Tentative Rulings for October 29, 2025
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

25CECG00896 ***Joseph Molina v. Qassim Muftah*** **(Dept. 502)**

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(03)

Tentative Ruling

Re: ***Walker v. Walker***
Case No. 25CECG02956

Hearing Date: October 29, 2025 (Dept. 502)

Motion: Plaintiffs' Motion for Order Compelling Arbitration

Tentative Ruling:

To grant plaintiffs' motion for an order compelling arbitration of the parties' claims, with the exception of the defendant's sixth cross-claim for declaratory relief, which is severed from the other claims and stayed pending resolution of the arbitration. The court also intends to stay the entire pending civil action until the arbitration is resolved.

Explanation:

Pursuant to California Code of Civil Procedure section 1281.2, "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement. (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact." (Cal. Civ. Proc. Code § 1281.2, subds. (a)-(c), paragraph breaks omitted.)

"California courts traditionally have maintained a strong preference for arbitration as a speedy and inexpensive method of dispute resolution. To this end, 'arbitration agreements should be liberally construed', with 'doubts concerning the scope of arbitrable issues [being] resolved in favor of arbitration [citations].'" (*Market Ins. Corp. v. Integrity Ins. Co.* (1987) 188 Cal. App. 3d 1095, 1098, internal citations omitted.)

"[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement - either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see § 1281.2, subds. (a), (b)) - that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal v. Great Western Fin. Securities Corp*. (1996)14 Cal. 4th 394, 413.) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute,

and general principles of California contract law guide the court in making this determination. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534.)

Here, plaintiffs have met their burden of showing that there is an agreement to arbitrate their disputes over the management and operation of the Walker businesses. Under paragraph 6.1 of the Family Business Agreement, titled "Dispute Resolution",

> Pursuant to the Judgment, the Court has retained jurisdiction over the guranteed [*sic*] distributions to SHARON and in the event of a dispute arising out of or relating to the guaranteed distributions the dispute shall be resolved by the Court. All other disputes arising out of or relating to any aspect of this Agreement or any agreement executed pursuant hereto (including the Operating Agreements of WALKER MANAGEMENT of WFP, or the Partnership Agreements of J&S LP or any FLP), including disputes relating to the performance of any party, the breach of any party, the decision, consent, approval or disapproval of any party, the calculation of any amount due, or the right of a party, shall be resolved in the following manner:
>
> (a) Mediation. First, the parties shall attempt in good faith to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure…
>
> (b) Arbitration. If the parties are unable to resolve any dispute in accordance with Section 6.1(a), then the parties hereby agree to resolve such dispute by final and binding arbitration in the manner set forth below… (Exhibit A to Whelan decl., Family Business Agreement, pp. 5-6.)

The Operating Agreement also incorporates the dispute resolution procedures from the Family Business Agreement. "All disputes arising out of or relating to any aspect of this Agreement shall be resolved pursuant to and in accordance with the Dispute Resolution provisions of Section 6.1 of the Family Business Agreement." (See Exhibit B to Whelan decl., Operating Agreement of Walker Management, LLC, p. 36, ¶ 11.1.)

Thus, plaintiffs have shown that there is an agreement to arbitrate disputes "arising out of or relating to any aspect" of the Family Business Agreement and the Operating Agreement, which covers all of the claims alleged in the complaint. As a result, plaintiffs have met their burden of showing that there is an agreement to arbitrate the claims they have raised in their complaint.

Defendant argues that, to the extent that plaintiffs are alleging claims related to the failure to pay monthly distributions of $25,000 to Sharon Walker, such claims are not covered by the arbitration agreement and the court should not compel those claims to arbitration. However, it does not appear that plaintiffs are seeking to assert any claims for failure to pay a distribution to Sharon. The complaint mentions in passing that Sharon is entitled to a monthly distribution of $25,000. (Complaint, ¶ 8.) Yet the gravamen of the individual causes of action is that Jim Walker breached the Operating Agreement by refusing to cooperate with the competency verification process and has mismanaged the affairs of Walker Management (first cause of action), that plaintiffs are entitled to an injunction allowing them to serve jointly with Darrick Walker as co-managers of the businesses and barring Mary Jane Montgomery from exercising management authority

over the businesses (second cause of action), for declaratory relief finding that Jim Walker has effectively resigned due to his refusal to cooperate in the competency process, and that plaintiffs and Darrick are entitled to serve as co-managers of the businesses (third cause of action), and for appointment of a receiver to manage the businesses (fourth cause of action). Therefore, it does not appear that plaintiffs are seeking any relief with regard to an alleged failure to pay Sharon's distributions, and the arbitration clause covers all of their claims. In any event, plaintiffs now state that Sharon has been receiving her $25,000 monthly distributions, so they are not seeking to bring any claims based on her right to such distributions. (Reply decl. of Brandon Walker, ¶ 3.) As a result, the court will not deny the motion to compel arbitration based on any purported claim regarding Sharon's distributions.

