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 or email department1@scscourt.org before 4 pm. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

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LAW AND MOTION TENTATIVE RULINGS
DATE: SEPTEMBER 21, 2023 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV371353	McDonald v. HCL America, Inc.	See tentative ruling. The Court will prepare the final order.
LINE 2	22CV396904	Ferrell v. CoreSite, L.L.C. (PAGA)	See tentative ruling. The Court will prepare the final order.
LINE 3	22CV394795	Gomez v. A1-Jay's Machining, Inc., et al. (PAGA)	See tentative ruling. The Court will prepare the final order.
LINE 4	23CV415833	Trace3, LLC v. Sycomp, A Technology Company, Inc., et al.	See tentative ruling. The Court will prepare the final order.
LINE 5	19CV361005	Credit Corp Solutions Inc., Assignee of Webbank v. Guzman	See tentative ruling. The Court will prepare the final order.

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LAW AND MOTION TENTATIVE RULINGS

LINE 6	21CV375422	Temujin Labs Inc. v. Fu	See tentative ruling. The Court will prepare the final order.
LINE 7	20CV372622	Temujin Labs Inc. v. Abittan, et al.	See line 6.
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Jordan McDonald v. HCL America, Inc., et al.*
Case No.: 20CV371353

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff alleges that Defendant HCL America, Inc. provided employees with wage statements that omitted required information and failed to pay final wages on time.

The parties reached a settlement, which the Court preliminarily approved in an order filed January 23, 2023. The factual and procedural background of the action and the Court's analysis of the settlement and settlement class are set forth in that order.

Before the Court is Plaintiff's motion for final approval of the settlement, and for approval of his attorney's fees, costs, and service award. The motion is unopposed. As discuss below, the Court GRANTS final approval.

I. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

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

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The trial court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, citation and internal quotation marks omitted.) The trial court also must independently confirm that "the consideration being received for the release of the class members' claims is reasonable in

light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar, supra,* 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be "provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Id.* at pp. 130, 133.)

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) ___U.S.___, 2022 U.S. LEXIS 2940 (*Viking River*).)

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.)

B. TERMS AND ADMINISTRATION OF SETTLEMENT

The non-reversionary gross settlement amount is $410,000. Attorney fees of up to $136,666.66 (one-third of the gross settlement), litigation costs of $8,583.88, and $10,000 in administration costs will be paid from the gross settlement. $40,000 will be allocated to PAGA penalties, 75 percent of which ($30,000) will be paid to the LWDA. The named plaintiff seeks an incentive award of $10,000.

The net settlement amount of $204,749.45 will be allocated 20 percent to 56 Late Pay Class members and 80 percent to the 201 Wage Statement Class members. Late Pay Class members will each receive an equal share of their allocation, while Wage Statement Class members' payments will be allocated proportionally based on the number of relevant wage statements they received.

Class members will not be required to submit a claim to receive their payments and will be issued payment of their individual settlement payments subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the individual settlement payment. Funds associated with checks uncashed after 180 days will be paid to the California State Controller for deposit in the Unclaimed Property Fund in the name of the appropriate employee.

In exchange for the settlement, class members who do not opt out will release "any and all Labor Code section 226(a) claims arising during the Wage Statement Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action, and any and all Labor Code section 201-203 claims arising [during] the Class Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action." PAGA aggrieved employees will release any such claims for PAGA penalties arising during the PAGA period. The releases are appropriately tailored to the allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

The notice process has now been completed. There were no objections to the settlement or requests for exclusion from the class. Of the 234 notices mailed by the administrator, none were returned or considered undeliverable. The administrator estimates that the highest individual settlement payment to be made to class members is approximately $2,546.26, the lowest individual settlement payment is approximately $35.79, and the average individual settlement payment is approximately $917.73. With respect to the $40,000 of the gross settlement amount allocated to PAGA penalties, there are 201 aggrieved employees who earned a total of 8,214 wage statements during the PAGA period, resulting in the highest individual PAGA payment of approximately $97.39 and the average individual PAGA payment to be paid amounting to $49.75.

At preliminary approval, the Court found that the settlement is a fair and reasonable compromise of the class claims and that the PAGA allocation is genuine, meaningful, and reasonable in light of the statute's purposes. It finds no reason to deviate from these findings now, especially considering that there are no objections. The Court thus finds that the settlement is fair and reasonable for purposes of final approval.

C. ATTORNEY FEES, COSTS, AND INCENTIVE AWARD

Plaintiff seeks a fee award of $136,666.66, one-third of the gross settlement. 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 provides a lodestar figure of $124,725 for just one of the three class counsel, based on 166.3 hours on this case (including 15 hours of anticipated time) at a rate of $750 per hour. This results in a reasonable multiplier of 1.09. The lodestar cross-check supports the percentage fee requested, particularly given the lack of objections to the attorney fee request. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1 Cal.5th 480, 488, 503–504 [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13].)

Plaintiff's counsel also requests $8,583.88 in litigation costs, below the amount estimated at preliminary approval. These costs appear reasonable based on the summary provided and are approved. The $10,000 in administrative costs are also approved.

Finally, the named plaintiff seeks a service award of $10,000. To support his request, he submits a declaration describing his efforts on the case. The Court finds that the class representative is entitled to this award and the amount requested is reasonable.

D. CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

The motion for final approval is GRANTED. The following class is certified for settlement purposes:

- the "Late Pay Class" of "all former non-exempt employees of Defendant, HCL America, Inc., in the State of California whose employment ended at any time from April 12, 2017, through April 30, 2022 (the 'Late Pay Period')," and

- the "Wage Statement Class" of "all current and former non-exempt employees of Defendant in the State of California at any time from April 12, 2019, through February 28, 2021 (the 'Wage Statement Period')."

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

The Court sets a compliance hearing for **May 23, 2024 at 2:30 P.M.** in Department 1. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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Calendar Line 2

Case Name: *Alicia Ferrell v. CoreSite, LLC*
Case No.: 22CV396904

Plaintiff Alicia Ferrell brings a claim under the Private Attorneys General Act ("PAGA") against Defendant CoreSite, LLC. Plaintiff alleges that Defendant violated PAGA by failing to provide accurate itemized wage statements in violation of Labor Code section 226 ("Section 226"), subdivision (a).

Before the Court is Plaintiff's motion for approval of a settlement, which is unopposed. As discussed below, the Court GRANTS the motion.

II. BACKGROUND

As alleged in the operative complaint, Plaintiff is currently employed as a Data Center Technician by Defendant, which operates data center facilities and provides data center investment services. (Complaint, ¶ 7.) Plaintiff has been employed with Defendant since November 13, 2019, and throughout her employment has been employed as an hourly, non-exempt employee. (*Ibid*.) She alleges that Defendant violated Section 226, subdivision (a), by failing to provide accurate itemized wage statements. Specifically, Defendants failed to identify the applicable hourly rate of pay for overtime wages, instead displaying only the base hourly rate of pay.

