CIVIL COMPLEX CENTER

DEPARTMENT CX103

Judge Lon F. Hurwitz

Procedural guidelines for several types of motions and dismissals handled regularly in this department are set forth here. The guidelines appear after the Tentative Rulings.

TENTATIVE RULINGS

Date: April 26, 2024

Time: 1:30PM

The Court will hear oral argument on all matters at the time noticed for the hearing. If you would prefer to submit the matter on your papers without oral argument, please advise the clerk by emailing her as soon as possible. The email should be directed to CX103@occourts.org. When sending emails to the department, make sure to CC ALL SIDES as to avoid any sense of ex parte communication. The Court will not entertain a request for continuance nor filing of further documents once the ruling has been posted.

If appearing **remotely** on the date of the hearing, log into ZOOM through the following link and follow the prompts**:**

https://acikiosk.azurewebsites.us/advisement?dept=CX103

OTHER INFORMATION ABOUT THIS DEPARTMENT

HEARING DATES/RESERVATIONS: Except for Summary Judgment and Adjudication Motions, **no reservations are required for Law and Motion matters**. Call the Clerk to reserve a date for a Summary Judgment or Adjudication Motion. Regarding all other motions, the parties are to include a hearing date (Friday at 1:30PM) in their motion papers. The date initially assigned might later be continued by the Court if the assigned date becomes unavailable for reasons related to, among other things, calendar congestion.

COURT REPORTERS AND TRANSCRIPTS: Court reporters are not available in this department for *any* proceedings. Please consult the Court's website at www.occourts.org concerning arrangements for court reporters. If a transcript of the proceedings is ordered by *any* party, that party must ensure that the Court receives an electronic copy by email as mentioned above.

SUBMISSION ON THE TENTATIVE

If a tentative ruling is posted and **ALL** counsel intend to submit on the tentative without oral argument, please advise the clerk by emailing the department at **CX103@occourts.org** as soon as possible. When sending emails to the department, make sure to **CC ALL SIDES** as to avoid any sense of ex parte communication. 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 Ruling. If there is no submission or appearance by either party, the court will determine whether the matter is taken off calendar or will become the final ruling.

ORDERS
The court's minute order will constitute the order of the court and no further proposed orders must be submitted to the court unless the court or the law specifically requires otherwise. **Where an order *is* specifically required by the court** or by law, the parties are required to do so in accordance with California Rules of Court, rule 3.1312(c) (1) and (2).

BOOKMARKS
Bookmarking of exhibits to motions and supporting declarations - **The court requires strict compliance with CRC, rule 3.1110 (f) (4)** which requires electronic exhibits to include electronic bookmarks with the links to the first page of each exhibit, and with bookmarked titles that identify the exhibit number or letter and briefly describe the exhibit. CRC, rule 3.1110 (f) (4).

The court may continue a motion that does not comply with rule 3.1110 (f) (4) and require the parties to comply with that rule before resetting the hearing.

April 26, 2024

		Tentative
1	**2018-01040085** **SMITH vs. NORDIC SECURITY SERVICES**	**Final Accounting** Although the number of checks that remain uncashed is unusually high, the Court is satisfied that Class Counsel and the settlement administrator have made all reasonable efforts to contact Class Members and notify them of the deadline to either cash their settlement checks or request their re-issuance. Class Members have had more than a year to cash their settlement checks. As a result, the Court finds that the settlement administrator has the authority to void any remaining uncashed settlement checks and remit the funds to the cy pres recipient. **RULING:** The Final Accounting hearing is **CONTINUED** to June 28, 2024, at 1:30 p.m. in Department CX103 so that Plaintiff can file the settlement administrator's supplemental declaration regarding the final disbursement of the settlement funds. Supplemental declarations must be filed no later than fourteen (14) calendar days prior to the continued hearing date. Plaintiff is to give notice of the Court's ruling, including to the LWDA, within five (5) calendar days of this hearing.

		The Court does not require any physical or remote appearance at the hearing set for April 26, 2024. If the parties intend to submit on the tentative, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org.
2	**2020-01139875** **Walter vs. Farfetch.com US, LLC**	**Final Accounting** **RULING:** Since all distribution efforts are fully concluded, the final report is **APPROVED**. Accordingly, the Court's file is closed. The Court does not require any physical or remote appearance at the Final Accounting hearing scheduled for April 26, 2024. If the parties intend to submit on the tentative ruling, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org.
3	**2023-01319871** **Rodriguez Peralta vs. Winall Oil Co.**	**Motion to Set Aside/Vacate Default (ROA 40)** RELIEF SOUGHT: Defendant seeks to set aside the default entered against it, as well as any Judgment subsequently entered thereon. **FACTS/OVERVIEW**: On October 2, 2023, Plaintiffs filed a Request for Entry of Default. (ROA 28.) The clerk entered default the same day. (Ibid.) On February 22, 2024, Defendant filed the current Motion to Set Aside Default. (ROA 40.) Plaintiffs oppose the Motion (ROA 50), and Defendant replies (ROA 52). **CONTENTIONS AND ANALYSIS:** **Statement of the Law** A motion to set aside a default may be brought pursuant to either Code of Civil Procedure section 473, subdivision (b), or section 473.5. A court has broad discretion to vacate a default or default judgment. However, this discretion can only be exercised if the moving party establishes a proper ground for relief, by proper procedure and within the appropriate periods. (Cruz v. Fagor America, Inc. (2007) 146 Cal.App.4th 488, 495.) Code of Civil Procedure section 473, subdivision (b), states that "The court, may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise or excusable neglect." Relief pursuant to this section is discretionary unless accompanied by an attorney affidavit of fault. (Lorenz v. Commercial Accept (1995) 40 Cal.App.4th 981, 989.) Application for relief must be accompanied by a copy of the proposed answer or other pleading to be filed, if any, and the application must be made within a

		reasonable time, in no case exceeding six months, after the judgment, dismissal, or order was taken. Under Section 473(b), relief may be based either on an attorney affidavit of fault, or declarations or other evidence showing mistake, inadvertence, surprise, or excusable neglect. Relief must be granted where the default or dismissal resulted from inexcusable neglect by the defendant's attorney and the motion is supported by an attorney affidavit. (Beeman v. Burling (1990) 216 Cal.App.3d 1586, 1604.) The court is not concerned with the reasons for the attorney's mistake. (Billings v. Health Plan of America (1990) 225 Cal.App.3d 250, 256.) If a party moves to set aside default under section 473, it must be noted that the law strongly favors trial and disposition on the merits, so any doubts in applying the statute must be resolved in favor of the party seeking relief from a default. (Tackett v. City of Huntington Beach (1994) 22 Cal.App.4th 60, 64-65.) When the defaulting party moves promptly to seek relief and the opponent to the request has suffered, or will suffer, little prejudice, only minimal evidence is required to justify setting aside a default. (Id.; Shamblin v. Brattain (1988) 44 Cal.3d 474, 478.) Where service of summons has not resulted in actual notice to a party in time to defend the action, the court is empowered to grant relief from a default or default judgment under Code of Civil Procedure section 473.5. This section is designed to provide relief where there has been proper service of summons but defendant nevertheless did not find out about the action in time to defend. Typically, these are cases in which service was made by publication. (See, e.g., Trackman v. Kenney (2010) 187 Cal.App.4th 175, 180; Randall v. Randall (1928) 203 Cal. 462, 464-465.) Imputed or constructive notice is not actual notice. (Civ. Code, §18; Rosenthal v. Garner (1983) 142 Cal.App.3d 891, 895.) However, substantial compliance with the statutory requirements for service of process is often deemed sufficient if the defendant has received actual notice of the lawsuit. (Gibble v. Car-Lene Research, Inc. (1998) 67 Cal.App.4th 295, 313 [emphasis added].) Until the statutory requirements for service of process are met the court lacks jurisdiction over a defendant. (Ruttenberg v. Ruttenberg (1997) 53 Cal.App.4th 801, 808.) A defendant seeking relief under section 473.5 must show that his or her lack of actual notice in time to defend was not caused by inexcusable neglect or avoidance of service. (Tunis v. Barrow (1986) 184 Cal.App.3d 1069, 1077-1078.) A party seeking relief under this section must do so within the earlier of 180 days after service of notice of entry of judgment or two years after entry of a default judgment. (Code Civ. Proc., § 473.5, subd. (a).) **Merits** Defendant contends the default should be set aside because its entry was premature. Defendant notes that it was served with the Summons and Complaint via the Secretary of State on August 30, 2023. In citing to Corporations Code section 1702, subdivision (a), Defendant argues that it had 40 days after service to file a responsive pleading. According to Defendant, default was erroneously entered by the clerk on October 2, 2023, although its responsive pleading was not

