Tentative Rulings for March 27, 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

(20) **Tentative Ruling**

Re: ***Roe v. Sanger Unified School District, et al.***
Superior Court Case No. 24CECG01452

Hearing Date: March 27, 2025 (Dept. 403)

Motion: By Plaintiff for Trial Setting Preference

If oral argument is timely requested, it will be entertained on Thursday, April 3, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To deny without prejudice.

Explanation:

Plaintiff moves for trial preference pursuant to Code of Civil Procedure, section 36, subdivision (b), on the ground that she is under 14 years of age.

> A civil action to recover damages for wrongful death or personal injury **shall** be entitled to preference upon the motion of any party to the action who is under 14 years of age unless the court finds that the party does not have a substantial interest in the case as a whole.

(Code Civ. Proc., § 36, subd. (b), emphasis added.)

Defendants Sanger Unified School District ("SUSD") and California Teaching Fellows Foundation ("CTFF") oppose the motion primarily on the grounds that their due process rights would be harmed by granting the motion, and plaintiff has been dilatory in making the motion. Neither is ground for denying the motion.

The legislature has declared that trial setting preference is mandatory once a plaintiff establishes that she is under 14 years of age and has a substantial interest in the case as a whole.

While the court recognizes the legitimacy of defendants' concerns about being able to conduct discovery, file summary judgment motions and prepare for trial on such a short timeline, that this is not a basis on which trial preference can be denied. (See *Pabla v. Superior Court* (2023) 90 Cal.App.5th 599, 604 & fn. 5 [section 36's mandate must prevail despite strong countervailing considerations including due process concerns].)

CTFF relies on *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, for the proposition that a motion for trial preference may be denied if the plaintiff was dilatory in bringing the motion. But their discussion of the case is entirely misguided, and fails to address the actual rationale for the ruling. CTFF states that in *Landry* the plaintiffs' request for trial preference was denied due to their seven-and-one-half-month period of inactivity. That is not what the case stands for.

The defendant in *Landry* moved to dismiss the case pursuant to Code of Civil Procedure sections 583.410 [discretionary dismissal for failure to prosecute] and section 583.420, subdivision (a)(2) [failure to bring case to trial within three years]. As CTFF points out, the plaintiffs in *Landry* allowed 7½ months to go by without activity on the case as they engaged in settlement discussions. The appeals court found that discretionary dismissal under these statutes was not in error, despite the plaintiffs' request for preferential trial setting under section 36(b), even though, as the court noted, preference under "subdivision (b) is mandatory; accordingly, as plaintiffs point out, the trial court does not have discretion to deny trial preference to a party under 14 who has a substantial interest in the litigation." (*Id*. at p. 687, citing *Peters v. Superior Court* (1989) 212 Cal.App.3d 218, 224.)

Since *Landry* concerned dismissal for failure to prosecute, the case has no relevance to the motion at hand.

However, the motion is not properly before the court due to plaintiff counsel's failure to sign any of the moving papers. The notice of motion, memorandum of points and authorities, and supporting declaration are all unsigned. The attorney for the moving party must sign the notice of motion. (Code Civ. Proc., § 128.7 [every notice of motion or similar court paper to be signed by at least one attorney of record].)

Moreover, a motion for preference must be supported by declaration showing good cause to grant the motion. (Weil & Brown, *California Practice Guide: Civil Procedure Before Trial* (TRG 2024) ¶ 12:272.) The declaration must show facts entitling the case to priority in setting. Motions based on the party's age must be supported by competent proof of the party's age, such a birth certificate or other official record. (*Id*. at ¶¶ 12:272, 12:272.1.) Alternatively, the party can sign a declaration establishing his or her age. (*Id*. at ¶ 12:272.1.)

The only evidence submitted of plaintiff's age is the declaration by attorney Guinness Costello. Counsel lacks personal knowledge or foundation to establish plaintiff's age. And as noted above, the declaration is not even signed, and therefore is no evidence at all. Declarations must be signed under penalty of perjury. (Code Civ. Proc., § 2015.5.)

Accordingly, the court intends to deny the motion without prejudice. Plaintiff's counsel may contact the calendaring clerk to obtain a new hearing date, and refile the motion. The court will not entertain an order shortening time on any such renewed motion.

