LAW & MOTION CALENDAR
TENTATIVE RULINGS

July 10, 2025

Judge Melissa R. McCormick
Dept. CX105

Department CX105 hears law and motion on Thursdays at 2:00 p.m.

Court reporters: Official court reporters typically are not provided in this department for any proceedings. If the parties desire the services of a court reporter, the parties should follow the procedures set forth on the court's website at www.occourts.org.

Tentative rulings: The court endeavors to post tentative rulings on the court's website by 9:00 a.m. the day of the hearing. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted.

Submitting on tentative rulings: If all parties intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5305. Please do not call the department unless all parties submit on the tentative ruling. If all parties submit on the tentative ruling and so advise the court, the tentative ruling will become the court's final ruling and the prevailing party shall give notice of the ruling.

Appearances and public access: Appearances, whether in person or remote, must comply with Civil Procedure Code section 367.75, California Rule of Court 3.672, Orange County Superior Court Local Rule 375, and Orange County Superior Court Appearance Procedure and Information—Civil Unlimited and Complex (pub. 9/9/22).

Unless the court orders otherwise, remote appearances will be conducted via Zoom. All counsel and self-represented parties appearing via Zoom must check in through the court's civil remote appearance website before the hearing begins. Check-in instructions are available on the court's website.

The public may attend hearings by coming to court or via remote access as described above.

Photographing, filming, recording and/or broadcasting court proceedings are prohibited unless authorized pursuant to California Rule of Court 1.150 or Orange County Superior Court Local Rule 180.

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

NO.	CASE NAME	MATTER
1	Aguilar v. TYR Sport, Inc. 2021-01188780	<u>Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement</u> The court has reviewed and considered the papers filed in support of plaintiff's motion for final approval of a $480,000 class action and PAGA settlement. The court has the following questions and comments:

		1. The brief and the Brown Declaration state the high, low and average class and PAGA payments in "gross" amounts. Brief (ROA 161) at 11-12; Brown Decl. (ROA 163) ¶ 16. What are the high, low and average class and PAGA payments after deductions from the gross settlement amount for attorneys' fees and costs, plaintiff's enhancement award and the settlement administration fees, i.e., what are the actual high, low and average class and PAGA payments? 2. Did the settlement administrator send the notice to the 8 class members for whom defendant did not provide data? See Brief (ROA 161) at 7 n.1; Brown Decl. (ROA 163) ¶¶ 5-7. If not, how do the parties propose to notify those class members about the settlement? 3. Plaintiff's counsel must disclose whether counsel has any fee-splitting arrangement with any other counsel, including the exact percentages, or confirm none exists. *Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4th 172, 184; Cal. R. Ct. 3.769(b). 4. Plaintiff's counsel should submit copies of the Berger Consulting ($2,345.00), mediation ($12,500.00) and Ace ($119.00 + $47.95) invoices. Moon Decl. (ROA 162) Ex. 4. The hearing on plaintiff's motion for final approval is continued to <u>November 13, 2025 at 2:00 p.m.</u> in Department CX104 to enable the parties to address and respond to the above issues. *See also* Department CX104 Guidelines for Approval of Class Action Settlements and PAGA Settlements (www.occourts.org). A supplemental brief shall be filed at least 9 court days before the hearing and shall address as necessary each of the above points. Plaintiff is ordered to give notice, including to the LWDA, and to file a proof of service. Plaintiff must also serve the LWDA with any supplemental documents, and file a proof of service.
2	Alvarado v. Red Pointe Roofing, L.P. 2022-01286100	<u>Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement</u> The court has reviewed and considered the papers filed in support of plaintiff's motion for final approval of a $711,490 class action and PAGA settlement. The court grants the motion as follows: $7,500.00 for enhancement award to plaintiff; $237,139.62 for attorneys' fees; $11,426.16 for litigation costs (charges for postage, copies and legal research (totaling $52.88) are not recoverable and are not awarded; charges for "anticipated future costs" are not awarded);

