

**Tentative Rulings and Resolution Review Hearings
September 9, 2024
Department 64 (formerly Department 3)**

This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court’s website (www.shasta.courts.ca.gov) and are available by clicking on the “Tentative Rulings” link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

Per Local Rule 5.13, telephonic appearances through CourtCall (888-882-6878; courtcall.com) are generally permitted on the Law & Motion and Resolution Review calendars and can be made without leave of Court.

8:30 a.m. Law and Motion

BLACK KNIGHT FIRE SUPPORT, INC. VS. PETERSON HOLDING COMPANY, ET AL.

Case Number: 22CV-0201274

Tentative Ruling on Motion for Relief from Waiver of Objections. This is a breach of contract case arising out of maintenance and repair work that Plaintiff alleges it hired Defendants to perform on a bulldozer in 2020. On June 26, 2024, this Court entered an Order Granting Plaintiff’s Motion to Compel Discovery Responses. Defendants were ordered to provide verified responses to each of Plaintiff’s written discovery requests without objections. Defendants now move for relief from waiver of objections pursuant to Code of Civil Procedure §§ 2030.290 and 2031.300. Plaintiffs oppose the motion.

Merits: Code of Civil Procedure §§ 2030.290 and 2031.300 provide the court, on motion, may relieve a party from its waiver of a right to object to interrogatories, or demand for production, on its determination that: 1) the party has subsequently served a response that is in substantial compliance with the code, and 2) the party’s failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Here, Plaintiff does not dispute that Defendant has subsequently served responses that are substantially code compliant. The parties dispute whether Defendant’s failure to timely serve those responses was a result of mistake, inadvertence or excusable neglect. Defendant explains that Defense Counsel was forced out of his firm unexpectedly and struggled to establish a solo practice. (Declaration of Meidus ¶¶ 5,10.) Defense Counsel further explains he became overwhelmed and experienced a mental health crises as a result of the totality of his life circumstances, including his caseload and the administration and management of his new solo practice. (Declaration of Meidus ¶11.) As a result, Defense Counsel inadvertently neglected to calendar the due date of the subject discovery under the last extension granted by Plaintiff. (Declaration of Meidus 12-13.)

The party seeking relief bears the burden of demonstrating the neglect was excusable in order to

secure relief. The test of whether neglect was excusable is whether “ ‘a reasonably prudent person under the same or similar circumstances' might have made the same error. [Citations.]” *Luri v. Greenwald* (2003) 107 Cal. App. 4th 1119, 1128. The Court finds that Defense Counsel here has made the requisite showing of excusable neglect. The Court finds the totality of circumstances persuasively establish that a reasonably prudent person under the same or similar circumstances may have made the same error. The Court will exercise its discretion to grant relief from the waiver of objections. The Court also notes it is in the interest of justice that Defense Counsel’s client is not prejudiced by something it had nothing to do with and the interests of justice favor allowing cases to proceed on their merits. The Motion is **GRANTED**. A proposed order has been lodged and will be executed.

BLOUNT, ET AL. VS. BLOUNT, ET AL.

Case Number: 23CV-0202391

Tentative Ruling on Motion to Be Relieved as Counsel: The present motion is unopposed. Paul Meidus moves to be relieved as counsel for Plaintiff Brian Blount. CRC Rule 3.1362 provides the requirements for a motion to be relieved as counsel. It requires the use of mandatory Judicial Council forms and evidence supporting service of all forms, including the proposed order, on the client as well as information related to why the motion has been brought instead of filing the substitution of attorney. No proof of service of the client is on file. Counsel has submitted a Declaration detailing efforts to obtain the Client’s current address. The Court finds these efforts are insufficient. The text messages attached to Counsel’s Declaration are undated. The text messages show only that Counsel informed the Client of Counsel’s intent to file the instant Motion on the same day he intended to file and gave the Client three hours to respond. The Court finds that these text messages do not constitute reasonable efforts to locate a current address, and that the requirements of CRC 3.1362(d) have not been satisfied. The motion is **DENIED** without prejudice.

IN RE CANTERO, ET AL.

Case Number: 24PB-0032569

Tentative Ruling on Petitions to Approve Minor Compromise: Petitioner Aimee Cantero seeks orders approving the compromise of four separate claims on behalf of her minor children. California Rules of Court, Rule 7.950 states that a petition for court approval of a minor’s compromise must contain a full disclosure of all information that has any bearing upon the reasonableness of the compromise. The Petitions fail to provide all necessary information to approve the Petitions. Item 8 of the Petitions require “An original or photocopy of any doctor’s report containing a diagnosis of the claimant’s injuries or a prognosis for the claimant’s recovery, and a report of the claimant’s current condition.” No such documentation has been provided. Each Petition is supported by a one sentence statement from Shingletown Medical Center which provides that the minor is not currently being treated related to the accident. The documentation fails to provide a diagnosis or prognosis and a report of the claimant’s current condition. Additional documentation will be required to cure this defect. Today’s hearing is continued to **Monday, October 28, 2024, at 8:30 a.m. in Department 64.** Petitioner shall file Supplemental Declarations which provide the documents required by Item 8 of the Petition. **No appearance is necessary on today’s calendar.**

IN RE: CASTILLO

Case Number: 24CV-0204664

Tentative Ruling on Petition for Change of Name: Petitioner Jaylin Lavon Castillo seeks to

change his name to Ryder Lee Young. All procedural requirements of CCP §§ 1275 et. seq. have been satisfied. The Petition is **GRANTED**. All future dates will be vacated, and the file closed upon the processing of the Decree Changing Name.

