

TENTATIVE RULINGS

DEPT CX102

Judge Layne H. Melzer

Court Reporters: Official court reporters (i.e., court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the court's policy on the use of privately retained court reporters which can be found on the court's website at [Court Reporter Services | Superior Court of California | County of Orange](#).

Tentative rulings: The court endeavors to post tentative rulings on the court's website in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5302. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

APPEARANCES: Department CX102 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference pursuant to CCP §367.75, California Rule of Court (CRC) 3.672 and Orange County Local Rule (OCLR) 375. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at [Civil Remote Hearings | Superior Court of California | County of Orange](#) prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available on the website. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") contained on the Court's website will be strictly enforced. Parties preferring to appear in-person for law and motion hearings may do so pursuant to CCP §367.75 and OCLR 375.

PUBLIC ACCESS: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

TENTATIVE RULINGS**May 8th, 2025**

#	Case Name	
100	Ramos vs. Southland Industries 2021-01202114	Final Accounting The Final Accounting is CONTINUED to November 13, 2025 at 2:00 p.m. in Department CX102 in order give the settlement administrator an opportunity to complete the distribution of the settlement funds. This action contains individual and representative PAGA claims. On May 20, 2021, Plaintiff Israel Ramos ("Plaintiff") filed the original Complaint against Defendants Southland Industries and Southland Industries, LLC ("Defendants"). The Complaint alleges two causes of action for PAGA violations as to two subgroups of aggrieved employees. On May 24, 2021, Plaintiff filed the First Amended Complaint ("FAC"), also alleging two causes of action for PAGA violations as to two subgroups of aggrieved employees. Subgroup A is defined as "all current and former hourly-paid or non-exempt individuals who were employed by any of the Defendants within the State of California." Subgroup B is defined as "all current and former salaried BIM Support Specialists, or persons who held similar job titles and/or performed similar job duties, misclassified as 'exempt' who were employed by any of the Defendants within the State of California." Both PAGA causes of action are predicated on various wage-and-hour violations, including failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely pay wages during employment, inaccurate wage statements, inaccurate payroll records, and failure to reimburse business-related expenses. [FAC, ¶¶ 50-81.] On August 17, 2023, Plaintiff filed the Motion for Approval of PAGA Settlement Agreement. On March 29, 2024, at the second hearing on the matter and after Plaintiff filed the operative Second Amended Complaint, and the Court granted the Motion. The Order and Judgment Granting Approval of the PAGA Settlement was entered on April 8, 2024, and approved the following distributions: • Gross Settlement Amount\$475,000.00 • Attorneys' fees \$166,250.00 • Litigation costs \$ 11,221.40 • Administration costs \$ 5,000.00 • Enhancement \$ 7,500.00 • LWDA PAGA Payment \$213,771.45 The Final Accounting hearing was scheduled for December 11, 2024. On January 8, 2025, the settlement administrator filed its

declaration regarding distribution of the Gross Settlement Amount. The administrator attested that after receiving the list of Aggrieved Employees, it determined that the number of pay periods totaled 3,899.39. The administrator stated it separately informed the parties of this determination and received the parties' approval regarding the count. However, the administrator attested that due to its inadvertent error, it did not apply the Escalator Clause or confer with the parties regarding the application of the Escalator Clause. The Escalator Clause provides that if the actual number of pay periods is more than 3,502, then the Gross Settlement Amount will be increased pro rata, or alternatively, Defendant could, at its discretion, elect to cut-off the PAGA Period so that the total pay periods did not exceed 3,502. The administrator attested that an application of the Escalator Clause would require Defendant to provide an additional \$53,886.55 towards the Gross Settlement Amount. In addition, the administrator attested that pursuant to the Settlement Agreement, 75% of this amount (i.e., \$40,414.91) is payable to the LWDA, and 25% (i.e., \$13,471.64) is payable to the Aggrieved Employees.

Nevertheless, using the original non-escalated Gross Settlement Amount, the administrator calculated the individual settlement payments, and on May 22, 2024, issued the settlement checks to the ninety-four (94) Aggrieved Employees. The administrator attested that the settlement checks ranged from \$65.71 to \$1,158.05, and the average payment was \$763.37. (Admin. Decl., ¶ 10.) The administrator attested that after some checks were returned as undeliverable and remailed, a total of 93 of the 94 settlement checks were considered successfully mailed. The check cashing date was November 18, 2024 (Admin. Decl., ¶¶ 10, 11.)

The administrator attested that as of January 7, 2025, there were thirteen (13) settlement checks, totaling \$4,690.05, that remain uncashed. Accordingly, eighty-one (81) settlement checks, totaling \$67,067.10, were cashed. (Admin. Decl., ¶ 12.) The administrator then awaited further instruction regarding what should be done due to the failure to apply the Escalator Clause. The administrator stated that to calculate the additional settlement payments to the Aggrieved Employees, the pay periods of each individual Aggrieved Employee would be divided by the total pay periods worked (3,899.29), and the result multiplied by the \$13,466.25 in additional settlement funds. In that regard, the administrator attested that it was ready to issue the additional payments, and in so doing, could include the uncashed funds for the thirteen (13) Aggrieved Employees who did not cash their original settlement checks. The administrator attested it would continue to hold any uncashed funds pending further order from the Court. (Admin. Decl., ¶¶ 13, 14.)

At the Final Accounting hearing on January 22, 2025, the Court expressed concern that neither Plaintiff's Counsel, nor Defendant's Counsel, nor the settlement administrator realized that the Escalator Clause had been triggered. The Court noted that

although it was the responsibility of the settlement administrator to ensure proper disbursement of the settlement funds, the attorneys for the parties also have a responsibility to ensure compliance with the terms of the Settlement Agreement and the Order granting approval of the settlement. After oral argument, the Court continued the hearing and granted the parties' request to brief the issue.

On February 14, 2025, the parties filed a joint brief and stipulation to clarify the Order and Judgment Granting Approval of the PAGA Settlement. Defendant's counsel attested that the parties met and conferred in to determine the best way to address this issue. (Defense Counsel Decl., ¶ 6.) Accordingly, the parties jointly stipulated as follows:

- Pursuant to Paragraph 3(b) of the Settlement Agreement, and subject to the Court's approval, Defendant elected to cut-off the PAGA Period on the last date that the total workweeks do not exceed 3,502, thus changing the PAGA Period so that it is from March 16, 2020, through April 23, 2022, instead of March 16, 2020, through July 31, 2022.
- Defendant would fund an additional \$1,698.50 to be distributed to the thirty-eight (38) underpaid Aggrieved Employees, to occur within ten (10) days of the Court approving the stipulation.
- Within fourteen (14) days, the parties would submit a proposed Additional Cover Letter that would inform all Aggrieved Employees that the PAGA Period had been shortened, and as a result, non-exempt employees and salaried exempt BIM Senior Support Specialists who are or were employed during the period of April 24, 2022, through July 31, 2022, were no longer considered "Aggrieved Employees", and thus were no longer covered by the Settlement Agreement or its release of claims. The letter would also inform these individuals that they could keep the monetary payment already issued to them through the Settlement. In addition, the letter would explain that certain individuals who were still considered "Aggrieved Employees" were entitled to additional payment.
- The settlement administrator would re-issue thirteen (13) settlement checks totaling \$4,690.05 of uncashed funds and would issue checks totaling \$1,698.50 to the Aggrieved Employees who were determined to have been underpaid in light of the shortened PAGA Period.
- All other provisions and terms of the Settlement Agreement would remain in effect, except to the extent they were modified by the stipulation and the Court's contemplated order.

