Tentative Rulings for March 26, 2025
Department 403

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.***

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 403

Begin at the next page

(03)

Tentative Ruling

Re: ***Alcala v. Certified Meat Products, Inc.***
Case No. 22CECG03628

Hearing Date: March 26, 2025 (Dept. 403)

Motion: Plaintiffs' Motion for Preliminary Approval of Class Action Settlement

Tentative Ruling:

To deny plaintiffs' motion for preliminary approval of class and PAGA settlement, without prejudice.

Explanation:

1. Class Certification

a. Standards

First, the court must determine whether the proposed class meets the requirements for certification before it can grant preliminary approval of the proposed settlement. An agreement of the parties is not sufficient to establish a class for settlement purposes. There must be an independent assessment by a neutral court of evidence showing that a class action is proper. (*Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81 (rev. denied); see also Newberg, *Newberg on Class Actions* (T.R. Westlaw, 2017) Section 7:3: "The parties' representation of an uncontested motion for class certification does not relieve the Court of the duty of determining whether certification is appropriate.")

"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.)

b. 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 when that identification becomes necessary. While often it is said that class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records, that statement must be considered in light of the purpose of the ascertainability requirement. Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." (*Nicodemus v. Saint Francis Memorial Hospital* (2016) 3 Cal.App.5th 1200, 1212, internal citations and quote marks omitted.)

Here, the class is ascertainable, as defendants' personnel records should be sufficient to allow the parties to identify the class members. The class is also sufficiently numerous to justify certification, as plaintiff's counsel claims that there are approximately 319 class members who worked for defendant during the class period. Therefore, the court intends to find that the class is sufficiently numerous and ascertainable for certification.

c. 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.'" (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.) "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.) [T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 669.)

Here, it does appear that there are common questions of law and fact, as all of the proposed class members worked for the same defendant and allegedly suffered the same type of Labor Code violations. Therefore, the proposed class involves common issues of law and fact.

With regard to the requirement of typicality of the representative's claims, it does appear that Mr. Alcala's and Mr. Alvarado's claims are typical of the rest of the class and that they seek the same relief as the other class members based on their allegations and prayer for relief in the complaint. There is no evidence that they have any conflicts between their interests and the interests of the other class members that would make them unsuitable to represent their interests. Therefore, plaintiffs have shown that the named plaintiffs have claims typical of the other class members.

Plaintiff's counsel has submitted declarations showing that they are experienced and qualified to represent the class. (See Melmed decl., ¶¶ 8-13; Leviant decl., ¶¶ 21-25.) The attorneys' declarations discuss their background, education, and experience in class action litigation. They clearly have extensive backgrounds and experience in class action litigation. Therefore, the declarations provide sufficient evidence to support counsels' assertion that they are experienced and qualified to represent plaintiffs and the other class members here.

d. Superiority of Class Certification

It does appear that certifying the class would be superior to any other available means of resolving the disputes between the parties. Absent class certification, each employee of defendants would have to litigate their claims individually, which would result in wasted time and resources relitigating the same issues and presenting the same testimony and evidence. Class certification will allow the employees' claims to be resolved in a relatively efficient and fair manner. (*Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) Also, the value of each individual class member's claim is relatively small, so it would not be worthwhile for them to bring their claims on an

individual basis. On the other hand, if they bring their claims as a class, then they can recover substantially more money and hopefully deter defendant from committing future violations of the law. Therefore, it does appear that class certification is the superior means of resolving the plaintiff's claims.

Conclusion: The court intends to grant certification of the class for the purpose of settlement.

2. Settlement

a. Legal Standards

"When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." (*Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F. 3d 1071, 1079.) "[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement . . . The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal. App. 4th 116, 129.) "[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished . . . [therefore] the factual record must be before the … court must be sufficiently developed." (*Id*. at p. 130.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id*. at p. 129.)

b. Fairness, Adequacy, and Reasonableness of the Settlement

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Here, plaintiffs' counsel has presented a sufficient discussion of the strength of the case if it went to trial, the risks, complexity, and duration of further litigation, and an explanation of why the settlement is fair and reasonable in light of the risks of taking the case to trial. Plaintiffs' counsel has provided a detailed explanation of the claims and defenses raised by the parties, and the problems and risks inherent in plaintiff's case.

