SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

Thomas Duarte, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2170

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 content the tentative ruling.

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

PLEASE 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 Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.
- Members of the public who wish to observe can do so through Microsoft Teams (using the link discussed above) or in person. Please make sure to turn your camera off and mute yourself if you are observing the proceedings 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 on Microsoft Teams.

DATE: JUNE 26, 2025 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	20CV367408	Saldivar v. Stanford Federal Credit Union (Class Action)	This matter was previously continued to July 31, 2025 at 1:30 p.m.
LINE 2	20CV369179	Hone Capital LLC, et al. v. Wu, et al. (Lead Case; Consolidated With 20CV369308)	See Line 2 for tentative ruling.
LINE 3	20CV369179	Hone Capital LLC, et al. v. Wu, et al. (Lead Case; Consolidated With 20CV369308)	

LAW AND MOTION TENTATIVE RULINGS

LINE 4	21CV391403	Temujin Labs Inc. v. Abittan, et al.	See Line 4 for tentative ruling.
LINE 5	21CV375422	Temujin Labs Inc. vs JOHN DOE	
LINE 6	21CV386893	Arellano v. Hero Adams, Inc., et al. (PAGA)	On the court's own motion, Plaintiffs' motion for preliminary approval is CONTINUED to July 24, 2025, at 1:30 pm. No later than July 17, 2025, Plaintiffs must file a supplemental declaration that includes the proposed class notice as an exhibit for the court's review.
LINE 7	22CV407249	Treespring Investments, LP v. Rautner, et al.	See Line 7 for tentative ruling.
LINE 8	22CV407249	Treespring Investments, LP v. Rautner, et al.	
LINE 9			
LINE 10			
LINE 11	24CV429605	Castaneda, et al. v. Marco Polo Management Inc. (Class Action/PAGA)	See Line 11 for tentative ruling.
LINE 12	24CV429605	Castaneda, et al. v. Marco Polo Management Inc. (Class Action/PAGA)	
LINE 13	24CV434222	Alvarez v. GB Group, Inc. (Class Action)	See Line 13 for tentative ruling.
LINE 14	24CV438655	Motiani v. Future US LLC (Class Action)	See Line 14 for tentative ruling.
LINE 15	24CV438655	Motiani v. Future US LLC (Class Action)	
LINE 16	21CV375422	Temujin Labs Inc. vs JOHN DOE	See Line 4 for tentative ruling.

Calendar Line 1

Case Name:
Case No.:

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Calendar Line 2 (including Calendar Line 3)

Case Name: *Hone Capital LLC v. Wu et al.*
Case No.: 20CV369179 (consolidated with Case No. 20CV369308)

This consolidated action arises from a series of business disputes among several parties. Plaintiff/Cross-Defendant Hone Capital LLC ("Hone Capital" or "Hone" or "Plaintiff"), a subsidiary of China Science & Merchants Investment Management Group Co, LTD ("CSC Group"), has sued several parties for fraud and breach of fiduciary duty, among other things. Hone Capital's claims arise from: (1) alleged embezzlement and double-dealings of Defendants/Cross-Complainants Veronica Wu and Purvi Gandhi, former employees of Hone Capital; and (2) supposed assistance in these wrongful actions by various outside parties hired by or doing business with Mses. Wu and Gandhi, either directly or through entities controlled by Mses. Wu and Gandhi.[1] Mses. Wu and Gandhi have each filed cross-claims against Hone Capital for unpaid wages and profit sharing.

Before the Court is (1) Ms. Wu's motion to seal and (2) Ms. Gandhi's motion to seal, which are unopposed.

As discussed below, the Court GRANTS Ms. Wu's motion and GRANTS Ms. Gandhi's motion.

I. 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.)

[1] Ms. Wu has changed her name to Veronica Breckenridge, however, the Court will refer to her as Ms. Wu for the sake of clarity and consistency. No disrespect is intended. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

Rule 2.550 does not directly apply to "discovery motions and records filed or lodged in connection with discovery motions or proceedings." (See Cal. Rules of Court, rule 2.550(a)(3); *H.B. Fuller Co. v. Doe* (2007) 151 Cal.App.4th 879, 892-893 (*Fuller*) [the discovery process would be impeded if a presumptive right of public access to records disclosed under protective orders and filed in connection with routine discovery motions were imposed].) Nonetheless, even in discovery proceedings, a party moving for leave to file records under seal must identify the specific information claimed to be entitled to confidentiality and the nature of the harm threatened by disclosure. (See *Fuller, supra*, 151 Cal.App.4th at p. 894.)

Where some material within a document warrants sealing, but other material does not, the document should be edited or redacted if possible, to accommodate both the moving party's overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court, rule 2.550(d)(4), (5).) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*Providian, supra*, 96 Cal.App.4th at p. 309.)

II. MS. WU'S MOTION TO SEAL

Ms. Wu moves to seal (1) all specific monetary values mentioned in Exhibit 4 attached to the declaration of Daniel Weinberg ("Weinberg") in support of Ms. Wu's Motion to Quash; (2) all specific monetary values mentioned in Exhibit 5 attached to the Weinberg declaration in support of Ms. Wu's Motion to Quash; and (3) Exhibit attached to the Weinberg declaration in its entirety.

Ms. Wu argues that the need to protect her private financial information such as sensitive bank routing information, account balances, etc., justifies restricting public access as they are not matters ordinarily available or of interest to the general public. She further argues she would be prejudiced if her personal financial information was not sealed, her proposed sealing order is narrowly tailored, and there are no less restrictive practical means for Ms. Wu to protect her personal information. The Court finds that Ms. Wu establishes an overriding interest that justifies sealing these materials and other factors set forth in Rule 2.550 are satisfied. Thus, Ms. Wu's motion to seal is GRANTED.

III. MS. GANDHI'S MOTION TO SEAL

Ms. Gandhi moves to seal thirteen pages of Exhibit C to Marc Feinstein's declaration in support of Hone Capital's motion to compel and a portion of the memorandum of points and authorities ("MPA"), namely: (1) one page of the February 2020 bank statement; (2) a four-page statement from July 2020; (3) a four-page statement from August 2020; (4) two pages of the March 2021 statement; (5) part of the May 2021 statement; (6) a monetary figure from the MPA; and (7) one line of text from Mr. Feinstein's declaration. Ms. Gandhi also seeks to seal five pages which contain the personal financial information of non-parties who have not been given the opportunity to protect their own personal financial information. Ms. Gandhi also seeks to seal additional pages which contain unredacted financial account numbers.

Ms. Gandhi argues her interest in protecting her personal financial information overrides the right of public access to the information. She further argues her interest will be prejudiced if the materials are not sealed, her proposed order is narrowly tailored, and no less

restrictive means exist to protect her personal information. As to her personal information, the Court finds Ms. Wu establishes an overriding interest that justifies sealing these materials and the other factors set forth in Rule 2.550 are satisfied.

Ms. Gandhi moves to seal materials containing the financial information for non-parties Daisy Chew, Chu Hayes, Consuelo Alejandra Acuna Sandoval, Ngan Larnauti, Jonathan Ablemann, and Leslie Fox. Ms. Gandhi directs the Court towards *County of Los Angeles v. Superior Court* (2021) 65 Cal.App.5th 621, which involved an action against various pharmaceutical companies involved in the manufacture, marketing, distribution, and sale of prescription opioid medications. (*Id*. at p. 626.) The court addressed the constitutional rights of third parties in a discovery dispute. (*Id*. at pp. 633-634.) The court stated, "it is well established that, under appropriate circumstances, a litigant 'may assert the privacy rights of third parties… One such circumstances is where the litigant's interests align with those of the third party and the third party's rights are likely to be diluted or adversely affected unless the litigant is permitted to assert their rights on their behalf." (*Id*. at p. 635 [citations omitted].) While *County of Los Angeles* did not involve a motion to seal, it appears that the non-parties privacy interest in the instant matter are aligned with Ms. Gandhi's. In other words, they also have an overriding interest in their personal financial information. Moreover, they are unable to assert such interests or file a motion to seal such information, thus, Ms. Gandhi may assert those rights on their behalf. If the materials are not sealed, there is a probability of prejudice. Additionally, the request is narrowly tailored and there are no less restrictive means to protect this information. Thus, Ms. Gandhi's motion to seal the non-parties personal financial information is GRANTED.

Lastly, Ms. Gandhi moves to seal additional materials on the ground they contain completely unredacted financial account numbers. California Rules of Court, Rule 1.201, provides, "to protect personal privacy and other legitimate interests, parties and their attorneys must not include or must redact where inclusion is necessary, the following identifiers from all pleadings and other papers filed in the court's public file, whether filed in paper or electronic form, unless otherwise provided or ordered by the court…(2) financial account numbers. If financial account numbers are required in a pleading or other paper filed in the public file, only the last four digits of these numbers may be used." (Cal. Rules of Ct., Rule 1.201(2).) Here the financial numbers are completely unredacted. There is an overriding interest in these materials and the other factors set forth in Rule 2.550 are satisfied. Thus, Ms. Gandhi's motion to seal the additional financial information is GRANTED.

IV. CONCLUSION

Ms. Wu's motion to seal is GRANTED. Ms. Gandhi's motion to seal is GRANTED.

The Court will prepare the final order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to

https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 3

Case Name:
Case No.:

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Calendar Line 4 (including Calendar Lines 5 & 16)

Case Names: *Temujin Labs, Inc. v. Abittan, et al; Temujin Labs Inc. v. John Doe*
Case Nos.: 20CV372622; 21CV375422

INTRODUCTION

These related actions arise from the business dealings of: (1) Temujin Labs Inc., a Delaware corporation ("Temujin DE"); (2) a related Cayman Islands corporation ("Temujin Cayman");[1] and (3) Temujin's co-founders, who go by the aliases of Lily Chao and Damien Ding. These business dealings involve the development of Temujin as a financial technology company operating under the name "Findora."

In Case No. 20CV372622 ("*Abittan*"), Temujin alleges that Defendants and Cross-Complainants Ariel Abittan, Benjamin Fisch, and Charles Lu conspired to: (a) assert a false claim of ownership of its business; (b) misappropriate its trade secrets; (c) usurp and interfere with control over its assets, such as social media accounts; and (d) interfere with its relationships with investors and business partners. Mr. Abittan, a former business partner of Ms. Chao and Mr. Ding, filed a cross-complaint alleging, among other things, that Ms. Chao and Mr. Ding stole from and defamed him. Mr. Fisch and Mr. Lu filed a separate cross-complaint, asserting that Ms. Chao and Mr. Ding misrepresented a host of important facts about their business and activities to induce Mr. Fisch and Mr. Lu to work for Temujin.

In Case No. 21CV375422 ("*Fu*"), Temujin alleges that its former consultant, Defendant and Cross-Complainant Franklin Fu, demanded additional under-the-table payments for himself and secret payments to certain investors rather than performing his duties in good faith. In a cross-complaint, Mr. Fu alleges that Ms. Chao and Mr. Ding repeatedly lied to him about a range of subjects, including Temujin's technology and even their own identities.