Defendant has also argued that the plaintiffs' fourth cause of action seeking appointment of a receiver is not subject to arbitration, and therefore the court should not enforce the arbitration agreement. (*Marsch v. Williams* (1994) 23 Cal.App.4th 238, 245-249.) However, plaintiffs contend that the fourth cause of action is now moot, as James has died and there is no need to appoint a receiver to manage the businesses. (Reply, p. 5.) They have also filed a request to dismiss the fourth cause of action. Therefore, since plaintiffs have now dismissed their claim seeking appointment of a receiver, the court will not decline to enforce the arbitration agreement based on the request to appoint a receiver.

Defendant also contends that the arbitration clause does not cover all of his cross-claims, so it should not be enforced. However, most of defendant's cross-claims relate to the dispute over the management and control of the business, as well as claims related to the alleged conversion of business funds by plaintiffs. (Amended Cross-Complaint, Causes of Action 1-5.) Thus, most of the cross-claims fall within the scope of the arbitration clause.

On the other hand, the sixth cross-claim seeks declaratory relief stating that plaintiffs violated the conditional gift provisions of James Walker's Last Will and Testament and the James Walker Trust by suing James and attempting to have him removed as manager of the companies, and thus plaintiffs are not entitled to inherit through James' Will or Trust. (Amended Cross-Complaint, Sixth Cause of Action, ¶¶ 65-67.) While this cross-claim also arises out of the dispute over James' ability to manage the businesses, and thus might potentially be covered by the arbitration clause, it seems to be essentially a dispute over who is entitled to inherit under James' Will and Trust. Thus, the claim is not covered by the arbitration clause, as it is essentially a dispute about James' Will and Trust, not management of the businesses.

Plaintiffs concede that this cross-claim involves issues that are not subject to arbitration, and that it should be severed from the other claims. (See Plaintiffs' Reply, pp. 5-6.) However, they also contend that the existence of one non-arbitrable cross-claim should not prevent the parties from arbitrating their other claims, which are clearly covered by the arbitration clause.

This court agrees that the existence of a single non-arbitrable cross-claim relating to James' Will and Trust is not enough reason to deny enforcement of the rest of the agreement, especially since the cross-claim can be severed from the other claims and

litigated separately. The sixth cross-claim raises issues that are probably best resolved in Probate Court, and the issues that it raises are not so closely intertwined with the other claims that it cannot be severed and tried separately from them. Therefore, the court intends to sever the sixth cross-claim from the other claims and find that the rest of the claims in the complaint and cross-complaint are covered by the arbitration clause.

Next, defendant argues that plaintiffs have waived their right to compel arbitration by engaging in actions that are inconsistent with the right to enforce the arbitration clause. He points out that plaintiffs have filed a complaint in court rather than filing a petition to compel arbitration, they filed multiple ex parte applications for relief in court, and they filed an answer to the cross-complaint that did not raise an affirmative defense based on the arbitration clause. Defendant contends that these acts indicate that plaintiffs knowingly and intentionally waived their right to enforce the arbitration clause, and thus the court should deny their motion to compel arbitration.

As mentioned above, the court may deny a motion to compel arbitration even if it finds that the parties entered into an arbitration agreement that covers their dispute, if it finds that the moving party waived its right to enforce the agreement. (Code Civ. Proc., § 1281.2, subd. (a).) The party opposing the motion to compel arbitration does not have to show that they were prejudiced by the delay in seeking arbitration. (*Quach v. California Commerce Club, Inc*. (2024) 16 Cal.5th 562, 583.) Instead, the burden is on the opposing party to show by clear and convincing evidence that the moving party knew of its contractual right to arbitration and intentionally relinquished or abandoned it. (*Id*. at p. 584.) "Its intentional relinquishment or abandonment of the right may be proved by evidence of words expressing an intent to relinquish the right or of conduct that is so inconsistent with an intent to enforce the contractual right as to lead a reasonable factfinder to conclude that the party had abandoned it." (*Ibid*, citations omitted.)