CUEBAS, ET AL. VS. GENERAL MOTORS, LLC

Case Number: 22CV-0200976

Tentative Ruling on Attorney Fees Motion: This lemon law action, arising out of Plaintiff's purchase of a 2022 GMC Sierra 2500, was filed November 2, 2022. Plaintiffs and Defendant General Motors LLC ("GM") settled this matter and stipulated that Plaintiff is prevailing party and entitled to an award of attorney's fees under Civil Code § 1794. Plaintiff now moves for an award of attorney's fees and costs in the amount of \$49,829.11. GM opposes the Motion as untimely. GM alternatively argues for a reduction in fees to \$22,525.00.

Timeliness of Motion: GM requests the Motion be denied as untimely. GM states the Parties settled this matter and judgment was entered on September 5, 2023. GM argues Counsel waited 330 days after entry of judgment to file its motion for attorney fees. Under California Rule of Court 3.1702, a fee motion must be filed no later than 180 days after entry of judgment. However, the Court has no record of entry of judgment in this matter. A Notice of Conditional Settlement was filed September 26, 2023. The Court thereafter issued an Order vacating the trial date and setting the matter for resolution review regarding status of judgment/dismissal on May 28, 2024. Plaintiff's Memorandum of Costs was filed April 22, 2024, and the instant Fee Motion was filed July 31, 2024. As of today's date, no judgment is on file. The Motion is timely.

Objections to Evidence: Plaintiffs have raised 8 Objections to portions of the Declaration of Ryan Kay on the grounds that the statements lack foundation, are irrelevant, misleading, more prejudicial than probative, and improper opinion testimony. The Objections are **OVERRULED**.

Song-Beverly: The Song-Beverly Act contains a cost-shifting provision that specifically allows prevailing buyers to recover their costs, including attorney's fees. Civ. C. § 1794(d). The attorney's fee award is limited to the amount the court determines was reasonably incurred by the buyer in commencing and prosecuting the action, based on actual time expended. The prevailing buyer has the burden of proving the fees were both reasonably necessary to conduct the litigation and reasonable in amount. Civil Code § 1794(d); *Robertson v. Fleetwood Travel Trailers of California, Inc.*, (2006) 144 Cal. App. 4th 785. The lodestar method applies to determining attorney's fees under the Song-Beverly Act. *Id.* at 817. When determining a reasonable attorney's fee award, using the lodestar method, the judge begins by deciding the reasonable hours the prevailing party's attorney spent on the case and multiplies that number by the prevailing hourly rate for private attorneys in the community who conduct non-contingent litigation of the same type. *Doppes v Bentley Motors, Inc.* (2009) 174 CA4th 967, 998. Plaintiff is entitled to be compensated at rates that reflect the reasonable market value of their services in the community. *Serrano v. Unruh* (1982) 32 Cal.3d 621, 643. In determining the amount of attorney's fees to which a litigant is entitled, an experienced trial judge is the best judge of the value of professional services rendered in his or her court. *Granberry v. Islay Investments* (1995) 9 Cal. 4th 738, 752.

Reasonableness of Hours: The court has discretion to decide which of the hours expended by the attorneys were reasonably spent on litigation. *Hammond v. Agran* (2002) 99 Cal.App.4th 115, 133. The predicate of any attorney fee award is the necessity and usefulness of the conduct for which compensation is sought. *Thayer v. Wells Fargo Bank, N.A.* (2001) 92 Cal.App.4th 819,

846. The court’s focus in evaluating the fee request should be to provide a fee award reasonably designed to completely compensate attorneys for the services provided. The starting point for this determination is the attorney’s time records. Absent clear indication they are erroneous, verified time records are entitled to credence. *Horsford v. Board of Trustees of Calif. State Univ.* (2005) 132 Cal.App.4th 359, 395-397.

Plaintiffs seek a total of \$\$43,363.50 in attorney fees associated with 93.9 hours of work performed by three attorneys and one paralegal. Plaintiffs have submitted detailed time records to support their request. GM challenges numerous specific entries. (Opposition pp. 7 – 10.) The Court has reviewed the billing records in detail, as well as Defendant’s objections. The Court finds the hours claimed by the attorneys were reasonably spent on litigation.

Reasonableness of Rates: A reasonable hourly rate is determined by the prevailing rate charged to attorneys of similar skill and experience in the relevant community. See *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. However, the court may also consider the attorney’s skill and expertise, the nature of the work performed, the relevant area of expertise and the attorney’s customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632. A plaintiff seeking to recover hourly rates for out-of-town counsel that are higher than the local rates must show (1) a good faith effort to find local counsel, and (2) demonstrate that hiring local counsel was impracticable. *Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1243.

The Court is the best judge of the value of professional services provided and may use its discretion to apply rates in line with the market rates for the services provided. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. This Court has extensive experience in presiding over Song Beverly actions including motions for attorney’s fees, costs and expenses under Song Beverly. As such this Court is aware of the reasonable hourly rates charged in actions of this nature. It is also aware of the prior hourly rates found to be reasonable. Based on the Court’s extensive knowledge and experience, it finds that reasonable hourly rates are \$400 per hour for the partners, \$350 per hour for the senior associate, and \$100 per hour for the paralegal.

