 for tentative ruling on motions in limine.
LINE 2	21CV391898	Gatchalian v. CKS Prime Investments, LLC, et al.	See Line 2 for tentative ruling.
LINE 3	23CV416856	Sentinelone, Inc. v. Bernard, et al.	See Line 3 for tentative ruling.
LINE 4	22CV403427	Bravo v. Michels Pacific Energy, Inc. (Class Action/PAGA)	See Line 4 for tentative ruling.
LINE 5	22CV405663	Pineda v. Super Clean Custodial, LLC, et al. (Class Action/PAGA)	See Line 5 for tentative ruling.
LINE 6			
LINE 7			
LINE 8			
LINE 9			
LINE 10			

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LAW AND MOTION TENTATIVE RULINGS

LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: Spencer v. Monsanto Company, et al. (WAS included in JCCP4953; assigned to Alameda)
Case No.: 21CV376397

Before the court are eight pretrial motions to exclude expert testimony, brought under the trial court's gatekeeping role applying the standards and analysis set forth in the *Sargon* decision.

Having thoroughly reviewed the extensive filings on these motions, the court DENIES each motion to exclude, with one exception. Defendant's motion to exclude the testimony of Dr. Yogi Hendlin is DENIED, *without prejudice*, at this time. Defendant's motion to strike portions of Plaintiff's opposition to the motion to exclude Dr. Hendlin is DENIED in part and GRANTED in part, in that defendant's request for leave to take the deposition of Dr. Hendlin is GRANTED. Counsel shall immediately meet and confer to schedule and complete the deposition of Dr. Hendlin prior to trial, with sufficient time to address any further motions that may be brought regarding Dr. Hendlin's proffered testimony.

The court's decisions on these motions are limited at this time to its gatekeeping role under *Sargon*, and any appropriate evidentiary objections to any part of the proffered expert testimony, and to other testimony at trial, are reserved.

- oo0oo -

Calendar Line 2

Case Name: Gatchalian v. CKS Prime Investments, LLC, et al.
Case No.: 21CV391898

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 28, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This is a putative class action brought by plaintiff Harriet Gatchalian ("Plaintiff") against defendants CKS Prime Investments, LLC ("CKS"), Webcollex, LLC ("Webcollex"), and Cawley & Bergman, LLC ("C&B"), alleging violations of the California Fair Debt Buying Practices Act and the Rosenthal Fair Debt Collection Practices Act. The Complaint, filed on December 14, 2021, alleges that Plaintiff incurred a debt in the form of a consumer credit account issued by non-party WebBank and evidenced by an electronic promissory note. The debt was allegedly transferred to CKS and Webcollex, but they were never given the electronic promissory note. CKS and Webcollex allegedly engaged C&B to send collection letters in an attempt to collect the debt, notwithstanding the fact that they were not in possession of the electronic promissory note.

Now before the court are: (1) the motion by Plaintiff to compel CKS to provide further responses to special interrogatories, set one ("SI"), Nos. 18 and 20 and requests for production of documents, set one ("RPD"), Nos. 23 and 24, and for an award of monetary sanctions in the amount of $5,000; (2) the motion by Plaintiff to compel Webcollex to provide further responses to SI No. 29 and RPD Nos. 23 and 24, and for an award of monetary sanctions in the amount of $5,000; and (3) the motion by Plaintiff to compel C&B to provide further responses to SI No. 22 and RPD Nos. 20 and 21, and for an award of monetary sanctions in the amount of $3,300. CKS and Webcollex filed oppositions to the motions to compel them to provide further responses.

II. LEGAL STANDARD

If a party demanding a response to an interrogatory deems that an answer to a particular interrogatory is evasive or incomplete, an exercise of the option to produce documents is

unwarranted or inadequate, or an objection to an interrogatory is without merit or too general, that party may move for an order compelling a further response. (Code Civ. Proc., § 2030.300, subd. (a)(1)–(3).) If a timely motion to compel a further response to an interrogatory has been filed, the burden is on the responding party to justify any objection to the discovery request. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255 (*Fairmont*); *Coy v. Superior Court* (*Wolcher*) (1962) 58 Cal.2d 210, 220-221 (*Coy*).)

If a party demanding a response to a request for production of documents deems that a statement of compliance with the demand is incomplete, a representation of inability to comply is inadequate, incomplete, or evasive, or an objection in the response is without merit or too general, that party may move for an order compelling a further response. (See Code Civ. Proc., § 2031.310, subd. (a).) On a motion to compel a further response to a request for production of documents, it is the moving party's burden to demonstrate good cause for the discovery sought. (*Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98 (*Kirkland*).) "Good cause" requires a showing of both relevance to the subject matter (e.g., how the information in the documents would tend to prove or disprove some issue in the case) and specific facts justifying discovery (e.g., why such information is necessary for trial preparation or to prevent surprise at trial). (*Glenfed Develop. Corp. v. Superior Court* (1997) 53 Cal.4th 1113, 1117.) Once good cause has been shown, the burden shifts to the responding party to justify any objections. (*Kirkland, supra*, 95 Cal.App.4th at p. 98.)

III. MOTION AS TO CKS

A. SI No. 18

SI No. 18 asks CKS to state the number of persons with a California address from whom CKS (or its agents, attorneys, or other representatives) collected any amount between June 19, 2017, and the present date relating to a debt that was originated by WebBank, and serviced by Lendingclub Corporation.

In its most recent response to SI No. 18, CKS objects to the request as violating privacy rights, irrelevant, premature, and requesting information about the collection activities of third parties. CKS states that it is a debt buyer and does not engage in debt collection. Subject to and without waiving its objections, CKS further states that it was acquired by Velocity in 2021,

and can only verify that since acquisition the number of people responsive to the request is 860 people.

Except as expressly discussed below, CKS does not defend its objections to the request. Thus, the undefended objections are without merit and are overruled. (See *Coy, supra*, 58 Cal.2d at pp. 220-221.)

In its opposition, CKS first attempts to justify it objection to the term "collected" as used in SI No. 18. CKS asserts that its objection to the request is proper because it is a debt buyer (not a debt collector) and it does not engage in collection activities.

This objection lacks merit and is overruled. As Plaintiff persuasively argues, SI No. 18 does not merely seek the number of persons from whom CKS, itself, collected monies. Rather, the request broadly requests information regarding the number of persons from whom CKS or its agents, attorneys, or other representatives collected monies. CKS is required to provide information regarding the collection activities of its agents, attorneys, or other representative to the extent such information is within its personal knowledge. (See Code Civ. Proc., § 2030.220, subds. (a)-(c).) To the extent, Plaintiff does not have sufficient personal knowledge to respond fully, it must so state and confirm that it has made a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations. (See Code Civ. Proc., § 2030.220, subd. (c).)

CKS also attempts to justify its objection to SI No. 18 as premature, arguing that no class has been certified and prospective class members have right to privacy.

This objection lacks merit and is overruled. The discovery sought by the request is indisputably relevant to Plaintiff's claims as it seeks to identify number of putative class members in this action. CKS's argument in opposition—that a class has not yet been certified—is not a basis for denying discovery. The possibility that the court may deny certification or may certify a more limited class than what Plaintiff has pleaded is not a basis to prevent Plaintiff from obtaining pre-certification discovery with respect to the entire class as defined in the Complaint. (See *Williams v. Superior Court* (2017) 3 Cal.5th 531, 551 (*Williams*) ["That the eventual proper scope of a putative representative action is as yet uncertain is no obstacle to discovery; a party may proceed with interrogatories and other

discovery methods precisely in order to ascertain that scope."]; see also *Limon v. Circle K Stores Inc.* (E.D.Cal. Mar. 30, 2020, No. 1:18-cv-01689-SKO) 2020 U.S.Dist.LEXIS 56415, at *14 [refusing to limit pre-certification discovery even though the plaintiff claims might not prevail when the court ruled on a motion for class certification].)

