SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 22, Honorable Beth McGowen Presiding
Farris Bryant, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: (408) 882-2340

To contest a tentative ruling, you must:

1. Call (408) 808-6856 before 4:00 P.M. and leave a voicemail message containing the information described below, and
2. Notify the other side before 4:00 P.M. that you will appear at the hearing to contest the tentative ruling.

In the voicemail message, please state your case name, case number, the name of the attorney, who you represent (Plaintiff or specific defendant) and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested.

PLEASE NOTE:

- If you do not notify the Court and/or opposing side as required by California Rule of Court, rule 3.1308(a)(1) and Civil Local Rule 8(E), the Court will not hear argument and the tentative ruling will be adopted even if all parties appear at the hearing.
- Sending an email to the department or to the Complex Clerk will no longer suffice to constitute notice to the Court of the need for a hearing regarding a tentative ruling.

Court Reporters are not provided. Please consult our Court's website, www.scscourt.org, for the rules, policies, and required forms for appointment by stipulation of privately-retained court reporters.

- **Parties can appear either in person or remotely.** All remote appearances must be made through UDC, unless otherwise arranged with the Court. Please go to https://santaclara.courts.ca.gov/online-services/remote-hearings to find the appropriate link. Also, please note that that you must register in advance to appear remotely.
- As a reminder, state and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while in the courtroom and while appearing remotely.

DATE: March 5, 2026 TIME: 1:30 P.M.

PREVAILING PARTY SHALL PREPARE THE ORDER UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

LINE #	CASE #	CASE TITLE	RULING
LINE 1	17CV310003	Arriaga, et al. v. Lara, et al. [Coordinated into Arriaga and Associates Wage and Hour Cases JCCP4980 Santa Clara]	Motion: Claim of Exemption is DENIED Click on Line 1 for tentative ruling

LINE 2	19CV361005	Credit Corp Solutions Inc., Assignee of Webbank v. Guzman	Motion: Final Approval is conditionally GRANTED, subject to the filing of a corrected declaration, moving party to prepare the order. Click on Lines 2-3 for tentative ruling
LINE 3	19CV361005	Credit Corp Solutions Inc., Assignee of Webbank v. Guzman	Hearing: see above
LINE 4	22CV397776	Caraska, et al. v. Action Urgent Care, Inc. (Class Action/PAGA)	Hearing: Motion hearings
LINE 5	23CV421632	Lobyoc v. Headway Technologies, Inc., et al. (Class Action)	Motion: Final Approval is GRANTED Click on Line 5 for tentative ruling
LINE 6	23CV424964	Alcantar v. Kidango, Inc. (Class Action)	Motion: Final Approval is GRANTED Click on Line 6 for tentative ruling
LINE 7	24CV434574	Mitchell v. Applovin Corporation (Class Action)	Hearing: Demurrer continued to March 19, 2026
LINE 8	25CV470496	Section 32 Fund 5, LP vs IronArc Opportunities XV, LP	Motion: Demurrer is SUSTAINED, with 20 days leave to amend. Sanctions Granted pursuant to CCP 128.7. Click on lines 8-10 for tentative ruling
LINE 9	25CV470496	Section 32 Fund 5, LP vs IronArc Opportunities XV, LP	See above
LINE 10	25CV470496	Section 32 Fund 5, LP vs IronArc Opportunities XV, LP	See above

LINE 11	25CV472876	Kevin Anguka vs Timothy Cook et al	Motion to SEAL is GRANTED. Click on Line 11 for tentative ruling
LINE 12			
LINE 13			

Calendar Line 1

Case Name: *Arriaga, et al. v. Lara, et al.*
Case No.: 17CV310003 [coordinated into Arriaga and Associates Wage and Hour Cases (Case No. JCCP4980)]

This matter was part of a consolidated and bifurcated/trifurcated cases involving Louis Christopher Arriaga ("Arriaga") and Arriaga & Associates, Inc. ("A&A")(collectively "Judgment Debtors"), which is a company that provides security for other business and entities.

Before the Court is the claim of exemption of third-party Raylene Khan ("Khan") regarding the levied property located at 1411 Shadow Oaks Way, Saratoga, CA 95070 (the "Property"), which is opposed by Judgment Creditors.[1]

As discussed below, the Court DENIES Khan's claim of exemption.

I. BACKGROUND

The initial complaint was brought by Plaintiffs A&A and Arriaga against defendants Jason Lara, Jose Segura, and Maddison Group, Inc. A&A alleged that defendants Jason Lara ("Lara"), and Jose Segura ("Segura") were employees of Arriaga, Inc. (FAC, ¶ 7.) On July 1, 2016, Lara and Segura contacted A&A's biggest customer, Dave Busters, to speak about replacing A&A. with Lara, Segura, and couple of additional employees of A&A, for the provision of security to Dave and Busters in California. (FAC, ¶¶ 11-13.) Dave and Busters decided to make the switch. (FAC, ¶¶ 16-19.) Arriaga and A&A asserted the following causes of action: (1) unfair competition in violation of Business and Professions Code section 17200; (2) intentional interference with prospective economic advantage; (3) breach of fiduciary duty; (4) conversion; (5) conspiracy; (6) breach of implied in fact contact; and (7) injunctive relief. In the First Amended Class Action Cross-Complaint ("FACC"), Cross-Complainants Lara, Segura, Douglas Martin, Marty Verducci, and Russ Oleyer (collectively, "Cross-Complainants"), filed on July 8, 2020, in the lead case, Cross-Complainants allege that Arriaga and A&A violated various Labor Code provisions and Wage Orders. In the eighteenth cause of action, Lara and Segura assert defamation claim.

On March 21, 2024, the Court (Hon. Alloggiamento) entered judgment against Judgment Debtors in the amount of $20,051,690.59. On October 17, 2024, counsel associated into this action as co-counsel of record for Judgment Creditors. On October 22, 2024, the Court entered a fee award of over $10 million in favor of Judgment Creditors, and their counsel, and against Judgment Debtors. On April 17, 2025, the Court entered the Second Amended Judgment. On October 17, 2025, the Court (Hon. Adams) issued its order which granted Judgment Creditors' motion for an assignment order; granted their motion for a charging order; and denied their motion to vitiate the attorney-client privilege.

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[1] Judgment Creditors consists of the former employees of Judgment Debtors, both individually and in classes.

On December 15, 2025, Judgment Creditors filed their application for sale of the Property.

II. MOTION REGARDING A CLAIM OF EXEMPTION BY THIRD PARTY

A. Legal Standard

Code of Civil Procedure section 703.520, provides, "the claimant may make a claim of exemption by filing with the levying officer either in person or by mail, a claim of exemption together with a copy of the claim. If the claimant is personally served, the claim shall be made within 15 days after the date the notice of levy of the property claimed to be exempt is served on the judgment debtor. If the claimant is served by mail, the claim shall be made within 20 days after the date the notice of levy on the property claimed to be exempt is served on the judgment debtor…" (Code Civ. Proc., § 703.520, subd. (a).)

Code of Civil Procedure section 720.110, provides, "[a] third party claiming ownership or the right of possession of property may make a third-party claim under this chapter in any of the following cases if the interest claimed is superior to the creditor's lien on the property: (a) Where real property has been levied upon under a writ of attachment or a writ of execution. (b) Where personal property has been levied upon under a writ of attachment, a writ of execution, a prejudgment or post judgment writ of possession, or a writ of sale." (Code Civ. Proc., § 720.110.) "A person making a third-party claim under this chapter shall file the claim with the levying officer, together with two copies of the claim, after levying on the property but before the levying officer does any of the following: (a) Sells the property. (b) Delivers possession of the property to the creditor. (c) Pays proceeds of the collection to the creditor." (Code Civ. Proc., § 720.120.)

Code of Civil Procedure section 720.130, subdivision (a), provides,

(a) The third-party claim shall be executed under oath and shall contain all of the following:
   (1) The name of the third person and an address in this state where service by mail may be made on the third person.
   (2) A description of the property in which an interest is claimed.
   (3) A description of the interest claimed, including a statement of the facts upon which the claim is based.
   (4) An estimate of the market value of the interest claimed.

(Code Civ. Proc., § 720.130, subd. (a).)

Following the filing of the third-party claim with the levying officer, "either the creditor or the third person may petition the court for a hearing to determine the validity of the third-party claim and the proper disposition of the property that is the subject of the claim." (Code Civ. Proc., § 720.310.)

B. Discussion

On January 9, 2026, the Santa Clara Sheriff's Office mailed Khan's third-party claim and supporting documents to Judgment Creditors. On January 26, 2026, Judgment Creditors filed their opposition to Khan's claim of exemption and an application for a hearing to determine the validity of her claim of exemption.