Timekeeper	Requested	Awarded	Total
R. Aguilar (paralegal)	10.4 x 200/hr	10.4 x 100/hr	1,040
J. Anvar (managing partner)	1.3 x 550/hr	1.3 x 400/hr	520
J. Cohen (partner)	8.3 x 525/hr	8.3 x 400/hr	3,320
D. Rivero (senior associate)	73.9 x 490/hr	73.9 x 350/hr	25,865
Total	\$43,363.50		\$30,745

Costs and Expenses: The Song-Beverly Act provides that the court will award a successful plaintiff a sum equal to the aggregate amount of costs and expenses, which have been determined to have been reasonably incurred. Civil Code § 1794(d). Plaintiffs have requested an award of costs and expenses in the amount of \$3,315.61. Plaintiffs have filed a Memorandum of Costs in support of the request. GM does address costs in its opposition and did not timely file a Motion to Tax Costs. Therefore, costs in the amount of \$3,315.61 are awarded.

Fees on this Motion: Counsel anticipates incurring additional fees through the hearing on Plaintiffs’ Motion for Attorney fees including 5.5 hours on reviewing, analyzing and drafting a Reply to the Opposition, and 0.5 hours for appearing at the hearing on the Motion. The request is therefore for 6 additional hours at a rate of \$525 per hour, for a total of \$3,150.00. The Court finds

the additional time spent reasonable, but the rates will be reduced as described above. The total additional fees on this Motion are therefore \$2,400.00.

Lodestar	\$30,745.00
Fees for Reply and hearing on this Motion	\$2,400.00
Costs	\$3,315.61
Total Attorney Fees, Costs, and Expenses	\$36,460.61

The Motion for Attorney Fees and Costs is **GRANTED** in part, as detailed above. No proposed order has been lodged as required by Local Rule 5.17(D). Plaintiff shall prepare the proposed order.

FLORES VS. HUDSON

Case Number: 24CV-0204646

Tentative Ruling on Order to Show Cause Re: Dismissal: An Order to Show Cause Re: Dismissal issued on August 8, 2024 to Plaintiff Eladio Flores, in pro per, for failure to timely serve the complaint and failure to timely prosecute. “The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint.” CRC 3.110(b). The Complaint in this matter was filed on March 29, 2024. There is still no valid Proof of Service of Summons on file. Plaintiff did not file a response to the Order to Show Cause Re: Dismissal. Monetary sanctions have already been imposed for failure to timely serve and it appears that Plaintiff has made no efforts to effect proper service. Without sufficient excuse for the delay and because previous sanctions appear to have been ineffective, the matter is **DISMISSED** without prejudice pursuant to Gov. Code § § 68608(b). All future dates are vacated. The clerk is directed to close the file.

FLORES VS. SWIFT

Case Number: 24CV-0204653

Tentative Ruling on Order to Show Cause Re: Dismissal: An Order to Show Cause Re: Dismissal issued on August 8, 2024 to Plaintiff Eladio Flores, in pro per, for failure to timely serve the complaint and failure to timely prosecute. “The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint.” CRC 3.110(b). The Complaint in this matter was filed on March 29, 2024. There is still no valid Proof of Service of Summons on file. Plaintiff did not file a response to the Order to Show Cause Re: Dismissal. Monetary sanctions have already been imposed for failure to timely serve and it appears that Plaintiff has made no efforts to effect proper service. Without sufficient excuse for the delay and because previous sanctions appear to have been ineffective, the matter is **DISMISSED** without prejudice pursuant to Gov. Code § § 68608(b). All future dates are vacated. The clerk is directed to close the file.

FLORES VS. LANDRAU

Case Number: 24CV-0204650

Tentative Ruling on Order to Show Cause Re: Dismissal: An Order to Show Cause Re: Dismissal issued on August 8, 2024 to Plaintiff Eladio Flores, in pro per, for failure to timely serve the complaint and failure to timely prosecute. “The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint.” CRC 3.110(b). The Complaint in this matter was filed on March 29, 2024. There is still no valid Proof of Service of Summons on file. Plaintiff did not file a

response to the Order to Show Cause Re: Dismissal. Monetary sanctions have already been imposed for failure to timely serve and it appears that Plaintiff has made no efforts to effect proper service. Without sufficient excuse for the delay and because previous sanctions appear to have been ineffective, the matter is **DISMISSED** without prejudice pursuant to Gov. Code § 68608(b). All future dates are vacated. The clerk is directed to close the file.

GOODMAN V. HERTAN

Case Number: CVCH21-0196548

Tentative Ruling on Motion for Attorney Fees and Costs: Petitioner Matthew Godman seeks attorney fees and costs after a Court Trial on his Request for Renewal of Restraining Order. The Court granted the Request, renewing the Restraining Order against Respondent Bryce Hertan for two years. As prevailing party, Petitioner seeks an award of \$4,200 in attorney fees and \$500 in Petitioner's lost wages. Respondent has not filed an opposition.

Merits: California Code of Civil Procedure section 527.6 governs civil restraining orders. Subsection (s) provides that the prevailing party in an action brought pursuant to this section may be awarded court costs and attorney's fees, if any. CCP 527.6(s). In determining the amount of attorney's fees to which a litigant is entitled, an experienced trial judge is the best judge of the value of professional services rendered in his or her court. *Granberry v. Islay Investments* (1995) 9 Cal. 4th 738, 752.

