Tentative Rulings for April 2, 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

(37) **Tentative Ruling**

Re: ***Matthew Salazar***
Court Case No. 25CECG00266

Hearing Date: April 2, 2025 (Dept. 403)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant. The Court intends to sign the proposed order. No appearances necessary.

Pursuant to California Rules of Court, Rule 3.1312 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** 4-1-25 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Becerra Rios v. Oro Loma Processing, LP et al.***
Superior Court Case No. 22CECG02992/COMPLEX

Hearing Date: April 2, 2025 (Dept. 403)

Motion: By Plaintiff Anthony Becerra Rios for Final Approval of Class Settlement

Tentative Ruling:

To grant final approval of the class action settlement, costs, class representative enhancement payment, PAGA payment, and settlement administrator's fees. To grant and approve an attorney fees award in the reduced amount of $51,953.00. Plaintiff Anthony Becerra Rios is directed to submit a new proposed order.

To set a status conference for Wednesday, October 15, 2025, 3:30 p.m. in Department 403.

Explanation:

1. Class Certification

The court has already granted the motion for preliminary approval and certification of the class and found that the class is sufficiently numerous and ascertainable to warrant certification for the purpose of approving the settlement. There is no reason for the court to reconsider its decision granting certification of the class. Therefore, the court certifies the class for the purpose of final approval of the 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. The Settlement Is Fair and Reasonable

Previously, the court found that the settlement was fair and reasonable based on the evidence that plaintiff Anthony Becerra Rios ("Plaintiff") submitted in support of the motion for preliminary approval. It does not appear that there is any reason for the court to reconsider its decision in this regard. The gross settlement is $300,000.00, which is non-reversionary. The employees will be paid shares based on the number of weeks they worked during the settlement period.

The values of the various claims were calculated based on informal discovery, which was then negotiated through counsel with the aid of an experienced wage-and-hour class action mediator. The gross settlement contemplated to challenges of going to trial, which carried significant risks and costs, especially when considering the defenses raised by defendant Oro Loma Processing, LP ("Defendant"). There was also a risk that the class might not be certified at all.

The settlement was reached after arm's length negotiations during a mediation with an experienced mediator, which weighs in favor of finding that the settlement was fair, adequate, and non-collusive. The parties also exchanged informal discovery, and class counsel analyzed the records to determine the potential value of the alleged violations. In addition, class counsel are experienced in class litigation, and provided information as to their assessments of the strength of Plaintiff's case, the risk, expense and complexity of the litigation, the risk of maintaining class action status, and the extent of discovery completed. Thus, class counsel's opinion that the settlement is fair, adequate, and reasonable is entitled to considerable deference. There is also no evidence that the settlement is the product of collusion. Therefore, the court finds that the settlement is fair, reasonable, and adequate, and approves it.

3. Attorney's Fees and Costs

Plaintiff's counsel seeks approval of attorney's fees in the amount of $100,000.00, which is 1/3 of the gross settlement amount. Plaintiff submits a representation contract which provides for an award of 33 and 1/3 percent of any recovery. Counsel submits a lodestar of $123,982.50.

The California Supreme Court in *Laffitte v. Robert Half Intern. Inc*. (2016) 1 Cal.5th 480, held that a court has discretion to grant attorney's fees in class actions based on a percentage of the total recovery. (*Id*. at pp. 503-504.) However, the trial court may also

use a lodestar calculation to double check the reasonableness of the fee award. (*Id*. at pp. 504-506.) The choice of a fee calculation is generally one within the discretion of the trial court, the goal under either approach being the award of a reasonable fee to compensate counsel for their efforts. (*Id*. at p. 504.) If the comparison between the percentage and lodestar calculations produced an imputed multiplier indicating that the percentage fee will reward counsel for their services at an extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage. (*Ibid.*)

Here, counsel submits that they spent 151.9 hours to prosecute this case. Applying the amount sought of $100,000.00 produces a blended rate of $658.33, which is high, particularly where two of the four timekeepers did not present years of experience. The court therefore will not rely on a percentage approach.

Counsel was directed to support any request for fees upon final approval. Counsel has elected to submit no time entries in favor of a general statement of time spent. While time entries are not required, it remains Plaintiff's burden to prove the reasonableness of the number of hours they devote to this action. (*Concepcion v. Amscan Holdings, Inc*. (2014) 223 Cal.App.4th 1309, 1325.) A trial court may not rubberstamp a request for attorney fees, and must determine the number of hours reasonably expended. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271.)