> As the *Williams* court explained,
> "The Legislature was aware that establishing a broad right to discovery might permit parties lacking any valid cause of action to engage in "fishing expedition[s]," to a defendant's inevitable annoyance. [Citation.] It granted such a right anyway, comfortable in the conclusion that "[m]utual knowledge of all the relevant facts gathered by both parties is essential to proper litigation." [Citation.]

(*Williams, supra*, 3 Cal.5th at p. 551.) Consequently, that a class action, as alleged by the plaintiff, may be invalid for various reasons is not a basis for denying discovery.

To the extent CKS attempts to justify its objection to SI No. 18 on the ground that the request violates third party privacy rights, its objection is not well-taken.

> The state Constitution expressly grants Californians a right of privacy. [Citation.] Protection of informational privacy is the provision's central concern. [Citation.] In *Hill*, we established a framework for evaluating potential invasions of privacy. The party asserting a privacy right must establish a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious. [Citation.] The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy. A court must then balance these competing considerations. [Citation.]
>
> The *Hill* test, conceived in the context of a pleaded cause of action for invasion of privacy, has been applied more broadly, including to circumstances where litigation requires a court to reconcile asserted privacy interests with competing claims for access to third party contact information. [Citations.] In *Pioneer Electronics*, we used the *Hill* framework to resolve the same question the trial court faced here—the extent to which a litigant should have access to nonparty contact information. In the context of a consumer class action, we concluded fellow consumers who had already complained about a product defect had little or no expectation their contact information would be withheld from a plaintiff seeking relief from the manufacturer on behalf of consumers [citation], that disclosure would involve "no serious invasion of privacy" [citation], and in any event that conditioning disclosure on an opt-in notice might significantly limit the ability of named plaintiffs "to redress a variety of social ills" through collective action [citation].
>
> In turn, *Pioneer Electronics* was extended to wage and hour class actions by *Belaire-West Landscape, Inc. v. Superior Court*…. Before class certification, the named plaintiff sought statewide employee contact information for the preceding five years. While fellow employees generally had a reasonable expectation of privacy in their contact information, the court doubted they would have "wish[ed] it to be withheld from a class action plaintiff who seeks relief for violations of employment laws." [Citation.] Nor was any prospective invasion of privacy serious: "the information, while personal, was not particularly sensitive, as it was contact information, not medical or financial

> details." [Citation.] Moreover, the balance of competing interests favored disclosure even more clearly than in *Pioneer Electronics*; "at stake [was] the fundamental public policy underlying California's employment laws." [Citation.] The *Belaire-West* trial court was correct to order disclosure, subject to employees being given notice of the action, assurance they were under no obligation to talk to the plaintiffs' counsel, and an opportunity to opt out of disclosure by returning an enclosed postcard.
>
> Courts subsequent to *Belaire-West* have uniformly applied the same analysis to reach the same conclusion: In wage and hour collective actions, fellow employees would not be expected to want to conceal their contact information from plaintiffs asserting employment law violations, the state policies in favor of effective enforcement of these laws weigh on the side of disclosure, and any residual privacy concerns can be protected by issuing so-called *Belaire-West* notices affording notice and an opportunity to opt out from disclosure. [Citations.]

(*Williams, supra*, 3 Cal.5th at pp. 552-553.)

Although case law establishes that absent employees have a bona fide interest in the confidentiality of their contact information, SI No. 18 does not seek the disclosure of such information. Rather, it merely asks CKS to state the number of putative class members in the action. Thus, the privacy rights of absent class members are not implicated and CKS's privacy objection is overruled.

Furthermore, CKS's substantive response to SI No. 18 is deficient. CKS does not state the number of persons with a California address from whom CKS (or its agents, attorneys, or other representatives) collected any amount between June 19, 2017, and the present date relating to a debt that was originated by WebBank, and serviced by Lendingclub Corporation. Instead, CKS states that it was acquired by Velocity in 2021, and can only verify that since acquisition the number of people responsive to the request is 860 people. Because CKS has only identified the number of putative class members since its acquisition in 2021, its response is incomplete. Moreover, CKS fails to adequately explain why its acquisition in 2021, prevents it from providing responsive information regarding the number of putative class members prior to that time. Consequently, a further response is warranted to SI No. 18.

B. SI No. 20

SI No. 20 asks CKS to state specific information regarding each portfolio listed in its response to SI No. 19, such as the date purchased, total number of accounts, total debt balance, and total amount collected for each portfolio for putative class members. SI No. 20 also asks Defendant to include references to any documents which support its answer.

In its most recent response to SI No. 20, CKS asserts numerous objections to the request. Subject to and without waiving its objections, CKS further states that :[i]n 2021, Velocity purchased [CKS], which is a portfolio of debt" and "[o]ther than purchasing the CKS Prime portfolio, there are no other portfolios to disclose …."

In opposition, CKS does not attempt to defend any of its objections to the request. Thus, the undefended objections are without merit and are overruled. (See *Coy*, *supra*, 58 Cal.2d at pp. 220-221.)

Instead, CKS argues that it responded to the request in good faith by producing documents related to the portfolio at issue in this litigation, specifically the Certificate of Loan Sale and the Bill of Sale.

But CKS's mere production of documents does not constitute a code-compliant response. Notably, CKS does not cite any statutory authority providing that a responding party may simply produce documents in response to an interrogatory in order to satisfy its obligations under the Discovery Act.

It appears to the court that CKS may have intended to invoke Code of Civil Procedure section 2030.230. That statute provides that it is a sufficient answer to an interrogatory to refer to this section and to specify the writings from which the answer may be derived or ascertained if the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party. Additionally, the specification must be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained.

Here, CKS's substantive response does not refer to Code of Civil Procedure section 2030.230, specify the writings from which an answer can be ascertained, or establish that answering the request would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from CKS's documents. Therefore, CKS's substantive response does not comply with Code of Civil Procedure section 2030.230.

Furthermore, SI No. 20 asks CKS to state specific information to state specific regarding each portfolio listed in its response to SI No. 19, such as the date purchased, total number of accounts, total debt balance, and total amount collected for each portfolio for putative class members. CKS's substantive response does not provide any such information. Consequently, the response is incomplete and a further response is warranted.

C. RPD No. 23

RPD No. 23 asks Defendant to produce all documents relating to or evidencing the number of persons with a California address from whom CKS (or its agents, attorneys, or other representatives) collected any amount between June 19, 2017, and the present date relating to a debt that was originated by WebBank, and serviced by Lendingclub Corporation.

In its most recent response to RPD No. 23, CKS objects to the request as violating privacy rights, irrelevant, premature, and requesting information about the collection activities of third parties. CKS states that it is a debt buyer and does not engage in debt collection. CKS also states that after a diligent search and reasonable inquiry, it cannot identify any document in its possession, custody or control. However, CKS identifies Webcollex and C&B as persons who may have responsive documents.

As an initial matter, there is generally good cause for the discovery sought. The discovery sought by the request is indisputably relevant to Plaintiff's claims as it seeks to identify the documents that support the number of putative class members identified by CKS. As there is good cause for the discovery, the court turns to CKS's objections.

Except as expressly discussed below, CKS does not defend its objections to the request. Thus, the undefended objections are without merit and are overruled. (See *Coy, supra*, 58 Cal.2d at pp. 220-221.)

In its opposition, CKS first attempts to justify it objection to the term "collected" as used in RPD No. 23. CKS asserts that its objection to the request is proper because it is a debt buyer (not a debt collector) and it does not engage in collection activities.

This objection lacks merit and is overruled. The request broadly seeks documents regarding the number of persons from whom CKS or its agents, attorneys, or other representatives collected monies. CKS is required to provide documents regarding the

collection activities of its agents, attorneys, or other representative to the extent such documents are within its possession, custody, or control. (See Code Civ. Proc., §§ 2031.220-2031.240.)

CKS also attempts to justify its objection to RPD No. 23 as premature, arguing that no class has been certified and prospective class members have right to privacy.