		due until October 9, 2023. Defendant contends that Plaintiffs have refused to agree to set aside the default. As a result, Defendant argues that since the default against it was entered due to mistake, the default should be set aside by the Court under Code of Civil Procedure sections 473 and 418.10. Defendant also contends that Plaintiffs' counsel failed to fulfill the obligation to warn defense counsel before requesting entry of default. According to Defendant, Plaintiffs' counsel knew the identity of the attorneys representing Defendant in this action, but nevertheless failed to inform them that a lawsuit had been filed, service had been attempted, and default had been requested. Defendant contends it only learned of the instant litigation through communications with opposing counsel in another PAGA action filed against Defendant in Los Angeles County. In opposition, Plaintiffs completely ignore Defendant's argument. Instead, Plaintiffs contend that the Motion should be denied because Defendant fails to state the reason it failed to file a responsive pleading—i.e., whether it was due to mistake, inadvertence, surprise, or excusable neglect, and whose mistake, if any, was the cause of Defendant's failure. In addition, Plaintiffs contend that Defendant has failed to file an attorney affidavit of fault in support of the Motion. According to Plaintiffs, Defendant has instead chosen to blame Plaintiffs' counsel and the Court for Defendant's failure to timely respond to the Complaint. Plaintiffs note that before filing the Complaint, it mailed a request for employment records to Defendant's registered address in Signal Hill, California, and Defendant's counsel responded to that letter. Similarly, Plaintiffs note they also mailed a PAGA letter to Defendant, with a courtesy copy to Defendant's counsel. According to Plaintiffs, however, they did not receive a response from Defendant or its counsel indicating that counsel was willing to accept service of the contemplated complaint or that counsel was still serving as counsel to Defendant. Plaintiffs contend that after service of the Summons and Complaint was attempted at the Signal Hill address without success, a declaration of due diligence was filed, and shortly thereafter, Plaintiffs sought an application for an order to serve Defendant through the Secretary of State. Notably, Plaintiffs admit that Defendant was served through the Secretary of State on August 30, 2023. Plaintiffs' contention that the Motion should be denied rests primarily on the assertion that Defendant has failed to explain how it suddenly stopped receiving mail and service at the Signal Hill address. In noting that the Signal Hill address was Defendant's registered address for service of process, Plaintiffs imply that Defendant was intentionally avoiding service of process. In that regard, Plaintiffs argue Defendant must either provide an attorney affidavit of fault or explain its mistake, excusable neglect, surprise, or inadvertence which prevented a timely response to the Complaint. Plaintiffs' arguments are unavailing. Although it is noted that Plaintiffs made more than a dozen unsuccessful attempts to serve Defendant at the Signal Hill address (ROA 11), it is also noted that Plaintiffs ultimately sought an order to serve Defendant through the Secretary of State (ROA 14). Plaintiffs' application was granted, and the Court entered the Order for Service Upon the Secretary of State for Defendant on August 29, 2023. (ROA 24.) According to the proof of service

		filed by Plaintiffs, Defendant, through the Secretary of State, was served with the Summons and Complaint on August 30, 2023. (ROA 26.) Corporations Code section 1702 provides in relevant part: "If an agent for the purpose of service of process … cannot with reasonable diligence be found at the address designated for personally delivering the process … and it is shown by affidavit to the satisfaction of the court that process against a domestic corporation cannot be served with reasonable diligence upon the designated agent by hand … or upon the corporation …, the court may make an order that the service be made upon the corporation by delivering by hand to the Secretary of State …." (Corps. C., § 1702, subd. (a).) Under the statute, service upon a corporation is deemed complete 10 days after delivery to the Secretary of State. As a result, when a corporation is served through the Secretary of State, it has 40 days after delivery to respond. (Corps. C., § 1702, subd. (a).) **In this instance, since delivery of the Summons and Complaint occurred on August 30, 2023, Defendant had until October 9, 2023, to file a responsive pleading. However, Plaintiffs prematurely sought, and were granted, entry of default against Defendants on October 2, 2023—seven days before expiration of the 40-day period. As a result, the entry of default by the clerk was in error.** A clerk's authority to enter default is limited by the applicable statutes, which impose a ministerial duty on the clerk. (Ferraro v. Camarlinghi (2008) 161 Cal.App.4th 509, 533-534.) "A clerk's entry of default … is not a judicial act. It reflects the clerk's performance of s series of quintessentially clerical tasks: ascertaining that the request for default appears in order, confirming that the defendant's time to plead has elapsed, noting the absence of a responsive pleading by him, and signifying these facts by entering the default." (Id., at p. 534.) "Thus, some errors by the clerk or trial court renders defaults and default judgments void—rather than merely voidable—and subject to attack…" (Bae v. T.D. Service Co. of Arizona (2016) 245 Cal.App.4th 89, 99.) "Under the doctrine of extrinsic mistake, relief from a default and default judgment is potentially available when the clerk or trial court erred in entering them." (Bae v. T.D. Service, supra, 245 Cal.App.4th at p. 98.) Under the doctrine of extrinsic mistake, relief is subject to a three-part formula: (1) the defaulted party must demonstrate it has a meritorious case; (2) the party seeking to set aside the default must articulate a satisfactory excuse for not presenting a defense to the original action; and (3) the moving party must demonstrate diligence in seeking to set aside the default. (Id., at p. 100.) Here, Defendant has demonstrated the existence of a meritorious defense to the action. In support of the instant Motion, Defendant has provided a copy of its proposed responsive pleading—a motion to dismiss or stay on the ground that there is a previously-filed duplicative action against it involving the same Plaintiffs that is currently pending in Los Angeles Superior Court. (See, ROA 38, Declaration of Ken H. Moreno ("Moreno Decl."), Exh. L.) Defendant has also stated a satisfactory excuse for failing to respond to the Complaint before default was entered—namely, that the time to respond had not yet expired and default was entered prematurely under Corporations Code section 1702. Lastly, Defendant has demonstrated it was diligent in seeking to set aside the default. Defendant's

		counsel attests it immediately contacted Plaintiffs' counsel to request that Plaintiffs' voluntarily set aside the entry of default, but Plaintiffs' counsel refused. (Moreno Decl., ¶ 11.) After repeated refusals by Plaintiffs, Defendant timely filed the instant Motion on February 22, 2024—less than six months after default was entered. (ROA 40.) The doctrine of relief in equity from mistake applies where the mistake is that of the clerk of court. (Baske v. Burke (1981) 125 Cal.App.3d 38, 44, cited in Rappleyea v. Campbell (1994) 8 Cal.4th 975, 983.) In this instance, the entry of default against Defendant was clearly in error since it occurred before the 40-day period had elapsed for Defendant to respond to the Complaint. Accordingly, the Motion is granted and the default is set aside. **RULING:** Defendant Winall Oil Co.'s Motion to Set Aside Default is **GRANTED** on the ground that entry of default by the clerk was in error because the time to file a responsive pleading had not elapsed. Defendant Winall Oil Co. is ordered to file its responsive pleading no later than May 24, 2024. Clerk to give notice of this Court's ruling. If the parties intend to submit on the tentative ruling, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org.
4	**2023-01356537** **Sadrarhami vs. Nelnet, Inc.**	**1. Motion to Strike Class Allegations From Complaint (ROA 20)** **2. Case Management Conference** **Motion to Strike Class Allegations** Moving Party: Defendant Nelnet, Inc. Responding Party: Plaintiff Ali Reza Sadrarhami SERVICE: February 22, 2024, by U.S. Mail RELIEF SOUGHT: Defendant moves for an order striking the class allegations and language from the prayer section in Plaintiff's Class Action Complaint. UPCOMING EVENTS: None **FACTS/OVERVIEW**: This is a putative class action for violations of California's debt collection laws. On October 20, 2023, Plaintiff Ali Reza Sadrarhami, individually and on behalf of all others similarly situated ("Plaintiff"), filed a Class Action Complaint against Defendant Nelnet, Inc. ("Defendant"). (ROA 2.) The Complaint alleges two causes of action for: (1) Violation of Unfair Competition Law ("UCL"); and (2) Violation of the Rosenthal Fair Debt Collection Practices Act ("RFDCPA").

		Defendant is a Nebraska corporation engaged in the servicing of student loans. Plaintiff is a debtor with outstanding student loans. The Complaint alleges that Defendant regularly fails to apply borrowers' payments to all loans, thus resulting in the improper imposition of late fees and past due balances. In addition, it is alleged that Defendant improperly serviced loans under the U.S. Department of Education's "Saving on a Valuable Education" plan by charging additional interest beyond the amount of a borrower's monthly payment, in violation of federal regulations. (Compl., ¶¶ 2-4, 13.) On February 22, 2024, Defendant filed the current Motion to Strike Class Allegations. (ROA 20.) The Motion is brought on the ground that Plaintiff's proposed class is an impermissible fail-safe class. Plaintiff opposes the Motion (ROA 29), and Defendant replies (ROA 33). **CONTENTIONS AND ANALYSIS:** **Statement of the Law** The Court may, upon a motion made pursuant to Code of Civil Procedure section 436, or at any time in its discretion, and upon terms it deems proper, strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) Motions to strike are disfavored, and the policy is to construe the pleadings liberally, with a view to substantial justice. (Code Civ. Proc., § 452). Motions to strike all class allegations are properly granted where it appears from the face of the complaint that there is no reasonable possibility that plaintiff can establish a community of interest among the potential class members and that individual issues predominate over common questions of law and fact. (Tucker v. Pacific Bell Mobile Services (2012) 208 Cal.App.4th 201, 211.) However, if there is a reasonable possibility that plaintiff can establish a community of interest among the members of the class, a decision on the propriety of the class action should be deferred until an evidentiary hearing has been held. (Prince v. CLS Transportation, Inc. (2004) 118 Cal.App.4th 1320, 1325; Tarkington v. California Unemployment Ins. Appeals Bd. (2009) 172 Cal.App.4th 1494, 1511 [recognizing "policy disfavoring determination of class suitability issues at the pleading stage"].) Similar to a demurrer, the grounds to strike shall either appear on the face of the pleading or from matters that are judicially noticed. (Code Civ. Proc., §437.) The court reads the allegations as a whole, with all parts in their context, and assumes their truth. (Spielholz v. Sup. Ct. (2001) 86 Cal.App.4th 1366, 1371.) **Merits** Defendant contends the class allegations should be stricken from the Complaint because one of the putative classes is not ascertainable. According to Defendant, the putative "Payment Class" is defined in terms of success on the merits. In citing to Noel v. Thrifty Payless, Inc. (2019) 7 Cal.5th 955, as well as several federal cases, Defendant argues that the class is an impermissible "fail-safe" class because it would require individualized trials on the merits to determine whether someone is a member of the class. Defendant also contends such fail-safe classes are

