Tentative Rulings for June 13, 2024
Department 502

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

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

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(46)

Tentative Ruling

Re: ***Nex Gen Electric LLC v. Consolidated Electrical Distributors, Inc.***
Superior Court Case No. 22CECG04066

Hearing Date: June 13, 2024 (Dept. 502)

Motion: Motion to Strike Answer and Enter Default by Cross-Complainant Consolidated Electrical Distributors, Inc.

Tentative Ruling:

To grant the motion of cross-complainant Consolidated Electrical Distributors, Inc. to strike the answer of cross-defendant Nex Gen Electric LLC, filed February 21, 2024. The answer, only as it pertains to Nex Gen Electric LLC., is hereby stricken.

To deny the request for entry of default against cross-defendant Nex Gen Electric LLC.

Explanation:

Motion to Strike Cross-Defendant's Answer to Cross-Complaint

"[A] corporation, unlike a natural person, cannot represent itself before courts of record in propria persona, nor can it represent itself through a corporate officer, director or other employee who is not an attorney. It must be represented by a licensed counsel in proceedings before courts of record. It must be represented by licensed counsel in proceedings before courts of record." (*CLD Constr., Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145.) LLC's fall under the definition of an unincorporated association under California Corporations Code section 18035(a), but this common law has been extended to LLCs in numerous unpublished cases.

Cross-defendant Nex Gen Electric LLC has been unrepresented by counsel since on or about August 7, 2023, when its counsel withdrew. The Order allowing cross-defendants' attorney to withdraw was made after due notice was given. The motion and the Order were drawn on the mandated Judicial Council forms, which are designed to be easily understood by non-attorney litigants. This form of Order clearly gave cross-defendant notice (set off from the rest of the form in a text box), of the following:

> "**Your present attorney will no longer be representing you. You may not in most cases represent yourself if you are one of the parties on the following list:** …An unincorporated association…. **If you are one of these parties, YOU SHOULD IMMEDIATELY SEEK LEGAL ADVICE REGARDING LEGAL REPRESENTATION. Failure to retain an attorney may lead to an order striking the pleadings or to the entry of a default judgment.**"

[Bolded and upper case text in the original]

Thus, Nex Gen Electric LLC was notified: 1) of its attorney's withdrawal; 2) that an unincorporated association could not represent itself and it would need to immediately seek other counsel; and 3) that the consequences of not doing so might be "an order striking the pleadings or…the entry of a default judgment." Several months have passed to retain other counsel, and yet there has been no filing or notice presented to this court evidencing an attempt at obtaining new counsel. No opposition to this motion was filed. Nex Gen Electric LLC cannot represent itself in court, and thus by choosing not to retain counsel has put itself at a stall in this litigation.

Thus, the court grants the motion to strike the answer of cross-defendant Nex Gen Electric LLC, filed February 21, 2024, only as it pertains to Nex Gen Electric LLC.

Entry of Default Against Cross-Defendant

Cross-complainant has simultaneously requested the entry of default against Nex Gen Electric LLC. For clarity and transparency in the judicial record and in a good-faith final attempt to notify the cross-defendant, cross-complainant should proceed to seek default through the regular manner of filing a CIV-100 judicial council form and by following all other civil procedures for procuring a default judgment against Nex Gen Electric LLC.

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

Tentative Ruling
Issued By: KCK on 06/11/24 .
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***In re: Isabel Angeles***
Superior Court Case No. 24CECG00146

Hearing Date: June 13, 2024 (Dept. 503)

Motion: Expedited Petition to Approve Compromise of Minor's Claim

Tentative Ruling:

To deny. In the event that oral argument is requested minor is excused from appearing.

Explanation:

As noted in the intended ruling issued on May 14, 2024, the judgment or total settlement stated in the petition (item nos. 11 and 17) exceeds the $50,000 qualifying limitation required for expedited relief (Cal. Rules of Court, rule 7.950.5(a)(8); see also Pet., at item 3(g)(1)), and neither counsel's declaration nor the other attached documents provide sufficient justification for applying the limited exceptions (e.g. there is no "attachment 3"). Counsel filed an amended petition on June 10, but it does not cure the defect.

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

Tentative Ruling
Issued By: KCK on 06/11/24 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Angel Sarmiento v. The Neil Jones Food Company/Class Action***
Superior Court Case No. 21CECG03825

Hearing Date: June 13, 2024 (Dept. 502)

Motion: Plaintiffs' Motion for Preliminary Approval of Class Settlement

Tentative Ruling:

To grant plaintiffs' motion for preliminary approval of class settlement.

Explanation:

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 3,711 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' 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 similar claims, since plaintiffs allege that they and the other class members all suffered the same types of harm due to defendants' 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 defendants during the class period and have alleged that they suffered the type of Labor Code violations that the other class members suffered. Plaintiffs 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 should find that the plaintiffs have met their burden of showing the superiority of litigating the case as a class action.