Ms. Chao and Mr. Ding received terminating sanctions for concealing their identities after several rounds of discovery motion practice and Temujin, Ms. Chao and Mr. Ding received issue and evidentiary sanctions for discovery misconduct arising from noncompliance with Court orders. A prove-up hearing was conducted by the Court on January 8, 2024, with default judgments subsequently entered in favor of Mr. Abittan and Messrs. Lu and Fisch on their Cross-Complaints against Ms. Chao and Mr. Ding.

Messrs. Abittan, Lu, Fisch, and Fu (collectively, "Cross-Complainants") have filed a motions for sanctions pursuant to Code of Civil Procedure section 128.5 against SAC Attorneys LLC ("SAC"), former attorneys for Temujin, Ms. Chao, and Mr. Ding in both the *Abittan* case and the *Fu* case. SAC has opposed the motions and Cross-Complainants have filed replies. As the motions and oppositions are nearly identical, they will be discussed together.

[1] Temujin DE and Temujin Cayman will be referred to collectively as "Temujin".

DISCUSSION

I. SAC's Applications to Seal

In connection with their oppositions in both the *Abittan* case and the *Fu* case, SAC has filed unopposed applications to seal the following documents:

1. Exhibits D & G to the Declaration of James Cai filed June 5, 2025; and
2. Exhibits A & B to the Declaration of Patrick O'Shaughnessy filed June 5, 2025.

A. Legal Background

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.)

Where some material within a document warrants sealing, but other material does not, the document should be edited or redacted if possible, to accommodate both the moving party's overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court, rule 2.550(d)(4), (d)(5).) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*Providian*, *supra*, 96 Cal.App.4th at p. 309.)

B. Merits of the Request to Seal

Here, SAC contends that each document it proposes to seal has been designated and marked as confidential by the Temujin Parties pursuant to protective orders and that the court has previously ordered that the information contained in the exhibits be kept confidential pursuant to its protective orders. The documents at issue consist of communications between SAC attorneys and Mr. Jianrong Wang, purportedly the CEO of Temujin Cayman, and two

different versions of Temujin's trade secret disclosure under Code of Civil Procedure section 2019.210.

The court GRANTS the unopposed application to seal.

II. Motion for Sanctions

Cross-Complainants seek sanctions pursuant to Code of Civil Procedure section 128.5 against SAC and Temujin's attorneys of record Mr. James Cai and Mr. Patrick O'Shaughnessy. Mr. Fu requests $125,000 and Mr. Abittan, Mr. Fisch, and Mr. Lu each seek $250,000, all against SAC, Mr. Cai, and Mr. O'Shaughnessy jointly and severally.

A. Legal Background

"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).) " 'Actions or tactics' include, but are not limited to, the making or opposing of motions or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading." (Code Civ. Proc., § 128.5, subd. (b)(1).) " 'Frivolous' means totally and completely without merit or for the sole purpose of harassing an opposing party." (Code Civ. Proc., § 128.5, subd. (b)(2).) A showing of subjective bad faith is required. (*In re Marriage of Sahafzadeh-Taeb &Taeb* (2019) 39 Cal.App.5th 124, 134.)

"Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers or, on the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the action or tactic or circumstances justifying the order." (Code Civ. Proc., § 128.5, subd. (c).) "If, after notice and a reasonable opportunity to respond, the court issues an order pursuant to subdivision (a), the court may, subject to the conditions stated below, impose an appropriate sanction upon the party, the party's attorneys, or both, for an action or tactic described in subdivision (a). In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence." (Code Civ. Proc., § 128.5, subd. (f)(1).)

B. Merits of the Motion for Sanctions

Cross-Complainants set forth the following arguments in support of their request for sanctions: (1) SAC failed to disclose that Temujin DE was no longer a corporation in good standing as of November 2023 and, therefore, it could not maintain the instant lawsuits; (2) SAC litigated on behalf of Temujin Cayman even though was not registered to conduct business in California and, therefore, it could not maintain the instant lawsuits; (3) SAC deliberately misrepresented that Jianrong Wang was the CEO of Temujin but he is not a legitimate, functioning CEO of Temujin who was qualified to sign various verifications and declarations submitted in this case; (4) SAC brought baseless trade secret claims and engaged in bad faith litigation to drive up costs for Cross-Complainants.

SAC responds to Cross-Complainants' arguments contending, inter alia, that Cross-Complainants failed to provide SAC with the requisite 21-day "safe harbor" in which to cure the alleged sanctionable conduct. The court views this as a threshold consideration. Accordingly, it will discuss the failure to provide the safe harbor at the outset.

1. Safe Harbor

Code of Civil Procedure section 128.5, subdivision (f)(1)(B) provides, "If the alleged action or tactic is the making or opposing of a written motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected, a notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court, *unless 21 days after service of the motion or any other period as the court may prescribe, the challenged action or tactic is not withdrawn or appropriately corrected*."

SAC contends that Cross-Complainants failed to provide them with the requisite 21-day safe harbor. Cross-Complaints assert that the bad faith actions taken by SAC are uncurable and, therefore, no safe harbor was required. (See *Nutrition Distribution, LLC v. Southern SARMs, Inc.* (2018) 20 Cal.App.5th 117, 126 ["As a practical matter, the court explained, requiring a party to comply with the safe harbor waiting period before filing a sanctions motion under section 128.5 makes little sense with respect to bad faith actions or tactics that, once performed, cannot be withdrawn."].)

At least one court has found that the safe harbor provision is limited to the filing or service of pleadings or motions. In *In re Marriage of Sahafzadeh-Taeb &Taeb* (2019) 39 Cal.App.5th 124, 147, the court explained that, "given the nature of the conduct on which the sanctions were based—[an attorney's] misrepresentation to the court that she was ready to proceed to trial, when she was, in fact, not ready, her failure to ever correct the court's misapprehension as to her readiness, and her delay in seeking a continuance until after the case was called for trial—the safe harbor provisions are not applicable. Rather, these provisions allow time for the withdrawal of frivolous pleadings. ([Code Civ. Proc.] § 128.5, subd. (f)(1)(B), (D).)"

In this case, the sanctionable conduct does not consist of the filing or service of any pleading. However, as to the arguments that Temujin DE and Temujin Cayman failed to comply with the requirements to file or maintain the instant lawsuits, the court will find that the alleged actions were curable and the safe harbor period should have been provided as discussed below.

2. Temujin DE

Cross-Complainants maintain that Temujin DE is unable to sue because its corporate status has been forfeited. In *Palm Valley Homeowners Ass'n v. Design Mtc* (2000) 85 Cal.App.4th 553, 560, the court explained that failure to file a required statement under California Corporations Code section 1502 or failure to pay taxes under California Revenue and Taxation Code section 23301 is "disabled from participating in any litigation activities."

The court further held that a reasonable attorney should have determined that a corporation that was suspended for failure to file a statement under Corporations Code section 1502 is unable to sue and therefore, pursuing litigation on behalf of such a corporation is sanctionable under Code of Civil Procedure section 128.5. (*Id*. at pp. 561, 563.)

Cross-Complainants provide a screenshot from the California Secretary of State website, showing Temujin DE's status as "forfeited – FTB", its standing as "not good", and an "inactive date" of "04/02/2024". (See Declaration of Brianna K. Pierce in Support of Motion for Sanctions, Ex. A.) They also provide a screenshot from the Delaware Secretary of State website showing Temujin's status as "forfeited – failure to appoint R/A" and status date as "11/17/2023". (See *id*., Ex. B.) The meaning of these notations is not entirely clear. But, Cross-Complainants assert that Temujin DE has been in "forfeited status" since November 17, 2023. Nonetheless, SAC continued to represent Temujin DE in the instant litigation. The court notes that SAC filed its motion to withdraw as counsel on September 24, 2024.

Cross-Complainants assert, citing an unpublished Delaware Chancery Court case that Temujin DE is therefore void and no longer has the power to sue. (*Rivera v. Angkor Cap. Ltd.* (Ch. Aug. 20, 2024, Civil Action No. 2022-0671-MTZ) 2024 Del. Ch. LEXIS 297, at *1 (*Rivera*) [corporation that is void under 8 Del. C. § 510 for nonpayment of franchise taxes may not sue].) SAC argues that the statements in *Rivera* are merely dicta because they arise from an unpublished case. Assuming without deciding that *Rivera* correctly states Delaware law, the court cannot conclude that forfeiture of Temujin DE's corporate status is incurable such that the 21-day safe harbor should not have been provided.

In *Rivera*, the court concluded that failure to pay franchise taxes rendered the corporation void, removing its ability to sue. The court explained, the void corporation "Kalibrr has not paid franchise taxes since 2020, and on June 15, 2022, just before Kalibrr and Rivera filed this action, the governor issued a proclamation declaring Kalibrr void." (*Rivera, supra*, 2024 Del. Ch. LEXIS 297, at *3.) Here, it is not entirely clear why Temujin DE's status is forfeited or inactive. Nowhere in the screenshots provided does the Secretary of State of either California or Delaware describe Temujin DE's status as void nor is there any indication that the governor made any sort of proclamation regarding Temujin DE. That said, SAC appears to concede that Temujin DE failed to pay its corporate taxes. (See Opposition to Motion for Sanctions, p. 3:17-21 ["Temujin DE's disability was and is not permanent; the issue is easily correctable under Delaware law and, once the appropriate administrative fees are paid, is no bar to continuing a pending lawsuit. More importantly in the context of this motion, Respondents were not aware that their client had failed to pay those taxes until 11 days (six court days) prior to seeking to withdraw from the case."].)

SAC asserts that it is possible to restore Temujin DE to active status via 8 Del. C. § 312, which provides for revival of a corporation's certificate of incorporation. That section provides, in pertinent part, "Any corporation whose certificate of incorporation has become forfeited or void pursuant to this title may at any time procure a revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which had been secured or imposed by its original certificate of incorporation and all amendments thereto, by complying with the requirements of this section. Notwithstanding the foregoing, this section shall not be applicable to a corporation

whose certificate of incorporation has been revoked or forfeited pursuant to § 284 of this title." (8 Del. C. § 312, subd. (b).)[2]

Here, it is not clear that it would not be possible to cure the defect with Temujin DE's standing. Accordingly, the court cannot find that the issue is incurable such that the 21-day safe harbor should not have been provided. Even if the safe harbor provisions of Code of Civil Procedure section 128.5 do not apply, SAC has provided evidence that it was unaware of the issue with Temujin DE's corporate status until shortly before it moved to withdraw as counsel. (See Declaration of James Cai in Opposition to Motion for Sanctions ("Cai Decl."), ¶¶ 19-20.) Given that the defect in standing could have been cured and that SAC was unaware of it, the court does not find that SAC acted in bad faith in representing Temujin DE.