"The waiver inquiry is exclusively focused on the waiving party's words or conduct; neither the effect of that conduct on the party seeking to avoid enforcement of the contractual right nor that party's subjective evaluation of the waiving party's intent is relevant. This distinguishes waiver from the related defense of estoppel, 'which generally requires a showing that a party's words or acts have induced detrimental reliance by the opposing party.' To establish waiver, there is no requirement that the party opposing enforcement of the contractual right demonstrate prejudice or otherwise show harm resulting from the waiving party's conduct." (*Id*. at p. 585, citations and footnote omitted.)

In *Quach*, the California Supreme Court found that the defendant had waived its right to compel arbitration because it knew of the arbitration clause and it engaged in conduct that was inconsistent with asserting its right. The Supreme Court noted that defendant had filed an answer rather than filing a motion to compel arbitration, served written discovery requests, wrote letters to plaintiff's counsel about discovery issues, took plaintiff's deposition, filed a case management conference statement stating that it wanted a jury trial without checking the box stating it wanted to arbitrate the dispute, and paid jury fees. (*Id*. at p. 586.) It did not move to compel arbitration until 13 months after plaintiff filed his complaint. (*Ibid*.) "This evidence of Commerce Club's words and conduct shows that Commerce Club chose not to exercise its right to compel arbitration and to instead defend itself against Quach's claims in court." (*Ibid*.)

Here, there is no dispute that plaintiffs have been aware of their right to arbitrate their dispute since before they filed their complaint, as their attorney sent a letter to defendants on May 27, 2025, invoking their right to mediate and arbitrate the dispute. (Exhibit A to Whelan decl.) They filed their complaint about a month later, on June 30, 2025, after efforts to have defendants attend mediation failed. (Whelan decl., ¶ 5.) Thus, it is clear that plaintiffs were aware of their right to compel arbitration under the dispute resolution clauses of the Operating Agreement and Family Business Agreement before they filed the complaint.

On the other hand, plaintiffs' words and conduct do not show that they intentionally relinquished or abandoned their right to arbitrate the dispute. Plaintiffs' counsel sent a letter to defendants on May 27, 2025, in which they stated that they wanted to mediate and arbitrate their dispute. (Exhibit A to Whelan decl.) They then attempted to arrange a mediation, retained a mediator, and tried to have defendants appear for the mediation. (Whelan decl., ¶ 5.) Under the dispute resolution clause, the parties are required to pursue mediation in good faith before they can demand arbitration. (Family Business Agreement, ¶ 6.1(a).) It was only after the attempt to mediate the dispute failed that plaintiffs filed their complaint in Superior Court. (Whelan decl., ¶ 5.)

Also, while plaintiffs did file three ex parte applications for relief after they filed their complaint, they were also actively seeking to pursue mediation with defendants at the same time, which indicates that they did not intend to relinquish their right to enforce the arbitration clause. (Whelan decl., ¶¶ 8-10.) The parties did in fact attend mediation on August 27, 2025, but they were unable to resolve their dispute. (*Id*. at ¶¶ 8-9.) However, they did circulate a proposed agreement, which included language that the parties would submit their dispute to arbitration with retired Justice Kane serving as the arbitrator. (*Id*. at ¶ 9.) Defense counsel sent plaintiffs' counsel a redlined copy of the proposed agreement, which did not strike out the arbitration language from the agreement. (*Ibid*.) Thus, the parties were still actively discussing the idea of arbitrating the dispute in late August and early September of 2025, and both sides appeared to be open to the idea of arbitration at that time.

Plaintiffs' counsel continued to discuss the possibility of a settlement or an arbitration of the dispute in mid-September. (*Id*. at ¶ 10.) It was not until September 19, 2025, that defense counsel suggested for the first time that his client, Darrick Walker, was opposed to arbitrating the dispute, and that he would only agree to have Justice Kane act as a referee rather than an arbitrator. (*Ibid*.)

Thus, it appears that the parties were still actively considering the possibility of arbitrating their dispute up until late September of 2025, despite the fact that plaintiffs had filed their complaint on June 30, 2025 and requested ex parte relief several times. In addition, as plaintiffs point out, the parties have not yet exchanged written discovery requests, no depositions have been taken, and the case is still only a few months old. No trial date has been set, and plaintiffs have not filed a case management statement indicating that they want to go to trial rather than going to arbitration. Under the circumstances, then, the court finds that there is no clear and convincing evidence that plaintiffs have intentionally relinquished or abandoned their right to compel arbitration.

Therefore, the court intends to grant plaintiffs' motion to compel the parties to attend arbitration. The court will, however, sever out the defendant's sixth cross-claim and stay that claim until after the arbitration is resolved. The court will also stay the civil case until the arbitration is resolved.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 10/27/25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Torres v. Golden Doaba Enterprises, LLC et al.***
Superior Court Case No. 22CECG03657

Hearing Date: October 29, 2025 (Dept. 502)

Motion: By Plaintiffs for Class Certification

Tentative Ruling:

To deny, without prejudice.