		$10,000.00 for settlement administration costs; and $50,000.00 total PAGA penalties ($37,500.00 to the LWDA). The final accounting hearing is scheduled for June 25, 2026 at 9:00 a.m. in Department CX105. Plaintiff shall submit a final accounting report at least 9 court days before the final accounting hearing regarding the status of the settlement administration. The final report must include all information necessary for the court to determine the total amount actually paid to class members and any amounts tendered to the State Controller's Office under the unclaimed property law. Plaintiff is ordered to give notice, including to the LWDA, and to file a proof of service.
3	Crews, et al. v. WL Homes LLC, et al. 2024-01397283	Financial Pacific Insurance Company's Motion to Intervene Financial Pacific Insurance Company (FPIC) moves pursuant to Civil Procedure Code section 387 to intervene on behalf of its insured cross-defendant Worthen Enterprises, Inc. dba Classic Cabinets. No oppositions to the motion were filed. For the following reasons, FPIC's motion is granted. Civil Procedure Code section 387 states, in relevant part: "(c) A nonparty shall petition the court for leave to intervene by noticed motion or ex parte application. The petition shall include a copy of the proposed complaint in intervention or answer in intervention and set forth the grounds upon which intervention rests. "(d)(1) The court shall, upon timely application, permit a nonparty to intervene in the action or proceeding if either of the following conditions is satisfied: "(A) A provision of law confers an unconditional right to intervene. "(B) The person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties. "(2) The court may, upon timely application, permit a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both." Civ. Proc. Code § 387(c), (d). FPIC issued an insurance policy to cross-defendant Worthen Enterprises, Inc. dba Classic Cabinets, which FPIC's declarant states may provide coverage, subject to a reservation of rights, for damages that may be claimed against Worthen Enterprises, Inc. in this case. McNeill Decl. (ROA 57) ¶ 2. FPIC has

		provided evidence that Worthen Enterprises, Inc. is a California suspended corporation. *Id.* ¶ 4 & Ex. B. FPIC states that as a result of the insurance policy it issued to Worthen Enterprises, Inc., FPIC may be subject to a direct action pursuant to Insurance Code section 11580 in the event a default judgment is entered against its insured Worthen Enterprises, Inc. in this action. Brief (ROA 57) at 4:17-19. FPIC states that it seeks to intervene in this action to enable it to raise defenses to the claims alleged against Worthen Enterprises, Inc. *Id.* at 4:19-20. FPIC has shown good cause to grant it leave to intervene on behalf of its insured cross-defendant Worthen Enterprises, Inc. dba Classic Cabinets. FPIC's motion is granted. *See* Civ. Proc. Code § 387; Ins. Code § 11580; *see also Reliance Ins. Co. v. Superior Ct.* (2000) 84 Cal.App.4th 383, 386-87. FPIC is ordered to file the answer in intervention attached as Exhibit A to the McNeill Declaration (ROA 57) by July 21, 2025, and to serve the answer in intervention in accordance with Civil Procedure Code section 387(e)(2). FPIC is ordered to give notice in accordance with Civil Procedure Code section 387(e)(2).
4	Hernandez v. Islands Restaurants, L.P., et al. 2023-01320258	Off calendar
5	Kimco Staffing Data Breach Cases JCCP 5321	Off calendar.
6	Murkison, et al. v. Kimco Staffing Services, Inc. 2024-01428357	Off calendar.
7	Carl, et al. v. Kimco Staffing Services, Inc. 2024-01446404	Off calendar.
8	Lawson v. Executive Maintenance, Inc., et al. 2019-01107756	<u>Plaintiff David Lawson's Motion for Terminating Sanctions</u> Plaintiff David Lawson moves for terminating sanctions in the form of an order striking defendant William May's answer or, in the alternative, for evidentiary sanctions in the form of an order precluding May from introducing into evidence at trial various categories of documents and for an adverse inference instruction or, in the alternative, for issuance of an order to show cause why terminating, evidentiary and/or issue sanctions should not be imposed. Lawson also moves for monetary sanctions for sums incurred for the instant motion. May did not file an opposition. For the following reasons, Lawson's motion is granted in part and denied in part.

