Case No. S246711

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

ZB, N.A. and ZIONS BANCORPORATION,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO,

Respondent;

KALETHIA LAWSON,

Real Party In Interest.

After a Decision by the Court of Appeal
Fourth Appellate District, Division One
Case Nos. D071279 & D071376 (Consolidated)

PETITIONERS' MOTION FOR JUDICIAL NOTICE [PROPOSED] ORDER GRANTING MOTION

RUTAN & TUCKER, LLP
JAMES L. MORRIS (SBN 109674)
*BRIAN C. SINCLAIR (SBN 180145)
GERARD M. MOONEY (SBN 222137)
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Attorneys for Petitioners
ZB, N.A. and ZIONS BANCORPORATION

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TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to Rules 8.54, 8.252 and 8.520(g) of the California Rules of Court, as well as Evidence Code Sections 452(d) and 459, Petitioners move for judicial notice of the following Orders from Superior Courts of California for the counties of Orange, Contra Costa, and Ventura:

1. *Orange County Superior Court*. Minute Order, dated March 2, 2018, in the action entitled *Ingram v. Education Management Corporation*, Case No. 30-2017-00922559-CU-OE-CXC. (Ex. 1.)
2. *Contra Costa Superior Court*. Tentative Ruling, dated March 1, 2018, in the action entitled *Ely v. Walnut Creek Associate*, Case No. MSC 16-00996. (Ex. 2, at pp. 3-7.)
3. *Ventura County Superior Court*. Minute Order, dated January 24, 2018, in the action entitled *Cisneros v. Lazy Dog Restaurants*, Case No. 50-2017-00501824-CU-OE-VTA. (Ex. 3.)

For the reasons set forth below, Petitioners respectfully request this Court grant this Motion for judicial notice.

MEMORANDUM OF POINTS AND AUTHORITIES

This motion seeks judicial notice of two Minute Orders and one Tentative Ruling (which Petitioners understand was adopted by the Superior

Court). Judicial notice is the appropriate procedure for bringing these Orders before this Court. (*See*, EVIDENCE CODE § 452(d); *Szetela v. Discovery Bank* (2002) 97 Cal.App.4th 1094, 1098.)

The Orders are relevant because, as Petitioners explained in their petition for review and reply brief, an express and irreconcilable split of authority exists between the Fourth District Court of Appeal's opinion in *Lawson v. ZB, N.A*. (2017) 18 Cal.App.5th 705 ("*Lawson*"), and the Fifth District Court of Appeal's opinion in *Esparza v. KS Indus., L.P*. (2017) 13 Cal.App.5th 1228 ("*Esparza*"). Petitioners have urged "this Court to resolve the conflict between the *Esparza* and *Lawson* decisions so that trial courts and other appellate districts may have clear guidance from the Supreme Court on this frequently-recurring and important issue." (Reply Brief, at p.9.)

Since filing their Reply Brief, Petitioners have learned that trial courts are, in fact, struggling with the split of authority, with some trial courts following *Lawson* and others following *Esparza*. For example, on March 2, 2018, the Orange County Superior Court (Honorable Randall Sherman) reviewed the split of authority, and rejected the *Lawson* court's holding, instead choosing to follow the *Esparza* decision. (Ex. 1.) On the other hand, on March 1, 2018, the Contra Costa Superior Court (Honorable Barry Goode) rejected the *Esparza* court's holding, and instead followed the *Lawson*

decision. (Ex. 2, at pp. 3-7.)[1] In its ruling, the Contra Costa Superior Court commented that "the Supreme Court has not resolved the split" and, therefore, appellate resolution is necessary:

> There is no published case on this topic from the First District Court of Appeal. Further, the Supreme Court has not resolved the split between *Esparza* and *Lawson*. As a result, the Court certifies that the characterization of claims for relief under Labor Code section 558 (as either civil penalties within the meaning of PAGA or not) is a controlling question of law as to which there are substantial grounds for difference of opinion. Appellate resolution of the question would materially advance the conclusion of this (and potentially future) litigation.

(Ex. 2, at p.7.) On January 24, 2018, the Ventura County Superior Court (Honorable Kevin DeNoce) also followed the *Lawson* decision, although recognizing the split of authority. (Ex. 3.)