This objection lacks merit and is overruled. The discovery sought by the request is indisputably relevant to Plaintiff's claims as it seeks documents supporting the number of putative class members identified by CKS. CKS's argument in opposition—that a class has not yet been certified—is not a basis for denying discovery. The possibility that the court may deny certification or may certify a more limited class than what Plaintiff has pleaded is not a basis to prevent Plaintiff from obtaining pre-certification discovery with respect to the entire class as defined in the Complaint. (See *Williams, supra,* 3 Cal.5th at p. 551 ["That the eventual proper scope of a putative representative action is as yet uncertain is no obstacle to discovery; a party may proceed with interrogatories and other discovery methods precisely in order to ascertain that scope."]; see also *Limon v. Circle K Stores Inc.* (E.D.Cal. Mar. 30, 2020, No. 1:18-cv-01689-SKO) 2020 U.S.Dist.LEXIS 56415, at *14 [refusing to limit pre-certification discovery even though the plaintiff claims might not prevail when the court ruled on a motion for class certification].)

CKS also attempts to justify its objection to RPD No. 23 on the ground that the request violates the privacy rights of putative class members. For the same reasons explained above in connection with SI No. 18, CKS's privacy objection lacks merit and is overruled.

Furthermore, CKS's substantive response is deficient. CKS does not clearly state that it is unable to comply with the request. (See Code Civ. Proc., §§ 2031.210 & 2031.230.) Instead, CKS merely states that after a diligent search and reasonable inquiry, it cannot identify any document in its possession, custody or control. Even assuming that this statement constituted a representation of inability to comply, it is not code-compliant because it does not specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no

longer, in the possession, custody, or control of the responding party. (Code Civ. Proc., § 2031.230.)

For these reasons, a further response is warranted to RPD No. 23.

D. RPD No. 24

RPD No. 24 asks CKS to produce all documents relating to or evidencing the total amount collected from each person with a California address between June 19, 2017, and the present date relating to a debt that was originated by WebBank, and serviced by Lendingclub Corporation.

In its most recent response to RPD No. 24, CKS objects to the request as violating privacy rights, irrelevant, premature, and requesting information about the collection activities of third parties.

As an initial matter, there is generally good cause for the discovery sought. The discovery sought by the request is indisputably relevant to Plaintiff's claims as it seeks to identify the documents regarding the amount damages sustained by the putative class. As there is good cause for the discovery, the court turns to CKS's objections.

Except as expressly discussed below, CKS does not defend its objections to the request. Thus, the undefended objections are without merit and are overruled. (See *Coy*, *supra*, 58 Cal.2d at pp. 220-221.)

In its opposition, CKS first attempts to justify it objection to the term "collected" as used in RPD No. 24. CKS asserts that its objection to the request is proper because it is a debt buyer (not a debt collector) and it does not engage in collection activities.

This objection lacks merit and is overruled. The request broadly seeks documents regarding the amount of money collected from the class. CKS is required to provide documents regarding the collection activities of its agents, attorneys, or other representative to the extent such documents are within its possession, custody, or control. (See Code Civ. Proc., §§ 2031.220-2031.240.)

CKS also attempts to justify its objection to RPD No. 24 as premature, arguing that no class has been certified and prospective class members have right to privacy.

This objection lacks merit and is overruled. The discovery sought by the request is indisputably relevant to Plaintiff's claims as it seeks documents regarding damages. CKS's argument in opposition—that a class has not yet been certified—is not a basis for denying discovery. The possibility that the court may deny certification or may certify a more limited class than what Plaintiff has pleaded is not a basis to prevent Plaintiff from obtaining pre-certification discovery with respect to the entire class as defined in the Complaint. (See *Williams, supra,* 3 Cal.5th at p. 551 ["That the eventual proper scope of a putative representative action is as yet uncertain is no obstacle to discovery; a party may proceed with interrogatories and other discovery methods precisely in order to ascertain that scope."]; see also *Limon v. Circle K Stores Inc.* (E.D.Cal. Mar. 30, 2020, No. 1:18-cv-01689-SKO) 2020 U.S.Dist.LEXIS 56415, at *14 [refusing to limit pre-certification discovery even though the plaintiff claims might not prevail when the court ruled on a motion for class certification].)

Because CKS's objections are overruled and it did not provide a substantive response to the request, a further response to RPD No. 24 is warranted.

E. Monetary Sanctions

Plaintiff seeks an award of monetary sanctions against CKS in the amount of $5,000 pursuant to Code of Civil Procedure sections 2030.300, subdivision (d) and 2031.310, subdivision (h).

Those statutes provide that the court shall impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories or requests for production of documents, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (Code Civ. Proc., §§ 2030.300, subd. (d) & 2031.310, subd. (h).)

Here, Plaintiff prevailed on the motion. In addition, the court finds that CKS did not act with substantial justification and there are no other circumstances that make the imposition of sanctions unjust. Consequently, Plaintiff is entitled to an award of monetary sanctions. Furthermore, the declaration submitted by Plaintiff's counsel demonstrates that Plaintiff

incurred attorney fees in the amount of $5,000 in connection with the instant motion. Thus, the amount of monetary sanctions requested is reasonable.

F. Conclusion

Accordingly, Plaintiff's motion to compel CKS to provide further responses to the SI and RPD is GRANTED. Within 30 days from the date of the filing of the order on this matter, CKS shall serve Plaintiff with further, code-compliant responses to SI Nos. 18 and 20 and RPD Nos. 23 and 24, without objection (except for those based on the attorney-client privilege and work product doctrine which are preserved), and produce documents in accordance with its further responses. If any responsive documents are withheld from production on the grounds they are protected by the attorney-client privilege or work product doctrine, CKS shall produce a privilege log identifying each item withheld from production and setting forth sufficient facts to permit evaluation of the merits of the asserted objection. Additionally, CKS shall pay monetary sanctions in the amount of $5,000 to Plaintiff's counsel.

IV. MOTION AS TO WEBCOLLEX

A. SI No. 29

SI No. 29 asks Webcollex to state its net worth and how its net worth was computed. The request also asks Webcollex to identify all documents that support its answer.

In its most recent response to SI No. 29, Webcollex states that it invokes the option to produce documents under Code of Civil Procedure section 2030.230. Webcollex then identifies a balance sheet and further identifies financial statements "as potentially responsive to this request."

In its opposition, Webcollex contends that its substantive response is code-compliant because it elected to use the option under Code of Civil Procedure section 2030.230 to produce documents and it identified financial statements as potentially responsive to the request.

Code of Civil Procedure section 2030.230 provides that it is a sufficient answer to an interrogatory to refer to this section and to specify the writings from which the answer may be derived or ascertained if the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it

would be substantially the same for the party propounding the interrogatory as for the responding party. Additionally, the specification must be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained.

Here, Webcollex's substantive response is deficient. Webcollex has made no showing that the burden or expense of preparing or making the purportedly compilation, abstract, audit, or summary of or from the documents is substantially the same for Plaintiff as for Webcollex. Therefore, Webcollex's substantive response does not comply with Code of Civil Procedure section 2030.230.

Consequently, a further response is warranted to SI No. 29.

B. RPD No. 23

RPD No. 23 asks Webcollex to produce all documents relating to or evidencing the number of persons with a California address from whom Webcollex (or its agents, attorneys, or other representatives) collected any amount between June 19, 2017, and the present date relating to a debt that was originated by WebBank, and serviced by Lendingclub Corporation.

In its most recent response to RPD No. 23, Webcollex objects to the request as violating privacy rights, irrelevant, premature, and requesting information about the collection activities of third parties. Subject to and without waiving its objections, Webcollex states that it "has identified 4,770 CA consumer[s] from whom Webcollex collected from during the relevant time period." Webcollex also states that the production of the list of those individuals is premature.

As an initial matter, there is generally good cause for the discovery sought. The discovery sought by the request is indisputably relevant to Plaintiff's claims as it seeks to identify the documents that support the number of putative class members identified by Webcollex. As there is good cause for the discovery, the court turns to Webcollex's objections.

Except as expressly discussed below, Webcollex does not defend its objections to the request. Thus, the undefended objections are without merit and are overruled. (See *Coy, supra,* 58 Cal.2d at pp. 220-221.)