The court rejects the status of Temujin DE as a basis for sanctions.

3. Temujin Cayman

As an additional basis for their requested sanctions, Cross-Complainants assert that Temujin Cayman was never registered to do business in California. Cross-Complainants rely on California Corporations Code section 2105, which provides, in part, "A foreign corporation shall not transact intrastate business without having first obtained from the Secretary of State a certificate of qualification." (Corp. Code, § 2105, subd. (a).) "A foreign corporation subject to the provisions of Chapter 21 (commencing with Section 2100) which transacts intrastate business without complying with Section 2105 shall not maintain any action or proceeding upon any intrastate business so transacted in any court of this state, commenced prior to compliance with Section 2105, until it has complied with the provisions thereof and has paid to the Secretary of State a penalty of two hundred fifty dollars ($250) in addition to the fees due for filing the statement and designation required by Section 2105 and has filed with the clerk of the court in which the action is pending receipts showing the payment of the fees and penalty and all franchise taxes and any other taxes on business or property in this state that should have been paid for the period during which it transacted intrastate business." (Corp. Code, § 2203, subd. (c).)

As explained in this court's order regarding Messrs. Abittan, Fisch, and Lu's demurrer,

> Although an unqualified corporation may commence an action without qualifying, its failure to qualify is a matter of abatement: i.e., the defendant may raise as a defense that the foreign corporation lacks the capacity to maintain the action. (*United Med. Mgmt. Ltd. v. Gatto* (1996) 49 Cal.App.4th 1732, 1740.) Where the defendant raises this defense, he has the burden to establish that (1) the action arises out of a transaction of intrastate business by a foreign corporation and (2) the action was commenced by the foreign corporation prior to qualifying to transact business here. (*United Systems of Arkansas, Inc. v. Stamison* (1998) 63 Cal.App.4th 1001, 1007.)

[2] "Upon motion by the Attorney General, the Court of Chancery shall have jurisdiction to revoke or forfeit the charter of any corporation for abuse, misuse or nonuse of its corporate powers, privileges or franchises. The Attorney General shall proceed for this purpose by complaint in the Court of Chancery." (8 Del. C. § 284, subd. (a).)

(Order (1) Sustaining Defendant/Cross-Complainant's Demurrer; and (2) Overruling Plaintiff/Cross-Defendant's Demurrer filed July 2, 2024, pp. 10:18-11:1.)

In response, SAC contends that Cross-Complainants have not shown that Temujin Cayman transacts intrastate business in California or that this action is an "action or proceedings upon any intrastate business . . . ." Therefore, it asserts that Corporations Code sections 2105 and 2203 do not apply. "For the purposes of Chapter 21 (commencing with Section 2100), 'transact intrastate business' means entering into repeated and successive transactions of its business in this state, other than interstate or foreign commerce." (Corp. Code, § 191, subd. (a).) The court agrees with SAC that Cross-Complainants have provided no evidence to show that Temujin Cayman transacts intrastate business in California. Further, they contend that Temujin Cayman alleged extensive California business and dealings but they do not cite any portion of Temujin Cayman's pleadings.

Additionally, the court finds that the failure to provide the 21-day safe harbor period is fatal as to this potential basis for sanctions. It is clear that the relevant authorities contemplate a procedure whereby the foreign corporation is given the opportunity to comply with the registration requirement. In *United Medical Management Ltd. v. Gatto, supra*, 49 Cal.App.4th 1732, 1740, the Court of Appeal explained

> The failure of a foreign corporation to qualify to transact business prior to commencing an action is a matter of abatement of the action. [Citation.] Once a non-qualified foreign corporation commences an action regarding intrastate business, the defendant may assert by demurrer or as an affirmative defense in the answer the lack of capacity to *maintain* an action arising out of intrastate business. [Citation.] This abatement procedure enables the foreign corporation to obtain a judicial determination as to whether it is in fact transacting intrastate business. The defendant bears the burden of proving: (1) the action arises out of the transaction of intrastate business by a foreign corporation; and (2) the action was commenced by the foreign corporation prior to qualifying to transact intrastate business. [Citation.] If the defendant establishes the bar of the statute, then the foreign corporation plaintiff must comply with [Corporations Code] section 2203, subdivision (c). Ordinarily, the matter should be stayed to permit the foreign corporation to comply. If the foreign corporation plaintiff complies with [Corporations Code] section 2203, subdivision (c), by qualifying and paying fees, penalties and taxes, it may maintain the action. If the foreign corporation fails to comply, the matter should be dismissed without prejudice. A plaintiff whose action is dismissed on procedural grounds, such as noncompliance with statutory requirements, is not precluded by the doctrine of res judicata from bringing a second action, subject to the applicable statute of limitations, after compliance with the statute. [Citation.] Thus, a plaintiff, whose first action upon intrastate business is dismissed for failure to qualify to transact intrastate business prior to commencing the action, may, subject to the applicable statutes of limitations, bring a second action after so qualifying.

Here, Cross-Complainants filed their demurrer alleging that Temujin Cayman had failed to plead compliance with Corporations Code section 2203. The court found that Cross-Complainants had failed to meet their burden of establishing that the action arose from

intrastate business or that Temujin Cayman transacted intrastate business. (Order (1) Sustaining Defendant/Cross-Complainant's Demurrer; and (2) Overruling Plaintiff/Cross-Defendant's Demurrer filed July 2, 2024, p. 11:1-2.) The action was therefore not dismissed. Cross-Complainants again have not met their burden. If they had done so in connection with the demurrer, Temujin Cayman would have been given an opportunity to cure the defect. The court cannot now order sanctions where SAC has not been provided with the requisite 21-day safe harbor to cure the issue.

Again, even if the 21-day safe harbor period does not apply to this type of alleged misconduct, the court finds that SAC did not act in bad faith in representing Temujin Cayman because such an issue is curable and the authorities specifically contemplate a situation wherein the defendant challenges the failure to comply with the Corporations Code and has the burden to establish that compliance is necessary. The court explicitly found that Cross-Complainants did not meet that burden when the issue was presented to it.

The court rejects any failure of Temujin Cayman to comply with Corporations Code section 2203 as a basis for sanctions.

4. Bad Faith Litigation

Cross-Complainants also assert that SAC attorneys made misrepresentations and attempted to conceal their lack of contact with Jianrong Wang, the alleged CEO of Temujin. Cross-Complainants contend that Mr. Wang is a chauffer who was named the CEO on paper to conceal control of the companies by Mr. Ding and Ms. Chao. They further argue that Mr. Wang could not have signed certain declarations filed with the court with knowledge of their contents because he does not have the English skills necessary to comprehend the complex language contained in the declarations. Cross-Complainants also allege that Mr. Ding and Ms. Chao failed to comply with court orders regarding discovery of their identity documents and lied during their depositions regarding what happened to their identity documents and that SAC aided and abetted this conduct. Finally, Cross-Complainants argue that SAC remained as counsel for Temujin despite being aware of ethical violations, as evidenced by SAC attorneys seeking to withdraw from representing Temujin in the middle of Mr. Ding's deposition.

Regarding the alleged misrepresentations, "[m]isrepresentations to a court are not justified by the duty of vigorous advocacy." (*Bryan v. Bank of Am.* (2001) 86 Cal.App.4th 185, 193.) However, the court cannot confirm that any of the alleged misrepresentations were made in bad faith.

In making its order granting terminating sanctions against Mr. Ding and Ms. Chao, the court (Hon. Sunil Kulkarni) found that it could not conclude that Mr. Wang was not the legitimate CEO of Temujin based on the evidence before it. (Order Concerning [] Motion for Terminating Sanctions [] filed August 16, 2023, p. 9, fn. 4.) Cross-Complainants filed a motion for reconsideration on August 28, 2023 seeking sanctions against Temujin. Messrs. Fisch, Lu, and Fu declared in support of the motion reconsideration that Mr. Wang was a chauffer and domestic worker who had no involvement with Temujin and Fisch declared that Ms. Chao told him that she put Mr. Wang's name on the company because she did not want to put her own

for legal protection reasons. (Declaration of Benjamin Fisch in Support of Motion for Reconsideration filed August 28, 2023, ¶¶ 11, 12; Declaration of Charles Lu in Support of Motion for Reconsideration filed August 28, 2023, ¶ 12; Declaration of Frank Fu in Support of Motion for Reconsideration filed August 28, 2023, ¶ 7.) Again, the court concluded in its order denying the motion for reconsideration that it could not conclude that Mr. Wang lacked knowledge or decision-making authority over Temujin. (Order Concerning Defendants' Motion for Reconsideration filed September 26, 2023, p. 6:16-18.) While the court stated in a footnote that this state of the evidence could change after Mr. Wang's deposition, (see *id*., p. 6, fn. 2), Cross-Complainants point to no new evidence establishing that Mr. Wang is not a legitimate CEO.

In response to the instant motion for sanctions, SAC has provided corporate documents indicating that Jianrong Wang is the CEO of Temujin. (See Cai Decl., ¶ 16, Ex. F.) Mr. Cai also declares that he confirmed with Yang Yang,[3] purportedly one of the major investors in Temujin, that Mr. Wang was the CEO of Temujin Cayman, which is a 100% parent of Temujin DE and, therefore, Mr. Wang was authorized to make decisions for both companies. (See *id*., ¶¶ 12-13.) Mr. Cai also declares that he saw no credible evidence during SAC's representation of Temujin that Mr. Wang was a chauffer or a strawman of Mr. Ding and Ms. Chao. (*Id*., ¶ 17.) Finally, Mr. Cai declared that Mr. Ding testified under oath that Mr. Wang was and is the CEO of Temujin. Thus, SAC has established a reasonable basis for believing that Mr. Wang is the legitimate CEO of Temujin despite Cross-Complainants' evidence to the contrary.

Mr. Cai also declares that he was in constant contact with Mr. Wang at the time the parties were seeking to schedule Mr. Wang's deposition, between June and September 2024. (Cai Decl., ¶ 18.) He also provides copies of WeChat messages between himself and persons purporting to be Mr. Wang and Mr. Yang. (Cai Decl., ¶ 18, Ex. G.) The messages reveal that neither Mr. Wang nor Mr. Yang were particularly forthcoming regarding when Mr. Wang's deposition could be scheduled. Although Cross-Complainants fault Mr. Cai's declaration because it does not indicate that SAC was in contact with Mr. Wang through December 2024, the court notes that SAC filed its motion to withdraw as counsel in September 2024.