Counsel also explains why they decided to accept $190,000 to settle the claims even though they might potentially have recovered much more money if they prevailed at trial. They note that there was a risk that the class might not be certified, or that defendant might try to settle each individual class member's claim separately. The court might also exercise its discretion to reduce or even refuse to award PAGA penalties. In addition, plaintiffs might not have been able to prove that any Labor Code violations were intentional. The issues of the case were hotly contested, and defendant might have prevailed on its defenses. Plaintiffs' counsel and their expert conducted discovery and reviewed a sample of 33% of the employees' records to determine what potential damages might be. As a result, plaintiffs concluded that settling for $190,000 was reasonable under the circumstances.

Therefore, plaintiffs have shown that the settlement is fair, reasonable, and adequate in light of the unique facts and legal issues raised by the plaintiffs' case.

c. Proposed Class Notice

The proposed notice appears to be adequate. The notices will provide the class members with information regarding their time to opt out or object, the nature and amount of the settlement, the impact on class members if they do not opt out, the amount of attorney's fees and costs, and the service award to the named class representatives. As a result, the court intends to find that the proposed class notice is adequate.

3. Attorney's Fees and Costs

Plaintiff's counsel seeks attorney's fees of $63,333.33, which is one-third of the gross settlement. Plaintiff's counsel has provided two declarations to describe their education, skill, and experience, as well as the challenges presented in the litigation. (Melmed decl.; Leviant decl.) The declarations generally discuss the attorneys' background, education, skill, and experience. They rely on the fact that courts have chosen to allow attorneys in class and representative actions to recover fees based on a percentage of the common fund that they obtained for the class. Such fees are commonly in the range of one-third of the total recovery.

However, plaintiffs' counsel has not provided any information about the work they did on this case, their hourly rates, and why they should be allowed to recover one-third of the total gross settlement here. While it is true that the courts commonly allow counsel in class actions to recover fees based on a percentage of the total recovery, courts may also conduct a lodestar cross-check to determine whether the amount of fees sought is reasonable in light of the work done on the case and a reasonable hourly rate. (*Laffitte v. Robert Half International, Inc*. (2016) 1 Cal.5th 480, 504.) Here, plaintiffs' counsel has not provided the court with enough information to perform a lodestar cross-check of the requested fees. Therefore, the court intends to find that plaintiffs have not adequately proven up the reasonableness of their fees request at this time.

4. Payment to Class Representative

Plaintiff seeks preliminary approval of a $15,000 service award to the named plaintiffs/class representatives, with Mr. Alcala and Mr. Alvarado each receiving a payment of $7,500. Plaintiffs have provided their declarations, which support the request for a service award, as they state that they worked closely with plaintiff's counsel,

provided documents, answered questions, and participated in meetings about the case with counsel. The service awards appear to be fair and reasonable in light of the work done by the named plaintiffs. Therefore, the court intends to grant preliminary approval of the incentive award to the named plaintiffs.

5. Payment to Class Administrator

Plaintiff's counsel states that the class administrator, Apex Class Action Administration, will receive $7,000 to administer the settlement. (Melmed decl., ¶ 67, Leviant decl., ¶ 33.) Apex presented the lowest qualified bid for administration services. (*Ibid*.) Plaintiffs' counsel has no relationship with Apex, other than as a third-party vendor of services in an arm's length transaction. (*Ibid*.) Therefore, plaintiffs propose to use Apex for administration of the settlement.

However, plaintiffs have not provided a declaration from a representative of Apex, discussing the services they would provide, their qualifications, or the amount that they will charge for their services. Therefore, plaintiffs have not provided enough evidence to show that it would be fair and reasonable to allocate $7,000 of the settlement funds to pay for Apex's class administration services.

6. PAGA Settlement

Plaintiff proposes to allocate $15,000 of the settlement to the PAGA claims, with 75% of that amount being paid to the LWDA as required by law and the other 25% being paid out to the aggrieved employees. Plaintiffs' counsel states that he gave notice of the settlement to the LWDA, and includes a copy of the email confirming that the LWDA received the notice. (Melmed decl., ¶ 76, and Exhibit D to Melmed decl.) Therefore, plaintiffs' counsel has shown that he complied with PAGA's requirement to give notice of the settlement to the LWDA. (See Labor Code, § 2699, subd. (s)(2).)