In its opposition, Webcollex attempts to justify its objection to RPD No. 23 as premature, arguing that no class has been certified and prospective class members have right to privacy.

This objection lacks merit and is overruled. The discovery sought by the request is indisputably relevant to Plaintiff's claims as it seeks documents supporting the number of putative class members identified by Webcollex. Webcollex's argument in opposition—that a class has not yet been certified—is not a basis for denying discovery. The possibility that the court may deny certification or may certify a more limited class than what Plaintiff has pleaded is not a basis to prevent Plaintiff from obtaining pre-certification discovery with respect to the entire class as defined in the Complaint. (See *Williams, supra*, 3 Cal.5th at p. 551 ["That the eventual proper scope of a putative representative action is as yet uncertain is no obstacle to discovery; a party may proceed with interrogatories and other discovery methods precisely in order to ascertain that scope."]; see also *Limon v. Circle K Stores Inc.* (E.D.Cal. Mar. 30, 2020, No. 1:18-cv-01689-SKO) 2020 U.S.Dist.LEXIS 56415, at *14 [refusing to limit pre-certification discovery even though the plaintiff claims might not prevail when the court ruled on a motion for class certification].)

Webcollex also attempts to justify its objection to RPD No. 23 on the ground that the request violates the privacy rights of putative class members. For the same reasons explained above in connection with RPD No. 23 propounded to CKS, Webcollex's privacy objection lacks merit and is overruled.

Furthermore, Webcollex's substantive response is deficient. CKS does not clearly state that it will comply with the request or that it is unable to comply with the request. (See Code Civ. Proc., §§ 2031.210 & 2031.230.) Instead, Webcollex merely states that it has identified a certain number of putative class members. Thus, the response is evasive and incomplete.

For these reasons, a further response is warranted to RPD No. 23.

C. RPD No. 24

RPD No. 24 asks Webcollex to produce all documents relating to or evidencing the total amount collected from each person with a California address between June 19, 2017, and

the present date relating to a debt that was originated by WebBank, and serviced by Lendingclub Corporation.

In its most recent response to RPD No. 24, Webcollex objects to the request as violating privacy rights, irrelevant, premature, and requesting information about the collection activities of third parties.

As an initial matter, there is generally good cause for the discovery sought. The discovery sought by the request is indisputably relevant to Plaintiff's claims as it seeks to identify the documents regarding the amount damages sustained by the putative class. As there is good cause for the discovery, the court turns to Webcollex's objections.

Except as expressly discussed below, Webcollex does not defend its objections to the request. Thus, the undefended objections are without merit and are overruled. (See *Coy, supra,* 58 Cal.2d at pp. 220-221.)

In its opposition, Webcollex attempts to justify its objection to RPD No. 24 as premature, arguing that no class has been certified and prospective class members have right to privacy.

This objection lacks merit and is overruled. The discovery sought by the request is indisputably relevant to Plaintiff's claims as it seeks documents regarding damages. Webcollex's argument in opposition—that a class has not yet been certified—is not a basis for denying discovery. The possibility that the court may deny certification or may certify a more limited class than what Plaintiff has pleaded is not a basis to prevent Plaintiff from obtaining pre-certification discovery with respect to the entire class as defined in the Complaint. (See *Williams, supra,* 3 Cal.5th at p. 551 ["That the eventual proper scope of a putative representative action is as yet uncertain is no obstacle to discovery; a party may proceed with interrogatories and other discovery methods precisely in order to ascertain that scope."]; see also *Limon v. Circle K Stores Inc.* (E.D.Cal. Mar. 30, 2020, No. 1:18-cv-01689-SKO) 2020 U.S.Dist.LEXIS 56415, at *14 [refusing to limit pre-certification discovery even though the plaintiff claims might not prevail when the court ruled on a motion for class certification].)

Because Webcollex's objections are overruled and it did not provide a substantive response to the request, a further response to RPD No. 24 is warranted.

D. Monetary Sanctions

Plaintiff seeks an award of monetary sanctions against Webcollex in the amount of $5,000 pursuant to Code of Civil Procedure sections 2030.300, subdivision (d) and 2031.310, subdivision (h).

Those statutes provide that the court shall impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories or requests for production of documents, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (Code Civ. Proc., §§ 2030.300, subd. (d) & 2031.310, subd. (h).)

Here, Plaintiff prevailed on the motion. In addition, the court finds that Webcollex did not act with substantial justification and there are no other circumstances that make the imposition of sanctions unjust. Consequently, Plaintiff is entitled to an award of monetary sanctions. Furthermore, the declaration submitted by Plaintiff's counsel demonstrates that Plaintiff incurred attorney fees in the amount of $5,000 in connection with the instant motion. Thus, the amount of monetary sanctions requested is reasonable.

E. Conclusion

Accordingly, Plaintiff's motion to compel Webcollex to provide further responses to the SI and RPD is GRANTED. Within 30 days from the date of the filing of the order on this matter, Webcollex shall serve Plaintiff with further, code-compliant responses to SI No. 29 and RPD Nos. 23 and 24, without objection (except for those based on the attorney-client privilege and work product doctrine which are preserved), and produce documents in accordance with its further responses. If any responsive documents are withheld from production on the grounds they are protected by the attorney-client privilege or work product doctrine, Webcollex shall produce a privilege log identifying each item withheld from production and setting forth sufficient facts to permit evaluation of the merits of the asserted objection. Additionally, Webcollex shall pay monetary sanctions in the amount of $5,000 to Plaintiff's counsel.

V. MOTION AS TO C&B

A. SI No. 22

SI No. 22 asks C&B to state its net worth and how its net worth was computed. The request also asks C&B to identify all documents that support its answer.

In its most recent response to SI No. 22, C&B objects to the request on the grounds that it violates privacy rights, seeks information equally available to Plaintiff, and is premature. Subject to and without waiving its objections, C&B states that it "has requested its year end 2022 balance sheet and will supplement this response upon receipt of same." C&B further states that "[a]ny net worth calculation would be outdated without the most recent balance sheet."

C&B did not file an opposition to the instant motion. Therefore, C&B fails to justify its objections to the request and those objections are overruled. (See *Coy, supra*, 58 Cal.2d at pp. 220-221.)

Furthermore, C&B's substantive response is deficient. C&B does not provide the requested information—its net worth or how it calculated its net worth. Thus, the response is incomplete.

Consequently, a further response is warranted to SI No. 22.

B. RPD No. 20

RPD No. 20 asks C&B to produce all documents relating to or evidencing the number of persons with a California address from whom C&B (or its agents, attorneys, or other representatives) collected any amount between June 19, 2017, and the present date relating to a debt that was originated by WebBank, and serviced by Lendingclub Corporation.

In its most recent response to RPD No. 20, C&B objects to the request as violating privacy rights, irrelevant, seeking information equally available to Plaintiff, premature, and requesting information about the collection activities of third parties.

As an initial matter, there is generally good cause for the discovery sought. The discovery sought by the request is indisputably relevant to Plaintiff's claims as it seeks to identify the documents that support the number of putative class members identified by C&B. As there is good cause for the discovery, the court turns to C&B's objections.

C&B did not file an opposition to the instant motion. Therefore, C&B's undefended objections are without merit and are overruled. (See *Coy, supra*, 58 Cal.2d at pp. 220-221.)

As C&B's objections are overruled and it did not provide a substantive response, a further response is warranted to RPD No. 20.

C. RPD No. 21

RPD No. 21 asks C&B to produce all documents relating to or evidencing the total amount collected from each person with a California address between June 19, 2017, and the present date relating to a debt that was originated by WebBank, and serviced by Lendingclub Corporation.

In its most recent response to RPD No. 21, C&B objects to the request as violating privacy rights, irrelevant, seeking information equally available to Plaintiff, premature, and requesting information about the collection activities of third parties.

As an initial matter, there is generally good cause for the discovery sought. The discovery sought by the request is indisputably relevant to Plaintiff's claims as it seeks to identify the documents regarding the amount damages sustained by the putative class. As there is good cause for the discovery, the court turns to C&B's objections.