As to Cross-Complainants' argument regarding SAC's filing of declarations signed by Mr. Wang, the court finds that Cross-Complainants have not shown reason to believe that Mr. Wang did not have the declarations translated before signing them. Thus, on this record, the court cannot find that SAC made any type of misrepresentation by filing the declarations purportedly signed by Mr. Wang. Cross-Complainants' also contend that SAC made misrepresentations regarding its contact with Mr. Ding. Specifically, they assert that Mr. O'Shaunessy stated at an informal discovery conference that he thought SAC had lost contact with Mr. Ding but SAC later filed a notice of appeal on Mr. Ding's behalf. The court finds that Mr. Cai's explanation that Mr. O'Shaunessy did not know of his contact with Mr. Ding reasonable. Although not ideal, it is reasonable to believe that one attorney in a law firm may not have the same level of communication with a client that another attorney might have.

[3] Cross-Complainants insist that Yang Yang is not a real person but an alias of Mr. Ding or Ms. Chao but SAC has provided an alleged photo of him. (See Cai Decl., ¶ 12 [embedded photo and testimony regarding same].)

Finally, as to the argument that SAC attorneys were aware of certain bad faith conduct that was brought to light during the deposition of Mr. Ding, it appears that SAC attorneys were not aware of that conduct prior to the deposition. (See Declaration of Brianna K. Pierce in Support of Motion for Sanctions, Ex. E [Declaration of John Durrant], ¶ 4, Ex. 44 [then SAC attorney indicating that representations were made that he was unaware of].) The mere fact that SAC did not immediately withdraw after discovering the possibility of unethical conduct on the part of a client is insufficient for the court to find that sanctions are warranted.

The court finds that the alleged bad faith litigation does not warrant the imposition of sanctions pursuant to Code of Civil Procedure section 128.5.

5. Baseless Trade Secret Claims

The final basis for the sanctions requested by Cross-Complainants is that SAC maintained the instant lawsuits alleging trade secret claims that are without merit. Specifically, Cross-Complainants assert, "Despite asserting claims under the California Uniform Trade Secrets Act (CUTSA), Civ. Code, § 3426 et seq., SAC refused to serve a code compliant trade secret disclosure as required by Code Civ. Proc., § 2019.210." (Motion or Sanctions Against Counsel, p. 13:11-13.)[4] Cross-Complainants indicate that SAC submitted the disclosure on April 4, 2024, after the court had admonished it to do so, but that the disclosure was overly general, using only industry jargon describing common business practices rather than identifying the actual scope of the alleged trade secrets. SAC submitted an amended disclosure on September 3, 2024 after the court ordered it state whether, when and how it would amend the disclosure.

In response, SAC contends that sanctions pursuant to Code of Civil Procedure section 128.5 are not available for discovery-related conduct. As SAC points out, Code of Civil Procedure section 128.5 provides, "This section shall not apply to disclosures and discovery requests, responses, objections, and motions." (Code Civ. Proc., § 128.5, subd. (e).) Cross-Complainants counter that they are not seeking sanctions for any discovery violation, rather they are seeking sanctions on the ground that SAC knowingly prosecuted these actions despite the lack of a factual basis to pursue the trade secret claims. The court accepts Cross-Complainants argument that they are asserting that SAC engaged in sanctionable conduct by pursuing frivolous claims and that the trade secret disclosure is merely evidence that the trade secret claims are frivolous. (See Code Civ. Proc., § 128.5, subd. (b)(1) [frivolous and sanctionable " '[a]ctions or tactics' include, but are not limited to, the making or opposing of motions or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading"].)

[4] Code of Civil Procedure section 2019.210 provides, "In any action alleging the misappropriation of a trade secret under the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code), before commencing discovery relating to the trade secret, the party alleging the misappropriation shall identify the trade secret with reasonable particularity subject to any orders that may be appropriate under Section 3426.5 of the Civil Code."

It does not escape the court's attention that SAC did not draft or file the initial complaints or the first amended complaints in these matters. While the court recognizes that SAC did take other actions in support of the claims filed by others, such as pursuing discovery, the court finds that the fact that the trade secret disclosures were overly general is insufficient to support a finding that SAC maintained a frivolous action in bad faith. Notably, no trial or evidentiary hearing has occurred in this case and no finding has been made that the plaintiffs lack evidence to support their trade secret claims. (Cf. *Llamas v. Diaz* (1990) 218 Cal.App.3d 1043, 1046 [affirming denial of sanctions award based on lack of subjective bad faith despite attorney being "ill-prepared" and "consistently failed[ing] . . . to present legally acceptable evidence to support her clients' claims, resulting in presentation of an "utterly meritless" case and non-suit for defendants].)

Although the court previously found the original trade secret disclosure insufficient and it understands Cross-Complainants' argument that the amended trade secret disclosure remains deficient, it rejects this basis for finding the trade secret claims frivolous.

CONCLUSION

The motions for sanctions (Lines 4 & 5) are DENIED.

The application to seal (Line 16) is GRANTED.

The court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 5

Case Name:
Case No.:

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Calendar Line 6

Case Name:
Case No.:

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Calendar Line 6 (including Calendar Line 7)

Case Name: *Treespring Investments, LP v. James Rautner, et. al*
Case No.: 22CV407249

Plaintiff Treespring Investment, LP ("Treespring") brings the instant action for concealment and breach of fiduciary duty, among other causes of action, arising out of a business dispute between itself and defendants James Rautner ("Rautner") and Dennis Pollutro ("Pollutro") (collectively, "Defendants"). Defendants now bring a motion for leave to file a cross-complaint and a motion to continue the trial date.

I. Background

In 2014, Defendants co-founded SDSE Networks, LLC ("SDSE") and served as its managing partners. (First Amended Complaint ("FAC"), ¶ 12.) SDSE is in the business of securing electronic communications and data and represents that it primarily serves the U.S. government. (*Ibid*.)

In 2018, Defendants incorporated another company: Eclipz ("Eclipz"). (FAC, ¶ 11.) Eclipz is a technology company whose software secures data in transit by creating secure data transport connection enclaves, without the need for expensive hardware and software, and serves customers in a number of industries. (*Ibid*.) Rautner became Eclipz's Chief Financial Officer and Chief Operating Officer, while Pollutro became its Chief Technology Officer. (*Id*. at ¶ 3.)

On February 27, 2018, Eclipz and SDSE entered into an Exclusive Software License Agreement (the "Exclusive License"), which Ecljpz and SDSE amended on June 24, 2019. (FAC, ¶ 13.) Under this agreement, SDSE granted to Eclipz "perpetual and irrevocable" and "exclusive (even as to SDSE), worldwide, fully-paid-up, royalty-free, non- transferable, sub-licenseable [sic] . . . right and license under all of SDSE's Intellectual Property Rights, now existing or hereafter arising, to (a) use, copy and create derivative works of the Software (including any and all Updates thereto). . ." (*Ibid*.) The Exclusive License obligated SDSE to provide a copy of the software to Eclipz "in a form or medium reasonably requested by Eclipz." (*Ibid*.)

On December 11, 2018, SDSE and Eclipz entered into a Consulting Agreement pursuant to which certain work done by SDSE for Eclipz would be the property of Eclipz, and upon completion of this work, SDSE was obligated to provide all deliverables (including source code). (FAC, ¶ 14.) The agreement was made retroactive to apply to any work done by SDSE for Eclipz prior to its execution and permitted Eclipz to withhold payment of an invoice in the event of a dispute without the withholding constituting a breach of its terms. (*Ibid*.)

In September 2019, Defendants solicited Treespring's investment in Eclipz. (FAC, ¶ 17.) At that time, Defendants allegedly concealed that: they planned to take Eclipz's technology for use by SDSE; they had no intention of turning over the source code/other source materials pertaining to Eclipz's technology; they were using Eclipz as a vehicle to obtain Treespring's investment for the benefit and growth of SDSE; they were approving unsubstantiated invoices for payments to SDSE, which were not being disclosed in Eclipz's

financial statements; as officers of Eclipz, they had not obtained a copy of the Eclipz 1.0 platform, or any updates, in source code format; and SDSE did not create or own the core technology at the heart of the Scout 2.0 platform, and only had a non-exclusive license from a third-party for the core technology, in contrast to the provisions contains in the Exclusive License and Consulting Agreement. (*Ibid*.)

On September 18, 2019, Treespring entered into a Series A Preferred Stock Purchase Agreement (the "SAPS Agreement") pursuant to which it purchased shares in Eclipz for a total purchase price of $2.8 million. (FAC, ¶ 19.) The Agreement included a warranty that Eclipz had ownership and possession of all intellectual property rights necessary to conducting its business. (*Ibid*.) Treespring subsequently continued to invest in Eclipz; to date, it has invested over $6.6 million in the company. (*Ibid.*)

Unbeknownst to Treespring, SDSE worked on Eclipz's technology, at the expense of Eclipz, and using Treespring's invested funds, without providing Eclipz with any actual possession of the source code or source materials behind its software. (FAC, ¶ 20.) Defendants allegedly abused their dual roles as fiduciaries to Eclipz and its shareholders to their advantage, and under their control, and using Treespring's investment, Eclipz paid SDSE over $4 million for software, work product, and engineering services related to cyber security software that is either fully, exclusively licensed to, or owned by Eclipz, but which Eclipz never received and for which SDSE is now claiming ownership. (*Ibid*.)

Defendants suggested that SDSE and Eclipz negotiate a merger between the two companies, but talks broke down due to Defendants' excessive demands. (FAC, ¶ 21.) On September 19, 2021, Eclipz demanded that SDSE provide Eclipz with possession of its source code and other source materials pursuant to the terms of the Exclusive License and Consulting Agreement, and also informed SDSE that it was suspending payment for disputed invoices. (*Ibid*.) SDSE, however, managed by Defendants, declined. (*Ibid*.) Defendants resigned from their positions as directors and officers of Eclipz. (*Ibid*.) Shortly thereafter, SDSE terminated its engineering support, leaving Eclipz unable to service existing customers or provide proof-of-concepts to potential customers. (*Ibid*.) Another demand for the source code and source materials made by Eclipz on October 15, 2021 went unheeded by SDSE. (*Id.* at ¶ 23.)

On November 15, 2021, Eclipz filed an action against SDSE for breach of the Exclusive License and Consulting Agreements, among other things, in San Mateo County Superior Court (the "San Mateo Action"). (FAC, ¶ 24.) In this action, Eclipz sought and obtained a TRO compelling SDSE to fulfill its obligations under the subject agreements. (*Ibid*.) Defendants refused to comply with the Court's order and instead directed SDSE to file an appeal challenging the issuance of the TRO on February 24, 2022, as well as a motion to dissolve it. (*Id.* at ¶¶ 26-28.)

On November 23, 2022, Treespring filed a complaint. On June 24, 2024, Treespring filed the FAC alleging causes of action for: (1) concealment; (2) violation of Corporations Code sections 25400, subdivision (d), 25401, 25504, and 25504.1; (3) breach of fiduciary duty; (4) constructive fraud; (5) intentional interference with contractual relations; and (6) intentional interference with prospective economic advantage.