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 3-24-25 .
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Jazmin Ayala-Ventura v. CCS Facility Services-Fresno, Inc.***
Superior Court Case No. 24CECG03802

Hearing Date: March 27, 2025 (Dept. 403)

Motion: By Defendants to Compel Arbitration and Dismiss Class Action Claims

If oral argument is timely requested, it will be entertained on Thursday, April 3, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant the motion to compel arbitration of Plaintiff Jazmin Ayala-Ventura's individual claims and to dismiss the class claims. To stay the proceedings pending arbitration of Plaintiff's individual claims.

Explanation:

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc., § 1281.2.) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Cal.App.4th 1497, 1505) "Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute." (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

The party moving to compel arbitration bears the burden of proving by a preponderance of the evidence the existence of an arbitration agreement. (*Fleming v. Oliphant Financial, LLC* (2023) 88 Cal.App.5th 13, 18; *Lane v. Francis Capital Management* LLC (2014) 224 Cal.App.4th 676, 683.) In order to determine whether an arbitration agreement exists, the court may need to assess the parties to any such agreement. (*Melchor Investment Co. v. Rolm Systems* (1992) 3 Cal.App.4th 587, 592.) After the moving party establishes the existence of an arbitration agreement between the parties, then the burden shifts to the opposing party to show that the agreement is otherwise unenforceable. (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219.)

Here, Plaintiff has not challenged the existence of the arbitration agreement, nor has she challenged the authenticity of her electronic signature. Plaintiff has only challenged the enforceability of the arbitration agreement, arguing that it is unconscionable.

"Because unconscionability is a reason for refusing to enforce contracts generally, it is also a valid reason for refusing to enforce an arbitration agreement under Code of Civil Procedure section 1281, which, as noted, provides that arbitration agreements are

'valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract.' The United States Supreme Court, in interpreting the same language found in section 2 of the FAA (9 U.S.C. § 2), recognized that 'generally applicable contract defenses, such as fraud, duress, or *unconscionability*, may be applied to invalidate arbitration agreements ....'" (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114, internal citation omitted, italics in original.)

"The party resisting arbitration bears the burden of proving unconscionability. Both procedural unconscionability and substantive unconscionability must be shown, but 'they need not be present in the same degree' and are evaluated on '"a sliding scale."' '[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.'" (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247, internal citations omitted.)

Procedural unconscionability has to do with the manner in which the contract was negotiated and the parties' circumstances at that time, and focuses on the factors of oppression or surprise. (*Kinney v. United HealthCare Services, Inc.* (1999) 70 Cal.App.4th 1322, 1327; *Martinez v. Master Protection Corp.* (2004) 118 Cal.App.4th 107, 113.) Oppression "arises from an inequality of bargaining power of the parties to the contract and an absence of real negotiation or a meaningful choice on the part of the weaker party." (*Kinney v. United HealthCare Services, Inc.* (1999) 70 Cal.App.4th 1322, 1329.) "Surprise" involves the extent to which the supposedly agreed-upon terms are buried in an overly complex form; it deals with "the disappointed reasonable expectations of the weaker party. (*Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, 1406.)

Plaintiff argues the agreement is procedurally unconscionable because it was adhesive. An agreement is adhesive where a standardized contract, drafted and imposed by the party with superior bargaining strength, gives the other party only an opportunity to adhere to the terms or to reject them. (*Armendariz, supra*, 24 Cal.4th 83, 113.) It is apparent that the agreement was somewhat adhesive in appearance, as the terms of the agreement were pre-printed. However, as Defendant points out, the agreement asserts that it is "Voluntary" and in order to indicate assent to the arbitration agreement, it required scrolling through the document whereas selecting "No" did not. (Kiefer Decl., ¶ 14 and Exh. A.) As such, any procedural unconscionability was minimal here.