Plaintiff's counsel has also adequately discussed the reasons why they allocated $15,000 of the total settlement to the PAGA claims. As a result, the court intends to find that plaintiff has not adequately shown that the PAGA settlement is fair, adequate, and reasonable.

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: lmg on 3-21-25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re:	***Doe v. Macias et al.*** Superior Court Case No. 24CECG03131
Hearing Date:	March 26, 2025 (Dept. 403)
Motion:	(1) By Defendant Fresno Unified School District on Demurrer to the First Amended Complaint (2) By Defendant Fresno Unified School District on Motion to Strike Portions of the First Amended Complaint (3) By Defendant Stanley Dennis Macias on Motion to Strike Portions of the First Amended Complaint

Tentative Ruling:

To overrule the demurrer by defendant Fresno Unified School District in its entirety. (Code Civ. Proc. § 430.10, subd. (e).)

To deny the motion to strike by defendant Fresno Unified School District.

To grant the motion to strike by defendant Stanley Dennis Macias, with leave to amend.

Plaintiff John Doe shall serve and file an amended complaint within ten (10) days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

Demurrer and Motion to Strike – Fresno Unified School District

Defendant Fresno Unified School District ("FUSD") demurs to the First Amended Complaint ("FAC") filed by plaintiff John Doe ("Plaintiff"), on the grounds that the fifth and sixth causes of action of the FAC for: breach of mandatory duty – failure to report suspected child abuse; and negligent failure to warn, train or educate; fails to state sufficient facts to state a cause of action against FUSD.[1]

On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114.) In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.) The court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.)

[1] FUSD's Requests for Judicial Notice on Demurrer and Motion to Strike are granted.

Contentions, deductions, and conclusions of law, however, are not presumed as true. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate facts; the pleading is adequate if it apprises the defendant of the factual basis for the plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) When the complaint is defective, great liberality should be exercised in permitting a plaintiff to amend the complaint if there is a reasonable possibility that the defect can be cured by amendment. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549.)

Government Code section 815 abolished all common law or judicially declared forms of liability for public entities. (Gov. Code § 815; *see also Miklosy*, *supra*, 44 Cal.4th at p. 899.) As such, all government tort liability must be based on statute. (*Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 932.) Moreover, because all governmental liability under the Tort Claims Act must be based on statute, the general rule is that "to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pled with particularity." (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.) There is no general dispute that FUSD is a public entity within the meaning of Government Code section 815. Accordingly, the FAC is required to identify the statute under which liability may attach.

Here, the fifth cause of action relies on Government Code section 815.6 and Penal Code section 11166 et seq. to establish liability against FUSD. Government Code section 815.6 states that:

> Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

The fifth cause of action thus relies on Penal Code section 11166, which provides, in pertinent part: "a mandated reporter shall make a report… whenever the mandated reporter, in the mandated reporter's profession capacity or within the scope of the mandated reporter's employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect." (Pen. Code § 11166, subd. (a).)

FUSD demurs to this cause of action, arguing that the FAC fails to allege sufficient facts as to it. Namely, FUSD contends that Penal Code section 11166 does not create a private right of action. FUSD further contends that the FAC fails to specify how Penal Code section 11166 attaches to FUSD, who is, as an entity, not a mandated reporter. (*See generally* Pen Code § 11165.7.) FUSD concludes that the State Legislature distinguishes school districts from its employees in this regard because the laws on mandated reporting direct school districts to train their employees and persons working on their behalf of these duties. (*Id.*, § 11165.7, subd. (d).) FUSD further argues that the FAC fails to state facts to demonstrate how FUSD knew or could reasonably suspect that acts requiring mandatory reporting occurred.

