SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Evette D. Pennypacker Presiding

Maggie Castellon, Courtroom Clerk
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LAW AND MOTION TENTATIVE RULINGS
DATE: JANUARY 18, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

Please note that the hearing location will be Department 6.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV369344	Luna, et al. v. Escuela Popular Del Pueblo (Class Action)	Plaintiff's unopposed preliminary approval of settlement is GRANTED. Please refer to Line 1 below for full tentative ruling.
LINE 2	21CV392049	Cantu v. Google LLC, et al. (PAGA)	Plaintiff's motion to amend is GRANTED. Please refer to Line 2 below for full tentative ruling.

Calendar Line 2

Case Name: *Susana Luna, et al. v. Escuela Popular Del Pueblo*
Case No.: 20CV369344

This is putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Susan Luna, Claudia Uchicua and Laura Padilla allege that Defendant Escuela popular Del Pueblo ("Escuela Popular" or "Defendant"), a family learning center located in East San Jose, failed to pay overtime and minimum wages, failed to provide meal and rest periods or pay associated premiums, and failed to provide code-complaint wage statements, among other Labor Code violations.

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

I. BACKGROUND

A. Factual

According to the allegations of the operative Second Amended Class and Representative Class Action Complaint ("SAC"), Escuela Popular is a charter school that operates four different educational academies: (1) Childcare Academy; (2) TK-8th Dual Language Academy; (3) High School Youth Bilingual Academy; and (4) High School Adults Bilingual Academy and Vocational Training. (SAC, ¶ 46.) All of these academies are operated independently from the local school districts and are geared to serve the community of East San Jose. (*Ibid*.) Plaintiffs were employed as full-time and/or part-time members of its teaching staff in the positions of Instructors, Teachers, and/or Special Education Papaprofessionals. (*Id*., ¶ 45.) The teaching staff hired by Defendant was not required to have teaching credentials nor a bachelor's degree. (*Id*., ¶ 47.)

Plaintiffs allege Escuela Popular failed to compensate them for hours worked in excess of eight hours per day and forty hours per week based on having misclassified them and class members as exempt. (SAC, ¶ 61.) Defendant also failed to provide Plaintiffs with code-compliant meal and rest periods or the legally mandated premiums for doing so. (*Id*. at ¶¶ 65, 69.) Defendant also failed to timely pay Plaintiffs all wages due to them during their employment and upon separation of that employment, and failed to provide them with accurate and itemized wage statements in accordance with California law. (*Id*. at ¶¶ 70-72.) Finally, Escuela Popular failed to reimburse Plaintiffs for all business-related expenses as required, including expenses associated with driving their personal vehicles. (*Id*., ¶ 73.)

B. Procedural

Plaintiffs initiated this action on August 14, 2020, and filed the operative SAC on July 19, 2022, asserting: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide off-duty meal periods; (4) failure to provide off-duty meal rest periods; (5) failure to provide accurate itemized wage statements; (6) failure to provide accurate itemized wages due at termination; (7) failure to indemnify for necessary expenditures; (8) unfair competition; and (9) civil penalties under PAGA.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

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

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

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

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

B. PAGA

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

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

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

III. SETTLEMENT PROCESS

As part of their investigation into their claims, Plaintiffs propounded lengthy written discovery, argued various informal discovery conferences, reviewed thousands of records, conducted interviews of putative class members and aggrieved employees, and took the deposition of Defendant's Person Most Knowledgeable to explore Escuela Popular's record-keeping, wage statement, meal period, rest period, overtime pay and global employment practices.

Through informal discovery, Defendant produced a significant amount of documents and data relating to the employment agreements of putative class members, their time and pay records, and Defendant's corporate-wide policies. Plaintiffs' counsel reviewed thousands of pages of these documents and electronic data, including employment contracts, school academic and work calendars, time records, earnings statements, school policies and employee handbooks. Additionally, counsel extensively researched the applicable law with respect to the claims asserted in this action and the potential defenses thereto.

On September 29, 2022, the parties participated in a mediation before Jeffrey A. Ross, an experienced wage and hour employment law neutral, but were unable to reach an agreement. Thereafter, the parties continued litigating the case, which included engaging in contested discovery conferences and other disputes. Approximately a year later, settlement discussions between the parties resumed with the assistance of Mr. Ross, and this time the parties reached a settlement in principle on September 27, 2023, which is now before the Court.