Adhesion does not *per se* render the arbitration agreement unenforceable, since such contracts "are an inevitable fact of life for all citizens, businessman and consumer alike." (*Graham v. Scissor-Tail, Inc.* (1981) 28 Cal.3d 807, 817-818.) The Supreme Court has stated this is the reason for "the various intensifiers in our formulations: '*overly* harsh,' '*unduly* oppressive,' '*unreasonably* favorable.'" (*Baltazar v. Forever 21, Inc.*, (2016) 62 Cal.4th 1237, 1245 (emphasis in the original).) A finding of procedural unconscionability "does not mean that a contract will not be enforced, but rather that courts will scrutinize the substantive terms of the contract to ensure they are not manifestly unfair or one-sided." (*Id.* at p. 1244.) In other words, because procedural unconscionability has been found, the analysis turns on consideration of the substantive unconscionability prong.

Substantive unconscionability exists if the terms of the agreement are overly harsh or one-sided, provisions which shock the conscience, are unduly oppressive, or unreasonably favorable to the party seeking to compel arbitration. (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 909.) With substantive unconscionability, the "paramount consideration" is the mutuality of obligation to arbitrate. (*Nyulassy v. Lockheed Martin Corp.* (2004) 120 Cal.App.4th 1267, 1286.) To find substantive unconscionability, the court must find a *significant* degree of unfairness. A simple "bad bargain" does not qualify. (*Baltazar v. Forever 21, Inc., supra,* 62 Cal.4th at pp. 1244-1245.) Of "paramount consideration" is the mutuality of obligation to arbitrate. (*Nyulassy v. Lockheed Martin Corp.* (2004) 120 Cal.App.4th 1267, 1286.)

Plaintiff argues that the agreement is substantively unconscionable because it has an overly broad scope, an indefinite duration, and lack of mutuality. Plaintiff relies on *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, a decision from the Second District Court of Appeals. The Fifth District Court of Appeals has not yet cited to *Cook* as authority on the issues of scope, duration, and lack of mutuality as presented in *Cook*. This Court is not obligated to find *Cook* persuasive, nor does it.

Additionally, the situation here is distinguishable from that in *Cook*. The appellate court noted that the defendants in *Cook* initially had taken the position that the arbitration agreement there was meant to encompass all claims, whether or not the claims arose out of the plaintiff's employment. (*Cook, supra*, 102 Cal.App.5th 312, fn. 1.) The defendants changed their position on appeal, claiming the arbitration agreement only covered employment related claims. (*Ibid*.) Here, Defendants argue that the court should read the arbitration agreement in context to only apply to employment related claims. Here, the Court is so inclined.

The agreement states, in relevant part,

> "PBC SolutionOne, Inc. dba CCS Facility Services and all of its related entities, parents, and subsidiaries (hereinafter "Company") and I voluntarily agree to the resolution by arbitration of all claims, disputes, and/or controversies (collectively "claims"), whether or not arising out of Employee's employment or the termination of employment, that Company may have against Employee or that Employee may have against Company or against its employees or agents in their capacity as employees or agents. The claims covered by this Arbitration Agreement include, but are not limited to, claims for wages or other compensation due; claims for breach of any contract or covenant (express or implied); tort claims; claims for discrimination or harassment, including, but not limited to, alleged violation of any federal or state civil rights laws, ordinances, regulations or orders, based on charges of discrimination or harassment on account of race, color, religion, sex, sexual orientation, age, citizenship, national origin, mental or physical disability, medical condition, genetic predisposition, marital status, pregnancy, or any other discrimination or harassment

> prohibited by such laws, ordinances, regulations or orders; claims for benefits (except where an employee benefit or retirement plan specifies that its claims procedures shall culminate in an arbitration procedure different from this), and claims for violation of any federal, state, or other governmental law, statute, regulation or ordinance, except claims specifically excluded below."

(Kiefer Decl., Exh. A.)

Plaintiff also argues that the agreement violates the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 ("EFAA"). The EFAA does prohibit compelling arbitration for sexual harassment and assault claims. (9 U.S.C. §§ 401, 402.) The EFAA was enacted March 3, 2022. (*Doe v. Second Street Corp*. (2024) 105 Cal.App.5th 552, 566.) The EFAA applies to disputes or claims arising or accruing after its enactment. (*Ibid*.) Here, the arbitration agreement was signed June 8, 2021, prior to the enactment of EFAA. (Kiefer Decl., Exh. A.) Additionally, Plaintiff has not included any sexual harassment or assault allegations. So, there are no allegations which would place any claim for sexual harassment or assault occurring after the EFAA was enacted.