III. 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.) 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 (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) "[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.)

IV. PLAINTIFF'S INVESTIGATION, SETTLEMENT PROCESS, AND THE PARTIES' AGREEMENT

After the commencement of this action, the parties met and conferred regarding potential settlement and agreed to participate in private mediation. In connection with mediation, which took place on October 19, 2022 before Steve Serratore, Esq., the parties engaged in informal discovery, with Defendants providing Plaintiff with information and data pertaining to the PAGA Group, including the number of wage statements and pay periods at issue, as well as Defendant's policies pertaining to the issuance of wage statements. The parties continued settlement negotiations following mediation, and reached the current agreement now before the Court.

Pursuant to that settlement, Defendant will pay a gross amount of $142,500, $47,500 in attorneys' fees, litigation costs of up to $17,000 and $2,950 in administration costs. The named plaintiff also seeks an enhancement award of $5,000 for serving as the PAGA representative. The net settlement amount of approximately $70,667.14 will be distributed 75 percent ($53,000.35) to the LWDA and 25 percent ($17,666.79) to the "PAGA Group," i.e., aggrieved employees, based on the number of pay periods that each of these individuals received overtime compensation during the PAGA period.

The PAGA group includes "all individuals who are or previously were employed by Defendant in California as non-exempt employees who earned overtime during the PGA Period." The "PAGA Period," in turn, is defined as any time from February 11, 2021, through February 25, 2022. The 141 aggrieved employees will receive an average payment of $125.30, with the amount each *actually* receives based on the number of pay periods he or she was paid overtime wages during the PAGA Period.

In exchange for the settlement, aggrieved employees will release:

> [A]ll claims under California Labor Code § 2698, et seq. (the Private Attorneys General Act), based on the facts and theories alleged in Plaintiff's LWDA Letter and the Complaint, for violations of Labor Code § 226 arising within the PAGA Period.

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].)

V. DISCUSSION

A. Potential Verdict Value

During settlement negotiations, Defendant, who has denied violations of any applicable laws as well as liability for any claims asserted in this action, represented that there were a total of 2,972 wage statements with payments for overtime wages in the PAGA period, i.e., February 11, 2021, and February 25, 2022. Assuming a 100 percent violation rate, Plaintiff calculated total exposure to be as high as $743,000 (2,972 pay periods x $250 penalty per pay period pursuant to Labor Code § 226.3).

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 a compelling argument to the contrary. 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 19.2% of the total possible liability of 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 $47,500, 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 $63,300, based on 105.5 hours spent on this case by counsel billing at a rate of $600 per hour. This amount exceeds the fee requested by Plaintiffs here, resulting in a 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 actual litigation costs of $16,382.86 appears reasonable (the settlement agreement allows for up to $17,000) based on the supporting declarations provided and is approved, as is the request for $2,950 in administrative costs. Because the amount of actual litigation costs is less than the maximum in the settlement agreement, the difference will be distributed to the LWDA and Aggrieved Employees.

Finally, the Court finds that the named plaintiff is entitled to an enhancement award. 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.

Applying the relevant factors, the Court is finds that an enhancement award of $5,000, which is adequately supported by declaration provided by the named plaintiff, is appropriate.

VI. ADMINISTRATION PROCESS

The parties have agreed that Defendant will deposit the gross settlement amount with the settlement administrator, Phoenix, within 14 days of the "Effective Date," which is defined as the date by which (1) the Court enters a Judgment and Order approving the settlement *and* (2) the Judgment is final. Within that same period of time, Defendant is to provide the administrator with a list of all members of the PAGA Group and their relevant identifying and contact information. Within seven business days of receiving this information, the settlement administrator will perform one National Change of Address search for all individuals on the aforementioned list and will obtain approval from counsel for both parties of its estimates of the individual payment amounts to be distributed to each PAGA Group Member.

Within three days of receiving approval from counsel of the aforementioned payment calculations, the settlement administrator shall disburse the payments to each PAGA Member by check via First-Class U.S. Mail, accompanied by copies of the agreed-upon explanatory letter. Any checks returned as non-deliverable will be re-mailed to any updated address located by using a skip-trace or other search using the name, address, or Social Security number of the PAGA Group Member involved. The checks shall remain valid for 180 days, and thereafter, shall be cancelled, with the associated funds transmitted to the California State Controller's Office to be held pursuant to the Unclaimed Property Law in the name of the PAGA Group Member.

These administrative procedures are appropriate and are approved.

VII. ORDER AND JUDGMENT

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Plaintiff's motion for approval of the parties' PAGA settlement is GRANTED. The aggrieved employees are: "all individuals who are or previously were employed by Defendant in California as non-exempt employees who earned overtime during the PGA Period." The "PAGA Period," in turn, is defined as any time from February 11, 2021, through February 25, 2022.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiffs shall take from their consolidated complaint 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 **May 23, 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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Calendar Line 3

Case Name: *Erasmo Gomez v. A-1 Jay's Machining, Inc., et al.*
Case No.: 22CV396904

Plaintiff Erasmo Gomez brings claims under the Private Attorneys General Act ("PAGA") against Defendants A-1 Jay's Machining, Inc. ("A1-Jay's") and James K. Machathil. Plaintiff alleges that Defendants failed to pay employees for all hours worked, including minimum and overtime wages, failed to provide compliant meal and rest periods, failed to provide accurate, itemized wage statements and failed to reimburse employees for business expenses.

Before the Court is Plaintiff's motion for approval of a settlement, which is unopposed. As discussed below, the Court is inclined to GRANT the motion, subject to changes to attorney's fees and the net settlement amount.

VIII. BACKGROUND

Plaintiff worked as a janitor for A1-Jay's from approximately 2015/2016 to September 15, 2021 and was classified as an hourly, non-exempt employee. (Complaint, ¶ 7.) He alleges that Defendants failed to pay him and similarly situated employees for all hours worked because A1-Jay's had a policy of rounding down those hours. (*Id.*, ¶ 10.) Plaintiff was also not compensated when he worked "off the clock" through his meal periods and he and other employees did not receive bonuses and other forms of additional compensation, including the shift differential pay, in calculating the correct regular rate of pay for the purposes of calculating the correct overtime rate of pay. (*Id*., ¶ 11.) Plaintiff alleges that Defendants also failed to provide employees with meal and rest breaks and compensate accordingly, and had a policy of combining meal and rest breaks in contravention of California law. (*Id*., ¶¶ 12, 13.) Employees also allegedly did not receive all wages earned and due upon separation of employment as required. (*Id*., ¶ 15.) Defendants also purportedly failed to reimburse employees for business expenses, including those incurred for the use personal cell phones for work purposes as well as mileage reimbursement for use of personal vehicles for work purposes. (*Id*., ¶ 17.) Further, Defendants failed to keep accurate and complete payroll records. (*Id*., ¶ 16.)