On January 13, 2026, Khan submitted a claim of third-party exemption stating: she is not the judgment debtor in this action; she became aware of a notice of levy against the Property on December 26, 2025; she is the owner and holder of a legal and equitable interest in the Property since December 26, 2018; the judgment debtor does not own the property. (Claim of Exemption, ¶¶ 1-4.) She contends the Property is exempt from the judgment pursuant to Code of Civil Procedure section 703.520; and the levy is improper and unlawful as applied to her property interest. (Claim of Exemption, ¶¶ 5-6.)

On February 14, 2026, Khan submitted a supplemental declaration in which she reiterated the same information, adding that she is the manager and sole member of Rayko LLC, which was erroneously named in documents as Rayco, LLC. She also included additional documents recovered in discovery after January 29, 2026. In support, Khan provides the following evidence:

(1) her initial declaration opposing the applicable for sale of the Property: Exhibit 1;
(2) Proof of service: Exhibit 2;
(3) memorandum of points: Exhibit 3;
(4) email of closing packet for the Property: Exhibit 4;
(5) CAR purchase agreement-Ryan O'Sullivan and Samantha Arriaga, dated June 8, 2022: Exhibit 5;
(6) Recorded full reconveyance and erroneous name correcting Rayco to Rayko, LLC: Exhibit 6;
(7) Wells Fargo bank statements identifying the erroneous name issues: Exhibit 7;
(8) Estimated settlement statement First American identifying the initial deposit to Rayco: Exhibit 8;
(9) Property tax payments by Ryan O'Sullivan dated from December 7, 2023 to the present: Exhibit 9;
(10) Proof of utility responsibility and payments-Ryan O'Sullivan: Exhibit 10.

In opposition, Judgment Creditors argue Khan has no ownership interest in the Property. (Judgment Creditors' Opposition ("Opp."), p. 5:16-21.) They argue that Khan's evidence shows that the title to the Property was transferred to "Rayco Limited Liability Company", not to her and thus, she fails to establish that she has ever held an ownership interest in the Property. (Opp., p. 5:21-24.)

Corporations Code section 17701.04 provides that "a limited liability company is an entity distinct from its members." (Corp. Code, § 17701.04, subd. (a).) Thus, an LLC has its own legal existence separate from the individuals or entities that are its members. (See *PacLink Communications Intern., Inc. v. Superior Court* (2001) 90 Cal.App.4th 958, 965 (*PacLink Communications*).) In other words, the LLC may own property independent from the individual abilities of its members. (*Ibid.*) Moreover, a membership interest in an LLC constitutes the members' personal property, however, it does not include an ownership interest

in assets held by the LLC. (See *Denevi v. LGCC, LLC* (2004) 121 Cal.App.4th 1211, 1214, fn. 1, 18 Cal.Rptr.3d 276 [Like corporate shareholders, members of a limited liability company hold no direct ownership interest in the company's assets"]; *PacLink Communications, supra,* 90 Cal.App.4th at p. 964 [same].)

The Grant Deed dated December 26, 2018, states that the property was granted to "Rayco Limited Liability Company." (Claim of Exemption, Exh. B.) The Articles of Organization, dated July 24, 2008, provide that Khan is the initial manager of the company and the member who owns a 20% or greater interest in the company. (Claim of Exemption, Exh. C.) However, the only evidence before the Court pertains to Rayko's ownership interest in the Property. In other words, Khan fails to establish a superior interest in the Property.

To the extent Khan asserts an ownership interest on behalf of Rayko, Judgment Creditors argue this is insufficient as she cannot speak for the LLC in propria persona. (Opp., p. 6:1-3.) This argument is well taken as there is no dispute that Rayko is an LLC. California courts have long held that an LLC cannot represent itself in a court of record either in propria personal or through an officer or agent who is not an attorney. (See *Caressa Camille, Inc. g. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094, 1101.) Here, it appears Khan is a real estate agent. (See Judgment Creditors' Application for Order for Sale of [the Property], ¶¶ 7-8; Exh. 1, p. 61:16-25.) Therefore, Khan is not represented by counsel nor is she an attorney herself, thus, she cannot represent Rayko or assert an interest on its behalf. (*See Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 730; *Paradise v. Nowlin* (1948) 86 Cal.App.2d 897, 898.) Consequently, Khan does not establish a superior property interest to support her claim of exemption.

Based on the foregoing, Khan's claim for exemption of third-party is DENIED.

III. CONCLUSION

Khan's claim of exemption is DENIED.

The Court will prepare the order.

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Case Name:
Case No.:

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Calendar Lines 2-3

Case Name: *Credit Corp Solutions, Inc., v. Lorie Ann Guzman*
Case No.: 19CV361005

Plaintiff and Cross-Defendant Credit Corp Solutions, Inc. ("CCS") brought this case to collect a debt allegedly owed by Defendant and Cross-Complainant Lorie Guzman. Ms. Guzman filed a cross-complaint against CCS, Credit Corp Group Limited, Patenaude & Felix, and Todd Christopherson (collectively, "Cross-Defendants") alleging putative class claims under the California Fair Debt Collection Buying Practices Act, Civil Code section 1788.50-1788.64 (the "CFDBPA"); the federal Fair Debt Collection Practices Act, 15 U.S.C. sections 1692-1692p (the "FDCPA"); and the California Rosenthal Fair Debt Collection Practices Act, Civil Code sections 1788-1788.33 (the "RDCPA")

Before the Court is the parties' joint motion for final approval of Class settlement (the "Settlement") and Class Counsel's motion for attorneys' fees, costs, and service award. As discussed below, the Court GRANTS the motions.

I. BACKGROUND

According to the allegations of the operative second amended complaint ("SAC"), CCS is a debt buyer and the assignee of LendingClub Corporation ("LendingClub"). (SAC, ¶ 5.) WebBank, serviced by LendingClub, extended a loan to Ms. Guzman pursuant to her submitted loan application, for personal, family, or household purposes. (SAC, ¶ 6.) Within five business days of origination, WebBank transferred or otherwise conveyed all of its rights, title, and interest in the account to LendingClub. (SAC, ¶ 7.) Ms. Guzman defaulted on the requirement payments and LendingClub assigned and transferred all right, title, and interest in the account to CCS. (SAC, ¶ 8.)

CCS is the sole owner of the account at issue, or has authority to assert the rights of all owners of the debt. (SAC, ¶ 9.) The balance at charge-off was $2,093.96 and CCS is not seeking to recover any post charge-off fees or interest. (SAC, ¶ 10.) The date of last payment was on or about January 22, 2016 and the name of the charge-off creditor is LendingClub. (SAC, ¶¶ 11-12.) CCS has complied with Civil Code section 1788.52. (SAC, ¶ 15.)

Based on the foregoing, CCS initiated this action with the filing of the complaint on December 31, 2019 and on February 4, 2020, it filed its first amended complaint, which asserted a single cause of action for breach of contract. On January 4, 2021, it filed the operative SAC, which asserts a claim for breach of contract. On July 2, 2020, Ms. Guzman filed her Cross-Complaint and on January 4, 2021, she filed her operative first amended Cross-Complaint, which asserts causes of action under (1) the CFDBPA; (2) the FDCPA; and (3) the RDCPA. On August 29, 2025, the Court issued its order which granted the parties' joint motion for preliminary approval of class action settlement.

The parties now seek final approval of Class Action.

II. MOTION FOR FINAL APPROVAL

A. Legal Standard

i. Class Action

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

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

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

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

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 , 2022 U.S. LEXIS 2940.)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of

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

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

C. Terms and Administration of Settlement

The Settlement provides for the establishment of a class fund of $8,400 to be distributed on a pro rata basis to the "Class Members" who are defined as "any persons who are part of the Class and who do not fall within a relevant exception." The Class is defined as "all persons with addresses in California against whom Cross-Defendants filed and served a collection Complaint in the form of Exhibits "1" or "2" to the First Amended Class Action Cross-Complaint for Declaratory Relief and Damages herein, in an attempt to collect a charged-off consumer debt originally owed to WebBank, which is sold or resold to Credit Corp Solutions, Inc., on or after January 1, 2014, during the period December 31, 2018, through the date of class certification."[1] The parties agree there are approximately 42 Class Members and the Settlement provides that each Class Member will receive no less than $200. Cross-Defendants will also pay Ms. Guzman $1,000 in statutory damages and bear the costs of administering notice to the Class. Class counsel will seek an award of attorneys' fees and costs not to exceed $170,000.00 and Cross-Defendants will not oppose the request. Ms. Guzman seeks a service award of $2,000. Funds associated with checks uncashed after 90 days will be transmitted to Alexander Community Law Center

The Settlement contains the following attorney fees and costs provision:

> Cross-Defendants will pay Class Counsel reasonable attorneys' fees and costs, pursuant to California Civil Code §§ 1788.17, 1788.30(c), 1788.62(c), and 15 U.S.C. § 1692k(a)(3), as approved by the Court. Class Counsel will seek an award of attorney fees and costs in an amount not to exceed $170,000, and Cross-Defendants will not oppose such request. Any application for approval of such attorneys' fees and costs will be made separately, upon noticed motion, and determined at the Final Fairness Hearing, or at the Court's discretion.