Lastly, Plaintiff takes issue with the dismissal of the case. However, this is not requested. Defendants request the class claims be dismissed based on the waiver in the signed arbitration agreement. (Kiefer Decl., Exh. A.) Plaintiff argues that *Smith v. Spizziri* (2024) 601 U.S. 472 rejected the dismissal of claims over granting of a stay. However, there the Supreme Court was concerned with dismissal of a case instead of staying it where a *dispute is the subject of arbitration*. (*Id*. at p. 474.) Here, the class claims would not be subject to arbitration, pursuant to the arbitration agreement. Plaintiff has not challenged the appropriateness of waiving class action claims. There is a class action waiver in the agreement and the agreement indicates that it is governed by the FAA. (See Kiefer Decl., Exh. A.) California's state law rendering such a waiver unenforceable and substantively unconscionable is preempted by federal law where an agreement is to be governed under the FAA. (*AT&T Mobility v. LLC v. Concepcion* (2011) 563 U.S. 333, 341; see Epic Systems Corporation v. Lewis (2018) 584 U.S. 497.)

The Court finds that Plaintiff has not met her burden of showing the arbitration agreement is unconscionable. As such, the court compels arbitration of Plaintiff's individual claims and dismisses the class claims.

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 3-25-24.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Pico, et al. v. Vitro Flat Glass, LLC***
Superior Court Case No. 22CECG02995

Hearing Date: March 27, 2025 (Dept. 403)

Motion: by Plaintiffs for Preliminary Approval of Class Action and PAGA Settlement

If oral argument is timely requested, it will be entertained on Thursday, April 3, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To deny plaintiffs' motion without prejudice.

Explanation:

Untimely Service of Motion

"Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing." (Code Civ. Proc., § 1005, subd. (b).) However, the deadline for service is extended by two court days where the response was served by electronic mail. (Code Civ. Proc., § 1010.6, subd. (a)(3).) Accordingly, the last day to serve the motion by electronic service was on March 3, 2025. Nonetheless, the court exercises its discretion to consider the merits of the motion in order to preserve judicial economy and prevent further delay of these proceedings.

Preliminary Approval of Class Settlement

1. General Principles: A settlement of a class action requires court approval after a hearing. (Cal. Rules of Court, rule 3.769, subd. (a).) The approval of the settlement also requires certification of a preliminary settlement class. (Cal. Rules of Court, rule 3.769, subd. (d).) "If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing. (Cal. Rules of Court, Rule 3.769, subd. (e).)

"If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement. (Cal. Rules of Court, Rule 3.769, subd. (f).) "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, Rule 3.769, subd. (g).)

2. Certification of the Class: The court must first determine whether the class should be certified before deciding whether the settlement should be preliminarily approved.

"Code of Civil Procedure section 382 authorizes class actions 'when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court…' The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. 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." *(Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) The burden of proof is on the plaintiff to show the above factors weigh in favor of class certification by a preponderance of the evidence. (*Id.* at p. 322.)

"As to the necessity for an ascertainable class, the right of each individual to recover may not be based on a separate set of facts applicable only to him. [¶] The requirement of a community of interest does not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered in determining whether a class action is proper. The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover subsequent to the rendering of any class judgment which determined in plaintiffs' favor whatever questions were common to the class. [¶] Substantial benefits both to the litigants and to the court should be found before the imposition of a judgment binding on absent parties can be justified, and the determination of the question whether a class action is appropriate will depend upon whether the common questions are sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits." (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809–10, internal footnotes omitted.)

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.")

a. Numerosity and Ascertainability

A proposed class is sufficiently numerous when it would be impractical to bring all members of the class together before the court. (Code Civ. Proc., § 382.) "[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.' We regard this standard as including class definitions that are 'sufficient to allow a member of [the class] to identify himself or herself

as having a right to recover based on the [class] description.'" (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980, citations omitted.)

