SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1, Honorable Theodore C. Zayner Presiding

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

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department19@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

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LAW AND MOTION TENTATIVE RULINGS
DATE: DECEMBER 13, 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	20CV363709	Griego v. The Tehama Law Group, P.C., et al. (Class Action)	See Line 1 for tentative ruling.
LINE 2	23CV415981	Kobayashi v. Dfinity USA Research LLC, et al.	See Line 2 for tentative ruling.
LINE 3	18CV338800	Chambers v. Crown Asset Management, LLC (Class Action)	See Line 3 for tentative ruling.
LINE 4	21CV392334	Balabanoff v. Classic Vacations, LLC, et al. (/Class Action/PAGA)	See Line 4 for tentative ruling.
LINE 5	20CV368472	Tesla, Inc. v. Pascale, et al.	See Line 5 for tentative ruling.
LINE 6	20CV368472	Tesla, Inc. v. Pascale, et al.	See Line 5 for tentative ruling.
LINE 7	19CV359262	Hightower v. Compass Group USA, Inc., et al. ("Hightower I")	See Line 7 for tentative ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 8	21CV376397	Spencer v. Monsanto Company, et al.	Unopposed motions for admission *pro hac vice* in Lines 8-10 are GRANTED. Court will sign proposed orders. No appearances necessary on Law & Motion calendar.
LINE 9	21CV376397	Spencer v. Monsanto Company, et al.	
LINE 10	21CV376397	Spencer v. Monsanto Company, et al.	
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name: Griego v. The Tehama Law Group, P.C., et al. (Class Action)
Case No.: 20CV363709

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on December 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This is a putative consumer class action brought pursuant to the California Rosenthal Fair Debt Collection Practices Act ("RFDCPA"). According to the allegations of the First Amended Class Action Complaint for Declaratory Relief, Injunctive Relief, and Damages ("FAC"), filed on April 13, 2020 in federal district court, plaintiff Maria Consuelo Griego ("Plaintiff") seeks statutory damages against defendants The Tehama Law Group, P.C. ("Tehama"), Kes Narbutas ("Narbutas"), Cypress Asset Recovery Services, LLC ("Cypress"), Jeff Fernandez ("Fernandez"), Eric Wilson, Matthew Wright, and Patelco Credit Union ("Patelco").[1] (FAC, ¶¶ 3 & 10-15.) Plaintiff alleges that the defendants had a routine practice of sending initial written communications, like the one sent to Plaintiff, that fail to contain the disclosure required by California Business and Professions Code sections 6077.5, subdivision (g)(4) and 6077.5, subdivision (g)(5), and which falsely represent or imply that a civil lawsuit has been filed to collect a defaulted consumer debt when no such lawsuit has been filed, and that the failure to pay will result in an accusation that the debtor has committed a crime. (*Ibid*.) The defendants also had a routine practice of sending voice messages, which falsely represent or imply that a civil lawsuit had been filed to collect a defaulted consumer debt and that the failure to pay would result in an accusation that the debtor had committed a crime. (*Ibid.*) The FAC sets forth the following causes of action: (1) Rosenthal Fair Debt Collection Practices Act; and (2) Violation of California Unfair Competition Law.

On December 16, 2022, the court entered defaults against Cypress and Fernandez.

On December 22, 2022, Patelco filed a Cross-Complaint against Tehama, Narbutas, Cypress, and Fernandez (aka Eric Wilson, aka Matthew Wright), alleging causes of action for:

[1] Cypress and Fernandez were substituted as Doe 1 and Doe 2, respectively, on January 12, 2021.

(1) Breach of Written Contract; (2) Fraud; (3) Negligence; (4) Tort of Another; (5) Express Contractual Indemnity; (6) Implied Indemnity; (7) Equitable Indemnity; (8) Legal Malpractice; (9) Contribution; (10) Declaratory Relief; and (11) Declaratory Relief.

On December 28, 2022, Plaintiff filed a Notice of Termination or Modification of Stay, advising the bankruptcy stay regarding Tehama was no longer in effect.

On January 31, 2023, Tehama and Narbutas filed a Cross-Complaint against Patelco and Fernandez (aka Eric Wilson, aka Matthew Wright), which sets forth causes of action for: (1) Equitable Indemnity; (2) Apportionment of Fault; and (3) Declaratory Relief.

Patelco and Plaintiff have entered into a settlement.

Subsequently, Plaintiff and Patelco jointly moved for preliminary approval of class action settlement. Additionally, Patelco moved for determination of good faith settlement.

On October 4, 2023, the court continued both motions to December 13, 2023. In its minute order, the court requested Plaintiff's counsel submit a declaration estimating Patelco's maximum potential liability for damages to the class for each claim alleged in the FAC and explaining how the estimate for the RFDCPA claim was reached given Patelco's net worth.

On October 16, 2023, Plaintiff's counsel filed a supplemental declaration in support of the motions.

II. MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

A. LEGAL STANDARD

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

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

(*Wershba*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

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

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

B. DISCUSSION

1. Provisions of the Settlement

> The case has been settled on behalf of the following class:
> All persons with addresses in California to whom [Tehama], sent, or caused to be sent, an initial written communication in the form of Exhibit "1" to the Complaint in an attempt to collect a consumer debt owed to [Patelco], which were not returned as undeliverable by the U.S. Post Office during the period from February 11, 2019, through the date of class certification.

(Declaration of Fred W. Schwinn in Support of Joint Motion for Preliminary Approval of Class Action Settlement and Provisional Class Certification ("Schwinn Dec."), Ex. A ("Settlement Agreement"), ¶ 2.3.)

According to the terms of settlement, Patelco will pay a non-reversionary amount of $245,900 to the class (i.e., no less than $100 to each of the estimated 2,459 class members). (Settlement Agreement, ¶¶ 4.1, 4.3, 4.4.) In addition to the class fund, Patelco will pay all costs associated with settlement administration, actual and statutory damages in the amount of

$20,000 to Plaintiff, and attorney fees and costs not to exceed $350,000. (Settlement Agreement, ¶¶ 4.2, 4.5-4.7.)

The class fund will be distributed to the class members on a pro rata basis. (Settlement Agreement, ¶ 4.3.) Settlement checks will become void 90 days after mailing and funds from uncashed checks will be distributed to the Katherine & George Alexander Community Law Center. (Settlement Agreement, ¶¶ 4.3, 4.4.) The *cy pres* recipient is approved.

In exchange for the settlement, class members agree to release Patelco, and related persons and entities, from all claims alleging a violation of the California Rosenthal Fair Debt Collection Practices Act, Civil Code sections 1788-1788.33, or similar or related claims or causes of action, arising from or relating to collection letters allegedly mailed on behalf of Patelco in the form attached as Exhibit 1 to the FAC during the class settlement period. (Settlement Agreement, ¶¶ 2.15, 7.1.) Additionally, Plaintiff agrees to voluntarily withdraw from membership with Patelco and not reapply for membership at any time in the future. (Settlement Agreement, ¶ 4.2.)

2. Fairness of the Settlement

The parties assert that the settlement is fair, reasonable, and adequate, given Patelco's net worth, the strength of Plaintiff's claim, the inherent risks of litigation, and the costs of pursuing litigation. The parties actively litigated this case and conducted substantial formal discovery. The court also heard several dispositive motions. Following mediation with the Honorable Wynne Carvill (Ret.), the parties reached a settlement. The parties point out that Civil Code section 1788.17 incorporates the remedies articulated in 15 U.S.C. 1629K, which provide for statutory damages to the class in an amount not to exceed the lesser of $500,000 or 1 percent of the net worth of the debt collector. However, in their moving papers, the parties do not provide any information regarding Patelco's net worth or an estimate of Patelco's maximum potential liability for statutory damages to the class. Rather, Plaintiff's counsel represents that Patelco disclosed financial information to Plaintiff and Plaintiff's counsel believes the settlement is fair given Patelco's net worth. The parties also set forth reasons why the value of the claim should be discounted.