Lawson contends May has not complied with the following court orders:

July 6, 2023 order (ROA 396)	Order compelling May to provide further responses to Special Interrogatories Nos. 1-12
September 12, 2023 order (ROA 419)	Order to appear for deposition
February 1, 2024 order (ROA 488)	Order to pay monetary sanctions
August 29, 2024 order (ROA 603)	Order to provide responses to Requests for Production (Set One) and pay monetary sanctions
October 16, 2024 order (ROA 650, 651)	Order approving class notice and administrator
December 19, 2024 order (ROA 739)	Order denying motion to deem Requests for Admissions (Set One) admitted and imposing monetary sanctions
April 17, 2025 order (ROA 747)	Order compelling defendant Executive Maintenance, Inc. to produce Class Members' Data and imposing monetary sanctions

July 6, 2023 order (ROA 396): Lawson concedes May provided further responses, albeit 27 days late, to Special Interrogatories Nos. 1-12 on August 17, 2023. Lawson argues that May's further responses to Special Interrogatories Nos. 4 and 5 were insufficient. Lawson made this same argument in his earlier motion to compel May to serve further supplemental responses to Special Interrogatories Nos. 1-12, which the court denied on February 1, 2024. 2/1/24 Order (ROA 488). Lawson has not provided any basis for the court to reconsider that order, much less complied with the statutory requirements to do so. *See*

		Civil Proc. Code § 1008. May's conduct regarding the July 6, 2023 order does not warrant additional sanctions. September 12, 2023 order (ROA 419): Lawson concedes May appeared for deposition, albeit on December 13, 2023, which was two months later than the date in the court's September 12, 2023 order. While the court does not condone May's lateness, the court does not find the delay supports imposition of additional sanctions. February 1, 2024 order (ROA 488): Lawson states that May has not paid the monetary sanctions ($1,380 imposed jointly and severally against May, defendant David Moltz, defendant Patricia May and their counsel John V. Gaule) imposed in the February 1, 2024 order. As the court has previously stated (2/1/24 order), a court order awarding monetary sanctions is immediately enforceable through the execution of judgment laws. *See, e.g.*, Cal. Civ. Proc. Code §§ 680.230, 680.270 & 699.510; *Newland v. Superior Court* (1995) 40 Cal.App.4th 608, 615. Lawson states no reasons this principle does not apply here. August 29, 2024 order (ROA 603): Lawson states that May has not provided responses to Requests for Production (Set One) or paid the monetary sanctions imposed in the August 29, 2024 order. May's failure to provide responses to Requests for Production (Set One) warrants additional sanctions, as discussed below. As discussed above, an order awarding monetary sanctions is immediately enforceable through the execution of judgment laws. As noted above, Lawson states no reasons this principle does not apply here. October 16, 2024 order (ROA 650, 651): These orders (ROA 650, 651) approved the class notice and the administrator. ROA 650 states that "[n]otice shall be given in substantially the same manner as proposed in Plaintiff's Statement Regarding Class Notice (ROA 637)." Lawson's Statement Regarding Class Notice (ROA 637) states that defendant Executive Maintenance, Inc. (EMI) "shall provide to Class Counsel the Class Members' Data" within 30 days of the court's order approving the notice. ("Class Members' Data" is defined in the Statement Regarding Class Notice.) Lawson argues that May, in his capacity as defendant EMI's "corporate officer and owner, failed to ensure" that EMI provided the Class Members' Data to Class Counsel. May has not filed an opposition to the instant motion, and has not otherwise contested Lawson's claim that he controlled EMI's provision of the Class Members' Data to Class Counsel. As discussed below, May's failure to ensure that EMI provided the Class Members' Data to Class Counsel warrants additional sanctions. December 19, 2024 order (ROA 739): Lawson states the court granted his motion to deem his Requests for Admissions (Set One) to May admitted in the December 19, 2024 order. Brief (ROA 771) at 2:28-3:1. This is incorrect. The court denied