In exchange for the settlement, Class Members will release:

[1] The Class certified by the Court is the same Class subject to the Settlement, thus, the Court does not need to conditionally certify the Class nor do the parties request conditional Class certification.

> Any and all claims alleging violation of the California Fair Debt Buying Practices Act, California Civil Code §§ 1788.50-1788.64, the California Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.33, and the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692-, or similar or related claims or causes of action under state or federal law, arising from or relating to collection Complaints in the form of Exhibits "1" or "2" to the First Amended Class Action Cross-Complaint for Declaratory Relief and Damages herein , that Cross-Complaint or any of the Class Members does not know or even suspect to exist against any of the released parties, which, if known, might have affected his or her decision regarding the settlement of this matter.

The notice period has now been completed. While the motion refers to a declaration from the settlement administrator, it appears the declaration was rejected by the Court due to an error with the filing. As this was a clerical error, the Court will consider the declaration at this time contingent upon Class Counsel submitting a correct version before the final order can be issued.

In support of this motion, Christian Labow ("Labow"), a case manager with settlement administrator CPT, submitted a declaration. On September 5, 2025, CPT received the notice packet from Class Counsel and the Class Members' data from Cross-Defendants. On September 22, 2025, CPT updated the mailing list and sent the notice packets to 42 Class Members. 5 notice packets were returned, and CPT was able to locate a better address for 4 of them. Thus, only 1 notice packet was deemed undeliverable.

The response deadline has passed and as of the date of Labow's declaration, CPT received 0 objections. Consequently, there are 42 participating Class Members. Pursuant to the terms of the Settlement, each Class Member will receive an individual settlement payment of $200 with the class fund totaling $8,400.

Pursuant to the Settlement, Cross-Defendants are responsible for paying the costs to CPT.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to the claims. It finds no reason to depart from these findings now, especially considering that there are no objections. Therefore, the Court finds that the settlement is fair and reasonable for the purposes of final approval.

Based on the foregoing, the parties' joint motion for final approval of the settlement is GRANTED.

III. MOTION FOR ATTORNEYS' FEES, LITIGATION COSTS, AND PLAINTIFFS' SERVICE AWARD

The benefits achieved by the settlement justify an award of attorney fees to Class Counsel. Class Counsel seeks a fee and costs award of $170,000, the negotiated maximum amount as set forth in the Settlement. The Court has an independent right and responsibility to review the requested attorney fees and only award so much as it determines reasonable.

(See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The lodestar method is a recognized method for calculating attorney fees in civil class actions and is appropriately employed in this case. (See *Wershba*, *supra,* 91 Cal.App.4th at p. 254 ["Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method."]; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556–557 [trial court properly awarded attorney fees in consumer class action based on lodestar method where there was no "common fund" justifying a percentage recovery].)

> The lodestar (or touchstone) is produced by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative 'multiplier' to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.

(*Consumer Privacy Cases*, *supra,* 175 Cal.App.4th at p. 556, internal citation and quotations omitted.)

Class Counsel provides a lodestar figure of $393,000.00 based on 568.4 hours of work at billing rates ranging from $605 to $825. (Declaration of Class Counsel Fred A. Schwinn ("Schwinn Decl.), ¶¶ 14-15; Exh. A.) These hours are reasonable based on the summaries provided, and counsel's hourly rates are also reasonable considering their experience and the market in which they practice. Counsel also incurred $7,229.12 in costs. (Schwinn Decl., ¶¶ 17-18.) The combined fee and costs award of $170,000 is below the combined total lodestar plus costs. The fee and cost award requested by Class Counsel is thus fair and reasonable, without the need to consider a multiplier, and it is approved by the Court.

Lastly, Cross-Defendants agreed to pay a service award to Ms. Guzman in the amount of $2,000. Ms. Guzman submitted a declaration detailing her efforts in this action. The Court finds she is entitled to a service award and the amount requested is reasonable. Thus, the service award is approved.

IV. CONCLUSION

The motions for final approval, attorneys' fees and costs, and Ms. Guzman's service award is GRANTED provided that Class Counsel submits a corrected declaration from Labow.

Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) The members of the Class will take only the relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court will retain jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **November 5, 2026 at 2:30 P.M**. in Department 22. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel

shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.

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Calendar Line 5

Case Name: *Linkee Fair Lobyoc v. Headway Technologies, Inc. d/b/a TDK Headway Technologies, Inc.*
Case No.: 23CV421632

This is a putative class and representative action arising from alleged wage and hour violations. Plaintiff Linkee Fair Lobyoc ("Plaintiff") alleges that Defendant Headway Technologies, Inc. d/b/a TDK Headway Technologies, Inc. ("Defendant") committed various wage and hour violations.

I. BACKGROUND

According to the allegations of the operative First Amended Complaint ("FAC"), Defendant employed Plaintiff as a non-exempt, hourly-paid employee. (FAC, ¶¶ 18-19.) Plaintiff alleges that Defendant failed to: pay all wages owed (including minimum, rest period, meal period, overtime, and final wages); reimburse employees for necessary business expenses; and provide complete and accurate wage statements.

Plaintiff began this action on August 22, 2023 by filing a class action complaint against Defendant. On February 6, 2025, Plaintiff filed the operative first amended complaint, asserting the following causes of action: (1) unpaid overtime; (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) unpaid minimum wages; (5) final wages not timely paid; (6) non-compliant wage statements; (7) unreimbursed business expenses; (8) violation of California's Private Attorneys General Act ("PAGA"); and (9) violation of Business & Professions Code section 17200, *et seq*.

The parties have reached a settlement (the "Settlement Agreement"). On September 8, 2025, the Court issued an order granting Plaintiff's motion for preliminary approval of the Settlement Agreement (the "Prior Order"). Now before the Court is Plaintiff's unopposed motion for final approval of the Settlement Agreement.

II. Legal Standard for Settlement Agreements

a. Class Action

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

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

the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) But the trial court is free to engage in a balancing and weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91 Cal.App.4th at p. 245.) The trial court must examine the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, citation and internal quotation marks omitted.)

The burden is on the proponent of the settlement to show that it is fair and reasonable. However, "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Wershba*, *supra*, 91 Cal.App.4th at p. 245, internal citation and quotation marks omitted.)

b. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The Court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency ("LWDA"), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639.)

Like its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable" to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77, overruled on other grounds by *Turrieta v. Lyft* (2024) 16 Cal.5th 664.) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 ["when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public . . ."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

The settlement must be reasonable considering the potential verdict value. (See *O'Connor, supra,* 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that

courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

III. Discussion

A. Terms and Administration of Settlement

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

> [A]ll current and former hourly-paid or non-exempt employees of Defendants within the State of California at anytime during the Class Period [August 22, 2019 through March 24, 2025] and who did not sign an arbitration agreement.

(Prior Order, pp. 5:25-6:2.) The settlement includes a subset group of PAGA Members defined as: "all current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the PAGA Period and who did not sign an arbitration agreement." (*Id.* at p. 5:20-22.)

Defendant will pay a gross settlement amount of $989,000. The gross settlement amount includes attorney fees of $346,150; litigation costs of $18,733.60; a PAGA allocation of $75,000, 65 percent of which will be paid to the LWDA and 35 percent of which will be paid to PAGA Employees as individual PAGA payments; $10,000 as a class representative service payment; and settlement administration costs of $10,000. (See Memorandum of Points and Authorities in Support of Final Approval of Class Action Settlement ("MPA"), p. 10:1-4; Prior Order, p. 5:15-23.) The net settlement amount will be distributed to participating class members on a pro-rata basis. Individual PAGA payments will be distributed according to the number of pay periods worked. Funds associated with checks uncashed after 180 days will be transmitted to the Controller of the State of California to be held as unclaimed property in the name of participating class members and aggrieved employees.