As is clear from these trial court decisions – all three of which are from courts outside the Fourth and Fifth Appellate Districts – trial courts are struggling to decide the intersection between PAGA claims seeking victim-specific unpaid wages and the Federal Arbitration Act. This struggle will

[1] Exhibit 2 is a copy of the tentative ruling. Petitioners are awaiting the final Order from the Court, although Petitioners understand that Judge Goode adopted his tentative ruling.

continue until this Court settles this important question of law. (Cal. Rule of Court, Rule 8.500(b)(1).)

Pursuant to California Rules of Court, Rule 8.252(a)(2)(B) and (D), Petitioners note that the matters to be noticed were not presented to the Superior Court or Court of Appeal below, as these trial court rulings occurred after the judgment and decisions by the respective Courts of Appeal discussed in the Petition. The matters are, however, subject to judicial notice pursuant to Evidence Code Section 452(c) and (d), as official acts and records of Courts of this State. (Cal. Rules of Court, Rule 8.252(a)(2)(C).)

On the basis of the foregoing, Petitioners request that this Court take judicial notice of Exhibits 1-3. Petitioners further request that the Court grant review to address this important legal issue, as to which the Courts of Appeal, and trial courts, are irreconcilably split.

Respectfully submitted,

Dated: March 13, 2018

RUTAN & TUCKER, LLP
JAMES L. MORRIS
BRIAN C. SINCLAIR
GERARD M. MOONEY

By: Brian C. Sinclair
Brian C. Sinclair
Counsel for Petitioners ZB, N.A.
and ZIONS BANCORPORATION

ORDER

Pursuant to Rules 8.54, 8.252 and 8.520(g) of the California Rules of Court and Evidence Code Sections 452(d) and 459, as well as the Request for Judicial Notice filed by Petitioners ZB N.A. and Zions Bancorporation ("Petitioners"), and good cause appearing therefor, the Court takes judicial notice of the following documents as presented by Petitioners:

1. Minute Order, dated March 2, 2018, entered by the Orange County Superior Court in the action entitled *Ingram v. Education Management Corporation*, Case No. 30-2017-00922559-CU-OE-CXC. (Ex. 1.)
2. Tentative Ruling, dated March 1, 2018, entered by the Contra Costa County Superior Court in the action entitled *Ely v. Walnut Creek Associate*, Case No. MSC 16-00996. (Ex. 2, at pp. 3-7.)
3. Minute Order, dated January 24, 2018, entered by the Ventura County Superior Court in the action entitled *Cisneros v. Lazy Dog Restaurants*, Case No. 50-2017-00501824-CU-OE-VTA. (Ex. 3.)

Dated: _____ _____
Justice of the California Supreme Court

CERTIFICATION OF WORD COUNT UNDER RULE 8.504(D)

The undersigned certifies that according to the word processing program used to prepare this brief, it consists of 922 words, exclusive of the matters that may be omitted under Rule 8.504(d) of the California Rules of Court.

Dated: March 13, 2018

RUTAN & TUCKER, LLP
JAMES L. MORRIS
BRIAN C. SINCLAIR
GERARD M. MOONEY

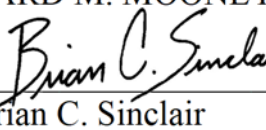
By: 
Brian C. Sinclair
Counsel for Petitioners ZB, N.A.
and ZIONS BANCORPORATION

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 03/02/2018 TIME: 10:00:00 AM DEPT: CX105

JUDICIAL OFFICER PRESIDING: Randall J. Sherman
CLERK: Jason Phu
REPORTER/ERM:
BAILIFF/COURT ATTENDANT: Jose F Boc

CASE NO: **30-2017-00922559-CU-OE-CXC** CASE INIT.DATE: 05/25/2017
CASE TITLE: **Ingram vs. Education Management Corporation**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 72746614

EVENT TYPE: Motion to Compel Arbitration
MOVING PARTY: Education Management Corporation
CAUSAL DOCUMENT/DATE FILED: Motion to Compel Arbitration Individual Arbitration and Stay the PAGA representative Action pending the Completion of the Individual Arbitrations, 01/12/2018

EVENT ID/DOCUMENT ID: 72748759

EVENT TYPE: Status Conference

APPEARANCES
Julian A. Hammond and Polina Pecherskaya, from HammondLaw, P.C., present for Plaintiff(s) telephonically.
David E. Amaya, from FISHER & PHILLIPS, LLP, present for Defendant(s).