		Lawson's motion to deem his Requests for Admissions (Set One) to May admitted, but imposed $560 in monetary sanctions on May because May's failure to serve timely responses to Lawson's Requests for Admissions caused the filing of the motion. ROA 739. Lawson argues May's failure to pay the monetary sanctions imposed by the December 19, 2024 order warrants additional sanctions. As discussed above, an order awarding monetary sanctions is immediately enforceable through the execution of judgment laws. As noted above, Lawson states no reasons this principle does not apply here. April 17, 2025 order (ROA 747): This order compelled EMI to comply with the October 16, 2024 order by providing the Class Members' Data to Class Counsel by April 24, 2025 and imposed monetary sanctions on EMI. Lawson argues that May, in his capacity as defendant EMI's "corporate officer and owner, failed to ensure" that EMI provided the Class Members' Data to Class Counsel. As noted, May has not filed an opposition to the instant motion, and has not otherwise contested Lawson's claim that he controlled EMI's provision of the Class Members' Data to Class Counsel. As discussed below, May's failure to ensure that EMI provided the Class Members' Data to Class Counsel warrants additional sanctions. EMI's failure to pay the monetary sanctions imposed in the April 17, 2025 order does not warrant additional sanctions against May. Moreover, as discussed above, an order awarding monetary sanctions is immediately enforceable through the execution of judgment laws. As noted above, Lawson states no reasons this principle does not apply here. As set forth above, the following conduct by May warrants additional sanctions: (i) May's failure to comply with the August 29, 2024 order that he provide responses to Requests for Production (Set One); and (ii) May's failure to ensure that EMI complied with the October 16, 2024 and April 17, 2025 orders that EMI provide the Class Members' Data to Class Counsel. Disobeying a court order to provide discovery is a misuse of the discovery process. Cal. Civ. Proc. Code § 2023.010(g); *Van Sickle v. Gilbert* (2011) 196 Cal.App.4th 1495, 1516. A trial court should consider both the conduct being sanctioned and its effect on the party seeking discovery and, in choosing a sanction, should attempt to tailor the sanction to the harm caused by the withheld discovery. *Doppes v. Bentley Motors, Inc*. (2009) 174 Cal.App.4th 967, 992. The discovery statutes evince an incremental approach to discovery sanctions, starting with monetary sanctions and ending with the ultimate sanction of termination. *Id.* If a lesser sanction fails to curb misuse, a greater sanction is warranted: continuing misuses of the discovery process warrant incrementally harsher sanctions until the sanction is reached that will curb the abuse. *Id.* Where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce

		compliance with the discovery rules, a trial court is justified in imposing the ultimate sanction. *Id.* Because terminating sanctions are drastic, it is generally recognized that "terminating sanctions are to be used sparingly, only when the trial court concludes that lesser sanctions would not bring about the compliance of the offending party." *R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496. Courts contemplating imposition of a terminating sanction should generally engage in a "balancing process," *McGinty v. Superior Ct.* (1994) 26 Cal.App.4th 204, 214, taking into account the nature of the discovery abuse, whether it was part of a pattern, whether it was willful and without substantial justification, *Sauer v. Superior Ct.* (1987) 195 Cal.App.3d 213, 224-25, whether lesser sanctions would be effective to produce the discovery sought, the extent of the prejudice to other party, and whether the sanction would result in a "windfall" to the other party. *McGinty*, 26 Cal.App.4th at 214. The court does not find this record supports at this time the terminating sanction Lawson seeks, i.e., an order striking May's answer. May served further responses to Special Interrogatories Nos. 1-12, and he appeared for deposition. That said, May's discovery conduct and compliance with the court's orders has been insufficient, has impeded Lawson's ability to prepare for trial, and has frustrated class counsel's efforts to represent the interests of the class. May did not comply with the court's August 29, 2024 order that he provide responses to Requests for Production (Set One), and there is no evidence that—despite his role as EMI's owner and his stated ability to access EMI's records (Schubert Decl. (ROA 789) Ex. 2)—he did anything to ensure EMI complied with the October 16, 2024 and April 17, 2025 orders that EMI provide the Class Members' Data to Class Counsel. The court finds this record supports imposition of evidentiary sanctions. Lawson requests evidentiary sanctions in the form of an order precluding May from introducing into evidence at trial the categories of documents sought in Lawson's Requests for Production (Set One) to May: (i) all versions of the employee handbook applicable to class members during the class period; (ii) all signed acknowledgements of the employee handbook applicable to class members during the class period; (iii) all time records for all class members who worked during the class period; (iv) all audit trails for time records for PAGA employees during the PAGA period; (v) all payroll records for all class members during the class period; (vi) all wage statements furnished to class members during the class period; and (vii) all wage statements furnished to Enrique Morales from January 1, 2022 to February 16, 2024. Schubert Decl. (ROA 524) Ex. 3. Lawson's motion for an evidentiary sanction precluding May from introducing these categories of documents into evidence at trial is granted.