In exchange for the settlement, the class members agree to releasee Defendant, and related entities and persons, from:

> [A]ll claims that were asserted, or could have been asserted, based on the allegations set forth in the Operative Complaint arising at any time during the Class Period. This includes, but is not limited to, claims for: (a) failure to pay overtime and minimum wages; (b) failure to pay all regular rate wages due (including sick leave pay); (c) failure to provide meal and rest periods and associated premium payments; (d) untimely payment of wages during employment and upon termination; (e) inaccurate wage statements; (f) failure to maintain complete and accurate payroll records; (g) failure to keep payroll records in a central location; (h) failure to reimburse for necessary business expenses; (i) unfair business practices stemming from these alleged Labor Code violations; (j) any and all claims arising out of alleged violations of the Labor Code, including sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, 203, 204, 205.5, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 229, 245-249, 510, 512, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 1776, 2800-2802, Code of Regulations Title 8 section 11040, and the

> applicable Industrial Welfare Commission Wage Orders, (l) interest; (m) attorneys' fees and costs; and (n) any other claims arising out of, or related to, the Operative Complaint. Except as provided in section 8, subdivision c, pertaining to Plaintiff, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

(Declaration of Douglas Han in Support of Motion for Preliminary Approval of Class Action Settlement ("Han Preliminary Approval Decl."), Ex. 2 at pp. 3, 4.) PAGA Members agree to release Defendant, and related entities and persons, from:

> [A]ll claims that were asserted, or could have been asserted, based on the allegations set forth in the Operative Complaint and written notice to the LWDA arising at any time during the PAGA Period. These are claims for: (a) failure to pay overtime and minimum wages; (b) failure to pay all regular rate wages due (including sick leave pay); (c) failure to provide meal and rest periods and associated premium payments; (d) untimely payment of wages during employment and upon termination; (e) inaccurate wage statements; (f) failure to maintain complete and accurate payroll records; (g) failure to keep payroll records in a central location; (h) failure to reimburse for necessary business expenses; and (i) penalties under PAGA. The Released PAGA Claims includes violations of Labor Code 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 229, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802, and the Industrial Welfare Commission Wage Orders.

(*Id.* at p. 4.) The release provisions are appropriately tailored to the factual allegations of the operative pleading. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

The Agreement provides that Apex Class Action, LLC ("Apex") will serve as settlement administrator. On September 22, 2025, Apex received from Defendant class data listing each class member's name and last-known mailing address, among other information. (Declaration of Madely Nava in Support of Motion for Final Approval of Class Action Settlement ("Nava Declaration"), ¶ 6.) On October 8, 2025, Apex mailed class notices to the 382 settlement class members identified in the class data provided by Defendant. (*Id.* at ¶ 7.) Apex received no requests for exclusion or objections to the settlement. (*Id.* at ¶¶ 10-12.) Thus, the Nava Declaration indicates that Apex has not received any substantive objections to the terms of the settlement agreement now before the Court. Apex estimates that the average class settlement payment will be approximately $1,385.12 and the highest is $1,986.30. (*Id.* at ¶ 15.) The notice process has now been completed.

At preliminary approval, the Court found the settlement to be fair and reasonable. Given that there are no substantive objections to the terms of the settlement, it finds no reason to deviate from that finding now. Accordingly, the Court finds that the settlement is fair and reasonable for purposes of final approval.

B. Enhancement Awards, Attorney Fees and Costs

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

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, internal punctuation and citations omitted.)

Plaintiff requests a service award of $10,000. Plaintiff asserts this amount is for "time and effort [spent] in locating and producing relevant documents and past employment records, reviewing relevant documents with Class Counsel, and providing facts and evidence necessary to prove the allegations." (MPA, p. 25:7-9.) Plaintiff has provided a declaration describing Plaintiff's participation in this action, which has included gathering documents and communicating with counsel. (See Declaration of Linkee Fair Lobyoc, ¶ 5.) Plaintiff estimates that Plaintiff spent over 30 hours working on this lawsuit. (*Ibid*.) The Court agrees that a service award is warranted and approves a service award to Plaintiff in the amount of $10,000.

Plaintiff's counsel seeks an attorney fee award of $346,150. (MPA, p. 9:26; Declaration of Douglas Han in Support of Motion for Final Approval of Class Action and PAGA Settlement ("Han Decl."), ¶ 8.) Plaintiff's counsel submits that the lodestar of fees incurred in this action is $256,560 based on a total of 330.5 hours billed at rates ranging from $900 to $500 per hour. (*Id.* at ¶ 11.) This results in a multiplier of 1.35, which is within the range of multipliers that courts typically approve. (See *Wershba, supra,* 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases].)

The benefits achieved by the settlement justify an award of attorney fees to class counsel. The court finds that the requested attorney fee award is reasonable as a percentage of the common fund and approves an attorney fee award in the requested amount.

Plaintiff's counsel requests reimbursement of litigation costs in the amount of $18,733.60 and presents an itemized list supporting that figure. (Han Decl., ¶ 23, Ex. 6.) The court finds the cost reimbursement request to be reasonable and therefore approves an award of litigation costs in the requested amount. The settlement administration costs are also approved in the requested amount of $10,000. (See Nava Decl., ¶ 17, Ex. B.)

C. Conclusion

The motion for final approval of the settlement is GRANTED.

A compliance hearing is set for November 5, 2026, at 1:30 p.m. in Department 22.

Plaintiff shall prepare the order in accordance with California Rules of Court, rule 3.1312.

Case Name:
Case No.:

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Calendar Line 6

Case Name: *Arlen F. Alcantar, et al. v. Kidango, Inc., et al.*
Case No.: 23CV424964

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiffs Arlen Alcantar and David Chiang (collectively, "Plaintiffs") allege that defendant Kidango, Inc. committed various wage and hour violations.

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

V. BACKGROUND

According to the allegations of the operative second amended complaint ("SAC"), Defendant failed to: timely pay wages, pay overtime wages, provide compliant meal and rest periods or compensation in lieu thereof; and maintain timekeeping records.

Based on the foregoing, Plaintiff Alcantar initiated this action on October 30, 2023, with the filing of the complaint and on January 4, 2024, she filed her first amended complaint. On March 21, 2025, Plaintiffs filed the operative SAC, which asserts the following claims: (1) failure to pay minimum wages; (2) failure to pay wages and overtime (Lab. Code § 510); (3) meal period liability (Lab. Code §§ 226.7 & 512); (4) rest break liability (Lab. Code § 226.7 & 512); (5) violation of Labor Code § 226; (6) violation of Labor Code § 221; (7) violation of Labor Code § 204; (8) violation of Labor Code §§ 201-203; (9) failure to maintain records (Lab. Code §§ 1174, & 1174.50); (10) failure to produce requested records (Lab. Code §§ 226 & 198); (11) failure to reimburse necessary business expenses (Lab. Code § 2802); (12) violation of Business & Professions Code § 17200, *et seq.*; (13) civil penalties under the PAGA (Lab. Code § 2698 *et seq*.; and (14) failure to pay sick wages (Lab. Code §§ 201-203, 210, 233, 246). On September 8, 2025, the Court issued its order which granted Plaintiffs' motion for preliminary approval of class and PAGA settlement.

Plaintiffs now seek an order: certifying the class ("Class") for settlement purposes; confirming Plaintiffs as Class representatives; approving the settlement; confirming appointment of Class counsel; approving Class Representative payments to Plaintiffs; approving attorneys' fees and costs; and entering judgment.

VI. MOTION FOR FINAL APPROVAL

C. Legal Standard

j. Class Action

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

(*Wershba*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

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

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

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

D. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 , 2022 U.S. LEXIS 2940.)

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

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

D. Settlement Class

Plaintiffs request that the following Class be certified for settlement purposes.

> All individuals employed as non-exempt, hourly employees by Kidango, Inc. within the State of California during the Class Period [October 30, 2019 through November 30, 2024].[1]

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

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

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

At preliminary approval, the Court provisionally certified the above-described class, determining that Plaintiffs demonstrated by a preponderance of the evidence (1) an

[1] The escalator clause was triggered, thus, in order to avoid exceeding the 111,038 workweeks threshold, Defendant elected to end the Class Period on November 30, 2024, pursuant to Paragraph 8 of the Settlement Agreement—resulting in 111,004 total workweeks. (Motion, p. 1, fn. 1.)

ascertainable class, (2) a well-defined community of interest among the class members and (3) that a class action provides substantial benefits to both litigants and the Court. Consequently, the Court will certify the Class for settlement purposes as requested.

E. Terms and Administration of Settlement

The non-reversionary gross settlement amount is $1,990,000. Attorneys' fees up to one-third of the gross settlement amount, which is approximately $663,333.33; litigation costs of up to $45,000.00; and administrative costs of up to $14,500.00. $70,000.00 will be allocated to PAGA penalties, 75% of which ($52,500.00) will be paid to the LWDA, with the remaining 25% ($17,500.00) will be dispensed, on a pro rata basis, to "Aggrieved Employees" who are defined as "all individuals employed as non-exempt, hourly employees by Defendant within the State of California during the PAGA Period."[2] Plaintiffs will seek Class representative payments of $10,000.00 each—totaling $20,000.00.

Class Counsel fails to provide a net settlement amount but based on the information provided, the Court estimates the net settlement amount to be $1,177,166.67, which will be allocated to Class members. For tax purposes, 20% of each Class member's individual payment will be allocated to wages and 80% will be allocated to interest and penalties. Funds associated with checks uncashed after 180 days will be transmitted to the Controller of the State of California to be held in trust for such Class members pursuant to California unclaimed property law. Plaintiffs will seek Class representative awards of $10,000 each—totaling $20,000.