Tentative Ruling posted on the Internet .

The Court hears oral argument.

The Court confirms the tentative ruling as follows:

Defendant Education Management Corporation's Motion to Compel Individual Arbitrations and Stay the PAGA Representative Action Pending the Completion of the Individual Arbitrations is granted. Plaintiffs must arbitrate the portions of their Complaint by which they seek unpaid wages and benefits for themselves, but not the portions by which they seek per-violation penalties of which 75% will go to the state. This case is ordered stayed pending the conclusion of the arbitration. A Post-Arbitration Review Hearing is set for September 7, 2018 at 9:00 a.m. Both sides' Requests for Judicial Notice are granted.

Based on Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal. 4th 348, 386-88, and Esparza v. KS Industries, L.P. (2017) 13 Cal. App. 5th 1228, 1243-46, plaintiffs are required to arbitrate their individual, victim-specific claims, recovery on which they will personally retain, but may have the court determine their representative PAGA claims, whose recovery mostly will go to state coffers. Plaintiffs pray for underpaid wages, liquidated damages and unpaid business expenses in paragraphs

37, 40 and 48 of their Complaint. Those claims are all subject to arbitration by virtue of the parties' written agreements.

This court has avoided discussing whether unpaid wages and benefits are "penalties" because this court sees that issue as an unimportant distraction. This court disagrees with Lawson v. ZB, N.A. (2017) 18 Cal. App. 5th 705, 722-25 (which was not decided by the appellate court covering Orange County), to the extent it is inconsistent with Esparza. The important distinction is not whether recovery should be labeled penalties or damages, but rather whether recovery will go to the individual plaintiffs or mostly (75%) to the state. The Lawson court even seemed to consider the beneficiary of the action to be relevant: "there is no basis upon which to conclude that recovery under the statute will largely go to individual employees, at this point". 18 Cal. App. 5th at 724-25. But the U.S. Supreme Court held in Dean Witter Reynolds Inc. v. Byrd (1985) 470 U.S. 213, 217, that where both arbitrable and nonarbitrable claims are asserted, the arbitrable claims must still be arbitrated. That court repeatedly has expressed a strong public policy favoring enforcement of arbitration agreements. Thus, plaintiffs must arbitrate the claims which seek monetary relief that would wholly go to them personally. Under Labor Code §558(a)(3) and Thurman v. Bayshore Transit Management, Inc. (2012) 203 Cal. App. 4th 1112, 1145, plaintiffs would keep any underpaid wages (and other unpaid benefits) themselves. Plaintiffs must therefore arbitrate those claims.

Notice is waived.

EXHIBIT 2

CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA
DEPARTMENT: 17
HEARING DATE: 03/01/18

1. TIME: 8:30 CASE#: MSC16-00996
CASE NAME: ELY VS. WALNUT CREEK ASSOCIATE
HEARING ON MOTION TO/FOR COMPEL ARBITRATION FILED BY WALNUT CREEK ASSOCIATES 2, INC, GORDON S WALTON, STEVE SKLAVOS, DAVID
**** TENTATIVE RULING: ****

The motion to compel arbitration (the "Motion") filed by defendants (collectively, "WCA2") requires the Court to analyze two recent appellate opinions and choose the opinion the Court believes controls this matter. *Auto Equity Sales, Inc. v. Super. Ct.* (1962) 57 Cal.2d 450, 456 ("where there is more than one appellate court decision, and such appellate decisions are in conflict," the inferior tribunal "can and must make a choice between the conflicting decisions.").

WCA2 contends the Court ought to follow the Fifth District Court of Appeal's decision in *Esparza v. KS Indus., L.P.* (2017) 13 Cal.App.5th 1228 ("*Esparza*"). Opposing the Motion, plaintiff Landen Ely ("Ely") contends the Court ought to follow the Fourth District Court of Appeal's decision in *Lawson v. ZB, N.A.* (2017) 18 Cal.App.5th 705 ("*Lawson*").