Moreover, counsel submits hourly rates for H. Scott Leviant, at $975 per hour; Kane Moon at $900 per hour; Mariam Ghazaryan at $600 per hour; and Sandy Pham at $500 per hour. As Plaintiff notes, the reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The proposed rates, based in part on the Laffey Matrix which has no calibration to Fresno County, are significantly higher than local community rates. No evidence was given to show why it was reasonably necessary to utilize out-of-town counsel to support adjusting adequate compensation. Further, where the hourly rate is high, this court typically evaluates time entries to determine whether the time spent is commiserate with the experience stated, to command a higher hourly rate. As no time entries were submitted, the court finds that Plaintiff has failed to support the rates sought. The court sets the hourly rates as follows: H. Scott Leviant at $500 per hour; Kane Moon at $450 per hour; Mariam Ghazaryan at $350 per hour; and Sandy Pham at $300 per hour.

On review of the limited information of the time submitted, the court does not credit the 29.3 hours of Kane Moon, nor the 17.1 hours of Sandy Pham. No reasons were given as to why multiple timekeepers were necessary to support H. Scott Leviant, counsel of over 25 years specializing in class action lawsuits who billed nearly half of the reported time on this unremarkable and otherwise routine wage and hour class action. Accordingly, the court sets the lodestar at $47,230.00, and the lodestar multiplier sought is 2.12.

Plaintiff seeks a lodestar multiplier. Plaintiff previously estimated the lodestar multiplier at 0.74. However, in light of the adjustments to the hourly rates, the court further evaluates the merits. As explained by the California Supreme Court regarding lodestar multipliers, sometimes referred to as fee enhancements:

> …the trial court is *not required* to include a fee enhancement to the basic lodestar figure for contingent risk, exceptional skill, or other factors, although it retains discretion to do so in the appropriate case; moreover, the party seeking a fee enhancement bears the burden of proof. In each case, the trial court should consider whether, and to what extent, the attorney and client have been able to mitigate the risk of nonpayment, e.g., because the client has agreed to pay some portion of the lodestar amount regardless of outcome. It should also consider the degree to which the relevant market compensates for contingency risk, extraordinary skill, or other factors under *Serrano III*. We emphasize that when determining the appropriate enhancement, a trial court should not consider these factors to the extent they are already encompassed within the lodestar. The factor of extraordinary skill, in particular, appears susceptible to improper double counting; for the most part, the difficulty of a legal question and the quality of representation are already encompassed in the lodestar. A more difficult legal question typically requires more attorney hours, and a more skillful and experienced attorney will command a higher hourly rate. (*See Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1004, 185 Cal.Rptr. 145.) Indeed, the " 'reasonable hourly rate [used to calculate the lodestar] is the product of a multiplicity of factors ... the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case.' " (*Ibid*.) Thus, a trial court should award a multiplier for exceptional representation only when the quality of representation far exceeds the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation. Otherwise, the fee award will result in unfair double counting and be unreasonable. Nor should a fee enhancement be imposed for the purpose of punishing the losing party. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138-1139 [emphasis original].)

Once a lodestar is fixed, the lodestar may be adjusted based on certain factors, including: (1) the novelty and difficulty of the questions involved; (2) the skill displayed in presenting them; (3) the extent to which the nature of the litigation precluded other employment by the attorneys; and (4) the contingent nature of the fee award. (*Id.* at p. 1132, *citing Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 49.)

The court acknowledges the contingent nature of the fee award sought. Though counsel argues that the difficulty of the questions involved were rapidly evolving and skills required were high, nothing in the evidence supports such a finding. The court finds that the claims in this action are typical to all wage and hour claims regarding minimum wage, overtime wages, meal periods, rest periods, itemized statements and unfair business practices. There were no demonstrated deviations from the typical course these actions generally follow: the making of the claim, some informal discovery, some data analysis, a mediation, and a settlement. (*E.g.*, Leviant Decl., ¶ 31, subd. (a)-(k).)

Based on the above, the court sets a lodestar multiplier of 1.1 in recognition of the risk borne by counsel on contingent representation. Applied to the $47,230.00 lodestar, fees are approved in the reduced amount of $51,953.00.

The request for $15,000.00 in court costs is approved.