Except as expressly discussed below, Webcollex does not defend its objections to the request. Thus, the undefended objections are without merit and are overruled. (See *Coy, supra*, 58 Cal.2d at pp. 220-221.)

C&B did not file an opposition to the instant motion. Therefore, C&B's undefended objections are without merit and are overruled. (See *Coy, supra*, 58 Cal.2d at pp. 220-221.)

As C&B's objections are overruled and it did not provide a substantive response, a further response is warranted to RPD No. 21.

D. Monetary Sanctions

Plaintiff seeks an award of monetary sanctions against C&B in the amount of $3,300 pursuant to Code of Civil Procedure sections 2030.300, subdivision (d) and 2031.310, subdivision (h).

Those statutes provide that the court shall impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories or requests for production of documents, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the

imposition of the sanction unjust. (Code Civ. Proc., §§ 2030.300, subd. (d) & 2031.310, subd. (h).)

Here, Plaintiff prevailed on the motion. In addition, the court finds that C&B did not act with substantial justification and there are no other circumstances that make the imposition of sanctions unjust. Consequently, Plaintiff is entitled to an award of monetary sanctions. Furthermore, the declaration submitted by Plaintiff's counsel demonstrates that Plaintiff incurred attorney fees in the amount of $3,300 in connection with the instant motion. Thus, the amount of monetary sanctions requested is reasonable.

E. Conclusion

Accordingly, Plaintiff's motion to compel C&B to provide further responses to the SI and RPD is GRANTED. Within 30 days from the date of the filing of the order on this matter, C&B shall serve Plaintiff with further, code-compliant responses to SI No. 22 and RPD Nos. 20 and 21, without objection (except for those based on the attorney-client privilege and work product doctrine which are preserved), and produce documents in accordance with its further responses. If any responsive documents are withheld from production on the grounds they are protected by the attorney-client privilege or work product doctrine, C&B shall produce a privilege log identifying each item withheld from production and setting forth sufficient facts to permit evaluation of the merits of the asserted objection. Additionally, C&B shall pay monetary sanctions in the amount of $3,300 to Plaintiff's counsel.

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

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Calendar Line 3

Case Name: Sentinelone, Inc. v. Bernard, et al.
Case No.: 23CV416856

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 28, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

II. INTRODUCTION

On May 23, 2023, plaintiff SentinelOne, Inc. ("Plaintiff") filed a Complaint against defendants Daniel Bernard ("Bernard") and Brandon Andrews ("Andrews") (collectively, "Defendants"), which sets forth the following causes of action: (1) Breach of Contract (against Bernard); and (2) Breach of Contract (against Andrews). Plaintiff alleges Bernard breached his Proprietary Information and Invention Assignment Agreement ("PIIA Agreement") and Employment Agreement by modifying security protections on the Market Operating Plan, downloading the Market Operating Plan onto a personal computer, preparing to compete against Plaintiff during his employment with Plaintiff, and using Plaintiff's confidential information to compete against Plaintiff. (Complaint, ¶¶ 7-13, 55-62.) Plaintiff alleges Andrews breached a Confidential Information and Invention Assignment Agreement ("CIIA Agreement") by taking 75 Plaintiff documents containing confidential information, preparing to compete against Plaintiff during his employment with Plaintiff, and using Plaintiff's confidential information to compete against Plaintiff. (Complaint, ¶¶ 7, 14-18, 64-70.)

On August 25, 2023, the parties filed a Stipulation to Extend Time to Respond to Complaint, which extending Defendants' time to respond to the Complaint to August 31, 2023.

Now before the court are: (1) Bernard's demurrer to the Complaint; (2) Andrews' demurrer to the Complaint; (3) Bernard's motion to strike portions of the Complaint; and (4) Andrews' motion to strike portions of the Complaint. Plaintiff opposes all of the matters.

II. DEMURRERS

A. Legal Standard

The function of a demurrer is to test the legal sufficiency of a pleading. (*Trs. Of Capital Wholesale Elec. Etc. Fund v. Shearson Lehman Bros.* (1990) 221 Cal.App.3d 617,

621.) Consequently, " '[a] demurrer reaches only to the contents of the pleading and such matters as may be considered under the doctrine of judicial notice' [citation]." (*Hilltop Properties, Inc. v. State* (1965) 233 Cal.App.2d 349, 353; see Code Civ. Proc., § 430.30, subd. (a).) " 'It is not the ordinary function of a demurrer to test the truth of the … allegations [in the challenged pleading] or the accuracy with which [the plaintiff] describes the defendant's conduct. … .' [Citation.] Thus, … 'the facts alleged in the pleading are deemed to be true, however improbable they may be. [Citation.]' [Citations.]" (*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 958.)

B. Bernard's Demurrer

1. Request for Judicial Notice

In connection with his moving papers, Bernard asks the court to take judicial notice of pleadings and requests for dismissals filed in two unrelated cases: *SentinelOne, Inc. v. Daniel Bernard* (San Francisco County Superior Court, Case No. CGC-23-604716) and *SentinelOne, Inc. v. Daniel Bernard, et al.* (Santa Clara County Superior Court, Case No. 23CV416526).

The court declines to take judicial notice of the subject items. Although courts may generally take judicial notice of records of any court of this state under Evidence Code section 452, subdivision (d) (Evid. Code, § 452, subd. (d)(1)), a precondition to judicial notice is that the matter to be noticed must be relevant to the material issue before the court (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307 (*Silverado*), citing *People ex rel. Lockyer v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 422, fn. 2 (*Lockyer*) [the court may properly take judicial notice of court records if those records are deemed to be necessary and relevant to the disposition of the motion]).

Here, the fact that Plaintiff filed other lawsuits containing similar allegations made on information and belief, and later dismissed those actions, is irrelevant and has no bearing on whether the claims alleged in this case are adequately pleaded.

Accordingly, the request for judicial notice is DENIED.

2. Uncertainty

Bernard demurs to the first cause of action of the Complaint on the ground of uncertainty. (See Code Civ. Proc., § 430.10, subd. (f).)

However, Bernard's memorandum of points and authorities is devoid of any argument specifying an allegation in the first cause of action that Bernard contends is uncertain, ambiguous, and/or unintelligible. (See *Fenton v. Groveland Community Services Dist*. (1982) 135 Cal.App.3d 797, 809 (*Fenton*) [the "failure to specify the uncertain aspects of a complaint will defeat a demurrer based on the grounds of uncertainty"], overruled on other grounds by *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 328, fn. 30 (*Katzberg*).) It appears that Bernard contends the claim is vague, ambiguous, and/or uncertain because Plaintiff fails to allege sufficient facts to plead its claim. In this regard Bernard misunderstands the nature of uncertainty as a ground for demurrer. The law is settled that "[a] special demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the pleading but is directed at the uncertainty existing in the allegations already made." (*Butler v. Sequiera* (1950) 100 Cal.App.2d 143, 145-146 (*Butler*).)

Accordingly, the demurrer on the ground of uncertainty is OVERRULED.

3. Failure to Allege Sufficient Facts

Bernard demurs to the first cause of action of the Complaint on the ground of failure to allege sufficient facts to constitute a cause of action. (See Code Civ. Proc., § 430.10, subd. (e).) Bernard argues the court should sustain his demurrer, without leave to amend, because the factual allegations against him are pled on information and belief and Plaintiff does not allege what, if any, information leads it to believe that the allegations are true. Bernard further asserts the claims is inadequately pled because Plaintiff does not identify the disclosure of any Plaintiff information to any specific person outside the company. Bernard also contends that Plaintiff's discovery responses show that it cannot allege such facts and this litigation is simply a fishing expedition. In addition, Bernard argues Plaintiff has not alleged any facts showing that he actually has or will misuse any of Plaintiff's confidential information. Next, Bernard asserts that all of his conduct, as alleged in the Complaint, was lawful and to find otherwise would illegally restrain him from practicing his trade or profession under Business and Professions Code section 16600. Finally, Bernard contends that Plaintiff has failed to allege any non-speculative harm because it does not identify any customer or business opportunity that was lost as a result of his alleged conduct.