In his supplemental declaration, Plaintiff's counsel declares that Patelco's net worth is approximately $746,415,000, as reflected in financial statements publicly available on its website. (Supplemental Declaration of Fred W. Schwinn in Support of Joint Motion for Preliminary Approval of Class Action Settlement and Provisional Class Certification, ¶¶ 4-5.) In light of Patelco's net worth, the maximum potential recovery for Plaintiff's claim under Civil Code section 1788.17 is $500,000. (*Id.* at ¶ 8.) Plaintiff's counsel indicates that no monetary recovery is available for the claims for violations of the Business and Professions Code. The proposed settlement amount represents 49 percent of the maximum possible recovery. (*Ibid.*)

Consequently, the court finds that the settlement is fair. It provides for a significant recovery and eliminates the risk and expense of continued litigation.

3. Fees and Costs

The court has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will seek attorney fees of $350,000. Plaintiff's counsel shall submit lodestar information (including hourly rates and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiff's counsel shall also submit evidence of actual costs incurred.

4. Conditional Certification of Class

Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . ." As interpreted by the California Supreme Court, Section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

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

> As explained by the California Supreme Court,
> The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

(*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

The parties state that there are approximately 2,459 class members, which can be ascertained from Patelco's records. There are common issues because Patelco's potential liability is based on the same facts and legal issues that apply to all class members regarding the collection efforts. No issue has been raised regarding the typicality or adequacy of Plaintiff as class representative. In sum, the court finds that the proposed class should be conditionally certified.

5. Class Notice

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

The notice complies with the requirements for class notice. (Settlement Agreement, Ex. 1.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion. The notice is, therefore, approved.

C. CONCLUSION

Accordingly, the motion for preliminary approval of the class action settlement is GRANTED. The final fairness hearing is set for June 12, 2024, at 1:30p.m. in Department 19.

III. MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

A. LEGAL STANDARD

Code of Civil Procedure section 877.6 provides that a party to an action involving two or more alleged joint tortfeasors may seek a determination that a settlement was made in good faith. To promote settlement (*Cal-Jones Properties v. Evans Pacific Corp*. (1989) 216 Cal.App.3d 324, 327), such determination "shall bar any other joint tortfeasor … from any further claims against the settling tortfeasor … for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." (Code Civ. Proc., § 877.6, subd. (c).) The amount paid by the settling defendant reduces the claim against the other defendants. (Code Civ. Proc., § 877, subd. (a).)

In *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488 (*Tech-Bilt*), the Supreme Court set forth factors to be considered in approving a good faith settlement, including:

> a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants.

(*Tech-Bilt, supra*, 38 Cal.3d at p. 499.)

However, "only when the good faith nature of a settlement is disputed" is it "incumbent upon the trial court to consider and weigh the *Tech-Bilt* factors." (*City of Grand Terrace v. Superior Court* (*Boyter*) (1987) 192 Cal.App.3d 1251, 1261 (*City of Grand Terrace*).)

"Where there are multiple defendants, each having potential liability for different areas of damage, an allocation of the settlement amount must be made." (*L.C. Rudd & Son, Inc. v. Superior Court* (*Krystal*) (1997) 52 Cal.App.4th 742, 750.) It is the settling parties' burden to explain "the evidentiary basis for any allocations and valuations made sufficient to demonstrate that a reasonable allocation was made." (*Ibid.*) Nevertheless,

> the inquiry at the good faith settlement stage is not the same as the inquiry at trial, where complete precision of allocation could presumably be achieved. Since we are dealing with a pretrial settlement, in which the factual findings or determinations made on contested issues of liability or damages are tentative, … we must necessarily apply a broader and more permissive standard for evaluating good faith of a settlement as to such allocation. … [W]hat should be required of the settling parties is that they furnish to the court and to all parties an evidentiary showing of a rational basis for the allocations made and the credits proposed. They must also show that they reached these allocations and credit proposals in an atmosphere of appropriate adverseness so that the presumption may be applied that a reasonable valuation was reached.

(*Regan Roofing v. Superior Court* (*Finkelstein*) (1994) 21 Cal.App.4th 1685, 1704, internal citations omitted.) "[W]here the settling parties have failed to allocate, the trial court must allocate in the manner which is most advantageous to the nonsettling party." (*Dillingham Construction N.A., Inc. v. Nadel Partnership* (1998) 64 Cal.App.4th 264, 287.)

The court may consider affidavits and counteraffidavits, and may receive other evidence at the hearing on the motion in its discretion. (Code Civ. Proc., § 877.6, subd. (b).) "The party asserting the lack of good faith shall have the burden of proof on that issue." (Code Civ. Proc., § 877.6, subd. (d).) Bad faith may be established by "demonstrat[ing] that the settlement is so far 'out of the ballpark' in relation to [the *Tech-Bilt*] factors as to be inconsistent with the equitable objectives of the statute." (*Tech-Bilt, supra*, 38 Cal.3d at pp. 499-500.) "[W]hen no one objects, the barebones motion which sets forth the ground of good faith, accompanied by a declaration which sets forth a brief background of the case is sufficient." (*City of Grand Terrace, supra*, 192 Cal.App.3d at p. 1261.)

B. DISCUSSION

Patelco asserts that its settlement with Plaintiff (which provides for $20,000 to Plaintiff for actual and statutory damages, and $245,900 to be distributed to class members pro rata for

statutory damages) is in good faith because it has a complete defense to the FAC. Specifically, Patelco asserts that it did not authorize Tehama (or have Cypress authorize Tehama) to provide legal services or undertake collection activities on its behalf. Patelco states that the case has been intensely litigated, and was settled after the parties engaged in discovery and mediation with the Honorable Wynne Carvill (Ret.). Patelco settled for a release of all of Plaintiff's claims related to this matter. Patelco believes that the settlement with Plaintiff is within the "ballpark" relative to its potential share of liability because Plaintiff cannot demonstrate that it is liable. Patelco also requests the court dismiss Tehama and Narbutas's Cross-Complaint with prejudice pursuant to California Rules of Court rule 3.1382. (Cal. Rules of Court, Rule 3.1382 ["A motion or application for determination of good faith settlement may include a request to dismiss a pleading or a portion of a pleading. The notice of motion or application for determination of good faith settlement must list each party and pleading or portion of pleading affected by the settlement and the date on which the affected pleading was filed."].)

Here, Patelco's motion generally meets the "barebones" showing required for unopposed motions for good faith settlement. The moving papers set forth the grounds of good faith and the motion is supported by a declaration from Patelco's counsel, which sets forth a brief background of the case.

C. CONCLUSION

Accordingly, the motion for determination of good faith settlement is GRANTED.

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

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Calendar Line 2

Case Name: Kobayashi v. Dfinity USA Research LLC, et al.
Case No.: 23CV415981

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on December 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

II. INTRODUCTION

This action primarily arises from defendant Dominic Williams' ("Williams") alleged breaches of fiduciary duty and tortious interference with plaintiff Satoshi Kobayashi's ("Plaintiff") rights concerning his investment in a blockchain project known as the Internet Computer Protocol, which is operated by defendant Dfinity USA Research LLC ("Dfinity USA"). On May 8, 2023, Plaintiff filed a Complaint against Williams and Dfinity USA (collectively, "Defendants"), setting forth causes of action for: (1) Tortious Interference with Contract; (2) Tortious Interference with Prospective Economic Advantage; (3) Breach of Fiduciary Duty; (4) Conversion; (5) Trespass to Chattels; and (6) Unfair Competition.

On July 24, 2023, the court entered an Order Deeming Case Complex.

On July 31, 2023, Dfinity USA filed a motion for an order dismissing the Complaint for improper forum or, in the alternative, staying or dismissing the action on the basis of forum non conveniens. The motion to dismiss is set for hearing on January 31, 2024.

On September 6, 2023, Williams filed a motion to quash service of the summons and complaint, on the grounds that service was defective.

On September 26, 2023, Dfinity USA file a motion for an order staying discovery.

Plaintiff filed an opposition to the motion to stay discovery on November 15, 2023. Plaintiff filed an opposition to the motion to dismiss and an opposition to the motion to quash on November 17, 2023.

On December 5, 2023, the parties participated in an Informal Discovery Conference ("IDC") regarding Dfinity USA's motion to stay discovery.

