CIVIL COMPLEX CENTER

DEPARTMENT CX103

Judge Lon F. Hurwitz

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

TENTATIVE RULINGS

Date: April 19, 2024

Time: 1:30PM

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

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

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

OTHER INFORMATION ABOUT THIS DEPARTMENT

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

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

SUBMISSION ON THE TENTATIVE

If a tentative ruling is posted and **ALL** counsel intend to submit on the tentative without oral argument, please advise the clerk by emailing the department at **CX103@occourts.org** as soon as possible. When sending emails to the department, make sure to **CC ALL SIDES** as to avoid any sense of ex parte communication. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the

prevailing party shall give Notice of Ruling. If there is no submission or appearance by either party, the court will determine whether the matter is taken off calendar or will become the final ruling.

ORDERS

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

BOOKMARKS

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

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

April 19, 2024

		Tentative
1	**2021-01178012** **Berber vs. Anyone Home, Inc.**	**Final Accounting** On April 4, 2024, counsel filed the administrator's supplemental declaration. (ROA 242.) The administrator attests that of the $800,000.00 GSA, the net settlement amount was $501,464.31, which included $47,099.87 for all applicable payroll taxes. (Admin. Supp. Decl., ¶¶ 3, 9.) On February 29, 2024, settlement award checks totaling $454,364.44 were mailed to the 420 Class Members. The same day, the administrator also disbursed: (1) $266,666.67 to Class Counsel for attorneys' fees; (2) $9,369.02 to Class Counsel for litigation costs; (3) $5,000.00 to Plaintiff for the enhancement award; (4) $10,000.00 for administration costs; (5) $7,500.00 to the LWDA for PAGA penalties; and (6) $36,418.30 to the Internal Revenue Service and $10,681.58 to the Employment Development Department for federal and state payroll taxes. (Id., ¶¶ 4-11.) The administrator attests that the check cashing deadline for the settlement award checks is August 27, 2024. (Admin. Supp. Decl., ¶ 12.) The administrator further attests that on or about September 28, 2024, it will report any unclaimed settlement funds to the State Controller's Office – Unclaimed Property Fund. The administrator will hold the unclaimed funds until such time as it is required to

		transfer them to the State Controller—a process that usually takes approximately 8 to 9 months. (Id., ¶ 13.) **RULING:** The Final Accounting hearing is **CONTINUED** to July 11, 2025, at 1:30 p.m. in Department CX103 so that counsel can submit the supplemental declaration of the settlement administrator regarding the disbursement of the settlement funds. The administrator's supplemental declaration must be filed at least fourteen (14) calendar days before the hearing. 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. The Court instructs counsel to request a continuance of the hearing if the remaining funds are not fully disbursed by the report deadline. The Court does not require any physical or remote appearance at the hearing set for April 19, 2024. If the parties intend to submit on the tentative ruling, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org.
2	**2023-01368352** **Ward vs. Best-VIP Chauffeured Worldwide Corp.**	**Motion to Compel Arbitration (ROA 28)** Moving Party (MP): Defendant Best-VIP Chauffeured Worldwide Corp. Responding Party (RP): Plaintiff William Jacob Ward Service: No issues RELIEF SOUGHT: Defendant seeks an order compelling Plaintiff to arbitrate his individual claims and dismissing his class claims. **FACTS/OVERVIEW**: Plaintiff filed this class action on 12-19-23. The operative Complaint (ROA 2) asserts the following causes of action: 1) Failure to Pay Minimum Wage; 2) Failure to Pay Overtime Compensation; 3) Failure to Provide Lawful Meal Periods; 4) Failure to Provide Lawful Rest Periods; 8) Failure to Pay All Wages Upon Separation; 6) Failure to Provide Accurate Itemized Wage Statements; 7) Failure to Indemnify Employees for Expenditures; and 8) Unfair Business Practices. **ANALYSIS**: The parties' sole dispute is whether or not Plaintiff qualifies for an exemption under the FAA for "transportation" workers, which would mean he can pursue his class claims in court notwithstanding the class action waiver in the arbitration agreement. Circuit City Stores, Inc. v. Adams (2001) 532 U.S. 105, 109;

		Betancourt v. Transportation Brokerage Specialists, Inc. (2021) 62 Cal. App. 5th 552. Plaintiff agrees with Defendant "the core purpose of Best-VIP's business is providing 'ground transportation for businesses, executives, and large groups nationwide.'" Opp. at 4. Specifically, Plaintiff declares that "[i]n my role as a chauffeur at Best-VIP, I would use vehicles such as sedans, sport utility vehicles, limousines, or 35-passenger buses to transport people, belongings, and various goods in the State of California. Ward Decl. ¶ 5. Plaintiff claims he qualifies as a transportation worker for several reasons: A regular part of my job as a chauffeur for Best-VIP included transporting out-of-state and international clients who were materially involved in various businesses that engaged in commerce domestically (including outside of California) and internationally. Ward Decl. ¶ 6. I contributed to the transportation of certain out-of-state goods and services by being directly involved in the flow of such goods. For instance, I recall picking up a client from the Ontario International Airport who had flown in from Arizona on a business trip. This client was in the business of selling and servicing hot tubs/jacuzzies and was traveling with goods that were specific to his trade. I would also frequently transport executives and other businessmen that worked for a mobility manufacturer headquartered in Japan. These businessmen would frequently load various goods into my vehicle that they would use for purposes of selling their products in California and other parts of the nation. I also recall transporting employees of a tire company, also headquartered in Japan, to various roadshows and tire installation centers. These employees would load various goods into my vehicle that they would use for purposes of selling their products in California and other parts of the nation. Ward Decl. ¶ 7. Additionally, Plaintiff argues the agreement itself states both parties are involved in interstate commerce. Noel Decl. Ex. A ¶ 7 ("Any arbitration proceeding under this agreement shall proceed under and be governed by the Federal Arbitration Act ("FAA") because both I and [Best-VIP] are engaged in interstate commerce.") Furthermore, Plaintiff argues several of the factors the court considered in Muller v. Roy Miller Freight Lines, LLC (2019) 34 Cal.App.5th 1056 support finding that he was a transportation worker engaged in commerce. Opp. at 5. Specifically, Plaintiff worked in the transportation industry, was "directly responsible for moving goods within the flow of commerce by transporting the goods of his clients who were engaged in interstate commerce", the vehicles drive were vital to Defendant's business, and strike by similar workers would disrupt commerce. Opp. at 6. Plaintiff thus argues that, because the FAA does not apply, the class waiver is unenforceable under Cal. Lab. Code § 229 and Gentry v. Super. Ct. (2007) 42 Cal.4th 443 (class action waivers that impede an employee's unwaivable statutory rights are invalid if a class action would be a more effective means to vindicate such rights).

		However, Plaintiff has not met his burden to show the exemption applies. Recently, the U.S. Supreme Court found that a Southwest Airlines cargo loader whose job required "her to load and unload baggage, airmail, and commercial cargo on and off airplanes that travel across the country," belonged to a "class of workers engaged in foreign or interstate commerce" that is exempted from the FAA. Southwest Airlines Co. v. Saxon (2022) 142 S. Ct. 1783, 1787. The court stated that a transportation worker "must at least play a direct and 'necessary role in the free flow of goods' across borders," or "[p]ut another way. . . must be actively 'engaged in transportation' of those goods across borders via the channels of foreign or interstate commerce." Id. at 1790. The court concluded that "any class of workers directly involved in transporting goods across state or international borders falls within [9 U.S.C.] § 1's exemption." Id. at 1789. While Plaintiff asserts he transported people and "goods," never once does Plaintiff state that any goods he transported were sold or actually ended up in interstate commerce. For example, the "goods" that Plaintiff vaguely references, even assuming he has proper foundation, were not goods for sale but "goods that were specific to [ ] trade", whatever that means, and goods that would be used "for purposes of selling their products in California and other parts of the nation". Ward Decl. ¶ 7. In other words, any relationship these goods had to interstate commerce was indirect and unnecessary. This is supported by Defendant's HR Manager, who explains that Defendant is in the business of transporting people, not goods, and its fleet of vehicles are passenger vehicles, not cargo or freight vehicles. Supp. Barker Decl. ¶ 7. There is no authority to support that Plaintiff's attenuated (at best) connection to interstate commerce qualifies for FAA exemption. Notably, as recently as April 12, 2024, the United States Supreme Court affirmed the transportation worker exception should be given a narrow construction, limited to workers with a direct and necessary role. Bissonnette v. LePage Bakeries Park St., LLC (2024) 2024 WL 1588708, at *5 ("any exempt worker 'must at least play a direct and 'necessary role in the free flow of goods' across borders"). Here, as Plaintiff has not shown his role was either necessary or direct, the exemption does not apply. Plaintiff's job most closely resembles a taxi, or rideshare driver, which courts have consistently held do not fall within the transportation worker exemption, regardless of any connection to interstate commerce their passenger's may have. See, e.g., In re Grice (9th Cir. 2020) 974 F.3d 950, 958; Osvatics v. Lyft, Inc. (D.D.C. 2021) 535 F. Supp. 3d 1, 21; Capriole v. Uber Techs., Inc. (9th Cir. 2021) 7 F.4th 854, 861. Defendant's Objections (ROA 45) to the Ward Declaration: 1. OVERRULE 2. SUSTAIN (relevance and foundation) 3. SUSTAIN (foundation)

		4. SUSTAIN (relevance and foundation) 5. SUSTAIN (relevance and foundation) 6. SUSTAIN (relevance and foundation) **RULING:** Defendant Best-VIP Chauffeured Worldwide Corp.'s Motion to Compel Arbitration is **GRANTED.** All of plaintiff's individual claims are ordered to arbitration. Plaintiff's class claims are dismissed without prejudice. This action is ordered stayed pending completion of the arbitration. A post-Arbitration Review Hearing is set for February 5, 2025 at 1:30 p.m.. The parties must file a Joint Status Report at least seven days before the hearing and may request a continuance if arbitration is not yet complete. The court concludes there exists a valid agreement to arbitrate the individual claims asserted by plaintiff and that no grounds exist to bar enforcement of the agreement. CCP §1281.2. The class action waiver is enforceable because the agreement is subject to the Federal Arbitration Act. Epic Systems Corp. v. Lewis (2018) 138 S. Ct. 1612, 1616; Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal. 4th 348, 364. When an arbitration agreement does not authorize class arbitration of disputes, case law provides for dismissal without prejudice of the class claims. Epic Systems Corp. v. Lewis (2018) 138 Sup. Ct. 1612; Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp. (2010) 559 U.S. 662, 686; Kinecta Alternative Financial Solutions, Inc. v. Superior Court (2012) 205 Cal. App. 4th 506, 510-11. Both the Federal Arbitration Act and California law provide for a stay of proceedings pending arbitration. 9 U.S.C. §3; CCP §1281.4. Plaintiff contends that he qualifies for an exemption under the FAA for transportation workers, which would mean that he could pursue his class claims in court notwithstanding the class action waiver in the arbitration agreement. Plaintiff provided "ground transportation for businesses, executives, and large groups nationwide." Opp. at 4. There is no evidence Plaintiff traveled outside of California at any time to perform his duties. While Plaintiff asserts he transported people and "goods," never once does Plaintiff state that any goods he transported were sold or actually ended up in interstate commerce. In other words, even assuming the goods carried by a person Plaintiff drove were used by that person to facilitate a sale of goods that tended up in interstate commerce, such a relationship is not sufficiently necessary of direct to qualify for an exemption. See Supp. Barker Decl. ¶ 7 (Defendant is in the business of transporting people, not goods, and its fleet of vehicles are passenger vehicles, not cargo or freight vehicles.) Based on the evidence before the Court, Plaintiff's job most closely resembles a taxi, or rideshare driver, which courts have consistently held do not fall within the transportation worker exemption, regardless of any connection to interstate commerce their passenger's may have. See, e.g., In re Grice (9th Cir. 2020) 974 F.3d 950, 958; Osvatics v. Lyft, Inc. (D.D.C. 2021) 535 F. Supp. 3d 1, 21; Capriole

		v. Uber Techs., Inc. (9th Cir. 2021) 7 F.4th 854, 861. The Court finds this reasoning persuasive. In Southwest Airlines Co. v. Saxon (2022) 142 S. Ct. 1783, 1787, 1790, the U.S. Supreme Court held that the critical question is whether the workers are actively "engaged in transportation" of goods in interstate commerce and play a "direct and necessary role in the free flow of goods across borders", or put another way, workers must be actively engaged in the transportation of those goods across borders via the channels of foreign or interstate commerce. The U.S. Supreme Court has recently affirmed the transportation worker exception should be given a narrow construction, limited to workers with a direct and necessary role. Bissonnette v. LePage Bakeries Park St., LLC (2024) 2024 WL 1588708, at *5 ("any exempt worker 'must at least play a direct and 'necessary role in the free flow of goods' across borders"). As Plaintiff has not shown his role was either necessary or direct, the narrow FAA exemption does not apply. Defendant's objection no. 1 is overruled and objection nos. 2-6 are sustained. Clerk to give notice.
3	**2022-01268477** **Calvillo vs. INTERNATIONALHR SERVICES LLC, a California limited liability company** **(CLASS ACTION)**	**1. Motion to Compel Arbitration (ROA 57)** **2. Status Conference** **1. Motion to Compel Arbitration [Related to #4]** Moving Party: Defendants International HR Services, LLC and Titanium Industries, Inc. Responding Party: Plaintiff Pablo Calvillo, an individual and on behalf of all others similarly situated SERVICE: February 6, 2024, by electronic transmission RELIEF SOUGHT: Defendants move for an order compelling Plaintiff to submit his individual claims to arbitration, striking or dismissing Plaintiff's class allegations, dismissing any non-individual PAGA claims, and staying further proceedings pending completion of the arbitration. UPCOMING EVENTS: None **FACTS/OVERVIEW**: This is a putative wage-and-hour class action. On July 6, 2022, Plaintiff Pablo Calvillo, an individual and on behalf of all others similarly situated ("Plaintiff"), filed a Complaint against Defendants InternationalHR Services, LLC and Titanium Industries, Inc. (collectively, "Defendants"). (ROA 2.) The Complaint alleges nine causes of action as follows:

		1. Failure to Pay Overtime Wages; 2. Failure to Pay Minimum Wages; 3. Failure to Provide Meal Periods; 4. Failure to Provide Rest Periods; 5. Waiting Time Penalties; 6. Wage Statement Violations; 7. Failure to Timely Pay Wages; 8. Failure to Indemnify; and 9. Unfair Competition. On January 10, 2023, Plaintiff filed a separate action, Case No. 2023-01301017, against Defendants alleging a single cause of action for PAGA penalties. On June 14, 2023, the Court took notice that the two cases are related. (ROA 45.) International HR Services, LLC is a recruiting and staffing service that places administrative, clerical, customer service, and light industrial workers in temporary or full-time opportunities with its clients. Titanium Industries, Inc. is an international company that provides specialty metals and titanium for the aerospace, defense, industrial, medical, and oil and gas markets. Plaintiff was hired by InternationalHR to work for Titanium from May 2021 through November 2021 as a non-exempt employee, and his duties included inspecting materials and quality assurance. On February 6, 2024, Defendants filed the current Motion to Compel Arbitration. (ROA 57.) Plaintiff opposes the motion (ROA 65), and Defendants reply (ROA 69).1 **CONTENTIONS AND ANALYSIS**: **Statement of the Law** Under Code of Civil Procedure section 1281.2, a party to an arbitration agreement may move to compel arbitration if another party to the agreement refuses to arbitrate. A party moving to compel arbitration under Section 1281.2 must prove by a preponderance of the evidence that: (1) The parties entered into a written agreement to arbitrate; and (2) one or more of the claims at issue are covered by that agreement. (Code Civ. Proc., § 1281.2; Villacreses v. Molinari (2005) 132 Cal.App.4th 1223, 1230.) If the moving party meets this burden, the burden shifts to the resisting party to prove by a preponderance of evidence a defense to enforcement of the agreement. (Id., at p. 1230.) California law favors the enforcement of valid arbitration agreements. (Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street (1983) 35 Cal.3d

		312, 320; In re Tobacco I (2004) 124 Cal.App.4th 1095, 1103.) Any doubts to arbitration will be resolved against the party asserting a defense to arbitration, whether the issue is construction of contract language, waiver, delay or any other defense to arbitrability. (Erickson, supra, 35 Cal.3d at p. 320; In re Tobacco I, supra, 124 Cal.App.4th at p. 1103.) **Request for Judicial Notice (ROA 67)** Plaintiff asks this Court to take judicial notice of the Commercial Arbitration Rules of the American Arbitration Association. The request is brought pursuant to Evidence Code section 452, subdivision (h). Judicial notice is granted. **Merits** **Is There an Agreement to Arbitrate?** In resolving petitions to compel arbitration, courts must first determine whether the agreement exists—i.e., whether the parties actually entered into a valid contract agreeing to arbitrate certain disputes—and whether it is enforceable. (Pinnacle Museum Tower Ass'n v. Pinnacle Market Develop. (US), LLC (2012) 55 Cal.4th 223, 236.) The moving party has the initial burden to prove the existence of an agreement to arbitrate by either reciting verbatim or providing a copy of the agreement. (CRC 3.1330; Condee v. Longwood Mgmt. Corp. (2001) 88 Cal.App.4th 215, 219.) If the moving party meets its initial burden and the opposing party disputes the existence of the agreement, then "the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement." (Gamboa v. Northeast Community Clinic (2021) 72 Cal.App.5th 158, 165.) The opposing party may do this by declaring under penalty of perjury that the party never saw or does not remember seeing the agreement, or that the party never signed or does not remember signing the agreement. (Ibid.; see also, Bannister v. Marinidence Opco, LLC (2021) 64 Cal.App.5th 541, 546; Espejo v. Southern California Permanente Medical Group (2016) 246 Cal.App.4th 1047, 1054.) If the opposing party meets its burden, then the burden shifts back to the moving party to establish with admissible evidence the existence of a valid arbitration agreement. "The burden of proving the agreement by a preponderance of the evidence remains with the moving party." (Gamboa, supra, 72 Cal.App.5th at pp. 165-166.) Here, Defendants contend that prior to commencing his employment, Plaintiff agreed to submit any claims arising out of his employment to binding arbitration under InternationalHR's "Arbitration Agreement with Dispute Resolution" ("Arbitration Agreement"). (ROA 55, Declaration of Sandra Mora ("Mora Decl."), ¶¶ 4, 5, 8; Exh. A.) In addition, Defendants contend that Plaintiff impliedly agreed to arbitrate his claims through his acceptance of the job and his continued employment after being placed on notice of the Agreement. As argued by Defendants, not only did Plaintiff agree to arbitrate his claims against InternationalHR, but he also agreed to arbitrate any claims against InternationalHR's "vendors and worksite client company"—i.e., Defendant Titanium.

		Defendants contend that during Plaintiff's onboarding and employment with InternationalHR, he was provided with physical copies of all onboarding documents, including the Arbitration Agreement, and he signed the documents on April 29, 2021. (ROA 55, Declaration of Sandra Mora ("Mora Decl."), ¶¶ 5, 8, 9.) Sandra Mora, InternationalHR's regional manager, attests that she was present when the documents were given to Plaintiff and when he returned the signed documents. (Id., ¶ 5.) Ms. Mora also attests that InternationalHR entered into an employment services agreement with Titanium on or about April 5, 2021, and that Plaintiff was assigned to work at Titanium in April 2021 after he was hired by InternationalHR. (Id., ¶ 6.) Notably, Plaintiff has not provided a declaration disputing that he signed the onboarding documents, including the Arbitration Agreement. Nevertheless, Defendants have not met their burden of demonstrating that there is a valid, enforceable agreement to arbitrate. The existence of an agreement to arbitrate is determined under the standard rules of contract interpretation. (Badie v. Bank of America (1998) 67 Cal.App.4th 779, 787.) As a general rule, a contract is not enforceable unless it is sufficiently definite so a court can ascertain the parties' respective obligations and determine whether those obligations have been performed or breached. (Bustamante v. Intuit, Inc. (2006) 141 Cal.App.4th 199, 209.) If a contract is so indefinite and uncertain that the parties' intent cannot be ascertained, the contract is unenforceable. (Cheema v. L.S. Trucking, Inc. (2019) 39 Cal.App.5th 1142, 1149.) Generally, in accordance with contract interpretation rules, ambiguities are resolved against the drafter of the agreement. (Civ. C., § 1654.) An ambiguity exists when a contractual provision is capable of two or more constructions, any of which are reasonable. (Saheli v. White Mem. Med. Ctr. (2018) 21 Cal.App.5th 308, 317.) However, the Federal Arbitration Act ("FAA") preempts the state law "contra proferentem" principle. Therefore, for contracts governed by the FAA, any ambiguities above an arbitration agreement's scope must be resolved in favor of arbitration. (Western Bagel Co., Inc. v. Sup. Ct. (2021) 66 Cal.App.5th 649, 654-655.) Here, the issue is that the Arbitration Agreement is internally inconsistent. The first paragraph of the document, in bold font, states in relevant part: [A]ll matters related to the employment with this company InternationalHR, its vendors and worksite client company shall be subject to arbitration. And that arbitration has been mutually agreed upon as the sole and exclusive remedy to all matters pertaining to this employment relationship ….(Exh. A to Mora Decl. [emphasis added].) However, in the following paragraphs set forth under the "Dispute Resolution" banner, the Arbitration Agreement contains a multi-step resolution process that provides for a mandatory negotiation phase and a mandatory mediation phase before claims are submitted to arbitration. (Ibid.) Specifically, the Arbitration Agreement provides in relevant part: Neither the company nor the employee shall institute a proceeding in any court or administrative agency to resolve a dispute between the parties before that party

		has sought to resolve the dispute through direct negotiation with the other party. Either party … shall submit its grievance or issue(s), which are in dispute … to the Human Resources Department. If the dispute is not resolved …after submission to the Human Resources Department, the parties shall attempt to resolve the dispute through mediation. … [¶]If the mediator is unable to facilitate a Settlement of the dispute … the mediator shall issue a written statement to that effect and any unresolved dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration ….(Ibid.) The uncertainty of the terms of the Arbitration Agreement is problematic. Absent disregarding one or the other portion of the Arbitration Agreement, the Court cannot find a consistent and sensible way to synthesize and interpret these competing provisions. "Arbitration" is defined as a formal adjudicatory process wherein a neutral third party, i.e., the arbitrator, renders a binding decision after a hearing at which both parties have an opportunity to be heard. (Sy First Family Ltd. Partnership v. Cheung (1999) 70 Cal.App.4th 1334, 1341-1342.) However, the Arbitration Agreement also contemplates mediation before arbitration. "Mediation" is defined as a non-adjudicatory, non-binding process wherein a neutral person facilitates communication between the parties to assist them in reaching a mutually acceptable agreement. (Jeld-Wen, Inc. v. Sup. Ct. (Marlborough Develop. Corp.) (2007) 146 Cal.App.4th 536, 540.) It usually is the next step beyond direct negotiations between the parties, but occurs before and as an alternative to formal dispute resolution proceedings or court proceedings. (See, e.g., Wimsatt v. Sup. Ct. (Kausch) (2007) 152 Cal.App.4th 137, 150.) Although some alternative dispute resolution agreements may require the parties to mediate before commencing other dispute resolution procedures, mediation is entirely voluntary. (Jeld-Wen, supra, 146 Cal.App.4th at p. 540.) Here, unless the Court completely ignores the portion of the Arbitration Agreement requiring that the parties negotiate and mediate the dispute before proceeding to arbitration, then that provision directly conflicts with the Arbitration Agreement's requirement for the parties to proceed directly to arbitration "as the sole and exclusive remedy to all matter pertaining to [the] employment relationship." As a result, it is not clear whether the parties must follow the apparent mandate to submit claims directly to arbitration or follow the mandate to first submit claims to the negotiation/mediation process. On a side note, the Court also has noticed that InternationalHR did not sign the Arbitration Agreement until more than three months after it was purportedly signed by Plaintiff. (See, Exh. A to Mora Decl.) Although a writing memorializing an arbitration agreement need not be signed by both parties in order to be upheld as a binding arbitration agreement, the existence of an agreement to arbitrate can be based on " 'conduct from which one could imply either ratification or implied acceptance of such a provision.' [Citations.]" (Serafin v. Balco Properties Ltd., LLC (2015) 235 Cal.App.4th 165, 176.) In this instance, although this issue is not dispositive, it is noted that InternationalHR has not provided an explanation for the delay in its execution of the Arbitration Agreement. **Enforceability and Arbitrability**