Existence of Conflict Between *Esparza* and *Lawson*

Unless *Esparza* and *Lawson* conflict on a point material to the disposition of the Motion, the Court need not make a choice between them. The Court first concludes that *Esparza* and *Lawson* are in conflict on such a point. The Motion seeks to compel to arbitration Ely's claims for relief under Labor Code section 558(a). Broadly speaking, *Esparza* says that section 558(a) claims may be compelled to arbitration, because the relief sought by a claim under section 558(a) is individualized relief. *Lawson* says that section 558(a) claims cannot be compelled to arbitration, because a section 558(a) claim constitutes a claim for civil penalties under PAGA.

Accordingly, under *Auto Equity*, the Court is required to "make a choice between [*Esparza*] and [*Lawson*]." *Auto Equity, supra*, 57 Cal.2d at p. 456.

The Relevant Statute

The Court's starting point is the text of Labor Code section 558(a) itself. It says:

> Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
>
> (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
> (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
> (3) Wages recovered pursuant to this section shall be paid to the affected employee.

Esparza

The following passage sums up the holding of *Esparza*:

> We conclude that, for purposes of the *Iskanian* rule, PAGA representative claims for *civil penalties* are limited to those where a portion of the recovery is allocated to the Labor and Workforce Development Agency. Claims for unpaid wages based on Labor Code section 558 are not allocated in this manner and, therefore, the *Iskanian* rule does not exempt such claims from arbitration.

Esparza at p. 1234.

The *Esparza* Court reasoned that although section 558 "refers to the amount 'as a penalty,' it does not constitute a 'civil penalty' as that term is used in *Iskanian* because it is payable to the employees and not a state agency." *Id.* at p. 1242.

The court acknowledged that section 558 uses the phrase "civil penalty," but said that section 558's usage of the phrase "civil penalty" is different from the way that phrase is used in Labor Code section 2699 or *Iskanian*. The court reached that conclusion because of the "substantive aspect of the claim" and its "financial reality that 100 percent of the 'amount sufficient to recover underpaid wages' is paid to the affected employee." *Id.* at p. 1245. The court continued "[t]he dispute over wages is a private dispute because, among other things, it could be pursued by Employee in his own right." *Id.* at p. 1246.

In short, under *Esparza*, the Court is to look at how the relief sought is allocated. If the relief sought is payable in part to the LWDA, the relief sought is a civil penalty within the meaning of PAGA, and the claim seeking that relief cannot be compelled to arbitration.

By contrast, if the relief sought is not payable in part to the LWDA, then the relief sought is victim-specific relief, and is not a civil penalty within the meaning of PAGA. A dispute concerning such relief does not implicate the State of California, and as a private dispute, can be compelled to arbitration. *See Esparza* at p. 1246 ("[t]he rule of nonarbitrability adopted in *Iskanian* is limited to claims that can *only* be brought by the state or its representatives, where any resulting judgment is binding on the state and any monetary penalties largely go to state coffers").

The Court is cognizant that the conclusion of the *Esparza* Court—claims under section 558 do not seek civil penalties within the meaning of PAGA—has been followed by the Ninth Circuit in an (as of yet) unpublished opinion. *Mandviwala v. Five Star Quality Care, Inc.* (9th Cir. Feb. 2, 2018) No. 16-55084, 2018 U.S.App.LEXIS 2770. The Court notes here that in a memorandum opinion, *Mandviwala* followed *Esparza* without any substantive analysis. Further, *Mandviwala* is not controlling authority.

Lawson

The Fourth District Court of Appeal expressly disagreed with *Esparza*:

> [T]he $50 and $100 assessments as well as the compensation for underpaid wages provided for by section 558, subdivisions (a) and (b) are, together, the *civil*

> *penalties* provided by the statute. In this regard, we respectfully part company with the views recently expressed by our colleagues in the Fifth District in *Esparza*.

Lawson at p. 722.

The *Lawson* Court first took issue with the conclusion in *Esparza* that an employee plaintiff could have pursued recovery under section 558 in his own right before PAGA. *Id.* at p. 723. *Lawson* found this persuasive: "The court in *Iskanian* made it clear that the distinction between civil penalties and victim specific statutory damages hinges in large measure on whether, prior to enactment of the PAGA, they could only be recovered by way of regulatory enforcement." *Id.* at p. 724.