Based on these allegations, Plaintiff asserts fifteen causes of action against Defendants, including various Labor Code violations, a PAGA claim and violation of California Unfair Competition Law (Business & Professions Code § 17200 et seq.).

IX. 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.) 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 (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) "[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.)

X. PLAINTIFF'S INVESTIGATION, SETTLEMENT PROCESS, AND THE PARTIES' AGREEMENT

After Defendants filed their answer to the Complaint, the parties met and conferred and agreed to engage in private mediation, which they did with the Honorable James Lambden (Ret.) on June 15, 2023. At mediation, the parties agreed to settle Plaintiff's claims. Prior to reaching this agreement, the parties engaged in informal discovery regarding Defendants' policies, practices, operations, time and payroll information, among other topics. Defendants also provided information and documents relating to other PAGA members (the requested 20% sample), including time and payroll data. It was only after the foregoing discovery and investigation was performed- including Plaintiff's retention and use of a professional data analyst to examine the records and determine the meal period violation rates- and arm's length negotiations engaged in, that the parties agreed to settlement terms.

Pursuant to the settlement reached at mediation, Defendants will pay a gross amount of $500,000, divided thusly: $165,000 in attorney fees, litigation costs of $8,284.98, and $4,250 in administrative costs. There is no enhancement award to the named plaintiff because he negotiated an individual settlement agreement separate from the PAGA settlement. The net settlement of approximately $322,465.02 will be distributed 75% ($241,848.76) to the LWDA

and 25% ($80,616.26) to the aggrieved employees based on a pro-rata basis dependent on the number of pay periods Defendants employed them during the PAGA period.

The "PAGA Members," i.e., aggrieved employees, are defined as "all persons within the state of California who are or were employed by Defendants in the State of California and classified as non-exempt during the PAGA Period." The "PAGA Period," in turn, is defined as the period from November 8, 2020 through court approval of the settlement agreement. The approximately 150 PAGA Members will receive an average payment of $537.44.

In exchange for the settlement, aggrieved employees will release "all known and unknown claims for civil penalties, attorneys' fees and costs, or any other relief under PAGA arising out of the Labor Code claims and allegations expressly plead in the operative Complaint and all other Labor Code claims that could have bene [sic] asserted based on the facts and allegations plead in the operative Complaint, including but not limited to: California Labor Code Sections 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198 and 2802."

The release is appropriately tailored to the allegations at issue by explicitly referring to the Complaint, 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].)

XI. DISCUSSION

A. Potential Verdict Value

Based on the data produced, Plaintiff estimates that there were approximately 8,000 pay periods for all PAGA Members during the PAGA Period, resulting in a maximum of $4,875,000 in PAGA penalties (stacking the several violations alleged). Plaintiff further estimates a maximum exposure of $1.6 million for the strongest disputed claims of failure to provide meal and rest periods and unpaid overtime. Plaintiff discounted the rest and meal break portions by 50%, with the former discounted to account for the named Plaintiff and other PAGA Members having received at least one rest break during their work shifts. The settlement therefore represents over 10% of the maximum value of the case. Considering the discretionary and uncertain nature of PAGA penalty awards in general and the nature of the violations at issue here, the Court agrees that the settlement 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"].)

Here, counsel requests a fee award of $165,000, or one third of the gross settlement amount. Counsel maintains that this request is fair and reasonable based on their lodestar as cross-checked against the percentage of the recovery, as well as counsel's experience in litigating similar actions. Utilizing the lodestar method results in fees in the amount of $44,850 (89.80 hours at $600-$400 per hour) and thus a multiplier of 3.679. Multipliers of up to 4 are typical for cases of this nature. (See *Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].) Counsel has provided detailed records supporting how much time was spent on particular tasks in this case.

Here, the Court is inclined to find that a downward adjustment to counsel's requested fee is appropriate. While the nature of counsel's representation and the results obtained justify the application of a reasonable multiplier (see *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (*Ketchum*) [lodestar may be adjusted by the court based on factors including the contingent nature of the fee award]; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 45 [California and federal courts often use the amount at stake and the result obtained by counsel as relevant factors justifying enhancement of a lodestar fee through use of a multiplier]), given the absence of particularly complicated or difficult issues in this case, the Court believes that a more modest multiplier, i.e., 2.5, is appropriate. This results in attorney fees totaling $112,125, which the Court finds reasonable.

C. Other Costs and Expenses

Plaintiff's request for litigation costs of $8,284.98 appears reasonable and is approved, as is the request for administrative costs of $4,250.

XII. ADMINISTRATION PROCESS

Pursuant to the terms of the agreement, within 45 days of the "Effective Date," i.e., the Court entering an order approving the settlement, Defendants will deposit the gross settlement amount with the Settlement Administrator, ILYM Group, Inc. ("ILYM").

Within 10 days of the Effective Date, Defendants will provide ILYM with a list of all PAGA Members and their relevant identifying and contact information. Within 20 days of receipt of the foregoing, ILYM shall conduct one National Change of Address search for all individuals on the list and then issue each PAGA Member a check for his or her share of the net settlement amount along with Notice of the PAGA Settlement by first-class U.S. mail. Any checks returned as non-deliverable will be re-mailed within five days after ILYM has performed a skip-trace.

The checks shall remain valid for 180 days, and checks remaining uncashed beyond that point will be transmitted to the California State Controller's Office with an identification of the amount of unclaimed funds attributable to each PAGA Member.

These administrative procedures are appropriate and are approved.

XIII. ORDER AND JUDGMENT

Pending receipt of an amended settlement agreement reflecting the Court's reduction of the amount of attorney fees recovered by Plaintiff's counsel and the resulting effect on the net settlement amount and amounts to be distributed to PAGA Members, the Court is inclined to grant approval to the PAGA settlement as follows.

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Plaintiff's motion for approval of the parties' PAGA settlement agreement is GRANTED. The aggrieved employees are: "all persons within the state of California who are or were employed by Defendants in the State of California and classified as non-exempt during the PAGA Period." The "PAGA Period," in turn, is defined as the period from November 8, 2020 through court approval of the settlement agreement.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff shall take from his complaint 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 **May 23, 2023 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.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

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").[1] 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 three separate motions to seal, as well as a motion to uphold confidentiality designations by Trace3, all of which are opposed by Sycomp.[2] For the reasons discussed below, the Court GRANTS Trace3's third and fifth motions to seal and motion to uphold confidentiality designation, and GRANTS IN PART its fourth motion to seal.

I. 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.)

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[1] On July 21, 2023, Trace3 dismissed Liliana Elias as a defendant.

[2] Individual Defendants move to join in each of Sycomp's oppositions to Trace3's motions. Their requests are GRANTED.

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. Third Motion to Seal

In its third motion to seal, Trace3 moves to seal its initial Trace Secret and Confidential Information List ("TS/CI List") served on June 2, 2023, with a Bates range of TRACE3 0000001-6243, which is the subject of the concurrently filed Motion to Uphold Confidentiality Designations (see below).