Here, the proposed class is sufficiently numerous to be certified, since there are approximately 215 members of the proposed class. The class is also ascertainable, since the class definition is specific and the class members can be readily identified using objective criteria and facts, including referring to the defendants' business and personnel records. Therefore, the proposed class meets the numerosity and ascertainability requirements for certification.

b. Community of Interest

i. Class Representatives with Typical Claims

"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 have shown that all of the proposed class members have the same claims, since plaintiffs allege that they and the other class members all suffered the same types of harm due to defendant's unlawful policies, which resulted in various Labor Code wage and hour violations such as failure to pay minimum wage, failure to pay overtime, failure to provide meal and rest breaks, etc. As a result, plaintiffs have satisfied the requirement of showing that their claims are typical of the other class members.

ii. Predominant Questions of Fact and Law

"As a general rule, if defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (B*rinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1022.)

Here, there are predominant questions of fact and law that are common to all members of the putative class, as plaintiffs have alleged that they and all of the class members were subjected to the same types of wage and hour violations and suffered the same type of harm. Plaintiffs' and the other class members' claims all share common issues of fact and law, and all class members will need to prove the same types of facts in order to prevail. They all seek the same legal remedies as well. It would be preferable to resolve all of the claims in a single action as opposed to litigating them separately, especially considering that each individual claim is likely to be worth relatively little and the expense of litigating the individual claims would probably exceed the potential recovery. Therefore, plaintiffs have shown that there are predominant questions of fact and law that favor class certification.

c. Adequacy of Counsel and Class Representative

"[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, plaintiffs and class counsel have submitted their declarations showing that they are adequate representatives for the proposed class. Plaintiffs are former employees of the defendant during the class period and have alleged that they suffered the type of Labor Code violations that the other class members suffered. They also have no conflicts that would prevent them from representing the class, and they have promised to represent their interests vigorously in the case as they have already been doing. Also, class counsel is highly experienced in class litigation and appears to be very qualified to represent the proposed class here. Therefore, plaintiffs have met their burden of showing that they and the attorneys will be adequate class representatives.

d. Superiority of Class Litigation

Plaintiffs have also shown that litigating the case as a class action would be superior to resolving the class members' claims individually, since it would be highly inefficient to force the class members to file and litigate individual cases rather than resolving all of the claims in a single action. It would also be impractical to have the individual class members litigate their claims separately given the relatively small amounts at stake in each individual case and the cost of litigating each case. It would be far more practical and efficient to resolve all of the class members' claims at once in a single case rather than holding potentially dozens of separate trials. As a result, the court intends to find that the plaintiffs have met their burden of showing the superiority of litigating the case as a class action.

e. Conclusion

The court intends to grant certification of the class for settlement purposes.

3. 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." (*Ibid*.)

b. Fairness, Reasonableness, and Adequacy of the Settlement

Settlements preceding class certification are scrutinized more carefully to make sure that absent class members' rights are adequately protected. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 240.) The court has a fiduciary responsibility as guardian of absent class members' rights to ensure that the settlement is fair. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.)

Generally speaking, a court will examine the entirety of the settlement structure to determine whether it should be approved, including, as relevant here, fairness, the notice, the manner of notice, the practicality of compliance, and the manner of the claims process. (*Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801 (fairness reviewed at final approval); (*Wershba, supra,* 91 Cal.App.4th at pp. 244-45 (court is free to balance and weigh factors depending on the circumstances of the case).) "[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk*, *supra*, at p.1802, citation omitted.)

In the present case, plaintiffs have presented sufficient evidence to show that the settlement is fair, reasonable, and adequate. The settlement was negotiated during arm's length mediation before a neutral mediator. The parties also engaged in written formal and informal discovery and expert analysis and testimony before resolving their claims. While plaintiffs' counsel expresses confidence that they would have prevailed at trial, they nevertheless acknowledge that defendants raised potentially valid defenses and that both sides were prepared to litigate their position at trial. Plaintiff also ran the risk of having the trial court deny his motion for certification. Even if he succeeded in certifying the class and prevailed at trial, he would not necessarily have obtained as much in damages as his expert estimated. The gross settlement here is about 88% of the total estimated realistic liability of the defendant if plaintiffs did prevail at trial, which is an excellent result, especially considering the expense and risk of going to trial versus the guaranteed payment that plaintiffs will receive for the class through the settlement. Therefore, the court intends to find that plaintiffs have met their burden of showing that the settlement is fair, reasonable and adequate.