IV. SETTLEMENT PROVISIONS

The non-revisionary gross-settlement amount is $825,000. Attorney fees of up to one-third of the gross settlement (currently $275,000), litigation costs not to exceed $30,000, and an estimated $7,750 in administration costs will be paid from the gross settlement. $82,500

will be allocated to PAGA penalties, 75% of which ($61,875) will be paid to the LWDA. Plaintiffs will seek an enhancement award of $10,000 each.

The net settlement will be allocated to class members on a pro rata basis based on the number of weeks worked during the class period. With a class size of approximately 144 individuals, class members will, on average, receive a net amount of $2,919.27. For tax purposes, settlement payments will be allocated 30% to wages and 70% to penalties and interest. The employer side payroll taxes on the settlement payments will be paid by Defendant separately from, and in addition to, the gross settlement amount. 100% of the PAGA settlement to "Aggrieved Employees" will be allocated to penalties. Funds associated with checks uncashed after 180 days will be donated to The Law Foundation of Silicon Valley, the designated *cy pres* recipient.

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

> [A]ll claims that they may have under the California Labor Code, Wage Orders regulations, and/or any other provisions of state and federal law against Defendant and East Side Union High School District, their present and former parent companies, affiliates and their present owners, former owners, subsidiaries, shareholders, officers, directors, employees, agents, attorneys, insurers, reinsurers, successors, and assigns and any individual or entity which could be jointly liable with any of them (collectively, the "Released Parties") as alleged in the Second Amended Complaint and PAGA Notice, or which could have been alleged, based upon the same factual predicate as the claims raised in the Second Amended Complaint and PAGA Notice, including, but not limited to, claims for unpaid wages, overtime pay, minimum wage, regular wages, noncompliant and/or missed meal period pay, noncompliant and/or missed rest period pay, unreimbursed expenses, claims for interest, attorneys' fees, costs, penalties, waiting time penalties, wage statement penalties, premium pay, Business & Professions Code Section 17200 et seq., and penalties under PAGA (Private Attorney General's Act).

"Aggrieved Employees" will also release "all claims that arise under PAGA during the PAGA Period as alleged in Plaintiffs' August 14, 2020, PAGA notice to the LWDA and to Defendant, to the extent such claims were pled, or could arise out of the facts pled in the operative Second Amended Complaint filed" in this action. Consistent with the statute, Aggrieved Employees will not be able to opt out of the PAGA portion of the settlement.

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

V. FAIRNESS OF SETTLEMENT

Based on a review of available data, Plaintiffs' counsel estimated Defendant's maximum exposure for each claim at the following amounts: $788,361.50 (unpaid wages); $1,015,152 (failure to provide meal periods); $840,921.60 (failure to provide rest periods); $383,650 (wage statement violations); $495,205 (waiting time penalties); $75,500 (failure to reimburse business expenses); and $1,813,000 (PAGA penalties). However, Plaintiffs' counsel arrived at the settlement amount by offsetting or reducing Defendant's maximum theoretical liability by: the risk of class certification being denied due to potential individualized issues;

Defendant's arguments on the merits, including, among other things, that off-the-clock work was against school policy, that certain off-campus activities were voluntary field trips, that employees were allowed to take their rest periods and had designated breaks in between school class periods, and that certain employees *had* been reimbursed for business expenses; and the potential unmanageability of Plaintiffs' PAGA claims.

Considering the portion of the case's value attributable to uncertain penalties (33% of the total estimated liability), claims that could be difficult to certify for class treatment, and the multiple, dependent contingencies that Plaintiffs would have had to overcome to prevail on their claims, the settlement achieves a good result for the class. For purposes of preliminary approval, the Court finds that the settlement is fair and reasonable to the class, and the PAGA allocation is genuine, meaningful, and reasonable in light of the statute's purposes.

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

VI. PROPOSED SETTLEMENT CLASS

Plaintiffs request that the following settlement class be provisionally certified:

> All current and former members of Defendant's reaching staff who worked for Defendant in California, excluding Instructional Leaders, from August 14, 2016, through September 27, 2023.

A. Legal Standard for Certifying a Class for Settlement Purposes

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

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

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled."

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

B. Ascertainable Class

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

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

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

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

Here, the estimated 144 class members are readily identifiable based on Defendant's records, and the settlement class is appropriately defined based on objective characteristics. The Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

C. Community of Interest

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

For the first community of interest factor, "[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also examine evidence of any conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v.*

Superior Court (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be good for the judicial process and to the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105 (*Lockheed Martin*).) "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks, supra,* 89 Cal.App.4th at p. 916.)