		To the extent it is determined that the "arbitration only" provision of the Arbitration Agreement controls, Defendants contend that the FAA governs because the agreement involves interstate commerce. The issue of FAA applicability is important because when the FAA does apply, it preempts any state law rule that "stands as an obstacle to the accomplishment of the FAA." (Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal.4th 348, 384, abrogated in part by Viking River, supra, 142 S.Ct. at pp. 1922-1924.) The requirement that the FAA applies to any contract "evidencing a transaction involving commerce" means the transaction must, in fact, involve interstate commerce. (Shepard v. Edward MacKay Enterprises, Inc. (2007) 148 Cal.App.4th 1092, 1097; 9 U.S.C. § 2.) " '[T]he phrase " 'involving commerce'" in the FAA is the functional equivalent of the term " 'affecting commerce,'" which is a term of art that ordinarily signals the broadest permissible exercise of Congress's commerce clause power.' [Citations.] Accordingly, 'although Congress's power to regulate commerce is broad, it does have limits …. [A relatively trivial impact on interstate commerce cannot be used as an excuse for broad regulation of state or private activities. [Citation.]" (Carbajal v. CWPSC, Inc. (2016) 245 Cal.App.4th 227, 238.) The party asserting FAA preemption bears the burden of presenting sufficient evidence that the contract with the arbitration provision is a "contract evidencing a transaction involving commerce." Failure to do so renders the FAA inapplicable. (Ibid.) Here, although the Arbitration Agreement does not directly state that it is governed by the FAA, Defendants have proffered sufficient evidence that it involves interstate commerce. Ms. Mora attests that InternationalHR is a staffing company that provides services throughout the United States. (Mora Decl., ¶ 17.) She also attests that Titanium is one of InternationalHR's largest interstate clients, and it conducts business nationally and internationally. (Id., ¶ 19.) This is sufficient to establish that the Arbitration Agreement had a bearing on interstate commerce, and thus is governed by the FAA. Next, Defendants contend the Arbitration Agreement is enforceable as to Plaintiff's claims against both InternationalHR and Titanium. Defendants note that Plaintiff has alleged InternationalHR and Titanium were his joint employers, and that they were agents and alter egos of each other. In that regard, Defendants argue that Titanium, as a nonsignatory worksite operator, can enforce the Arbitration Agreement between its staffing agency, i.e., InternationalHR, and any staffing agency employees working at Titanium. Plaintiff does not address this issue. On this limited issue, Defendants are correct. In Garcia v. Pexco, LLC (2017) 11 Cal.App.5th 782, the appellate court discusses the "agency exception" to the general rule that only parties to an arbitration agreement may enforce it. "The exception applies, and a defendant may enforce the arbitration agreement, 'when a plaintiff alleges a defendant acted as an agent of a party to an arbitration agreement ….' [Citation.]" (Garcia, supra, 11 Cal.App.5th at p. 788.) Here, the operative complaint alleges that Defendants were Plaintiff's joint employers, and that they were the "agent, principal, employee, employer, representative, joint venture [sic] or co-conspirator" of each other. (Compl., ¶¶ 6-8.) Moreover, the Complaint alleges Labor Code violations against InternationalHR and Titanium as joint employers, refers to them collectively as "Defendants" without any

		distinction, and alleges all of the causes of action against both. Under the holding in Garcia, this is sufficient to support the agency exception as to Titanium. (See, Garcia, supra, at p. 788.) Regarding the scope of the Arbitration Agreement, Defendants contend that it encompasses Plaintiff's claims. Plaintiff, on the other hand, contends that the Arbitration Agreement does not cover his Labor Code claims. As argued by Plaintiff, the Agreement on its face does not contain any mention of the Labor Code or that any statutory claims must be submitted to arbitration. Plaintiff also argues that the Arbitration Agreement's repeated reference to "disputes" indicates it is intended to apply to contractual or informal workplace disputes—not statutory claims of any type. In addition, Plaintiff contends the Arbitration Agreement accords the arbitrator certain remedial powers that are not contemplated in similar court proceedings. Plaintiff's arguments are unavailing. As noted above, the Arbitration Agreement states that "all matters related to the employment … shall be subject to arbitration." (Exh. A to Mora Decl.) Generally, the phrase "related to" has been broadly construed by the courts. (See, e.g., Vaughn v. Tesla, Inc. (2023) 87 Cal.App.5th 208, 220; Khalatian v. Prime Time Shuttle, Inc. (2015) 237 Cal.App.4th 651, 659-660.) This type of broad form clause is "consistently interpreted as applying to extracontractual disputes between the contracting parties." (Khalatian, supra, at p. 660.) "It is well established … that when courts say that an arbitration agreement including 'relating to' is broad, it typically is because it expands the reach of the agreement to encompass claims rooted in the employment relationship, even if the claims do not actually arise from the employment contract itself." (Vaughn, supra, at p. 220.) For example, Khalatian held that Labor Code claims were encompassed by the arbitration agreement in that case. (Khalatian, supra, at p. 660.) Similarly, the court in Ramos v. Superior Court (2018) 28 Cal.App.5th 1042, 1053, held that statutory employment claims were within the scope of an arbitration agreement because the underlying contract was relevant to the claims in several respects. Here, the Arbitration Agreement is generally silent as to the specific types of claims that must be arbitrated. It only states that the arbitration policy "is inclusive of any joint legal or administrative actions inclusive of but not limited to all Class Action Lawsuits." (See, Exh. A to Mora Decl.) Nevertheless, the use of the phrase "related to" indicates that statutory claims, including Labor Code claims, fall within the scope of the Agreement. **Unconscionability** Plaintiff contends the Arbitration Agreement is unenforceable because it is permeated with both procedural and substantive unconscionability. Regarding the defense of unconscionability, it is first noted that unconscionability has both a "procedural" and a "substantive" element. (Armendariz v. Found. Health Psychcare Servs., Inc. (2000) 24 Cal. 4th 83, 114.) "The prevailing view is that [procedural and substantive unconscionability] must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability." (Id. at pp. 113-114) "But they need not be present in the same degree." (Ibid.) "Essentially a sliding scale is invoked which disregards

		the regularity of the procedural process of the contract formation, that creates the terms, in proportion to the greater harshness or unreasonableness of the substantive terms themselves." (Ibid.) Procedural unconscionability focuses on 'oppression' or 'surprise' due to unequal bargaining power, the latter on 'overly harsh' or 'one-sided' results." An analysis of procedural unconscionability "begins with an inquiry into whether the contract is one of adhesion." (Armendariz, supra, 24 Cal.4th at p. 113.) An agreement imposed on an employee as a condition of employment, with no opportunity to negotiate, is typically an "adhesive" contract which may be procedurally unconscionable. (Navas v. Fresh Venture Foods, LLC (2022) 85 Cal.App.5th 626, 633, citing to Armendariz, supra, 24 Cal.4th at p. 115.) "The pertinent question … is whether circumstances of the contract's formation create such oppression or surprise that closer scrutiny of its overall fairness is required." (OTO, L.L.C. v. Kho (2019) 8 Cal.5th 111, 126.) "Oppression occurs where a contract involves lack of negotiation and meaningful choice, surprise where the allegedly unconscionable provision is hidden within a prolix printed form." (OTO, L.L.C. v. Kho (2019) 8 Cal. 5th 111, 126.) "The circumstances relevant to establishing oppression include, but are not limited to (1) the amount of time the party is given to consider the proposed contract; (2) the amount and type of pressure exerted on the party to sign the proposed contract; (3) the length of the proposed contract and the length and complexity of the challenged provision; (4) the education and experience of the party; and (5) whether the party's review of the proposed contract was aided by an attorney." (Id. at 126-127.) "With respect to preemployment arbitration contracts, ... 'the economic pressure exerted by employers on all but the most sought-after employees may be particularly acute, for the arbitration agreement stands between the employee and necessary employment, and few employees are in a position to refuse a job because of an arbitration requirement.'" (OTO, supra, 8 Cal.5th at 127.) "This economic pressure can also be substantial when employees are required to accept an arbitration agreement in order to keep their job." (Id. [significant oppression when "[t]he agreement was presented to Kho in his workspace, along with other employment-related documents," "[n]either its contents nor its significance was explained," and "Kho was required to sign the agreement to keep the job he had held for three years"].) Further, arbitration provisions that are lengthy and full of legal jargon contribute the surprise element. (Id. at 128 ["The single dense paragraph covering arbitration requires 51 lines," the text is "visually impenetrable" and "challenge[s] the limits of legibility."].) Here, Plaintiff contends the Arbitration Agreement is procedurally unconscionable because it is a contract of adhesion. According to Plaintiff, it is undisputed that Defendants required employees to sign the Arbitration Agreement as a condition of employment. In addition, Plaintiff contends there is no evidence that Defendants provided him or other new hires with the opportunity to negotiate the terms of the Arbitration Agreement. Plaintiff also contends there is a strong showing of surprise because of the incorporation of the fee-sharing provisions of the American Arbitration Association ("AAA") Commercial Arbitration Rules—an allegedly unconscionable provision that was hidden from an employee's review of the Arbitration Agreement. Plaintiff notes that although the Arbitration Agreement

		states that an employee will be required to arbitrate disputes "in accordance with the Commercial Arbitration Rules" of the AAA, it cannot be determined from the face of the Agreement what those rules require. Moreover, Plaintiff contends that courts have held the use of the AAA's Commercial Arbitration Rules may be considered substantively unconscionable where an employee may be required to pay arbitration fees they otherwise would not have had to pay. Plaintiff's argument regarding the requirement to sign the Arbitration Agreement is not well taken. On the face of the Arbitration Agreement, it allows an employee to refuse consent. (See, Exh. A to Mora Decl.) Indeed, the document contains two signature blocks—one where an employee can "agree to consent to this arbitration policy/agreement", and one where an employee can "refuse to consent to this arbitration policy/agreement." Therefore, although the Arbitration Agreement was presented as one of several onboarding documents, Plaintiff ostensibly had the option to refuse to consent. However, as discussed above, due to the internal inconsistency in the Arbitration Agreement between the "arbitration only" provision and the multi-phase negotiation and mediation provision, it is not clear as to what policy an employee is providing his or her consent. Indeed, in addition to the procedurally unconscionability related to the internal dissonance between these two competing provisions, procedurally unconscionability could also be found because of the "surprise" arising from the potentially substantive unconscionability of the negotiation "requirement". Substantive unconscionability relates to the fairness of a contract's terms and determines whether they are "overly harsh." (OTO, supra, 8 Cal.5th at p. 129.) "Unconscionable terms ' "impair the integrity of the bargaining process or otherwise contravene the public interest or public policy"' or attempt to impermissibly alter fundamental legal duties. [Citation.]" (Ibid.) Under Armendariz, arbitration agreements must provide for: (1) a neutral arbitrator; (2) more than minimal discovery; (3) a written award; (4) all the types of relief that would otherwise be available in court; and (5) the requirement that the employer pays the arbitrator's fees or expenses. (Armendariz, supra, 24 Cal.4th at p. 102.) Relevant here, some courts have found that the requirement that an employee pursue a multi-step negotiation and mediation process before submitting a claim to arbitration is substantively unconscionable. (See, e.g., Nyulassy v. Lockheed Martin Corp. (2004) 120 Cal.App.4th 1267, 1282-1283 [appellate court found employment arbitration agreement substantively unconscionable where employees required to submit to discussions with their supervisors as a condition precedent to submitting dispute to binding arbitration].) It is also found that the Arbitration Agreement is substantively unconscionable because of two other factors. As noted by Plaintiff, the Arbitration Agreement provides that an employee must submit his or her dispute to the negotiation process "within two weeks of the alleged occurrence or incident." It also provides that arbitration proceedings will be conducted in accordance with the AAA's Commercial Arbitration Rules, and the arbitrator shall have the authority to order the reimbursement of costs and expenses, including reasonable attorneys' fees, incurred to enforce the Agreement. (See, Exh. A to Mora Decl.)

		Regarding the first factor, the two-week limitations period is considerably shorter than the applicable limitations period for bringing Labor Code claims, thus rendering the Arbitration Agreement substantively unconscionable. Generally, although parties to an arbitration agreement may agree to shorten the applicable limitations period for bringing an action, courts have held that the shortened limitations period must be reasonable. (Baxter v. Genworth North America Corp. (2017) 16 Cal.App.5th 713, 731.) " 'A contractual period of limitation is reasonable if the plaintiff has a sufficient opportunity to investigate and file an action, the time is not so short as to work a practical abrogation of the right of action, and the action is not barred before the loss or damage can be ascertained.'" (Ibid.) In this instance, it is patently unreasonable to give employees only two weeks to assert statutory claims such as those alleged by Plaintiff in the instant litigation. Regarding the second factor, the possibility that an employee may be required to bear certain expenses of arbitration under the Commercial Arbitration Rules is substantively unconscionable because it serves as a deterrent to the bringing of employment-related claims against Defendants. Courts have found that such a fee-shifting provision is contrary to California law in wage disputes because it could be disproportionately burdensome to the plaintiff employee and create an advantage for the defendant employer. (Armendariz, supra, 24 Cal.4th at pp. 110-111.) Moreover, as noted by Plaintiff, the fact that this requirement is buried within the Commercial Arbitration Rules that are only incorporated by reference, and not attached to, the Arbitration Agreement introduces an element of procedural unconscionability. (See, e.g., Ali v. Daylight Transp., LLC (2020) 59 Cal.App.5th 462, 476-477; Baltazar v. Forever 21, Inc. (2016) 62 Cal.4th 1237, 1246.) Based on the above, it is determined that the Arbitration Agreement has elements of both procedural and substantive unconscionability such that it is rendered unenforceable. Although Defendants contend the Court may sever any unconscionable provisions, the Arbitration Agreement does not contain any such severability clause. Moreover, the broad nature of the procedural and substantive unconscionability precludes such a remedy. Indeed, the Arbitration Agreement is so "permeated" with procedural and substantive unconscionability that it cannot be saved. (Armendariz, supra, 24 Cal.4th at pp. 122-125.) Lastly, as discussed above, there are questions as to the actual existence of an agreement to arbitrate between the parties because of the internal inconsistencies in the document. As a result, Defendants' motion to compel arbitration is denied. **RULING:** The Motion to Compel Arbitration brought by Defendants International HR Services, LLC and Titanium Industries, Inc. is **DENIED** on the ground the Arbitration Agreement is procedurally and substantively unconscionable. It is ordered that Plaintiff Pablo Calvillo's individual and class claims be adjudicated in this civil action. Clerk to give notice of this Court's ruling.