In its supplemental declaration, the administrator attested that under the shortened PAGA Period, fifty-six (56) Aggrieved Employees had been overpaid by approximately \$1,698.50, and thirty-eight (38) Aggrieved Employees had been underpaid by the

same amount. (Admin. Supp. Decl., ¶¶ 9, 10.) The administrator attested that with the shortened PAGA Period, Defendant's additional funding of \$1,698.50 would place the parties in compliance with the Escalator Clause. (*Id.*, ¶ 11.) In addition, the administrator attested that thirteen (13) checks, totaling \$4,690.05, remained uncashed, and it would re-issue those checks and issue checks totaling \$1,698.50 to the thirty-eight (38) identified underpaid Aggrieved Employees upon receiving the additional funds from Defendant. (*Id.*, ¶¶ 13, 14.)

On February 21, 2025, the Court approved the parties' plan to address this issue and continued the matter so the parties could effectuate the terms of the Stipulation. The Stipulation and Order was entered on March 5, 2025.

On April 24, 2025, Plaintiff filed the administrator's second supplemental declaration. (Admin. 2nd Supp. Decl.) The administrator attests that on March 12, 2025, in accordance with the Stipulation and Order, it sent the additional cover letter to all Aggrieved Employees and sent additional settlement checks, totaling \$1,698.50, to the thirty-eight (38) identified underpaid Aggrieved Employees. The administrator also re-issued thirteen (13) individual settlement checks, totaling \$4,690.05, of uncashed funds. (Admin. 2nd Supp. Decl., ¶ 15.)

As of April 23, 2025, of the thirty-eight (38) additional checks that were issued, twenty-six (26) have been negotiated, and therefore, \$1,248.65 out of the \$1,698.50 additional funds has been cashed. Of the thirteen (13) re-issued checks, five (5) have been negotiated, and therefore, \$1,448.55 out of the \$4,690.05 original uncashed funds has been cashed. (Admin. 2nd Supp. Decl., ¶¶ 16, 18.)

The administrator attests that the current balance in the QSF is \$3,691.44, which represents the amount of uncashed funds. The administrator attests that after the check cashing deadline on September 9, 2025, any uncashed checks will be cancelled and the funds transmitted to the State Controller's Office in the name of each Aggrieved Employee whose check was voided. (Admin. 2nd Supp. Decl., ¶¶ 18, 19.)

Counsel for the parties and the settlement administrator are ordered to submit supplemental declarations no less than fourteen (14) calendar days prior to the continued Final Accounting hearing regarding the disposition of any uncashed checks.

Plaintiff's Counsel is ordered to give notice of this ruling, including to the LWDA, within five (5) calendar days.

101	Dos Santos vs. Atlas International, Inc 2024-01410298	Motion to Compel Arbitration Defendant’s Motion to Compel Arbitration of Plaintiff’s Individual PAGA Claims is DENIED. This is a PAGA-only action. On June 28, 2024, Plaintiff Ian Haither Dos Santos, as an aggrieved employee and on behalf of all other aggrieved employees (“Plaintiff”), filed a Complaint Under the Labor Code Private Attorneys’ General Act of 2004 against Defendant Atlas International, Inc. (“Defendant”). The Complaint asserts a single cause of action for PAGA penalties predicated on several Labor Code wage-and-hour violations, including failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods, failure to provide rest breaks, failure to provide accurate wage statements, failure to pay all wages owed, failure to pay wages owed at time of separation, and failure to reimburse for necessary business expenses. On November 12, 2024, Defendant answered the Complaint. On November 13, 2024, after Defendant filed a Notice of Related Case, the Court took notice that the instant action is related to <i>Dos Santos v. Atlas International, Inc.</i>, Case No. 2024-01394521, wherein Plaintiff alleged class claims against Defendant. The cases have not been consolidated. On January 30, 2025, Defendant filed the current Motion to Compel Arbitration. In the Motion, Defendant seeks to compel Plaintiff’s individual PAGA claim to arbitration on the ground that there is a valid and enforceable arbitration agreement requiring Plaintiff to submit any employment-related claims to arbitration. As a preliminary matter, it is noted that in the related case of <i>Dos Santos v. Atlas International, Inc.</i>, Case No. 2024-01394521 (“Dos Santos Class Action”), the parties and the Arbitration Agreement are identical to the instant action. In the Dos Santos Class Action, Plaintiff filed a Class Action Complaint concurrently with his filing of the Complaint in the instant PAGA-only action. Defendant brought a motion to compel Plaintiff’s individual claims to arbitration and dismiss the class claims in the Dos Santos Class Action. At the hearing on March 27, 2025, the Court found that the Arbitration Agreement, including the express class action waiver, is valid and enforceable. As a result, the Court granted Defendant’s motion to compel arbitration, dismissed Plaintiff’s class claims without prejudice, and stayed the rest of the action pending completion of arbitration. (See, Case No. 2024-01394521, ROA 59.) Therefore, since the validity and enforceability of the Arbitration Agreement has already been adjudicated, the only issue in the instant Motion is whether Plaintiff’s individual PAGA claim can be compelled to arbitration. In the instant Motion, Defendant contends that in the PAGA Complaint, all of Plaintiff’s claims arise out of or relate to his
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employment with Defendant, including Plaintiff's "headless PAGA" claim, which Plaintiff alleges is brought on behalf of other aggrieved employees of Defendant. According to Defendant, the Arbitration Agreement allows Plaintiff to assert a representative PAGA claim after the arbitrator determines that Plaintiff is an aggrieved employee. The provision in the Arbitration Agreement states in part:

To the extent permitted by law without impairing the enforceability of this arbitration agreement, [Defendant] and [Plaintiff] agree that each shall only submit their own individual claims in arbitration and will not seek to represent the interests of any other person and that each will not assert class, collective, or representative claims against the other in arbitration. ... To the extent applicable law provides that employees may not be required to waive their right to bring PAGA claims under the California Labor Code Private Attorneys General Act of 2004 (but only to that extent), this arbitration agreement shall not impair my right to bring representative PAGA claims, notwithstanding any other provision of this arbitration agreement.

(See, ROA 29, Exh. A to Decl. of Nam Phamtran.)