		improper because they raise due process and fairness concerns. As a result, Defendant contends the Court can strike the Payment Class and all related allegations because the defects appear on the fact of the Complaint. In support of its argument regarding the propriety of striking the class allegations, Defendant cites to In re BCBG Overtime Cases (2008) 163 Cal.App.4th 1293. In opposition, Plaintiff contends that Defendant's Motion is improper because any purported deficiencies in the class allegations should be addressed at the certification stage—not the pleading stage before any discovery has occurred. Moreover, Plaintiff contends that Defendant has not cited to any authority in support of the Motion. As argued by Plaintiff, there is no basis for Defendant's assertion about fail-safe classes. Nevertheless, Plaintiff contends the proposed Payment Class is not a fail-safe class, but rather is defined by objective criteria, and any ruling on class suitability is premature. Defendant's argument is unavailing. As a preliminary matter, it is noted that "[j]udicial policy in California has long discouraged trial courts from determining class sufficiency at the pleading stage and directed that this issue be determined by a motion for class certification. '"In order to effect this judicial policy, the California Supreme Court has mandated that a candidate complaint for class action consideration, if at all possible, be allowed to survive the pleading stages of litigation" [Citations.]' [Citation.]" (Gutierrez v. California Commerce Club, Inc. (2010) 187 Cal.App.4th 969, 976.) Although there are circumstances in which granting a motion to strike class allegations may be appropriate, this is not one of them. For instance, a defendant may move to strike the class allegations based on evidence outside the pleadings. However, this does not pertain to motions brought at the pleading stage under Code of Civil Procedure sections 435 and 436, but rather it generally pertains to motions related to the certification stage pursuant to Code of Civil Procedure section 382 and CRC Rules 3.764(b) and 3.767. As noted above, Defendant points to In re BCBG Overtime Cases to support their contention that the instant Motion is appropriate. However, Defendant ignores pivotal distinctions between this case and In re BCBG. In BCBG, the motion to strike was brought in a case that had been pending for four years since the filing of the initial complaint. In the intervening months between the filing of the operative complaint and the motion to strike, the parties had "been engaged in 'an extensive law and motion battle regarding the identify of members of the putative class ….'" (BCBG, supra, 163 Cal.App.4th at p. 1300.) More importantly, the motion to strike in BCBG was "not a motion to strike used during the pleading stage of a lawsuit …." (Id., at p. 1299.) Instead, it was a motion filed under CRC Rule 3.767, and sought to have the class allegations stricken from the complaint by asking the court to hold an evidentiary hearing. (Ibid.) Contrary to Defendant's argument here, the BCBG court ultimately adhered to the rule that "[c]lass certification is generally not decided at the pleading stage of a lawsuit," and that the " 'preferred course is to defer decision on the propriety of the class action until an evidentiary hearing has been held on the appropriateness of class litigation.'" (Id., at p. 1299.) As for Defendant's substantive argument, it too is unavailing. In some federal and out-of-state decisions, so-called "fail-safe classes" refer to classes that are framed as a legal conclusion or defined in terms of success on the merits. (See, e.g.,

		Mullins v. Direct Digital, LLC (7th Cir. 2015) 795 F.3d 654, 660; Randleman v. Fidelity Nat'l Title Ins. Co. (6th Cir. 2011) 646 F.3d 347, 352 ["Either the class members win or, by virtue of losing, they are not in the class and, therefore, not bound by the judgment."].) First, it is noted that none of the cases cited by Defendant are published, citable California cases that hold that "fail-safe" classes are prohibited. Instead, many of the cases cited by Defendant are federal cases in jurisdictions other than California or the Ninth Circuit. The state case primarily relied upon by Defendant, Noel v. Thrifty Payless, Inc. (2019) 7 Cal.5th 955, is not only distinguishable from those federal cases, but its holding has been misconstrued by Defendant. Indeed, in Noel, although the California Supreme Court did spend considerable time discussing the analysis in the federal Seventh Circuit case of Mullins v. Direct Digital, the issue of fail-safe classes was not directly addressed and the opinion does not contain a holding that so-called fail-safe classes are prohibited. More generally as to class action litigation, California case law often diverges from federal practice, including on issues of ascertainability and class certification. Federal class actions are governed by Federal Rule of Civil Procedure Rule 23, and although federal cases interpreting the rule are persuasive, it has been held that they are not binding on state courts unless a constitutional right is impaired. (Rosack v. Volvo of America Corp. (1982) 131 Cal.App.3d 741, 750.) Accordingly, the federal cases cited by Defendant are not relevant here. As noted by Plaintiff, there are no published California cases that have stricken class allegations because they defined a so-called fail-safe class. Nevertheless, even to the extent that any California case has considered the issue of a fail-safe class, it has done so in the context of a motion for class certification in determining whether the class was ascertainable. "Ascertainability is required in order to give notice to putative class members as to whom judgment in the action will be res judicata." (Hicks v. Kaufman and Broad Home Corp. (2001) 89 Cal.App.4th 908, 914.) "[It] can be better achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible when that identification becomes necessary. (Id., at p. 915.) This is distinguished from the element of commonality—i.e., the existence of common questions of law and fact involved in the litigation. "Common questions of law and fact are required in order to assure the interest of the litigants and the court are furthered by permitting the suit to proceed as a class action 'rather than in a multiplicity of separate suits.'" (Id., at p. 914.) In the instant litigation, Plaintiff has defined two classes—the "Payment Class" and the "SAVE Class". (Compl., ¶¶ 33, 37.) In this Motion, Defendant is only challenging the "Payment Class", which is defined as: All consumers, who, between the applicable statutes of limitations and the present, made a payment on student loans serviced by Defendant, and Defendant did not credit those payments to loans as instructed by the consumer. (Compl., ¶ 33.) Defendant contends this is an impermissible class because it is defined in terms of success on the merits of Plaintiff's claim—namely, that Defendant failed to apply

		the putative class member's payment as directed, and thus the putative class member is entitled to recover under the UCL and RFDCPA. However, Defendant's reading of the "Payment Class" definition is too broad. Not crediting payments to loans "as instructed by the consumer" does not automatically mean that Defendant violated the UCL and RFDCPA and thus a putative class member/borrower/consumer is entitled to recovery. Instead, if anything, Defendant's failure to credit a student loan as instructed by the borrower is simply a precondition for class membership that relates to the existence of common questions of law and fact, not ascertainability of the class. "A class is still ascertainable even if the definition pleads ultimate facts or conclusions of law." (Hicks v. Kaufman and Broad, supra, 89 Cal.App.4th at p. 915.) In this instance, the Payment Class, as defined by Plaintiff, consists of student loan borrowers whose loans are serviced by Defendant and whose payments were not credited to their loans as they instructed. This could include borrowers who may have instructed Defendant to credit their loans in a manner that was improper, unlawful, or contrary to the terms of those loans, and therefore Defendant's failure to credit the loans as instructed by the borrower may not be violative of the UCL or the RFDCPA. Contrary to Defendant's assertion, the Payment Class, as currently defined, is not a so-called "fail-safe class"; it is not defined in terms of ultimate liability questions. Instead, the Court finds that the Payment Class is ascertainable. Accordingly, the Motion is denied. **RULING:** Defendant Nelnet, Inc.'s Motion to Strike Class Allegations is **DENIED.** The Payment Class is ascertainable and is not a "fail-safe class". Clerk to give notice of this Court's ruling. If the parties intend to submit on the tentative, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org. Case Management Conference remains on calendar.
5	**2011-00511808** **Levanoff vs. Socal Wings LLC**	**1. Motion to Strike or Tax Costs (ROA 2269)** **2. Motion to Strike or Tax Costs (ROA 2276)** **Continued to 8/2/24 Per Minute Order dated 4/24/24.**
6	**2020-01175109** **Valle vs. EXPRESS FURNITURE SERVICES LLC**	**1. Motion for PAGA Approval (ROA 132)** **2. Status Conference** **OVERVIEW**: Defendant briefly employed Plaintiff as a non-exempt employee. In the operative Second Amended Complaint (ROA 36), Plaintiff alleges individual substantive Labor Code claims and a PAGA claim based upon failure to pay wages,