Trace3 maintains that the foregoing items should be sealed because the TS/CI List identifies, describes, and sets forth confidential, proprietary, and trade secret information- specifically, customer lists, vendor lists, Build Documents, ongoing business opportunities, Build Document file names, historical sales, revenue, profit margin, pricing documentation, business operation costs, business process and structure- the disclosure of which could jeopardize its commercial interests and the information technology of its clients. It continues that the TS/CI list is a compendium that simply collects the exact same file names already identified in the Declaration of Sergio Kopelev ("Kopelev Decl.") Exhibit A, and Exhibits 3-15 thereto.

The Court previously granted Trace3's request to seal Table F of Exhibit A and Exhibits 3-15 of the Kopelev Declaration, concluding that: these documents contain confidential information, including information alleged to be trade secrets; Trace3 had an overriding interest in the nondisclosure of this information; Trace3 had demonstrated that it had no less restrictive means of achieving this interest; and its proposed redactions were narrowly tailored to protect this interest while preserving public access.

In its opposition, Sycomp argues that Trace3 has not met its burden in seeking to file the *entire* list under seal, despite the fact that the list is inclusive of items that do not met the California Rules of Court ("CRC") sealing standard (e.g., file names listing personal photos and videos and other personal lists), and has improperly framed the issue as "all-or-nothing." Consequently, it argues, this motion should be denied outright.

The Court finds Trace3's arguments more persuasive. First, as it asserts, the Court *already* ordered sealed this very same information in its July 25 Order on Trace3's first motion to seal and thus has already concluded that Trace3 had met the applicable sealing standards set forth in the CRC. Second, Sycomp does not appear to dispute that the TC/SI list is *primarily* comprised of documents designated as trade secret and confidential information- at least 70%

according to Trace3- and given the volume of files at issue (over 300,000 were so designated), and the allegation that Defendants took all of these items without permission, the exercise of caution in the manner urged by Trace3 in de-designating anything in this list is justified. Third, the Court agrees that it would be exceedingly burdensome for Trace3 to have to de-designate the TS/CI List because of the possible presence of personal documents. Importantly, as Trace3 maintains, courts have held that the presence of personal documents does *not* undermine a trade secret identification, particularly when, as is the case here, the burden is the result of the scale of theft allegedly committed by the defendant accused of misappropriating trade secrets. (See, e.g., *Microvention, Inc. v. Balt United States* (C.D. Dist. 2021) 2021 U.S. Dist. LEXIS 201585, *12, fn. 3.)

Because the Court concludes that the TS/CI List meets all of the sealing criteria listed in Rule 2.550, Trace3's third motion to seal is GRANTED.

C. Fourth Motion to Seal

In its fourth motion to seal, Trace3 moves to seal designated portions of the May 22, 2023, Hearing Transcript on the Temporary Restraining Order, specifically: 10:7-23, 11:2, 11:23-26, 13:1-3, 15:12-26, 22:3, 22:20-21, 27:17-19, 33:6-8, 33:12, 36:26-27, 37:23-26 and 41:18-19.[3]

Trace3 maintains that the foregoing portions of the transcript should be sealed because they identify or describe customer and vendor names (individually and as a compilation), 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 ("SPO"), and the disclosure of such information would jeopardize its legitimate competitive and commercial interests.

Sycomp opposes Trace3's request, arguing that the identity of the company's clients and vendors is not confidential and Trace3 had not taken any reasonable measure to maintain this information as such. It continues that there is no basis to seal generic deal descriptions and prices, and specifically challenges the sealing of the hearing transcript at 15:12-16 as a bad faith request on the part of Trace3 because it does not contain *actual* details of any information alleged by the company to be a trade secret or confidential.[4]

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[3] Trace3 previously requested that portions of the May 22, 2023 hearing transcript be sealed in its reply brief in support of its July 2023 motion to seal. The Court denied this request without prejudice as the hearing had taken place *after* the filing of the motion to seal.

[4] Sycomp's additional assertion that Trace3 unnecessarily delayed filing this motion is without merit. The materials submitted by the parties establish that they engaged in various meet and confer efforts to reach agreement on which portions of the transcript should be sealed subsequent to the hearing but were ultimately unable to do so. Trace3 then improperly included a request to seal this information (see fn. 2) in its reply brief filed July 6 in support of its first motion to seal that was not denied by the Court without prejudice until July 24, 2023, and proceeded to file the instant motion a week later on August 1. Nothing about this timeline evidences delay on the part of Trace3.

Upon review, the Court believes that the portions of the transcript at issue meet the criteria for sealing under Rule 2.550, save the portion contained in 15:12-16.[5] As Trace3 notes the Court, in its July 25 Order on Trace3's first motion to seal, ordered sealed the *very same information* contained in these portions and thus already concluded that it qualifies as trade secret and/or competitively sensitive business information which could harm Trace3's business interests if disclosed, and for which there is no countervailing public interest in disclosure. Trace3's request is narrowly tailored to only confidential information that is directly related to this action and/or directly implicates Defendants' misconduct as alleged in the Complaint (i.e., customers and vendors who have moved projects or other business operations to Sycomp and non-public deal prices where Trace3 was previously the bidder for certain projects that they are now in competition with Sycomp for) rather than broad categories of information.

Accordingly, Trace3's fourth motion to seal is GRANTED IN PART.

D. Fifth Motion to Seal

In its remaining motion to seal, Trace3 moves to seal designated (i.e., the redacted) portions of documents that were lodged conditionally under deal with the Court by Defendants prior to the July 28 hearing on Trace's Motion to Modify Temporary Restraining Order and Motion to Compel pursuant to both the CUTSA and relevant California Rules of Court:

(1) Sycomp's opposition to the motion;
(2) Declaration of Rajiv Dharnidharka filed in support of the opposition;
(3) Individual Defendants' opposition to the motion;
(4) Declaration of Geoff Peterson in support of the opposition;
(5) Declaration of Timothy Cordell in support of the opposition;
(6) Declaration of Lyn Agre in support of Individual Defendants' opposition; and
(7) Sycomp's Response to Trace3's Separate Statement in support of its Motion to Compel.

On June 3, 2023, the Court entered an order on the parties' SPO. Under the SPO, a "Designating Party" has 10 days to filing a motion to seal "Protected Material" when a party files a motion using Protected Material but does not have that Protected Material sealed. (See SPO at § 12.3(b).)

On July 17, 2023, Sycomp filed its opposition to Trace3's Omnibus Motion to File Documents Under Seal, Opposition to Trace3's "Motion for Reconsideration of Temporary Restraining Order"[6] and Opposition to Trace3's Motion to Compel Discovery. In connection with these oppositions, Sycomp also filed several declarations and a response to Trace3's separate statement. Pursuant to the SPO, Sycomp publicly filed redacted versions and conditionally lodged unredacted versions of the foregoing materials because these items

[5] In its reply, Trace3 concedes that this portion can be subject to filing without the need for sealing, consistent with communications between the parties concerning the sealing of this transcript attached as Exhibit 13 to the Declaration of Rajiv Dharnidharka filed in support of Sycomp's opposition.