Here, common legal and factual issues predominate. Plaintiffs' claims all arise from Defendant's wage and hour practices (and others) applied to the similarly situated class members.

As for the second factor,

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

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

Like other class members, Plaintiffs were employed by Defendant as part of its teaching staff and allege that they experienced the alleged violations. The anticipated defenses are not unique to Plaintiffs, and there is no indication that Plaintiffs' interests are otherwise in conflict with those of the class.

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

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

D. Substantial Benefits of Class Certification

"[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to

individual lawsuits. (*Ibid.)* "Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action." (*Id*. at pp. 120–121, internal quotation marks omitted.)

Here, there are an estimated 144 class members. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. Further, it would be cost prohibitive for each class member to file suit individually, as each member would have the potential for little to no monetary recovery. It is clear a class action provides substantial benefits to both the litigants and the Court in this case.

VII. NOTICE

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

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

The notice is generally adequate. Regarding appearances at the final fairness hearing, the notice shall be further modified to instruct class members as follows:

> The judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 7 (Afternoon Session) or by calling the toll free conference call number for Department 7. Any class member who wishes to appear in person should check in at Court Services (1st floor, Downtown Superior Courthouse, 191 N. 1st St., San Jose) and wait for a sheriff's deputy to escort him or her to the courtroom for the hearing.

Turning to the notice procedure, the parties have selected Phoenix Settlement Administrators as the settlement administrator. The administrator will mail the notice packet

within 20 days of the entry of the Court's ordinary preliminarily approving the parties' settlement, after updating class members' addresses through skip-traces and other similar means. Any returned noticed will be re-mailed to any forwarded address provided or an updated address located through the aforementioned methods. Class members who receive a re-mailed notice will have an additional 15 days to respond. These notice procedures are appropriate and are approved.

VIII. CONCLUSION

Plaintiffs' motion for preliminary approval is GRANTED. The final approval hearing shall take place on **July 11, 2024** at 1:30 in Dept. 7. The following class is preliminarily certified for settlement purpose:

> All current and former members of Defendant's reaching staff who worked for Defendant in California, excluding Instructional Leaders, from August 14, 2016, through September 27, 2023.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.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.

Calendar Line 2

Case Name: *Ana Cantu v. Google LLC, et al.*
Case No.: 21CV392049

Plaintiff Ana Cantu brings this action for employment discrimination, harassment, and retaliation, Violation of the Equal Pay Act, and related claims against her former employer, Defendant Google LLC, and her former supervisor, Defendant Lisa Nicole Chen. Plaintiff also brings a claim under the Private Attorneys General Act ("PAGA") against Google, seeking penalties for Equal Pay Act Violations and derivative Labor Code Violations committed against herself and other aggrieved "non-White employees."

Before the Court is Plaintiff's motion for leave to file the Third Amended Complaint ("TAC"), which is opposed by Google. As discussed below, the Court GRANTS Plaintiff's motion.

IX. BACKGROUND

A. Factual

Google is a technology company specializing in internet-related services and products with offices in Mountain View and Sunnyvale. (Second Amended Complaint ("SAC"), ¶ 7.) Ms. Chen is Google's Head of Internal Communications, based in Mountain View, and was Plaintiffs supervisor. (*Id*., ¶ 8.)

Plaintiff identifies as ethnically Mexican and racially Indigenous. (SAC, ¶ 26.) She was hired by Google in September or October of 2014 and performed exemplary work, receiving consistently positive performance reviews and accolades. (*Id*., ¶ 18.) Plaintiffs department at Google was made up of almost all White employees, and while Plaintiff continually asked what she needed to do to be promoted and/or receive a raise like her White colleagues, no one at Google could provide an answer. (*Id*, ¶ 19.) Rather, Ms. Chen intentionally deviated from protocol by "withholding" Plaintiff's contributions and awards in her performance evaluations, instead taking credit for Plaintiff' s work herself. (*Id*., ¶ 20.) Ms. Chen admitted to Plaintiff that had her awards and contributions been considered, Plaintiff would have received higher ratings. (*Ibid*.) Due to discrimination, harassment, and retaliation by Ms. Chen and others, Plaintiff languished at a job level of L5 while her White peers were promoted to job levels L6 and L7, receiving significant additional compensation including bonuses and stock options. (*Id.*, ¶ 21.)