		If the parties intend to submit on the tentative ruling, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org. Status Conference is continued to 9/11/24.
4	**2023-01301017** **Calvillo vs. International HR Services LLC** **(PAGA)**	**1. Motion to Compel Arbitration (ROA 28)** **2. Status Conference** **1. Motion to Compel Arbitration [Related to #3]** Moving Party: Defendants InternationalHR Services, LLC and Titanium Industries, Inc. Responding Party: Plaintiff Pablo Calvillo, an individual and on behalf of all others similarly situated SERVICE: February 6, 2024, by electronic transmission RELIEF SOUGHT: Defendants move for an order compelling Plaintiff to submit his individual claims to arbitration, striking or dismissing Plaintiff's class allegations, dismissing any non-individual PAGA claims, and staying further proceedings pending completion of the arbitration. UPCOMING EVENTS: None **FACTS/OVERVIEW**: This is a PAGA-only action based on various alleged wage-and-hour violations. On January 10, 2023, Plaintiff Pablo Calvillo, as an aggrieved employee and on behalf of all other aggrieved employees ("Plaintiff"), filed a Complaint against Defendants InternationalHR Services, LLC and Titanium Industries, Inc. (collectively, "Defendants"). (ROA 2.) The Complaint alleges a single cause of action for PAGA penalties. Previously, on July 6, 2022, Plaintiff filed a Class Action Complaint, Case No. 2022-01268477, against Defendants alleging the following causes of action: 1. Failure to Pay Overtime Wages; 2. Failure to Pay Minimum Wages; 3. Failure to Provide Meal Periods; 4. Failure to Provide Rest Periods; 5. Waiting Time Penalties; 6. Wage Statement Violations;

		7. Failure to Timely Pay Wages; 8. Failure to Indemnify; and 9. Unfair Competition. On June 14, 2023, the Court took notice that the two cases are related. (ROA 45.) International HR Services, LLC is a recruiting and staffing service that places administrative, clerical, customer service, and light industrial workers in temporary or full-time opportunities with its clients. Titanium Industries, Inc. is an international company that provides specialty metals and titanium for the aerospace, defense, industrial, medical, and oil and gas markets. Plaintiff was hired by International HR to work for Titanium from May 2021 through November 2021 as a non-exempt employee, and his duties included inspecting materials and quality assurance. On February 7, 2024, Defendants filed the current Motion to Compel Arbitration. (ROA 28.) Plaintiff opposes the motion (ROA 34), and Defendants reply (ROA 38).1 **CONTENTIONS AND ANALYSIS:** **Statement of the Law** Under Code of Civil Procedure section 1281.2, a party to an arbitration agreement may move to compel arbitration if another party to the agreement refuses to arbitrate. A party moving to compel arbitration under Section 1281.2 must prove by a preponderance of the evidence that: (1) The parties entered into a written agreement to arbitrate; and (2) one or more of the claims at issue are covered by that agreement. (Code Civ. Proc., § 1281.2; Villacreses v. Molinari (2005) 132 Cal.App.4th 1223, 1230.) If the moving party meets this burden, the burden shifts to the resisting party to prove by a preponderance of evidence a defense to enforcement of the agreement. (Id., at p. 1230.) California law favors the enforcement of valid arbitration agreements. (Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street (1983) 35 Cal.3d 312, 320; In re Tobacco I (2004) 124 Cal.App.4th 1095, 1103.) Any doubts to arbitration will be resolved against the party asserting a defense to arbitration, whether the issue is construction of contract language, waiver, delay or any other defense to arbitrability. (Erickson, supra, 35 Cal.3d at p. 320; In re Tobacco I, supra, 124 Cal.App.4th at p. 1103.) **Request for Judicial Notice (ROA 67)** Plaintiff asks this Court to take judicial notice of the Commercial Arbitration Rules of the American Arbitration Association. The request is brought pursuant to Evidence Code section 452, subdivision (h). Judicial notice is granted. **Merits**

		As noted above, Defendants have filed an identical Motion to Compel Arbitration in the related Class Action Case, Case No. 2022-01268477. Since the motions are identical and relate to the same underlying dispute, the analysis in the Class Action Case also applies to the instant case. Accordingly, the motion is denied for the same reasons stated in this Court's ruling on Defendants' motion in the Class Action Case. **RULING:** The Motion to Compel Arbitration brought by Defendants InternationalHR Services, LLC and Titanium Industries, Inc. is **DENIED** on the ground the Arbitration Agreement is procedurally and substantively unconscionable. It is ordered that Plaintiff Pablo Calvillo's individual and representative PAGA claims be adjudicated in this civil action. Defendants shall give notice of this Court's ruling. If the parties intend to submit on the tentative ruling, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org. Status Conference is continued to 9/11/24.
5	**2023-01310267** **Hernandez vs. Northwest Hotel Corporation**	**1. Motion for Preliminary Approval of Class Action Settlement (ROA 30)** **2. Case Management Conference** **Motion for Preliminary Approval of Class Action and PAGA Settlement** Moving Party: Plaintiff Ene C. Hernandez, individually and on behalf of other persons similarly situated and similarly aggrieved employees. Responding Party: None (unopposed) SERVICE: December 29, 2023, by e-mail RELIEF SOUGHT: Plaintiff seeks preliminary approval of the proposed class action and PAGA settlement. UPCOMING EVENTS: None FACTS/OVERVIEW: This is a putative wage-and-hour class action and PAGA matter. On March 3, 2023, Plaintiff Ene C. Hernandez, individually and on behalf of other persons similarly situated ("Plaintiff"), filed a Complaint against Defendant Northwest Hotel Corporation ("Defendant"). (ROA 2.) The Complaint alleged the following eight causes of action: 1. Failure to Provide Meal Periods;

		2. Failure to Provide Paid Rest Periods; 3. Failure to Pay Wages; 4. Failure to Timely Pay Wages at Termination; 5. Failure to Timely Pay Vacation Wages at Termination; 6. Failure to Provide Accurate Wage Statements; 7. Failure to Reimburse Business Expenses; and 8. Violation of Unfair Business Practices Act On May 8, 2023, as a matter of right, Plaintiff filed the operative First Amended Complaint ("FAC") adding a cause of action for PAGA penalties. (ROA 12.) Defendant is engaged in the business of hotel ownership and operation. Plaintiff worked as a non-exempt employee at the Howard Johnson Hotel in Anaheim from 1996 to August 2022. (FAC, ¶ 3.) On December 29, 2023, Plaintiff filed the current Motion for Preliminary Approval of Class Action and PAGA settlement. (ROA 30.) Neither party has sought to compel arbitration, and there are no outstanding discovery orders in place. This is the first hearing on this matter. **SUMMARY OF THE SETTLEMENT:** A copy of the fully executed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement") is attached as Exhibit 1 to the Declaration of Haik Hacopian ("Hacopian Decl."). (ROA 31.) Class/Aggrieved Employee Definition: All current and former hourly-paid and/or non-exempt employees of NWH in California, including those at Howard Johnson Hotel and Water Playground, Courtyard Anaheim Theme Park Entrance, Courtyard by Marriot Fisherman's Wharf, and its corporate staff, employed during the Class Period/PAGA Period. (Settlement, ¶¶ 1.4, 1.5.) Class Period: March 3, 2019, through preliminary approval or February 5, 2024, whichever is sooner. (Id., ¶ 1.12.) PAGA Period: March 3, 2022, through preliminary approval, or February 5, 2024, whichever is sooner. (Id., ¶ 1.31.) Approx. Class Size: 440 Class Members, and 296 Aggrieved Employees. (Hacopian Decl., ¶ 9.) Gross Settlement Amount ("GSA"): $400,000.00 Defendant to separately pay all employer payroll taxes owed. (Settlement, ¶¶ 3.1-3.2.)

		$ 140,000.00 Attorneys' fees (35% GSA) $ 15,000.00 Litigation costs (NTE) $ 10,000.00 Administration costs (NTE) $ 7,500.00 Enhancement award $ 30,000.00 PAGA penalties (75% LWDA, 25% Aggrieved Employees) $ 200,000.00 Net Settlement Amount Escalator Clause: Defendant estimates 29,507 total workweeks through October 5, 2023. If actual number of workweeks exceeds estimate by more than 10%, Defendant has option to either: (1) have Released Claims be released only for 29,507 workweeks, or (2) increase the GSA pro rata to equal percentage increase in workweeks. (Id., ¶¶ 4.1, 8.) ISSUE: Estimated workweeks is not based on end of Class Period or PAGA Period. This discrepancy could result in a greater than 10% increase in the total number of actual workweeks, and thus lead to the triggering of the Escalator Clause. Giving Defendant option to limit release of claims to period through October 5, 2023, effectively gives Defendant option to unilaterally shorten the Class/PAGA Period, which calls into question the fairness of the settlement. Payments to Class: How Calculated? Pro rata based on number of workweeks for both class and PAGA payments. (Id., ¶¶ 3.2.4, 3.2.5.1.) Reversion? No Claims Made? No Taxation? For class payments, 33% allocated to settlement of wage claims, 67% allocated to interest and penalties. (Id., ¶ 3.2.4.1.) Aggrieved employees assume responsibility for any taxes owed on PAGA payment. (Id., ¶ 3.2.5.1.) Uncashed Checks: uncashed after 180 days will be remitted to cy pres recipient, Second Harvest Food Bank of Orange County, a 501(c)(3) nonprofit organization. (Id., ¶¶ 4.4.1, 4.4.3.) Counsel does not have any interest or involvement with cy pres. (Hacopian Decl., ¶ 39.) Average Pymt. Average class payment, $438.88. (Hacopian Decl., ¶ 13.) ISSUE: Counsel must provide estimated high and low class settlement payment, as well as estimated average, high, and low PAGA payments. **CERTIFICATION OF CLASS:**

		The party seeking class certification must establish three things: "(1) the existence of an ascertainable and sufficiently numerous class, (2) a well-defined community of interest, and (3) substantial benefits from certification that render proceeding as a class superior to the alternatives." (Brinker Restaurant Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1021.) It appears that these elements are met, and the proposed class can be conditionally certified for settlement purposes. The parties agree to conditional certification of the class for settlement purposes. The class appears to be ascertainable, sufficiently numerous, and well-defined. **SETTLEMENT ISSUES:** 1. Released Class Claims: All claims set forth in Complaint, any claims predicated on same or similar facts alleged, any claims that could have been pled which arise from same or similar facts, and claims for interest and penalties. Includes claims under Labor Code and applicable IWC Wage Orders. (Settlement, ¶ 5.2.1.) ISSUE: Release should not include claims under Labor Code sections 225.5 and 226.3 since these are not included in the operative Complaint or the LWDA letter. 2. Aggrieved Employees PAGA Release: Claims for PAGA penalties which could have been asserted on same or similar facts alleged in the Complaint and/or any PAGA letter sent to the LWDA by Plaintiff. (Id., ¶ 5.3.) 3. Plaintiff's General Release: Any causes of action, "of whatever kind or character, whether known or unknown, which Plaintiff ever had, now has, has asserted or may hereafter assert or claim to have against the Released Parties arising out of or relating in any way to any acts, circumstances, facts, transactions, or omissions based on facts occurring up to and including" the date the Settlement is executed. Includes claims under ADA, Title VII, FLSA, Civil Rights Act of 1991, 42 U.S.C. § 1981, Equal Pay Act, ERISA, FMLA, FEHA, and all other federal and state statutes, and any claims based on theories of wrongful or constructive discharge, breach of contract, fraud, misrepresentation, promissory estoppel, IIED, NIED, except for claims that cannot be released by law. Does not extend to claims for vested benefits. Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. Does not prevent disclosure of facts related to any acts of sexual assault, sexual harassment, retaliation, workplace harassment or discrimination, or failure to prevent. ISSUE: Plaintiff's General Release should not include release of claims wholly unrelated to claims asserted in operative Complaint and LWDA letter. 4. Valuation of Claims: The parties conducted an investigation of the operative facts through informal discovery. No class data was sampled. Plaintiff received complete pay and time data for the class through mediation, and data was analyzed with assistance of expert prior to mediation. Parties participated in mediation on October 5, 2023, and reached a resolution. (Hacopian Decl., ¶¶ 10, 11.)