Respondent Goldman is the prevailing party. The Court will exercise its discretion to award fees pursuant to CCP 527.6(s). Evidence submitted in support of the Motion, namely the Declaration of Jacob Levin, details counsel's time expended and hourly rate. The Court finds the hourly rate and time expended reasonable. Petitioner also requests \$500.00 for Petitioner's lost wages. The Code of Civil Procedure section 1033.5 provides which costs claimed by a prevailing party are recoverable. Lost wages are not an allowable cost. The request for \$500 in lost wages is denied.

Petitioner's Motion for Attorney Fees and Costs is **GRANTED** in part. Attorney fees of \$4,200.00 are awarded against Respondent. Lost wages of \$500.00 are not awarded. No proposed order has been lodged as required by Local Rule 5.17(D). Moving party shall prepare the order.

HULBERT V. CROSS

Case Number: CVPO18-0190446

Tentative Ruling on Motion to Relieve the Public Defender: The County Counsel of the County of Shasta, on behalf of the Public Defender of the County of Shasta, seeks an order relieving the Public Defender from representation of Darren Hulbert in *Hulbert v. Cross*, Shasta County Superior Court Case No. CVPO18-0190446. The Motion is unopposed.

The duties of the Public Defender are set forth in Government Code section 27706. In summary, that section requires the Public Defender to defend indigent defendants charged with contempt, misdemeanor, or felonies; prosecute appeals where the appeal is expected to result in reversal or modification of judgment or conviction; prosecute actions for collection of wages less than \$100; defend indigent persons in civil litigation where the individual is being persecuted or unjustly harassed; represent indigent persons in guardianship, juvenile, and conservatorship proceedings; and represent defendants charged with capital offenses. Additionally, the Public Defender *may* represent indigent individuals in proceedings relating to the nature or conditions of detention or of punishment resulting from criminal or juvenile proceedings.

Case law confirms that this is an exclusive list. “The office of the county public defender is authorized to provide representation only in those classes of cases specified in Government Code section 27706.” *Littlefield v. Superior Ct.* (1993) 18 Cal. App. 4th 856, 858–59; *see also Littlefield v. Superior Ct.* (1979) 98 Cal. App. 3d 652, 654 (Government Code section 27706 sets forth the authorized duties of the county public defender who is thereunder empowered to act in only a limited number of narrowly defined civil actions not involving the possible loss of liberty to the defendant.) Representation of a Plaintiff in a civil suit such as a medical malpractice action does not fall within the scope of Government Code section 27706. The Motion is **GRANTED**. Moving party shall prepare the proposed order.

JPMORGAN CHASE BANK, N.A. VS. RAWSON

Case Number: 23CV-0203657

Tentative Ruling on Motion for Judgment on the Pleadings: This action was dismissed on September 5, 2024, pursuant to stipulation per CCP 664.6. The file is therefore closed and **no appearances are necessary on this calendar**.

IN RE LEGACY GARDEN, INC.

Case Number: 24CV-0205404

Tentative Ruling on Petition for Order Reinstating Petitioner to Active Status: Petitioner seeks an order reinstating Legacy Garden, Inc., a California Corporation, to Active Status with the Secretary of State pursuant to Gov. Code 12260-12263. As the Court previously noted in its August 5, 2024 Order, the Court cannot reach the merits of this petition at this time due to two substantive defects.

First, Petitioner is an individual in pro per, purporting to represent Legacy Garden, Inc. a California Corporation. This is not permitted. “[a] corporation cannot represent itself in court, either in propria persona or through an officer or agent who is not an attorney. [Citations.]” (*Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 729.) That is, a corporate officer, who is not an attorney, may not appear on behalf of the corporation. (*Ibid.*) *Ziegler v. Nickel*, 64 Cal. App. 4th 545, 548, 75 Cal. Rptr. 2d 312, 314 (1998). Second, the Petition is not supported by admissible evidence. Attached to the Petition are number of supporting exhibits. However, no associated declaration authenticating these exhibits has been filed. No request for judicial notice of official documents has been made pursuant to Evidence Code 452(c). A Declaration of Johanna Layne has been filed, but the Declaration does not comply with Code of Civil Procedure section 2015.5.

The Court previously continued hearing on this matter to permit Petitioner to cure the defects noted above. No amended pleadings have been filed. Therefore, the Petition is **DENIED** without prejudice.

MATHESON, ET AL. VS. WATTS, ET AL.

Case Number: 23CV-0203077

Tentative Ruling on Order to Show Cause Re: Dismissal: An Order to Show Cause Re: Dismissal issued on July 10, 2024 to Plaintiffs and Plaintiffs’ Counsel, failure to timely file proof of service of summons pursuant to CRC 3.110, and for failure to timely file a Settlement Conference Statement pursuant to CRC 3.1380. “The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days

after the filing of the complaint.” CRC 3.110(b). The Complaint in this matter was filed on August 25, 2023. There is still no Proof of Service of Summons on file. Plaintiff did not file a response to the Order to Show Cause Re: Dismissal. Monetary sanctions have already been imposed for failure to appear at the Mandatory Settlement Conference on May 28, 2024. It appears Plaintiffs have abandoned their case. Without sufficient excuse for the delay and because previous sanctions appear to have been ineffective, the matter is **DISMISSED** without prejudice pursuant to Gov. Code § 68608(b). All future dates are vacated. The clerk is directed to close the file.

MIDDLEBROOKS VS. FLEETPRIDE, INC.