Now before the court Dfinity USA's motion to stay discovery. Plaintiff opposes the motion.

II. REQUEST FOR JUDICIAL NOTICE

In connection with its moving papers, Dfinity USA asks the court to take judicial notice of the Declaration of Joshua Drake filed on July 31, 2023, its motion to dismiss filed on July 31, 2023, and its memorandum of points and authorities in support of its motion to dismiss filed on July 31, 2023.

The subject documents are generally proper subjects of judicial notice as they are court records relevant to the pending motion; however, the court can only take judicial notice of the existence of the documents. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records]; see also *People v. Woodell* (1998) 17 Cal.4th 448, 455 [Evid. Code, § 452, subd. (d) permits the trial court to "take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact."].)

Accordingly, Dfinity USA's request for judicial notice is GRANTED only as to the existence of the documents.

III. PROCEDURAL ISSUE

As a preliminary matter, the court notes that Dfinity USA's motion is procedurally improper as it violates Santa Clara Complex Civil Guidelines, Section VI.2, which requires the parties to meet and confer and have an IDC before filing any discovery motion, unless otherwise authorized by the court. Here, the parties did not participate in an IDC before Dfinity USA filed its motion. Nonetheless, the court will overlook the procedural defect on this occasion as the parties recently attended an IDC on December 5, 2023. The court directs counsel to review the Complex Litigation Guidelines and expects counsel to follow them going forward.

IV. LEGAL STANDARD

"As a general matter, the trial court is empowered to exercise superintendency over discovery." (*Boston v. Penny Lane Centers, Inc*. (2009) 170 Cal.App.4th 936, 952.) "[O]n motion and for good cause shown, the court may establish the sequence and timing of

discovery for the convenience of parties and witnesses and in the interests of justice." (Code Civ. Proc., § 2019.020.)

V. DISCUSSION

Dfinity USA argues the court should stay this action until it has ruled on the pending motion to dismiss and, if that motion is not granted, until after any further challenges to Plaintiff's Complaint. Defendant states that Plaintiff has propounded substantial discovery regarding the merits of his claims (including 85 special interrogatories and 48 requests for production). Defendant contends that this discovery should be stayed pending the resolution of the motion to dismiss because that matter is set for hearing on January 31, 2024, and will potentially dispose of this case in its entirety. Dfinity also asserts that the court should stay discovery until the sufficiency of the pleadings are tested and resolved.

In opposition, Plaintiff argues that discovery with respect to the merits of his claims is proper and, in any event, the discovery requests also address issues relevant to the motion to dismiss. Plaintiff further argues it would be prejudiced to the extent Dfinity USA seeks a stay pending any further challenges to the Complaint.

Here, the court finds that a brief stay of discovery is warranted pending resolution of the motion to dismiss, which is set for hearing on January 31, 2024. The motion is potentially dispositive of this action. Furthermore, the discovery at issue is not necessary to oppose the motion. Plaintiff filed oppositions to the motion to dismiss and motion to quash on November 17, 2023. In his opposition papers, Plaintiff did not request a continuance in order to provide additional evidence sought via the outstanding discovery requests. Notably, but for the happenstance that this case was not first filed as complex, the reassignment order and Order Deeming Case Complex did not include the usual, automatic initial stay of discovery. Had the case initially been filed as a complex case, the order would have issued immediately, and the motion to stay would have been unnecessary as the initial stay of discovery would still be in effect.

Dfinity USA's additional request that discovery be stayed pending the resolution of any challenges to the Complaint is not well-taken. It is well-established that the right to discovery does not depend on the status of the pleadings. (See *Mattco Forge, Inc. v. Arthur Young & Co*.

(1990) 223 Cal.App.3d 1429, 1436 [sanctions upheld for refusal to engage in discovery due to a pending demurrer].)

Accordingly, Dfinity USA's motion to stay discovery is GRANTED IN PART and DENIED IN PART. The motion is GRANTED to the extent it seeks a stay of discovery until the court issues a ruling on the pending motion to dismiss and motion to quash. The motion is DENIED in all other respects.

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

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Calendar Line 3

Case Name: Chambers v. Crown Asset Management, LLC (Class Action)
Case No.: 18CV338800

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on December 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

III. INTRODUCTION

This is a putative consumer class action brought pursuant to the California Fair Debt Buying Practices Act, Civil Code sections 1788.50-1788.64 ("CFDBPA"). According to the Class Action Complaint for Statutory Damages ("Complaint"), filed on December 4, 2018, plaintiff Pamela Shereé Chambers ("Plaintiff") seeks statutory damages against defendant Crown Asset Management, LLC ("Defendant") arising from its routine practice of sending initial written communications in smaller than 12-point type. (Complaint, ¶ 1.) The Complaint sets forth a single cause of action under the CFDBPA.

On December 27, 2022, the court granted Plaintiff's motion for class certification.

On January 10, 2023, the court entered a Stipulation Regarding Type Size and Order Thereon, which provides that the collection letter attached as Exhibit 1 to the Complaint provided the notice required by Civil Code section 1788.52, subdivision (d)(1) in 10-point type size.

The parties have reached a settlement. Plaintiff and Defendant jointly moved for preliminary approval of the settlement.

On October 4, 2023, the court continued the motion for preliminary approval to December 13, 2023. In its minute order, the court asked Plaintiff's counsel to submit a supplemental declaration estimating Defendant's maximum potential liability for statutory damages to the class and explaining how the estimate was reached given Defendant's net worth

On October 16, 2023, Plaintiff's counsel filed a supplemental declaration in support of the motion.

II. LEGAL STANDARD

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

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

(*Wershba*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

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

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

III. DISCUSSION

A. Provisions of the Settlement

The case has been settled on behalf of the following class:

> All persons with addresses in California to whom McCarthy, Burgess & Wolff, Inc., sent, or caused to be sent, an initial written communication in the form of

> Exhibit "1" [attached to the Complaint] on behalf of [Defendant] in an attempt to collect a charged-off consumer debt originally owed to Synchrony Bank, which was sold or resold to [Defendant] on or after January 1, 2014, which were not returned as undeliverable by the U.S. Post Office during the period December 4, 2017, through the date of class certification.

(Declaration of Fred W. Schwinn in Support of Joint Motion for Preliminary Approval of Class Action Settlement ("Schwinn Dec."), Ex. A ("Settlement Agreement"), ¶ 2.3.)

According to the terms of settlement, Defendant will pay a non-reversionary amount of $158,095 to the class (i.e., no less than $35 to each of the estimated 4,517 class members). (Settlement Agreement, ¶¶ 4.1, 4.3, 4.4.) In addition to the class fund, Defendant will pay all costs associated with settlement administration, statutory damages in the amount of $1,000 to Plaintiff, a service award not to exceed $3,500 to Plaintiff, and attorney fees and costs not to exceed $250,000. (Settlement Agreement, ¶¶ 4.2, 4.5-4.7.)

The class fund will be distributed to the class members on a pro rata basis. (Settlement Agreement, ¶ 4.3.) Settlement checks will become void 90 days after mailing and funds from uncashed checks will be distributed to the Katherine & George Alexander Community Law Center. (Settlement Agreement, ¶¶ 4.3, 4.4.) The *cy pres* recipient is approved.

In exchange for the settlement, class members agree to release Defendant, and related persons and entities, from all claims alleging a violation of Civil Code section 1788.52, subdivision (d)(1) or similar or related claims or causes of action, arising from or relating to collection letters mailed on behalf of Defendant in the form attached as Exhibit 1 to the Complaint during the class settlement period. (Settlement Agreement, ¶¶ 2.16., 7.1)

B. Fairness of the Settlement

The parties assert that the settlement is fair, reasonable, and adequate, given Defendant's net worth, the strength of Plaintiff's claim, the inherent risks of litigation, and the costs of pursuing litigation. The parties actively litigated this case and conducted substantial formal discovery, and the court heard several dispositive motions. The parties point out that Civil Code section 1788.62, subdivision (b) provides for statutory damages to the class in an amount not to exceed the lesser of $500,000 or 1 percent of the net worth of the debt buyer. However, in their moving papers, the parties do not provide any information regarding Defendant's net worth or an estimate of Defendant's maximum potential liability for statutory

damages to the class. Rather, Plaintiff's counsel represents that Defendant disclosed financial information to Plaintiff and Plaintiff's counsel believes the settlement is fair given Defendant's net worth. The parties also set forth reasons why the value of the claim should be discounted.