[6] This was the title of Sycomp's naming of Plaintiff's motion, which Plaintiff actually titled "Motion to Modify Temporary Restraining Order and Order Authorizing Expedited Discovery."

contained information designated by Trace3 as confidential. The Individual Defendants also filed their oppositions to these motions and related declarations, and did so in accordance with the SPO.

Trace3 maintains that the foregoing items identify or describe customer and vendor names, individually and as a compilation, and other non-public, proprietary, and trade secret information that has been provisionally or actually designated as either confidential or highly confidential pursuant to the Parties' SPO which, if made public, would cause competitive harm to its business interests. Trace3 continues that there is no countervailing public interest in the disclosure of this information. Trace3 explains that the customers and vendors at issue are those who have moved projects or other business operations over to Sycomp and thus its request is narrowly tailored to protect this confidential information from disclosure.

In opposition, Sycomp asserts that Trace3 has failed to specifically enumerate the facts sought to be withheld from public view, and the information is not actually confidential because an employee mentioned specific Trace3 customers in his LinkedIn profile.

Upon review, the Court, the Court concludes, as it did with the preceding motions, that the criteria for sealing have been met, both under the CUTSA and the CRC. Contrary to Sycomp's assertions, Trace3 has enumerated all of the information it seeks to be filed under seal and the factual bases for these requests, with the company seeking to seal only the information redacted in connection with the seven filings at issue that Defendants conditionally lodged under seal. This information, which has already been deemed confidential by this Court in its orders on preceding motions to seal (see the Court's July 25 Order on Trace3's first motion to seal), seeks to seal information *directly* related to this lawsuit and/or that directly implicates Defendants' misconduct as alleged in the Complaint, and is narrowly tailored to only those customer and vendor names that have "move projects or other business operations over to Sycomp." (Fifth Sealing Motion, p. 9.) Trace3 has demonstrated that it has an overriding interest in the nondisclosure of this information and that it has no less restrictive means of achieving this interest.

As for the import of the posting of certain customer-identifying information on the LinkedIn page of Trace3 employee Jack Robinson, the Court agrees with Trace3 that Sycomp's focus on this posting is misplaced. Mr. Robinson is not a party to this lawsuit and Trace3 is seeking to seal *specific* confidential information that it maintains the Defendants in particular misappropriated, i.e., information that it derives economic value from. Thus, the sealing is directly related to this lawsuit and is competitively sensitive.

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

II. MOTION TO UPHOLD CONFIDENTIALITY DESIGNATION

Lastly, Trace3 moves for an order upholding the confidentiality designation for its initial TS/CI List served on June 2, 2023, with a Bates range of TRACE3 0000001-6243.

On May 23, 2023, the Court granted a narrowly-tailored TRO and authorized "limited expedited discovery" to aid the parties "in preparation for the preliminary injunction hearing." On June 2, 2023, Trace3 produced its first TS/CI List, which consisted of the 300,000 plus file names identified as misappropriated by Defendants in the Kopelev Declaration Exhibit A and

Exhibits 3-15 thereto, and was designated by the company as "Highly Confidential- Attorney Eyes Only ["AEO"]" under the SPO. Trace3 produced an "Amended TS/CI List" on June 12, 2023, along with a summary document categorizing the trade secrets at issue along six particular categories of information misappropriated by Defendants, denoting those particular documents that also appeared to be provisionally personal to Defendants but commingled within the other business files taken. Trace3 also designated the Amended TS/CI List as "Highly Confidential-AEO" under the SPO.

The parties engaged in meet and confer efforts as to the scope of Trace3's AEO designation for the initial TS/CI List, but the parties were unable to reach an agreement, with Sycomp objecting about the inclusion of certain personal materials in the list. Trace3 offered to de-designate personal file names and/or documents, but Defendants have declined to cooperate.

Under the Discovery Act, the Court possesses the authority to "make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, undue burden and expense." (Code Civ. Proc., § 2031.060, subd. (b).) This includes an order that confidential "commercial information" "not be disclosed or be disclosed only to specified persons or only in a specified way." (Code Civ. Proc., § 2031.060, subd. (b)(5); see also *Fireman's Fund Ins. Co. v. Superior Court* (1991) 233 Cal.App.3d 1138, 1141.)

Here, the SPO permits "Highly Confidential-Attorneys' Eyes Only" designation of "extremely sensitive" 'Confidential information or Items,' disclosure of which to another party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means." (SPO at § 2.7, attached as Exhibit D to Declaration of Nicole Phillis in Support of Motion to Uphold Confidentiality Designations.) It further provides that if the parties "cannot resolve a challenge without court intervention, the Designating Party" may filed a motion to retain confidentiality. (*Id*. at § 6.3.)

Here, Trace3 makes this motion on the grounds that the foregoing is substantively identical to the Kopelev Exhibits 3-15 that the Court already ruled may be filed under seal, contains a compilation of file names that reflect highly confidential, non-public, commercially sensitive information regarding its Northern California business operations, including specific Rack N Roll, Loose Gear, and Cloud services which, if revealed, would pose a "grave and substantial" competitive harm to it.

Sycomp responds that Trace3 "knows" that its AEO designations are improper because they are overbroad and were made in bad faith. It explains that Trace3's August 7 amended trade secret disclosure identifies 327,882 files that it claims are either trade secrets (categories 2-4), a single alleged trade secret compilation (category 1), or "provisionally confidential," but that the TS/CI List, by contrast, list 486,929 files as alleged trade secret or confidential. Thus, Sycomp asserts, Trace3 no longer claims as trade secret or confidential 159,047 files, yet has not removed its AEO designation for *any* portion of the TS/CI List, even though the SPO requires it. (See SPO at § 5.1 ["[i]f it comes to the a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation."].) Trace3 impliedly acknowledged the overbreadth of its designation, Sycomp argues, by responding to the Court at

the hearing on Trace3's motion to compel discovery that for the purposes of responding to discovery only it would permit those that were "necessary" to have access to the TS/CI List. This is despite, Sycomp explains, the fact that there is no provision in the SPO for selective AEO waiver just to respond to discovery. Sycomp continues that the Individual Defendants have testified that information on the TS/CI List is not trade secret and is not maintained by Trace3 as confidential.