Defendant contends that under the holding in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 142 S.Ct. 1906, 213 L.Ed.2d 179, individual PAGA claims may be compelled to arbitration. In this instance, Defendant contends Plaintiff has asserted a "headless" PAGA claim on behalf of other aggrieved employees wherein he claims he is not asserting an individual PAGA claim for himself. As argued by Defendant, however, "headless" PAGA actions are not allowed under the PAGA statute. In citing to *Leeper v. Shipt* (2024) 107 Cal.App.5th 1001, Defendant argues that all PAGA actions necessarily include an individual PAGA claim. As a result, Defendant contends that since Plaintiff's PAGA Complaint necessarily includes an individual PAGA claim, that claim must be compelled to arbitration under the holding in *Viking River*.

In opposition, Plaintiff contends the instant Motion fails because his PAGA Complaint only asserts representative PAGA claims. Plaintiff notes that the PAGA Complaint expressly states that this action is being brought "to collect civil penalties under PAGA for all other aggrieved employees", and "Plaintiff does not seek to assert his own claim for civil penalties under PAGA as part of this Action." (Compl., Preamble and ¶ 4.) In addition, Plaintiff contends he asserted this representative-only PAGA claim in his April 12, 2024 PAGA notice letter to Defendant and the Labor and Workforce Development Agency ("LWDA"). (ROA 48, Declaration of Amanda L. Thompson ("Thompson Decl."), ¶ 3.) As a result, Plaintiff contends that since

he has only asserted representative PAGA claims in the Complaint, then his PAGA claims cannot be compelled to arbitration under the Arbitration Agreement.

Defendant's arguments are not well taken. The PAGA-only Complaint in the instant action expressly states that "Plaintiff does not seek to assert his own claim for civil penalties under PAGA as part of this Action" and "Plaintiff, in Plaintiff's representative capacity *only*, seeks civil penalties" under PAGA for Defendant's alleged Labor Code violations. (Compl., ¶¶ 4, 35.) Indeed, the Complaint appears to have been drafted with the goal of carving out all individual components of the claims. Throughout the Complaint, Plaintiff does not explicitly seek PAGA civil penalties for any alleged wage and hour violations that he may have suffered. Instead, Plaintiff alleges that "Aggrieved Employees are entitled to recover civil penalties" under PAGA for Defendant's alleged Labor Code violations. To the extent Plaintiff identifies himself as an "aggrieved employee", he is required to do so in order to meet the standing requirements for PAGA non-individual claims. (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1114.) Therefore, it is found that Plaintiff has not asserted any individual PAGA claims in the Complaint.

As for Defendant's reliance on *Leeper*, it is misplaced. Although *Leeper* did hold that PAGA actions necessarily include an individual component, the court in *Rodriguez* found the holding unpersuasive in circumstances similar to those found in the instant litigation. (*Rodriguez v. Packers Sanitation Services LTD., LLC* (2025) 109 Cal.App.5th 69, 78.) In *Rodriguez*, the parties disputed whether the complaint included an individual claim that could be compelled to arbitration. Like the Complaint in the instant action, the complaint in *Rodriguez* asserted a single PAGA cause of action predicated on several Labor Code wage and hour violations. (*Id.*, at pp. 72-73.) The defendant brought a motion to compel arbitration of the plaintiff's individual PAGA claim. (*Ibid.*)

However, after acknowledging the decision in *Leeper*, the *Rodriguez* court found that the logic in *Leeper* did not withstand scrutiny. According to the *Rodriguez* court, *Leeper* "decided that under Labor Code section 2699, subdivision (a), (1) an individual PAGA claim is a necessary component of a PAGA action; *therefore*, (2) all PAGA actions ... included an individual PAGA claim." (*Rodriguez, supra*, 109 Cal.App.5th at p. 79.) But the *Rodriguez* court found that the second conclusion did not follow from the first. Instead, the court in *Rodriguez* found that "just because a PAGA action *must* include an individual PAGA claim does not mean any particular complaint brought under the auspices of PAGA *does* contain one. It means that a PAGA complaint *should* contain an individual PAGA claim, not that it *does*." (*Ibid.*) The *Rodriguez* court went on to note that it was not unusual for plaintiffs to file complaint that did not conform to applicable statutory requirements, and that there are specific procedural provisions—such as motions to strike—that address that scenario. (*Ibid.*)

		In addition, the <i>Rodriguez</i> court found that the court in <i>Leeper</i> reached its conclusion without actually considering the allegations of the complaint before it. (<i>Rodriguez, supra</i>, 109 Cal.App.5th at p. 80.) “By ruling in this fashion, the <i>Leeper</i> court appeared to insert into the plaintiff’s complaint a missing claim. But in our legal system it is the plaintiff, not the court, who is responsible for prosecuting a civil action. [Citation.] And the complaint in a civil action ‘serves to frame and limit the issues.’ [Citation.] The <i>Leeper</i> court overlooked these principles by construing Labor Code section 2699, subdivision (a) as requiring an individual PAGA claim, and not only declaring that the complaint ‘necessarily’ included such a claim but also requiring the plaintiff to arbitrate a claim she had never chosen to assert.” (<i>Ibid.</i>) Accordingly, the <i>Rodriguez</i> court found: “If the plaintiff’s complaint asserts no individual PAGA claim, there is no existing dispute over his or her right to obtain an individual PAGA remedy, and he or she cannot properly be ordered to arbitrate such a claim. Therefore, if on a motion to compel arbitration, the court examines the complaint and determines it does not allege an individual PAGA claim, the court should decline to compel any such claim to arbitration.” (<i>Ibid.</i>) Here, in the instant litigation, Plaintiff’s failure to allege an individual PAGA claim may mean the Complaint fails to comply with section 2699, subdivision (a), but that would be a pleading deficiency that is not properly challenged through the instant Motion. Since Plaintiff has not asserted an individual PAGA claim in the Complaint, then the Court cannot compel a non-existent claim to arbitration. Accordingly, the Motion is denied. Defendant is ordered to give notice of this ruling.
102	Figueroa vs. CR&R Incorporated 2024-01441930	1. Motion to Compel Arbitration 2. Case Management Conference Defendant CR&R Incorporated’s Motion to Compel Arbitration and Dismiss Class Claims is GRANTED. Plaintiff Sergio Figueroa’s individual claims are ordered to arbitration, Plaintiff’s class claims are dismissed without prejudice, and this action is otherwise stayed pending the completion of arbitration. This is a putative wage-and-hour class action and PAGA matter. On November 22, 2024, Plaintiff Sergio Figueroa, as an individual and on behalf of all others similarly situated (“Plaintiff”), filed a Class Action Complaint against Defendant CR&R Incorporated (“Defendant”) alleging a single cause of action for Violation of Labor Code § 226(a). On January 28, 2025, as a matter of right, Plaintiff filed the operative First Amended Class and Representative Action Complaint adding a cause of action for PAGA penalties. On March 4, 2025, Defendant filed the instant Motion to Compel Arbitration wherein it seeks to compel Plaintiff’s individual claims to arbitration, dismiss the class claims, and stay this litigation. Plaintiff has indicated that he does not oppose the instant Motion.