		Unpaid Wage Claims: Maximum exposure, $364,915.00. Discounted 80% for certification risks. Adjusted liability, $72,983.00. Maximum exposure for rounding loss and overtime miscalculations, $11,081.00. Not discounted. Meal Period Claims: Maximum exposure, $864,458.00, if violation assumed for all recorded meal breaks (51,698 [offset by 7,593 in premiums paid] x $19.60 average pay). If exposure does not include meal breaks of exactly 30 minutes in length, realistic exposure is $151,625.60. Discounted 47%. Adjusted liability, $80,000.00. Rest Break Claims: Maximum exposure, $243,214.00. Discounted 79% for certification and merits risks. Adjusted liability, $50,000.00. Waiting Time Penalties: Maximum exposure, $150,123.00. Discounted 33% for merits risks. Adjusted liability, $100,000.00. Wage Statement Claims: Maximum exposure, $643,050.00. Discounted 91% for merits risks. Adjusted liability, $60,000.00. PAGA penalties: Maximum exposure, $607.100.00. Discounted 80% results in potential exposure of $121,420.00. Merits risks and risk of Court lowering penalty, resulted in $30,000 allocation by the parties. Maximum exposure, $1,552.927.60. Adjusted liability, $374,064.00. GSA of $400,000.00 is 107% of adjusted liability. Net Settlement Amount of $197,500.00 is 52.8% of adjusted liability. (Hacopian Decl., ¶¶ 18-33.) This is an excellent result that falls within the acceptable range of reasonable recovery. 5. Requests for Exclusion: Class Members can opt out by sending written request by fax, email, or mail, not later than 60 days after mailing of Class Notice, plus additional 14 days for remailed Notices. Opt out request must be accepted by administrator if identity of Class Member can be reasonably ascertained. Administrator's determination of validity and authenticity is final. (Settlement, ¶ 7.5.) If opt outs exceed 8% of Class Members, Defendant may elect to withdraw from settlement. (Id., ¶ 9.) ISSUE: Court prefers 45-day deadline after remailing. Settlement should state that Court has final say over validity of opt out requests. 6. Objections: Class Members may send written objections by fax, email, or mail within 60 days after mailing of Class Notice, plus additional 14 days after remailing of Notice. May present verbal objections at Final Approval hearing. (Id., ¶ 7.7.) ISSUE: Court prefers 45-day deadline after remailing. 7. Disputes: Class members must submit written disputes by fax, email, or mail within 60 days after mailing of Class Notice, plus additional 14 days after remailing of Notice. Absent contrary documentation, administrator may presume accuracy of workweeks in Notice. Administrator will consult with counsel to address disputes,

		and provide recommendation. Parties will present disputes and administrator's recommendation to Court for resolution at final approval. (Id., ¶ 7.6.) ISSUE: Court prefers 45-day deadline after remailing. 8. Attorneys' Fees and Costs: Class counsel to receive attorneys' fees of not more than 35% of GSA, or $140,000.00, plus litigation costs of not more than $15,000.00. (Id., ¶ 3.2.2.) Counsel will provide detailed support for request for fee award with motion for final approval. (Hacopian Decl., ¶ 16.) ISSUE: Counsel must disclose fee-splitting arrangement, fi any, or attest there is none. Attorneys' fees of 35% of GSA is higher than percentage usually approved by Court. 9. Enhancement: Plaintiff to receive $7,500.00 enhancement award. (Settlement, ¶ 3.2.1.) Counsel generally attests enhancement intended to recognize Plaintiff's contributions on behalf of Class. (Hacopian Decl., ¶ 15.) Plaintiff generally attests she has put "significant" time and effort into assisting counsel and participating in litigation. Plaintiff attests she has spent 6 to 7 hours on this litigation. (ROA 33, Declaration of Ene C. Hernandez, ¶¶ 6, 7.) ISSUE: Enhancement of $7,500 is more than the $5,000 usually approved by the Court. Counsel and Plaintiff must provide detailed declarations, including estimates of time spent by Plaintiff on various tasks and discussion of risks, to support request for higher enhancement award. 10. Settlement Administrator: Parties have selected CPT Group, Inc. as the settlement administrator. (Settlement, ¶ 7.1.) Settlement states that administrator will be paid no more than $10,000 for administration costs. (Id., ¶ 3.2.3.) Settlement also states that administrator will post copies of Settlement Agreement, Class Notice, motions for preliminary and final approval, Orders for preliminary and final approval, and Final Approval and Judgment on its website. (Id., ¶ 7.8.1.) In addition, Settlement states administrator will provide declaration at least 14 days before filing of Motion for Final Approval, and final report at least 15 days before final accounting. (Id., ¶¶ 7.8.5, 7.8.6.) 11. Notice to LWDA: Counsel has provided copy of Plaintiff's PAGA notice to the LWDA. (Hacopian Decl., Exh. 2.) 12. Concurrent Pending Cases: Counsel attests he is unaware of any other pending wage-and-hour actions against Defendant. Search on LWDA's database shows one earlier notice submitted on behalf of "Patrick Marshall" on August 13, 2021. However, there is no associated case number, complaint submission, or settlement information associated with Mr. Marshall, and counsel opines that the notice never ripened into litigation. (Hacopian Decl., ¶ 14.) 13. Continuing Jurisdiction: Settlement provides for continuing jurisdiction of the Court for enforcement of Settlement, and administration and post-judgment matters. (Settlement, ¶ 10.3.)

ISSUES RE CLASS NOTICE:

1. Class Notice must be revised consistent with the issues identified above.

2. Title of Class Notice should state it is for Class Action and PAGA Settlement.

ISSUES RE PROPOSED ORDER: (ROA 26)

1. Proposed Order is to be revised consistent with the issues identified above.

2. Caption of Proposed Order should indicate it is for Class Action and PAGA settlement.

3. Caption and first paragraph of Proposed Order should reflect actual hearing date.

4. Settlement Agreement should be identified by the ROA number of the declaration to which it is attached.

5. Proposed Order should include discussion of funding of the GSA and proposed disbursements.

6. Proposed Order should add paragraph advising how Class/PAGA Members will be notified of preliminary approval and final Judgment.

RULING:

The hearing on the Motion for Preliminary Approval is **CONTINUED** to August 2, 2024, at 1:30 p.m. in Department CX103 so that counsel may address the issues identified above.

Counsel must file supplemental papers addressing the Court's concerns no later than fourteen (14) calendar days prior to the continued hearing date. Counsel must also provide red-lined versions of all revised papers. Counsel must also provide an explanation of how the pending issues were resolved, with precise citation to any corrections or revisions. A supplemental declaration or brief that simply asserts the issues have been resolved is insufficient and will result in a continuance.

Plaintiff to give notice of this Court's ruling, including to the LWDA, within five (5) calendar days, and file proof of service.

The Court does not require any physical or remote appearance at the hearing scheduled for April 19, 2024.

If the parties intend to submit on the tentative, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org.

		Case Management Conference Continued to 8/2/2024.
6	**2018-01018729** **Perez vs. AC&A LLC**	**Motion for Preliminary Approval of Class Action Settlement (ROA 184)** On August 9, 2023, Plaintiffs filed the current Motion for Preliminary Approval of Class Action Settlement. (ROA 184). At the hearing on October 20, 2023, the Court continued the hearing so counsel could address several issues. (ROA 189.) Counsel was ordered to file supplemental papers no later than 14 calendar days before the continued hearing date. (Ibid.) On or around January 12, 2024, the parties submitted a stipulation to continue the hearing and deadline to file supplemental papers regarding the pending Motion. In the stipulation, the parties stated they were working to amend the Settlement and the Motion documents to address the concerns raised by the Court. The Court signed the Order on January 19, 2024, and continued the hearing to March 11, 2024. (ROA 198.) On the Court's own motion, the hearing was subsequently continued to April 19, 2024. (ROA 203.) As of April 15, 2024, no supplemental papers have been filed, and the parties have not sought a continuance of the hearing. This matter is **Ordered OFF CALENDAR.** **Clerk to give Notice.**
7	**2018-01014871** **JL KIDS, LLC vs. California Department of Transportation**	**Motion for Leave to File Reply Briefs in Support of Motions in Limine (ROA 480)** MP: Defendants and Cross-Complainants State Of California Department of Transportation (Caltrans) and Orange County Transportation Authority (OCTA) (collectively, the "Agencies") RP: Plaintiff ST. ANDREW'S BY THE SEA UNITED METHODIST CHURCH (the "Church") Service: No issues. Motion (02-14-24); OPP (04-08-24); Reply (04-12-24). REQUEST: Caltrans and OCTA move for an order permitting Reply briefs to support its Motion in Limine Nos. 1-3. ROA 431-433. **FACTS / OVERVIEW**: These consolidated actions involve inverse condemnation claims and cross-complaints for indemnification. The action was initiated by JL Kids, which seeks recovery for damages caused by a landslide onto its property in San Clemente. St. Andrews cross-complained against OCTA and Caltrans for indemnification, contending that their construction of the I-5 HOV widening project caused the landslide.

		Trial is set for 06-03-24. **CONTENTIONS:** MP (ROA 480): The Agencies have three pending MILs seeking to exclude certain categories of evidence that are not raised by the pleadings. The Church opposes the MILs on the basis it can amend the pleadings according to proof, specifically, to add (1) a breach of contract cause of action as a third-party beneficiary to the contract between OCTA and Flatiron West, Inc. (Opp. to MIL No. 1 (ROA 453) at 18:3-13) and (2) causes of action for res ipsa loquitor negligence and/or dangerous condition of public property (Opp. to MIL No. 3 (ROA 451) at 17:22-26, 18:6-14). Given the Church has supported its MIL oppositions with over 1,110 pages of evidence, the Agencies assert the Court will have a clearer record and easier time resolving the MILs if the Agencies are afforded a chance to respond in writing regarding the amendment of the pleadings as well as providing its written objections to the evidence. ROA 480. RP (ROA 491, 493): The Church states it is not seeking leave to amend. ROA 491. Furthermore, the 1,100 pages of evidence support all of its oppositions to the seven MILs that were filed by all parties. The Agencies have never raised the need for reply briefs before, when the MILs were first set to be heard in Aug. 2023 or when they were rescheduled to Oct. 2023. ROA 493. REPLY (ROA 495): Plaintiff's claim that allowing the Agencies to file additional briefing would somehow be a tactical advantage ignores the fact that it was Plaintiff that caused the original trial delay, which provided it an additional eleven weeks to prepare the MIL Oppositions as its reward for having improperly withheld evidence. Plaintiffs have presented no reason or authority for denying the Agencies' request and the opposition just regurgitates its oppositions to the MILs. **ANALYSIS:** As to amendment, the Church has stated it does not seek leave to amend, so nothing needs to be briefed at this time. As to the Agencies’ objections to the evidence filed in support of the Church’s MIL oppositions, it is true the evidence submitted is extensive, so written objections and responses thereto might be useful in written form. ROA 463, 465. However, because the MIL hearing is set for 04-25-24, it does not appear there is enough

		time for written objections, written responses, and time thereafter for the Court's review to make this a useful exercise. Notably, MP does not explain why it did not raise this issue sooner. **RULING:** Defendants and Cross-Complainants State Of California Department of Transportation (Caltrans) and Orange County Transportation Authority's (OCTA) (collectively, the "Agencies") Motion for Leave to File Reply Briefs in support of their Motion in Limine Nos. 1-3 is **DENIED WITHOUT PREJUDICE.** The Court accepts Plaintiff St. Andrew's by the Sea United Methodist Church's (the "Church") representation it does not and will not seek to amend its complaint. Furthermore, at this time, the Court does not require "Reply Briefs" to address the Church's evidence in support of its oppositions to the Agencies' MIL Nos. 1-3, which the Court is set to hear on 04-25-2024. Clerk to give notice. Please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org if both parties intend to submit on the tentative.
8	**2019-01104539** **M. Westland, LLC vs. State of California**	**1. MSJ/MSA (DFDTs State of California, Dept. of Transportation, Adetokunbo (Toks" Omishakin, and Orange County Transportation Authority, ROA 646)** **2. MSJ/MSA (DFDTs 405 Partners', OHL USA, Inc, and Astaldi Construction Corporation, ROA 649)** **1. Motion for Summary Adjudication** **Moving Party: Defendants State of California, California Department of Transportation, Orange County Transportation Authority, and Adetokunbo "Toks" Omishakin** **Responding Party**: Plaintiffs M. Westland, LLC; Dorothy Sublett-Miller and Walter J. Miller, as Successor Trustees of The Miller Family Trust, originally dated October 12, 1979, amended and restated February 05, 2004, for the Estate of Willis L. Miller, deceased, as to an undivided ½ interest; Dorothy Sublett-Miller and Walter J. Miller, Successor Trustees of The Miller Family Trust, originally dated October 12, 1979, amended and restated February 05, 2004, for the Estate of Dorothy M. Miller, deceased, as to an undivided ½ interest; and Land Partners, LLC fka Land Partners Co. Ltd. SERVICE: January 31, 2024, by electronic service

		RELIEF SOUGHT: Defendants move for summary adjudication as to the first cause of action for Breach of Contract and second cause of action for Tortious Interference with Contract. UPCOMING EVENTS: Status Conference – 09/25/2024 RELATED CASES ("Eminent Domain Cases"): 1. Orange County Transportation Authority v. M. Westland, LLC, et al., Case No. 2018-00994118 2. Orange County Transportation Authority v. Miller, Case No. 2018-00994148 **FACTS/OVERVIEW**: This is a breach of contract and inverse condemnation action. The original Complaint (ROA 2) was filed on October 15, 2019, by Plaintiffs M. Westland, LLC; Dorothy Sublett-Miller and Walter J. Miller, as Successor Trustees of The Miller Family Trust, originally dated October 12, 1979, amended and restated February 05, 2004, for the Estate of Willis L. Miller, deceased, as to an undivided ½ interest; Dorothy Sublett-Miller and Walter J. Miller, Successor Trustees of The Miller Family Trust, originally dated October 12, 1979, amended and restated February 05, 2004, for the Estate of Dorothy M. Miller, deceased, as to an undivided ½ interest; and Land Partners, LLC fka Land Partners Co. Ltd. (collectively, "Plaintiffs"). The named Defendants are State of California, California Department of Transportation, Adetokunbo "Toks" Omishakin, Orange County Transportation Authority, OC 405 Partners, OHL USA, Inc., and Astaldi Construction Corporation (collectively, "Defendants"). On June 16, 2023, pursuant to stipulation and order, Plaintiffs filed the operative Fourth Amended Complaint ("4AC") (ROA 600) alleging five causes of action for: 1. Breach of Contract; 2. Tortious Interference with Contract; 3. Inverse Condemnation; 4. Nuisance; and 5. Trespass Plaintiffs own a 79-acre property next to the 405 Freeway, which includes a mobile home park and a RV dealership ("Subject Property"). In 1960, Defendant State of California ("State") and the Plaintiffs' predecessor-in-interest, Dorothy M. Miller, entered into a Right-of-Way ("ROW") agreement. The agreement gave the State the right of way across a portion of the Subject Property in exchange for the State accepting drainage from the Subject Property onto the highway. Defendants are involved in the "405 Improvement Project" ("Project"), a small segment of which is adjacent to and encroaches onto the Subject Property. In January and February 2019, after construction began, rain caused flooding of the Subject Property because Defendants allegedly failed to properly design, maintain,