In exchange for settlement, Class Members who do not opt out will release:

> All claims, rights, demands, liabilities, and causes of action that are alleged, or reasonably could have been alleged based on the facts asserted in the Operative Complaint that occurred during the Class Period, including the following claims: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code§ 510; (3) Meal Period Liability Labor Code § 226.7; (4) Rest-Break Liability Labor Code§ 226.7; (5) Violation of Labor Code§ 226; (6) Violation of Labor Code§ 221; (7) Violation of Labor Code§ 204; (8) Violation of Labor Code§ 203; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to Produce Requested Records under §§ 226 and 1198; (11) Failure to Reimburse Necessary Business Expenses under Labor Code§ 2802; (12) Violation of Business & Professions Code§ 17200, *et seq*.; (13) claims under Labor Code Section 246 *et seq*. and related laws for Paid Sick Leave violations; and (14) all claims under the Wage Orders, including suitable seating claims.[3]

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[2]The "PAGA Period" is defined as "the period from October 30, 2022, and continuing through the date of preliminary approval.

[3] The release expressly excludes all other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, retaliation, discrimination, unemployment insurance, disability, social security, workers compensation, and Class claims outside of the Class Period.

Aggrieved Employees, who consistent with the statute will not be able to opt out of the PAGA portion of the settlement, will release:

> All claims for the recovery for civil penalties, attorneys' fees and costs permissible under PAGA which Plaintiffs and/or the Aggrieved Employees had, or may claim to have, against Released Parties, which were alleged or were based on the facts in the Operative Complaint and/or the PAGA Notices submitted in connection with the Alcantar and Chiang Actions, including failure to pay overtime compensation, failure to pay minimum wages, failure to provide compliant meal and rest breaks, failure to pay meal and rest period premiums, failure to pay all wages owed at discharge or resignation; failure to timely pay wages during employment; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; failure to provide one day's rest from seven; failure to reimburse necessary business-related expenses; failure to provide suitable seating, and violations of Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.3, 226.7, 246*, et seq*., 510,512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2698, *et seq*.[4]

The notice period has now been completed. Stacey Shim ("Shim"), a case manager for settlement administrator Apex, submitted a declaration in support of the instant motion. Shim states that on September 10, 2025, Apex received the notice packet from Class Counsel and on November 10, 2025, defense counsel provided the Class data file including the names, last known mailing addresses, and social security numbers of the Class Members and/or Aggrieved Employees.

The names and addresses were verified and updated against the National Change of Address Database. On November 26, 2025, the notice packets were sent to 1,042 Class Members. As of the date of Shim's declaration, 21 class notices have been returned as undeliverable. Apex was able to locate 18 updated addresses and the Class notices were promptly re-mailed. Thus, 3 notices were undeliverable.

The deadline to respond was January 26, 2026, and as of the date of Shim's declaration, Apex received one (1) request for exclusion, zero (0) objections, and zero (0) workweek disputes. To avoid exceeding 111,038 workweeks, Defendant established the end of the Class Period as November 30, 2024, pursuant to the settlement agreement. The total number of workweeks worked by participating Class members during the Class Period is 111,004. The PAGA period end date remains September 5, 2025. As a result of the Class Period ending before the PAGA Period, 95 individuals out of the 1,042 individuals were hired after the end of the Class Period which renders them ineligible to receive an Individual Class Payment. Thus, there are 947 Class Members. Consequently, there are 946 participating Class Members. The average individual payment will be $1,201,510.10, the highest payment will be $2,894.03 and the lowest will be $32.52. The average PAGA payment will be $21.29, the highest will be $35.72, and the lowest will be $0.51.

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[4]This release expressly excludes other PAGA claims, claims for vested benefits, wrongful termination, discrimination, unemployment insurance, disability, social security, and worker's compensation, and PAGA claims outside of the PAGA Period.

The settlement provides for administration costs for up to $14,500. Shim's declaration supports costs to Apex in the amount of $14,500. This amount is reasonable and therefore, it is approved.

At the preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiffs' claims. It finds no reason to depart from these findings now, especially considering that there are no objections. Therefore, the Court finds that the settlement is fair and reasonable for the purposes of final approval.

F. Attorneys' Fees, Litigation Costs, and Plaintiffs' Service Award

Class Counsel seeks a fee award of $663,333.33, or one-third of the gross settlement amount, which is not an uncommon contingency fee in a wage and hour class action. Class Counsel provide a lodestar figure of 256,979.00 based on 348.9hours of work at billing rates ranging from $475 to $1,260, resulting in a multiplier of 2.58. This is within the range of multipliers that courts typically approve. (See *Wershba, supra*, 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements funding a range of 0.6-19.6, with most (20 to 24, or 83%) from 1.0-4.0 and a bare majority (13 of 24, or 54%) in the 1.5-3.0 range"].)

"While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable by refining the choice of a percentage or by checking the percentage result against the lodestar-multiplier calculation." (*Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, 495 (*Laffitte*).) Applying the latter approach,

> [T]he percentage-based fee will typically be larger than the lodestar based fee. Assuming that one expects rough parity between the results of the percentage method and the lodestar method, the difference between the two computed fees will be attributable solely to a multiplier that has yet to be applied. Stated another way, the ratio of the percentage-based fee to the lodestar-based fee implies a multiplier, and that implied multiplier can be evaluated for reasonableness. If the implied multiplier is reasonable, then the cross-check confirms the reasonableness of the percentage-based fee; if the implied multiplier is unreasonable, the court should revisit its assumptions.

(*Laffitte, supra,* 1 Cal.5th at p. 496, quoting Walker & Horwich, *The Ethical Imperative of a Lodestar Cross-check: Judicial Misgivings About "Reasonable Percentage" Fees in Common Fund Cases* (2005) 18 Geo. J. Legal Ethics 1453, 1463.) As described by the California Supreme Court, "[i]f the multiplier calculated by means of a lodestar crosscheck is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Laffitte, supra,* 1 Cal.5th at 505.)

Here, the multiplier sought by Class Counsel is within the range of modifiers typically approved by courts, is supported by the percentage cross-check as well as the declarations submitted by Class Counsel Enoch J. Kim and Kyle Nordrehaug. Thus, the Court finds Class Counsel's requested fee award is reasonable.

Class Counsel also seek $20,656.57 in litigation costs, which is lower than the $45,000 allowed for in the Settlement. The request is supported by Class Counsel's declarations. This amount is reasonable and thus, it is approved.

Plaintiffs request a service payment award of $10,000 each-totaling $20,000.

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

(*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, internal punctuation and citations omitted.) Incentive awards are particularly appropriate where a plaintiff undertakes a significant reputational risk in bringing an action against an employer. (*Covillo v. Specialty's Café* (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29.)

At the preliminary approval, the Court preliminarily approved Plaintiffs' requests for service awards. Having review Plaintiffs' declaration, the Court does not find any reason to depart from that finding. Thus, Plaintiffs' request for service awards in the amount of $10,000-totaling $20,000 is approved.

VII. CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Plaintiffs' motion for final approval is GRANTED. The following Class is certified for settlement purposes only:

> All individuals employed as non-exempt, hourly employees by Kidango, Inc. within the State of California during the Class Period.

Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiffs and the members of the Class will take from the SAC only the relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court will retain jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **November 5, 2026 at 2:30 P.M**. in Department 22. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying

distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.

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Case Name: *Section 52 Fund 5, LP v. IronArc Opportunities XV, LP*
Case No.: 25CV470496

This action arises from an alleged breach of contract regarding a transaction for purchase of stocks.

Before the Court is defendant IronArc Opportunities XV, LP's ("IronArc")'s demurrer; its motion for sanctions under Code of Civil Procedure Section 128.5 ("Section 128.5); and motion for sanctions under Code of Civil Procedure 128.7 ("Section 128.7"), all of the motions are opposed.

As discussed below, the Court SUSTAINS Defendant's demurrer with 20 days' leave to amend; DENIES its motion for sanctions under Section 128.5; and GRANTS its motion for sanctions under Section 128.7.

VIII. BACKGROUND

According to the allegations of the Complaint, on May 28, 2025, IronArc and plaintiff Section 52 Fund 5 executed a Stock Transfer Notice and Agreement (the "Agreement"). (Complaint, ¶ 12.) In the Agreement, Plaintiff agreed to sell 334,058 shares of Scale AI, Inc. ("Scale AI") and Defendant agreed to buy the shares. (Complaint, ¶ 13.) The shares were comprised of 319,380 shares of Scale AI Series C Preferred Stock, 12,564 shares of Scale AI Series D Preferred Stock, and 2,114 shares of Scale AI Series E Preferred Stock. (*Ibid*.) The sale price was $26.32 per share—totaling $8,795,546.71. (Complaint, ¶ 14.) The Agreement is on a form used by the National Association of Securities Dealer Automated Quotations ("Nasdaq") private market to facilitate the transfer of private company stock among sophisticated parties. (Complaint, ¶ 15.) The parties agreed that any proposed transfer would be subject to any right of first refusal ("ROFR") applicable to the shares. (Complaint, ¶¶ 16-17.) The Agreement further provided that if Scale AI did not approve the transaction within 30 days of the agreement and the failure was not "due to any material action or inaction" by Plaintiff or Defendant then "either party may terminate" the Agreement by written notice. (Complaint, ¶ 18.)