On May 23, 2025, Defendants filed a motion for leave to file a cross-complaint. On May 27, 2025, Defendants filed a motion to continue the trial date. On June 12, 2025,

Treespring filed oppositions to both motions. On June 18, 2025, Defendants filed replies in support of both of their motions.

II. Motion for Leave to File a Cross-Complaint

A. Legal Standard

"A party against whom a cause of action has been asserted in a complaint or cross-complaint may file a cross-complaint setting forth either or both of the following: [¶] (a) Any cause of action he has against any of the parties who filed the complaint or cross-complaint against him. . . . [¶] (b) Any cause of action he has against a person alleged to be liable thereon, whether or not such person is already a party to the action, if the cause of action asserted in his cross-complaint (1) arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him or (2) asserts a claim, right, or interest in the property or controversy which is the subject of the cause brought against him." (Code Civ. Proc., § 428.10.)

"A party shall obtain leave of court to file any cross-complaint except one filed within the time specified in subdivision (a) [before or at the same time as the answer to the complaint or cross-complaint] or (b) [before the court has set a date for trial]. Leave may be granted in the interest of justice at any time during the course of the action." (Code Civ. Proc., § 428.50, subd. (c).)

B. Discussion

Defendants argue that Eclipz "survived long after Defendants resigned as officers and directors, and in fact continues to exist in good standing with the California Secretary of State. Eclipz is no longer in bankruptcy and has not been dissolved." (Memorandum of Points and Authorities in Support of Defendant's Motion for Leave to File a Cross-Complaint ("Leave to File MPA"), p. 1:9-11.) The proposed cross-complaint "seeks to bring at least two culpable officers and directors of Eclipz into the litigation on claims for equitable indemnity. Eclipz also belongs in this litigation. Eclipz agreed under a written Settlement Agreement and Release to defend, indemnify and hold Defendants' harmless from this specific action." (*Id.* at p. 1:13-16.) Furthermore, Defendants argue that while Plaintiff alleges that Eclipz has ceased operations, "Defendants have learned that another recently-formed entity called myphantompath, LLC ('My Phantom Path') has continued to market Eclipz's software using a clone of Eclipz's former website. . . . As a successor to Eclipz, My Phantom Path must also be a party to this action and indemnify Defendants." (*Id.* at p. 1:19-23.)

Treespring contends that the "allegations of the proposed cross-complaint are irrelevant" to the present lawsuit. (Plaintiff's Memorandum of Points and Authorities in Support of Opposition to Motion for Leave to File a Cross-Complaint ("Leave to File Opposition"), pp. 8:22-9:13.) Treespring also contends that the proposed cross-complaint does not arise out of the same transactions or occurrences at issue in the FAC and the "proposed cross-complaint is at most permissive, not compulsory." (See *id.* at pp. 9:14-11:5.) According to Treespring, the court should deny Defendants leave to file a cross-complaint because Treespring will suffer prejudice, Defendants have caused inexplicable delay, the cross-complaint would be futile, and the proposed cross-complaint does not allege facts sufficient to

support causes of action for equitable indemnity and contractual indemnity. (See *id.* at pp. 12:5-17:2.)

The proposed cross-complaint brings causes of action for contractual indemnity, total equitable indemnity, partial equitable indemnity, and declaratory relief against proposed cross-defendants Eclipz, My Phantom Path, James Bailey ("Bailey"), and Steven Roberts ("Roberts"). (See Declaration of Nathan M. Carle ("Carle Decl."), Ex. A at p. 1.) According to the allegations of the proposed cross-complaint, Eclipz executed a settlement agreement that included language wherein Eclipz agreed to indemnify Defendants; the settlement agreement stated that its obligations were binding on successors, assigns, employees, and agents of Eclipz; My Phantom Path is a successor to Elicpz; My Phantom Path has acquired or licensed all of Eclipz's intellectual property sold during Eclipz's Chapter 11 bankruptcy; My Phantom Path's officers include Bailey and Roberts; Bailey and Roberts marketed for sale Eclipz's assets during Chapter 11 bankruptcy proceedings; and Bailey and Roberts agreed to sell Eclipz's assets for $25,000. (*Id.* at ¶¶ 8-34.)

The court agrees with Treespring that the fourth cause of action in the proposed cross-complaint improperly alleges "declaratory relief" as a cause of action. As noted by Treespring, "declaratory relief" is not a cause of action. (See Carle Decl., Ex. A at ¶¶ 31-34; Leave to File Opposition, p. 9:8-10, citing *Faunce v. Cate* (2013) 222 Cal.App.4th 166, 173 ["[I]njunctive and declaratory relief are equitable remedies, not causes of action. [Citation.]"].)

Otherwise, the court disagrees with Treespring that the first, second, and third causes of action in the proposed cross-complaint do not arise out of the same transaction, occurrence, or series of transactions or occurrences as those described in the FAC. (See Leave to File Opposition, pp. 9:14-10:16; Code Civ. Proc., § 428.10.) The second and third causes of action for total equitable indemnity and partial equitable indemnity concern the conduct of two parties not named in the FAC—Bailey and Roberts—and their alleged decision to sell Eclipz assets for the "unreasonable" price of $25,000. (See Carle Decl., Ex. A at ¶¶ 19-30.) The proposed cross-complaint alleges that Bailey and Roberts are obligated to partially or fully indemnify Defendants if Defendants are found liable for their alleged conduct as described in the FAC. (See *ibid.*) Similarly, the proposed cross-complaint's first cause of action alleges that on or about February 27, 2023, Eclipz executed a settlement agreement wherein Eclipz agreed to indemnify Defendants for their conduct as alleged in the FAC. (See *id.* at ¶ 14 ["Neither Eclipz nor My Phantom Path have performed their obligations to Defendants and Cross-Complainants under the Settlement Agreement and Release by defending them in connection with the FAC or stating that they will indemnify Defendants and Cross-Complainants for any damages incurred as a result of the allegations in the FAC."].) These allegations arise out of the same transaction, occurrence, or series of transactions or occurrences as the causes of action in the FAC brought against Defendants. (See Code Civ. Proc., § 428.10.)

The court turns to Treespring's remaining arguments. In opposition, Treespring contends the proposed cross-complaint is the consequence of unexplained delay as it is being sought "four months before the trial date." (See Leave to File Opposition, p. 12:14-15.) The court finds that there appears to have been a slight delay with Defendants seeking to file the proposed cross-complaint. Treespring brought this action on November 23, 2022. The proposed cross-complaint alleges that Eclipz executed a written settlement agreement, wherein Eclipz agreed to indemnify Defendants, on or about February 27, 2023. (Carle Decl., Ex. A at ¶ 9.) Bailey and Roberts were officers of Eclipz. (See *id.* at ¶ 22.) In January 2024, the court

lifted "discovery" and "responsive pleading" stays in this action. (See Minute Order, dated Jan. 30, 2024.) As such, Defendants appear to have waited over two years after Eclipz allegedly signed a settlement agreement and one year after the court lifted responsive pleading and discovery stays before attempting to bring Eclipz, Bailey, and Roberts into the litigation—roughly five months before trial, as Treespring notes. (See Leave to File Opposition, p. 8:3-19.)

However, Defendants explain that "Plaintiff filed the operative pleading on June 24, 2024, less than one year from the filing of this motion. Additionally, at the time Plaintiff filed the FAC, Eclipz had not yet emerged from bankruptcy and the stay remained in place." (Leave to File MPA, p. 5:5-7.) Furthermore, Defendants note that they determined "the viability of a cross-complaint only after discovering the formation of the My Phantom Path entity" in January 2025. (See Leave to File MPA, p. 5:8-9; Reply in Support of Defendants' Motion for Leave to File a Cross-Complaint ("Leave to File Reply"), pp. 4:28-5:7.) According to Defendants, "[s]uch discoveries led to the realization that Eclipz had not ceased its operations, and that third-parties bear responsibility for the alleged losses asserted in the FAC." (Leave to File MPA, p. 5:5-13.) The court finds Defendants have adequately explained any delay with their seeking leave to file a cross-complaint.

Treespring argues that it will suffer prejudice if the court grants Defendants' motion for leave to file a cross-complaint. According to Treespring, it will be "unreasonably required to bear the expense of significantly prolonged litigation" should the court grant leave to file a cross-complaint, "despite Defendants having had the necessary information to bring such a cross-complaint since early in this litigation." (Leave to File Opposition, p. 12:15-17.) Treespring also argues that the court, plaintiffs and defendants, and necessary witnesses have "now reserved their calendars in reliance on the agreed upon trial date." (*Id.* at p. 12:20-21.)

According to Treespring, in contrast to the prejudice caused to Plaintiff, denial of leave would cause no prejudice to Defendants. Treespring argues that "the proposed claims for indemnity can be pursued after the present litigation," as an action for equitable indemnity "does not accrue, for purposes of the statute of limitations, until the indemnitee pays a judgment or settlement that entitles them to indemnity. [Citation.]" (Leave to File Opposition, p. 12:21-26.) Treespring further argues that "it is well established a party may wait and pursue its rights against third parties in subsequent, independent proceedings. [Citation.]" (*Id.* at p. 12:26-28.)

The court does not find Treespring's prejudice arguments convincing. As Defendants note in their reply, "crossclaims [sic] for indemnity or contribution against cross-defendants will not require Plaintiff to respond, answer, or even conduct any new discovery." (Leave to File Reply, p. 7:24-26.) Furthermore, while the court acknowledges that the parties, counsel, and witnesses have potentially already planned for the current trial date, Defendants seek a trial continuance to a date "no earlier than December 1, 2025," little over a month from the current trial date.

Moreover, the court agrees with Defendants that the case law cited by Treespring is distinguishable. (See Leave to File Opposition, p. 12:7-13, citing *Crocker National Bank v. Emerald* (1990) 221 Cal.App.3d 852 (*Crocker*).) While the defendant in *Crocker* sought leave to file a cross-complaint "only five months before the trial date," this was seven years after the onset of litigation and five years after the court sustained a demurrer to the defendant's fifth

amended cross-complaint without leave to amend. (*Crocker, supra*, 221 Cal.App.3d at p. 864.) Here, Defendants do not seek leave to file a cross-complaint seven years after the onset of litigation, and Defendants have explained the reasoning behind any delay in seeking leave to file the proposed cross-complaint, whereas the defendant in *Crocker* provided "no explanation for his delay in seeking the court's permission to file his proposed cross-complaint." (*Ibid*.)