Plaintiff's counsel has now provided a supplemental declaration stating that Defendant provided discovery responses and financial statements, which demonstrate that Defendant's net worth is $18,799,775. (Supplemental Declaration of Fred W. Schwinn in Support of Joint Motion for Preliminary Approval of Class Action Settlement, ¶¶ 4-6.) In light of Defendant's net worth, the maximum potential recovery for Plaintiff's claim is $187,997.75. (*Id.* at ¶ 7.) The proposed settlement amount represents 84 percent of the maximum possible recovery. (*Ibid.*)

Consequently, the court finds that the settlement is fair. It provides for a significant recovery and eliminates the risk and expense of continued litigation.

C. Incentive Award, Fees, and Costs

> Plaintiff requests a service award in the amount of $3,500.
> The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an individual to participate in the suit. Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

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

Prior to the final approval hearing, the class representative shall file a declaration specifically detailing her participation in the action and an estimate of time spent. The court will make a determination at that time.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel

will seek attorney fees of $250,000. Plaintiff's counsel shall submit lodestar information (including hourly rates and hours worked) prior to the final approval hearing in this matter so the court can compare the lodestar information with the requested fees. Plaintiff's counsel shall also submit evidence of actual costs incurred.

D. Conditional Certification of Class

Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . ." As interpreted by the California Supreme Court, Section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

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

> As explained by the California Supreme Court,
> The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

(*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation marks, ellipses, and citations omitted.)

Here, the court has already certified the class, named Plaintiff as class representative, and Plaintiff's counsel as class counsel. Thus, the elements of class certification are met for purposes of the settlement.

E. Class Notice

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

The notice complies with the requirements for class notice. (Settlement Agreement, Ex. 1.) It provides basic information about the settlement, including the settlement terms, and procedures to object or request exclusion. The notice is, therefore, approved.

IV. CONCLUSION

Accordingly, the motion for preliminary approval of the class action settlement is GRANTED. The final fairness hearing is set for June 12, 2024, at 1:30p.m. in Department 19.

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

- oo0oo -

Calendar Line 4

Case Name: Balabanoff v. Classic Vacations, LLC, et al. (/Class Action/PAGA)
Case No.: 21CV392334

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on December 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

IV. INTRODUCTION

This is a putative class and representative action arising out of various alleged wage and hour violations. The operative First Amended Complaint ("FAC"), filed on June 14, 2023, sets forth causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal-Period Liability Under Labor Code § 226.7; (4) Rest-Period Liability Under Labor Code § 226.7; (5) Failure to Pay Vacation Wages; (6) Failure to Comply with Labor Code §§ 245 and 246; (7) Reimbursement of Necessary Expenditures Under Labor Code § 2802; (8) Failure to Comply with Labor Code § 2751; (9) Violation of Labor Code § 226(a); (10) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (11) Penalties Pursuant to Labor Code § 203; (12) Violation of Business and Professions Code § 17200 et seq.; and (13) Penalties Pursuant to Labor Code § 2699 et seq.

The parties have reached a settlement. Plaintiff Sasha Balabanoff ("Plaintiff") moved for preliminary approval of the settlement.

On October 4, 2023, the court continued the motion for preliminary approval to December 13, 2023. In its minute order, the court directed Plaintiff to identify a new *cy pres* recipient in compliance with Code of Civil Procedure section 384. The court also asked Plaintiff to submit evidence that the proposed settlement was submitted to the LWDA as required under Labor Code section 2699, subdivision (l)(2). Finally, the court asked the parties to make several changes to the class notice.

On November 14, 2023, Plaintiff's counsel filed a supplemental declaration in support of the motion.

V. LEGAL STANDARD

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

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

(*Wershba*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid*., quoting *Dunk*, *supra*, 48 Cal.App.4th at p. 1801 and *Officers*, *supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

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

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

VI. DISCUSSION

The supplemental declaration filed by Plaintiff's counsel adequately addresses the court's concerns regarding the settlement agreement. Specifically, the parties have now executed an Addendum to Class Action and PAGA Settlement Agreement ("Addendum"),

which designates Bet Tzedek as the *cy pres* recipient in compliance with Code of Civil Procedure section 384. (Supplemental Declaration of David Yeremian in Support of Motion for Preliminary Approval of the Class Action Settlement, Ex. 1.) Plaintiff's counsel also submits evidence that the settlement agreement and Addendum have been provided to the LWDA. (*Id.* at Ex. 4.) Finally, the parties have made the requested changes to the class notice. (*Id.* at Exs. 2-3.) In particular, the amended notice now includes a third option of objecting to the settlement on page 2 of the notice; the amended notice now reflects the gross settlement amount; and the amended notice includes the requisite language regarding the final approval hearing.

Accordingly, the motion for preliminary approval of the class and PAGA action settlement is GRANTED. The final fairness hearing is set for June 12, 2024, at 1:30p.m. in Department 19.

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

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Calendar Lines 5 – 6

Case Name: Tesla, Inc. v. Pascale, et al.
Case No.: 20CV368472

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on December 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VII. INTRODUCTION

This action arises out of the alleged misappropriation of trade secrets owned by plaintiff Tesla, Inc. ("Plaintiff"). According to the allegations of the operative Fourth Amended Complaint ("FAC"), filed on September 21, 2021, Plaintiff designs, manufactures, and sells electric cars, electric vehicle powertrain components, as well as scalable energy generation and storage products. (FAC, ¶ 36.) Plaintiff sells successful electric vehicles and is poised to enter the pickup truck market, with over 500,000 reservations for its highly anticipated Cybertruck. (*Ibid*.)

Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC (collectively, "Rivian") are a prospective electric vehicle manufacturer with a desire to bring to market a truck or SUV based on an electric drivetrain. (FAC, ¶ 37.) Plaintiff, as the world leader in electric vehicles and vehicle automation, is Rivian's number one target from which to acquire information, including trade secret, confidential, and proprietary information. (*Id.* at ¶ 38.) Rivian has hired at least 70 employees directly from plaintiff Tesla. (*Ibid*.) Thirteen of Rivian's recruiters are former Tesla employees who are familiar with the type of information Tesla employees have access to and what information would be useful to Rivian. (*Id.* at ¶ 39.)

Tesla has in place a comprehensive set of policies and practices that robustly protect its trade secret, confidential, and proprietary information. (FAC, ¶ 41.) As a condition of employment, all Tesla employees must sign an Employee Nondisclosure and Inventions Assignment Agreement ("NDA"). (*Ibid*.) Defendants Vince Tanner-Duran ("Tanner-Duran"), Tami Pascale ("Pascale"), Kim Wong ("Wong"), Jessie Yoste ("Yoste"), Savayia Bero ("Bero"), Jessica Siron ("Siron"), Carrington Bradley ("Bradley"), Andrea Zechmann

("Zechmann"), Ashwin Alinkil ("Alinkil"), Saikat Das, and David Wu ("Wu") (collectively, "Individual Defendants") each electronically signed the NDA. (*Ibid*.)

Through the NDA, employees pledge, among other things, not to disclose Plaintiff's "Proprietary Information," defined to include "all information, in whatever form and format, to which I have access by virtue of and in the course of my employment," and encompassing, as relevant here, "technical data, trade secrets, know-how, plans, designs,. .. methods, processes, data, programs, lists of or information relating to, employees, suppliers, financial information and other business information." (FAC, ¶ 42.)

Plaintiff's Internet Usage Policy and Technology Systems and Electronic Communications Policy both specifically prohibit the unauthorized "transmitting, copying, downloading, or removing" of Tesla trade secret, proprietary, or confidential business information. (FAC, ¶ 44.) Plaintiff also reminds employees that they "must not … forward work emails outside of … Tesla or to a personal email account." (*Ibid*.)