		failure to provide rest and meal periods, failure to itemized wage statements, PAGA penalties, failure to permit inspection of records, and violations of the UCL. This Request For Approval was first heard on 01-27-23. At that time, the Court continued the hearing so that Plaintiff could address 13 items of concern. ROA 93. On 04-28-23, the Court was forced to continue the hearing again as counsel failed to adequately respond to several of the issues the Court previously identified. ROA 99. At that time, the Court gave counsel "one additional opportunity to resolve the following concerns…" ROA 99 at 1. The third hearing was held on 08-25-23 and counsel again failed to adequately address the issues previously identified. ROA 113. The Court thus denied the motion, and noted, among other things: (1) "Counsel, on a serial basis, has failed to comply with a basic rule of court and this Department's admonition it requires 'strict compliance' with CRC 3.1110(f)(4). (See, e.g., ROA 48, 96, 106.)" ROA 113 at 4. (2) "**To the extent that Counsel chooses to refile this Motion, the Court sets an OSC re Sanctions for the same date pursuant to CCP Section 177.5 for Counsel's failure to comply with Court Orders re compliance with CRC Section 3.1110 and this Court's Procedural Guidelines For PAGA Settlements as set forth hereinbelow at C.2." Id.** (3) "Given the Court's 3 exhaustive analyses of the problems needing correction, there should be no reason for Counsel to be unable to present a Code and Rule Compliant Motion, without shortcomings, should Counsel choose to refile this Motion." Id. **ANALYSIS:** As an initial matter, the renewed filing consists of a sixty-page document (ROA 132) that combines the notice of motion, the memorandum, and the declaration of Samantha L. Ortiz, which includes Exs. A-D. **The document has NOT been electronically bookmarked, once again violating CRC and this Department's guidelines.** Counsel makes no response to the OSC re Sanctions which was automatically set per ROA 113 at page 4 upon her refiling of this Motion. [Minute Order of 8/25/23]. **RULING**: 1. The Court imposes a sanction in the sum of $500 (Five Hundred Dollars) as against the Law Offices of Ramin R. Younessi, A Professional Law Corporation and Samantha Ortiz, jointly and severally, pursuant to CCP Section 177.5 for Counsel's failure to comply with this Court's Orders by failing to correct improprieties in the Motion For Approval as set forth by the Court on 1/27/23, 4/28/23, and 8/25/23. Said sanctions to be paid to this Court by close of business 5/15/24. Plaintiff's motion for approval of PAGA settlement is **CONTINUED** to August 23, 2024 at 1:30 p.m. in Department CX103 to permit the Moving Party to respond to the following items of concern. Any supplemental briefing shall be filed on or

		before August 9, 2024. **If a revised settlement agreement and/or proposed notice is submitted, a redline version showing all changes, deletions, and additions must be submitted as well. In addition, Plaintiff must provide proof of service of any revised settlement agreement and supplemental papers on the LWDA.** **As to the Settlement:** 1. What was the sample size of employee records? Decl. ¶¶ 8, 9. What steps were taken to ensure it was representative of all aggrieved employees throughout the entire PAGA Period? 2. The valuation of the PAGA claim has two significant flaws. First it relies upon a group of 53 aggrieved employees, but that number was estimated as of 05-25-22. Decl. ¶ 12. What is the number of aggrieved employees now? Relatedly, the number of workweeks continues to accrue as the PAGA Period runs through the date of any approval. Counsel has added 40 additional workweeks to the analysis to account for this, but the actual number is 50 as of the date of this hearing and the calculations still rely on 53 aggrieved employees from nearly two years ago. Decl. ¶ 13. Nonetheless, assuming one meal and one rest period violation per pay period, per employee, counsel asserts the maximum valuation is $2,443,300. Id. Counsel asserts discounting based on Defendant's production of compliant meal period records. ¶ 13. Counsel then asserts this should reduce the exposure by 50% for meal period violations, for a valuation of $795,000. Id. Counsel then states the maximum value of the claim is $10,600 based on a total of two violations total for all 53 employees. There is no evidence or authority identified that supports this degree of discounting. ¶ 14. Additionally, this discussion only concerns meal periods. None of the other underlying violations, which counsel seeks to release, i.e., minimum and overtime wages, wage statements, and waiting time penalties, are included in the PAGA claim valuation at all. 3. The definition of Aggrieved Employees incorporates the undefined short form "Express". Agr. § II(A)(1). This renders it vague. 4. Please provide records to support the costs request. 5. The release is overbroad to the extent it includes the following: "…or that are based on any alleged failure to pay minimum, regular, or hourly wages, and/or alleged off-the-clock work; failure to pay overtime wages or accurate overtime wages; failure to provide accurate and/or complete wage statements; and failure to timely pay wages during employment or upon separation." § II(A)(12). Additionally, to the extent counsel cannot provide valuations for any of the alleged violations, those should be removed from the release. 6. There is no proof the papers were served on the LWDA despite counsel's representation to the contrary in January 2024. Decl. ¶ 41. **As to the Notice**: 7. It uses only the undefined short form "Express".

		8. There needs to be a blank for insertion of an end date for the PAGA Period. 9. It should state that no claims other than for PAGA penalties are being released and specifically, that no individual claims are being released. 10. It should state current employees will not be retaliated against for cashing the check. **As to the Proposed Order:** 11. It should identify the fee and cost amounts separately. **Additionally, the Court sets another OSC re Sanctions for Counsel's Failure to Comply with the Orders for Correction set forth hereinabove, to be heard on the same date and time as the continued Motion-August 23, 2024 at 1:30 p.m.** **The Status Conference is ordered Off Calendar.** Clerk to give Notice. **Plaintiff's Counsel to give Notice of the continued Motion to the LWDA and file Proof of Service of same.**
7	**2023-01320469** **Higginbotham vs. Newport Beach Vineyards & Winery, LLC**	**1. Motion for PAGA Approval (ROA 33)** **2. Status Conference** **<u>Motion for Approval of PAGA Settlement</u>** **FACTUAL BACKGROUND:** This PAGA matter involving the non-exempt employees of Defendant was filed 04-20-23. ROA 2. Plaintiff alleges Defendant failed to pay Plaintiff for all hours worked at the correct regular rate, committed illegal tip pooling, failed to pay all wages upon termination or resignation, and failed to provide accurate itemized wage statements. The operative Complaint brings the following causes of action: 1. PAGA penalties 2. UCL 3. LC §§ 351, 353 4. Wage statements 5. Waiting time **SUMMARY OF SETTLEMENT:**

		Aggrieved Employees Definition: PAGA Member(s) or Settlement Group Members are "all current and former non-exempt employees of Defendant who were subject to the alleged illegal and unauthorized tip pooling in California during the PAGA Period." (§ 1.14.) The "PAGA Period" is 02-14-22 through approval. (§ 1.15.) Number of Aggrieved Employees: Five, who worked 15 pay periods during the PAGA Period. (Carney Decl. ¶ 4.) Value of Settlement: GSA is $1,164.07 (§ 1.9) $ 0 Attorney's fees (§ 11.13) $ 0 Litigation costs (id.) $ 0 Administration costs (§ 6.1, Defendant will send via U.S. Mail) $??? LWDA share of PAGA ("LWDA Payment" is not defined) $??? Net Settlement Amount (§ 1.11 defines it) For whatever reason, the settlement fails to include the 75% / 25% split of the GSA. Counsel reports it in her declaration (¶ 16), but this should be explicit in the settlement. Assuming five aggrieved employees, this is $19.44 per pay period. ¶ 16. Calculation of PAGA payments: Proportional pay periods. The methodology is at § 1.10. Claims Administrator: None. Defendant will mail the payments. Taxation: 1099s. § 5.2. Who sends these? Unclaimed Funds: Sent to the Controller after 180 days. (§ 6.2) Release: The PAGA release is at § 1.20. It covers: "all claims and theories that were set forth, or that could have been set forth based on the facts alleged in the Action during the PAGA Period, including but not limited to Penalties pursuant to PAGA under California Labor Code sections 200 et seq., 201-204, 205.5, 210, 218.6, 226, 226.3, 226.7, 256, 351, 353, 510, 558, 1174, 1194, 1194.2, 1197, 1198, and 2699, and related IWC Wage Orders, based on the various theories of liability, including, but not limited to, Defendant's alleged failure to: (a) pay proper wages and overtime compensation, (b) pay all wages, (c) properly maintain and submit accurate itemized wage statements, (d) timely pay

		all wages upon separation of employment, and (e) for violations of Labor Code sections 351 and 353." This generally tracks the complaint and the attached LWDA letter, but it needs to be limited to claims for penalties under PAGA. 664.6 provision: None. Settlement should so provide. ANALYSIS: LWDA Issues: Proof of service is at Carney Decl. Ex. 2. The letter is attached to the Complaint. It's fine. Other Cases: Not mentioned. Need to confirm there are no other cases. **Fairness** (Citations are to the Carney Decl. unless noted.) **Investigation of Claims** "Plaintiff has propounded interrogatories and document requests, Defendant has produced documents and data, including payroll records, policy documents, and related employment records for aggrieved employees." (¶ 10.) **Circumstances of Settlement** Unclear. No mention of mediation, which is not surprising given the small scope of this case. **Valuation of Claims** The valuation is described at ¶¶ 12-13. This is pretty barren and it only mentions the tip-pooling claim. What value was placed on the other underlying labor code violations alleged? The tip-pooling claim is valued at $50/$100 for a total of $1450 for the fifteen pay periods. ¶ 12. The discounting relates to the heightened penalties. Id. **Attorney's Fees and Costs** N/A **Plaintiff's Enhancement** N/A **Notice**