Lawson, concluded by saying, "in sum, because, prior to enactment of PAGA there was no private remedy under section 558 and because there is no basis upon which to conclude that recovery under the statute will largely go to individual employees," the section 558 claim could not be compelled to arbitration. *Id.* at pp. 724-725.

Application

The Court finds *Lawson* to be a more persuasive reading of section 558 and a more persuasive application of *Iskanian*.

First, the text of section 558 itself refers to the $50 or $100 assessment *in addition* to an amount sufficient to recover unpaid wages as "a civil penalty." *See also Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1134. The Court is hard-pressed to ignore the statute describing the relief it provides using a specific term of art. The Court does not agree that this is mere "semantics," as *Esparza* says. In interpreting statutes, the Court is to give effect to every word the Legislature uses. *E.g., Hughes v. Bd. of Architectural Examiners* (1998) 17 Cal.4th 763, 775. The Court also is required to assume that when the Legislature enacted PAGA, it was aware that section 558 used the phrase "civil penalties." *See Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2009) 173 Cal.App.4th 13, 21-22. Section 558 could have used many terms to describe the relief it provides; instead, it uses the phrase "civil penalty." PAGA could have used many terms to describe the relief it empowers private plaintiffs to seek. Instead, it uses the phrase "civil penalties." The Court is not permitted to treat this as mere happenstance, coincidence, or semantics.

Second, the Court agrees with *Lawson* that prior to PAGA, it appears there was no private right of action for an employee under section 558. Indeed, the statute suggests as much: the employer would pay to the regulatory agency a civil penalty consisting of (i) the $50 or $100 assessment and (ii) the amount necessary to make the employee whole. The employee would be paid the underpaid wages by the regulatory agency. Crucially, the employer paid only one civil penalty, and that civil penalty was paid directly the LWDA. If, prior to PAGA, only the LWDA could have enforced section 558, it follows that if a plaintiff now seeks to enforce section 558, that plaintiff is only doing so pursuant to the authority granted him or her by PAGA to act as a private attorney general to enforce the Labor Code. That principle is consistent with *Iskanian*.

Put another way, the employee is not seeking victim-specific relief. Rather, the employee is a representative of the LWDA, augmenting the LWDA's enforcement capability by enforcing a provision of the Labor Code previously enforceable only by the LWDA.

Third, in interpreting a statute such as section 558, the Court is required to effectuate the purpose of the law. The Court must "select the statutory construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute." *Sonoma State University v. WCAB* (2006) 142 Cal.App.4th 500, 504 (citation, quotation, parenthetical omitted). In addition, the Court should read the Labor Code as a whole and assume that when PAGA was enacted, the Legislature was aware of section 558, including its use of the phrase "civil penalties." *See Apartment Assn. of Los Angeles County, Inc., supra,* 173 Cal.App.4th at pp. 21-22.

The purpose of section 558: The Court reads section 558 to have dual purposes. First, section 558 has a deterrent function. If an employer could underpay employees and the punishment for such underpayment was limited to simply paying the employee(s) the wages they were entitled to all along, there would be less incentive to properly pay employees in the first instance. Section 558 provides such an incentive by creating a civil penalty consisting of both the amount necessary to make employee(s) whole and a per pay period assessment.

Second, section 558 exists to ensure that employees are not underpaid by ensuring that employees receive an amount sufficient to properly compensate them.

The purpose of PAGA: The LWDA says that PAGA "authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for Labor Code violations." (www.labor.ca.gov/Private_Attorneys_General_Act.htm; accessed February 28, 2018.) This comports with what our Supreme Court has said: "the Legislature's purpose in enacting the PAGA was to augment the limited enforcement capability of the Agency by empowering employees to enforce the Labor Code as representatives of the Agency." *Iskanian, supra*, 59 Cal.4th at p. 383.

Before PAGA, section 558 empowered the LWDA (and only the LWDA) to seek civil penalties from employers that had underpaid employees. PAGA was enacted to permit private plaintiffs to enforce the Labor Code by seeking civil penalties from employers violating the Labor Code. The Court must presume the Legislature knew of the existence of section 558 when it enacted PAGA, including that it did not create a private right of action.