Nor does the court find persuasive Treespring's argument regarding the purported futility of the proposed cross-complaint. (See Leave to File Opposition, pp. 14:1-17:2.) The court agrees with Defendants that any pleading deficiencies can be addressed by a demurrer, or other procedural mechanism, filed by the party or parties whom the cross-complaint is directed against. The cases Treespring cites do not suggest otherwise. In *IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630 (*Yi*), towards the close of trial plaintiff IIG Wireless, Inc. requested leave to amend its complaint to include an aiding and abetting breach of fiduciary duty claim as to defendant Kim to "conform to proof." (*Yi, supra*, 22 Cal.App.5th at p. 653.) The Court of Appeal in *Yi* found that the trial court did not err in denying leave to amend and agreed with the trial court that there was "insufficient *evidence* to hold Kim liable for civil conspiracy." (*Id.* at p. 654, emphasis added.) As such, the Court of Appeal in *Yi* examined the sufficiency of the evidence as to whether a trial court abused its discretion in refusing to allow leave to amend a complaint to add a cause of action against another party to the litigation.

Similarly, in *Glogau v. Hagan* (1951) 107 Cal.App.2d 313 (*Glogau*), the Court of Appeal found there was no abuse of discretion in the court's refusal to allow a defendant to file his cross-complaint against the plaintiff on the grounds that the "cross-complaint was demurrable" and a "prior action based upon the causes alleged in the cross-complaint was still pending." (*Glogau, supra,* 107 Cal.App.2d at pp. 320-321.) Here, it is not clear to the court that the cross-complaint is demurrable as to any arguments Treespring might raise.[1]

The court GRANTS Defendants' motion for leave to file a cross-complaint.[2]

III. Motion to Continue Trial

A. Requests for Judicial Notice

In support of their motion to continue the trial date, Defendants request that the court judicially notice four exhibits. (See Defendants' Request for Judicial Notice in Support of Motion to Continue Trial Date ("RJN"), p. 1.) Exhibit A to the declaration of Nathan M. Carle is a copy of a voluntary petition for Chapter 11 bankruptcy filed by Eclipz in *In re Eclipz.io Inc.*, case no. 23-51253, filed on October 30, 2023. (See Declaration of Nathan M. Carle, Ex. A.) Exhibit B is a copy of Eclipz's motion to extend the time to file its schedule of assets and

[1] The parties spend a significant portion of their respective briefs analyzing the language of an order issued by the United States Bankruptcy Court for the Northern District of California. (See Leave to File Opposition, pp. 14:22-17:2; Leave to File Reply, pp. 9:10-10:22.) For the reasons discussed, the court declines to engage in an analysis of this language at this time.

[2] The court declines to address Defendants' objections to portions of the declaration of Marwa Elzankaly given they are not material to resolving the issues raised by the motion. (See Defendants' Evidentiary Objections to the Declaration of Mawra Elzankaly.)

liabilities in the same case, filed on November 13, 2023. (*Id.* at Ex. B.) Exhibit C is a copy the bankruptcy court's order authorizing the sale of Eclipz's assets in the same case, filed on March 28, 2024. (*Id.* at Ex. C.) Exhibit D is a copy of an order dismissing the case in the same case, filed on September 4, 2024. (*Id.* at Ex. D.)

"Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed must be relevant to a material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, fn. 18, citing *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter." (Evid. Code, § 453, subd. (b).) Also, "[a] party requesting judicial notice of material under Evidence Code sections 452 or 453 must provide the court and each party with a copy of the material." (Cal. Rules of Court, rule 3.1306(c).)

The court GRANTS judicial notice of Exhibits A, B, C, and D pursuant to Evidence Code section 452, subdivision (d). Evidence Code section 452, subdivision (d), permits a court to take judicial notice of "records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States." (See Evid. Code, § 452, subd. (d).) While the court takes judicial notice of these filings, the court does not take notice of the truth of the contents of these documents. (See *Oh v. Teachers Ins. & Annuity Assn. of America* (2020) 53 Cal.App.5th 71, 81 (*Oh*) [truth of contents of court records cannot be judicially noticed].)

B. Legal Standard

A party seeking a continuance of the date set for trial, whether contested or uncontested or stipulated to by the parties, must make the request for a continuance by a noticed motion or an ex parte application, with supporting declarations. (Cal. Rules of Court, rule 3.1332(b).) The party must make the motion or application as soon as reasonably practical once the necessity for the continuance is discovered. (Cal. Rules of Court, rule 3.1332(b).) " 'The decision to grant or deny a continuance is committed to the sound discretion of the trial court.' " (*Reales Investment, LLC v. Johnson* (2020) 55 Cal.App.5th 463, 468 (*Reales*), quoting *Forthmann v. Boyer* (2002) 97 Cal.App.4th 977, 984-985.)

> Trial continuances are "disfavored" and may be granted "only on an affirmative showing of good cause." (Cal. Rules of Court, rule 3.1332(c).) The party requesting a continuance must do so "by a noticed motion or an ex parte application" and "with supporting declarations." (Cal. Rules of Court, rule 3.1332(b).) California Rules of Court, rule 3.1332(c) lists seven circumstances "that may indicate good cause." California Rules of Court, rule 3.1332(d) lists additional factors the trial court may consider, including "the proximity of the trial date, whether there were previous trial continuances, the length of the requested continuance, and the prejudice that parties or witnesses would suffer as a result of the continuance. [Citation."

(*Reales, supra,* 55 Cal.App.5th at p. 468.)

C. Discussion

Defendants request that the court continue the October 20, 2025 trial and all related discovery deadlines to a date no earlier than December 1, 2025. (Memorandum of Points and Authorities in Support of Defendants' Motion to Continue Trial Date ("Motion to Continue MPA"), p. 9:17-19.) Defendants request this continuance so that they (1) "have sufficient time to file a cross-complaint for contractual and equitable indemnity against Eclipz and its other officers and directors as described herein and in the motion for leave to file a cross-complaint set for hearing on the same date, and (2) to have adequate time to complete discovery before the pending deadline to file a summary adjudication motion regarding some (if not all) claims in the FAC." (*Id.* at p. 1:12-19.)

Having granted Defendants' motion for leave to file a cross-complaint, the court agrees with Defendants that it should grant a continuance on this basis. (See California Rules of Court, rule 3.1332(c)(5) ["Although continuances of trials are disfavored, each request for a continuance must be considered on its own merits. The court may grant a continuance only on an affirmative showing of good cause requiring the continuance. Circumstances that may indicate good cause include . . . [t]he addition of a new party . . ."].) Considering the factors stated in California Rules of Court, rule 3.1332, the court finds that there is good cause to continue the trial. Specifically, no previous continuances of the trial date appear to have been sought, Defendants seeks a short continuance, and while both parties argue that the other side has delayed discovery and otherwise engaged in dilatory tactics, it appears to the court that delays in this matter have been relatively minimal. Moreover, while the court again acknowledges Treespring's argument that its counsel and other parties have already potentially penciled in the trial date, the court does not believe that it will be materially prejudiced by a short continuance.[3]

The court will briefly address Defendants' other argument that to date Treespring has delayed complying with Defendants' discovery requests, which Defendants argue in turn has left them without the necessary time "to conduct the discovery that may ultimately adjudicate much of this dispute, in a manner far less onerous and time consuming on the Court than a full trial." (*Id.* at pp. 8:22-9:2.)

The court finds this specific argument for a continuance less convincing. Defendants cite *Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389 (*Oliveros*). (See Motion to Continue MPA, p. 9:10.) In *Oliveros*, trial was scheduled for March 5, 2002, and at a final status conference on February 25, 2002, counsel for defendant the County of Los Angeles advised the trial court that he was scheduled to begin trial in another matter on March 4. (*Oliveros, supra,* 120 Cal.App.4th at p. 1392.) This same counsel then requested that the trial court continue the trial date three or four weeks. (*Ibid.*) The trial court's first available trial date was in early July, and so the court continued the trial to July 9, 2002. (*Ibid.*) Counsel for the County of Los Angeles had another case set for trial the week of July 8, but counsel did not learn of any "likely conflict" between the two cases until July 3, and counsel requested another

[3] The court declines to address Treespring's bifurcation argument. (See Treespring's Memorandum of Points and Authorities in Support of Opposition to Defendants' Motion to Continue Trial Date, pp. 13:20-14:8.) As Defendants note, a motion to bifurcate is not presently before the court. (See Defendants' Reply in Support of Defendants' Motion to Continue Trial Date, p. 10:4-11.)

continuance on July 9. (*Id.* at pp. 1392-1393.) The trial court did not grant the continuance, counsel was unable to participate in the trial, and the jury ultimately found against counsel and his client, the County of Los Angeles. (*Id.* at pp. 1393-1394.) The County of Los Angeles moved to vacate the judgment and for a new trial, the trial court denied, and the Court of Appeal reversed, finding that the "strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency." (*Id.* at pp. 1394-1395.)

Here, Defendants do not contend that their ability to present their case at trial on the merits will be impacted by the court's decision to grant or deny their request for a continuance. They argue that the court should grant a continuance because without a complete production of documents or certain depositions, they cannot assess whether any disputes of material fact exist that would preclude summary adjudication. (See Motion to Continue MPA, pp. 8:7-9:15.) These circumstances are inapposite to those in *Oliveros*, where the Court of Appeal reversed the trial court's denial of a trial continuance after counsel could not attend trial due to a conflict. (*Oliveros, supra*, 120 Cal.App.4th at pp. 1392-1395.) Defendants otherwise provide no other authority supporting its argument that the court should grant a continuance to "facilitate resolution of the case and a more efficient trial." (See Motion to Continue MPA, p. 9:14-15.)

The court GRANTS Defendants' motion to continue the trial date.

IV. Conclusion

The court GRANTS Defendants' motion for leave to file a cross-complaint. The court GRANTS Defendants' motion to continue the trial date.

Trial is continued to January 20, 2026 at 9:00 a.m. All pre-trial deadlines shall be based on the new trial date.

The court vacates the settlement and pretrial conferences currently set for October 1, 2025 and October 7, 2025, respectively. The settlement conference is rescheduled for December 17, 2025, at 1:30 p.m. The pretrial conference is rescheduled for January 13, 2026, at 9:00 a.m.

The court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 8

Case Name:
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Calendar Line 10

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Calendar Line 11

Case Name: *Raul Castañeda, et al. v. Marco Polo Management, Inc., et al.*
Case Nos.: 24CV429605

This is a representative action under the Private Attorneys General Act ("PAGA"). Plaintiffs Raul Castañeda, Esvin Perez, and Angela Lozano allege that defendant Marco Polo Management Inc. dba Terun committed various wage and hour violations and seeks PAGA penalties for those violations.

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

I. BACKGROUND

According to the allegations of the operative second amended complaint ("SAC"), Plaintiffs were employed by Defendants as non-exempt hourly employees. (SAC, ¶¶ 8-9.) They allege Defendants committed minimum wage violations, overtime violations, rest break violations, meal break violations, untimely wages during employment and at separation, failure to reimburse business expenses, wage statement violations, and recordkeeping violations.

Based on the foregoing, Plaintiffs Castañeda and Perez initiated this action on January 23, 2024 and they filed their first amended complaint on March 28, 2024, which asserted a single cause of action for PAGA penalties arising from various Labor Code violations. On October 9, 2024, the parties filed a joint stipulation permitting Plaintiffs to file their SAC, which asserts a single cause of action for PAGA penalties arising from various Labor Code violations and to add plaintiff Lozano. The Court granted Plaintiff leave to file the SAC and it was deemed filed as of October 9, 2024.