As Plaintiff contends in opposition, the basis of the cause of action is not Penal Code section 11166. The basis of the cause of action is Government Code section 815.6, breach of a mandatory duty. The duty identified is under the standards set by Penal Code section 11166. Accordingly, Plaintiff may maintain the action against FUSD arising from the alleged duties imposed by Penal Code section 11166. (*See also B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 188, fn. 6.) Moreover, the cause of action may be maintained against the school district despite the school district not being identified as a mandatory reporter. (*See Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 138-143 [evaluating, on summary judgment, the sufficiency of the evidence on a cause of action for breach of Penal Code section 11166 as to the school district for the failure of district employees to make mandatory reports].) Finally, as Plaintiff argues, there is no requirement of specificity at the pleading stage. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Though FUSD argues that the statement is conclusory that defendant Stanley Dennis Macias was the subject of serious complaints prior to the alleged acts of sexual assault on Plaintiff, it is an ultimate fact. A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises the defendant of the factual basis for the plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) The court finds that this ultimate fact adequately apprises FUSD of what it is called to answer.

For the above reasons, the demurrer to the fifth cause of action for breach of mandatory duty is overruled.

For similar reasons, FUSD's demurrer to the sixth cause of action, for negligent failure to warn, train or educate is overruled. The sixth cause of action relies on Government Code section 815.2, subdivision (a), which states:

> (a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.

Government Code section 820 similarly provides, in pertinent part that "a public employee is liable for injury caused by his act or omission to the same extent as a private person." Based on the above, the FAC clearly identifies the statutory bases upon which Plaintiff states his claim. As Plaintiff notes in opposition, these statutes can impose liability for sexual misconduct. (*See West Contra Costa Unified School Dist. v. Superior Court of Contra Costa County* (2024) 103 Cal.App.5th 1243, 1260.) To the extent that FUSD argues the cause of action is duplicative of the uncontested causes of action of negligent hiring and negligent supervision, as Plaintiff argues in opposition, redundancy is not a basis to sustain a demurrer. (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 889-890.) The elimination of a duplicative claim previously would have been a grounds for a motion to strike; however, the statute that authorized such a basis was repealed in 1982. (*Id.* at p. 890.) This sort of defect is ordinarily dealt with most economically at trial, or on a dispositive motion such as summary judgment. (*Ibid.*) Accordingly, the demurrer to the sixth cause of action for negligent failure to warn, train or educate is overruled.

FUSD further seeks to strike paragraphs 59, 63, 67, 77 and 83 of the FAC. These paragraphs each refer to alleged duties owed by FUSD. FUSD submits that these paragraphs are subject to strike as irrelevant, false, or improper. (Code Civ. Proc. § 436, subd. (a).) For the reasons stated on FUSD's demurrer to the FAC, the court finds that the paragraphs in question are not irrelevant, false or improper. FUSD's motion to strike is denied.

Motion to Strike – Stanley Dennis Macias

Defendant Stanley Dennis Macias ("Macias") seeks to strike paragraphs 28 through 33 of the FAC as irrelevant. (Code Civ. Proc. § 436, subd. (a).) The paragraphs in question allege that Macias was subject to certain legal proceedings for the arrest for, charging of, and conviction of sexual assault "of a 15-year-old boy" between 2001 and 2003. (FAC, ¶¶ 28, 29.) Macias submits that the allegations in question were made for the purpose of establishing forewarning of the alleged acts against Plaintiff. However, the allegations in question post-date the alleged acts against Plaintiff, are not stated as having occurred to Plaintiff, and therefore are irrelevant to the specific claims of Plaintiff.

In opposition, Plaintiff does not appear to refute that the allegations in question post-date the alleged acts against Plaintiff. Rather, Plaintiff submits that the pleading should not be subjected to an evidentiary standard. Plaintiff concludes that in any event, the allegations in question are admissible as character or propensity evidence.

Insofar as pleadings, the court finds that the allegations in question are irrelevant or improper, and therefore subject to strike. (Code Civ. Proc. § 435, subd. (a).) As the parties appear to agree for different reasons, these allegations at best hold evidentiary value, but are not properly included in the pleadings as allegations that would support any particular cause of action. The allegations in question facially do not have any relation to acts allegedly perpetrated against Plaintiff and occurred later in time, which does not support the causes of action as to notice on the causes of action against other defendants. In sum, the allegations in question hold no particular purpose as pled.

For the above reasons, Macias's motion to strike is granted, with leave to amend.

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: lmg on 3-25-25.
(Judge's initials) (Date)