		Lawson also requests an adverse inference instruction that the above categories of documents, if produced, would have been prejudicial to May. Brief (ROA 767) at 7:15-16. Lawson's motion for an adverse inference instruction is also granted. If the case proceeds as a jury trial, the jury will be instructed with CACI No. 204 (Willful Suppression of Evidence) (as modified) as follows: "The court has found that defendant William May intentionally concealed documents and that those documents would have been unfavorable to defendant William May." Lawson's request for an order to show cause why terminating, evidentiary and/or issue sanctions should not be imposed is denied. Lawson's request for monetary sanctions for fees and costs incurred in connection with the instant motion is granted. Defendant William May shall pay sanctions in the amount of $1,710.00 to plaintiff David Lawson by July 24, 2025. Plaintiff to give notice.
9	Morales v. Mastroianni Family Enterprises Ltd. 2022-01286355	<u>Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement</u> The court has reviewed and considered the papers, including the supplemental papers, filed in support of plaintiff's motion for final approval of a $1,295,000 class action and PAGA settlement. The court grants the motion as follows: $5,000.00 for enhancement award to plaintiff (see No. 1 below); $388,500.00 for attorneys' fees (see No. 2 below); $18,875.00 for litigation costs (see No. 3 below); $12,750.00 for settlement administration costs; and $75,000.00 total PAGA penalties ($56,250.00 to the LWDA). 1. In its March 13, 2025 order (ROA 133), the court noted that plaintiff stated in her declaration that she sought an enhancement payment of $7,500 for "the scope of the release, as well as [her] active participation this case." 3/13/25 Order (ROA 133) No. 6 (citing Morales Decl. (ROA 128) ¶ 6)). The court stated that an enhancement award is not intended to serve as consideration for the release of additional claims, but rather to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, in some circumstances, to recognize their willingness to act as a private attorney general. 3/13/25 Order (ROA 133) No. 6. The court stated that it was unlikely to approve a settlement that provides an enhancement award in exchange for a general release. *Id.*