II. LEGAL STANDARD FOR APPROVING PAGA SETTLEMENT

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. 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.) 75 percent of any penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the remaining 25 percent for the employees. (*Ibid.*) PAGA is intended "to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Id.* at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (*Id.* at p. 381.)

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.) "[C]lass certification is not required" in this context as in a class action. (*Haralson v. U.S. Aviation Servs. Corp*. (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 (*Haralson*).)

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 (*Moniz*).) 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, supra,* 383 F. Supp. 3d at p. 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.)

III. PLAINTIFFS' INVESTIGATION, SETTLEMENT PROCESS, AND THE PARTIES' AGREEMENT

On January 23, 2024, Plaintiffs Castañeda and Perez submitted a letter to the LWDA and filed their complaint. On March 28, 2024, they filed their FAC and on September 26, 2024, Plaintiffs filed a supplemental PAGA notice with the LWDA notifying it of Plaintiff Lozano's intention to pursue the same Labor Code violations. The SAC was deemed filed on October 9, 2024.

The parties engaged in settlement negotiations. They exchanged various documents and information that allowed both sides to evaluate the potential exposure and potential risks. Plaintiffs' counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of PAGA damages, interviews of Plaintiffs, trial management, and appellate issues and risks.

On June 13, 2024, the parties came to an agreement regarding the broad terms of a settlement. The parties negotiated and finalized the terms of the Settlement Agreement, which was fully executed on December 9, 2024.

Pursuant to the parties' agreement, Defendants will pay a non-reversionary gross settlement amount of $40,000, which is comprised of up to $13,333.33 in attorneys' fees, $2,074.60 in litigation costs, and $2,750.00 in administration costs. The net settlement is approximately $20,342.07, which will be distributed 75% ($15,256.55) to the LWDA and 25% ($5,085.52), on a pro rata basis, to "Aggrieved Employees," who are defined as "All individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period."[1] It is estimated there are approximately 40 Aggrieved Employees and 500 pay periods during the relevant time period—this results in an average payment of

[1] The PAGA Period is defined as "the period from January 23, 2023, through the date of court approval of the settlement."

$127.25 to each Aggrieved Employee. Plaintiffs seek PAGA representative service payments of $500 each ($1,500 total).

In exchange for settlement, Plaintiffs will release:

> All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged or reasonably could have been alleged based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

The release is appropriately tailored to the allegations at issue, and does not release any claims other than those for PAGA penalties. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537; *Moniz, supra*, 72 Cal.App.5th at p. 82 [release of "all known and unknown claims under PAGA … that were or could have been pled based on the allegations of the Complaint" was appropriately approved].)

IV. DISCUSSION

A. Potential Verdict Value

In the SAC, Plaintiffs asserted a claim for PAGA penalties based on the following Labor Code violations: minimum wage violations; overtime violations; rest period violations; meal period violations; recordkeeping violations; untimely wages; waiting time penalties; failure to reimburse expenses; and wage statement violations.

Based on figures provided by Defendants for mediation- 40 Aggrieved Employees and 500 pay periods during the relevant time period- Plaintiffs calculated Defendants' total exposure for PAGA penalties to be $50,000. While Plaintiffs believe their claims are meritorious and that they would have recovered unreduced penalties, Defendants assert numerous defenses to the claims. Defendants also argue that Plaintiffs could only seek PAGA penalties at the $100 "initial" violation rate, as opposed to the $200 "subsequent" violation rate as before Plaintiffs initiated this action, Defendants had never been put on notice by a court or the Labor Commissioner that its practices violated the Labor Code. Therefore, Plaintiffs gave Defendants the benefit of the initial violation amount ($100). After considering the risks and Defendants' defenses, the parties settled on $40,000, which represents approximately 80% of Defendants' anticipated exposures on the PAGA claims.

Given this, as well as the risks attendant to proceeding to trial, Defendants' insistence that any violations were not willful and the likelihood that PAGA penalties would be significantly reduced in line with numerous appellate decisions, the Court finds that the proposed settlement is fair to those affected and is genuine, meaningful, and reasonable in light of the statute's purposes.

B. Attorney Fees

While the PAGA statute does not expressly require judicial review of claimed attorney fees, the Court believes it cannot adequately fulfill its statutory duty to review the penalties associated with PAGA settlements without also considering attorney fees. The Court thus finds that it must scrutinize the attorney fee arrangement associated with a PAGA settlement. This is consistent with the observation of many courts that PAGA claims are analogous to "*qui tam*" suits like those under the federal False Claims Act: when reviewing settlements of *qui tam* claims, courts should and do consider any associated attorney fee arrangement. (See *U.S. v. Texas Instruments Corp.* (9th Cir. 1994) 25 F.3d 725, 728 [attorney fee award must be considered by the trial court as part of its review of the "entire settlement arrangement"].)

As articulated above, Plaintiffs' counsel seeks a fee award of $13,333.33 in attorneys' fees. Plaintiffs submit as lodestar figure of $12,421.60 based on 19.2 hours of work at billing rates of $473 to $1,141 per hour, resulting in a positive multiplier of 1.07. This is well short of the range of multipliers that courts typically approve. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 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 finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

Here, given the amount of work performed by Plaintiffs' counsel, and because the requested multiplier sought by them is well short of the range of multipliers regularly approved by California courts in similar actions, the Court finds counsel's requested fee award is reasonable and therefore it is approved.

C. Other Costs and Expenses

Counsel's request for litigation costs of $2,074.60 appears reasonable based on the supporting declarations provided which establish that counsel actually incurred costs in this amount and is approved. Administration costs of $2,750 are also approved.

Finally, the Court finds that Plaintiffs are entitled to an enhancement award. The rationale for such awards in class actions is that named plaintiffs "should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class," considering "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." (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394–1395, internal citations and quotations omitted.) These considerations apply equally in the PAGA context. To support their request for enhancement awards, Plaintiffs provide declarations describing their efforts on the case.

Applying the relevant factors, the Court is finds that enhancement awards of $500 each is appropriate here.

V. ADMINISTRATION PROCESS

Pursuant to the terms of the Settlement Agreement, within fifteen (15) days of Court approval of its terms, Defendants will provide settlement administrator Simpluris, Inc. ("Simpluris") with a list of all Aggrieved Employees with the relevant identifying information (including the last known home address) and the number of pay periods worked. Defendants will pay the gross settlement amount by transmitting the funds to Simpluris no later than fourteen (14) days after the effective date. Within fourteen (14) days after Defendants funds the gross settlement amount, Simpluris will mail all checks for individual PAGA payments, the LWDA PAGA payments, the administration expenses payments, the PAGA counsel fees payment, the PAGA counsel litigation expenses payment, and the PAGA representative service payments. Any checks returned as non-deliverable will promptly be re-mailed to the forwarding address provided; if none is, Simpluris will attempt to locate one using a skip trace or other search method. Any checks returned as undeliverable or that remain uncashed after 180 days will be transmitted to the California Controller's Unclaimed Property Fund. These administrative procedures are appropriate and are approved.

VI. ORDER AND JUDGMENT

Plaintiffs' motion for approval of the parties' PAGA settlement is GRANTED. The covered individuals are: All individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period.

Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiffs and the Aggrieved Employees shall take from the PAGA claim in their SAC only the relief set forth in the parties' settlement agreement and this order and judgment. The Court retains jurisdiction over the parties to enforce the terms of the PAGA settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **February 12, 2026 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, Plaintiffs' 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 the Unclaimed Property Fund; the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel may appear at the compliance hearing remotely.

The Case Management Conference (Calendar Line 12) is VACATED.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

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The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 12

Case Name:
Case No.:

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Calendar Line 13

Case Name: *Jose Alvarez v. The GB Group, Inc.*
Case No.: 24CV434222

This is a putative class action. Plaintiff Jose Alvarez ("Plaintiff") alleges that defendant The GB Group, Inc. ("Defendant"), a provider of construction services to homeowner associations, apartments, high-rise and mid-rise communities, committed various wage and hour violations.

I. BACKGROUND

According to the allegations of the operative complaint ("Complaint"), Plaintiff was employed by Defendant as an hourly-paid, non-exempt employee. Plaintiff alleges that Defendant failed to: pay all wages due (including minimum, overtime, double time and prevailing); provide all meal periods or pay compensation in lieu thereof; provide rest periods or compensation in lieu thereof; provide accurate, itemized wage statements; pay earned wages; and reimburse employees for necessary business expenses incurred by them.

Plaintiff initiated this action with the filing of the Complaint on April 2, 2024 and asserts the following causes of action: (1) failure to pay all wages; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to provide accurate itemized wage statements; (5) failure to pay earned wages; (6) failure to reimburse; and (7) unfair business practices.

On November 12, 2024, Defendant filed a motion to compel arbitration and to stay the action and Plaintiff opposed the motion. On December 13, 2024, this Court granted the motion to compel arbitration and stayed the action pending conclusion of arbitration.

Before the Court is Plaintiff's motion for reconsideration of the Court's order granting Defendant's motion to compel arbitration, which is opposed by Defendant. As discussed below, the Court DENIES the motion.

II. LEGAL STANDARD ON MOTION FOR RECONSIDERATION

Code of Civil Procedure section 1008 represents the Legislature's attempt to regulate what the Supreme Court has referred to as "repetitive motions." (See *Standard Microsystems Corp. v. Winbond Electronics Corp.* (2009) 179 Cal.App.4th 868, 885 [disapproved on other grounds in *Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830].) Motions for reconsideration are regulated by Code of Civil Procedure section 1008, subdivision (a), which states that such a motion may be brought by "any party affected by" a prior order.

The statute requires that any such motion be: (1) filed within 10 days after service upon the party of written notice of the entry of the order of which reconsideration is sought, (2) supported by new or different facts, circumstances or law, and (3) accompanied by an affidavit detailing the circumstances of the first motion, and the respects in which the new motion differs from it. Reconsideration cannot be granted based on claims the court misinterpreted the

law in the prior ruling; that is not a "new" or "different" matter. (See *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500 (*Gilberd*).)

Reconsideration is properly restricted to circumstances where a party offers the court some fact or circumstance not previously considered, and some valid reason for not offering it earlier. The burden under section 1008 "is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial." (*New York Times Co. v. Superior Ct. (Wall St. Network, Ltd.)* (2005) 135 Cal.App.4th 206, 212-213.) A party seeking reconsideration of a prior order based on "new or different facts, circumstances or law" must provide a satisfactory explanation for failing to present the information at the first hearing; i.e., a showing of reasonable diligence. (See *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 689-690; *California Correctional Peace Officers Ass'n v. Virga* (2010) 181 Cal.App.4th 30, 47, fn. 15 [collecting cases].)