On balance, the Court ultimately finds Trace3's position more persuasive. Trace3 has adequately explained the "discrepancy" between its initial TS/CI List and its amended list, stating that it pared the data down into one list to assist Defendants in identifying each and every one of the 116,901 provisionally personal items as distinguished from the remaining 300,000 plus items in the Kopelev Exhibits, and once Defendants review the list of documents provisionally identified as "personal" and provide confirmation of the same, Trace3 will be in a position to further redact the Kopelev Exhibits and the TS/CI List to potentially exclude any personal items. The Court agrees that these efforts do not invalidate Trace3's AEO designation because as discussed in connection with the third sealing motion, the vast majority of the initial TS/CI List is comprised of documents designated as trade secret and confidential information, the disclosure of which could harm Trace3's competitive interests and thus "create[s] a substantial risk of serious harm," and even if Sycomp cannot or will not review and identity personal documents in the TS/CI List such that they can be extracted and de-designated as AEO, the existence of these materials does not undercut the overall confidential nature of the list. The initial list, which contains every file name that Defendants allegedly copied, deleted, moved, or otherwise misappropriated, is properly designated as AEO because it is a compendium of sensitive confidential and proprietary information. The Court agrees that the presence of some personal documents on the TS/CI List does not mean that Trace3 improperly designated the list as AEO, and that holding otherwise would arguably be rewarding the Individuals Defendants for misappropriating large volumes of data that happen to include some personal documents in the mix.[7]

The Court is also not persuaded that the AEO designation and the terms of the SPO will prevent Sycomp from adequately responding to discovery. There is nothing that prohibits the parties from meeting and conferring on this issue and reaching an agreement permitting Defendants to review the TS/CI List where necessary in order to respond to discovery. The SPO is not carved in stone.

For the reasons discussed above, Trace3's motion to uphold the confidentiality designation is GRANTED.

III. CONCLUSION

Trace3's third motion to seal is GRANTED.

Trace3's fourth motion to seal is GRANTED IN PART. The portions of the May 22, 2023 hearing transcript contained at15:12-16 may be filed without sealing, while the remaining portions at issue may not.

[7] For this reason, the Individual Defendants' testimony about the possible presence of personal files in the TS/CI List does not mean the AEO designation is invalid.

Trace3's fifth motion to seal is GRANTED.

Trace3's motion to uphold confidentiality designation is GRANTED. The initial TS/CI List may only be inspected by the Court and Defendants' counsel and not Defendants, unless the parties reach an agreement to the contrary.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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Calendar Line 5

Case Name: *Credit Corp. Solutions, Inc. v. Guzman*
Case No.: 19CV361005

This action was filed by Plaintiff and Cross-Defendant Credit Corp. Solutions, Inc. ("CCS") to collect a debt allegedly owed by Defendant and Cross-Complainant Lorie Guzman. Ms. Guzman filed a cross-complaint alleging putative class claims under the California Fair Debt Collection Buying Practice Act, California Civil Code sections 1788.50-1788.64 ("CFDBPA"); the federal Fair Debt Collection Practices Act, 15 U.S.C. sections 1692-1692p ("FDCPA"); and the California Rosenthal Fair Debt Collection Practices Act, California Civil Code sections 1788-1788.33 ("RFDCPA").

Before the Court is Ms. Guzman's motion to compel further document production responsive to requests for production of documents ("RPDs), Set Three, and CCS and Cross-Defendants Patenaude & Felix and Todd Christopher Simonson's (collectively, "Cross-Defendants") motion to seal certain limited records conditionally lodged in support. This discovery seeks information relating to CCS's net worth for purposes of pursuing Ms. Guzman's class claims. CCS opposes the motion to compel. The motion to seal is unopposed. For the reasons discussed below, the Court GRANTS IN PART the motion to compel and GRANTS the motion to seal.

XIV. BACKGROUND

CCS filed this action on December 31, 2019, asserting a single claim for breach of contract arising from Ms. Guzman's alleged failure to fully repay a loan subsequently assigned to CCS. Ms. Guzman answered and filed a cross-complaint alleging putative class claims against CCS and its counsel who filed this action. She alleges that CCS's complaint incorrectly identifies the charge-off creditor, falsely states that CCS has complied section 1788.52 of the Civil Code, and fails to attach a copy of the contract as required by the CFDBPA. She further alleges that it is Cross-Defendants' routine practice to file and serve collection complaints with these defects.

Cross-Defendants retained new counsel around November 2020, and the parties stipulated to the filing of amended pleadings. In January 2021, CCS filed a Second Amended Complaint ("SAC") and Ms. Guzman filed the operative First Amended Class Action Cross-Complaint for Declaratory Relief and Damages ("FAXC"), which addresses the filing of the SAC. The action was deemed complex and reassigned to this Department later in January 2021.

XV. MOTION TO COMPEL FURTHER PRODUCTION

A. Discovery Dispute

In May 2022, Ms. Guzman propounded various discovery on CCS, including those at issue here, RPDs, Set Three, and CCS served its responses the following month, which consisted solely of objections. Following meet and confer efforts, the parties attended an informal discovery conference ("IDC") on September 9. Subsequent to the IDC, CCS served

in mid-September 23 pages of documents responsive to the discovery requests, which CCS contended amounted to its financial statement for the year ending June 30, 2021.

Believing that CCS's production and responses were insufficient, in January 2023, Ms. Guzman moved to compel further responses to certain special interrogatories and RPDs, Set three. The motion was granted in part, with the Court overruling the majority of CCS's objections but concluding that the term "relating to" appearing in some of the document requests was ambiguous. Ms. Guzman was ordered to re-serve the requests at issue with definitions of certain terms and CCS to provide further, code-compliant responses within 30 days of receiving the updated requests. CCS was permitted to raise new objections *only* related to the definitions or their effect on the information and documents sought, and to the extent that any items were withheld on the basis of attorney-client or work product privilege, provide a privilege log as the same time as the production.

In its order on Ms. Guzman's motion, the Court also stated that to the extent that she was seeking production of documents responsive to her RPDs, as opposed to further responses to the same, she was *not* entitled to production at that time because CCS had not yet agreed to provide responsive documents.

However, CCS subsequently failed to serve substantive responses to the subject RPDs, and the parties attended a further IDC on May 18, 2023. In the order following the IDC, the Court memorialized the agreement between the parties, and pursuant to this agreement (among other things), Ms. Guzman was to re-serve the RPDs by May 22, with CCS having until June 30 to provide verified supplemental responses. To the extent Ms. Guzman was unhappy with CCS's supplemental responses and document production, she was to file a related motion to compel no later than July 21.

CCS ultimately served its supplemental responses to RPDs, Set Three, on July 21, 2023. Its answers contain objections overruled by the Court but otherwise state that CCS is agreeing to comply "in whole" and "that all documents in the demanded category that are in the possession, custody, or control of Responding Party have been produced, as Bates Nos. CCS0030003-CCS004006." The accompanying document was heavily redacted and no privilege log was provided for the redactions. The parties met and confer on August 1 and 8 to address the sufficiency of CCS's production. On August 14, 2023, counsel for CCS stated that the redactions were "not related to intercompany loan[s]" and that no reactions were applied on the basis of privilege. This motion then followed.

B. Legal Standard

Pursuant to Code of Civil Procedure section 2031.320 ("Section 2031.320"), Ms. Guzman moves to compel further production of documents in compliance with CCS's statement of compliance and produce all responsive documents and ESI in its possession, custody and control. Ms. Guzman additionally seeks monetary sanctions against CCS.