Under the Agreement, in the event Scale AI approved the transfer or did not exercise a right of first refusal, the parties agreed to "enter into [Scale AI's] form of stock purchase and/or transfer agreement…" (Complaint, ¶ 19.) It is undisputed that Scale AI's does not have a right of first refusal over the shares at issue. (Complaint, ¶ 20.)

As a sophisticated investor, Defendant could have bargained for a clause allowing it to terminate or modify the Agreement due to what could be considered a material adverse change in circumstances or a change in the classification of the stock it was going to purchase, and it did not do so. (Complaint, ¶ 21.) After the Agreement was executed, Scale AI received a major investment from a third party, which was predicated upon the reclassification of preferred stock to common stock. (Complaint, ¶ 22.)

On June 22, 2025, Defendant purported to terminate the Agreement "effective immediately." (Complaint, ¶ 23.) In the notice, Defendant said that Scale AI had not approved the transfer as of June 22, 2025, and it claimed a right to terminate the Agreement because it provided the notice "within 30 days of the June 23, 2025 [date of the Agreement." (*Ibid*.) Defendant had no right to terminate the Agreement on this basis—it only allows for termination by Defendant where Scale AI does not approve the transfer within 30 days after the notice date and such failure is not due to any material action or inaction by Defendant. (Complaint, ¶ 24.)

By letters dated June 20 and July 3, 2025, Plaintiff exhorted Defendant to comply with the Agreement and execute the paperwork necessary to effectuate the transfer of Scale AI stock. (Complaint, ¶ 25.) Defendant has not executed any of the necessary transfer papers or paid any of the money and Plaintiff's correspondence has been met with silence. (Complaint, ¶ 26.)

Based on the foregoing, Plaintiff initiated this action with the filing of the Complaint, which asserts the following causes of action: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) specific performance; and (4) declaratory relief.

IX. DEMURRER

Defendants demur to the Complaint and each cause of action on the ground that it fails to state a cause of action upon which relief can be granted. (Code Civ. Proc., § 430.10, subd. (e).)

A. Evidentiary Objections

Defendant submits evidentiary objections to the declaration of Nina Labatt which was filed in support of Plaintiff's opposition to the demurrer.

A demurrer tests only the sufficiency of the allegations and not any facts outside of the pleadings or judicially noticed materials. Therefore, the Court did not consider or rely on facts in extrinsic materials, and it does not need to rule on the objections.

B. Request for Judicial Notice

1. Defendant's Request

Defendant requests judicial notice of the following items:

(1) Scale AI's Certificate of Incorporation issued by the Delaware Secretary of State, filed on June 12 2025: Exhibit 1; and

(2) Complete Email Family of Exhibit Attached to the Complaint: Exhibit 2.

Here, the court may take judicial notice of Exhibit 1 as it is filed with the Delaware Secretary of State under Evidence Code section 452, subdivision (c). (See *Friends of Shingle Springs Interchange, Inc. v. County of El Dorado* (2011) 200 Cal.App.4th 1470, 1496, fn. 6 [courts may properly take judicial notice of certificates issued by the Secretary of State].)

However, the email exchange in Exhibit 2 contains a different agreement than the one identified in the Complaint. Additionally, it is only signed by one party. Therefore, judicial notice of it is not proper.

Thus, Defendant's request for judicial notice is GRANTED as to Exhibit 1 and DENIED as to Exhibit 2.

2. Plaintiff's Request

Plaintiff requests judicial notice of the Restated Certificate of Incorporation of Scale AI with the Delaware Secretary of State, filed on May 1, 2024: Exhibit A.

For reasons stated above, Plaintiff's request for judicial notice is GRANTED.

C. Legal Standard

The function of a demurrer is to test the legal sufficiency of a pleading. (*Trs. Of Capital Wholesale Elec. Etc. Fund v. Shearson Lehman Bros.* (1990) 221 Cal.App.3d 617, 621.) Consequently, "[a] demurrer reaches only to the contents of the pleading and such matters as may be considered under the doctrine of judicial notice." (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732, internal citations and quotations omitted; see also Code Civ. Proc., § 430.30, subd. (a).) "It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct. … Thus, … the facts alleged in the pleading are deemed to be true, however improbable they may be." (*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 958, internal citations and quotations omitted (*Align Technology*).)

In ruling on a demurrer, the allegations of the complaint must be liberally construed, with a view to substantial justice between the parties. (*Glennen v. Allergan, Inc.* (2016) 247 Cal.App.4th 1, 6.) Nevertheless, while "[a] demurrer admits all facts properly pleaded, [it does] not [admit] contentions, deductions or conclusions of law or fact." (*George v. Automobile Club of Southern California* (2011) 201 Cal.App.4th 1112, 1120.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

D. Discussion

Defendant demurs to each cause of action on the ground that it fails to allege sufficient facts to state a claim. (Code Civ. Proc., § 430.10, subd. (e).)

1. First Cause of Action-Breach of Contract

Plaintiff alleges that it agreed to sell, and Defendant agreed to buy 334,058 shares of Scale AI at $26.32 per share—totaling $8,795,546.71. (Complaint, ¶¶ 27-29.) Defendant breached the Agreement which caused harm to Plaintiff. (Complaint, ¶ 30.)

To state a breach of contract cause of action, a plaintiff must allege: 1) the existence of a (valid) contract; 2) Plaintiff's performance of his or her responsibilities under the contract or excuse for nonperformance; 3) Defendant's breach; and 4) damage to Plaintiff resulting from

that breach. (See *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 228.) "Under Delaware law, the elements of a breach of contract claims are (i) a contractual obligation, (ii) a breach of that obligation by the contractual party, and (iii) causally related harm to the counterparty." (*JER Hudson GP XXI LLC v. DLE Investors, LP* (Del. Ch. 2022) 275 A.3d 755, 800.)[1]

The Agreement provides as follows:

> The parties acknowledge and agree that this proposed transfer of the Company shares is subject to the Company's customary transfer terms and transfer restrictions, including but not limited to, any applicable Company right of first refusal ("ROFR"), and that this STNA constitutes an offer to sell the abovementioned shares to other Company or one or more of the Company's assignees pursuant to the Company's ROFR at the Sale Price set forth above.
>
> THE PARTIES AGREE THAT THIS STNA CONSTITUTES A BINDING COMMITTEMENT TO TRANSFER THE ABOVE MENTIONED SHARES IF THE PROPOSED TRANSFER IS EFFECTIVELY APPROVED BY THE COMPANY, INCLUDING VIA THE COMPANY'S WRITTEN OR ELECTRONIC APPROVAL (WHETHER TO NPM (DEFINED BELOW) OR OTHERWISE), OR FAILURE TO TIMELY EXERCISE ANY APPLICABLE ROFR. Without limiting any other rights or remedies available to NPM Securities, LLC (or its affiliate(s)) ("NPM") or any other party hereto fails to timely fulfill it obligations under this STNA and complete the closing of the transaction, such breaching party will be liable to the agreed fee payable by such party to NPM for the transaction, due within thirty (30) days of invoice by NPM, and NPM shall be entitled to directly enforce this clause as an intended beneficiary.

(Complaint, Exh. A, p. 2 [emphasis original].)

Defendant argues the Complaint does not state a breach of contract because an obligation that never ripened due to non-occurrence of conditions precedent cannot give rise to a breach. (Memorandum of Points and Authorities ("MPA"), p. 12:9-13.) In opposition, Plaintiff argues that the Agreement does not allow unilateral termination, Defendant prevented the satisfaction of a condition precedent, and it stands ready and willing to perform the Agreement. (Plaintiff's Opposition ("Opp."), p. 4: 11-16.)

Under Delaware law, the proper interpretation of language in a contract is a question of law, therefore the meaning of contractual language may be determined on a motion regarding the sufficiency of the allegations. (See *OSI Systems, Inc. v. Instrumentarium Corp.* (Del. Ch. 2006) 892 A.2d 1086, 1090.) When the language of a contract is plain and unambiguous, binding effect should be given to its evident meaning. (See *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.* (Del. 1992) 616 A.2d 1192, 1195.)