		Not provided. It needs to describe what's released by the settlement, in particular that individual claims are not released. It should also state current employees will not be retaliated against for cashing the check. Does it need to be in a language other than English? **RULING:** Plaintiff's motion for approval of PAGA settlement is **CONTINUED** to August 30, 2024 at 1:30 p.m. in Department CX103 to permit the parties to respond to the following items of concern. Any supplemental briefing shall be filed on or before August 16, 2024. If a revised settlement agreement and/or proposed notice is submitted, a redline version showing all changes, deletions, and additions must be submitted as well. In addition, Plaintiff must provide proof of service of any revised settlement agreement and supplemental papers on the LWDA. **As to the Settlement:** 1. Are there any other matters, including in the pre-filing LWDA stage, that may be affected by this settlement? 2. As of what date were there 15 pay periods and how many are there now? 3. The Settlement does not provide a definition or formula to calculate the "LWDA Payment". 4. The release appears overbroad to the extent it includes "all claims and theories" as opposed to claims for penalties pursuant to PAGA. 5. The settlement should provide for the Court's continuing jurisdiction pursuant to CCP § 664.6. 6. The valuation appears to only include the claim for tip pooling. What values and discounts were applied to the other underlying labor code violations alleged? 7. No notice has been provided for the Court's review. It should describe what is released by the settlement, in particular, that individual claims are not released. It should also state current employees will not be retaliated against for cashing the check. 8. Does the notice need to be translated to a language other than English? The Status Conference is ordered Off Calendar. Moving Party to give notice unless notice. Please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org if both parties intend to submit on the tentative.

8	**2021-01189853** **Schneider vs. All-Clad Metalcrafters, LLC**	**1. Motion for Final Approval (ROA 363)** **2. Motion for Attorney Fees (ROA 324)** **3. Status Conference** **FACTS/OVERVIEW**: This is a putative class action for violations of California's consumer protection laws. Plaintiffs allege that All-Clad Metalcrafters LLC ("All-Clad") and Groupe SEB USA, Inc. ("T-Fal") (collectively, "Defendants") falsely advertised their products with express warranties. Defendants separately manufacture kitchen appliances, cookware, and other consumer goods, and advertise that their products are sold with express warranties. Both All-Clad and T-Fal include warranty registration cards within their product packaging and make their warranty registration forms available on their respective websites. Plaintiffs are consumers who purchased either All-Clad or T-Fal products with the expectation that they came with automatic warranties. Instead, Plaintiffs found warranty registration cards with their purchased products, and discovered they were required to "register" their warranties. Plaintiffs do not contend that the respective warranties did not exist. Rather, Plaintiffs assert that Defendants' practices were contrary to California law because they result in a chilling effect on the submission of warranty claims, and mislead consumers into purchasing products that either did not have a warranty or failed to disclose that the warranty came with certain requirements, On March 17, 2021, Plaintiffs Leann Schneider, Michael Sporn, and Kathryn Churchill (collectively, "the All-Clad Plaintiffs") filed the original Complaint (ROA 2) against Defendant All-Clad Metalcrafters, LLC ("All-Clad") alleging causes of action for: (1) Violation of Song-Beverly Consumer Warranty Act; (2) Violation of Consumer Legal Remedies Act; and (3) Violation of California's Unfair Competition Law. As a matter of right, the All-Clad Plaintiffs filed the First Amended Complaint on May 18, 2021, alleging the same causes of action. (ROA 23) On October 29, 2021, Plaintiffs Crystol De La Cruz and Angelina Sharp (collectively, "the T-Fal Plaintiffs") filed a Complaint in San Bernardino Superior Court, Case No. CIVSB2127396, against Defendant Groupe SEB USA, Inc. ("T-Fal") asserting claims of consumer protection laws violations. The case was timely removed by T-Fall to the U.S. District Court for the Central District of California on December 3, 2021. The T-Fal Plaintiffs then filed a motion to remand the case to state court. The next day, T-Fal filed a motion to dismiss the Complaint. The All-Clad Plaintiff and T-Fal Plaintiffs separately agreed to stay their cases and go to private mediation to resolve their respective disputes with All-Clad and T-Fal. On June 23, 2022, and August 2, 2022, the parties attend mediation sessions with Bruce Friedman of JAMS. Following mediation, the parties engaged in extensive good faith settlement discussions for approximately ten months. After reaching a settlement in principle, the All-Clad Plaintiffs and All-Clad filed a Joint Status Report on October 27, 2022, stating that they anticipated filing a stipulation for leave to file a consolidated amended complaint that would include

		the claims of the T-Fal Plaintiffs against T-Fal. (ROA 162). The stipulation was filed on November 9, 2022. (ROA 174). Subsequently, the T-Fal Plaintiffs dismissed their action without prejudice. On November 14, 2022, the All-Clad Plaintiffs and T-Fal Plaintiffs (collectively, "Plaintiffs") filed the operative Consolidated Amended Class Action Complaint ("CAC") against Defendants. (ROA 177). The Consolidated Complaint alleges the same causes of action that are contained in the All-Clad Plaintiffs' FAC. The Motion for Preliminary Approval was filed on June 14, 2023. (ROA 236). On November 3, 2023, at the third hearing on the matter, the Court granted the Motion (ROA 304), and the Order Granting Preliminary Approval was entered on November 13, 2023 (ROA 314). On February 1, 2024, Plaintiffs filed the Motion for Attorneys' Fees, Costs, and Service Awards. (ROA 324.) On February 26, 2024, Plaintiffs filed the current Motion for Final Approval of Class Action Settlement and Certification of Settlement Class. (ROA 363.) However, Plaintiffs did not provide a copy of the fully executed operative Settlement Agreement with the final approval papers. Presumably, Plaintiffs did not do so because there were no changes to the version submitted to the Court at the time of preliminary approval. The Settlement Agreement is the basis for the Motion for Final Approval. Therefore, it must be attached to counsel's declaration for the Court's review. The Court should not be required to refer to a separate document filed during preliminary approval in order to reach a determination at Final Approval. **RULING:** The Motion for Final Approval of Class Action Settlement and Certification of Settlement Class is **CONTINUED** to August 16, 2024, at 1:30 p.m. in Department CX103. For the Final Approval hearing, a copy of the fully executed operative Settlement Agreement must be submitted as an attachment to counsel's declaration. Counsel must file supplemental papers addressing this issue no later than fourteen (14) calendar days prior to the continued hearing date. The Motion for Attorneys' Fees, Costs, and Service Awards is also **CONTINUED** to August 16, 2024, at 1:30 p.m. in Department CX103, to be heard concurrently with the Motion for Final Approval. The Court does not require any physical or remote appearance at the hearing scheduled for April 26, 2024. The Status Conference is ordered Off Calendar.
9	**2021-01193589**	**1. Motion for Preliminary Approval of Class and PAGA Action Settlement (ROA 245)** **2. Order to Show Cause**

	Diaz-Garcia vs. Awesome Products, Inc	**1. Motion for Preliminary Approval of Settlement** This hearing was continued twice from 12-15-23. to 02-23-24 so that Counsel could address issues raised by the Court. The Court also set an OSC re sanctions to be heard concurrently. **The Declaration (ROA 286) does not address the OSC and no separate written response has been filed as of 04-23-24.** **ANALYSIS:** The Court's remaining issues were addressed with the exception of the Issue set forth hereinbelow. **As to the Proposed Order:** This reflects the settlement as ROA 271, which does not exist. (Decl. Ex. B.) The current executed settlement ROA is unknown as it has not been filed. The ROA must be updated as the Settlement is amended. ISSUE. This reflects ROA 285, which does not exist. It simply needs to be changed to ROA 286. **RULING:** The Court has reviewed the supplemental briefing filed in response to the prior minute order. The motion for preliminary approval of class action settlement is **GRANTED** as to the current version of the parties' settlement agreement. The Court also approves the current version of the class notice. The motion for final approval shall be heard on August 30, 2024 at 1:30 p.m.in Department CX103. Moving papers are due 16 court days before the hearing. Please submit a revised proposed order that conforms to the foregoing, identifies the settlement by correct ROA number, which is 286, includes the date of the final approval hearing, and updates all dates that are calculated in reference to the date preliminary approval is granted. The OSC is Off Calendar; **however, Counsel is cautioned that the Court will not tolerate any future failure to respond to a Court issued Order to Show Cause.** Plaintiff to give notice of this Court's ruling, including to the LWDA, within 10 calendar days, and file proof of service. The Court does not require any physical or remote appearance at the hearing scheduled for 04-26-24.

		Please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org if both parties intend to submit on the tentative.
10	**2022-01295800** **Lopez vs. NexGen Air Conditioning and Heating, LLC**	**1. Motion for Preliminary Approval of Class Action Settlement (ROA 38)** **2. Case Management Conference** 1. **Motion for Preliminary Approval of Class Action and PAGA Settlement** **FACTS/OVERVIEW**: This is a putative wage-and-hour class action and PAGA matter. On December 8, 2022, Plaintiff Ramon Lopez, on behalf of himself and all others similarly situated ("Plaintiff"), filed a Complaint against Defendant NexGen Air Conditioning and Heating, LLC ("Defendant"). (ROA 2.) The Complaint alleged the following nine causes of action: 1. Failure to Pay Minimum Wages; 2. Failure to Pay Overtime Wages; 3. Failure to Provide Accurate, Itemized Wage Statements; 4. Failure to Provide Meal Periods; 5. Failure to Provide Rest Breaks; 6. Waiting Time Penalties; 7. Failure to Maintain Records; 8. Failure to Reimburse Business Expenses; and 9. Unfair Business Practices On March 3, 2023, as a matter of right, Plaintiff filed the operative First Amended Complaint ("FAC") adding a cause of action for PAGA penalties. (ROA 14.) Defendant engages in the business of air conditioning and heating installation and service. Plaintiff was a non-exempt employee who worked as an Installer, and his duties included customer service, sales, and installation. On February 22, 2024, Plaintiff filed the current Motion for Preliminary Approval of Class Action Settlement. (ROA 38.) Neither of the parties have sought to compel arbitration, and there are no outstanding discovery orders. This is the first hearing on this matter. **SUMMARY OF THE SETTLEMENT:** A copy of the fully executed Joint Stipulation for Class Action and PAGA Settlement ("Settlement Agreement") is attached as Exhibit B to the Declaration of Gregory P.