Section 2031.320 provides, "If a party filing a response to a demand for inspection, copying, testing or sampling under Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280 thereafter fails to permit the inspection, copying, testing, or sampling in accordance with that party's statement of compliance, the demanding party may move for an order compelling compliance." (Code Civ. Proc., § 2031.320, subd. (a).) A party moving to compel pursuant to this code section need only demonstrate that the responding party failed to comply

with the agreement to produce. (See *Standon Co., Inc. v. Superior Court* (1990) 225 Cal.App.3d 898, 903.)

C. Discussion

Ms. Guzman explains that the subject discovery was served in order to get an accurate measure of CCS's net worth. She explains that in response to prior related discovery propounded by her, CCS produced a document (bates-numbered CCS000844-000849)- an unaudited and incomplete financial statement for the year ended June 30, 2021- which indicated that CCS has a negative net worth of $43 million as a result of unidentified liabilities in the amount of $182 million. She continues that RPDs, Set Three is aimed at obtaining information related to those liabilities. But the documents produced as responsive to this set of RPDs,[8] which seek (as edited by the Court) documents evidencing each "Trade and other payables" as shown on CCS000846 (RPD No. 1) and notes, schedules, exhibits, attachments, and other documents evidencing the transactions listed in CCS's financial statements (CCS000844-CCS000849) (RPD No. 2), were heavily redacted, Ms. Guzman explains, and not accompanied by a privilege log. Not only that, she asserts, but as counsel for CCS has maintained that no redactions were applied on the basis of privilege, it is unclear why these documents are redacted at all.

Ms. Guzman also takes issue with the overall completeness of CCS's production, arguing that the provision of certain financial documents for 2012-2013 but not for 2014-2021 indicates that not all responsive documents have actually been produced. Additionally, she insists, CCS has not produced notes, schedules, exhibits, attachments, and other documents evidencing the transactions listed in CCS's financial statements as required.

Given the foregoing, Ms. Guzman insists, CCS has not fully complied with its statements of compliance in its supplemental responses to the requests.

In its opposition, CCS contends that the instant motion should be denied for the following reasons: (1) it is improperly brought as a motion to compel compliance; (2) CCS fully complied with its discovery obligations by producing *all* documents responsive to RPDs, Set Three. These contentions are not entirely well taken.

First, the Court can discern nothing procedurally improper about Ms. Guzman's motion to compel. CCS served supplemental responses stating that it would comply with the requests and Ms. Guzman's believes that it has not completely done so. The appropriate instrument to challenge the adequacy of CCS's production based on this belief is a motion to compel compliance under Section 2031.320, precisely as Ms. Guzman has done.

Second, CCS notably does not deny having produced documents containing redactions. It insists that it has already explained to Ms. Guzman that the redacted information is entirely unrelated to intercompany loans and thus not responsive to RPD No. 3. But a lack of relevance is not a valid basis to redact information on a document that is otherwise responsive to a production request and thus in producing a document in this form, CCS has failed to fully comply with its responses to RPD, Set Three. As for whether *all* responsive documents in its

[8] This includes bank statements.

possession have otherwise been produced, CCS, based on the declaration of its counsel executed under penalty of perjury, represents that this is the case and that (1) reconciliations were produced only where there are no bank statements for that period matching the intercompany loan analysis and (2) no other reconciliations exist that have not been produced. There is nothing currently before the Court that would lead it to conclude that CCS's representations concerning the completeness of its production (outside of the redactions) are untruthful or inaccurate and the Court will not order further production based solely on Ms. Guzman's stated belief that there are responsive documents that still have not been produced.

It *will*, however, order CCS to reproduce copies of the responsive, redacted documents *without* such redactions. Thus, Ms. Guzman's motion is GRANTED, in part.

D. Request for Monetary Sanctions

Both parties request sanctions, Ms. Guzman on the basis that her motion was warranted and CCS on the contrary ground that her motion is frivolous.

Subdivision (b) of Section 2031.320 provides that "the court shall impose a monetary sanction … against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with a demand, 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." Here, the Court will not impose sanctions against either side given the fact that Ms. Guzman's motion is only *partially* successful. Thus both parties' request for sanctions are DENIED.

XVI. MOTION TO SEAL

A. Legal Standard

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

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

Where some material within a document warrants sealing, but other material does not, the document should be edited or redacted if possible, to accommodate both the moving party's

overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court, rule 2.550(d)(4), (5).) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*Providian, supra*, 96 Cal.App.4th at p. 309.)

B. Discussion

Cross-Defendants move to seal all documents conditionally lodged in support of Ms. Guzman's motion to compel, as attached to the Declaration of Matthew C. Salmonsen Filed Provisionally Under Seal, including Exhibit J, CCS000844-949, and Exhibit K, CCS003004-3044 and CCS003334-3335, thereto.

Cross-Defendants maintain that the foregoing items meet the criteria for sealing because they were produced and designated by CCS as "CONFIDENTAL" under the stipulated protective order entered in this matter on August 10, 2020, and thus they have an overriding interest in safeguarding this confidential and sensitive proprietary information from disclosure. Cross-Defendants' assertions are supported by the declaration of CCS's Customer Care Manager, Julia Anderson, who attests to the subject materials containing confidential, sensitive and proprietary information about CCS, particularly its private financial transactions. The Court finds that Cross-Defendants have established an overriding interest that justifies sealing these limited materials, and the other factors set forth in California Rules of Court, rule 2.550 are satisfied.

XVII. CONCLUSION

Ms. Guzman's motion to compel compliance is GRANTED IN PART. Both parties' requests for monetary sanctions are DENIED. CCS shall produce unredacted copies of the subject materials within 30 days of this order.

Cross-Defendants' motion to seal is GRANTED.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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Calendar Line 6

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

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

These related actions arise from the business dealings of: (1) Temujin Labs Inc., a Delaware corporation ("Temujin"); (2) a related Cayman Islands corporation; and (3) Temujin's co-founders, who go by the aliases of Lily Chao and Damien Ding.[9] These business dealings involve the development of Temujin as a financial technology company operating under the name "Findora."

In Case No. 20CV372622 ("*Abittan*"), Temujin alleges that Defendants and Cross-Complainants Ariel Abittan, Benjamin Fisch, and Charles Lu conspired to: (a) assert a false claim of ownership of its business; (b) misappropriate its trade secrets; (c) usurp and interfere with control over its assets, such as social media accounts; and (d) interfere with its relationships with investors and business partners. Mr. Abittan, a former business partner of Ms. Chao and Mr. Ding, filed a cross-complaint alleging, among other things, that Ms. Chao and Mr. Ding stole from and defamed him. Mr. Fisch and Mr. Lu filed a separate cross-complaint, asserting that Ms. Chao and Mr. Ding misrepresented a host of important facts about their business and activities to induce Mr. Fisch and Mr. Lu to work for Temujin.