Explanation:

Standards for Class Certification: "Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.)

California case law requires that substantial evidence underlie a decision to certify. (*Richmond v. Dart Industries, Inc*. (1981) 29 Cal. 3d 462, 470.) "In particular, we must consider whether the record contains substantial evidence to support the trial court's predominance finding, as a certification ruling not supported by substantial evidence cannot stand." (*Lockhead Martin Corp. v. Superior Court* (2003) 29 Cal. 4th 1096, 1106.)

Proposed Classes: In the present case, plaintiffs Aaron Chavez and Jorden Torres (together "Plaintiffs") seek to certify eight different sub-classes, which cover claims for unpaid overtime, wrong minimum wage rate, wage statement violations, unlawful payroll deductions, unpaid rest and meal breaks, wage theft, spoliation, and waiting time penalties.

More specifically, the unpaid rest period class would cover all current and former non-exempt employees of defendants Golden Doaba Enterprises, LLC, or J.T. Atwal Petroleum, Inc. (together "Defendants") during the time period November 16, 2018 through the present. As to the above eight sub-classes, Plaintiffs describe the bases for each category. Namely, Defendants failed to aggregate hours worked amongst different locations, causing overtime premiums to not be paid; that the sharing of employees amongst different locations placed the businesses at above 26 or more employees, constituting a different legal minimum wage than what was paid; that Defendants routinely miscalculated or reported timecards to third-party payroll companies; that repayment plans were not properly executed in writing; that Defendants' polices required an employee to elect to take two paid 10-minute breaks

or an unpaid half-hour meal break but not both in violation of rest and meal period laws; that wage theft occurred due to non-payment of hours worked; and that portions of employment records have been spoiled due to water damage and rodents.

Numerosity and Ascertainability: "Ascertainability is achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible." (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 918, *internal quotations omitted*; *Nicodemus v. St. Francis Mem. Hosp.* (2016) 3 Cal.App.5th 1200, 1212.)

"A class definition framed in objective terms that make the identification of class members possible promotes due process in at least two ways. Such phrasing puts members of the class on notice that their rights may be adjudicated in the proceeding, so they must decide whether to intervene, opt out, or do nothing and live with the consequences. This kind of class definition also advances due process by supplying a concrete basis for determining who will and will not be bound by (or benefit from) any judgment. Allowing a class to be defined in vague terms, by contrast, could blunt any invocation of res judicata by the defendant in subsequent lawsuits brought by persons attempting to relitigate issues decided in the earlier class proceeding. The outcome might resemble that which obtains when the 'one-way intervention' condemned by our decision in *Fireside Bank v. Superior Court* occurs — the defendant could be unfairly exposed to a succession of essentially duplicative class lawsuits." (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980–981, *citations omitted*.)

There is no set number of class members needed to satisfy the numerosity requirement. "To be certified, a class must be 'numerous' in size such that 'it is impracticable to bring them all before the court.' (Code Civ. Proc., § 382.) 'The requirement of Code of Civil Procedure section 382 that there be 'many' parties to a class action suit is indefinite and has been construed liberally.... No set number is required as a matter of law for the maintenance of a class action. [Citation.] Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees.' [¶] 'The ultimate issue in evaluating this factor is whether the class is too large to make joinder practicable....'" (*Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1222, citations omitted.)

Here, Plaintiffs submit that the putative classes have approximately 219, which is sufficiently large to meet the numerosity requirement. The class is also ascertainable based on a review of Defendants' personnel records, which should show employee's hours, rates, and whether they received rest and meal breaks. The payroll records should also show on their face whether or not they contain the information required by the Labor Code to identify all employers.

Defendants argue in opposition that the proposed classes are not ascertainable because the class is overbroad. Defendant suggests that the class definition is too broad because it does not specifically identify employees who were damaged, and would otherwise capture employees who were not damaged. This is not within the scope of ascertainability. As noted above, one of the functions of ascertainability is for determining who will and will not be bound by any judgment. Any employees captured by this class definition who never had claims would not be affected by a related

judgment. (*See In re ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 304 [finding that "possible overinclusiveness in the method proposed for identifying potential class members does not defeat ascertainability."])