Plaintiff complained to Google about her failure to be promoted and receive meaningful raises despite her excellent performance evaluations, and specifically complained that the discriminatory bias and retaliation of Ms. Chen and others prevented her from being promoted and paid equitably compared to her similarly situated, and in some cases, less qualified, White (SAC, ¶¶ 23-24.) She also complained about marginalization and discrimination by Ms. Chen regarding material terms and conditions of her employment, including Ms. Chen's refusal to hold one-on-one meetings with Plaintiff, which she regularly conducted with Plaintiff's White peers. (*Id*., ¶ 25.) Plaintiff also complained about the toxic hostile work environment at Google, telling a Human Resources manager that she cried on the Google bus each day during the trip to work. (*Id.*, ¶ 26.) Ms. Chen used racist terms including "pow wow" in front of Plaintiff and

others, and continued to do so even after Plaintiff asked her to stop, informing her that the terms were offensive to Plaintiff as an Indigenous woman. (*Id*., ¶ 27.)

Plaintiff sought an emergency transfer away from Ms. Chen's supervision, but Google allowed Ms. Chen to continue preventing Plaintiff from being promoted or paid equitably. (SAC, ¶ 28.) While Plaintiff had been flagged internally by Google for "calibration issues" because she "has been performing above her level" for years, she did not undergo the usual calibration process for promotion due to Ms. Chen's continued sabotage by citing vague and unsubstantiated "performance gaps" and regularly insulting Plaintiff's ability to complete basic work tasks. (*Ibid*.) Ms. Chen's supervisor Jane Hynes, Google's Vice President, Global Communications for Google Cloud, continued to rely on Ms. Chen's evaluations even after Plaintiff complained about Ms. Chen and stopped reporting to her directly. (*Ibid*.) Ms. Hynes refused to consider Plaintiff's subsequent supervisors' positive assessment in favor of Ms. Chen's discriminatory, harassing, and retaliatory assessment. (*Ibid*.) Google did nothing to address Plaintiffs multiple complaints, which Google Human Resources eventually conceded, admitting to Plaintiff that her complaints went into a "Black Hole." (*Id*., ¶ 29.)

Plaintiff was so distressed that she could no longer do her job as usual, which necessitated a leave of absence. (SAC, ¶ 30.) She returned to work and continued to be demoralized by the ongoing discrimination, harassment, and retaliation-which, by September 2021, she could no longer tolerate. (*Ibid*.) Plaintiff was thus forced to resign and her last day of work was September 10, 2021. (*Ibid*.)

Regarding her PAGA claim, Plaintiff alleges Google uses a common organizational and pay structure establishing compensation ranges based on employees' "job levels" or "job ladders." (SAC, ¶ 34.) At the same time, it assigns all positions to a "job family," within which employees perform similar job duties and responsibilities. (*Id*., ¶ 35.) According to this structure, all employees in the same job level and job position are performing a like level of duties and responsibilities. (*Ibid*.) Google requires jobs in different job families to have standardized transferable skills so that an employee in one job level can transfer to a different job family with known standard skills required for the job level. (*Ibid*.) But several job levels contain overlapping job duties and responsibilities, creating a subjective element that enables decisionmakers to place employees with the same job duties and responsibilities into one of multiple job levels. (*Id*., ¶ 36.)

When Plaintiff was hired, it was Google's standard practice to request each job candidate's salary history from his or her prior three jobs, and Google considered this information in determining the new employee's compensation and in what job level the new hire would be placed. (SAC, ¶ 37.) Plaintiff alleges on information and belief that this practice continued during the time period at issue in her representative claim. (*Ibid*.) At the same time, Google calculates annual merit raises as a percentage of an employee's current compensation, with the specific percentage raise based in part on each employee's performance ratings. (*Id*, ¶ 38.) And when employees are promoted, their new salary is typically limited to a percentage of their prior salary. (*Id*., ¶ 39.) Thus, employees' original job level and compensation affect the amounts they earn on a continuing basis. (*Id*., ¶¶ 38-39.) As a result of these pay practices, employees were placed in job levels not based on skill, effort, or responsibility, but based on their prior salaries at other jobs. (*Id.*, ¶ 40.) Employees' compensation was inextricably linked to their prior salaries and therefore derived from pre-existing race- and/or ethnicity-based

differentials in compensation, since diverse employees like Google's non-White employees have historically been paid disproportionately 1ow salaries. (*Ibid*.)