		In the parties' Joint Status Conference Statement filed on May 1, 2025, Defendant contends Plaintiff waived and released the claims alleged in the First Amended Complaint because he was included as a putative class member and aggrieved employee in a related case, CR&R Wage and Hour Cases, Case No. JCCP 5145, which is being handled in Riverside County Superior Court. Plaintiff did not request to be excluded from the coordinated action, and on April 28, 2025, the Riverside court granted final approval of the class action and PAGA settlement. The issue of the effect of the JCCP settlement is not currently before the Court. Perhaps it will be after the arbitration or by way of a different motion. . The Court sets an Arbitration Review hearing on January 8, 2026, at 9:30 a.m. in Department CX102. The parties are ordered to file a joint status report at least five (5) court days before the hearing. Defendant is ordered to give notice of this ruling.
103	Finnell vs. Control Air Enterprises, LLC 2021-01211292	1. Motion to Compel Deposition (Oral or Written) 2. Status Conference Defendants' Motion to Compel the Deposition of Plaintiff Sean Finnell and Request for Monetary Sanctions is GRANTED. Plaintiff Sean Finnell is ordered to appear for his deposition within 30 calendar days. The Court rules as follows on Plaintiff's evidentiary objections to the Declaration of Nicholas T. Spencer filed in support of Defendants' reply: 1. Overruled 2. Overruled This is an employment discrimination, wage and hour, and PAGA case. On July 20, 2021, Plaintiff Sean Finnell ("Plaintiff") filed a Complaint against Defendants Control Air Enterprises, LLC; Control Air Holdings, Inc.; and Todd Gavin. The Complaint alleges eight (8) causes of action for: 1. Medical Condition Discrimination (Associational); 2. Failure to Engage in the Interactive Process; 3. Retaliation (FEHA); 4. Failure to Prevent Discrimination, Harassment, or Retaliation; 5. Violation of Labor Code § 1102.5; 6. Violation of Labor Code § 6310; 7. Violation of Labor Code § 232.5; and 8. Wrongful Termination in Violation of Public Policy Plaintiff subsequently dismissed Defendant Gavin from the action, with prejudice, and filed an amended Complaint on October 6, 2021, adding a ninth cause of action for PAGA violations. On December 19, 2022, Plaintiff filed the operative Second Amended Complaint ("SAC") alleging the same nine causes of action and

adding causes of action for Retaliation (requesting reasonable accommodation), Vacation Time and Pay, and Failure to Pay All Wages Due at Separation.

On March 14, 2025, Defendants filed the current Motion to Compel Plaintiff's Deposition and Request for Sanctions.

Statement of the Law

"Any party may obtain discovery...by taking in California the oral deposition of any person, including any party to the action." (Code Civ. Proc., § 2025.010.) If the party being deposed objects to the deposition notice, it must object to same at least three calendar days prior to the date for which the deposition is scheduled. (Code Civ. Proc., § 2025.410, subds. (a) & (b).)

"If, after service of a deposition notice, a party to the action, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony...." (Code Civ. Proc., § 2025.450, subd. (a); *Robbins v. Regents of University of California* (2005) 127 Cal.App.4th 653, 659; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶¶ 8:820, 8:825.)

"A motion under subdivision (a) shall comply with both of the following: (1) The motion shall set forth specific facts showing good cause justifying the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice. (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents, electronically stored information, or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance." (Code Civ. Proc., § 2025.450, subd. (b); see, *Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1015-1016 [deposing attorney's letter to deponent's counsel stating that he would file a motion to compel unless he heard back from deponent's counsel satisfied meet-and-confer requirement].)

"If a motion under subdivision (a) is granted, the court shall impose a monetary sanction ... in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.450, subd. (g)(1).)

Contentions and Merits

Defendants contend that despite the issuance of two deposition notices, Plaintiff has failed to appear for his noticed deposition.

According to Defendants, the first notice was served on November 19, 2024, noticing Plaintiff's deposition for the mutually agreed upon date of December 17, 2024. (See, ROA 288, Declaration of Nicholas T. Spencer ("Spencer Decl."), ¶ 1; Exh. A.) Defendants state that shortly thereafter, Plaintiff's counsel requested that the deposition be moved to December 19 or 20, 2024, for unspecified "medical reasons", and Defendants' counsel agreed to do so. As a result, Plaintiff's deposition was moved to December 20, 2024. (*Id.*, Exh. B.)

However, after Plaintiff deposed former defendant Todd Gavin on December 4, 2024, Plaintiff's counsel informed CAE's counsel that Plaintiff objected to his December 20, 2024 deposition, and would not appear for his deposition on that date. Plaintiff's counsel claimed the deposition would not go forward because it became clear during Gavin's deposition that Defendants had withheld certain documents from production during discovery. (Spencer Decl., ¶ 7.) Defendants once again agreed to reschedule Plaintiff's deposition for the week of January 13, 2025, and the parties agreed to try and resolve any alleged discovery issues. Defendants contend that counsel exchanged emails about the alleged discovery issue, but on January 6, 2025, Plaintiff's counsel sent a meet and confer letter raising numerous issues not previously discussed. *Id.*, ¶ 10; Exh. G.) According to Defendants, they provided additional documents to Plaintiff on January 23, 2025, and met and conferred in early February in an attempt to rectify Plaintiff's remaining issues and reschedule his deposition. Defendants argue, however, that Plaintiff continued to move the goal post regarding alleged discovery issues and his pending deposition.

Defendants assert that on February 19, 2025, they sent a meet and confer letter to Plaintiff's counsel requesting deposition dates by February 21, 2025, for Plaintiff's deposition. (Spencer Decl., ¶ 12; Exh. H.) Defendants note that they advised Plaintiff's counsel that if Plaintiff did not appear on the noticed date, Defendants' counsel would take Plaintiff's non-appearance and move to compel his appearance. According to Defendants, Plaintiff's counsel did not respond, and as a result, Defendants' counsel unilaterally noticed the deposition of Plaintiff for March 11, 2025. (*Id.*, ¶ 13; Exh. I.) But on March 7, 2025, Plaintiff objected to the notice and advised Defendants he would not appear for deposition until Defendants' alleged discovery abuse was resolved. According to Defendants, Plaintiff had been threatening since January 2025 to file a motion regarding this issue. (*Id.*, ¶ 14; Exh. J.) Nevertheless, Defendants' counsel sent a meet and confer letter regarding their intention to move forward with the deposition and discussing Plaintiff's unreasonable position in refusing to appear. (*Id.*, ¶ 15; Exh. K.) On March 11, 2025, Defendants took Plaintiff's non-appearance. (*Id.*, ¶ 16; Exh. L.)