		Plaintiff has submitted a supplemental declaration that states that her request for a $7,500 enhancement award is based on her "active participation in this case." Supp. Morales Decl. (ROA 147) ¶ 2. Plaintiff's supplemental declaration is inconsistent with her prior declaration, and neither plaintiff nor plaintiff's counsel has addressed this discrepancy. Moreover, and in any event, neither plaintiff nor plaintiff's counsel has identified any unique circumstances warranting the generous enhancement award plaintiff seeks. The court awards plaintiff $5,000.00 as an enhancement award. 2. In its March 13, 2025 order (ROA 133), the court ordered Lawyers for Justice, PC to submit contemporaneous time records documenting the work performed, who performed each task, and the time spent on each task. 3/13/25 Order (ROA 133) No. 7. The court also stated that plaintiff's counsel should explain why the requested 35% attorneys' fee was reasonable, as the records provided for the lodestar crosscheck appeared to reflect excessive time and staffing for certain tasks. *Id.* No. 8. The court noted that, for example, Attorney Kim spent more than 18 hours preparing for the mediation and three attorneys at Lawyers for Justice, PC spent almost 28 hours preparing for the mediation; and that Attorney Kim spent 24.4 hours preparing the motion for preliminary approval and two attorneys at Lawyers for Justice, PC spent 11.8 hours also preparing the motion for preliminary approval. *Id.* Lawyers for Justice, PC has declined to submit contemporaneous time records, instead choosing to rest on the "Attorney Task and Time Chart" submitted previously, which the court found insufficient. In addition, plaintiffs' counsel has not explained the reasonableness of the number of attorneys and hours spent preparing for the mediation and preparing the motion for preliminary approval. Attorney Kim has submitted a supplemental declaration (ROA 146) attempting to justify his hours, but neither Attorney Kim nor any other plaintiff's attorney has addressed the hours incurred by other lawyers. The court finds attorneys' fees totaling 30% of the gross settlement amount reasonable for this case, and awards plaintiff's counsel $388,500.00 in attorneys' fees ($252,525.00 to Collins Kim LLP and $135,975.00 to Lawyers for Justice PC). 3. In its March 13, 2025 order (ROA 133), the court ordered plaintiffs' counsel to submit copies of the mediation invoice(s) ($1,912.50 x 2). 3/13/25 Order (ROA 133) No. 9. Plaintiffs' counsel has not done so. The court thus reduces plaintiffs' counsel award of

		litigation costs by $3,825.00 ($22,700.00 - $3,825.00 = $18,875.00). The final accounting hearing is scheduled for June 18, 2026 at 9:00 a.m. in Department CX105. Plaintiff shall submit a final accounting report at least 9 court days before the final accounting hearing regarding the status of the settlement administration. The final report must include all information necessary for the court to determine the total amount actually paid to class members and any amounts tendered to the State Controller's Office under the unclaimed property law. Plaintiff is ordered to give notice, including to the LWDA, and to file a proof of service.
10	Rubio v. Marriott Resorts Hospitality Corporation 2024-01442156	Off calendar.
11	Wilens v. RELX Inc. 2022-01274235	Defendant RELX, Inc.'s Motion to Dismiss Defendant RELX, Inc.'s moves for an order dismissing this case for failure to prosecute or, in the alternative, for issuance of an order to show cause why the case should not be dismissed. For the following reasons, defendant's motion is denied. On February 6, 2023 the court (Judge Peter Wilson) granted defendant's motion to compel plaintiff Jeffrey Wilens to arbitrate his individual claims against defendant and dismissed plaintiff's class claims. ROA 80. The court stayed the superior court action pending completion of the arbitration. *Id.* The action remains stayed. On May 26, 2023 Wilens filed a demand for arbitration with the American Arbitration Association (AAA) under the Consumer Arbitration Rules. On September 7, 2023 the AAA sent an initiation letter. On September 21, 2023 defendant submitted an answering statement that, among other things, objected to use of the Consumer Rules and asserted the Commercial Arbitration Rules should apply. Following appointment of an arbitrator and briefing, the arbitrator ruled on February 13, 2024 that the Commercial Rules applied. Petition (ROA 106) Ex. A. The arbitrator also ruled that Wilens had not demonstrated that application of the Commercial Rules, including the fee schedule therein, was unconscionable. *Id.* ("Claimant . . . otherwise has failed to establish the application of the Commercial Rules, including its fee schedule[,] is unconscionable"). The AAA thereafter confirmed that the designation of the arbitration had been changed to proceed under the Commercial Rules and requested payment of certain arbitration fees from the claimant (Wilens). Wilens did not pay, the arbitration did not commence, and the AAA closed the arbitration on March 28, 2024. On August 21, 2024 defendant filed in this court a "petition to fix time in which to make arbitration award" (ROA 106)