The Court concludes that reading section 558 together with PAGA compels the conclusion that PAGA was intended to permit aggrieved employees to seek the entirety of the civil penalty provided for by section 558 as a civil penalty under PAGA. In so doing, an aggrieved employee is enforcing section 558 as a representative of the LWDA. Accordingly, under *Iskanian* and *Betancourt v. Prudential Overall Supply* (2017) 9 Cal.App.5th 439, 447, among other cases, the Court cannot compel a section 558 claim to arbitration.

WCA2 makes one final argument. It says that *Lawson* does not apply because in *Lawson*, the court was able to say that "the underpaid wage portion of any recovery will fall within the 25

percent range implicitly approved by the court in *Iskanian*." *Lawson* at p. 724. WCA2 says that the state of the pleadings here does not permit the Court to say any similar thing. In the first instance, the Court does not read the decision in *Lawson* to depend on the quoted passage. Even if it did, the Court considers that opining on what Ely might recover and how that recovery might be categorized would be pure speculation at this juncture of the litigation. The Court declines to permit such speculation to form any part of the basis of its ruling on the Motion.

Disposition

As between *Lawson* and *Esparza*, the Court follows *Lawson*. A claim under section 558 is a claim for civil penalties within the meaning of PAGA. The Motion is denied.

Code of Civil Procedure Section 166.1

There is no published case on this topic from the First District Court of Appeal. Further, the Supreme Court has not resolved the split between *Esparza* and *Lawson*. As a result, the Court certifies that the characterization of claims for relief under Labor Code section 558 (as either civil penalties within the meaning of PAGA or not) is a controlling question of law as to which there are substantial grounds for difference of opinion. Appellate resolution of the question would materially advance the conclusion of this (and potentially other future) litigation.

2. TIME: 8:30 CASE#: MSC16-01426
CASE NAME: RICHMOND COMPASSIONATE VS RICH
HEARING ON MOTION TO/FOR ATTORNEYS FEES FILED BY 7 STARS HOLISTIC FOUNDATION, INC, ZEADD M HANDOUSH
**** TENTATIVE RULING: ****

The parties have requested that the various motions for attorneys' fees be heard on the same date. Therefore, all pending motions for attorneys' fees shall be heard on April 12, 2018 at 8:30 a.m. in Department 17. The Court will also hold a case management conference on April 12, 2018. The case management conference set for April 17, 2018 is off calendar.

It appears that none of the parties are arguing that the fee motions should be stayed pending the appeal by 7 Stars Holistic Foundation, Inc. and Zeaad Handoush. If any party plans to argue that one or more of the pending attorneys' fees motions should be stayed pending appeal that party shall file and serve a motion to stay on or before March 16, 2018. The hearing on any such motion shall be on April 12, 2018 and any opposition or reply will be due per code. (If, upon the filing of such a motion to stay, a hearing date other than April 12, 2018 is assigned, the parties to the motion are invited to jointly fax the clerk of Department 17, and the hearing date will be moved to April 12, 2018.)

The following attorneys' fees motions will be heard on April 12, 2018:

- Richmond Patient's Group, Holistic Healing Collective Inc., William Kozoil, Darrin Parle, Alex Parle, Rebecca Vasquez, Lisa Hirschhorn and Cesar Zepeda's motion

filed on February 3, 2017. This motion seeks fees related to the special motion to strike filed against the original complaint. Mr. Cloird was a moving party on this motion, however, Mr. Cloird has since filed a separate motion for his fees.

- 7 Stars Holistic Foundation, Inc. and Zeaad Handoush's motion filed on January 29, 2018. This motion seeks attorneys' fees for all of the defendants' involvement in the various special motions to strike. This motion includes documents filed for and against 7 Stars Holistic Foundation, Inc.'s and Zeaad Handoush's 2017 fee motion.

- Antwon Cloird's motion filed on February 5, 2018. This motion seeks attorneys' fees for defendant's involvement in the original special motions to strike. This motion includes documents filed for and against the Richmond Patient's Group, et al.'s 2017 fee motion.