Here, the Agreement is silent as to conversion of the stock. However, with regard to termination, the Agreement provides, "Notwithstanding the foregoing, *if the*

[1] The Agreement states it "will be governed by the laws of the State of Delaware without regard to any conflicts of law principles." (Complaint, Exh. A, p. 2.)

Company has not approved the transfer (and assuming the failure by the Company to approve such transaction is not due to any material action or inaction by the Proposed Buyer or Holder), *then within thirty (30) calendar days from the date of this STNA,* ***either party may terminate*** this STNA by written notice to the other party and NPM, and *such termination will not be deemed as a breach of this STNA*. (Complaint, Exh. A, p. 2 [emphasis added].)

The Delaware Chancery Court has explained that "where the parties have created a condition precedent, the occurrence of that condition is necessary to give rise to the other party's duty to perform; if the condition does not occur, the duty never arises. A condition subsequent is an event that discharges a party from a preexisting duty to perform immediately; the occurrence of the condition extinguishes that duty." (*D.R. Horton, Inc. v. Bunting MacKs LLC* (2024 Del. Ch. LEXIS 266 at * 14, fn. 5.)

Here, the Agreement explicitly states that it would constitute a *binding commitment to transfer the above mentioned shares* ***if the proposed transfer [was] effectively approved by the company…*** " (See Complaint, Exh. A, p. 2 [emphasis added].) Therefore, effective approval by Scale AI or a failure to timely exercise its ROFR was required in order for the Agreement to constitute a binding commitment to transfer the subject shares. (See *Shilling v. Shilling* (Del. 2024) 332 A.3d 453, 466 (*Shilling*) ["The use of terms like 'if,' 'provided that,' 'on condition that,' or some other phrase that conditions performance" usually connotate "an intent for a condition rather than a promise."] (*Shilling*).)

Here, there are no allegations that Scale AI approved the transfer or declined to timely exercise its ROFR. Therefore, the termination provision could not be a condition subsequent in this instance because there was no preexisting duty that could have been discharged in the absence of an approval by Scale AI or a refusal to exercise its ROFR.

The Court is not persuaded by Plaintiff attempts to read a requirement that Scale AI reject the transaction before the termination rights vested because the plain language of the Agreement expressly identifies "approval" or "refusal to exercise its ROFR" as conduct by Scale AI. Therefore, the Agreement's silence on rejection of the transaction as conduct required by Scale AI suggests that it was not necessary in order the termination provision to be triggered.

Based on the foregoing, it appears Plaintiff does not allege sufficient facts to establish the occurrence of a condition precedent. As a result, it cannot allege sufficient facts to allege a breach. Thus, Defendant's demurrer to Plaintiff's first cause of action is SUSTAINED with 20 days' leave to amend.

2. Second Cause of Action-Breach of the Covenant of Good Faith and Fair Dealing

Plaintiff alleges Defendant's refusal to execute documents which may have been required to effectuate a transfer of the Scale AI's stock that was the subject matter of the Agreement breached the covenant of good faith and faith dealing and damaged Plaintiff. (Complain, ¶¶ 31-33.)

> "The implied covenant is inherent in all contracts" and ensures that parties do not "frustrat[e] the fruits of the bargain" by acting "arbitrarily or unreasonably." The covenant of good faith and fair dealing "embodies the law's expectation that 'each party to a contract will act with good faith toward the other with respect to the subject matter of the contract.'" The covenant also encompasses "the principle of contract construction that 'if one party is given discretion in determining whether [a] condition in fact has occurred[,] that party must use good faith in making that determination.'"

(*Baldwin v. New Wood Res. LLC* (Del. 2022) 283 A.3d 1099, 1116; footnote/ citations omitted.)

A claim for breach of the implied covenant of good faith and fair dealing requires: (1) a specific implied contractual obligation; (2) bad faith breach of that obligation; and (3) resulting damage. (*Cygnus Opportunity Fund, LLC v. Washington Prime Group, LLC* (Del. Ch. 2023) 302 A.3d 430, 458.) Under Delaware law, a breach of the implied covenant claim is limited in scope and is intended solely to fill gaps in a contract's provisions. (See *Oxbow Carbon & Minerals Holding, Inc. v. Crestview-Oxbow Acquisition, LLC* (Del. 2019) 202 A.3d 482, 507-508 (*Oxbow Carbon & Mineral Holdings*).) "As such, the implied covenant does not apply when the contract addresses the conduct at issue, but only when the contract is truly silent concerning the matter at hand. Even where the contract is silent, [a]n interpreting court cannot use an implied covenant to re-write the agreement between the parties …." (*Id.* at p. 507.)

Plaintiff contends this claims as a "gap-filler" for conduct not addressed by the Agreement on the basis that it would be "too obvious." (Opp., p. 10:9-17.) However, the Agreement states, "in the event that the Company approves the transfer or declines to exercise its ROFR, the parties agree that they *shall enter into the Company's form of stock purchase and/or transfer agreement*…" (Complaint, Exh. A, p. 2.) Therefore, the Agreement expressly addressed the execution of documentation in order to effectuate the transfer. As a result, this cause of action cannot be predicated on this basis. (See *Oxbow Carbon & Mineral Holdings, supra,* 202 A.3d at p. 507 ["the implied covenant does not apple when the contract addresses the conduct at issue, but only when the contract is truly silent concerning the matter at hand."].)

Thus, Defendant's demurrer to Plaintiff's second cause of action is SUSTAINED with 20 days' leave to amend.

3. Third Cause of Action-Specific Performance

Plaintiff alleges that the stock at issue is not publicly traded, it does not trade in an efficient or liquid market—it is unique. (Complaint, ¶ 35.) Plaintiff stands willing and able to perform pursuant to the Agreement, which Defendant breached. (Complaint, ¶¶ 36-37.)

Specific performance is a form of relief and thus it needs to be supported by an underlying cause of action. (See *Addy v. Piedmonte* (Del. Ch. Mar. 18 2009) 2009 Del.Ch. LEXIS 38 at * 23 (*Addy*) [explaining that requests for relief "are not claims in and of themselves, but types of remedies dependent on the viability and outcome of the underlying causes of action, such as those for breaches of contract and equitable fraud"].) A party seeking specific performance must establish that (1) a valid contract exists, (2) he is ready, willing, and able to perform, and (3) that the balance of equities tips in favor of the party seeking performance. (*Estate of Osborn v. Kemp* (Del. 2010) 991 A.2d 1153, 1158 (*Estate of Osborn*).)

Similarly, under California law, specific performance is a remedy for breach of contract, not a standalone cause of action. (See *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 905; *Shoker v. Superior Court* (2022) 81 Cal.App.5th 271, 283 ["specific performance is a remedy for breach of contract"].) "To obtain specific performance after a breach of contract, a plaintiff must generally show: '(1) the inadequacy of his legal remedy; (2) an underlying contract that is both reasonable and supported by adequate consideration; (3) the existence of a mutuality of remedies; (4) contractual terms which are sufficiently definite to enable the court to know what it is to enforce; and (5) a substantial similarity of the requested performance to that promised in the contract.'" (*Real Estate Analytics, LLC v. Vallas* (2008) 160 Cal.App.4th 463, 472.)

Here, the demurrer has been sustained as to Plaintiff's underlying contractual claims. (See *Addy, supra*, 2009 Del.Ch. LEXIS at * 23.) Moreover, the Complaint is devoid of any allegations regarding the balance of equities. Therefore, Plaintiff fails to allege sufficient facts to state this claim. (See *Estate of Osborn, supra,* 991 A.2d at p. 1158.)

Thus, Defendant's demurrer to Plaintiff's third cause of action is SUSTAINED with 20 days' leave to amend**.**

4. Fourth Cause of Action-Declaratory Judgment

Plaintiff alleges that there is a current and actual dispute between the parties as to whether the Agreement was breached by Defendant. (Complaint, ¶ 41.)

> Delaware courts are statutorily authorized to entertain an action for a declaratory judgment, provided that an "actual controversy" exists between the parties. For an "actual controversy" to exist, the following four prerequisites must be satisfied:
> (1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief;
> (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim;
> (3) the controversy must be between parties whose interests are real and adverse;
> (4) the issue involved in the controversy must be ripe for judicial determination.

(*XL Specialty Ins. Co. v. WMI Liquidating Trust* (Del. 2014) 93 A.3d 1208, 1216-1217.)

As the Court explained above, Plaintiff fails to state sufficient facts to establish a breach. As a result, Plaintiff fails to allege the existence of a "actual controversy" between to parties to support this claim.

Thus, Defendant's demurrer to Plaintiff's fourth cause of action is SUSTAINED with 20 days' leave to amend.

X. DEFENDANT'S MOTIONS FOR SANCTIONS PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 128.5

Defendants moves for sanctions against Plaintiff and its law firm under Code of Civil Procedure section 128.5 on the grounds that they filed a frivolous Complaint, among other things. (Motion, p. 2:1-10.)