Defendants argue that good cause exists to compel Plaintiff's deposition. As argued by Defendants, they have been attempting to take Plaintiff's deposition since October 2024, but Plaintiff has

refused to appear due to ancillary discovery issues. Defendants contend they have made several attempts to resolve the issues raised by Plaintiff, but *Plaintiff refuses to sit for his deposition until he receives a ruling on his now-pending discovery motion*. Defendants argue Plaintiff's position is improper and lacks legal support.

In opposition, Plaintiff contends his position remains unchanged since December 6, 2024, when his counsel advised Defendants' counsel that Plaintiff's deposition could not proceed until after Defendants' alleged discovery abuses were resolved. According to Plaintiff, Defendants violated the Court's June 30, 2023 Order compelling production of certain documents and Code-compliant responses. (ROA 349, Declaration of Jason Hatcher ("Hatcher Decl."), ¶¶ 2, 8.) In that regard, Plaintiff contends it offered Defendants the opportunity to select a date between July 14, 2025, and August 15, 2025, for Plaintiff's deposition—after the June 26, 2025 hearing on Plaintiff's pending Motion for Sanctions regarding Defendants' alleged discovery abuses.

Plaintiff explains in great detail the alleged discovery abuses engaged in by Defendants and the documents they allegedly failed to produce. As argued by Plaintiff, production of the disputed documents would provide Plaintiff the opportunity to review certain information to refresh his recollection prior to his deposition. Plaintiff contends that pursuant to the Court's inherent powers and the Civil Discovery Act, the timing of discovery may be altered for good cause shown—in this instance, set Plaintiff's deposition after he obtains a ruling on his pending Motion for Sanctions.

However, shortly after the instant Motion was filed, two *ex parte* applications—one by Defendants for an order to advance the hearing date on the Motion and shorten time, and the second by Plaintiff for an order to shorten time and advance the hearing date on his Motion for Sanctions. (ROAs 299, 303.) In his opposition to Defendant's *ex parte* application, Plaintiff raised the issue of his own pending Motion for Sanctions regarding Defendant's alleged discovery abuses.

At the *ex parte* hearing on March 24, 2025, the Court granted Defendants' application to advance the hearing on the instant Motion and denied Plaintiff's application. In making its rulings, the Court "fully considered the arguments of all parties, both written and oral, as well as the evidence presented." Therefore, the Court has already considered Plaintiff's argument regarding the setting of his deposition after the hearing on his pending Motion for Sanctions, and the Court clearly rejected that argument. Plaintiff will not be given another bite at the apple on the issue.

It is also noted that on April 2, 2025, the parties filed a Joint Stipulation to Continue Trial Date, wherein they agreed to continue the trial from June 2, 2025, to December 2, 2025, so they could complete discovery. (ROA 336.) In the Stipulation, the parties

acknowledged the pending matters of the instant Motion and Plaintiff's Motion for Sanctions. The parties also stipulated to continue all motion and discovery cut-off deadlines accordingly. (*Id.*) The Order regarding the Stipulation was entered on April 7, 2025, and the trial date has been continued to December 8, 2025. (ROA 339.)

Plaintiff has not provided a valid reason for his repeated and continuing refusal to appear for his deposition. In its ruling on the dueling *ex parte* applications, this Court has already essentially determined that Plaintiff's pending Motion for Sanctions does not need to be resolved before Plaintiff sits for his deposition. Since Plaintiff provides no other valid reason for delaying his deposition, Defendants' Motion is granted.

As for Plaintiff's contention that the Motion should be denied because Defendants failed to meet and confer in good faith prior to bringing this Motion, that argument is not well taken. As noted above, no meet and confer is required when a deponent fails to appear for deposition. (Code Civ. Proc., § 2025.450, subd. (b)(2); see also, *Leko v. Cornerstone Building Inspection Service* (2001) 86 Cal.App.4th 1109, 1124.) Defendants' counsel contacted Plaintiff's counsel the day before Plaintiff's scheduled March 11, 2025 deposition to determine if Plaintiff intended to appear. Plaintiff's counsel informed Defendants' counsel that Plaintiff would not appear. (Spencer Decl., ¶ 15.) Given counsels' numerous communications before March 11, 2025, Defendants' counsel was not required to do anything further to meet the requirements of the Code.

Sanctions

Plaintiff contends the award of sanctions would be unjust. As argued by Plaintiff, he and his counsel acted with substantial justification under the circumstances. Notably, Plaintiff contends he and his counsel "never indicated that he would not sit for a deposition." (Opp., 15:3.) Instead, Plaintiff contends that after Defendants' alleged discovery abuses became apparent, he could not forego a discovery sanctions motion. According to Plaintiff, although he was willing to continue the trial in order to resolve the discovery disputes and allow Defendants' time to take his deposition, Defendants purportedly "rushed" to unilaterally notice his March 11, 2025 deposition and file the instant Motion. Plaintiff contends he has offered deposition dates to Defendants for days after the hearing on his pending Motion for Sanctions. Plaintiff argues he was justified in objecting to the timing of his deposition.

In light of the chronology of events, Plaintiff's argument is unavailing. As discussed above, this Court considered and rejected Plaintiff's "timing" argument when the Court heard and ruled on Defendants' and Plaintiff's competing *ex parte* applications. Although the Court did not make any substantive findings regarding the merits of the instant Motion and Plaintiff's pending Motion for Sanctions at the March 24, 2025 hearing, implicit in the Court's

		ruling was a rejection of Plaintiff's assertion that a ruling on his Motion for Sanctions had to occur before Defendants could compel his deposition. Therefore, the Court find that Plaintiff did not act with substantial justification in failing to appear for his deposition. Moreover, Plaintiff's statement that he never indicated he would not sit for a deposition is in direct conflict with counsel's declaration asserting that "[b]ecause of [Defendants'] discovery abuses, [counsel] instructed that Plaintiff's deposition would not go forward until CAE's discovery abuses were resolved." (ROA 345, Declaration of David P. Myers, ¶ 3.) Sanctions totaling \$5,340.00 are imposed against Plaintiff and Plaintiff's counsel, jointly and severally. Plaintiff and Plaintiff's counsel are ordered to pay the sanctions to Defendants within ten (10) court days. Defendants are ordered to give notice of this ruling.
104	De La Cruz vs. Montoya 2020-01131745	1. Motion to Compel Answers to Special Interrogatories 2. Motion to Compel Production Plaintiff Michelle de la Cruz's unopposed Motion to Compel Defendant Morgan Montoya's Responses to Plaintiff's Special Interrogatories, Set One is GRANTED IN PART. Plaintiff Michelle de la Cruz's unopposed Motion to Compel Defendant Morgan Montoya's Responses to Plaintiff's Requests for Production of Documents, Set Two is GRANTED IN PART. Defendant Morgan Alex Montoya, individually and dba Superior Hauling and Construction is ordered to provide written, verified responses, without objections to Plaintiff's Special Interrogatories, Set One; and Plaintiff's Requests for Production of Documents, Set Two, within 30 days of service of notice of this ruling. Plaintiff's requests for monetary sanctions as to each Motion are DENIED. Each Notice of Motion incorrectly provides that, "Defendants will further move this Court for an order requiring Plaintiff and Plaintiff's counsel, jointly and severally, to pay monetary sanctions to Defendants" (ROAs 312, 313.) The Notices are thus defective, and monetary sanctions cannot be imposed. (CRC, Rule 2.30(c) ["A party's motion for sanctions must ... identify the attorney, law firm, party, witness, or other person against whom sanctions are sought."].) Plaintiff is ordered to give notice of this ruling.