Therefore, the court grants 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 their success at trial was not guaranteed. Plaintiffs also ran the risk of having the trial court deny their motion for certification. Even if they succeeded in certifying the class and prevailed at trial, they would not necessarily have obtained as much in damages as class counsel estimated. The gross settlement is about 7.5-8% of the total estimated realistic liability of defendants if plaintiffs did prevail at trial.

However, even though it is only a fraction of the total possible damages, a cash settlement that represents only a fraction of the potential recovery does not render the settlement inadequate or unfair. (*Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir.1982).)

Here, plaintiffs and their counsel have engaged in informal discovery in order to evaluate the potential value and merit of their claims. This included obtaining data showing the estimated number of putative class members, the estimated number of workweeks for the putative class, the estimated number of employees eligible for civil penalties under PAGA, the estimated number of pay periods during the PAGA period, the number of employees separated from employment during the relevant statutory period, collective bargaining agreements (CBAs), defendant's employee handbooks and orientation materials, and plaintiffs' personnel records. Through this discovery, counsel were able to develop a damages model and evaluate the strengths and weaknesses of the claims and defenses.

Class counsel estimate that the defendants' maximum exposure for the labor code violations was $47,422,511. However, there are several factors that make the settlement in this case fair, reasonable and adequate. First, the off-the-clock claim was minimal from the start, as most off-the-clock violations were only a few minutes at most. Also, nearly all non-PAGA members were covered by CBAs. Defendants further contend that plaintiffs and the class members have signed enforceable arbitration agreements, and thus, no class action is even tenable. Moreover, as to the wage statement violations, class counsel acknowledges there is a risk that at trial, even it is determined that the wage statements were inaccurate, defendant's conduct would be found to be unintentional, which is a requirement of Labor Code section 226.

In addition, there was a risk that plaintiffs would not be able to obtain class certification for litigation purposes. There is always a risk of not being able to obtain or maintain class certification in any class action.

With regard to the portion of the settlement devoted to PAGA penalties, plaintiffs contend that the allocation of $120,000 of the settlement to PAGA penalties is fair, adequate, and reasonable as well. The PAGA penalties here were potentially as much as $36,225,000. However, plaintiffs' counsel believes a 90% discount of this maximum exposure amount to be reasonable, resulting in a valuation of $3,622,500. Defendants' argue that no PAGA penalties are likely to be awarded, and if they are, the exposure is vastly overstated. Defendants assert that the PAGA penalties cannot be stacked, individualized issues predominate the PAGA claims, making the claims unmanageable for trial, a violation cannot be found for each pay period, and no conduct is shown by plaintiffs to establish any knowing and intentional violation of the Labor Code. As such, class counsel believes $3,622,500 to be a reasonable estimate of the likelihood of what plaintiff could recover at trial for PAGA penalties. Also, the class members are going to receive not only PAGA penalties, but also about $3.8 million in settlement of their non-PAGA claims. Therefore, the goals of enforcing the Labor Code and protecting employees will be furthered by approving the settlement.

In light of these and other risk factors, the Settlement Amount of $6 million is reasonable. The significant risk that this Court may deny class certification is obviated by the Settlement. Class Members will receive timely relief and avoid the risk of an unfavorable judgment.

In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the difficulties in establishing liability, and the high likelihood of appeal of a favorable judgment are balanced against the merits of Plaintiffs' claims, it is clear that the Settlement amount is fair, adequate, and reasonable.

c. Attorney's Fees:

Plaintiffs' counsel request fees of $2 million, which is 1/3 of the total gross settlement. Counsel claim that this number is reasonable given the amount of work they did on the case. They also note that the courts have permitted use of a "percentage of the fund" method for calculating fees in class actions. (*Laffitte v. Robert Half Intern. Inc*. (2016) 1 Cal.5th 480, 503.) In *Laffitte*, *supra*, the California Supreme Court held that the trial court did not abuse its discretion in using the percentage of the fund method to determine attorney's fees in a class action case, although it also held that the court could double check the reasonableness of the percentage fee through a lodestar calculation. (*Id*. at pp. 503-504.)

Plaintiffs' counsel have now provided declarations explaining the work done by the attorneys on the case. (See Suppl. Bibiyan Decl., Han Decl., and Nordrehaug Decl.) The attorneys estimate the cumulative lodestar figure between all three firms to be $1,504,198.75 based on 2026.3 hours billed. The hourly rates of counsel range between $300 and $995, and paralegal and legal assistants at $175 and $75 per hour. The hours appear to be reasonable given the complexity and length of the case. Despite the hourly rates being high compared to Fresno rates, they appear to be in line with what other

class action attorneys in Los Angeles charge. Also, the multiplier of 1.33 seems reasonable to compensate counsel for the risk of taking the case on a contingent basis, the skill of counsel, the difficulty of the issues, the fact that counsel could not take some other clients while they litigated this case, and the reasonable results achieved in the case.