		and/or replace the drainage system adjacent to the Subject Property. Plaintiffs also claim Defendants are installing a drainage system that will be incapable of preventing flooding, threatening to turn "a considerable portion" of the Subject Property into "an involuntary rain water detention facility." Defendant OC 405 Partners ("OC 405") filed a Cross-Complaint on November 20, 2020, against Cross-Defendants Pacific Infrastructure 405 Designers, Arup North America Limited, H.W. Lochner, Inc. and Moffat & Nichol. The operative First Amended Cross-Complaint (ROA 313) was filed September 16, 2021, and asserts six causes of action: 1. Express Indemnity; 2. Breach of Contract; 3. Implied Contractual Indemnity; 4. Equitable Indemnity; 5. Apportionment of Fault; and 6. Declaratory Relief OC 405 alleges it entered into a contract with Cross-Defendant Pacific Infrastructure, whereby Cross-Defendants agreed to perform all necessary design services for the 405 Project. OC 405 asserts that Pacific Infrastructure is responsible for any design defect which interferes with the Subject Property's drainage system. Further, OC 405 alleges Cross-Defendant Pacific Infrastructure 405 Designers is a joint venture of the remaining named Cross-Defendants (i.e., Arup North America Limited, H.W. Lochner, Inc. and Moffatt & Nichol). On December 17, 2021, the Court set the trial dates for the related eminent domain cases. The trial in Case No. 2018-00994148 (Miller) involving the mobile home parcel, was set to begin November 7, 2022 (ROA 246) and the trial in Case No. 2018-00994118 (Westland), involving the RV dealer parcel, was set to begin April 17, 2023 (ROA 280). The instant case has not been set for trial. On February 18, 2022, Defendants State and Orange County Transportation Authority ("OCTA") filed a Motion for Summary Judgment / Summary Adjudication. (ROA 355.) Concurrently, Defendants OC 405, OHL USA, Inc., and Astaldi Construction Corporation also filed a Motion for Summary Judgment. (ROA 348.) On April 18, 2022, all of the Moving Defendants and Plaintiffs filed a joint stipulation agreeing to continue the hearing for both MSJs to August 26, 2022. (ROA 398.) On August 19, 2022, the Court continued the hearing on the State MSJ to September 14, 2022. (ROA 452.) On September 12, 2022, after discovering an error in the filing of the OC 405 MSJ, the Court ordered OC 405 to re-file its motion and continued the hearing on both MSJs to December 16, 2022. (ROA 494.)

		On December 9, 2022, on the Court's own motion, the hearings for both MSJs were continued again to February 16, 2023. (ROA 500.) On February 15, 2023, the Court granted Plaintiffs' ex parte application for an order continuing the hearings on both MSJs to April 14, 2023. (ROA 527, 529.) On April 12, 2023, the Court granted Plaintiffs' ex parte application for an order permitting the filing of an additional declaration in support of Plaintiffs' opposition, or alternatively, continuing the hearings on both MSJs. (ROA 564, 575.) The Court continued the hearings to June 23, 2023. (ROA 575.) At the hearing on June 23, 2023, the Court ordered both MSJs off calendar as moot in light of the stipulation by the parties to allow Plaintiffs to file the 4AC. (ROA 610.) On January 31, 2024, Defendants State, OCTA, California Department of Transportation ("CalTrans"), and Adetokunbo "Toks" Omishakin, in his official capacity as Director of CalTrans (collectively, "State") filed the current Motion for Summary Adjudication. (ROA 646.) Plaintiffs oppose the Motion (ROA 658), and State replies (ROA 681).1 **CONTENTIONS AND ANALYSIS:** **Statement of the Law** "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 843.) "A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc., § 437c, subd. (a)(1).) "The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact." (§ 437c, subd. (c).) "First, and generally, from commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (Aguilar, supra, 25 Cal.4th at p. 850.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (Ibid.)

		"Second, and generally, the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (Aguilar, supra, 25 Cal.4th at p. 850; § 437c, subd. (p)(1) [plaintiff meets its burden by proving each element of its cause of action].) Unless the moving party meets its initial burden, summary judgment cannot be ordered, even if the opposing party has not responded sufficiently, or at all. (Vesely v. Sager (1971) 5 Cal.3d 153, 169-170, superseded by statute on another point, as noted in Ennabe v. Manosa (2014) 58 Cal.4th 697, 701, 707; FSR Brokerage, Inc. v. Superior Court (1995) 35 Cal.App.4th 69, 73, fn. 4.) **Request for Judicial Notice** Plaintiffs ask the Court to take judicial notice of the following documents pursuant to Evidence Code sections 452, 453, and 459: 1. Right-of-Way Contract, entered into in 1960 by State of California and Dorothy M. Miller, recorded February 9, 1962, in Official Records of Orange County (Dfts. Compendium, Exh. B); 2. Grant Deed, dated April 4, 1960, recorded in Official Records of Orange County (Pltfs. Compendium, Exh. 13); 3. Letter from Midway City Sanitary District, dated August 30, 1962 (Pltfs. Compendium, Exh. 14); 4. State's response to Miller Parties' April 2, 1968 letter regarding 1960 ROW Contract (Pltfs. Compendium, Exh. 15); 5. Excerpts from January 2021 CalTrans Right of Way Manual (Pltfs. Compendium, Exh. 32). Judicial notice is granted as to all of these documents pursuant to Evidence Code section 452, subdivision (c). **Evidentiary Objections** **Plaintiffs' Objections**: (ROA 666) Plaintiffs state objections to the Declarations of Brian Patschull, Robert Martin, and Azzam Saad that were submitted in support of State's Motion. The objections and rulings are as follows:

		Patschull Declaration 1. Overruled 2. Overruled 3. Sustained – lacks foundation, speculation 4. Overruled 5. Sustained – improper expert opinion 6. Sustained – lacks foundation 7. Sustained – lacks foundation 8. Sustained – lacks foundation 9. Sustained – lacks foundation 10. Sustained – lacks foundation Martin Declaration 11. Overruled 12. Overruled 13. Overruled **Saad Declaration** 14. Overruled **State's Objections:** (ROA 679) State asserts objections to the Declarations of Bradford C. Sublett, Nicholas Streeter, Daniel Villines, and Walter J. Miller, as well as several of Plaintiffs' exhibits that were proffered in opposition to State's Motion. The objections and rulings are as follows: **Sublett Declaration** 1. Overruled 2. Overruled 3. Sustained – lack of personal knowledge

		4. Sustained – lack of personal knowledge 5. Sustained – lack of personal knowledge 6. Sustained – lack of personal knowledge 7. Sustained – lacks foundation 8. Sustained – lacks foundation 9. Sustained – lacks foundation 10. Overruled 11. Overruled 12. Overruled 13. Overruled 14. Overruled 15. Overruled 16. Overruled 17. Overruled 18. Overruled 19. Overruled 20. Overruled 21. Overruled 22. Overruled 23. Overruled 24. Overruled 25. Overruled 26. Overruled 27. Overruled

		28. Overruled 29. Overruled 30. Overruled 31. Overruled 32. Overruled 33. Overruled 34. Overruled 35. Overruled **Streeter Declaration** 36. Overruled 37. Overruled 38. Sustained – not relevant 39. Overruled 40. Overruled 41. Overruled 42. Overruled 43. Sustained – lacks foundation 44. Sustained – speculative 45. Sustained – lacks foundation 46. Sustained – lacks foundation 47. Sustained – lacks foundation 48. Sustained – lacks foundation 49. Sustained – lacks foundation 50. Sustained – improper opinion

		51. Sustained – lacks foundation 52. Sustained – lacks foundation 53. Sustained – hearsay 54. Sustained – lacks foundation 55. Overruled 56. Overruled 57. Overruled 58. Overruled 59. Overruled 60. Overruled 61. Overruled 62. Overruled 63. Overruled 64. Overruled 65. Overruled 66. Overruled 67. Overruled 68. Overruled 69. Overruled 70. Overruled 71. Overruled 72. Overruled 73. Overruled 74. Overruled

		75. Overruled 76. Overruled 77. Overruled 78. Overruled 79. Sustained – not relevant 80. Overruled 81. Overruled 82. Overruled 83. Overruled 84. Overruled 85. Overruled 86. Overruled 87. Overruled 88. Overruled 89. Overruled 90. Overruled 91. Overruled 92. Overruled 93. Overruled 94. Overruled 95. Overruled 96. Overruled 97. Overruled 98. Overruled

		Villines Declaration 99. Overruled 100. Overruled 101. Overruled 102. Overruled 103. Overruled 104. Overruled 105. Overruled 106. Sustained – lacks foundation, speculative 107. Overruled 108. Overruled 109. Overruled 110. Overruled 111. Overruled 112. Overruled 113. Overruled 114. Overruled 115. Overruled 116. Overruled 117. Overruled 118. Overruled 119. Overruled 120. Overruled 121. Overruled

		122. Overruled **Miller Declaration** 123. Overruled 124. Overruled 125. Overruled 126. Overruled 127. Overruled 128. Overruled 129. Overruled 130. Overruled 131. Overruled 132. Overruled 133. Overruled 134. Overruled Plaintiffs' Exhibits 135. Overruled 136. Sustained – lacks foundation 137. Overruled 138. Overruled 139. Overruled 140. Overruled 141. Overruled 142. Overruled 143. Overruled

		144. Overruled 145. Overruled 146. Overruled 147. Overruled 148. Overruled 149. Overruled 150. Overruled 151. Overruled **Merits** **1st COA** – **Breach of Contract (Specific Performance**): State seeks summary adjudication as to Plaintiffs' breach of contract/specific performance claim on the ground that Plaintiffs cannot establish that they performed their duties under the ROW Contract. According to State, Plaintiffs have admitted that they cannot prove they are delivering surface water at the locations specified in the ROW Contract. In addition, State contends it has affirmative evidence that Plaintiffs' surface water outlets are not near the locations agreed to in the ROW Contract. As a result, State argues that since the condition precedent triggering its contractual obligation to accept the delivery of surface water from Plaintiffs has not occurred, then Plaintiffs cannot seek to enforce the specific performance of the ROW Contract. State asserts that Plaintiffs own the Subject Property adjacent to the 405 Freeway in the City of Westminster, and that historically, surface water from the Subject Property naturally flowed onto the land that has become the 405 Freeway ("ROW Property"). (State's Undisputed Material Facts ("SUMFs"), 1 and 2.) Before construction of the 405 Freeway, State and Plaintiffs' predecessors-in-interest executed the ROW Contract, in part, to memorialize how issues regarding surface water drainage would be addressed. In that regard, Paragraph 12 of the ROW Contract provides: Whereas, it is generally agreed that surface drainage water on grantor's remaining property and on the property mentioned in Paragraph 8, above, normally flows from the northeast to the southwest in a general direction toward the proposed freeway: Therefore, it is understood and agreed by and between the parties hereto, that the State agrees to accept drainage onto the State highway right of way from grantor's property at the following points as indicated in orange on Sketch No. 1 attached hereto as made a part hereof:

		A. Opposite Station 227+65+ B. Opposite Station 283+60+ C. Opposite Station 292+00+ It is further understood and agreed that at these various points of acceptance the drainage shall only be accepted along an area ten (10) feet in width on either side of points A and C along the right of way line; and that drainage shall be accepted at point B to the width of thirty (30) feet. (SUMF 4; Dfts. Comp., Exh. B.) State asserts that Plaintiffs' predecessors constructed a system of three below-grade pipes that delivered water to State's drainage system on the ROW Property. (SUMFs 6, 7.) State contends, however, that the drainage system on Plaintiffs' Subject Property did not, and does not, deliver water to the ROW Property at or near the acceptance points identified in Paragraph 12 of the ROW Contract. (SUMFs 8-52.) As argued by State, the ROW Contract does not provide that Plaintiffs can deliver water everywhere and anywhere along the ROW Property, or that State would accept the delivery of water from Plaintiffs' Subject Property everywhere and anywhere along the ROW Property. As a result, State contends that since Plaintiffs have not fully performed their duties under the ROW Contract by delivering water at the identified points of acceptance, and Plaintiffs have not alleged ambiguity of the agreement or excuse of their performance in the 4AC, then the breach of contract claim must fail. State argues Plaintiffs are now precluded from asserting that the ROW Contract was ambiguous or they were excused from performance. In support, State points to a declaration from Mr. Brian Patschull, OCTA's lead reviewing engineer on the drainage improvement design for the Project. Mr. Patschull attests that he measured the distances between the acceptance points identified in Paragraph 12 of the ROW Contract and the outlets where Plaintiffs' drainage system connects with the ROW Property. (SUMFs 8-14; Declaration of Brian Patschull ("Patschull Decl., ¶¶ 6-12.) According to Mr. Patschull, the first outlet from Plaintiffs' drainage system is more than 100 feet away from the nearest acceptance point, and the second and third outlets are more than 200 feet from the nearest acceptance point. (Id., ¶¶ 13, 14.) As a result, Mr. Patschull opines that Plaintiffs' three drainage pipes do not deliver water to the ROW Property within the margin of distance to the acceptance points identified in the ROW Contract. (Id., ¶ 15.) State also points to Plaintiffs' own discovery responses in support of its argument. State contends that in Plaintiffs' responses to State's Requests for Admission, Plaintiffs admitted that their drainage outlets are not within the allowable margin around the acceptance points identified in Paragraph 12 of the ROW Contract. (SUMFs 15-51.) According to State, their discovery requests asked Plaintiffs to admit that the below-grade pipelines from the Subject Property delivered water to the ROW property at a certain distance from each acceptance point, and the distance varied depending on the facilities at issue. (SUMFs 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50.) In response to each discovery request, Plaintiffs stated that they "admit[] with clarification", and that they were "unable to determine the distance between these two points with specificity but believe[] the request is a reasonably accurate estimate." (SUMFs 17, 19, 21, 23,