105	Gomez vs. Black Lion Farms, LLC, a California limited liability company	1. Petition to Compel Arbitration 2. Order to Show Cause re: Monetary Sanctions 3. Case Management Conference
2024-01418681		Defendants' Motion to Compel Arbitration is CONTINUED to September 4, 2025, at 2:00 p.m. in Department CX102. The Order to Show Cause re: Sanctions against Plaintiff's counsel for Failure to Appear and Failure to File a Case Management Conference Statement is VACATED. The Status Conference is also CONTINUED to September 4, 2025, at 1:30 p.m. in Department CX 102. This is a putative wage-and-hour class action. On August 14, 2024, Plaintiff Angel Daniel Gomez, individually and on behalf of all others similarly situated ("Plaintiff"), filed a Class Action Complaint alleging the eight (8) causes of action for various Labor Code violations. The named Defendants are Black Lion Farms, LLC; Black Lion Labs, LLC; Gold Flora Corporation; Gold Flora Partners, LC; Gold Flora Partners Costa Mesa, LLC; Gold Flora Partners Corona, LLC; Gold Flora Capital, LLC; and Gold Flora Acquisition Fund 1, LLC (collectively, "Defendants"). On October 25, 2024, Defendants answered the Complaint. On February 3, 2025, Defendants filed the current Motion to Compel Arbitration. However, on April 7, 2025, Defendants filed a Notice of Stay of Proceedings wherein they assert that the instant action must be stayed due to an order appointing a receiver. The receivership order stays all actions against the Defendants. Defendants are also involved in active bankruptcy proceedings. In light of the active receivership and stay order, the instant action is stayed pending further hearings in the receivership action. Accordingly, the Motion to Compel Arbitration is continued. Clerk to give notice of the ruling.
106	Solomon vs. Micro Electronics, Inc.	Motion For Final Approval
2022-01262829		Plaintiff Lee Solomon's Motion for Final Approval of Class Action and PAGA Settlement is CONDITIONALLY GRANTED, on the condition that Class Counsel provide a declaration from the settlement administrator clarifying certain issues regarding the total workweeks worked by the Class Members and the number of PAGA Group members, and verifying the accuracy of the average, low, and high Individual Settlement Shares and Individual PAGA Payments. This is a putative wage-and-hour class action and PAGA matter. On June 2, 2023, Plaintiff Lee Solomon, individually and on behalf of all others similarly situated ("Plaintiff"), filed a Class Action Complaint against Defendant Micro Electronics,

Inc. dba Micro Center – The Ultimate Computer Store. The Complaint alleged eight (8) causes of action for various wage-and-hour violations of the Labor Code and for unfair business practices. On December 12, 2022, pursuant to stipulation and order, Plaintiff filed the operative First Amended Complaint (“FAC”) adding a PAGA claim.

On October 11, 2023, the parties engaged in private mediation. During the mediation, the parties reached an agreement to resolve this litigation, and they entered into a long-form settlement agreement on February 22, 2024.

On May 17, 2024, Plaintiff filed the Motion for Preliminary Approval of Class and Representative Action Settlement. On November 1, 2024, at the second hearing on the matter, the Court granted the Motion, and the Order Granting Preliminary Approval was entered on November 15, 2024.

On March 13, 2025, Plaintiff filed the current Motion for Final Approval of Class and Representative Action Settlement. The Motion seeks final approval of the Joint Stipulation of Class PAGA Representative Action Settlement and Release (“Settlement Agreement”), which provides for the settlement of Plaintiff’s claims for the non-reversionary Gross Settlement Amount of \$225,000.00. The putative Class is comprised of sixty-eight (68) Class Members consisting of: “All individuals who were employed by Defendant as non-exempt Inventory Specialists in California during the Class Period.” The Class Period is the period from June 2, 2018, through January 11, 2024.

The Settlement also pertains to PAGA Members (i.e., Aggrieved Employees) consisting of: “All individuals who were employed by Defendant as non-exempt Inventory Specialists in California at any time during the PAGA Period.” The PAGA Period is the period from June 2, 2021, through January 11, 2024.

On December 30, 2024, the settlement administrator, Phoenix Settlement Administrators, sent Notice Packets, in English and Spanish, by U.S. Mail to all of the putative Class Members. As of March 13, 2025, no Class Members had objected to, or asked to be excluded from, the Settlement. In addition, no Class Members submitted disputes as to the number of weeks they had worked during the Class Period.

However, the settlement administrator’s declaration contains conflicting, and thus unverifiable, information. In its declaration, the settlement administrator first attests that the

"total number of workweeks was 2,556 which was under the estimated 2,908 workweeks. Thus, the escalator clause was not triggered." (Admin. Decl., ¶ 10.) However, the settlement administrator then attests there are sixty-eight (68) Class Members who "worked a collective total of four thousand one hundred twenty-six (4,126) Workweeks during the Class Period." ("Admin. Decl., ¶ 12.) The Court cannot determine which workweeks total is correct, and therefore, it is not clear if the Escalator Clause was triggered. It is also not clear if the information regarding the average, lowest, and highest Individual Settlement Shares is correct since it is not clear which workweeks total was used to calculate these amounts.

In addition, the settlement administrator has attested that "[t]here are eight hundred eight (808) Aggrieved Employees who worked a total of eleven thousand three hundred thirteen (11,313) pay periods during the PAGA Period." (Admin. Decl., ¶ 13.) Clearly, this information is incorrect. As a result, the Court left in the dark as to the actual number of Aggrieved Employees and left without accurate information regarding the average, high, and low Individual PAGA Payments.

Within five (5) court days, the settlement administrator must provide a supplemental declaration clarifying the following information:

- The actual total number of workweeks worked by the Class;
- Whether or not the Escalator Clause has been triggered;
- The amounts of the average, high, and low Individual Settlement Shares;
- The total number of PAGA Members/Aggrieved Employees;
- The total number of pay periods worked by the PAGA Members/Aggrieved Employees; and
- The amounts of the average, high, and low Individual PAGA Payments.

The Court finds that the notice to the Class was adequate. Accordingly, the Court certifies the above-defined Class for settlement purposes only. Upon submission of the settlement administrator's supplemental declaration, the Court will determine if the \$225,000.00 Class Action and PAGA Settlement is fair and reasonable. If the Court reaches that conclusion, it will approve the following specific awards:

- \$75,000.00 for attorneys' fees to Class Counsel, Aegis Law Firm, PC;

- \$15,243.60 in litigation costs to Class Counsel, Aegis Law Firm, PC;
- \$6,500.00 for settlement administration costs to Phoenix Settlement Administrators;
- \$5,000.00 for the Class Representative Service Payment to Plaintiff Lee Solomon;
- \$15,000.00 to the LWDA (Labor and Workforce Development Agency) for its share of the PAGA penalties.