		pursuant to California Civil Procedure Code section 1283.8, which the court denied on January 16, 2025. ROA 123. Among other reasons, the court denied defendant's petition because defendant did not explain why the California Arbitration Act, in which section 1283.8 appears, applied. The court noted that defendant had argued in its motion to compel arbitration that the Federal Arbitration Act applies (ROA 27 (at 5:7-6:12)), and the parties had also agreed Ohio law applies. 2/6/23 Order (ROA 80) at 2. Defendant now argues the court should dismiss this case for lack of prosecution pursuant to the Federal Arbitration Act (FAA). Defendant cites several federal cases where federal courts dismissed cases for lack of prosecution when a party did not initiate arbitration as ordered by the court. Defendant argues these cases apply here because the parties' arbitration agreement incorporates the FAA's procedural provisions. As an initial matter, neither party submitted a copy of the parties' arbitration agreement with the motion or opposition papers. The court therefore cannot determine, for example, whether the snippet defendant quotes appears in the arbitration agreement, whether it is complete, whether it is part of another provision, and so on. Moreover, the phrase defendant quotes (i.e., "[i]ssues subject to arbitration will be determined in accordance to and solely with the federal substantive and procedural laws relating to arbitration") appears to state that "issues subject to arbitration," i.e., issues being arbitrated, will be decided by federal substantive and procedural arbitration laws. The court cannot conclude on this record that this snippet encompasses a purely procedural motion, i.e., a motion unrelated to the merits of an "issue[ ] subject to arbitration." Furthermore, defendant's argument appears at odds with the parties' agreement that Ohio law applies. 2/6/23 Order (Judge Peter Wilson, ROA 80) at 2 ("Despite the apparently conflicting provisions in the ALF and General Terms regarding the applicable law, the parties agree that Ohio law applies. ROA 28, Billman Decl., ¶6.1. Therefore, the Court applies Ohio law."). In addition, and in any event, defendant cites no relevant law holding that the court, rather than an arbitrator, should determine whether there has been an unreasonable delay in prosecution that would justify dismissal. *See, e.g.*, *Byerly v. Sale* (1988) 204 Cal.App.3d 1312, 1316 ("an arbitration has a life of its own outside the judicial system, and only the arbitrator should determine whether there has been an unreasonable delay in prosecution which would justify dismissal"). Defendant's motion for an order dismissing this case for failure to prosecute or, in the alternative, for issuance of an order to show cause why the case should not be dismissed is denied. Plaintiff to give notice. <u>ADR Review Hearing</u>

		The court has reviewed defendant's ADR Review hearing statement filed July 2, 2025 (ROA 146). The July 10, 2025 ADR Review hearing is continued to April 16, 2026 at 9:00 a.m. in Department CX105. The parties are ordered to file a joint ADR Review hearing statement at least 5 court days before the hearing. Clerk to give notice.
12	Zaavedra v. Wet Okole Hawaii, Inc. 2022-01246810	Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement The court has reviewed and considered the papers, including the supplemental papers, filed in support of plaintiff's motion for preliminary approval of a $110,000 class action and PAGA settlement. The court has the following questions and comments: As to the settlement: 1. In its March 13, 2025 order (ROA 93), the court asked how and when the parties intend to dispose of the related case (*Zaavedra v. Wet Okole Hawaii, Inc.*, Case No. 2022-01264339). Plaintiff states in the supplemental brief that the parties have amended the settlement agreement to state that "concurrently with seeking final approval of the settlement (including both the class action and PAGA action), a proposed order and judgment granting approval of the PAGA settlement in the PAGA Action will be submitted." Supp. Brief (ROA 96) at 2. Do the parties anticipate two separate approval orders/judgments? The parties have thus far sought approval for one settlement—a settlement that appears intended to resolve both the class action (Case No. 2022-01246810) and the PAGA action (Case No. 2022-01264339). If that is the case, and assuming the court grants final approval of the settlement, only one final approval order/judgment would be entered, and it would be entered in the case in which settlement approval has been sought (Case No. 2022-01246810). The parties should consider whether the PAGA case would be resolved by means of a dismissal of Case No. 2022-01264339 if and when final approval of the settlement is granted in Case No. 2022-01246810. 2. In its March 13, 2025 order (ROA 93), the court stated that the parties should provide the estimated average, high and low amounts for the individual class and PAGA payments. Plaintiff has not provided the estimated high and low amounts for the individual class and PAGA payments; plaintiff claims she cannot do so. This information is routinely provided at preliminary approval, and plaintiff must provide it.