Case Number: 23CV-0202247

Tentative Ruling on Motion for Preliminary Approval of Class Action and PAGA Settlement: Ryan Middlebrooks brought this wage and hour class action and Private Attorneys General Act (“PAGA”) matter against Defendant FleetPride, Inc. The parties have settled the matter for a total of \$315,000 and seek preliminary approval by the Court.

The law favors the settlement of lawsuits, particularly in complex litigation, where they save time and resources. *Neary v. Regents of the University of California* (1992) 3 Cal. 4th 273, 277-281 (superseded by statute on other grounds). However, courts cannot automatically and instantly approve a proposed settlement or dismiss a class action suit, even if the representative plaintiff and defendant have agreed on the terms of such settlement or dismissal. In a class action, the trial court has a duty to adequately protect the members of the class. *Bingham v. Obledo* (1983) 147 Cal. App. 3d 401, 406. Courts have long recognized that a class action may deprive an absent class member of the opportunity to independently press their claim, preclude a defendant from defending each individual claim to its fullest, and even deprive a litigant of a constitutional right. As such, a settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing. CRC 3.769(a). This takes two steps: (1) a preliminary review by the trial court, and (2) a final review after notice has been distributed to the class members.

The fundamental question for a preliminary review is whether the settlement is fair, adequate and reasonable. The purpose of this requirement is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801. The trial court has broad discretion to determine whether the settlement is fair. It should consider relevant factors, such as: (1) the strength of plaintiff’s case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. The list of factors is not exhaustive and should be tailored to each case. *Id.*

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 v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 225 (disapproved on other grounds by *Hernandez v. Restoration Hardware* (2018) 4 Cal. 5th 260).

Class Certification and Approval of Class Representative. A class action may be maintained “when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.” CCP § 382. “The ‘community of interest’ requirement embodies three factors: (1) predominant common 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.” *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 575. The proposed class is defined as “all persons who were employed by FleetPride, Inc. in California in an hourly, non-exempt position and who were paid overtime and/or doubletime wages at any time during the Class Period.” The Class Period is May 8, 2022 through September 15, 2023. The PAGA period is the same.

Here, there appears to be a community of interest. There are common questions of law and fact because the proposed class members all worked for the same employer and were subject to the same employment practices and policies and same wage and hour laws. Each class member would have received a wage statement that Plaintiff maintains did not accurately reflect hours worked. The class was readily identified through employment records and stands currently at approximately 280 individuals.

The class members have a representative who appears to be similarly situated as former employee of Defendant during the class period and within the class member designation. Counsel has provided evidence that there are no conflicts and Plaintiff’s claims are typical of the class. The Court certifies the class for the purpose of settlement and confirms Ryan Middlebrooks as the class representative.

Approval of Class Counsel. Plaintiff’s counsel has demonstrated their experience and familiarity with class action cases, including employment and wage-and-hour disputes. Plaintiff’s counsel has provided evidence that the firms are well versed in class actions, particularly of this nature, and have the competence to be appointed as Class Counsel. The Court appoints Larry W. Lee, Max W. Gavron, and Kwanporn “Mai” Tulyathan of Diversity Law Group and William L. Marder of Polaris Law Group as Class Counsel.

Approval of Settlement Administrator. The parties propose Phoenix Settlement Administrator as the settlement administrator in this matter. While counsel did not provide a declaration from any employee of Phoenix Settlement Administrators, the Court is familiar with Phoenix Settlement Administrator and approves Phoenix Settlement Administrators to act as the Settlement Administrator in this matter.

Fairness of Settlement and Plan of Allocation. Preliminary approval of a class action settlement constitutes a conditional finding that the settlement appears to be in the range of acceptable settlements. The Court has broad discretion to determine whether the settlement is fair. *Dunk v. Ford Motor Company, supra*, 48 Cal. App. 4th at 1801. As noted above, factors relevant to the court’s determination include, but are not limited to, 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, and the experience and views of counsel. *Id.* There is a presumption of fairness 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; and (3) counsel is experienced in similar litigation. *Id.* at 1802.

The settlement here was the result of arm’s-length bargaining following mediation with an experienced mediator. Plaintiff’s counsel declared that the parties have exchanged extensive discovery. The Declaration of Max. W. Gavron provides that the maximum possible recovery in this matter is \$1,833,300.00 but also provides the reasoning behind the \$315,000.00 settlement. The settlement takes into account the possibility that the class would not be certified, the inherent risk and costs associated with litigation, that arbitration agreements and class action waivers signed by a large proportion of the putative class, and the possibility that the Court would not award a maximum penalty on the PAGA claim. Settling avoids the added costs of litigation to certify the class and to try the matter. It also avoids the possibility that putative class members will have no recovery at all. The Court finds the settlement of \$315,000.00 to be fair, adequate, and reasonable.