4. Payment to Class Representative

Plaintiff seeks preliminary approval of a $7,500.00 "service payment". Plaintiff previously submitted a declaration in support of preliminary approval, explaining the work he did on the case and her involvement at all major milestones of the case. Further, Plaintiff bore the risk of paying Defendant's attorney's fees and costs had he been unsuccessful. The amount sought does not appear to be unreasonable here under the circumstances presented. Therefore, the court finds the requested $7,500.00 payment to the named class representative is reasonable and approves it.

5. Payment to LWDA under PAGA

Plaintiff also seeks approval of $24,000.00 to be paid to settle the PAGA claim, 75 percent of which will be paid to the LWDA pursuant to Labor Code section 2699, subdivision (i). The amount to be paid to settle the PAGA claim appears to be reasonable. In addition, the LWDA has been served with a copy of the settlement as well as preliminary approval motions, and it has not objected to the request to approve the settlement. Therefore, the court finds that the payment to settle the PAGA claim is reasonable, and approves it.

6. Payment to Class Administrator

Plaintiff seeks approval of a flat $6,000.00 payment to Phoenix Settlement Administrators. The administrative cost payment appears to be reasonable given the amount of work to be performed in sending out class notices, tracking down missing class members, handling questions from class members and parties, and sending out payments to class members, as well as providing declarations in support of the motions for class settlement approval. The court finds the administration costs of $6,000.00 as reasonable, and approves it.

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 4-1-25.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Altamirano v. Gebhart***
Superior Court Case No. 23CECG03931

Hearing Date: April 2, 2025 (Dept. 403)

Motion: Petition for Compromise of Minor

Tentative Ruling:

To deny without prejudice. In the event oral argument is requested, the minor is excused from appearing.

Explanation:

Settlement Funds Paid to Parent

With limited exception, the settlement monies cannot be paid or delivered to the parent of the minor, unless the remaining balance does not exceed $5,000. (Prob. Code, § 3611, subd. (e).) This is also expressly provided for on the Petition for Approval of Compromise of Claim or Action or Disposition of Proceeds of Judgment for Minor or Person with a Disability, Judicial Council Form MC-350, Item 18b(5): "*(Value of minor's entire estate, including the money or property to be delivered, must not exceed $5,000.)*"

This petition again asks for the minor's net settlement be paid to the mother. There is no attempt to cure this defect and no explanation for why such a request should be granted in spite of Probate Code section 3611.

Costs

In a prior petition for compromise, counsel indicated that he did not intend to deduct the costs from minor's settlement, but rather would deduct these costs entirely from the mother's settlement. (Salhab Decl., filed on Feb. 3, 2025, ¶ 8.) Despite that statement in his declaration, the calculation of the net proceeds in the earlier petition indicated that counsel did deduct the entire amount of court costs from the minor's settlement. In the court's prior ruling on that first petition for compromise, filed on February 25, 2025, the court was concerned with two issues pertaining to costs: (1) that counsel was potentially seeking double recovery of the court courts; and (2) the reasonableness of deducting the entire amount of costs from the minor's settlement. (Minute Order, filed on Feb. 25, 2025.)

Here, the petition indicates that counsel only seeks to deduct the entire amount of court costs from the minor's settlement. While this alleviates the courts' former concern pertaining to double recovery, the court does not find it reasonable to shift the all of the expenses of litigation to the minor. Counsel indicates that the minor's mother, the petitioner, has requested for such a shift in expenses, because the cost of the minor's

medical care stemming from this incident has been overwhelming. (Salhab Decl., filed on Mar. 10, 2025, ¶ 8.) For example, the expense for the minor's physical therapy was $2,000. Further, that the minor will require more physical therapy and a purchase of a special walker that will cost thousands of dollars in the future. (*Ibid*.)

However, this information not only directly conflicts with Item 8 of the petition, wherein petitioner reports that the minor is completely recovered and there are no permanent injuries, it ***highlights*** the minors' need for the settlement funds. If petitioner has had to pay for medical costs for the minor on her own, she may seek reimbursement of those medical costs from the minor's settlement in Item 12 of the petition with proper substantiation. If the minor requires future care and funds from the settlement are required to pay for such care, petitioner may request either a withdrawal of such funds from the blocked account, or otherwise, show that it is in the minor's best interest for such funds to be held. (Prob. Code, § 3611, subd. (d).) Notably, the petition does not seem to indicate the existence of any medical costs. Nor are there any medical records submitted to support the need for future care.

Accordingly, the court does not find it reasonable to shift the entire amount of costs to the minor.

Proposed Order

A completed proposed order approving of the compromise must be submitted.

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 4-1-25.
(Judge's initials) (Date)