		3. In its March 13, 2025 order (ROA 93), the court stated that plaintiff should provide the named plaintiff's anticipated total amount to be received (including for any individual claims and excluding any enhancement payment). Plaintiff states that she cannot provide her estimated individual class and PAGA amounts; presumably plaintiff has personal knowledge of her weeks and pay periods worked. This information is routinely provided at preliminary approval, and plaintiff must provide it. 4. In its March 13, 2025 order (ROA 93), the court asked when the class and PAGA releases are effective. The parties have added a sentence at the end of section III of the settlement agreement that states: "For avoidance of doubt, the above releases shall not be effective until: (i) the Effective Date has occurred; (ii) Defendant has paid all sums due by Defendant under the Agreement, including the Gross Settlement Sum and employer-side state and federal payroll taxes." Section III should be further amended to include this new provision after a new "4." Otherwise, this sentence appears to apply only to "3.", i.e., the PAGA Released Claims. In addition, the word "and" should be inserted after "occurred;" and before "(ii)." 5. In its March 13, 2025 order (ROA 93), the court stated that the "Settled Claims" provision was overbroad, and that the release of the class members' claims must be fairly tailored to the claims that were or reasonably could have been asserted in the lawsuit based on the facts alleged in the operative complaint. The "Settled Claims" provision remains overbroad. The following phrase should be removed: "any and all wage and hour claims, causes of action, primary rights, or claims for relief arising out of or relating to." 6. In its March 13, 2025 order (ROA 93), the court stated that absent unique circumstances, the court was unlikely to approve attorneys' fees in excess of 30% of the gross settlement amount. The court stated that plaintiff's counsel should address in the supplemental filing whether any such unique circumstances exist here. While the court will not determine the amount of attorneys' fees to be awarded until the final approval hearing, the circumstances described in plaintiff's supplemental brief (ROA 96 at 5:24-6:14) are not unique. 7. Plaintiff's counsel seeks litigation costs not to exceed $22,000. While the court will not determine the amount of litigation costs to be awarded until the final approval hearing, as a preliminary matter, costs for overhead items such as copies, scanning, fax and postage are not recoverable (see Civ. Proc. Code § 1033.5(b)) and

		should not be included. Plaintiff's counsel should submit an itemized detail of the costs incurred to date. As to the notice: 8. The notice should be revised consistent with the above. 9. The court department (CX105) should be updated throughout the notice. 10. The phrase "whether favorable or not" in section 7 on page 8 of the notice should be removed in two places. As to the proposed order (ROA 97): 11. The proposed order should be revised consistent with the above. 12. The court department (CX105) should be updated throughout the document. 13. The settlement agreement, any amendments thereto, and the notice packet (in English and Spanish) should be attached as exhibits to the proposed order. Paragraph 8 of the proposed order should revised accordingly. The hearing on plaintiff's motion for preliminary approval of a class action and PAGA settlement is continued to December 4, 2025 at 2:00 p.m. in Department CX105 to permit the parties to address and respond to the above issues. *See also* Department CX105 Guidelines for Approval of Class Action Settlements and PAGA Settlements (www.occourts.org). A supplemental brief shall be filed at least 9 court days before the hearing and shall address as necessary each of the above points. If required, an amendment to the settlement agreement is directed, rather than "amended settlement agreement," to streamline the court's review. The parties shall also provide redlined copies of any revised documents. Plaintiff is ordered to provide notice, including to the LWDA, and to file a proof of service. Plaintiff must also serve the LWDA with any supplemental brief and any amended settlement documents, and file a proof of service.
13	Zaavedra v. Wet Okole Hawaii, Inc. 2022-01264339	Status Conference in Case No. 2022-01264339 The July 10, 2025 status conference is continued to December 4, 2025 at 2:00 p.m. in Department CX105. The parties need not file a status conference statement in advance of the hearing, unless they desire to do so. Clerk to give notice.