		Wong ("Counsel Decl."). (ROA 36.) The summary of the Settlement Agreement is as follows: Class Definition: All current and former hourly non-exempt employees who worked for Defendant in the State of California during the Class Period. (Settlement, ¶ 7.) Class Period: December 8, 2018, through the date a preliminary approval order is entered. (Id., ¶ 8.) PAGA Group Definition: All current and former hourly non-exempt employees of Defendant who worked within California at any time during the PAGA Period. (Id., ¶ 18.) PAGA Period: December 9, 2021, through the date a preliminary approval order is entered. (Id., ¶ 19.) Estimated Class/PAGA Group Size: 410 Class Members, and 818 PAGA Group Members. Differential due to the fact that 408 PAGA Group Members signed arbitration agreements that included class action waivers. (Counsel Decl., ¶ 8.) Gross Settlement Amount ("GSA"): $1,413,822.00 Defendant to separately pay employer's share of payroll taxes in addition to the GSA. (Settlement, ¶ 12.) $ 471,274.00 Attorneys' fees (1/3 GSA) $ 15,000.00 Litigation costs (not to exceed) $ 20,000.00 Administration costs (NTE) $ 10,000.00 Enhancement (NTE) $ 140,000.00 PAGA penalties (75% to LWDA, 25% to PAGA Members) $ 757,548.00 Net Settlement Amount Escalator Clause: Defendant estimates 41,583 total workweeks. If actual number of workweeks in Class Period is 5% greater than estimate, then GSA will be increased proportionately. (Settlement, ¶ 52.) ISSUE: The end date of the Class Period is a moving target and uncertain since it is based on the date of entry of the preliminary approval order. Also, the end date for the calculation of estimated total workweeks is unknown and undefined. This uncertainty could result in an increase in the number of Class Members and PAGA Members as well as a greater than 5% increase in the total number of actual workweeks, and thus lead to the triggering of the Escalator Clause. This may impact the fairness of the settlement. Payments to Class:

		How Calculated? Pro rata based on number of workweeks for both class and PAGA payments. (Settlement, ¶¶ 37, 38.) Reversion? No Claims Made? No Taxation? For class payments, 1/3 wages, 1/3 penalties, and 1/3 interest. For PAGA payments, 100% allocated as penalties. (Id., ¶¶ 54, 55.) Uncashed Checks: uncashed after 180 days will be remitted to State Controller's Office. (Id., ¶ 51.) Average Pymt. Not provided. ISSUE: Counsel must provide estimated average, high, and low individual class and PAGA payments. **CERTIFICATION OF CLASS:** The party seeking class certification must establish three things: "(1) the existence of an ascertainable and sufficiently numerous class, (2) a well-defined community of interest, and (3) substantial benefits from certification that render proceeding as a class superior to the alternatives." (Brinker Restaurant Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1021.) It appears that these elements are met, and the proposed class can be conditionally certified for settlement purposes. The parties agree to conditional certification of the class for settlement purposes. The class appears to be ascertainable, sufficiently numerous, and well-defined. **SETTLEMENT ISSUES:** 1. Released Class Claims: Any and all claims based on facts alleged in FAC, including claims identified in PAGA notice letter and Labor Code sections 201-204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and 2802. (Settlement, ¶ 26.) 2. Released PAGA Claims: Any and all claims for civil penalties under PAGA based on the Labor Code and IWC Wage Order violations alleged in PAGA notice sent to LWDA, as well as all facts, theories, or claims described in FAC during the PAGA Period, or all facts and claims that would be considered administratively exhausted under applicable law by the PAGA notice. (Id., ¶ 25.) 3. Plaintiff's Release: All claims, demands, rights, liabilities, and causes of action, known or unknown, asserted or that might have been asserted, whether in tort, contract, or violation of federal or state statute or regulation, arising out of or relating to any act or omission by or on the part of any of the Released Parties committed or omitted prior to the execution of the Settlement Agreement. Includes

		any unknown claims Plaintiff does not know or suspect to exist in his favor at time of settlement. Includes section 1542 waiver. (Id., ¶ 62.) ISSUE: Plaintiff's Release should not include release of claims wholly unrelated to claims asserted in FAC and LWDA letter. 4. Valuation of Claims: Parties participated in mediation on January 17, 2024. Before mediation, Defendant produced substantial amount of documentation regarding payroll and timekeeping data. (Counsel Decl., ¶¶ 7, 8.) Unpaid Minimum Wages Claims: Maximum recovery, $1,045,762.50. Discounted 50% for certification risks, 25%-50% for merits risks. Adjusted liability, $87,146.88 - $196,080.47. Unpaid Overtime Claims: Maximum recovery, $903,190.21. Discounted 50% for certification risks, 25%-50% for merits risks. Adjusted liability, $75,265.85 - $169,348.16. Wage Statement Claims: Maximum recovery, $1,350,900.00. Discounted 50% for certification risks, 25%-50% for merits risks. Adjusted liability, $379,940.63 - $168,862.50. Meal Period Claims: Maximum recovery, $1,806,380.43. Discounted 50% to 66.67% for certification risks, 25% to 50% for merits risks. Adjusted liability, $150,531.70 - $508,044.49. Rest Period Claims: Maximum recovery, $915,400.30. Discounted 50% for certification risks, 25%-50% for merits risks. Adjusted liability, $76,283.36 - $257,456.33. Waiting Time Penalties: Maximum recovery, $758,644.00. Discounted 50% for certification risks, 25%-50% for merits risks. Adjusted liability, $94,830.50 - $213,368.63. Unreimbursed Business Expenses: Maximum recovery, $1,025,000.00. Discounted 50% to 75% for certification risks, 50% for merits risks. Adjusted liability, $64,062.50 - $12,125.00. PAGA Penalties: Maximum recovery, $2,701,800.00. Discounted 25% for odds of demonstrating unlawful policy, 50%-75% for merits risks, 42%-50% for risk of Court reduction of penalties. Adjusted liability, $42,215.63 - $168,862.50. Maximum exposure, $10,507,077.44. Risk-adjusted high recovery, $2,021.226.21. Risk-adjusted low recovery, $759,198.91. (Counsel Decl., ¶¶ 9-27.) Net settlement amount of $757,548.00 is 99.78% of risk-adjusted low recovery, and 37.48% of risk-adjusted high recovery. This result falls within the acceptable range of reasonable recovery. 5. Requests for Exclusion: Class Members can opt out by sending written request by fax or mail, no later than 45 days after mailing of Class Notice, plus additional

		15 days for remailed Notices. PAGA Members cannot opt out of settlement. If 10% or more of Class Members opt out, Defendant has right to void the settlement. (Settlement, ¶ 46.) ISSUE: Court prefers 45-day deadline after remailing. Settlement should state that Court has final say over validity of opt out requests. 6. Objections: Class Members may send written objections by mail no later than 45 days after mailing of Class Notice, plus additional 15 days for remailed Notices. Class Members may orally object at Final Approval hearing. (Id., ¶ 48.) ISSUE: Court prefers 45-day deadline after remailing. 7. Disputes: Settlement does not provide a process for Class Members to dispute workweeks. ISSUE: Settlement must provide means for Class Members to dispute the number of workweeks used to calculate their settlement payments. 8. Attorneys' Fees and Costs: Class counsel to receive attorneys' fees of up to $471,274.00, or 1/3 of GSA. (Settlement, ¶ 33.) ISSUE: Counsel must disclose fee-splitting arrangement, if any, or attests there is none. Counsel must provide billing statements or summary of fees, as well as costs invoice, at Final Approval. 9. Enhancement: Plaintiff to receive up to $10,000 for enhancement award in exchange for general release and in recognition of litigation efforts. (Id., ¶ 34.) Plaintiff attests he has spent an estimated 25 hours on the litigation, including conferring with counsel, reviewing documents, participating in the mediation, and assisting in finalizing Settlement Agreement. (ROA 39, Declaration of Ramon Lopez, ¶¶ 15-17.) ISSUE: Enhancement of $10,000 is considerably more than the $5,000 usually approved by the Court. At Final Approval, counsel and Plaintiff must provide detailed declarations, including discussion of risks and estimates of time spent by Plaintiff on various tasks, to support request for higher enhancement award. 10. Settlement Administrator: Parties have selected CPT Group, Inc. as the settlement administrator. (Settlement, ¶ 2.) Settlement states that administrator will be paid no more than $20,000 for administration costs. (Id., ¶ 3.) Settlement also state that administrator will post the Class Notice, hearing dates for Motions for Preliminary Approval and Final Approval, and Final Judgment on its website for 30 days. (Id., ¶¶ 45, 66.) ISSUE: Settlement should state that administrator will post copies of the preliminary approval and final approval motions, Orders for preliminary and final approval, and the Settlement Agreement on its website. Administrator should post Final Judgment for at least 60 days.