The Net Settlement Amount payable to all Class Members and PAGA Members/Aggrieved Employees is \$108,256.40, including the \$5,000.00 in PAGA penalties to be distributed to the PAGA Members/Aggrieved Employees in accordance with the Settlement Agreement. Pursuant to the Settlement Agreement, Defendant is ordered to pay all employer payroll taxes owed on the wages portion of the Individual Settlement Payments.

Within five (5) court days, Class Counsel must submit a revised Proposed Order with the following corrections:

- Re-format the document to eliminate blank pages;
- Remove attorney information from the caption page;
- Update the date and time of the final approval hearing in the caption and first paragraph;
- Title must state the Order and Judgment is for Final Approval of the Class Action and PAGA Representative Settlement;
- Identify the Settlement Agreement by the ROA number of the declaration to which it is attached;
- Include a paragraph defining the PAGA Group / Aggrieved Employees;
- In Paragraph 14, update the amount of litigation costs awarded so as to be consistent with this ruling;
- Paragraph 19 must state that the Court's continuing jurisdiction is pursuant to CCP § 664.6 and CRC 3.769(h);
- Paragraph must be added regarding the released Class claims and the released PAGA claims; and
- Paragraph must be added regarding the date, time, and location of the Final Accounting hearing.

Within five (5) court days, Class Counsel must also provide proof of service of the instant Motion on the LWDA.

Final Accounting is set for December 18, 2025, at 2:00

		p.m. in Department CX102. Counsel shall submit the final administrator's report no later than ten (10) court days prior to the Final Accounting hearing regarding the status of the settlement administration. The final report must include all information necessary for the Court to determine the total amount of the settlement funds actually paid to Class Members and PAGA Group Members, and the amount of uncashed funds remitted to the State Controller's Office. If the settlement funds are not completely disbursed by the report deadline, counsel must request a continuance. Plaintiff is ordered to give notice of this ruling, including to the LWDA, and file proof of service within five (5) court days.
107	Ortiz vs. Acrisure of California, LLC 2023-01365781	Motion for Approval of Class Settlement Plaintiff Rodolfo Ortiz's Motion for Preliminary Approval of Class Action and PAGA Settlement is GRANTED. This is a putative wage-and-hour class action and PAGA matter. On November 30, 2023, Plaintiff Rodolfo Ortiz, an individual on behalf of himself and all others similarly situated ("Plaintiff"), filed a Class Action Complaint against Defendants Acrisure of California, LLC; Acrisure of California Partner Group, LLC; and Mills Insurance Services ("Defendants"). The Complaint alleges nine (9) causes of action for various Labor Code wage-and-hour violations and unfair business practices. On January 17, 2024, Defendants demurred. However, on February 13, 2024, before the hearing on the demurrer, Plaintiff filed the operative First Amended Complaint ("FAC") adding a cause of action for PAGA violations. On January 13, 2025, Plaintiff filed the instant Motion for Preliminary Approval of Class Action and PAGA Settlement and submitted the parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement") for the Court's review. The Motion seeks preliminary approval of the parties' proposed settlement for the non-reversionary Gross Settlement Amount of \$250,000.00. Based upon a review of the Settlement Agreement, the Court finds the Settlement falls within the range of what is considered fair and reasonable, subject to a final determination at the Final Approval hearing. Within five (5) court days, Class Counsel must make the following corrections to the Settlement Agreement and provide the following information: On page 11 of the Settlement Agreement, the paragraphs currently identified as "3.2.4.1" and "3.2.4.2" are incorrectly numbered; they should be identified as "3.2.5.1" and "3.2.5.2".

- Paragraph 7.5.2 should state that the Court has the final say regarding the authenticity and validity of any request for exclusion.
- For requests for exclusion, objections, and challenges to calculation of workweeks, the deadline for submission should be 60 days after the mailing of the Class Notice, plus an additional 45 days after the remailing of any Class Notice.
- Settlement Agreement must provide that the settlement administrator will post copies of the operative Complaint, Settlement Agreement, Class Notice, preliminary approval order, and Final Approval Order and Judgment on its website for at least 60 days.
- In Section 8 of the Class Notice, the department number for the final approval hearing must be updated to Department CX102.
- Class Counsel must provide a copy of the LWDA PAGA Notice Letter.
- Class Counsel must provide information regarding the estimated average, high, and low individual settlement payments, and the estimated average, high, and low individual PAGA payments.

Within five (5) court days, Class Counsel must also provide a revised Proposed Order with the following corrections:

- Revisions to reflect the reassignment of this matter to the Hon. Layne H. Melzer in Department CX102;
- Remove the attorney information from the caption page;
- In the first paragraph, update the date and time of the preliminary approval hearing;
- Add information about the Gross Settlement Amount and the proposed awards for attorneys' fees, litigation costs, administration costs, PAGA penalties, and Plaintiff's enhancement award;
- In Paragraph 14, it must state that the Court's continuing jurisdiction is pursuant to CCP § 664.6 and CRC 3.769(h).

The Motion for Final Approval will be heard on August 7, 2025, at 2:00 p.m. in Department CX102. All papers for the Motion for Final Approval are due no later than sixteen (16) court days prior to the hearing date. If Class Counsel cannot meet this deadline, then counsel must request a continuance of the hearing. Failure to do so may result in the issuance of an OSC re Monetary Sanctions.

At the Final Approval hearing, evidence supporting the request for an award of attorneys' fees should be presented in the form of time records, or a summary of time spent on the substantive tasks, to enable the Court to evaluate the lodestar and costs claimed. Class Counsel should state by declaration whether time records were kept and created contemporaneously or otherwise. The Court also reminds Class Counsel that although a determination regarding the amount of the attorneys' fees award will not be made until final