Within the settlement, various fees and costs are apportioned prior to the net settlement amount, which is distributed to class members. The overall proposed breakdown of the settlement is as follows:

Total Settlement Amount	\$315,000.00
Proposed Attorneys’ Fees (35%)	-\$110,250.00
Litigation Costs and Expenses (up to)	-\$15,000.00
Settlement Administration Costs (up to)	-\$8,500.00
Proposed Class Representative Enhancement	-\$10,000.00
PAGA Claim Settlement Allocation	-\$30,000.00
Payment to Labor and Workforce Development Agency (LWDA) (75%)	(\$22,500.00)
Payment to Aggrieved Employees (25%)	(\$7,500.00)
Settlement Monies Remaining to be Disbursed to Class Members	\$141,250.00

Attorneys’ Fees and Costs: Counsel seeks up to 35% in attorneys' fees and up to \$15,000.00 in litigation costs. Counsel has provided evidence of their expertise in the area, the risk of taking the case given that no payment is provided until settlement, and efforts put forth to prosecute the case. The Court will not approve the amount of attorneys' fees until the final approval hearing. The court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case. This is the law even if the parties have agreed to the fees. *Robbins v. Alibrandi* (2005) 127 Cal. App. 4th 438, 450-451. At the time of the final approval hearing, the Court will review the evidence provided by Class Counsel. In addition to the hourly rate and hours spent on the case, Class Counsel should provide admissible evidence supporting the hourly fee requested including, if applicable, whether Class Counsel charges fee-paying clients the same rates. The Court will likewise not approve final costs until the final hearing as that is when Counsel can provide evidence of the specific costs incurred as part of this litigation.

Enhancement Award: The settlement provides for an enhancement award of \$10,000.00 to the named Plaintiff Ryan Middlebrooks as the Class Representative. The Court will not approve the amount of the Plaintiff's enhancement award until the final approval hearing. With the final approval motion, Plaintiff should provide admissible evidence to support the request, e.g. the number of hours of service provided, the nature of the work performed, the risks Plaintiff faced in prosecuting this lawsuit, including any actual retaliation, and/or other evidence demonstrating the need for an incentive payment. See *Clark v. American Residential Services, LLC* (2009) 175 Cal. App. 4th 785, 804-807. Plaintiff should also provide information regarding how the proposed service award relates to his anticipated individual settlement award and the average expected

individual settlement awards for class members.

Settlement Administration Costs: Settlement administration costs have been requested in an amount up to \$8,500.00. The Court notes that the Joint Stipulation, in Item 8.A., allows an increase in settlement administration costs to reduce the net settlement amount. As the Class Notice provides notice of settlement administration costs not to exceed \$8,500.00, Item 8.A. deprives the class members of notice and an opportunity to be heard on the potential increase in settlement administration costs. If Class Counsel believes that it is possible that the settlement administration costs will exceed \$8,500.00, this should be built into the notice.

PAGA: Under the Private Attorney General Act, private parties can assert claims for penalties that otherwise can be recovered only by the Labor and Workforce Development Agency ("LWDA"). Labor Code 2699(a). See also *Dunlap v. Superior Court* (2006) 142 Cal. App. 4th 330, 336. An employee who, through the PAGA, asserts a claim for civil penalties on behalf of the LWDA is acting as an agent of the LWDA. This is evident from the requirement that before initiating a PAGA claim, an employee must provide notice to the LWDA per Labor Code 2699.3(a), and the requirement that that 75% of any recovered civil penalties must be distributed to the LWDA, Labor Code 2699(i). In settling the LWDA's claims, Class Counsel are settling and releasing claims for penalties that belong to the People of the State of California acting through the LWDA. A settlement of LWDA claims should, therefore, provide a reasonable benefit to the state for the settlement of the released claims. The reasonable benefit may be based on the potential value of the recoverable civil penalties discounted by the risk and expense of litigation. In *Nordstrom Com' Cases* (2010) 186 Cal. App. 4th 576, 589, the Court of Appeal held that the Court can approve a settlement even when no money is allocated to the PAGA claims. The Declaration of Max W. Gavron provides evidence that the LWDA was notified of the settlement at the time the motion was filed and how the PAGA portion of the settlement was determined. The Court notes that no objection was received from the LWDA. The Court finds that the \$30,000.00 PAGA portion of the settlement is reasonable and confers a substantial benefit on both the State of California and aggrieved employees.

Notice and Notice Procedure. Plaintiff requests approval of Class Notice attached as Exhibit A to Exhibit A of the Declaration of Max W. Gavron. If a class notice is to be effective, "members of the class must receive the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Home Sav. & Loan Ass'n v. Sup. Ct.* (1975) 42 Cal. App. 3d 1006, 1012, citing Fed. R. Civ. P. 23(b)(2). The standard in California is whether the notice "has a reasonable chance of reaching a substantial percentage of class members." *Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 251. The Court notes the following issues with the Class Notice that will need to be corrected prior to mailing:

- Objection to the Class Settlement box – the correct department for the Final Approval Hearing is Department 64. The correct address is 1515 Court Street. This also needs to be corrected in the following paragraph that starts with “The Final Approval Hearing on the adequacy...”
- Distribution to Class members, second paragraph – the last four of the individual’s social security number should not be required.
- Option 2 – *Opt Out of the Settlement* - the last four of the individual’s social security number should not be required.
- Option 3 – *Submit an Objection to the Settlement* - the last four of the individual’s

- social security number should not be required.
- Final Approval Hearing – correct the department and address.
- CLASS COUNSEL – William L. Marder of Polaris Law Group should be listed alongside counsel from Diversity Law Group.
- Last paragraph of Page 5 – correct the address. Remove the sentence about obtaining documents through the Court’s website. While a listing of documents is available, the actual documents are not viewable online.
- All response deadlines should be calculated to reflect a 60 day response period.

Following the changes noted above, the Class Notice is approved for mailing in the manner described in the Settlement Agreement. The deadlines listed in the proposed Order are approved with the exception of the deadline for class members to postmark requests for exclusions, written objections, and workweek challenges which shall be 60 days instead of the proposed 45 days.