Based on these circumstances, Plaintiff alleges Google "has paid and continues to pay its non-White employees systematically lower total compensation (including salary, stock and bonuses) than White employees performing substantially similar work when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions." (SAC, ¶ 43.) Specifically, Google has paid and continues to pay non-White employees—including Plaintiff—less than White employees in the same job position and job level, even though Google acknowledges that employees in the same job position and level perform substantially similar work. (*Id*., ¶ 44.) Further, non-White employees are placed in lower job levels than White employees based on prior compensation, since Google "levels up" new employees into the job level that is commensurate with the salary range of a new hire's starting salary. (I., ¶ 45.) And in a separate violation Plaintiff experienced, Google otherwise places White employees in higher job levels than non-White employees, even though non-White and White employees in the same job title but different job levels perform substantially similar work when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions. (*Id*., ¶ 46.)

Plaintiff alleges Google knows of these pay disparities through its own internal processes and data, including its calibration/pay equalization processes and reporting data, but has ratified the ongoing disparity by failing to take any action to equalize employees' pay. (SAC, ¶ 47.) Plaintiff herself complained of the pay disparity she experienced, and is further aware of an internal study by a non-White affinity group at Google evidencing pay disparities on the basis of race/ethnicity. (*Id*., ¶¶ 48-49.) And it "is believed" that data Google reports to the California Department of Fair Employment and Housing also reflects pay disparities between non-White and White employees who perform substantially similar work when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions. (*Id*., ¶ 50.)

Finally, Plaintiff alleges on information and belief that, like herself, other non-White employees who complained about pay disparities between them and White employees were retaliated against and were not given raises or promotions consistent with their skills, effort and responsibilities and were otherwise adversely affected in the terms and conditions of their employment. (SAC, ¶ 52.) Not only does Plaintiff makes this allegation on information and belief and on behalf of "her own personal experiences, her communications with colleagues, and publicly-available information regarding other non-White employees who have alleged discrimination and race- and ethnicity- based pay inequality against GOOGLE." (*Id*., ¶ 53.)

Therefore, Plaintiff brings a PAGA claim on behalf of the following "aggrieved employees":

> all current and former non-White employees of Google in the State of California: (1) who were paid less than their White counterparts who performed substantially similar work when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, and/or (2) who did not receive promotions and meaningful raises during their employment with Google despite performing substantially similar work when viewed as a composite of skill, effort, and responsibility, and performed under similar

> working conditions as their White counterparts who routinely received promotions and meaningful raises that created unequal compensation, and/or (3) whose job performance warranted additional compensation that Google failed to equalize to that of their White counterparts who performed substantially similar work when Viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, and/or (4) who were retaliated against for registering complaints of pay disparities between non-White and White employees who performed substantially similar work when Viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.

(SAC, ¶ 51(a).)

B. Procedural

Plaintiff initiated this action on December 28, 2021 in her individual capacity, and filed a representative First Amended Complaint ("FAC") on February 15, 2022, asserting: (1) discrimination based on race/national origin/ancestry in violation of the Fair Employment and Housing Act ("FEHA") (against Google); (2) harassment based on race/national origin/ancestry in violation of FEHA (against Google and Ms. Chen); (3) retaliation for opposing practices forbidden by FEHA (against Google); (4) failure to prevent, investigate, and remedy discrimination, harassment, or retaliation in violation of FEHA (against Google); (5) whistleblower retaliation in violation of Labor Code section 1102.5 (against Google and Ms. Chen); (6) intentional infliction of emotional distress (against Google and Ms. Chen); (7) negligent infliction of emotional distress (against Google and Ms. Chen); (8) violation of the Equal Pay Act (against Google); (9) wrongful termination in violation of public policy (against Google); (10) unfair and unlawful business practices in violation of Business & Professions Code § 17200 et seq. (against Google); and (11) civil penalties under PAGA (against Google).

On April 5, 2022, the Court entered an order deeming the case complex and staying all discovery pending further order of the Court.

Defendants subsequently demurred to Plaintiff's PAGA claim on the grounds of uncertainty and failure to state a cause of action and, alternatively, moved to strike the claim based on her assertedly overbroad definition of the aggrieved employees. Defendants also alternatively moved for an order bifurcating "the threshold issue of Plaintiff s standing to pursue her PAGA claim" for purposes of both trial and discovery. In its August 22, 2022 order, the Court sustained the demurrer with leave to amend, concluding that Plaintiff "fail[ed] to allege facts supporting the conclusion that Google committed Equal Pay Act violations against other employees- or even to clearly and directly allege this conclusion itself." (Court's Order at 7:11-12.)