"A cause of action for breach of contract requires pleading of a contract, plaintiff's performance or excuse for failure to perform, defendant's breach and damage to plaintiff resulting therefrom." (*McKell v. Washington Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1489 (*McKell*).)

Here, Plaintiff fails to plead sufficient facts to state a claim for breach of contract. In the Complaint, Plaintiff alleges that Bernard breached Sections 1(b) and 2(a) of the PIIA.[1] (Complaint, ¶¶ 9-11, 56.) Section 1(b) provides that during his employment with Plaintiff, Bernard "will not engage in any other employment, occupation, consulting or other business activity related to" Plaintiff's business or "engage in any other activities that conflict with [his] obligations to" Plaintiff. (*Id.* at ¶ 9.) Section 2(a) provides that during and after his employment with Plaintiff, Bernard agrees "to hold in the strictest confidence, and not to use except for the benefit of [Plaintiff] or to disclose to any third party without written authorization of the Board of Directors of [Plaintiff], any Confidential Information of [Plaintiff]" (Complaint, ¶ 10.)

Plaintiff alleges that Bernard breach these provisions in the PIIA by modifying the security protections on the Marketing Annual Operating Plan, which allowed the document to be shared with anyone with a link to the document. (Complaint, ¶¶ 30, 57.) However, the modification of the security protections on the subject document does not constitute a breach of Sections 1(b) and 2(a) of the PIIA. Plaintiff does not any allege any facts showing, and it does not otherwise appear, that Bernard's modification the security protections constituted engagement in other employment or business activity related to Plaintiff's business. Additionally, the mere modification of the security protections does not constitute use or disclosure of the Marketing Annual Operating Plan. As Bernard persuasively argues, Plaintiff does not plead any facts showing that Bernard actually used the subject document or disclosed the subject document to a third party.

Next, Plaintiff alleges that Bernard breached Sections 1(b) and 2(a) of the PIIA by downloading the Marketing Annual Operating Plan onto his personal computer. (Complaint, ¶ 57.) But nothing in Sections 1(b) and 2(a) of the PIIA prohibits Bernard from downloading

[1] Notably, Plaintiff does not allege that Bernard breached Section 5 of the PIIA, which contains various non-solicitation provisions.

Confidential Information onto his personal computer. Furthermore, Plaintiff does not any allege any facts showing, and it does not otherwise appear, that downloading the document constitutes engagement in other employment or business activity related to Plaintiff's business. Additionally, the mere act of downloading the document onto Bernard's personal computer does not constitute use of the subject document or disclosure of the document to a third party.

Plaintiff also alleges that Bernard breached Sections 1(b) and 2(a) of the PIIA by "preparing to compete against [Plaintiff] while still employed by it, and using confidential information to compete against [Plaintiff[." (Complaint, ¶ 58.) However, Sections 1(b) and 2(a) of the PIIA do not prohibit Bernard from preparing to compete with Plaintiff. Moreover, California law permits an employee to seek other employment and even to make preparations to compete before resigning. (*Angelica Textile Services, Inc. v. Park* (2013) 220 Cal.App.4th 495, 509 (*Angelica*), citing *Fowler v. Varian Associates, Inc*. (1987) 196 Cal.App.3d 34, 41 (*Fowler*); *Mamou v. Trendwest Resorts, Inc*. (2008) 165 Cal.App.4th 686, 719 (*Mamou*).) Notably, Plaintiff does not allege any facts demonstrating that Bernard's alleged preparations to compete were done using Plaintiff's time, facilities, or proprietary information. (See *Mamou, supra*, 165 Cal.App.4th at p. 719 [employees may plan and prepare to create a competitive enterprise prior to their termination, so long as they do so on their own time and with their own resources].) At best, Plaintiff alleges facts showing that during his employment with Plaintiff, Bernard met with its competitor, CrowdStrike, regarding potential employment, Bernard had access to Plaintiff's Confidential Information, and Bernard installed and used Signal (an application used to send encrypted messages) on his work computer. These facts do not establish that Bernard used Plaintiff's time, facilities, or proprietary information to prepare to compete, or actually compete, with Plaintiff.

Finally, Plaintiff alleges that Bernard breached Section 11 of his Employment Agreement. (Complaint, ¶¶ 12-13, 58.) Section 11 states that during his employment with Plaintiff, Bernard shall "not assist any person or entity in competing with the Company, in preparing to compete with Company …." (*Ibid.*) Plaintiff alleges that Bernard breach Section 11 by "preparing to compete against [Plaintiff] while still employed by it, and using confidential information to compete against [Plaintiff[." (Complaint, ¶ 58.) However, Section

11 does not prohibit Bernard, himself, from preparing to compete with Plaintiff; rather, that provision only precludes him from assisting other persons or entities from competing with Plaintiff. Moreover, as explained above, Plaintiff does not allege any facts showing that Bernard actually used Plaintiff's confidential information to compete with it.

Accordingly, the demurrer on the ground of failure to allege sufficient facts is SUSTAINED with 30 days' leave to amend.

C. Andrews' Demurrer

1. Request for Judicial Notice

In connection with his moving papers, Andrews asks the court to take judicial notice of pleadings and requests for dismissals filed in two unrelated cases: *SentinelOne, Inc. v. Daniel Bernard* (San Francisco County Superior Court, Case No. CGC-23-604716) and *SentinelOne, Inc. v. Daniel Bernard, et al.* (Santa Clara County Superior Court, Case No. 23CV416526).

The court declines to take judicial notice of the subject items. Although courts may generally take judicial notice of records of any court of this state under Evidence Code section 452, subdivision (d) (Evid. Code, § 452, subd. (d)(1)), a precondition to judicial notice is that the matter to be noticed must be relevant to the material issue before the court (*Silverado, supra,* 197 Cal.App.4th at p. 307, citing *Lockyer, supra*, 24 Cal.4th at p. 422, fn. 2 [the court may properly take judicial notice of court records if those records are deemed to be necessary and relevant to the disposition of the motion]).

Here, the fact that Plaintiff filed other lawsuits containing similar allegations made on information and belief, and later dismissed those actions, is irrelevant and has no bearing on whether the claims alleged in this case are adequately pleaded.

Accordingly, the request for judicial notice is DENIED.

2. Uncertainty

Andrews demurs to the second cause of action of the Complaint on the ground of uncertainty. (See Code Civ. Proc., § 430.10, subd. (f).)

However, Andrews' memorandum of points and authorities is devoid of any argument specifying an allegation in the first cause of action that Bernard contends is uncertain, ambiguous, and/or unintelligible. (See *Fenton, supra,* 135 Cal.App.3d at p. 809 [the "failure to

specify the uncertain aspects of a complaint will defeat a demurrer based on the grounds of uncertainty"], overruled on other grounds by *Katzberg, supra,* 29 Cal.4th at p. 328, fn. 30.) It appears that Andrews contends the claim is vague, ambiguous, and/or uncertain because Plaintiff fails to allege sufficient facts to plead its claim. In this regard Andrews misunderstands the nature of uncertainty as a ground for demurrer. The law is settled that "[a] special demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the pleading but is directed at the uncertainty existing in the allegations already made." (*Butler, supra,* 100 Cal.App.2d at pp. 145-146.)

Accordingly, the demurrer on the ground of uncertainty is OVERRULED.

3. Failure to Allege Sufficient Facts

Andrews demurs to the second cause of action of the Complaint on the ground of failure to allege sufficient facts to constitute a cause of action. (See Code Civ. Proc., § 430.10, subd. (e).) Andrews argues the court should sustain his demurrer, without leave to amend, because the factual allegations against him are pled on information and belief and Plaintiff does not allege what, if any, information leads it to believe that the allegations are true. Andrews further asserts the claims is inadequately pled because Plaintiff does not identify the disclosure of any Plaintiff information to any specific person outside the company. Andrews also contends that Plaintiff's discovery responses show that it cannot allege such facts and this litigation is simply a fishing expedition. In addition, Andrews argues Plaintiff has not alleged any facts showing that he actually has or will misuse any of Plaintiff's confidential information. Next, Andrews asserts that all of his conduct, as alleged in the Complaint, was lawful and to find otherwise would illegally restrain him from practicing his trade or profession under Business and Professions Code section 16600. Finally, Andrews contends that Plaintiff has failed to allege any non-speculative harm because it does not identify any customer or business opportunity that was lost as a result of his alleged conduct.