Plaintiff takes extensive measures to ensure that its trade secret, confidential, and proprietary information cannot be wrongfully misappropriated, such as implementing stringent information and security policies and practices. (FAC, ¶¶ 46-47.)

Rivian is knowingly encouraging the misappropriation of Plaintiff's trade secret, confidential, and proprietary information by employees that Rivian hires. (FAC, ¶ 48.) Plaintiff has discovered a pattern of its employees surreptitiously stealing trade secret, confidential, and proprietary information and departing for Rivian. (*Id*. at ¶ 48.) Rivian directs and encourages those thefts even though defendant Rivian is well aware of Tesla employees' confidentiality obligations. (*Ibid*.) Furthermore, Rivian employees, who were previously employed by Plaintiff, are soliciting Plaintiff's employees to steal Plaintiff's trade secrets by secretly sending highly confidential files to Rivian while attempting to avoid detection by Plaintiff. (*Ibid.*)

The information misappropriated by the Individual Defendants allows Rivian to copy significant parts of Plaintiff's work in key areas without investing the substantial effort, time, and resources that defendant Rivian would need to develop these systems on its own. (FAC,

¶ 126.) This is information Plaintiff does not make available to its competitors or to the public. (*Ibid*.)

Based on the foregoing allegations, the FAC sets forth causes of action for: (1) Violation of the Uniform Trade Secrets Act (Cal. Civ. Code § 3426 et seq.); (2) Breach of Contract; and (3) Violation of California Computer Access and Fraud Act (Cal. Pen. Code § 520 et seq.).

Now before the court are the following motions: (1) Alinkil's motion to compel arbitration; (2) Alinkil's motion to stay the action; and (3) related motions to seal.

VIII. 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).) "A record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties." (Cal. Rules of Court, rule 2.551(a).) 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).)

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.)

Further, where some material within a document warrants sealing but other material does not, the document should be edited or redacted if possible, to accommodate the moving party's overriding interest and the strong presumption in favor of public access. (See Cal. Rules of Court, rule 2.550(e)(1)(B); see also *In re Providian Credit Card Cases*, *supra*, 96 Cal.App.4th at p. 309.) 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. (*In re Providian Credit Card Cases*, *supra*, 96 Cal.App.4th at p. 309.)

B. Plaintiff's Motion to Seal Portions of Alinkil's Motion to Compel Arbitration

Plaintiff moves to seal portions of Alinkil's motion to compel arbitration. Specifically, Plaintiff seeks an order sealing the redacted portions of the motion and Exhibits A and B to the Declaration of Deborah Hedley. Plaintiff asserts that sealing is warranted on the grounds that the subject materials contain Plaintiff's confidential business information and public disclosure would create an unreasonable risk of competitive harm to Plaintiff.

In support of its motion, Plaintiff provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Allison Huebert in Support of Plaintiff Tesla, Inc.'s Motion to Seal, ¶¶ 3-11.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1286 (*Universal*).) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

C. Plaintiff's Motion to Seal Portions of its Opposition

Plaintiff moves to seal portions of opposition to Alinkil's motion to compel arbitration and motion to stay. Specifically, Plaintiff seeks an order sealing the redacted portions of its

opposition papers, Exhibits 9-13, 15, 16, and 19 to the Declaration of Sara Pollock, and Exhibit C to the Declaration of Joseph Alm. Plaintiff asserts that sealing is warranted on the grounds that the subject materials contain private employment information of individual employees as well as Plaintiff's confidential business information, and public disclosure would create an unreasonable risk of harm to Plaintiff.

In support of its motion, Plaintiff provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Allison Huebert in Support of Plaintiff Tesla, Inc.'s Motion to Seal Certain Exhibits […], ¶¶ 3-12.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal, supra,* 110 Cal.App.4th at p. 1286.) In addition, individuals have a right to privacy in their personal employment information. (See *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn.3 ["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."].) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential and private information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

III. MOTION TO COMPEL ARBITRATION

A. Legal Standard

The California Arbitration Act provides that a court must grant a petition to compel arbitration "if it determines that an agreement to arbitrate … exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement," among other exceptions. (Code Civ. Proc., § 1281.2.)

The moving party must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. (See *Cruise v. Kroger*

Co. (2015) 233 Cal.App.4th 390, 396 [under both federal and state law, "the threshold question presented by a petition to compel arbitration is whether there is an agreement to arbitrate"]; *Rosenthal v. Great Western Fin'l Securities Corp*. (1996) 14 Cal.4th 394, 413 (*Rosenthal*) [moving party's burden is a preponderance of the evidence].) The burden then shifts to the resisting party to prove a ground for denial. (*Rosenthal, supra,* 14 Cal.4th at p. 413.)

B. Discussion

Alinkil argues that that he entered into an Employment Agreement with Plaintiff dated June 19, 2017, and the arbitration provision purportedly provides for arbitration of all of the claims alleged against him in this action. Specifically, Alinkil contends that the Employment Agreement provides from arbitration for "any and all disputes … arising from or relating" to his employment with Plaintiff. Notably, Alinkil does not address when he first became aware of the existence of the Employment Agreement, and its arbitration provision. But he asserts that arbitration is warranted at this time because he first learned in September 2023, that the Employment Agreement was one of the bases of Plaintiff's breach of contract claim.

In opposition, Plaintiff primarily argues that Alinkil waived his right to compel arbitration of this action because he engaged in extensive litigation conduct while in possession of his Employment Agreement. Plaintiff contends that after the filing of the FAC, Alinkil was provided with a copy of his employment file, including the Employment Agreement, on November 10, 2021. Thereafter, Alinkil filed an answer to the FAC, filed Joint Case Management Statements, and participated in discovery without raising the issue of arbitration. Plaintiff also notes that it produced a second copy of the Employment Agreement to Alinkil in June 2022. Plaintiff asserts that Alinkil's conduct is inconsistent with an intent to arbitrate and it would be prejudiced if the case was sent to arbitration.

> All case law on the subject of waiver is unequivocal: " 'Waiver always rests upon intent. Waiver is the intentional relinquishment of a known right after knowledge of the facts. [Citations]. The burden, moreover, is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation, and 'doubtful cases will be decided against a waiver.' " (*City of Ukiah v. Fones* (1966) 64 Cal.2d 104, 107-108 …; *Grubb & Ellis Co. v. Bello* (1993) 19 Cal.App.4th 231, 236 ….)

(*DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd*. (1994) 30 Cal.App.4th 54, 60.)

"[T]he test for determining waiver of the right to arbitrate is the same," or at least similar, "under the FAA and the CAA." (*Zamora v. Lehman* (2010) 186 Cal.App.4th 1, 11 (*Zamora*).) Both federal and California law "reflect[] a strong policy favoring arbitration agreements and require[] close judicial scrutiny of waiver claims." (*St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal.4th 1187, 1195 (*St. Agnes*).) "[W]aivers are not to be lightly inferred and the party seeking to establish a waiver bears a heavy burden of proof." (*Ibid*.) A waiver generally does not occur where the arbitrable issues have not been litigated to judgment, but—at least under California law—can occur even in the absence of judicial litigation of the merits of arbitrable issues if prejudice is demonstrated. (*Id*. at pp. 1201, 1203.)

The following factors are relevant in deciding whether a party's conduct constitutes a waiver of arbitration:

> (1) whether the party's actions are inconsistent with the right to arbitrate; (2) whether the litigation machinery has been substantially invoked and the parties were well into preparation of a lawsuit before the party notified the opposing party of an intent to arbitrate; (3) whether a party either requested arbitration enforcement close to the trial date or delayed for a long period before seeking a stay; (4) whether a defendant seeking arbitration filed a counterclaim without asking for a stay of the proceedings; (5) whether important intervening steps [e.g., taking advantage of judicial discovery procedures not available in arbitration] had taken place; and (6) whether the delay affected, misled, or prejudiced the opposing party.