		11. Notice to LWDA: Counsel has provided a copy of Plaintiff's PAGA notice to the LWDA. (Counsel Decl., Exh. B.) 12. Concurrent Pending Cases: ISSUE: Counsel must attest as to whether there are any other concurrent pending cases involving Defendant, or confirm there are none. 13. Continuing Jurisdiction: Settlement provides for Court's continuing jurisdiction for enforcement of Settlement, and administration and post-judgment matters. (Settlement, ¶ 66.) ISSUE: Settlement should state continuing jurisdiction pursuant to CCP § 664.6 and CRC 3.769(h). **ISSUES RE CLASS NOTICE:** Settlement states that Class Notice will be translated to Spanish. (Settlement, ¶ 45.) It is unclear why counsel submitted two copies of the Class Notice with his declaration. (See, Counsel Decl., Exhs. C and D.) It appears both versions are identical. 1. Class Notice must be revised consistent with issued identified above. 2. Title of Class Notice must also mention PAGA settlement. 3. Class Notice refers to "Aggrieved Employees", but Settlement Agreement only refers to "PAGA Group Members." The use of the terms must be consistent between the documents. Therefore, Settlement Agreement must either define and refer to "Aggrieved Employees" or Class Notice must use term "PAGA Group Members". 4. Last paragraph in Section 6 of Class Notice includes language not included in the Release provisions in the Settlement Agreement. The language should be consistent between the documents. Therefore, this language should be included in Settlement Agreement. 5. Section 7 allows submission of disputes via email, but neither Settlement Agreement nor Class Notice allows for submission of opt outs or objections by email. Methods of submission of opt outs, objections, and disputes should be consistent. 6. Section 9 of Class Notice must explain that opt outs can be faxed or mailed. 7. Section 10 of Class Notice must explain that Class Members may verbally object at Final Approval hearing even if written objection has not been submitted to the settlement administrator. 8. Class Notice should advise that copies of the First Amended Complaint, Settlement Agreement, Order of Preliminary Approval, and Final Judgment will be posted on the settlement administrator's website.

		ISSUES RE PROPOSED ORDER: (ROA 30) 1. Proposed Order must be revised consistent with the issues identified above. 2. Title of Proposed Order must also mention PAGA settlement. 3. Date of preliminary approval must be revised in caption and introductory paragraph. 4. Settlement agreement must be identified by the ROA number of the declaration to which it is attached. 5. Paragraphs 9, 15, and 17 should refer to the "Final Approval Hearing", not the "Settlement Fairness Hearing". 6. Proposed Order should propose actual date for Final Approval hearing. 7. Proposed Order should add paragraph advising how Class/PAGA Group Members will be notified of preliminary approval and Final Judgment. 8. Proposed Order should add paragraph regarding Court's continuing jurisdiction. **RULING:** The hearing on the Motion for Preliminary Approval is **CONTINUED** to July 19, 2024, at 1:30 p.m. in Department CX103 so that counsel may address the issues identified above. 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. Counsel must also provide 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 is insufficient and will result in a continuance. Plaintiff to give notice of this Court's ruling, including to the LWDA, within five (5) calendar days, and file proof of service. Case Management Conference **CONTINUED** to July 19, 2024, at 1:30 p.m. in Department CX103. The Court does not require any physical or remote appearance at the hearing scheduled for April 26, 2024. If the parties intend to submit on the tentative, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org.

PROCEDURAL GUIDELINES

Procedural Guideline for Preliminary Approval of Class Action Settlements

Parties submitting class action settlements for preliminary approval should be certain that the following procedures are followed and that all of the following issues are addressed. Failure to do so may result in unnecessary delay of approval. It is also strongly suggested that these guidelines be considered during settlement negotiations and the drafting of settlement agreements.

1) NOTICED MOTION - Pursuant to California Rule of Court ("CRC") 3.769(c), preliminary approval of a class action settlement must be obtained by way of regularly noticed motion.

2) CLAIMS MADE VS. CHECKS-MAILED SETTLEMENT/CY PRES – The court typically finds that settlement distribution procedures that do not require the submission of claim forms, but rather provide for settlement checks to be automatically mailed to qualified recipients, result in greater benefit to the members of most settlement classes. If a claims-made procedure is proposed, the settling parties must be prepared to explain why that form is superior to a checks-mailed approach. If the settlement results in "unpaid residue or unclaimed or abandoned class member funds," the agreement must comply with Code of Civil Procedure § 384.

3) REASONABLENESS OF SETTLEMENT AMOUNT – Admissible evidence, typically in the form of declaration(s) of plaintiffs' counsel, must be presented to address the potential value of each claim that is being settled, as well the value of other forms of relief, such as interest, penalties and injunctive relief. Counsel must break out the potential recovery by claims, injuries, and recoverable costs and attorneys' fees so the court can discern the potential cash value of the claims and how much the case was discounted for settlement purposes. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.) Where the operative complaint seeks injunctive relief, the value of prospective injunctive relief, if any, should be included in the *Kullar* analysis. The court generally requires that this analysis be fully developed and supported at the preliminary approval stage. The analysis must state the number of anticipated class members (broken down by subclasses if applicable), and the final approval hearing papers must similarly state the number of class members (again by subclass, if applicable).

This analysis must also include a description of the expected low, average, and high payments to class members, and the expected amount to be received by the Plaintiff(s) (excluding any enhancement award).

4) ALLOCATION – In employment cases, if the settlement payments are divided between taxable and non-taxable amounts, a rationale should be provided consistent with counsel's *Kullar* analysis. The agreement and notice should clearly indicate whether there will be withholdings from the distribution checks, and who is paying the employer's share of any payroll tax. The court is unlikely to approve imposing the employer's share of payroll taxes on class members. If the operative complaint and the settlement include penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), proof of submission to the LWDA must be provided. (Labor Code §2999(l)(1).)

5) RELEASE - The release should be fairly tailored to the claims that were or could be asserted in the lawsuit based upon the facts alleged in the complaint. Releases that are overbroad will not be approved. Furthermore, while the court has no problem, conceptually, with the waiver by the named Plaintiff of the protection of Civil Code §1542, a 1542 waiver by the absent class members is generally inappropriate in the class settlement context. A comprehensive description of released claims as those arising out of or reasonably related to the allegations of the operative complaint generally provides an adequate level of protection against future claims. A 1542 waiver, which by its own terms is not necessarily circumscribed by any definition of "Released Claims," goes too far.

Also, although the court will not necessarily withhold approval on this basis, it generally considers a plain language summary of the release to be better than a verbatim rendition in the proposed class notice.

6) SETTLEMENT ADMINISTRATION - The proposed Settlement Administrator must be identified, including basic information regarding its level of experience. Where calculation of an individual's award is subject to possible dispute, a dispute resolution process should be specified. The court will not approve the amount of the costs award to the Settlement Administrator until the final approval hearing, at which time admissible evidence to support the request must be provided. The court also generally prefers to see a settlement term that funds allocated but not paid to the Settlement Administrator will be distributed to the class pro rata.

The settlement should typically provide that the settlement administrator will conduct a skip trace not only on returned mail, but also on returned checks.

7) NOTICE PROCEDURE - The procedure of notice by first-class mail followed by re-sending any returned mail after a skip trace is usually acceptable. A 60-day notice period is usually adequate.

8) NOTICE CONTENT - The court understands that there can be a trade-off between precise and comprehensive disclosures and easily understandable disclosures and is willing to err on the side of making the disclosures understandable. By way of illustration, parties should either follow, or at least become familiar with the formatting and content of The Federal Judicial Center's "Illustrative" Forms of Class Action Notices at http://www.fjc.gov/, which conveys important information to class members in a manner that complies with the standards in the S.E.C.'s plain English rules. (17 C.F.R. § 230.421.)

Notices should always provide: (1) contact information for class counsel to answer questions; (2) an URL to a web site, maintained by the claims administrator or plaintiffs' counsel, that has links to the notice and the most important documents in the case; and (3) the URL for the court for persons who wish to review the court's docket in the case.

The motion should address whether translation(s) of the Notice and all attachments thereto should be provided to class members.

9) CLAIM FORM - If a claim form is used, it should not repeat voluminous information from the notice, such as the entire release. It should only contain that which is necessary to elicit the information necessary to administer the settlement.

10) EXCLUSION AND OBJECTION- The court prefers that the Notice be accompanied by a Form to be completed by the class member seeking to be excluded, and a separate Form to be completed by the class member wishing to object.

The notice need only instruct class members who wish to exclude themselves to send a letter to the settlement administrator setting forth their name and a statement that they request exclusion from the class and do not wish to participate in the settlement. It should not include or solicit extraneous information not needed to effect an exclusion. The same applies to the contents of the Form, if used.

Objections should also be sent to the settlement administrator (not filed with the court nor served on counsel). Thereafter counsel should file a single packet of all objections with the court. The court will not approve blanket statements that objections will be waived or not considered if not timely or otherwise compliant—rather, any such statements must be preceded by a statement that "Absent good cause found by the court…."