"A cause of action for breach of contract requires pleading of a contract, plaintiff's performance or excuse for failure to perform, defendant's breach and damage to plaintiff resulting therefrom." (*McKell, supra,* 142 Cal.App.4th at p. 1489.)

Here, Plaintiff fails to plead sufficient facts to state a claim for breach of contract. In the Complaint, Plaintiff alleges that Andrews breached Section 1(b) of the CIIA. (Complaint, ¶¶ 15-17, 64-65.) Section 1(b) provides that during and after his employment with Plaintiff, Andrews agrees "to hold in the strictest confidence and take all reasonable precautions to prevent any unauthorized use or disclosure of [Plaintiff] Confidential Information." (Complaint, ¶ 15.) The provision further states that Andrews "will not (i) use [Plaintiff] Confidential Information for any purpose whatsoever other than for the benefit of [Plaintiff] in the course of [his] employment, or (ii) disclose [Plaintiff] Confidential Information to any third party without the prior written authorization of the President, CEP, or the Board of Directors of [Plaintiff]." (*Ibid*.)

Plaintiff alleges that Bernard breach this provision in the CIIA by transferring 75 documents, which allegedly included Confidential Information, from his work computer to his personal Google Drive storage while he was employed with Plaintiff. (Complaint, ¶¶ 44-52, 66.) However, the act of transferring the subject documents to Andrews personal Google Drive storage does not constitute a breach of Section 1(b) of the CIIA. Plaintiff does not any allege any facts showing, and it does not otherwise appear, that Andrews' conduct constituted engagement in other employment or business activity related to Plaintiff's business. Additionally, the mere transfer of the documents during his employment with Plaintiff does not constitute use or disclosure of the subject documents. As Bernard persuasively argues, Plaintiff does not plead any facts showing that Andrews actually used the subject documents or disclosed the subject documents to a third party.

Next, Plaintiff also alleges that Andrews breached Section 1(b) of the CIIA by "preparing to compete against [Plaintiff] while still employed by it, and using confidential information to compete against [Plaintiff]." (Complaint, ¶ 67.) However, Section 1(b) of the CIIA does not prohibit Andrews from preparing to compete with Plaintiff. Moreover, California law permits an employee to seek other employment and even to make preparations to compete before resigning. (*Angelica, supra,* 220 Cal.App.4th at p. 509, citing *Fowler, supra,* 196 Cal.App.3d at p. 41; *Mamou, supra*, 165 Cal.App.4th at p. 719.) Notably, Plaintiff does not allege any facts demonstrating that Andrews' alleged preparations to compete were

done using Plaintiff's time, facilities, or proprietary information. (See *Mamou, supra*, 165 Cal.App.4th at p. 719 [employees may plan and prepare to create a competitive enterprise prior to their termination, so long as they do so on their own time and with their own resources].) At best, Plaintiff alleges facts showing that during his employment with Plaintiff, Andrews met with CrowdStrike regarding potential employment, Andrews had access to Plaintiff's Confidential Information, and Andrews transferred documents containing Confidential Information from his work computer to his personal Google Drive Storage. These facts do not establish that Andrews used Plaintiff's time, facilities, or proprietary information to prepare to compete, or actually compete, with Plaintiff.

Accordingly, the demurrer on the ground of failure to allege sufficient facts is SUSTAINED with 30 days' leave to amend.

III. MOTIONS TO STRIKE

A. Legal Standard

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a).) In ruling on a motion to strike, the court reads the pleading as a whole, all parts in their context, and assuming the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc.* (2010) 191 Cal.App.4th 53, 63 citing *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.)

B. Bernard's Motion

Bernard moves to strike Plaintiff's prayer for injunctive relief pursuant to Code of Civil Procedure section 436.

In light of the court's ruling on Bernard's demurrer, the motion to strike is deemed MOOT.

C. Andrews' Motion

Andrews moves to strike Plaintiff's prayer for injunctive relief pursuant to Code of Civil Procedure section 436.

In light of the court's ruling on Andrews' demurrer, the motion to strike is deemed MOOT.

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

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Calendar Line 4

Case Name: Bravo v. Michels Pacific Energy, Inc. (Class Action/PAGA)
Case No.: 22CV403427

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 28, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

III. INTRODUCTION

This is a class and representative action arising out of alleged wage and hour violations. The operative First Amended Class and PAGA Action Complaint ("FAC"), filed on November 28, 2022, sets forth the following causes of action: (1) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages); (5) Violation of Cal. Labor Code §§ 201, 202 and 203 (Final Wages Not Timely Paid); (6) Violation of Cal. Labor Code § 226(a) (Failure to Provide Accurate Wage Statements); (7) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses); (8) Violation of Cal. Business & Professions Code §§ 17200, et seq.; and (9) Violation of Cal. Labor Code §§ 2699, et seq. (Private Attorneys General Act).

The parties have reached a settlement. Plaintiff Michael Bravo ("Plaintiff") now moves for preliminary approval of the settlement. The motion is unopposed.

IV. LEGAL STANDARD

Generally, "questions whether a 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*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

> 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, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The 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*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

> The burden is on the proponent of the settlement to show that it is fair and reasonable. However "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."

(*Wershba*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1802.)

V. DISCUSSION

A. Provisions of the Settlement

> This case has been settled on behalf of the following class:
> [A]ll current and former hourly-paid and/or non-exempt non-union employees and union employees covered under the National Pipe Line Agreements employed by Defendant [Michels Pacific Energy, Inc. ("Defendant")] in the State of California at any time during the Class Period.

(Declaration of Jonathan M. Genish in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Genish Dec."), Ex. 2 ("Settlement Agreement"), ¶ 6(a).) The National Pipe Line Agreements means the collective bargaining agreements ("CBAs") that cover Defendant's employees who are members of the International Union of Operating Engineers ("IUOE"), the International Brotherhood of Teamsters ("IBT"), and the Laborers' International Union of North America ("LIUNA"). (Settlement Agreement, ¶ 6(u).)

The Class Period is defined as the period from September 26, 2018 through October 11, 2023. (Settlement Agreement, ¶ 6(f).)

The settlement also includes a subset of PAGA Employees, who are defined as "all current and former hourly-paid and/or non-exempt non-union and union employees covered under the National Pipe Line Agreements employed by Defendant in the State of California at any time during the PAGA Period." (Settlement Agreement, ¶ 6(y).) The PAGA Period means the period from September 22, 2021 through October 11, 2023. (Settlement Agreement, ¶ 6(aa).)

According to the terms of settlement, Defendant will pay a maximum, non-reversionary settlement amount of $1,750,000. (Settlement Agreement, ¶¶ 6(p).) The gross settlement amount includes attorney fees up to $583,333.33 (1/3 of the gross settlement amount), litigation costs not to exceed $13,000, a PAGA allocation of $200,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to PAGA Employees), an enhancement award up to $10,000, and settlement administration costs not to exceed $8,500. (Settlement Agreement, ¶¶ 6(a), 6(l), 6(p), 6(t), 6(v), 6(x), 6(z), 6(ll), 9-12.) The net settlement amount will be distributed to participating class members pro rata basis. (Settlement Agreement, ¶¶ 6(s), 6(v), 14.) Checks that remain uncashed 180 days from the date the checks are dated will be void and the funds from those checks will be distributed to the State of California Unclaimed Property Fund. (Settlement Agreement, ¶ 34.)

The parties' proposal to send funds from uncashed checks to the State of California Unclaimed Property Fund does not comply with Code of Civil Procedure section 384, which mandates that unclaimed or abandoned class member funds be given to "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." Plaintiff is directed to provide a new *cy pres* in compliance with Code of Civil Procedure section 384 prior to the continued hearing date.