(*St. Agnes, supra*, 31 Cal.4th at pp. 1195–1196, internal quotations omitted.) The multifactor test is not "a mechanical process in which each factor is assessed and the side with the greater number of favorable factors prevails," nor is the list of factors exclusive: rather, the factors reflect the principles that should guide courts in determining whether a party has waived its right to demand arbitration. (*Zamora, supra*, 186 Cal.App.4th at p. 15, internal quotation marks and citation omitted.)

Here, the court finds that Alinkil has unequivocally waived his right to compel arbitration. Alinkil contends that his Employment Agreement requires arbitration of the claims alleged against him in this action because the arbitration provision in the Employment Agreement encompasses all claims related to his employment. The operative FAC, which alleges claims related to Alinkil's employment, was filed on September 21, 2021, and Plaintiff presents evidence that Alinkil was provided with a copy of the Employment Agreement on November 10, 2021. Consequently, as of November 2021, Alinkil knew about the arbitration

provision and that Plaintiff's claims related to his employment. However, Alinkil unreasonably delayed in filing his motion to compel arbitration. Alinkil waited to file his motion until September 20, 2023, almost two years after he received information sufficient to put him on notice that the arbitration provision in the Employment Agreement was a possible affirmative defense to this action. (See *Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, 1205-1206 (*Hoover*) [finding a delay of almost one year unreasonable]; see also *Augusta v. Keehn & Associates* (2011) 193 Cal.App.4th 331, 338-340 (*Augusta*) [finding a delay of six and a half months unreasonable]; *Sobremonte v. Superior Court* (1998) 61 Cal.App.4th 980, 996 [10-month delay unreasonable]; *Kaneko Ford Design v. Citipark, Inc*. (1988) 202 Cal.App.3d 1220, 1228 [five-and-a-half-month delay unreasonable].)

Alinkil has failed to offer any satisfactory explanation for his decision to defer his demand for arbitration. Alinkil complains he first learned that the Employment Agreement was one of the bases of Plaintiff's breach of contract claim in September 2023. But this fact is immaterial as Alinkil asserts that the arbitration provision in the Employment Agreement applies to all of the claims alleged against him simply because the claims relate to his employment. Thus, Alinkil did not need to know that the Employment Agreement was one of the bases of Plaintiff's breach of contract claim in order to bring his motion to compel arbitration.

Moreover, Alinkil's conduct during the delay supports a finding that he lacked an intent to arbitrate. As Plaintiff points out, Alinkil filed an answer to the FAC on December 7, 2021, but did not raise arbitration as an affirmative defense. Alkinil also filed five Joint Case Management Statements, which included his views on appropriate trial dates (e.g., requesting that claims against him be tried by a jury "as soon as possible, in the first quarter of 2024") and made no mention of arbitration. Alkinil also took advantage of judicial discovery proceedings. Alinkil stipulated to the appointment of a discovery referee in May 2022, with respect to certain disputes between Plaintiff and Alinkil. In August 2022, Alinkil opposed Plaintiff's motion before the discovery referee to supplement the parties' protective order. Between April 2022 and August 2023, Alinkil propounded three sets of special interrogatories, three sets of requests for production of documents, and one set of form interrogatories on Plaintiff. Alinkil

has attended and asked questions of witnesses at depositions. Additionally, Alinkil noticed the deposition of Das and of a PMQ witness for Plaintiff. This type of conduct signifies an intent to litigate rather than to arbitrate. (See *Augusta, supra,* 193 Cal.App.4th at p. 340 [propounding formal discovery requests and filing motions to compel connotes an intent not to arbitrate]; see also *Adolph v. Coastal Auto Sales, Inc*. (2010) 184 Cal.App.4th 1443, 1451 [finding the defendant's conduct inconsistent with an intent to arbitrate when the defendant "filed two demurrers, accepted and contested discovery request[s], engaged in efforts to schedule discovery, omitted to mark or assert arbitration in its case management statement"]; *Hoover, supra,* 206 Cal.App.4th at p. 1205 [the defendant's conduct was inconsistent with an intent to arbitration where the defendant availed itself of discovery mechanisms like depositions not available in arbitration].)

In this case, the litigation machinery has been substantially invoked and the parties were well into preparation of the lawsuit before Alinkil notified Plaintiff of any intent to arbitrate. The effect of Alinkil's inconsistent actions has resulted in more than merely participating in litigation or expending legal costs, but in prejudice to Plaintiff by substantially undermining Plaintiff's ability at this late date to take advantage of the benefits and cost savings provided by arbitration. Alinkil's participation in litigation has also allowed him to take advantage of discovery procedures that would not be available to him in arbitration.

Accordingly, Alinkil's motion to compel arbitration is DENIED.

IV. MOTION TO STAY ACTION

Pursuant to Code of Civil Procedure section 1281.4, Alinkil moves to stay the action pending the court's resolution of his motion to compel arbitration and, if his motion to compel arbitration is granted, pending completion of arbitration.

As explained above, Alinkil's motion to compel arbitration is denied. Consequently, his motion for stay also lacks merit.

Accordingly, Alinkil's motion to stay the action is DENIED.

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

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Calendar Line 6

Case Name:
Case No.:

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Calendar Line 7

Case Name: Hightower v. Compass Group USA, Inc., et al. ("Hightower I")
Case No.: 19CV359262

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on December 13, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

IX. INTRODUCTION

This putative class action—*Sherri Hightower v. Compass Group USA, Inc., et al.* (Santa Clara County Superior Court, Case No. 19CV359262) ("*Hightower I*")—is brought by plaintiff Sherri Hightower ("Hightower") against defendants Compass Group USA, Inc. and Levy Premium Foodservice Limited Partnership ("Levy"), erroneously sued as Levy Premium Foodservice, Inc., (collectively, "Defendants") and arises out various alleged wage and hour violations. The operative First Amended Complaint, filed on December 10, 2019, sets forth the following causes of action: (1) Failure to Pay All Wages Owed Including Overtime; (2) Unlawful Deductions; (3) Failure to Provide Lawful Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Timely Pay Wages Owed Upon Separation From Employment; (6) Failure to Furnish Accurate Itemized Wage Statements; and (7) Violation of the Unfair Competition Law.

On February 4, 2020, Hightower filed a related action—*Sherri Hightower v. Compass Group USA, Inc., et al.* (Santa Clara County Superior Court, Case No. 20CV362751) ("*Hightower II*")—against Defendants for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"). The representative action arises out of allegations that Defendants failed to accurately calculate and pay all wages owed, failed to provide lawful meal periods, failed to provide compensation when lawful meal periods were not provided, failed to authorize and permit lawful rest periods, failed to provide compensation when lawful rest periods were not provided, failed to timely pay all wages owed, made unlawful deductions from earned wages, failed to provide accurate itemized wage statements, and failed to keep accurate records.

Several similar actions were subsequently filed in state and federal court. On February 14, 2020, Paula Davidson ("Davidson") filed a putative class action—*Paula Davidson v. Levy Premium Foodservice Limited Partnership, et al.* (Los Angeles County Superior Court, Case No. 20STCV005751) ("*Davidson Action*")—alleging claims for failure to pay all wages in violation of Labor Code sections 204, 1194, 1194.2, 1197, and 1197.1, failure to pay all wages owed at termination in violation of Labor Code sections 201-203, failure to furnish itemized wage statements upon payment of wages in violation of Labor Code section 226, failure to reimburse expenses in violation of Labor Code section 2802, and violations of Business and Professions Code section 17200, et seq. ("UCL")

On March 20, 2020, Mitchell Berbera ("Berbera") filed a class action complaint in *Mitchell Berbera v. Levy Premium Foodservice Limited Partnership, et al.* (Los Angeles County Superior Court, Case No. 20STCV11273) ("*Berbera Action*"), alleging causes of action for failure to pay overtime wages, failure to provide rest and meal periods, failure to reimburse business expenses, failure to pay vested vacation wages, failure to timely pay wages, failure to maintain payroll records, failure to provide accurate itemized wage statements, and violation of the UCL. Berbera later filed in amended complaint, which added a PAGA claim.