Plaintiff filed the SAC on September 20, 2022, asserting the same eleven causes of action as the FAC, but purporting to have corrected the deficiencies identified in the Court's August 2022 order. Defendants again demurred to the PAGA claim, or in the alternative, moved to strike it, based on their contentions that Plaintiff failed to "identify which titles or positions she seeks to compare, let alone provide any factual basis for her claim that employees in different jobs perform the same work" in support of her EPA theory, and still failed to plead facts relating to employees other than herself in support of her retaliation theory. In its

February 21, 2023 order, the Court overruled the demurrer and denied the alternative motion to strike, finding that Plaintiff had adequately stated a claim under PAGA.[1] The Court also lifted the discovery stay as to Plaintiff's PAGA claim only.

On June 9, 2023, the Court held an Informal Discovery Conference ("IDC") to resolve issues pertaining to the scope of informal discovery to be produced by Google regarding the allegedly aggrieved employees encompassed by Plaintiff's PAGA claim. Google agreed to produce data pertaining to its employees working within California during the statutory period, with the exception of its C-Suite, without prejudice to Google's right to argue that certain individuals should not be included within the allegedly aggrieved group. The parties were unable to reach an agreement as to the scope of employment and pay history data produced for each employee, and thus agreed that the issue should be briefed and set for hearing at a time convenient for the Court.

Plaintiff filed a motion to compel seeking an order directing Google to disclose the complete compensation and employment history of each employee in the relevant population, starting from the date of hire of each employee in the relevant population. Google opposed the motion, arguing Plaintiff's request covered too broad of a time period. In its September 9, 2023 order, the Court granted the motion in part, ordering Google to produce the pay and employment data of each Google employee in California, excluding C-Suite employees and labor contractors, for the period from December 9, 2018 through the date of production.

X. MOTION FOR LEAVE TO AMEND

A. Legal Standard

Section 473, subdivision (a)(1) of the Code of Civil Procedure states in pertinent part: "[t]he court may ... , in its discretion after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars ...." (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 760 (*Atkinson*).) In considering a motion for leave to amend, "courts are bound to apply a policy of great liberality in permitting amendments … at any stage of the proceedings, up to and including trial." (*Id.* at p. 761.) "[I]t is a rare case" in which a court will be justified in denying a party leave to amend his pleadings. (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.)

However, the policy of liberality in permitting amendments should be applied only where no prejudice is shown to the adverse party. (*Atkinson, supra,* 109 Cal.App.4th at p. 761.) Where an amendment would require substantial delay in the trial date and substantial additional discovery; would change not only the specific facts and causes of action pled, but the tenor and complexity of the complaint as a whole; and where no reason for the delay in seeking leave to amend is given, refusal of leave to amend is not an abuse of discretion. (See *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 486–488 (*Magpali*) [affirming

[1] In its order, the Court also noted its stated observation at the hearing on Defendants' motion that a PAGA case encompassing every single non-White Google employee would not be manageable. As such, the Court encouraged the parties to begin the process of narrowing the case (e.g., by providing specifics about comparators and the types of employees in the "aggrieved employee" group) by meeting and conferring to keep the "possibly-voluminous discovery within reasonable bounds." (Court's Order at 11:17-12:1.)

denial of request to amend made during trial].) "Even if a good amendment is proposed in proper form, unwarranted delay in presenting it may – of itself – be a valid reason for denial," which "may rest upon the element of lack of diligence in offering the amendment after knowledge of the facts, or the effect of the delay on the adverse party." (*Roemer v. Retail Credit Co.* (1975) 44 Cal.App.3d 926, 939–940 (*Roemer*) [trial court appropriately denied request to amend answer made during trial]; see also *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345 [plaintiff did not seek leave to amend until after trial readiness conference, amendment would require additional discovery and might prompt a demurrer or other pretrial motion, and plaintiff's explanation for the delay was inadequate]; *Miles v. City of Los Angeles* (2020) 56 Cal.App.5th 728, 739 (*Miles*) ["plaintiffs waited until four and a half years into the litigation to assert a federal claim, admittedly doing so only after the court indicated its intent to grant summary judgment"].)