"Section 1008 allows the trial court to reconsider and modify, amend or revoke its prior order when the moving party shows a different state of facts exists. 'An order denying a motion for reconsideration is interpreted as a determination that the application does not meet the requirements of section 1008. If the requirements have been met to the satisfaction of the court but the court is not persuaded the earlier ruling was erroneous, the proper course is to grant reconsideration and to reaffirm the earlier ruling.' '[T]he party seeking reconsideration must provide not only new evidence but also a satisfactory explanation for the failure to produce that evidence at an earlier time.'" (*Mink v. Superior Ct.* (1992) 2 Cal.App.4th 1338, 1342 [internal citations omitted].)

III. DISCUSSION

Plaintiff moves for reconsideration of this Court's December 13, 2024 Order Granting Defendant's Motion to Compel Arbitration.

a. Timeliness

Pursuant to Code of Civil Procedure section 1008, subdivision (a), a motion for reconsideration brought by a party must be filed within 10 days of service of "notice of entry" of the order sought to be reconsidered. Plaintiff's motion, filed on December 31, 2025, was filed more than 10 days after service of the December 13, 2024 Order. However, the Court's file does not contain a "notice of entry" of the order, the 10-day time limit is not triggered by the statute. (See *Novak v. Fay* (2015) 236 Cal.App.4th 329, 335-336 [10-day time limit did not apply where no notice of entry of order had been served].) The Court therefore finds the motion for reconsideration to be timely filed.

b. Moving Party Declaration

A motion for reconsideration must be accompanied by a declaration from the moving party stating: (1) what application was made previously; (2) when and what judge the application was made; (3) what order or decisions were made; and (4) what new or different facts, circumstances or law are claimed to be shown. (Code Civ. Proc., § 1008, subd. (a); see *Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1048

[plaintiff's motion to reconsider was invalid as it failed to contain an affidavit or declaration in support of the motion].)

Here, Plaintiff's counsel submits a declaration stating what application was made previously and the proposed new or different facts. However, the declaration does not indicate when and what judge the application was made to or what orders or decisions were made. However, given that those missing facts are evident, the Court will address the parties' arguments.

c. New and Different Facts

"Section 1008 allows the trial court to reconsider and modify, amend or revoke its prior order when the moving party shows a different state of facts exists. 'An order denying a motion for reconsideration is interpreted as a determination that the application does not meet the requirements of section 1008. If the requirements have been met to the satisfaction of the court but the court is not persuaded the earlier ruling was erroneous, the proper course is to grant reconsideration and to reaffirm the earlier ruling.' '[T]he party seeking reconsideration must provide not only new evidence but also a satisfactory explanation for the failure to produce that evidence at an earlier time.'" (*Mink v. Super. Ct.* (1992) 2 Cal.App.4th 1338, 1342 [internal citations omitted].)

As explained by one California appellate court:

> """Public policy requires that pressure be brought upon litigants to use great care in preparing cases for trial and in ascertaining all the facts. A rule which would permit the re-opening of cases previously decided because of error or ignorance during the progress of the trial would in a large measure vitiate the effects of the rules of res judicata."' When the requirement of section 1008 that the application for reconsideration be upon an 'alleged different state of facts' is viewed in light of this public policy, it is evident that the party seeking reconsideration must provide not only new evidence but also a satisfactory explanation for the failure to produce that evidence at an earlier time. In short, the moving party's burden is the same as that of a party seeking new trial on the ground of 'newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.'"

(*Blue Mountain Development Co. v. Carville* (1982) 132 Cal.App.3d 1005, 1013 [internal citations omitted].)

The crux of Plaintiff's argument is that Plaintiff requested his personnel file and that Defendant produced the personnel file of Plaintiff's brother, instead of Plaintiff's file. Plaintiff did not discover this failure to produce the correct personnel file until after the opposition to the motion compel was filed. Plaintiff asserts that Defendant violated Labor Code section 226 and he was unable to use the documents to support his opposition. (Motion, p. 7:1-5.) Plaintiff additionally argues that he does not speak or understand English and therefore could not understand the arbitration agreement, thereby establishing new circumstances warranting reconsideration of the order. (Motion, p. 7:15-22.)

In opposition, Defendant argues that these are not new facts because 1) it seeks to blame Defendant for Plaintiff counsel's confusion about which personnel file was produced; 2) Plaintiff's failure to present a competent declaration in support of the opposition "lacks indicia of reasonable diligence" and 3) there was a failure to present these facts in the underlying motion. The Court finds Defendant's arguments persuasive. Plaintiff's counsel offers no explanation for why he did not realize he had Plaintiff's brother's personnel file or why Plaintiff could not provide the same declaration detailing the language barrier in support of his opposition to the motion to compel arbitration.

As Defendant notes in opposition, Plaintiff's reliance on *Hollister v. Benzl* (1999) 71 Cal.App.4th 582 (*Hollister*) to argue that a failure to produce documents until after a motion for reconsideration warrants a second look at the court's ruling is not helpful here. In *Hollister*, the trial court granted defendant's petition to compel arbitration but then vacated that order on plaintiff's motion for reconsideration. The defendant appealed and the court reversed the order denying the petition to compel arbitration. The Court of Appeal ruled that the statutory requirements governing arbitration clauses in insurance contracts were not binding upon defendant, who was neither an agent nor an employee of the insurer, and that the signed arbitration agreement was valid and binding upon the plaintiff. (*Id.* at p. 584.) The Court determined the trial court had authority to consider the motion for reconsideration because certain documents were not produced until the plaintiff's motion for reconsideration and thus, constituted new evidence. In this case, documentation was produced but Plaintiff's counsel did not realize it was the personnel file of Plaintiff's brother. While Plaintiff's motion states he did not discover the failure to produce the correct personnel file until after the opposition was filed, it is entirely unclear why Plaintiff was unable to make such a discovery earlier. Thus, *Hollister* is inapposite.

Additionally, Plaintiff cites several cases stating that fraud in the execution exists rendering a contract void where the promisor does not know what is being signed. (See Motion, p. 8:11-24 [citing several cases].) However, Plaintiff proffers no explanation for why he could not assert this argument or provide a signed declaration in support of his opposition to the motion to compel arbitration on this topic, which is a fact entirely within his own knowledge. (See *New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 213 [""the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial" … stating also "Even if [the] evidence somehow could be considered 'new'" the moving party must still provide a satisfactory explanation for his failure to present it earlier.].) Accordingly, the motion for reconsideration is DENIED.

IV. CONCLUSION

The motion for reconsideration is DENIED. The Court will prepare the final order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go

to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Line 14 (including Line 15)

Case Name: *Digvijay Motiani v. Future US LLC*
Case No.: 24CV438655

This action arises from defendant Future US LLC's ("Defendant") alleged use of the TipleLift Tracker, the GumGum Tracker, and the Audiencerate Tracker (collectively, "Trackers") on TechRadar.com, a website it owns and operates. (Complaint, ¶¶ 1-2.) Plaintiff Digvijay Motiani alleges Defendant installed the Trackers on visitors' internet browsers and used them to collect their IP addresses. (Complaint, ¶ 2.) He further alleges Defendant used the Trackers without consent and in violation of the privacy rights of California residents, including him. (Complaint, ¶¶ 4-5.)

Before the Court is Plaintiff's motion to dismiss and motion to seal, which are unopposed.

As discussed below, the Court GRANTS Plaintiff's motion to dismiss and GRANTS his motion to seal.

V. MOTION TO DISMISS

A. Legal Standard

California Rules of Court, Rule 3.770, provides, "[a] dismissal of an entire class action or of any party or cause of action in a class action, requires court approval. The court may not grant a request to dismiss a class action if the court has entered judgment following final approval of a settlement. Requests for dismissal must be accompanied by a declaration setting forth the facts on which the party relies. The declaration must clearly state whether consideration, direct or indirect, is being given for the dismissal and must describe the consideration in detail." (Rules of Ct., Rule 3.770(a).)

B. Discussion

On May 9, 2024, Plaintiff initiated this action with the filing of the Complaint, which asserts a claim for violation of the California Invasion of Privacy Act. Plaintiff has settled his individual claim and now seeks to dismiss this action. A settlement was not submitted to the Court for approval, thus, the Court has not entered judgement and it is not precluded from granting the instant motion. (See Rules of Ct., Rule 3.770(a) ["The court may not grant a request to dismiss a class action if the court has entered judgment following final approval of a settlement"].)

The request is accompanied by the declaration of Plaintiff's counsel, L. Timothy Fisher ("Fisher Decl."). Mr. Fisher states the instant motion is brought because the parties have settled Plaintiff's individual claim, the details of which are not recounted here. (Fisher Decl., ¶ 5.) (Fisher Decl., ¶ 8.) In sum, Plaintiff provides sufficient information in support of his motion.

Rule 3.770, provides, in relevant part, "if the court has certified the class, and notice of the pendency of the action has been provided to class members, notice of the dismiss must be given to the class in the manner specified by the court. If the court has not ruled on class certification, or if notice of the pendency of the action has not been provided to class members in a case in which such notice was

required, notice of the proposed dismissal may be given in the manner and to those class members specified by the court, or the action may be dismissed without notice to the class members if the court finds that the dismissal will not prejudice them." (Rules of Ct., Rule 3.770(c).)

Plaintiff argues the dismissal does not prejudice any putative class members and thus notice is not required for the following reasons: (1) no class was certified, (2) no notice was provided to any putative class members, and (3) the statute of limitations for any claims by putative class members has been tolled during the pendency of this action therefore when dismissal is entered, any putative class members will be in the same position they were before the instant action was filed. In consideration of the above factors, it appears to the Court that notice is not required because the dismissal will not prejudice any putative class members.

Based on the foregoing, Plaintiff's motion to dismiss is GRANTED.

VI. 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.)

B. Discussion

Plaintiff moves to seal portions of the following documents in support of his motion to dismiss: his memorandum of points and authorities, and Mr. Fisher's declaration.

Plaintiff argues the materials should be sealed because they contain the amount and terms of the settlement between the parties. Plaintiff further argues the settlement agreement contains a confidentiality provision. Plaintiff contends his request is narrowly tailored, and there is an overriding interest which overcomes the right of public access to the materials. The Court also finds based on the nature of the information sought be sealed that a "substantial probability exists that the overriding interest will be prejudiced if the record is not sealed." (See Rules of Ct., Rule 2550(d); see also *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1222 ["once it is established

there is a potential overriding interest, the party seeking closure or sealing must prove prejudice to that interest is substantially probable."].) Thus, the motion to seal is GRANTED.

VII. CONCLUSION

Based on the foregoing, Plaintiff's motion to dismiss is GRANTED. His motion to seal is also GRANTED.

The Case Management Conference scheduled for June 26, 2025 at 2:31 p.m. is VACATED.

The Clerk shall administratively close this file.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

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