c. Attorney's Fees

Plaintiffs' counsel request fees of $200,000, which is one-third of the total gross settlement. However, counsel has not provided the court with any explanation of the work done on the case or how the requested fees were calculated and why the requested fees are reasonable. While the court may approve attorney's fees based on a percentage of the common fund, it can also conduct a lodestar cross-check of the requested fees. (*Laffitte v. Robert Half Intern. Inc*. (2016) 1 Cal.5th 480, 503-504.) Here, counsel has not discussed what work was done on the case or why the requested fees are reasonable in relation to the work performed. Nor has counsel provided the court with a summary of the hours worked, which attorneys did the work, or what their hourly rates are. Therefore, the court will not grant preliminary approval of the requested attorney's fees at this time.

d. Costs

Plaintiffs have requested an award of court costs of up to $25,000. Plaintiffs' counsel provides a declaration in which he states that his office incurred $20,788.82 in costs during the case. (Moon Decl., ¶ 15, Ex. 4.) Therefore, counsel has provided sufficient evidence to support the requested amount of costs. As a result, the court intends to preliminarily approve the request for an award of $25,000 in costs.

e. Class Administrator's Fees

Plaintiffs request approval class administrator's fees of up to $10,000. Counsel states that administrator's fees are estimated to be about $6,950 at this time, but they seek approval of up to $10,000 in administrator's fees. While a declaration from a representative of the class administrator is not provided, plaintiff's counsel attaches a copy of the administrator's flat-fee bid of $6,950. Therefore, plaintiffs have provided adequate evidence to support the request for class administrator's fees of up to $10,000, and the court intends to preliminarily approve the requested administration fees.

f. Incentive Award to Class Representative

Plaintiffs also request that the two class representatives each be awarded an incentive fee of $7,500, for a total of $15,000.

"While there has been scholarly debate about the propriety of individual awards to named plaintiffs, '[i]ncentive awards are fairly typical in class action cases.' These awards 'are discretionary, [citation], and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.'" (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393–1394, quoting *Rodriguez v. West Publishing Corp.* (9th Cir.2009) 563 F.3d 948, 958.)

" '[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the

class representative as a result of the litigation.' These 'incentive awards' to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit." (*Id*. at pp. 1394–1395, internal citations omitted.)

Here, the named plaintiffs Anthony Pico and Ryan Andrew Wilson each have filed a declaration in support of their request for incentive fees, in which they discuss in general terms their involvement in the case. (See Pico Decl., ¶¶ 19-20; see Wilson Decl., ¶¶ 19-20.) Plaintiffs indicate that they have provided all employment documents to counsel, explained the nature of those documents, related facts to counsel, identified potential witnesses, including other employees, and made themselves available to answer questions during mediation. (Pico Decl., ¶ 20, Wilson Decl., ¶ 20.) In light of the efforts expended by the named plaintiffs, an award of $7,500 appears to be reasonable and in line with the service awards granted in other class settlements. Therefore, plaintiffs have met their burden of showing that the $7,500 incentive award is fair and reasonable here for both plaintiffs, and the court intends to preliminarily approve the requested awards.

g. Class Notices

Under Rule of Court 3.766(d), "If class members are to be given the right to request exclusion from the class, the notice must include the following: (1) A brief explanation of the case, including the basic contentions or denials of the parties; (2) A statement that the court will exclude the member from the class if the member so requests by a specified date; (3) A procedure for the member to follow in requesting exclusion from the class; (4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel." (Cal. Rules of Court, Rule 3.766(d), paragraph breaks omitted.)

"In regard to the contents of the notice, the 'notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.' The purpose of a class notice in the context of a settlement is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members. Here again the trial court has broad discretion." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 251–252, citations omitted, disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc*. (2018) 4 Cal.5th 260.)

In the present case, the class notice gives the class members notice of the nature of the litigation, the terms of the settlement, how they may submit a claim for payment under the settlement, how and when they may object or opt out of the settlement, when the final approval hearing will be, that they will be bound by the settlement if they do not opt out of it, and that they have the right to appear at the final approval hearing either personally or through their lawyer. (Exhibit A to Class Settlement, attached as Exhibit 1 to Moon Decl.) Thus, the proposed notice does provide the basic information required under Rule of Court 3.766. Therefore, the court intends to grant preliminary approval of the class notice form.

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)