A party requesting leave to amend must include a copy of the proposed amended pleading with their noticed motion, as well as a supporting declaration which sets forth: (1) the effect of the amendment; (2) why the amendment is necessary and proper; (3) when the facts giving rise to the amended allegations were discovered; and (4) the reasons why the request for amendment was not made earlier.[2] (Cal. Rules of Court, rule 3.1324 (a) and (b).)

B. Discussion

The proposed TAC seeks to add two new causes of action: (1) a claim for violation of Labor Code section 1197.5 ("Section 1197.5") for a class of California employees defined as "All current and former Hispanic, Latinx, Indigenous, Native American, American Indian, Native Hawaiian, Pacific Islander, and/or Alaska Native employees who worked for Google in California within the last four years up to the date of trial in this Action," and (2) a claim for violation of Labor Code section 203 ("Section 203") for a former employee subclass defined as "all former Hispanic, Latinx, Indigenous, Native American, American Indian, Native Hawaiian, Pacific Islander, and/or Alaska Native employees who worked for Google in California within the last four years up to the date of trial in this Action." Section 1197.5 prohibits, among other things, disparate pay to employees of another race or ethnicity for substantially similar work. Plaintiff's Section 203 claim is based on Google's alleged failure to pay all wages due pursuant to Section 1197.5.

Plaintiff explains that while this case has been pending for almost three years, Defendants' "focus on initial motion practice" caused a discovery delay in relation to the PAGA Section 1197.5 claim until September 11, 2023, when her motion to compel was decided. Google only produced initial data on October 9, 2023, and her expert is still in the process of analyzing that data.

Because the default approach to most requests for leave to amend is to *grant* the request given the policy of liberality cited above, the Court will deny Plaintiff's request only where it is demonstrated that there is a compelling reason to do so, i.e., that as a result of the amendment Defendants will suffer prejudice, trial will be delayed, substantial additional

[2] In their opposition, Google asserts Plaintiff's motion fails to comply with subdivision (b)(4)—identifying the reasons why the request for amendment was not made earlier—and thus is procedurally flawed. The Court disagrees; Plaintiff's counsel's declaration adequately explains the timing of the instant motion.

discovery will be required, the tenor and complexity of the complaint as a whole will be changed, or no reason for the delay in seeking leave to amend has been given.

Google asserts that at a time when the Court has directed Plaintiff to consider narrowing her "sprawling case" due to its unmanageability in its current form, she nevertheless is seeking to expand it, and belatedly so. It maintains that Plaintiff offers no explanation for the delay in asserting her class claims, noting that she has, from the moment she initiated this action, alleged that Google discriminated against non-White employees in their pay. Google continues that Plaintiff's newly proposed class definition suffers from several defects and asserts that because motions to file amended complaints may be denied where the proposed amended complaint is defective on its face, this motion should be too. Finally, Google argues that the proposed amendment would result in significant added litigation costs, increase the burden of discovery, and further delay this case. Given that the PAGA and class claims have different statutes of limitations, it asserts, it will be forced to bear the burden of litigating what are essentially two distinct cases, and any delay risks the potential accrual of additional liability in the form of possible PAGA penalties, which accrue each pay period. The Court does not find these arguments persuasive.

Regarding delay, the Court a discovery stay is *still* in place and has been since this case was deemed complex in April 2022. While the stay was lifted with respect to the PAGA claim only, a claim that was not added until February 2022, that did not happen until February 2023. It was at that point that the parties were first permitted to engage in any form of discovery. After several IDCs failed to resolve the parties' disputes pertaining to the scope of permissible discovery as to the PAGA claim, motion practice followed, with Plaintiff ultimately obtaining her first batch of PAGA-related information from Google on October 9, 2023. The instant motion was filed a mere month later; this does not qualify as inexcusable delay on the part of Plaintiff, who proffers a valid reason for the timing of her request.

Plaintiff explains that given her obligations under Code of Civil Procedure section 128.7, subdivision (b)(3), to certify, prior to asserting the new claims, to the best of her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that "the [class] allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support," her counsel needed to review Google's pay and demographic information first. She notes, correctly, that a class action complaint requires pleading elements that are substantively different from a representative PAGA action. (See Code Civ. Proc., § 382.) While Plaintiff's expert has yet to complete their analysis of the materials produced by Google, Plaintiff's counsel was able to request leave now by proactively analyzing Google-compiled pay and demographic data provided to and published by *Business Insider* in September 2023. Based on this data, on October 24, 2023, Plaintiff's counsel requested Google stipulate to allow her to amend to allege a class-wide pay equity claim, and when it refused, Plaintiff filed this motion soon after. Plaintiff could have sought earlier amendment in good faith in the absence of information and data in Google's possession necessary to support them.[3] Further, not only has formal discovery not yet begun, but there is currently no trial date.