A. Legal Standard

Code of Civil Procedure section 128.5, subdivision (a), provides, "[a] trial court may order a party, the party's attorney, or both to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith that are frivolous or solely intended to cause unnecessary delay…" (Code Civ. Proc., §128.5, subd. (a).) Code of Civil Procedure section 128.5, subdivision (f), provides, as relevant, "[a]n order for sanctions pursuant to this section shall be limited to what is sufficient to deter repetition of the action or tactic or comparable action or tactic by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective directives, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the action or tactic described in subdivision (a)." (Code Civ. Proc., §128.5, subd. (f).) "Frivolous," is defined as "totally and completely without merit or for the sole purpose of harassing an opposing party." (Code Civ. Proc., § 128.5, subd. (b)(2).)

Intention to harass or cause unnecessary delay is measure by a subjective standard. (*Wallis v. PHL Associates, Inc.* (2008) 168 Cal.App.4th 882, 893.) The award of sanctions for a frivolous action under Code of Civil Procedure section 128.5 is within the sound discretion of the trial court. (*Bach v. McNelis* (1989) 207 Cal.App.3d 852, 878.)

The Courts of Appeal have repeatedly cautioned that sanctions should be "used sparingly in the clearest cases to deter the most egregious conduct." (*Wallis v. PHL Associates, Inc.* (2008) 168 Cal.App.4th 882, 893 [discussing sanctions under Code of Civil Procedure section 128.5].)

B. Discussion

A movant must provide the opposing party with a 21-day safe harbor period, "if the alleged action or tactic is the making or opposing of a written motion of the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected." (Code Civ. Proc., § 128.5, subd. (f)(1)(B).)

Here, Defendant served Plaintiff with the motion on July 31, 2025, and filed it with the Court on September 5, 2025, thus, it complied with the safe harbor requirement.

Defendant argues sanctions are warranted here because the Complaint is devoid of any legal merit and falsely asserts facts that Plaintiff knows to be false. (Motion, p. 15:1-9.) On this basis, it contends that the Complaint is sufficient to establish Plaintiff's bad faith. (Motion, p. 18:12-13.) Defendant argues that Plaintiff deliberately distorted the facts and law; tried to pressure it into the purchase of new, devalued stock; and it attempted to sidestep the automatic stay of discovery and responsive pleadings by requesting premature and invasive discovery into Defendant's ability to "satisfy a multi-million dollar judgment." (Motion, p. 19:3-12.)

In opposition, Plaintiff argues there is no basis for sanctions under Section 128.5. (Plaintiff's Opposition ("Opp."), pp. 4:11-5:13.)

A demurrer being sustained does not by itself entitle a party to sanctions under Section 128.5. Defendant asserts that Plaintiff puts forth several arguments are unsupported by the facts and law. The Court agrees that some arguments proffered by Plaintiff are unsupported by the language of the Agreement, such as the assertion that conversion event as contemplated by the parties despite the Agreement being silent on this point. However, it is not persuaded that the Plaintiff's filing of the Complaint was "totally and completely without merit" or "for the *sole purpose* of harassing," Defendant because it appears the Complaint was filed after it concluded that the communications with defense counsel were not meaningful. (See Code Civ. Proc., § 128.5, subd. (b)(2).) Moreover, given the time sensitive nature of the Agreement and the related investment, the Court is not persuaded that Plaintiff's purported rush to file the Complaint illustrates bad faith on Plaintiff's part. Furthermore, while Plaintiff's arguments and interpretation of the Agreement were unpersuasive to the Court, it does not find that they were totally and completely without merit.

Based on the foregoing, Defendant's motion for sanctions is DENIED.

XI. DEFENDANT'S MOTION FOR SANCTIONS PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 128.7

A. Legal Standard

A trial court may impose sanctions under section 128.7 when a "paper": (1) is "presented primarily for an improper purpose" (such as to harass a litigant, drive up the costs of litigation, or cause undue delay), (2) contains a claim, defense, or other legal contention that is not warranted by existing law "or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law," (3) contains allegations and factual contentions that do not have any evidentiary support or are not "likely to have evidentiary support after a reasonable opportunity for further investigation or discovery," or (4) contains denials of factual contentions that are not "warranted on the evidence or . . . are [not] reasonably based on a lack of information or belief." (Code Civ. Proc., § 128.7, subd. (b)(1)-(b)(4).) In other words, in order to prevail on a sanctions motion under § 128.7, a party must show that the other side's papers were brought for a dilatory or obstructive purpose, or are legally or factually "frivolous." (*Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 167 (*Guillemin*); *Peake v. Underwood* (2014) 227 Cal.App.4th 428, 440-441 (*Peake*).) As the Court noted in *Peake*, *supra*, section 128.7, subdivision (d), expressly provides that any sanction imposed "'shall be limited to what is sufficient to deter repetition of [the improper] conduct or comparable conduct by others similarly situated.'" (*Peake*, 227 Cal.App.4th at p. 441 [quoting Code Civ. Proc., § 128.7, subd. (d)].)

In *Peake, supra,* the court noted, section 128.7 "'must not be construed so as to conflict with the primary duty of an attorney to represent his or her client zealously. Forceful representation often requires an attorney attempt to read a case or an agreement in an innovative though sensible way. Our law is constantly evolving, and effective representation sometimes compels attorneys to take the lead in that evolution.'" (*Id.* at p. 441[quoting *Guillemin*, *supra*, 104 Cal.App.4th at pp. 167–168].)

B. Discussion

Defendant argues the Complaint is devoid of any legal merit and false asserts facts Plaintiff knows to be false. (Motion, p. 14:1-9.) As discussed above, the Court does not find that the Complaint was filed to cause undue delay or to harass Defendant.

Plaintiff asserts that the Agreement did not allow for unilateral termination and that it contemplated a conversion event. However, as explained above neither of these assertions are supported by the facts and they are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. (See Code Civ. Proc., § 128.7, subd. (b)(3).) Moreover, the assertions are objectively unreasonable. (See *Peake, supra,* 227 Cal.App.4th at p. 440.)

Based on the foregoing, Defendant's motion for sanctions under Section 128.7 is GRANTED in the amount of $15,000 and reasonable attorneys' fees and costs. Defendant is ordered to submit a memorandum in support of the attorneys' fees and costs.

XII. CONCLUSION

Defendants' demurrer is SUSTAINED with 20 days' leave to amend; its motion for sanctions under Section 128.5 is DENIED; and its motion for sanctions under Section 128.7 is GRANTED.

The Court will prepare the order.

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Case Name: *Kevin Anguka v. Timothy Cook, et al.*
Case No.: 25CV472876

This is a shareholder derivative complaint for breach of fiduciary duty.

Before the Court is Defendant Apple Inc.'s ("Apple") motion to seal portions of Plaintiff Kevin Anguka's complaint, which is unopposed.

As discussed below, the Court GRANTS Apple's motion to seal.

IV. MOTION TO SEAL

A. Legal Standard

"The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." (Cal. Rules of Court, rule 2.550(d).) Pleadings, in particular, should be open to public inspection "as a general rule," although they may be filed under seal in appropriate circumstances. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 104, fn. 35.)

"Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute overriding interests." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn. 3 (*Providian*).) Confidential matters relating to the business operations of a party may be sealed where public revelation of the information would interfere with the party's ability to effectively compete in the marketplace. (See *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1285–1286.)

"A party requesting that a record be filed under seal must file a motion or an application for an order sealing the record. The motion application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing." (Cal. Rules of Court, Rule 2.551(b)(1).)

B. Discussion

Apple moves to seal portions of the Complaint because it contains confidential commercially sensitive information, including its board records and sensitive financial information. (Motion, p. 2: 3-6.)

Apple argues it has an overriding interest in sealing the confidential information referenced in the Complaint. (Motion, p. 3:9-10.) The information includes non-public, commercially sensitive business and financial information, including board materials reflecting strategic business decisions and communications by Apple's Board of Directors regarding business and legal matters. (Motion, p. 3:15-19.) It further argues that its overriding interest will be prejudiced if the redacted information is not sealed. (Motion, p. 4:19-20.) Specifically, disclosure of the redacted information could harm Apple's competitive position by providing insight into internal Board deliberations regarding business and legal matters. (Motion, pp.

4:27-5:1-2.) Apple further contends that the redactions are narrowly tailored, and no less restrictive means exists to protect the overriding interest. (Motion, p. 5:7-14.)

The Court finds that Apple establishes overriding interests that justify sealing these materials and the other factors set forth in Rule 2.550 are satisfied. Additionally, Apple submits the necessary documents pursuant to Rule 2.551(b)(1). Thus, Apple's motion to seal portions of the Complaint is GRANTED.

V. CONCLUSION

Based on the foregoing, Apple's motion to seal portions of the Complaint is GRANTED.

The Court will prepare the order.

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