Defendants similarly argue that some sub-classes are overbroad. The arguments are similarly unavailing. With the overtime subclass, Defendants argue that the definition of all workers who worked at more than one of their gas stations would capture employees who received multiple paychecks but would not be entitled to overtime due to the hours actually worked. To the extent that such individuals are captured by this definition, the purpose of the sub-class remains clear: to capture those claims by individuals who worked in aggregate of hours necessary to trigger overtime premiums. Defendants suggest that plaintiff Chavez only attests to having one instance where he received three paychecks in a period, from two locations, neither of which summed to more than 40 hours per location. However, as the First Amended Complaint alleges, Defendants shared employees amongst their various stores, and for the purposes of payroll, treated each store as its own separate entity, thereby enabling Defendants to evade their legal obligations. (First Amended Complaint, ¶ 28; Torres Decl., ¶ 4, and Ex. 500 thereto.)

Defendants next suggest that the sub-classes are not identifiable without unreasonable expense or time. As Plaintiffs suggest on reply, unreasonable expense or time is not a function of ascertainability. A class is ascertainable when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary. (*Noel v. Thrifty Payless, Inc.*, *supra*, 7 Cal.5th at p. 980.) "Due process does not invariably require that personal notice be directed to all members of a class in order for a class action to proceed, or for that matter that an individual member of a certified class must receive notice to be bound by a judgment. It follows that a construction of the ascertainability requirement that presumes such notice *is* necessary to satisfy due process, and demands that the plaintiff show how it can be accomplished, threatens to demand too much, too soon. It is likewise mistaken to take a categorical view that the relevant due process interests can be satisfied only when 'official records' supply the means of identifying class members, and for a similar reason: due process is not that inflexible." (*Id*. at p. 984.) Reading into the ascertainability element an additional requirement that the identification of class members must occur without unreasonable expense or time "runs a similar risk of preempting a more careful analysis later" and "is at cross purposes with this direction." (*Id.* at p. 985.) Thus, the issue is not exclusive, and therefore not required to be shown strictly through ascertainability. (*Id.* at pp. 985, 986, fn. 15.) These issues, where they exist, can be appropriately addressed outside of and separately from the ascertainability requirement. (*Id.* at p. 986.) With the foregoing in mind, it nevertheless appears that nearly ever sub-class will be ascertainable from general employment records, which as Plaintiffs correctly note, were required by law. (*E.g.*, Lab. Code, § 1174.)

For the above reasons, the court finds that Plaintiffs have satisfied the numerosity and ascertainability requirements.

Community of Interest: "[T]he community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 313.) "The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Here, Plaintiffs has submitted evidence indicating that common issues of law and fact predominate over individual issues. Plaintiffs allege that they and other non-exempt employees suffered the same types of alleged Labor Code violations. To the extent that Defendants suggest that Plaintiffs have not established that they had a uniform policy or practice that was applied illegally, Plaintiffs are not required to do so in order to meet the standards for certification. "Nor was the court correct to require, at the certification stage, that plaintiffs demonstrate a 'universal practice' on the part of management to deny nursing staff the benefit of the Hospital's written break policy. The trial court failed to analyze the proper question - whether plaintiffs had articulated a theory susceptible to common resolution." (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 407, footnote and citations omitted.) While Defendants contend that Plaintiffs cherry-picked isolated incidents from thousands of records, it remains apparent that a claim still exists. The fact that some employees might not have been affected or to the same degree is an issue that goes to damages and is not a proper basis on which to deny certification. (*Id.* at p. 408.)

Typicality of Plaintiff's Claims: A representative plaintiff must be part of the class and possess the same interest and suffer the same injury as the class members. (*Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, 348, 349.) Typicality refers to the representative plaintiff's claims. (*Schmidt v. Cal. Highway Patrol* (2016) 1 Cal.App.5th 1287, 1297.) Plaintiffs have shown that their claims are typical of the proposed class members, with the exception of the spoliation sub-class. Neither of Plaintiffs state a condition that meets the definition of the spoliation sub-class. In all other aspects, just like the other class members, Plaintiffs were non-exempt employees who allegedly suffered violations of her rights.

Because there is no adequate representative for the spoliation sub-class, the typicality requirement fails, and the motion is denied, without prejudice.[1]

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk

[1] The court does note that Plaintiffs appear to have sufficiently shown adequacy of representation as to counsel, and that the class is sufficiently superior to alternative means for a fair and efficient adjudication of the litigation, as a wage and hour claim. Counsel for Plaintiffs additionally submitted a trial plan as required. The trial plan appears to be reasonable, and can be narrowed by further motion practice as counsel suggests. If and once aggregate damages are determined, individual payments can be calculated.

will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 10/28/25.
(Judge's initials) (Date)