[3] The cases cited by Google in support of its contention that Plaintiff inexcusably delayed seeking leave to amend are distinguishable; none involved a discovery stay or a plaintiff seeking leave within a reasonable amount of time from receiving information necessary to evaluate the validity of potential class claims, and each involved clear timing issues that would

The Court also agrees with Plaintiff that Google has not demonstrated the type of prejudice required to deny amendment. Google offers no specifics to support its broad claims that amendment will result in increased litigation costs, an increased discovery burden, and further delay this case. Google has been aware of Plaintiff's pay equity claim since 2021, and thus it strains credulity for Google to claim prejudice arising from such a claim. Google's cited cases in support of prejudice involved amendment request made on the eve of trial or a motion for summary judgment, and are thus distinguishable from the case at bar.[4] The Court simply does not see Google suffering from the type of prejudice that would warrant denying Plaintiff's motion.

Finally, case manageability concerns be handled through the typical complex case management processes already being followed in this case. And Google's concerns are best addressed through the certification process, which necessarily involves further discovery and where the specifics of the proposed classes can be evaluated relative to those concerns, and not in a motion for leave to amend, which the Court views as putting the cart before the horse. If Google believes that Plaintiff's new allegations are otherwise defective, that is an issue that should be addressed through a noticed motion, i.e., demurrer. Courts ordinarily are not to consider the validity of proposed amendments because grounds for a demurrer (or motion to strike) are premature, and while a court has discretion to deny leave to amend where a

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undoubtedly prejudice the other party if amendment was permitted. (See *Record v. Reason* (1999) 73 Cal.App.4th 472, 486 [amendment was denied where the case was fully developed and plaintiff first sought leave to amend in motion to be heard at same time as the defendant's summary judgment motion]; *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 746 [amendment denied where plaintiff moved ex parte for order shortening time on motion for leave to amend before hearing on a pending summary judgment motion]; *Roemer v. Retail Credit Co.* (1975) 44 Cal.App.3d 926, 940 [defendant denied leave to amend answer at the end of trial after the close of defendant's case and prior to giving instructions to jury]; *Green v. Rancho Santa Margarita Mortgage Co.* (1994) 28 Cal.App.4th 686, 692 [defendant denied leave to amend its answer following a first trial]; *la Mere v. Los Angeles Unified Sch. Dist.* (2019) 35 Cal.App.5th 237 [amendment denied where plaintiff failed to complete a pre-filing requirement with local law enforcement and there was a defect in the appellate record]; *Magpali v. Farmers Grp., Inc.* (1996) 48 Cal.App.4th 471 [amendment denied where proposed on eve on trial and no explanation was provided for the timing of the request and defendant demonstrated prejudice by showing that a trial continuance to allow additionally discovery on the new claim would be necessary]; *Hataishi v. First Am. Home Buyers Prot. Corp.* (2014) 223 Cal.App.4th 1454, 1469 [class certification decision in which plaintiff did not file a formal motion to amend].)

[4] *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168 [amendment denied on the ground that oral motion to amend complaint at summary judgment hearing prejudiced the defendant]; *Magpali v. Farmers Grp., Inc., supra*, 48 Cal.App.4th 471 [amendment denied when proposed on eve of trial and defendant demonstrated prejudice by showing that a trial continuance of the imminent trial date would be necessary to allow additional discovery on the new claim]; *M&F Fishing, Inc. v. Sea-Pac Ins. Managers, Inc.* (2012) 202 Cal.App.4th 1509 [amendment denied when plaintiff sought to add 166 new parties to a lawsuit on the eve of trial and five-year cutoff for case]; *Bidari v. Kelk* (2023) 90 Cal.App.5th 1152 [amendment denied where plaintiffs abandoned claims only to propose re-alleging them at the last possible moment when the lawsuit would have otherwise concluded and provided no explanation for their delay in seeking amendment].)

proposed amendment fails to state a valid cause of action as a matter of law (e.g., statute of limitations) (see *California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 281), it is not readily apparent that that is the case here.

For these reasons, Plaintiff's motion for leave to amend is GRANTED.

XI. CONCLUSION

Plaintiff's motion for leave to file the TAC 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.

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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