On April 20, 2020, William Atkins ("Atkins") filed a putative class and representative action—*William Atkins v. Levy Restaurant Holdings, Inc., et al.* (Los Angeles County Superior Court, Case No. 20STCV15321) ("*Atkins Action*")—alleging claims for failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods in violation of Labor Code sections 226.7, 512, 558, and 1198, failure to keep accurate payroll records in violation of Labor Code section 226, failure to pay waiting time penalties in violation of Labor Code sections 203 and 558, failure to pay wages upon termination in violation of Labor Code sections 201 and 202, failure to provide rest periods in violation of Labor Code section 226.7, failure to reimburse employee expenses in violation of the UCL, and violation of PAGA.

On June 25, 2020, Sharon Peskett ("Peskett") filed *Sharon Peskett v. Levy Premium Foodservice Limited Partnership, et al.* (United States District Court of the Central District of California, Case No 2:20-cv-05394) ("*Peskett Action*"). The class and representative action complaint alleges causes of action for failure to pay all wages in violation of Labor Code

sections 204, 1194, 1194.2, 1197, and 1197.1, failure to furnish accurate itemized wage statement upon payment of wages in violation of Labor Code section 226, improper service charges in violation of the UCL, intentional interference with advantageous relations, breach of contract, unjust enrichment, violations of the UCL, civil penalties for violation of PAGA, and violations of the Fair Labor Standards Act ("FLSA").

Lastly, on or about February 5, 2021, Katherine Modica Mendoza ("Mendoza") submitted a notice to the Labor Workforce Development Agency ("LWDA") joining in the claims asserted in *Hightower I* and *Hightower II* and providing additional details regarding those claims. Mendoza also asserted several new claims under the Labor Code and applicable wage order.

Hightower, Davidson, Berbera, Atkins, Peskett, and Mendoza (collectively, "Settling Parties") reached a settlement with Defendants and moved for an order preliminarily approving the settlement. In connection with their motion, Settling Parties sought leave to file a Consolidated Class Action Complaint in *Hightower I* adding Davidson, Berbera, Atkins, Peskett, and Mendoza as plaintiffs to the action and alleging the causes of action, facts, and theories set forth in each of their individual complaints on behalf of themselves and all other similarly situated employees of Defendants. Specifically, the proposed Consolidated Class Action Complaint set forth causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Accurately Pay Overtime; (3) Unlawful Deductions; (4) Failure to Provide Lawful Meal Periods; (5) Failure to Authorize and Permit Rest Periods; (6) Failure to Timely Pay Wages During Employment; (7) Failure to Timely Pay Wages Owed Upon Separation From Employment; (8) Failure to Furnish Accurate Itemized Wage Statements; (9) Failure to Reimburse Necessary Expenses; (10) Failure to Pay Vested Vacation Wages; (11) Improper Service Charges; (12) Intentional Interference with Advantageous Relations; (13) Breach of Contract; (14) Unjust Enrichment; (15) Violations of the California Business & Professions Code §§ 17200, et seq.; (16) Civil Penalties Under the Private Attorneys General Act, Labor Code §§ 2698, et seq.; and (17) Violations of the Fair Labor Standards Act §§ 201 et seq.

On February 2, 2022, the court entered an order denying the motion for preliminary approval of class action settlement without prejudice. The court noted that the proposed

Consolidated Class Action Complaint included, and the settlement agreement released, a cause of action for violations of the FLSA. The court stated that while it would consider approving an appropriately structured hybrid FLSA/class action settlement, significant changes to the settlement would be required for the court to approve it.

Later that year, Settling Parties renewed their motion for preliminary approval of class action settlement. In their motion, Settling Parties sought approval of an amended settlement agreement (which omitted references to the FLSA) and leave to file a Consolidated Class Action Complaint.

On February 8, 2023, the court issued a tentative ruling granting the renewed motion, subject to certain changes being made to the caption on the settlement agreement and the class notice.

On February 9, 2023, Settling Parties filed a Second Amended Complaint for Damages ("SAC") against Defendants, which sets forth causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Accurately Pay Overtime; (3) Unlawful Deductions; (4) Failure to Provide Lawful Meal Periods; (5) Failure to Authorize and Permit Rest Periods; (6) Failure to Timely Pay Wages During Employment; (7) Failure to Timely Pay Wages Owed Upon Separation From Employment; (8) Failure to Furnish Accurate Itemized Wage Statements; (9) Failure to Reimburse Necessary Expenses; (10) Failure to Pay Vested Vacation Wages; (11) Improper Service Charges; (12) Intentional Interference with Advantageous Relations; (13) Breach of Contract; (14) Unjust Enrichment; (15) Violations of the California Business & Professions Code §§ 17200, et seq.; and (16) Civil Penalties Under the Private Attorneys General Act, Labor Code §§ 2698, et seq.

On March 20, 2023, the court entered a Joint Stipulation Re Preliminary Approval Order and Order Approving Amended Class Notice ("Stipulation and Order"). The Stipulation and Order reflected that the parties had made the necessary changes to the caption on the settlement agreement and the class notice.

On April 4, 2023, the court entered an Order Granting Preliminary Approval of Class Action Settlement and Release, which granted preliminary approval of the class action

settlement, approved the amended class notice., and set the final approval hearing for August 9, 2023.

On June 30, 2023, the parties filed a Joint Stipulation to Continue Hearing on Motion for Final Approval and Motion for Attorneys' Fees, Costs, and Representative Enhancement, asking the court to continue the final approval hearing to November 8, 2023.

On July 12, 2023, the court entered an Order Granting Joint Stipulation to Continue Hearing on Motion for Final Approval and Motion for Attorneys' Fees, Costs, and Representative Enhancement, which continued the final approval hearing to November 8, 2023.

Settling Parties moved for final approval of the settlement.

On November 8, 2023, the court continued the motion for final approval to December 13, 2023. In its minute order, the court asked Settling Parties' counsel to provide a supplemental declaration explaining why Aisha G. Smith was not included in the list of individuals who opted out of the settlement. The court also directed Davidson, Berbera, and Peskett to submit supplemental declarations setting forth estimates of the time spent in connection with this action.

Settling Parties filed supplemental declarations in support of the motion on November 27, 2023.

X. LEGAL STANDARD

Generally, "questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 (*Dunk*).)

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

(*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624 (*Officers*).)

"The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid*., quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

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

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

XI. DISCUSSION

> The case has been settled on behalf of the following class:
> [A]ll persons who were employed by Levy as non-exempt, hourly employees in the State of California at any time from November 28, 2015 to February 2, 2022.

The class includes a subset of PAGA Group Members who are defined as "all persons who were employed by Levy as non-exempt, hourly employees in California from November 27, 2018 to February 2, 2022."

According to the terms of settlement, Defendants will pay a total non-reversionary amount of $3,600,000 in settlement of all claims, damages, or causes of action arising from or relating to the subject matter of the disputes in *Hightower I*, *Hightower II*, the *Davidson Action*, the *Berbera Action*, the *Atkins Action*, and the *Peskett Action* and allegations made in the LWDA letters sent by any of the Settling Parties. The total settlement payment includes attorney fees not to exceed $1,200,000 (1/3 of the gross settlement amount), litigation costs up

to $75,000, incentive awards in the total amount of $55,000 ($10,000 for Hightower, Davidson, Berbera, and Peskett, and $7,500 for Atkins and Mendoza), reasonable settlement administration costs, and a PAGA allocation of $300,000 ($225,000 of which will be paid to the LWDA). The net settlement will be distributed to class members pro rata based on their weeks worked during the applicable class period.

Funds from checks not cashed within 180 days will be directed to Legal Aid at Work.

On July 7, 2023, the settlement administrator mailed notice packets to 18,198 class members. (Declaration of Nathalie Hernandez of ILYM Group, Inc. in Support of Motion for Final Approval of Class Action Settlement ("Hernandez Dec."), ¶ 7.) Ultimately, 288 notice packets were deemed undeliverable. (*Id.* at ¶ 10.)

The settlement administrator represents that there were 41 requests for exclusion as of October 10, 2023.[2] (Hernandez Dec., ¶ 11 & Ex. B.) The settlement administrator states that it received one objection as of October 10, 2023. (Hernandez Dec., ¶ 13.)