In Case No. 21CV375422 ("*Fu*"), Temujin alleges that its former consultant, Defendant and Cross-Complainant Franklin Fu, demanded additional under-the-table payments for himself and secret payments to certain investors rather than performing his duties in good faith. In a cross-complaint, Mr. Fu alleges that Ms. Chao and Mr. Ding repeatedly lied to him about a range of subjects, including Temujin's technology and even their own identities.

Before the Court is a motion for reconsideration by Messrs. Fisch, Lu and Fu of the Court's August 16, 2023 partial denial of their motion for terminating and monetary sanctions or, in the alternative, for terminating and monetary sanctions against the Temujin entities. For the reasons discussed below, the Court DENIES the motion for reconsideration.

XVIII. MOTION FOR RECONSIDERATION

A. Background

In the August 16, 2023 order at issue (the "August 16 Order"), the Court set forth in detail the lengthy and complicated chronology of discovery disputes in the *Abittan* and *Fu* actions between Messrs. Fisch, Lu ("Moving Parties") and the Temujin Parties that preceded the motion for terminating and monetary sanctions. For the sake of brevity, the Court will not repeat this chronology here.

[9] The Temujin entities, a related entity called Discreet Labs Ltd., Ms. Chao, and Mr. Ding are referred to collectively herein as the "Temujin Parties."

In their preceding motion for terminating sanctions, Moving Parties requested terminating sanctions against the Temujin Parties striking their Complaint and Answer to the Cross-Complaint, and entering a default in their favor on the Cross-Complaint. They further requested that the Court set a prove-up hearing to allow them to set forth the amount of damages that they should be awarded as part of the default. In conjunction with the foregoing, Moving Parties requested that the Court permit them to present evidence supporting an award of monetary sanctions in the amount of fees incurred or charged to them relating to the Temujin Parties' failure to turn over identity information.

Finally, in addition or in the alternative to the foregoing, Moving Parties requested that the Court order monetary sanctions of $500 per day since the Court issued its September 29, 2022 Order for the Temujin Parties' refusal to comply, and an additional $1,500 for each day they refused to comply with the Court's Orders from May 30, 2023- the date of the Order for Issue and Evidence Sanctions- to the date of the (anticipated) granting of their motion.

In the August 16 Order, the Court granted in part and denied in part Moving Parties' motion. Based on its determination that Ms. Chao and Mr. Ding's failure to produce all responsive documents concerning their identities as required by the May 30 Order was theirs alone, the Court declined to impose terminating sanctions against the Temujin entities. It *did*, however, impose terminating sanctions against Ms. Chao and Mr. Ding, striking their answer to the Cross-Complaints in both *Abittan* and *Fu* and entering default for Messrs. Fisch, Lu and Fu on their Cross-Complaints against Ms. Chao and Mr. Ding. A prove up hearing was set for November 13, 2023.

Moving Parties now seek reconsideration of the Court's denial of their request for terminating sanctions against the Temujin entities, requesting that the Court strike Temujin Delaware's complaints in *Fu* and *Abittan* and enter judgment in their favor, strike Temujin Delaware and Temujin Cayman's answers to the Cross-Complaints in *Fu* and *Abittan*, and set a prove up hearing associated with the defaults. Additionally, Moving Parties seek an order imposing monetary sanctions arising from the amount of fees incurred by or charged to them in litigating the name and identity issue against Temujin.

B. Legal Standard

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

moving party could not, with reasonable diligence, have discovered or produced it at the trial." (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212-213.)

C. Discussion

In the August 16 Order that Moving Parties seek reconsideration of, the Court declined to impose terminating sanctions against the Temujin entities based on its view that the May 30 Order did not require them to, as opposed to Ms. Chao and Mr. Ding, produce additional identity-related documents. It explained that "[w]hile the Temujin entities had produced some documents and information regarding the identities of Ms. Chao and Mr. Ding, the focus of the Court's past orders (and Moving Parties' past briefs) was on the failure of Ms. Chao and Mr. Ding to produce identity-related information and documents, *not* on the Temujin entities' supposed failure to do so." (August 16 Order at 9:15-19.) The Court continued that the Temujin entities had provided a declaration from their chief executive officer, Mr. Wang, stating under oath that the Temujin entities did not have identity-related documents of Ms. Chao and Mr. Ding, such as driver's licenses or passports, and it had no reason to disbelieve this representation.

Moving Parties maintain that the Court should reconsider its denial of terminating sanctions against the Temujin entities because there is "extensive" evidence they reasonably have not submitted to the Court previously which establishes that: (1) the Temujin entities *themselves* failed to produced responsive documents in their possession, custody, and control as ordered by the Court; (2) Ms. Chao and Mr. Ding control Temujin completely and use it as a mere instrumentality; and (3) Mr. Wang was Ms. Chao and Mr. Ding's chauffer and domestic worker who had no involvement in Temujin's business and was used as a sham CEO. To allow the Temujin entitles to continue in this case would, they argue, undermine the terminating sanctions imposed on Ms. Chao and Mr. Ding and allow them to circumvent the Court's ruling by concealing their true identities while acting through Temujin.

Moving Parties acknowledge having in their possession the evidence and information they submit in support of the instant motion when the *initial* motion for terminating sanctions was heard, but assert that they have a valid reason for not offering it at that time- namely, none of the prior discovery or sanctions motions turned on a distinction between Ms. Chao and Mr. Ding on one hand, and the Temujin entities on the other. Thus, they submit, they had no reason to show that Ms. Chao and Mr. Dong control Temujin completely and use it as a mere instrumentality, and the evidence and information they proffer now establishing as much therefore qualifies as new facts, circumstances or law under Section 1008.

In opposition, the Temujin entities argue to the contrary, asserting that there was nothing stopping Moving Parties from offering this evidence with the underlying motion and thus is does not meet the high burden of Section 1008. They continue that even if the Court was inclined to consider the substantive merits of Moving Parties' arguments, the identity-related items that Ms. Chao and Mr. Ding have failed to produce have never been in their possession, custody or control and, as these items do not belong to them, they lack both the legal right and practical ability to compel them to be produced. In support of these assertions, they submit a new declaration from Mr. Wang, who again represents, under penalty of perjury, that he was duly appointed CEO of the Temujin entities and that the companies to not have the identity-related items.

While the Court understands Moving Parties' frustration with their inability to obtain all of the identity-related items that they seek, it does not believe that it is appropriate to treat this motion for "reconsideration" as what essentially amounts to a contested evidentiary hearing regarding the nature of the relationship between the Temujin entities and Ms. Chao and Mr. Ding. This is arguably what Moving Parties are requesting the Court do. The Court is also not prepared, at least at this juncture, to conclude that the representations made by Mr. Wang about the Temujin parties and the requested documents are untruthful and, based on that conclusion, impose the ultimate sanction against them. Therefore, the Court declines to alter its August 16 order and will not impose additional sanctions against the Temujin entities.

XIX. CONCLUSION

Moving Parties' motion for reconsideration is DENIED.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

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

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