- Richmond Patient's Group, William Kozoil, Darrin Parle, Alex Parle, and Cesar Zepeda's motion filed on February 26, 2018. This motion seeks fees related to the special motion to strike filed against the third amended complaint.

3. TIME: 8:30 CASE#: MSC16-01426
CASE NAME: RICHMOND COMPASSIONATE VS RICH
HEARING ON MOTION TO/FOR AWARD OF ATTORNEYS'' FEES AND COSTS FILED BY ANTWON CLOIRD
**** TENTATIVE RULING: ****

See line 2.

4. TIME: 8:30 CASE#: MSC17-02112
CASE NAME: MICHAEL PACHECO VS SHEA HOMES
HEARING ON MOTION TO/FOR TO DISMISS OR COMPEL FILED BY SHEA HOMES LIMITED PARTNERSHIP
**** TENTATIVE RULING: ****

Pursuant to the stipulation of the parties, the motion is continued to March 15, 2018, at 8:30 a.m. in Department 17.

5. TIME: 8:30 CASE#: MSL17-00913
CASE NAME: R.W. LYNCH VS. BRIGHTWELL
HEARING ON MOTION FOR SUMMARY JUDGMENT FILED BY R.W. LYNCH CO., INC.,
**** TENTATIVE RULING: ****

The motion is unopposed and appears meritorious. It is, therefore, granted.

6. TIME: 8:30 CASE#: MSL17-01033
CASE NAME: CAPITAL ONE VS GARCIA
HEARING ON MOTION TO/FOR ENTRY OF JUDGMENT UNDER STIPULATED SETTLEMENT FILED BY CAPITAL ONE BANK (USA), N.A.
**** TENTATIVE RULING: ****

Denied without prejudice. There is no Proof of Service showing that defendant was given notice of this motion. See Local Rule 3.14.

7. TIME: 8:30 CASE#: MSN17-1822
CASE NAME: SANTA CLARA VALLEY VS SF REGIO
HEARING ON DEMURRER TO 1st Amended CIVIL PETITION of SANTA CLARA VALLEY WATER DISTRICT FILED BY SAN FRANCISCO BAY REGIONAL WATER
**** TENTATIVE RULING: ****

This motion has been continued to March 29, 2018 at 8:30 a.m. pursuant to the parties' agreement.

EXHIBIT 3

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA

MINUTE ORDER

DATE: 01/24/2018 TIME: 08:20:00 AM DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce
CLERK: Tiffany Froedge
REPORTER/ERM: Nalena K Rieder

CASE NO: **56-2017-00501824-CU-OE-VTA**
CASE TITLE: **Cisneros vs Lazy Dog Restaurants**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT TYPE: Motion to Compel Arbitration and Stay Action
MOVING PARTY: Lazy Dog Restaurants LLC
CAUSAL DOCUMENT/DATE FILED: Motion - Other Petition to Compel Arbitration and Stay Action, 10/30/2017

APPEARANCES
Nazo Koulloukian, counsel, present for Plaintiff(s).
Philip K. Lem, specially appearing for counsel PAUL J COADY, present for Defendant(s).

At 09:08 a.m., court convenes in this matter with all parties present as previously indicated.

Counsel have received and read the court's written tentative ruling.

Defendant will submit on the Court's tentative ruling.

Matter submitted to the Court with argument.

The Court finds/orders:

Matter is taken under submission.

After further consideration of the submitted matter, the court rules as follows:

Motion to compel arbitration and stay action.

The court's tentative ruling is as follows:

The court grants the motion to compel arbitration. The following Labor Code claims are to be heard in arbitration: Labor Code §226.7; Cal Code tit. 8 section 11050(5); Labor Code §203(a); and Labor Code §226(e). Each of these claims involves statutory penalties or victim-specific remedies. As such, they do not fall under the rubric of PAGA as they do not seek civil penalties, and are properly severed from this action. "The civil penalties recovered on behalf of the state under the PAGA are distinct from the statutory damages to which employees may be entitled in their individual capacities." Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 381. "When a suit contains both arbitrable and inarbitrable claims, the arbitrable claims should be severed from those that are inarbitrable and sent to arbitration." Boughton v. Cigna Healthplans of California, (1999) 21 Cal. 4th 1066, 1088.