However, class counsel states that four objection forms were submitted. (Declaration of James R. Hawkins in Support of Plaintiffs' Motion for Final Approval of Class and Representative Action Settlement, and Motion for Fees and Costs ("Hawkins Dec."), ¶ 16 & Exs. 10-13.) The objection forms attached to counsel's declaration were submitted by: Aisha G. Smith ("Smith"); Peter Collins ("Collins"); Carmen Sanchez ("Sanchez""); and Magdaleno Marrufo ("Marrufo").

Smith's objection form is not signed or dated, and there are no reasons stated for her objection to the settlement. (Hawkins Dec., Ex. 10.) Notably, Smith also submitted a request for exclusion form dated August 23, 2023, but she is not included in the list of individuals who opted out of the settlement. (*Ibid.*) It is unclear to the court why Smith's opt-out was deemed invalid.

[2] The following individuals submitted requests for exclusion: Brandon Smith; Ramakeli Bisland; La Rae Carmichael; John Garside; Marco Ambas; Chris Toma; Jermaine Ho A Lim; Carmen Sanchez; Eric Woods; Jesus Verdugo; Maya Harel; Elke Coffey; Lyndee Luetjen; Chloe Valerio; Russell E Stoffel; David De La Paz; Tiffany Mejia; Adolfo Murguia; Norma Larios; Richard Kuegeman; Esther Cysneros; Jose Almaraz; Stephen Bishof; Rabia Nisha; Michelle Valenzuela; Peter Collins; Corina Campa; Hadas Ghebremeskel; Laura Y Gonzalez Alcala; Christine Harms; Andrea Morris; Michelle Schneider; Marvin J Martinez; Savannah Sanchez; Carmina Rodriguez; Maria Nappo; Irene Cardenas; Gregoria Navarro; Arturo Duran; Felice E Kaplan; and Carl Dukes.

The parties have now provided the court with supplemental declarations from the settlement administrator and Defendants' counsel, which explain that Smith's request for exclusion was sent directly to Defendants' counsel and that is why she was not included in the list of individuals who opted out of the settlement. (Declaration of Lonnie D. Giamela, ¶¶ 1-2; Supplemental Declaraton of Christina M. Lucio, ¶¶ 4-6.) Defendants state that they have no objection to Smith's request for exclusion. Consequently, the court includes Smith in the list of individuals who have opted out of the settlement.

Next, Collins' objection form is signed and dated, but there are no reasons stated for his objection to the settlement. (Hawkins Dec., Ex. 11.) Notably, Collins is included in the list of individuals who opted out of the settlement; thus, it appears Collins also submitted a request for exclusion form that the settlement administrator deemed valid.

Sanchez's objection form is signed and dated. (Hawkins Dec., Ex. 12.) Under "Reason(s) for Objection," Sanchez wrote, "I do not feel I have received unfair paid wages." (*Ibid.*) Sanchez's objection does not set forth a cogent reason for denying approval of the settlement and, therefore, it is overruled.

Lastly, Marrufo's objection form is signed and dated. (Hawkins Dec., Ex. 13.) Under "Reason(s) for Objection," Marrufo wrote, "It's unfair employees will receive less than $50 when lawyers will earn thousands." (*Ibid.*) While the court appreciates Marrufo's feedback regarding the settlement, the objection does not change the court's view that the settlement is fair and reasonable to the class. Here, the estimated average gross payment is $102.99 and the estimated highest gross payment is $1,595.46. (Hernandez Dec., ¶ 15.) The amount of attorney fees sought by class counsel in this case is one-third of the common fund, which is typically sought, and awarded, in wage and hour cases. For these reasons, Marrufo's objection is overruled.

Settling Parties request incentive awards in the total amount of $55,000 ($10,000 for Hightower, Davidson, Berbera, and Peskett, and $7,500 for Atkins and Mendoza). The class representatives have filed declarations specifically detailing their participation in the action. Hightower declares that she spent over 60 hours in connection with the action, including communicating with counsel, searching for and providing documents to counsel, identifying

witnesses, and reviewing documents. (Declaration of Plaintiff Sherri Hightower in Support of Plaintiffs' Motion for Order Granting Final Approval of Class and Representative Action Settlement and Entering Judgment, ¶ 7.) Davidson declares that she communicated with counsel, contacted witnesses, and reviewed documents; but she does not provide an estimate of the time she spent in connection with this action. (Declaration of Paula Davidson in Support of Motion for Final Approval of Class Action Settlement, ¶¶ 9-13.) Berbera declares that he communicated with counsel and reviewed documents; but he does not provide an estimate of the time she spent in connection with this action. (Declaration of Mitchell Berbera, ¶¶ 5-7.) Peskett declares that she communicated with counsel, contacted witnesses, and reviewed documents; but she does not provide an estimate of the time she spent in connection with this action. (Declaration of Sharon Peskett in Support of Motion for Final Approval of Class Action Settlement, ¶¶ 11-15.) Atkins declares that he spent approximately 35 hours in connection with the action, including communicating with counsel, gathering and providing documents to counsel, reviewing documents. (Declaration of William Atkins in Support of Motion for Final Approval of Class and Representative Action Settlement and Release, ¶¶ 4-8.) Mendoza declares that she spent over 40 hours in connection with the action, including communicating with counsel, searching for and providing documents to counsel, identifying witnesses, and reviewing documents. (Declaration of Plaintiff Katherine Mendoza in Support of Plaintiffs' Motion for Order Granting Final Approval of Class and Representative Action Settlement and Entering Judgment, ¶¶ 6-7.)

Davidson, Berbera, and Peskett have now submitted supplemental declarations setting forth estimates of the time spent in connection with this action. Davidson declares that she spent approximately 60-70 hours on this case. (Supplemental Declaration of Paula Davidson, ¶ 15.) Berbera declares that he spent approximately 55 hours on this case. (Supplemental Declaration of Mitchell Berbera, ¶ 4.) Peskett declares that she spent approximately 60-70 hours on this case. (Supplemental Declaration of Sharon Peskett, ¶ 20.)

This court finds that the incentive awards are warranted and they are approved.

The court also has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*

Angeles Cellular Telephone Co. (2004) 118 Cal.App.4th 123, 127-128.) Class counsel seek attorney fees in the amount of $1,200,000 (1/3 of the gross settlement amount). Class counsel provide evidence demonstrating a total combined lodestar of $740,705. (Hawkins Dec., ¶¶ 45-52; Declaration of Shadie L. Berenji in Support of Motion for Final Approval of Class Action Settlement and Application for Approval of Attorneys' Fees and Costs, Claims Administration Fees, and Class Representatives' Service Payments ("Berenji Dec."), ¶¶ 21-23; Declaration of Kiley Lynn Grombacher in Support of Motion for Final Approval of Class Action Settlement ("Grombacher Dec."), ¶¶ 18-19; Declaration of Haig B. Kazandjian in Support of Motion for Final Approval of Class and Representative Action Settlement and Release ("Kazandjian Dec."), ¶ 14 & Ex. A.) This results in a multiplier of 1.62. The fees requested are reasonable as a percentage of the common fund and are approved.

Class counsel also request costs of $43,840.99, which is less than the $75,000 provided for in the settlement agreement. Class counsel provide evidence of incurred costs in the amount of $43,186.66 and, therefore, the costs are approved in that lesser amount. (Hawkins Dec., ¶ 54 & Ex. 9; Berenji Dec., ¶ 23 & Ex. A; Grombacher Dec., ¶ 13 & Ex. 5; Kazandjian Dec., ¶ 15 & Ex. B.) The settlement administration costs of $100,000 are also approved. (Hernandez Dec., ¶ 16.)

Accordingly, the motion for final approval of the class action settlement is GRANTED.

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

The court will set a compliance hearing for August 14, 2024, at 2:30 p.m. in Department 19. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein, the number and value of any uncashed checks, amounts remitted to Defendants, 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.

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Calendar Lines 8 – 10

Case Name: Spencer v. Monsanto Company, et al.
Case No.: 21CV376397

Three unopposed motions for admission *pro hac vice* in Lines 8-10 are GRANTED. Court will sign proposed orders. No appearances necessary on Law & Motion calendar.

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Calendar Line 9

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