Interest Accrued in Settlement Account. The Court notes that the gross settlement is to be placed into an interest-bearing account. The settlement agreement does not provide for how any interest will be distributed at the end of the 180 day check cashing period when uncashed checks will be transmitted to the State of California Unclaimed Property. There is no *Cy pres* beneficiary. Absent counsel providing an alternative solution, the Court orders that any interest accrued in the account be transmitted to the LWDA upon the account being closed at the end of the check cashing period.

The Motion for Preliminary Approval is **GRANTED** as outlined above. The Court invites counsel to provide input regarding whether the settlement administration costs should be noticed in an amount not to exceed \$8,500.00 (meaning that they cannot be higher), or if the costs should be noticed in higher amount (perhaps \$10,000.00) which would allow for some flexibility should costs be higher than expected. Absent input by counsel, the Court will order that settlement administration costs are not to exceed \$8,500.00.

Based on the timeline, it appears that a Final Approval Hearing on **Monday, March 24, 2025 at 8:30 a.m. in Department 64** would provide sufficient time. Absent a request for a different date, the Court will calendar the Final Approval Hearing as noted. Plaintiff submitted a proposed Order that will be modified to reflect the Court’s ruling. The review hearing scheduled for February 3, 2025 is vacated.

MIDLAND CREDIT MANAGEMENT, INC VS. BURNETT

Case Number: 23CVG-00717

Tentative Ruling on Motion to Compel Arbitration: This collections case was filed August 1, 2023. The amount in controversy is \$4,142.94, which is the account balance from a Citibank Costco credit card. The Plaintiff, Midland Credit Management, Inc., was assigned all rights, title and interest in the account. The Motion is unopposed.

Notice. The proof of service does not indicate a Notice of Hearing was served along with the Motion to Compel as required by California Rules of Court Rule 3.1112. Additionally, the Motion itself does not indicate the correct department – the caption indicates Department 63, but that is incorrect. This matter is assigned to Judge Stephen Baker in D64 for all purposes.

Existence of Agreement. CCP § 1281.2 requires the Court to grant a petition to compel arbitration where it determines that an agreement to arbitrate the controversy exists. The court makes this

determination in a summary process. (See § 1290.2.) “[T]he trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination.” (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) The burden of persuasion is always on the moving party to prove the existence of an arbitration agreement with the opposing party by a preponderance of the evidence: “Because the existence of the agreement is a statutory prerequisite to granting the [motion or] petition, the [party seeking arbitration] bears the burden of proving its existence by a preponderance of the evidence.” (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) *Gamboa v. Ne. Cmty. Clinic* (2021) 72 Cal.App.5th 158, 164–65. The moving party “can meet its initial burden by attaching to the [motion or] petition a copy of the arbitration agreement purporting to bear the [opposing party's] signature.” (*Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541.)

Here, Petitioner has attached two pages to her unverified Motion to Compel Arbitration. These two pages do include a provision regarding arbitration. However, the pages appear to be an excerpt of a larger document. The pages provided do not state the identities of the parties to the agreement, nor the date it was entered. No context has been provided by way of verified declaration or other admissible evidence. Petitioner’s Motion states that the arbitration agreement was attached to the Complaint. However, upon review of the file, the Court does not have any record of an arbitration agreement either attached to the Complaint or otherwise. Petitioner has failed to produce prima facie evidence of a written agreement to arbitrate this controversy. The Motion is **DENIED** without prejudice. No proposed order has been lodged as required by Local Rule 5.17(D). Petitioner shall prepare the order.

SMITH VS. BRIDGEWAY INN & SUITES, ET AL.

Case Number: 23CV-0203137

Tentative Ruling on Order to Show Cause Re: Dismissal: An Order to Show Cause Re: Dismissal issued on July 10, 2024 to Plaintiffs and Plaintiffs’ Counsel, failure to timely file proof of service of summons pursuant to CRC 3.110, and for failure to timely file a Settlement Conference Statement pursuant to CRC 3.1380. “The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint.” CRC 3.110(b). The Complaint in this matter was filed on September 1, 2023. There is still no Proof of Service of Summons on file. Plaintiff did not file a response to the Order to Show Cause Re: Dismissal. Monetary sanctions have already been imposed for failure to appear at the Mandatory Settlement Conference on May 28, 2024.

Without sufficient excuse for the delay and because previous sanctions appear to have been ineffective, the matter is **DISMISSED** without prejudice pursuant to Gov. Code § 68608(b). All future dates are vacated. The clerk is directed to close the file.

IN RE: WHEELLESS

Case Number: 24CV-0204952

Tentative Ruling on Petition for Change of Name: Petitioner Robert David Wheelless seeks to change their name to Royce Allin Wheeler. All procedural requirements of CCP §§ 1275 et. seq. have been satisfied. The Petition is **GRANTED**. All future dates will be vacated, and the file closed upon the processing of the Decree Changing Name.

9:00 a.m. Review Hearings

IN RE BERG

Case Number: 24PB-0032393

This matter is on calendar for review regarding confirmation of receipt and acknowledgement of deposit. An Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account has been filed; however, it is not accepted by the Court. The Acknowledgement does not comply with the Court’s Order to Deposit Funds in Blocked Account, Item 3. Item 3 provides that the account must be opened in the name of Jason Berg as parent of Matthew Berg. The Acknowledgment provided indicates the account was opened in the name of Jason and Leslie Berg. The name and title on the account must be corrected, and an amended acknowledgement filed. This matter was previously continued to permit Petitioner to correct the defect identified above. Nothing further has been filed.