11) INCENTIVE AWARDS - The court will not decide the amount of any incentive award until final approval hearing, at which time evidence regarding the nature of the plaintiff's participation in the action, including specifics of actions taken, time committed and risks faced, if any, must be presented. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.)

12) ATTORNEY FEES - The court will not approve the amount of attorneys' fees until final approval hearing, at which time sufficient evidence must be presented for a lodestar analysis. Parties are reminded that the court will not award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case, even if the parties have agreed to the fees. (*Laffitte v. Robert Half International, Inc*. (2016) 1 Cal. 5th 480, 573-575.) Further information regarding fee approval is set forth in the court's Procedural Guidelines for Final Approval of Class Action Settlements.

At the final approval hearing, Plaintiff's counsel must disclose whether they have any fee-splitting arrangement with any other counsel or confirm none exists. (*Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4th 172, 184; California Rules of Court, rule 3.769(b).)

13) CONCURRENT PENDING CASES – The declaration(s) filed in support of the motion must inform the court as to whether the parties, after making reasonable inquiry, are aware of any class, representative or other collective action in any other court that asserts claims similar to those asserted in the action being settled. If any such actions are known to exist, the declaration shall also state the name and case number of any such case and the procedural status of that case. (*Trotsky vs. Los Angeles Fed. Sav. & Loan Assn*. (1975) 48 Cal. App. 3d 134, 148; Effect of failure to inform court of another pending case on same or similar issues.)

14) PROPOSED ORDER GRANTING PRELIMINARY APPROVAL – **All proposed orders should include adequate information to provide clear instructions to the settlement administrator.** The proposed order should also attach the proposed notice and any associated forms as exhibits. The proposed order must contain proposed dates for all future events contemplated therein. **The settlement agreement should not be attached**

to the order. Instead, it should be identified by reference to the Register of Action (ROA) number of the declaration to which it is attached. See below.

The Proposed Order must identify the documents comprising the Settlement Agreement (both the Original Settlement Agreement and any Amendments thereto) by reference to the **ROA number(s) of the declaration(s) to which they are attached**. This facilitates the identification of the settlement agreement (and any amendments) approved by the court. Referencing the ROA number(s) is less cumbersome than attaching the Settlement Agreement/Amendments as exhibit(s) to the Proposed Order.

B.

Procedural Guideline for Final Approval of Class Action Settlements

1) Parties submitting class action settlements for final approval should be certain that the following procedures are followed, and that all of the following issues are addressed. Failure to do so may result in unnecessary delay of final approval.

Since the date and place of final approval hearings are set by the preliminary approval order, notice of which is typically included in the notice to class members of the settlement itself (California Rules of Court ["CRC"] 3.769(c) & (f)), the final approval hearing is outside the scope of Code of Civil Procedure §1005. Nevertheless, settling parties should caption their papers submitted in support of final approval as a "Motion for Final Approval," and set the matter for hearing on the reserved date.

2) With rare exceptions, the court will expect all issues related to final approval to be heard at the same time, including, without limitation, (a) final approval of the settlement itself, (b) approval of any attorney's fees request, (c) approval of incentive awards to class representatives, and (d) approval of expense reimbursements and costs of administration. If the settling parties elect to file separate motions for any of these categories, the motions must be set on the same day.

3) All requests for approval of attorney's fees awards, whether included in a Motion for Final Approval or made by way of a separate motion, must include lodestar information, even if the requested amount is based on a percentage of the settlement fund. The court generally finds the declarations of class counsel as to hours spent on various categories of activities related to the action, together with hourly billing-rate information, to be sufficient, provided it is adequately detailed. It is generally not necessary to submit copies of billing records themselves with the moving papers, but counsel should be prepared to submit such records at the court's request.

Plaintiff's counsel must disclose whether they have any fee-splitting arrangement with any other counsel or confirm none exists. (*Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4th 172, 184; California Rules of Court, rule 3.769(b).)

4) Requests for approval of enhancement/incentive payments to class representatives must include evidentiary support consistent with the parameters outlined in *Clark* v. *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

5) For all settlements that include a distribution to settlement class members, a final compliance/accounting hearing must be set, which requires the submission and approval of a final status report after completion of the distribution process. The final accounting hearing will be set when final approval is granted**, so the moving papers should include a suggested range of dates for this purpose.** The compliance status report must be filed at least 10 calendar days prior to the compliance hearing.

6) In light of the requirements of CRC 3.769(h), all final approvals must result in the entry of judgment, and the words "dismissal" and "dismissed" should be avoided not only in proposed orders and judgments, but also in settlement agreements.

7) To ensure appropriate handling by the court clerk, the court prefers the use of a combined "order and judgment," clearly captioned as such (e.g. "Order of Final Approval and Judgment" or "Order and Judgment of Final Approval"). The body of the proposed order and judgment must also incorporate the appropriate "judgment is hereby entered" language, and otherwise fully comply with California Rule of Court ("CRC") 3.769(h), including express reference to that rule as the authority for the court's continuing jurisdiction. The proposed order and judgment should also include the compliance hearing provision (with suggested date and time) discussed above.

8) If the actions that are being settled are included in a Judicial Council Coordinated Proceedings ("JCCP"), termination of each included action by entry of judgment is subject to CRC 3.545(b) & (c), and proposed orders and judgments must so reflect. Language must also be included to the effect that compliance with CRC 3.545(b)(1 & 2) shall be undertaken by class counsel, and that a declaration shall be filed confirming such compliance.

9) All proposed orders and judgments should include all the requisite "recital," "finding," "order" and "judgment" language in a manner that clarifies the distinctions between these elements, and care must be taken that all terms that require definition are either defined in the proposed order and judgment itself or that definitions found elsewhere in the record are clearly incorporated by reference. No proposed order and judgment should be submitted until after review by counsel for each settling party.

C.1

Guidelines for PAGA Dismissals

(Private Attorney General Act of 2004, Labor Code sections 2698 et seq.)

In light of the similarity of a representative PAGA claim to a class action, and the requirements of Labor Code § 2699 (l) (2) which requires court approval of PAGA settlements, when a plaintiff wishes to dismiss a PAGA claim, the court requires plaintiff or plaintiff's attorney to

file a declaration containing information similar to that required under CRC, rule 3.770 (pertaining to class actions). In that declaration the declarant shall explain to the court why plaintiff wishes to dismiss the PAGA action, whether consideration was given for the dismissal, and if so, the nature and amount of the consideration given. The declaration shall be accompanied by a Proposed Order to Dismiss the PAGA claim.

If the dismissal arises out of settlement with the individual plaintiff, **a copy of that settlement agreement must be provided to the court.** If the parties have agreed to maintain the confidentiality of the settlement agreement, it must be provided to the court for *in camera* review. It should be submitted to the clerk by emailing it to CX103@occourts.org.

C.2

Guidelines for PAGA Settlements

Pursuant to Labor Code section 2699(1)(2): "The superior court shall review and approve any settlement of any civil action filed pursuant to this part."

While the court will review every such motion for approval on its own merits, the court requires that at a minimum the settlement and/or any order or judgment requested from the court in connection with it must contain at least the following.

A comprehensive definition of the group of allegedly aggrieved employees represented by plaintiff in the action.

1. A definition of the PAGA claims encompassed by the settlement, premised on the allegations of the operative complaint.

2. The total consideration being provided by defendant for the settlement ("gross settlement amount"), and a description of each allocation of the consideration, such that all the total consideration is accounted for. This description must include:

    a. A description of all consideration being received by plaintiff, including for plaintiff's individual claims, PAGA claims, attorney's fees and costs.

    b. A description of all consideration being received by aggrieved employees including, if applicable, civil penalties, unpaid wages, and attorneys' fees and costs.

    c. A statement of the amount of consideration that will be subject to the 75%/25% allocation required by section 2699(i).

    d. A statement of the net amount, after deduction of any identified fees and/or costs, payable to purported aggrieved employees, along with a precise explanation as to how the amount payable to each purported aggrieved employee is to be calculated.

3. To the extent not otherwise explained, the allocation of attorneys' fees between the part of the case dealing with individual claims and the part of the case dealing with PAGA claims An explanation as to why the attorneys' fees and costs sought are reasonable within the meaning of Labor Code section 2699 (g) (1).

    a. Any amount allocated to claims administration.

    b. A description of any other amount(s) being deducted from the gross settlement amount.

    c. A description of the tax treatment for any of the payments to plaintiff and/or aggrieved employees.

4. A provision setting forth the disposition of unclaimed funds, i.e., checks uncashed within a stated period of time after being sent to aggrieved employees.

5. A provision that the proposed settlement be submitted to the Labor and Workforce Development Agency at the same time that it is submitted to the court. (Labor Code section 2699(l)(2))

6. A provision that the Court will retain jurisdiction to enforce the settlement pursuant to CCP section 664.6.

7. A notice to aggrieved employees that will accompany the payment to them, a copy of such notice to be provided to the court for approval along with the motion seeking approval of the settlement.

8. Releases that do not include Civil Code section 1542 releases for aggrieved employees other than plaintiff.

9. Releases that release no more, for aggrieved employees other than plaintiff, than the civil penalties available under PAGA by reason of the facts alleged in the operative complaint.

10. Inform the court by declaration whether there is any class or other representative action in any other court that asserts claims similar to those alleged in the action being settled. If any such actions are known to exist, state the name and case number of any such case and the procedural status of that case.