		25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51.) State contends that Plaintiffs' responses are consistent with Mr. Patschull's findings, and that they essentially concede they cannot prove they performed their obligations under the ROW Contract. In opposition, Plaintiffs contend that State's Motion is based on a theory that has never been asserted during the entirety of their contractual relationship—namely, that Plaintiffs failed to perform their obligations under Paragraph 12 of the ROW Contract. As argued by Plaintiffs, the plain language of the ROW Contract, as well as the parties' course of conduct since 1960, demonstrates that any performance obligations under Paragraph 12 belong to State and are owed to, not by, Plaintiffs. As a result, Plaintiffs contend that State's Motion fails because State has mischaracterized the terms of the ROW Contract. Plaintiffs assert that the 1960 ROW Contract was executed to settle the then-pending eminent domain proceedings regarding the construction of the 405 Freeway. (Plaintiffs' Additional Material Facts ("PAMFs"), 61-63.) According to Plaintiffs, under the ROW Contract, their predecessors were obligated to deed the ROW Property to the State free of any encumbrances, and State was obligated to minimize any harm resulting from the taking of the property. Plaintiffs contend that one of those obligations was for State to "accept drainage onto the state highway right of way" from the Subject Property in order to ensure that the Subject Property was not flooded by any damming effect from the proposed freeway. (RJN No. 1, ROW Contract, ¶¶ 3, 4, 12.) In that regard, Plaintiffs contend the ROW Contract contemplated the remaining portion of the Subject Property would eventually be developed. Plaintiffs contend that as a result, their predecessors bargained for certain rights that would allow them to develop the Subject Property without impediment. Specifically, Plaintiffs contend the ROW Contract required State to grant certain easements and encroachments to Plaintiffs' predecessors for the construction of underground water and sewer lines. (RJN No. 1, ROW Contract, ¶¶ 7-10, 14-15, 18.) According to Plaintiffs, their predecessors were required to construct those sewer and water lines to "cross under the freeway right of way", and they had to "make arrangements to provide for the drainage of [their] remaining property and the property involved in the exchange…." However, Plaintiffs contend their predecessors also contracted for a promise from the State that they were not required to construct any permanent drainage facilities. (Ibid.) In support, Plaintiffs cite to Paragraphs 7, 13, and 15 of the ROW Contract—especially Paragraph 13. Plaintiffs contend that Paragraph 13 provided their predecessors with a temporary right to develop drainage facilities, if necessary, for the immediate development of the Subject Property before construction of the 405 Freeway. (RJN No. 1, ROW Contract, ¶ 13.) Paragraph 13 provides in relevant part: It is further understood and agreed that in the event the grantor finds it necessary to develop the drainage facilities described in Paragraph 12 of this contract prior to the Construction of the proposed San Diego Freeway, he shall have the right to grade temporary drainage facilities to the existing drainage ditch … in the manner indicated ….It is further understood and agreed that the Division of Highways will not require these temporary drainage facilities to be constructed of concrete or in

		any way made permanent. It is further understood and agreed that upon commencement of construction of the proposed freeway, said right shall expire and the provisions of Paragraph 12 of this contract shall prevail. Plaintiffs argue that this language confirms that after State began construction of the 405 Freeway, Plaintiffs' predecessors did not have the right or obligation to develop the drainage facilities described in Paragraph 12 of the ROW Contract. As argued by Plaintiffs, Paragraph 13 would have been superfluous if the ROW Contract made their predecessors responsible for the construction of permanent drainage facilities and the diversion of water to the identified acceptance points. In support of this assertion, Plaintiffs point to Paragraph 15 of the ROW Contract, which states that their predecessors were required to construct the "sanitary sewer and water facilities mentioned in [Paragraph] 14". In short, Plaintiffs contend that Paragraph 12 must be interpreted in the context of all of the provisions of the ROW Contract. As argued by Plaintiffs, the ROW Contract, as a whole, establishes the parties' intent to make State—not Plaintiffs' predecessors—responsible for designing and implementing the surface water drainage system. Plaintiffs also point to the parties' conduct since 1960 to confirm that they did not have any obligations under the ROW Contract related to the drainage of the surface water at the identified acceptance points. Plaintiffs contend that State's own conduct demonstrates that it believed it was responsible for ensuring compliance with Paragraph 12 regarding the drainage of the surface water. Moreover, according to Plaintiffs, State has accepted drainage of surface water at the current locations for more than 60 years. Plaintiffs contend that since neither the 405 Freeway nor the Subject Property had been developed at the time the parties entered the ROW Contract, the precise locations of the acceptance points cannot be ascertained with specificity. (PAMFs 65-69.) As a result, Plaintiffs argue that the parties' conduct is highly relevant to this issue. Plaintiffs contend that in the past 60 years, State has never asserted that it was accepting the drainage of surface water in contravention of the ROW Contract, or that Plaintiffs were not fulfilling their obligations. (PAMF 69.) Plaintiffs also note that since the ROW Contract was executed, State has admitted that it was responsible for the drainage facilities, and that the drainage system had been designed to receive drainage of the surface water from the Subject Property "as agreed to in the Right of Way Contract." (PAMF 64; Pltfs. Comp., Exh. 15.) Furthermore, Plaintiffs contend that early in the parties' contractual relationship, surface water drainage from the Subject Property to the ROW Property ran from three outlets into a concrete, trapezoidal channel underneath the 405 Freeway that led to the Bolsa Chica Channel (the "Swale System"). (PAMFs 65-70; Declaration of Nicholas Streeter ("Streeter Decl."), ¶¶ 4-6.) According to Plaintiffs, State built the Swale System to hook into the drainage outlets that existed at the time the ROW Contract was executed, and the location of these drainage outlets has never changed. (Ibid.) Plaintiffs contend that State contemplated using those same outlets when in 2019 when it removed the Swale System in anticipation of the construction of a new storm drain leading to a water detention basin (the "Detention System"). (PAMFs 74-76.)

		Regarding State's interpretation of the location of the drainage acceptance points as explained in Mr. Patschull's declaration, Plaintiffs contend Mr. Patschull's methodology is flawed because it presumes the stationing used for the ROW Contract is the same stationing used for the 1963 construction plans for the 405 Freeway. According to Plaintiffs, Mr. Patschull does not provide any facts to support this initial presumption, and note he admitted in his deposition that the stationing may have changed between 1960 and 1963. (PAMF 71.) Plaintiffs also contend State has mischaracterized their discovery responses regarding the locations of the drainage outlets and the acceptance points. As argued by Plaintiffs, they only admitted that the locations of the drainage outlets do not directly correspond with the locations of the acceptance points. Plaintiffs contend, however, that their admissions were based on express clarifications in their responses to Form Interrogatory No. 17.1—namely, that the locations could not be identified with specificity. Moreover, Plaintiffs contend they denied that they do not deliver water to the acceptance locations, again clarifying in Form Interrogatory No. 17.1: "Because of the lack of specificity of the drawings, [Plaintiffs] believe[] that the water flows in the general vicinity of some drainage acceptance points, but is unable to determine the precise location of the drainage." (See, Dfdts. Comp., Exhs. 30 and 31.) In reply, State remarkably concedes that Plaintiffs are not required to deliver surface water to the acceptance locations identified in Paragraph 12 of the ROW Contract. (Reply Brief, 6:3-4.) Nevertheless, State argues that if Plaintiffs want to enforce State's contractual duties under the ROW Contract, then Plaintiffs must satisfy the purported condition in Paragraph 12. And therein lies the weakness in State's argument. Generally, a party cannot recover on a contract without alleging and proving performance or prevention or waiver of performance of conditions precedent. (Roseleaf Corp. v. Radis (1953) 122 Cal.App.2d 196, 206.) However, as relevant here, a condition may be waived by the party for whose benefit the condition exists. (Galdjie v. Darwish (2003) 113 Cal.App.4th 1331, 1339.) The implied waiver of conditions occurs when one party accepts partial or nonconforming performance by the other without a reservation of rights. (Ibid.) Therefore, if the other party's conduct operates as a waiver of the first party's performance, then the first party need not tender its performance. (See, e.g., United Cal. Bank v. Maltzman (1974) 44 Cal.App.3d 41.) "Waiver is ordinarily a question for the trier of fact; '[h]owever, where there are no disputed facts and only one reasonable inference may be drawn, the issue can be determined as a matter of law.'" (DuBeck v. California Physicians' Service (2015) 234 Cal.App.4th 1254, 1265.) "California courts will find waiver when a party intentionally relinquishes a right or when that party's acts are so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished." (Old Republic Ins. Co. v. FSR Brokerage, Inc. (2000) 80 Cal.App.4th 666, 678.) In the instant litigation, Plaintiffs contend that State's course of conduct since 1960 not only rebuts State's interpretation of Paragraph 12 of the ROW Contract, but it demonstrates that Plaintiffs do not owe an obligation regarding the accuracy of the deliver of surface water to the acceptance points. In addition, Plaintiffs argue that

		State's decades-long acceptance of surface water drainage at the outlet locations raises a triable issue of fact regarding waiver. Indeed, while the parties differ in their interpretation of the purported obligations under Paragraph 12 of the ROW Contract, it is apparently undisputed that there has been a drainage system in place since the 405 Freeway was constructed in the early 1960s that successfully drained the surface water from Plaintiffs' Subject Property to and through the ROW Property. (Patschull Decl., ¶ 5; Streeter Decl., ¶¶ 4-6; see also, 4AC, ¶ 2.) It is also undisputed that the drainage outlets from Plaintiffs' Subject Property to the ROW Property have remained unchanged during the last several decades. (Ibid.) The current dispute began, however, with the construction of the 405 Freeway Improvement Project in 2018, and the proposed construction of new permanent drainage facilities on the ROW Property that would replace the long-standing drainage system, identified by Plaintiffs as the Swale System. Plaintiffs have alleged that as part of the Project, the Swale System was to be removed and replaced with the "Detention System"—a storm drain known as Drainage System 828 that would accept the drainage of surface water from the existing outlets on the Subject Property and channel it to the DB-1077 water detention basin. (Streeter Decl., ¶ 8.) Plaintiffs allege, however, that after removal of the Swale System and before installation of the Detention System, there were significant rain events that resulted in substantial flooding on the Subject Property. (PAMFs 77-78.) Shortly thereafter, after Plaintiffs identified issues with the proposed Detention System, State prepared revised plans in 2020. (PAMF 79.) Although Plaintiffs alleged stated their concerns with the revised 2020 plans, State nevertheless approved the plans, and subsequently, the Subject Property again experienced significant flooding. (Pltfs. Comp., Exhs. 16-19.) Now, State ostensibly contends that Plaintiffs are not entitled to specific performance of State's obligations under the ROW Contract—i.e., the acceptance of surface water drainage from the Subject Property—because Plaintiffs have not fulfilled the condition precedent of delivery of the surface water to the acceptance points identified in Paragraph 12 of the ROW Contract. However, Plaintiffs have established there is a triable issue of fact as to whether State waived any purported condition precedent by accepting the delivery of the surface water at points other than the identified acceptance points for the past 60 years. Accordingly, summary adjudication is denied on the first cause of action. **2nd COA – Tortious Interference of Contract:** Intentional interference with contractual relations is a cause of action in tort "against noncontracting parties who interfere with the performance of a contract." (Redfearn v. Trader Joe's Co. (2018) 20 Cal.App.5th 989, 997, partially abrogated by Ischel Pharma, LLC v. Biogen, Inc. (2020) 9 Cal.5th 1130, 1148.) To state a claim of intentional interference with contractual relations, a plaintiff must allege: (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) the actual breach or disruption of the contractual relationship; and (5) resulting damage. (Redfearn v. Trader Joe's, supra, 20 Cal.App.5th at p. 997; see also,

		Jenni Rivera Enters., LLC v. Latin World Entertainment Holdings, Inc. (2019) 36 Cal.App.5th 766, 782; Reeves v. Hanlon (2004) 33 Cal.4th 1140, 1148.) State's arguments regarding this claim are essentially the same as those asserted as to the breach of contract claim—namely, that since Plaintiffs did not perform their duties under Paragraph 12 of the ROW Contract, they cannot enforce State's obligations under that agreement. However, as discussed extensively above, there is a triable issue of fact as to whether State waived performance of any purported condition precedent. As a result, summary adjudication on this cause of action is denied. **RULING:** The Motion for Summary Adjudication brought by Defendants State of California, California Department of Transportation, Orange County Transportation Authority, and Adetokunbo "Toks" Omishakin is **DENIED** in its entirety on the ground there is a triable issue of material fact as to whether Defendants waived performance of the purported condition precedent in Paragraph 12 of the 1960 Right-of-Way Contract. Plaintiffs' Request for Judicial Notice is granted in its entirety. Clerk to give notice of this Court's ruling. If the parties intend to submit on the tentative, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org. **2. Motion for Summary Judgment** **Moving Party: Defendants OC 405 Partners, OHL USA, Inc., and Astaldi Construction Corporation** **Responding Party:** Plaintiffs M. Westland, LLC; Dorothy Sublett-Miller and Walter J. Miller, as Successor Trustees of The Miller Family Trust, originally dated October 12, 1979, amended and restated February 05, 2004, for the Estate of Willis L. Miller, deceased, as to an undivided ½ interest; Dorothy Sublett-Miller and Walter J. Miller, Successor Trustees of The Miller Family Trust, originally dated October 12, 1979, amended and restated February 05, 2004, for the Estate of Dorothy M. Miller, deceased, as to an undivided ½ interest; and Land Partners, LLC fka Land Partners Co. Ltd. SERVICE: January 31, 2024, by electronic service **RELIEF SOUGHT**: Defendants move for summary judgment as to single cause of action for Tortious Interference with Contract alleged against them in the Fourth Amended Complaint. UPCOMING EVENTS: Status Conference – 09/25/2024