The clerk is directed to mail a copy of today’s minutes to Counsel of record. This matter is continued to **Monday, October 21, 2024, at 9:00 a.m. in Department 64** for review regarding confirmation of receipt and acknowledgement of deposit. Failure to file an amended acknowledgement or provide a status report at least 5 days prior to the continued hearing date will result in the issuance of an order to show cause re sanctions for failure to file an acknowledgement that complies with the Court’s Order to Deposit Funds in Blocked Account dated May 30, 2024. **No appearance is necessary on today’s calendar.**

BURBANK VS. EVANS, ET AL.

Case Number: 23CV-0203648

This matter is on calendar for review regarding status of the case. The Court notes that proof of service of the Court’s Order granting the Wilshire Law Firm’s Motion to be Relieved as Counsel has been filed. Both Plaintiff and Defendants are now proceeding in pro per. This matter is not at issue because no proof of service for Defendant Katherine Ferrando has been filed. The Complaint in this matter was filed on November 14, 2023. **An appearance is necessary on today’s calendar to provide the Court with a status of service on Katherine Ferrando.**

DOBBINS, ET AL. VS. CARE OPTIONS MANAGEMENT PLANS AND SUPPORT

Case Number: CVCV20-0194615

This matter is on calendar for review regarding trial re-setting. The parties have filed a Joint Case Management Statement which indicates that the matter has settled. The parties have signed an MOU and are working on the long form settlement agreement and request a continuance. This matter is continued to **Monday, December 9, 2024, at 9:00 a.m. in Department 64** for review regarding status of settlement. **No appearance is necessary on today’s calendar.**

FLORES VS. HUDSON

Case Number: 24CV-0204646

This matter is on calendar for review regarding status of service. The Court intends to dismiss this matter on this morning’s 8:30 a.m. law and motion calendar. **No appearance is necessary at 9:00 a.m.**

FLORES VS. SWIFT

Case Number: 24CV-0204653

This matter is on calendar for review regarding status of service. The Court intends to dismiss this matter on this morning's 8:30 a.m. law and motion calendar. **No appearance is necessary at 9:00 a.m.**

FLORES VS. LANDRAU

Case Number: 24CV-0204650

This matter is on calendar for review regarding status of service. The Court intends to dismiss this matter on this morning's 8:30 a.m. law and motion calendar. **No appearance is necessary at 9:00 a.m.**

LIMON VS. STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION

Case Number: 23CV-0202491

This matter is on calendar for review regarding status of settlement. This matter settled on March 12, 2024, at the mandatory settlement conference. No request for dismissal has been filed. However, Plaintiff has filed a Status Statement indicating that Defendants have failed to comply with the terms of the Settlement, and requesting the Court issue an OSC to enforce the agreement.

CCP § 664.6. provides that if parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

Judgement has not been entered pursuant to the terms of the settlement. No writing signed by both parties has been provided. No properly noticed motion for the relief requested has been filed. **An appearance is necessary on today's calendar to discuss the status of the settlement.**

LVNV FUNDING, LLC VS. PARKS

Case Number: 22CVG-00824

This matter is on calendar for review regarding status of judgment/dismissal. A Conditional Notice of Settlement was filed on April 3, 2023 which indicates this matter would be dismissed no later than July 12, 2024. No dismissal is on file. The Court intends to dismiss this case pursuant to California Rule of Court 3.1385(c)(2) unless the parties appear at today's hearing and show good cause why the case should not be dismissed.

PHILLIPS VS. MURPHY, ET AL.

Case Number: 22CV-0201197

This matter is on calendar for review regarding confirmation of filing of the Appraisal. Pursuant to this Court's Order dated August 5, 2024, Sprenkel Appraisals has conducted an appraisal of real property commonly known as 9786 Old Oregon Trail, Redding, CA 96003. Pursuant to the notice requirements of CCP § 874.317, the appraised fair market value of the property is \$125,000.00. The appraisal is available at the court clerk's office. A party may file with the court an objection to the appraisal not later than 30 days after the notice is sent, stating the grounds for the objection. This matter will be set for hearing to determine the fair market value of the property no sooner than October 28, 2024. **Petitioner should appear today to provide available dates for the hearing to determine the fair market value of the property.** The clerk is directed to mail a

copy of today's minutes to each party with a known address.

THE PEOPLE OF THE STATE OF CALIFORNIA VS. \$21,004.00 U.S. CURRENCY

Case Number: 24CV-0205426

This matter is on calendar for review regarding status. Claimant Amy Kekki filed a Claim Opposing Forfeiture on July 2, 2024. The People filed a Petition for Forfeiture in Rem on August 12, 2024. **An appearance is necessary on today's calendar to provide the Court with a status of the underlying criminal matter.**

VALDEZ VS. FALL RIVER VALLEY FIRE PROTECTION DISTRICT, ET AL.

Case Number: 23CV-0203895

This matter is on calendar for review regarding status of writ. Defendants' Demurrer to the First Amended Petition for Writ of Mandate and Complaint was heard on July 29, 2024. The Court sustained the demurrer without leave to amend and struck an unauthorized Second Amended Verified Petition. On August 30, 2024, the Court executed a Judgment of Dismissal. Judgment has been entered in favor of Defendants as against Plaintiff. Absent any post judgment motions for costs or fees, there are no further future dates in this matter. **No appearances are required on this morning's calendar.**