		approval, the Court is unlikely to approve attorneys' fees in excess of thirty percent (30%) of the Gross Settlement Amount absent unique circumstances. As a result, in the supplemental filing, Class Counsel should address whether any such unique circumstances exist in this litigation. In addition, Class Counsel must attest as to whether there is a fee-splitting arrangement with any other counsel or confirm there is none. The amount of the Class Representative Service Payment is higher than what is usually approved by the Court. Therefore, at the Final Approval hearing, Plaintiff and Class Counsel must provide detailed declarations describing circumstances to justify the requested award, and addressing factors set forth in <i>Golba v. Dick's Sporting Goods, Inc.</i> (2015) 238 Cal.App.4th 1251, 1272, and <i>Clark v. Am. Residential Servs., LLC</i> (209) 175 Cal.App.4th 785, 804. Plaintiff must provide an estimate of the hours spent participating in this litigation. Plaintiff to give notice of this Court's ruling, including to the LWDA, within five (5) calendar days, and file proof of service.
108	Varela vs. Tawa Supermarket, Inc. 2023-01330200	Motion for Approval of Class Settlement Plaintiff Adalberto Medina Varela's Motion to Approve Settlement Agreement and Release of PAGA Claims is CONTINUED to September 25, 2025, at 2:00 p.m. in Department CX102 in order to give Plaintiff's counsel an opportunity to address the issues identified below. This is a PAGA-only action. On May 30, 2023, Plaintiff Adalberto Medina Varela, individually and on behalf of all others similarly situated ("Plaintiff"), filed a Class Action Complaint against Defendant Tawa Supermarket, Inc. ("Defendant"). The Complaint asserts eight (8) causes of action for various Labor Code wage-and-hour violations and unfair business practices. On August 29, 2023, pursuant to stipulation and order, Plaintiff filed the First Amended Class Action and Representative Action Complaint ("FAC") adding a cause of action for PAGA penalties. On October 24, 2024, pursuant to stipulation and order, Plaintiff filed the operative Second Amended Class Action and Representative Action Complaint ("SAC") wherein he added Welcome Market, Inc. and Tawa Group Holdings, Inc. as named defendants. Although the SAC asserts the same class action causes of action alleged in the original Complaint and the FAC, the stipulation states that the parties reached a PAGA-only representative settlement after mediation. Plaintiff purportedly dismissed the class claims without prejudice after learning that he had executed an enforceable arbitration agreement that included a class action waiver.

On February 7, 2025, Plaintiff filed the current Motion to Approve Settlement Agreement and Release of PAGA Claims. The Motion seeks approval of the parties' PAGA Settlement Agreement for the non-reversionary Gross Settlement Amount of \$825,445.00. The settlement group consists of approximately 4,313 Aggrieved Employees defined as: "All non-exempt employees in California employed by Defendant[s] at any time during the PAGA Period." The PAGA Period is the period from November 24, 2022, through May 9, 2024.

The Court is concerned about certain issues with the Settlement Agreement, the Notice Letter to be sent to the Aggrieved Employees, and the Proposed Order. Plaintiff's counsel must address the following issues before the Court can approve the Settlement:

1. The option in the Escalator Clause to shorten the PAGA Period is problematic because it renders the PAGA Period uncertain. It also increases the probability that the Court will find the Settlement to be unfair because the option could eliminate otherwise eligible Aggrieved Employees from the settlement.
2. The Settlement Agreement should provide that the settlement administrator will post copies of operative Complaint, Settlement Agreement, LWDA PAGA Notice letters, the Notice Letter to the Aggrieved Employees, and the Final Judgment on its website for at least 30 days.
3. The Settlement Agreement must state that the settlement administrator will provide the Notice Letter to the Aggrieved Employees in English and Spanish.
4. The statement in the Settlement Agreement regarding the Court's continuing jurisdiction must state it is pursuant to CCP § 664.6 and CRC 3.769(h).
5. Plaintiff's counsel must provide an estimate of the average, high, and low individual PAGA payments.
6. The valuation analysis is incomplete. Plaintiff's counsel must provide information regarding the discount applied to each category of claims, the total risk-adjusted exposure amount, and the Gross Settlement Amount as a percentage of the total risk-adjusted exposure amount.
7. Plaintiff's counsel must attest as to whether there are any concurrent pending cases against Defendants involving similar claims, or confirm there are none.

		8. Plaintiff's counsel must attest as to whether there is a fee-splitting arrangement with any other counsel, or confirm there is none. 9. The settlement administrator must provide a declaration regarding its qualifications and experience, procedures for processing the Aggrieved Employee Data, and procedures for mailing the Notice Letter and settlement checks. Settlement administrator must also attest as to the amount of its fees and costs, and provide an invoice of same. 10. In support of the request for Plaintiff's Service Award, Plaintiff and Plaintiff's counsel must provide declarations describing circumstances to justify the requested award, and addressing factors set forth in <i>Golba v. Dick's Sporting Goods, Inc.</i> (2015) 238 Cal.App.4th 1251, 1272, and <i>Clark v. Am. Residential Servs., LLC</i> (2009) 175 Cal.App.4th 785, 804. Plaintiff must provide an estimate of the hours he spent participating in this litigation so it can be determined if the requested Plaintiff's Service Award is fair and reasonable. 11. In 2nd line of 1st paragraph of the Notice Letter, it should state "employee", not "employees". 12. In 2nd line of 2nd paragraph of Notice, remove "." after "2024". 13. In 2nd line of 2nd paragraph of Notice, should refer to "Aggrieved Employees" instead of "PAGA Group" in order to be consistent with Settlement Agreement. 14. In last line of 2nd paragraph of Notice, must refer to "Aggrieved Employees" instead of "PAGA Group" in order to be consistent with Settlement Agreement. 15. In 2nd line of 2nd paragraph of Notice, must define the acronym, "LWDA". 16. In 2nd and 3rd line of 3rd paragraph of Notice, must refer to "Aggrieved Employees" instead of "PAGA Settlement Members" in order to be consistent with the Settlement Agreement. 17. In 7th line of 3rd paragraph of Notice, must refer to "Defendants" instead of "Defendant". 18. In 4th line of 4th paragraph of Notice, must refer to "Aggrieved Employees" instead of "PAGA Group employees". 19. In 1st line of 5th paragraph of Notice, must refer to "Aggrieved Employees" instead of "PAGA Settlement Employee" in order to be consistent with the Settlement Agreement. 20. In 5th paragraph of Notice, should state "shall fully release Defendants from the Released Claims."
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		21. On Proposed Order, remove attorney information from the caption page. 22. In caption of Proposed Order, update the date and time of the approval hearing. 23. In Proposed Order, must identify Settlement Agreement by the ROA number of the declaration to which it is attached. 24. In Proposed Order, must provide the Gross Settlement Amount. 25. In Paragraphs 12.a and 21 of Proposed Order, must correct the name of the settlement administrator. 26. In Paragraph 16 of Proposed Order, should read "The Court approves of the proposed letter, attached to the Declaration of ..., <u>that is to be sent to the</u> Aggrieved Employees" 27. Proposed Order must be revised to reflect the reassignment of this matter to Department CX102. 28. Paragraph 23 of Proposed Order must state that Court's continuing jurisdiction is also pursuant to CRC 3.769(h). Plaintiff's counsel must file supplemental papers addressing the Court's concerns no later than fourteen (14) calendar days prior to the continued hearing date. Counsel must also provide red-lined versions of all revised papers, as well as an explanation of how the pending issues were resolved, with precise citation to any corrections or revisions. A supplemental declaration or brief that simply asserts the issues have been resolved or does not clearly state a specific concern has been resolved, is insufficient and will result in a continuance. Plaintiff to give notice, including to the LWDA, of this ruling, and file proof of service within five (5) calendar days.
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