		RELATED CASES ("Eminent Domain Cases"): 1. Orange County Transportation Authority v. M. Westland, LLC, et al., Case No. 2018-00994118 2. Orange County Transportation Authority v. Miller, Case No. 2018-00994148 **FACTS/OVERVIEW**: This is a breach of contract and inverse condemnation action. The original Complaint (ROA 2) was filed on October 15, 2019, by Plaintiffs M. Westland, LLC; Dorothy Sublett-Miller and Walter J. Miller, as Successor Trustees of The Miller Family Trust, originally dated October 12, 1979, amended and restated February 05, 2004, for the Estate of Willis L. Miller, deceased, as to an undivided ½ interest; Dorothy Sublett-Miller and Walter J. Miller, Successor Trustees of The Miller Family Trust, originally dated October 12, 1979, amended and restated February 05, 2004, for the Estate of Dorothy M. Miller, deceased, as to an undivided ½ interest; and Land Partners, LLC fka Land Partners Co. Ltd. (collectively, "Plaintiffs"). The named Defendants are State of California, California Department of Transportation, Adetokunbo "Toks" Omishakin, Orange County Transportation Authority, OC 405 Partners, OHL USA, Inc., and Astaldi Construction Corporation (collectively, "Defendants"). On June 16, 2023, pursuant to stipulation and order, Plaintiffs filed the operative Fourth Amended Complaint ("4AC") (ROA 600) alleging five causes of action for: 1. Breach of Contract; 2. Tortious Interference with Contract; 3. Inverse Condemnation; 4. Nuisance; and 5. Trespass Plaintiffs own a 79-acre property next to the 405 Freeway, which includes a mobile home park and a RV dealership ("Subject Property"). In 1960, Defendant State of California ("State") and the Plaintiffs' predecessor-in-interest, Dorothy M. Miller, entered into a Right-of-Way ("ROW") agreement. The agreement gave the State the right of way across a portion of the Subject Property in exchange for the State accepting drainage from the Subject Property onto the highway. Defendants are involved in the "405 Improvement Project" ("Project"), a small segment of which is adjacent to and encroaches onto the Subject Property. In January and February 2019, after construction began, rain caused flooding of the Subject Property because Defendants allegedly failed to properly design, maintain, and/or replace the drainage system adjacent to the Subject Property. Plaintiffs also claim Defendants are installing a drainage system that will be incapable of preventing flooding, threatening to turn "a considerable portion" of the Subject Property into "an involuntary rain water detention facility."

		Defendant OC 405 Partners ("OC 405") filed a Cross-Complaint on November 20, 2020, against Cross-Defendants Pacific Infrastructure 405 Designers, Arup North America Limited, H.W. Lochner, Inc. and Moffat & Nichol. The operative First Amended Cross-Complaint (ROA 313) was filed September 16, 2021, and asserts six causes of action: 1. Express Indemnity; 2. Breach of Contract; 3. Implied Contractual Indemnity; 4. Equitable Indemnity; 5. Apportionment of Fault; and 6. Declaratory Relief OC 405 alleges it entered into a contract with Cross-Defendant Pacific Infrastructure, whereby Cross-Defendants agreed to perform all necessary design services for the 405 Project. OC 405 asserts that Pacific Infrastructure is responsible for any design defect which interferes with the Subject Property's drainage system. Further, OC 405 alleges Cross-Defendant Pacific Infrastructure 405 Designers is a joint venture of the remaining named Cross-Defendants (i.e., Arup North America Limited, H.W. Lochner, Inc. and Moffatt & Nichol). On December 17, 2021, the Court set the trial dates for the related eminent domain cases. The trial in Case No. 2018-00994148 (Miller) involving the mobile home parcel, was set to begin November 7, 2022 (ROA 246) and the trial in Case No. 2018-00994118 (Westland), involving the RV dealer parcel, was set to begin April 17, 2023 (ROA 280). The instant case has not been set for trial. On February 18, 2022, Defendants State and Orange County Transportation Authority ("OCTA") filed a Motion for Summary Judgment / Summary Adjudication. (ROA 355.) Concurrently, Defendants OC 405, OHL USA, Inc., and Astaldi Construction Corporation also filed a Motion for Summary Judgment. (ROA 348.) On April 18, 2022, all of the Moving Defendants and Plaintiffs filed a joint stipulation agreeing to continue the hearing for both MSJs to August 26, 2022. (ROA 398.) On August 19, 2022, the Court continued the hearing on the State MSJ to September 14, 2022. (ROA 452.) On September 12, 2022, after discovering an error in the filing of the OC 405 MSJ, the Court ordered OC 405 to re-file its motion and continued the hearing on both MSJs to December 16, 2022. (ROA 494.) On December 9, 2022, on the Court's own motion, the hearings for both MSJs were continued again to February 16, 2023. (ROA 500.)

		On February 15, 2023, the Court granted Plaintiffs' ex parte application for an order continuing the hearings on both MSJs to April 14, 2023. (ROA 527, 529.) On April 12, 2023, the Court granted Plaintiffs' ex parte application for an order permitting the filing of an additional declaration in support of Plaintiffs' opposition, or alternatively, continuing the hearings on both MSJs. (ROA 564, 575.) The Court continued the hearings to June 23, 2023. (ROA 575.) At the hearing on June 23, 2023, the Court ordered both MSJs off calendar as moot in light of the stipulation by the parties to allow Plaintiffs to file the 4AC. (ROA 610.) On January 31, 2024, Defendants OC 405, OHL USA, Inc., and Astaldi Construction Corporation (collectively, "OC 405") filed the current Motion for Summary Judgment as to the sole cause of action alleged against them in the 4AC—i.e., the second cause of action for Tortious Interference with Contract. (ROA 649.) Plaintiffs oppose the Motion (ROA 662), and OC 405 replies (ROA 668).1 **CONTENTIONS AND ANALYSIS:** **Statement of the Law** "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 843.) "A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc., § 437c, subd. (a)(1).) "The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact." (§ 437c, subd. (c).) "First, and generally, from commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (Aguilar, supra, 25 Cal.4th at p. 850.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (Ibid.) "Second, and generally, the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any

triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (Aguilar, supra, 25 Cal.4th at p. 850; § 437c, subd. (p)(1) [plaintiff meets its burden by proving each element of its cause of action].) Unless the moving party meets its initial burden, summary judgment cannot be ordered, even if the opposing party has not responded sufficiently, or at all. (Vesely v. Sager (1971) 5 Cal.3d 153, 169-170, superseded by statute on another point, as noted in Ennabe v. Manosa (2014) 58 Cal.4th 697, 701, 707; FSR Brokerage, Inc. v. Superior Court (1995) 35 Cal.App.4th 69, 73, fn. 4.)

Request for Judicial Notice

Plaintiffs ask the Court to take judicial notice of the following documents pursuant to Evidence Code sections 452, 453, and 459:

1. Right-of-Way Contract, entered into in 1960 by State of California and Dorothy M. Miller, recorded February 9, 1962, in Official Records of Orange County (Dfts. Compendium, Exh. B);

2. Grant Deed, dated April 4, 1960, recorded in Official Records of Orange County (Pltfs. Compendium, Exh. 13);

3. Letter from Midway City Sanitary District, dated August 30, 1962 (Pltfs. Compendium, Exh. 14);

4. State's response to Miller Parties' April 2, 1968 letter regarding 1960 ROW Contract (Pltfs. Compendium, Exh. 15);

5. Excerpts from January 2021 CalTrans Right of Way Manual (Pltfs. Compendium, Exh. 32).

Judicial notice is granted as to all of these documents pursuant to Evidence Code section 452, subdivision (c).

Evidentiary Objections

Plaintiffs' Objections: (ROA 666)

Plaintiffs' objections to the evidence proffered by OC 405 are the same objections asserted as to State's motion. Accordingly, the rulings are the same as those made regarding State's motion.

OC 405's Objections: (ROA 670)

OC 405 joins the evidentiary objections asserted by State in its motion. OC 405 also independently asserts objections to the Declarations of Bradford C. Sublett, Walter J. Miller, and Nicholas Streeter, as well as several of Plaintiffs' exhibits that were proffered in opposition to OC 405's Motion. The objections and rulings are as follows:

		1. Sustained – lack of personal knowledge 2. Sustained – lack of personal knowledge 3. Overruled 4. Overruled 5. Overruled 6. Overruled 7. Overruled 8. Overruled 9. Overruled 10. Overruled 11. Overruled 12. Overruled 13. Sustained – lacks foundation 14. Sustained – lacks foundation 15. Overruled 16. Overruled 17. Overruled **Merits** In the 4AC, the only claim alleged against OC 405 is the second cause of action for tortious interference with contract. Intentional interference with contractual relations is a cause of action in tort "against noncontracting parties who interfere with the performance of a contract." (Redfearn v. Trader Joe's Co. (2018) 20 Cal.App.5th 989, 997, partially abrogated by Ischel Pharma, LLC v. Biogen, Inc. (2020) 9 Cal.5th 1130, 1148.) To state a claim of intentional interference with contractual relations, a plaintiff must allege: (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) the actual breach or disruption of the contractual relationship; and (5) resulting damage. (Redfearn v. Trader Joe's, supra, 20 Cal.App.5th at p. 997; see also,

		Jenni Rivera Enters., LLC v. Latin World Entertainment Holdings, Inc. (2019) 36 Cal.App.5th 766, 782; Reeves v. Hanlon (2004) 33 Cal.4th 1140, 1148.) OC 405 contends that it is entitled to summary judgment on the tortious interference claim because: (1) it did not know of the existence of the 1960 ROW Contract between Plaintiffs and State, and (2) Plaintiffs and/or their predecessors failed to comply with their obligations under the ROW Contract. It is on this second point that OC 405's Motion fails. As discussed extensively in this Court's ruling on State's Motion for Summary Adjudication, there is a triable issue of material fact as to whether State waived Plaintiffs' performance of any purported condition precedent by accepting the delivery of the surface water at points other than the identified acceptance points for the past 60 years. As a result, on this ground alone, OC 405's Motion is denied. Since OC 405 is seeking summary judgment, not summary adjudication of issues, this Court need not reach the question of whether there are triable issues regarding OC 405's knowledge of the existence of the ROW Contract. **RULING:** The Motion for Summary Judgment brought by Defendants OC 405 Partners, OHL USA, Inc., and Astaldi Construction Corporation is **DENIED** on the ground there is a triable issue of material fact as to whether there was a waiver of Plaintiffs' performance of the purported condition precedent in Paragraph 12 of the 1960 Right-of-Way Contract. Plaintiffs' Request for Judicial Notice is granted in its entirety. Clerk to give notice of this Court's ruling. If the parties intend to submit on the tentative, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.org.

PROCEDURAL GUIDELINES

Procedural Guideline for Preliminary Approval of Class Action Settlements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Objections should also be sent to the settlement administrator (not filed with the court nor served on counsel). Thereafter counsel should file a single packet of all objections with the court. The court will not approve blanket statements that objections will be waived

or not considered if not timely or otherwise compliant—rather, any such statements must be preceded by a statement that "Absent good cause found by the court…."

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

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

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

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

14) PROPOSED ORDER GRANTING PRELIMINARY APPROVAL – **All proposed orders should include adequate information to provide clear instructions to the settlement administrator.** The proposed order should also attach the proposed notice and any associated forms as exhibits. The proposed order must contain proposed dates for all future events contemplated therein. **The settlement agreement should not be attached** to the order. Instead, it should be identified by reference to the Register of Action (ROA) number of the declaration to which it is attached. See below.

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

B.

Procedural Guideline for Final Approval of Class Action Settlements

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

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

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

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

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

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

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

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

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

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

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

C.1

Guidelines for PAGA Dismissals

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

In light of the similarity of a representative PAGA claim to a class action, and the requirements of Labor Code § 2699 (l) (2) which requires court approval of PAGA settlements, when a plaintiff wishes to dismiss a PAGA claim, the court requires plaintiff or plaintiff's attorney to file a declaration containing information similar to that required under CRC, rule 3.770 (pertaining to class actions). In that declaration the declarant shall explain to the court why plaintiff wishes to dismiss the PAGA action, whether consideration was given for the dismissal, and if so, the nature and amount of the consideration given. The declaration shall be accompanied by a Proposed Order to Dismiss the PAGA claim.

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

C.2

Guidelines for PAGA Settlements

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

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

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

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

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

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

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

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

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

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

    a. Any amount allocated to claims administration.

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

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

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

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

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

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

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

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

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