In exchange for the settlement, the class members agree to release Defendant, and related entities and persons, from any and all claims which were alleged or which could have

been alleged based on the factual allegations in the FAC arising during the Class Period. (Settlement Agreement, ¶¶ 6(ff), 6(hh), 35.) PAGA Employees agree to release Defendant, and related entities and persons, from any and all claims for civil penalties under PAGA arising from any of the factual allegations in Plaintiff's PAGA letter arising during the PAGA Period. (Settlement Agreement, ¶¶ 6(gg), 6(hh), 36.) In addition, Plaintiff agrees to a comprehensive general release. (Settlement Agreement, ¶ 37.)

B. Fairness of the Settlement

Plaintiff states that the settlement was reached through discovery, analysis, and mediation with Louis Marlin, Esq. (Genish Dec., ¶¶ 11-12, 22-25.) In anticipation of mediation, Plaintiff's counsel conducted informal discovery, which included a random sampling of putative class members' time and pay records, employee handbooks, CBAs, relevant wage and hour policies, information regarding the total number of putative class members, the total workweeks worked by the putative class members, the numbers of current versus former employees, the dates of employment of the putative class members, and the average rate of pay for the putative class members. (Genish Dec., ¶¶ 11, 23.) From the information provided, Plaintiff determined that there were approximately 273 class members who worked 12,515 workweeks from September 26, 2018 through May 31, 2023. (*Id.* at ¶¶ 16, 26.) Plaintiff estimates that Defendant's maximum potential liability for the claims is approximately $7,946,500. (*Id.* at ¶¶ 27-39.) Plaintiff provides a breakdown of this amount by claim. (*Ibid.*) Plaintiff discounted the value of the claims given Defendant's defenses, the possibility that the court could substantially reduce any PAGA penalties, and the risks and costs associated with class certification. (*Ibid.*) The gross settlement amount represents approximately 22 percent of the potential maximum recovery. The proposed settlement amount is within the general range of percentage recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.* (E.D.Ca|. Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist.LEXIS 30201, at *41-42 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].)

However, upon review of the settlement agreement, the court has concerns regarding the scope of the definitions of the class and PAGA Employees. The settlement agreement

states that the class and PAGA Employees include all current and former hourly-paid and/or non-exempt non-union and union employees covered under the National Pipe Line Agreements employed by Defendant. Thus, the class and PAGA Employees would appear to include non-union employees covered under the National Pipe Line Agreements. However, the settlement agreement further states that the National Pipe Line Agreements are CBAs that cover employees who are members of IUOE, IBT, and LIUNA. Therefore, it appears that the only employees covered by the subject CBAs are union members. In light of this apparent discrepancy, it is unclear to the court why the definitions of the class and PAGA Employees include non-union employees. Prior to the continued hearing, Plaintiff shall file a supplemental declaration explaining why the class and PAGA employees are defined to include non-union employees.

The court otherwise finds the terms of the settlement to be fair. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation.

C. Incentive Award, Fees, and Costs

Plaintiff requests an enhancement awards in the amount of $10,000 for the class representative.

> The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 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. These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks, brackets, ellipses, and citations omitted.)

Plaintiff filed a declaration generally describing his participation in the lawsuit. Plaintiff declares that he spent approximately 25 to 30 hours in connection with this action, including discussing the case with class counsel, searching for and providing documents to class counsel, answering questions from class counsel, providing information regarding

Defendant's policies and practices, and reviewing settlement documents. (Declaration of Plaintiff Michael Bravo in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement, ¶¶ 4-9.)

Moreover, Plaintiff undertook risk by putting his name on the case because it might impact his future employment. (See *Covillo v. Specialty's Café* (N.D.Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant "reputational risk" in bringing an action against an employer].)

However, the requested amount of $10,000 is more than the court typically awards for the amount of time Plaintiff spent in connection with this action. Therefore, the court approves an enhancement award in the total amount of $2,500.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co*. (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will seek attorney fees up to $583,333.33 (1/3 of the gross settlement amount) and litigation costs not to exceed $13,000. Plaintiff's counsel shall submit lodestar information (including hourly rates and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiff's counsel shall also submit evidence of actual costs incurred as well as evidence of any settlement administration costs.

D. Conditional Certification of Class

Plaintiff requests that the class be conditionally certified for purposes of the settlement. 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 . . . ." As interpreted by the California Supreme Court, Section 382 requires: (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 (*Sav-On*).)

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, supra,* 34 Cal.4th at p. 326.) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

> As explained by the California Supreme Court,
> The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines 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 advantageous to the judicial process and to the litigants.

(*Sav-On, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Plaintiff states that there are approximately 306 class members that can be determined from a review of Defendant's records. There are common questions regarding whether class members were subjected to common practices that violated wage and hour laws. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the proposed class should be conditionally certified for settlement purposes.

E. Class Notice

The content of a class notice is subject to court approval. "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court." (Cal. Rules of Court, rule 3.769(f).)

The notice generally complies with the requirements for class notice. (Settlement Agreement, Ex. A.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion.

However, Section 4(C) of the class notice states that individuals must notify the court of their intention to appear in order to appear at the final approval hearing. The class notice

must make clear that class members may object to the settlement by appearing at the final fairness hearing without submitting any notice of intention to appear.

Additionally, the notice shall include the following language regarding the final approval hearing:

> Class members may appear at the final approval hearing in person or remotely using the Microsoft Teams link for Department 19 (Afternoon Session). Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members who wish to appear remotely are encouraged to contact class counsel at least three days before the hearing if possible, so that potential technology or audibility issues can be avoided or minimize.

Notably, the language currently included in the class notice only discusses remote appearances and does not mention in person appearances. The amended notice shall be provided to the court for approval prior to the continued hearing date.

VI. CONCLUSION

The motion for preliminary approval of the class and representative action settlement is CONTINUED to March 27, 2024, at 1:30 p.m. in Department 19. Plaintiff shall file a supplemental declaration no later than March 15, 2024, identifying a new *cy pres* recipient, addressing the court's concerns regarding the scope of the definitions for the class and PAGA Employees, and including an amended class notice. No additional filings are permitted.

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

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Calendar Line 5

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

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on February 28, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VII. INTRODUCTION

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

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

II. LEGAL STANDARD

California Rules of Court, rule 3.1362 sets forth the requirements for a motion to be relieved as counsel. That rule provides that "[a] notice of motion and motion to be relieved as counsel under Code of Civil Procedure section 284(2) must be directed to the client and must be made on the Notice of Motion and Motion to Be Relieved as Counsel-Civil (form MC-051)." (Cal. Rules of Ct., rule 3.1362(a).) "[N]o memorandum is required to be filed or served with a motion to be relieved as counsel." (Cal. Rules of Ct., rule 3.1362(b).) "The motion to be relieved as counsel must be accompanied by a declaration on the Declaration in Support of

Attorney's Motion to Be Relieved as Counsel-Civil (form MC-052)," which "must state in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284(2) is brought instead of filing a consent under Code of Civil Procedure section 284(1)." (Cal. Rules of Ct., rule 3.1362(c).)

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

"The proposed order relieving counsel must be prepared on the Order Granting Attorney's Motion to Be Relieved as Counsel-Civil (form MC-053) and must be lodged with the court with the moving papers." (Cal. Rules of Ct., rule 3.1362(e).) "The order must specify all hearing dates scheduled in the action or proceeding, including the date of trial, if known. If no hearing date is presently scheduled, the court may set one and specify the date in the order." (*Ibid.*)

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

III. DISCUSSION

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

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

Based on the foregoing, the court finds that Wells has generally justified the request to be relieved as counsel. However, as noted above, Wells did not file a proposed order relieving counsel on the Order Granting Attorney's Motion to Be Relieved as Counsel-Civil (form MC-053) in compliance with California Rules of Court, rule 3.1362.

Accordingly, the motion to be relieved as counsel is CONTINUED to March 13, 2024, at 1:30 p.m. in Department 19. Defendants' counsel shall file a proposed order in compliance with California Rules of Court, rule 3.1362 no later than March 4, 2024. No additional filings are permitted.

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

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