With respect to Labor Code §558(a)(3), the court finds the analysis of Lawson v. ZB NA, 2017 WL 6477857 more persuasive than Esparza v. KS Industries, LP (2017) 13 Cal. App. 5th 1228, given the absence of authority that there is a private right of action for §558. Accordingly, the claims in the complaint regarding Labor Code §558(a)(1)(2)& (3), Labor Code §256, Labor Code §226.3, and Labor Code §1174.5 are stayed pending the resolution of the above-stated claims in arbitration.

In order to find that an agreement is unconscionable both procedural and substantive unconcsionability must be established. Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC (2012) 55 Cal.4th 223, 247. Here, the court does not find any evidence of substantive unconscionability. Plaintiffs mistakenly assume that the arbitrator will assess all of his or her fees on the employee, but the provision at §5 of the agreement is neutral. Furthermore, the arbitrator is bound by the agreement to follow the law in terms of apportionment of fees. See Bankwitz v. Ecolab, Inc. (2017) 2017 WL 4642284, at *3 (courts presume that arbitrators follow the law). Though unnecessary given the lack of substantive unconscionability, the court will comment on the issue of procedural unconscionability for which the evidence is mixed. Mr. Montes declares that he spoke to the plaintiffs in English on numerous occasions and that they were capable of reading recipes in English. (Montes Dec. at ¶7). He also states on behalf of the Defendant that new hires are given ample time to review the documents including the arbitration agreement, and that an interpreter is provided for new hires that have language difficulties. (Montes Dec at ¶5). Mr. Cisneros declares that he was not provided with a copy of the arbitration agreement in Spanish and that he cannot read or write in English. (Cisneros Dec at ¶2). He declares that he was not provided with an opportunity to review the documents. (Cisneros Dec at ¶7). The court notes that Mr. Ortiz did not provide a declaration in support of the opposition.

Notice to be given by the clerk.

PROOF OF SERVICE

KALETHIA LAWSON v. CALIFORNIA BANK & TRUST, et al.
San Diego Superior Court Case No. 37-2016-00005578-CU-OE-CTL
Court of Appeal Fourth Appellate District, Div. One, Case No. D071376

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-1931.

On March 13, 2018, I served on the interested parties in said action the within:

PETITIONERS' MOTION FOR JUDICIAL NOTICE
[PROPOSED] ORDER GRANTING MOTION

as stated below:

SEE ATTACHED SERVICE LIST

[✓] **(BY OVERNIGHT DELIVERY)** by depositing in a box or other facility regularly maintained by FedEx, an express service carrier, or delivering to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed as shown above, with fees for overnight delivery provided for or paid.

[✓] ****VIA TRUEFILING ELECTRONIC E-SERVICE SYSTEM:** I transmitted via the Internet a true copy(s) of the above-entitled document(s) through the Court's Mandatory Electronic Filing System via the TrueFiling Portal and concurrently caused the above-entitled document(s) to be sent to the recipients listed above pursuant to the E-Service List maintained by and as it exists on that database. This will constitute service of the above-listed document(s).

[✓] **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 13, 2018, at Costa Mesa, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Pat Seward	Pat Seward
(Type or print name)	(Signature)

SERVICE LIST

KALETHIA LAWSON v. CALIFORNIA BANK & TRUST, et al.
San Diego Superior Court Case No. 37-2016-00005578-CU-OE-CTL
Court of Appeal Fourth Appellate District, Division One, Case No. D071376

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Counsel for Plaintiff, KALETHIA LAWSON

*****Via TrueFiling***

Superior Court of the State of California
for the County of San Diego
Attn: Honorable Kenneth J. Medel
Department C-66
330 West Broadway
San Diego, CA 92101

Via Federal Express

Clerk of the Court
Court of Appeal, Fourth District, Division 1
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Via Federal Express

Clerk of the Court
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **LAWSON v. ZB, N.A.**
Case Number: **S246711**
Lower Court Case Number: **D071279**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **bsinclair@rutan.com**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

--
Date

/s/Brian Sinclair
Signature

Sinclair, Brian (180145)
Last Name, First Name (PNum)

Rutan & Tucker, LLP
Law Firm