Also, counsel expects to incur further time working on this case before it is concluded, administering the settlement with the settlement administration, coordination with defense counsel, answering class member calls, preparing the motion for final approval and attending that hearing, etc. (Bibiyan Decl., ¶ 18.) Thus, class counsel requests the court to approve a multiplier of 1.33 based on the fees already incurred on the case. (*Id*., at ¶ 17.)

It does appear that the requested fees of $2 million are reasonable and thus, the court preliminary approves of the attorneys' fees.

d. Costs:

Plaintiffs have requested an award of court costs of up to $35,00, which appear to be reasonable. The court preliminarily approves of the request for an award of $35,000 in costs.

e. Class Administrator's Fees:

Plaintiffs request approval of class administrator's fees of up to $21,950. A declaration by the Senior VP for ILYM Group, Inc., a professional class action services provider, is submitted in support of the fees. Therefore, plaintiffs have provided adequate evidence to support the request for class administrator's fees of up to $21,950, and the court preliminarily approves of the requested administration fees. (Rogers Decl., ¶ 10.)

f. Incentive Award to Class Representative:

Plaintiffs also request that each of the three class representatives be awarded an incentive fee of $10,000 each, for a total of $30,000. "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, plaintiffs seek an incentive award of $10,000 to the named representatives, Angel Sarmiento, Rafael Santiago-Lugo, and Teresa Tatarakis. All three plaintiffs have each provided a declaration describing the work each have done on the case and what risks they took to be a named class representative. Therefore, all three plaintiffs have sufficiently met their burden, and the court preliminary approves of an incentive award of $10,000 to each named representative plaintiff, for a total of $30,000.

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 notices give the class members notice of the nature of the litigation, the terms of the settlement, how they will be tendered 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 Vedang Decl.) Thus, the proposed notice does provide the basic information required under Rule of Court 3.766. Therefore, the court grants 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: KCK on 06/11/24 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***John Doe 7082 v. Selma Unified School District***
Superior Court Case No. 22CECG04155

Hearing Date: June 13, 2024 (Dept. 502)

Motion: By Defendant Selma Unified School District for Stay

Tentative Ruling:

To deny.

Explanation:

Plaintiff John Doe 7082 ("Plaintiff") filed the instant action regarding certain allegations of past conduct constituting childhood sexual abuse. Defendant Selma Unified School District ("Defendant") seeks a stay of the action pending resolution of two Court of Appeals cases presently before the First District Court of Appeals Case No. A16934, *West Contra Costa Unified School District v. Superior Court*, and the Second District Court of Appeals, Division 6, Case No. B334707, *Roe #2 v. Superior Court*. Both actions pending are petitions for writs of mandate.[1]

Defendant moves solely under the court's inherent authority to control its docket. (*E.g.*, *OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 141 [considering a stay pending application to compel arbitration].) Trial courts generally have the inherent power to stay proceedings in the interest of justice and to promote judicial efficiency. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 266-267.)

Defendant submits that a stay pending appeal is appropriate where another pending action will issue a ruling or determination of an issue that will be dispositive in the stayed action. (*See Caifa Prof. Law Corp. v. State Farm Fire & Casualty Co.* (1993) 15 Cal.App.4th 800, 803.) However, the case cited has the additional posture that the other pending action is between substantially identical parties affecting the same subject matter that was filed earlier in time. (*Ibid.*) In other words, the circumstances are more akin to a soft plea in abatement. (*E.g.*, *Lawyers Title Ins. Corp. v. Superior Court* (1984) 151 Cal.App.3d 455, 458-459.)[2] Nevertheless, staying a matter until another party's appeal is decided may still be in the interests of justice. (*See Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489 [in the context of multiple parties].)

---

[1] Defendant's Request for Judicial Notice, Plaintiff's Request for Judicial Notice, and Defendant's Request for Judicial Notice on Reply are granted to the extent they demonstrate that such records exist, but not for the truths of any of the matters asserted therefrom. (*Steed v. Dept. of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120-121.)

[2] Defendant also relies on *Farmland Irrigation Co. v. Dopplmaier*, which has the same inapposite facts of another action pending between <u>the same parties</u> on the same subject matter. (*Farmland Irr. Co. v. Dopplmaier* (1957) 48 Cal.2d 208, 215.)

Here, Defendant seeks the stay based on two writs of mandate. These writs of mandate challenge the constitutionality of legislation that allows Plaintiff to state his present action based on allegations dating back to 1984. Plaintiff in opposition does not materially contest the applicability of the legislation in question, AB 218, which is specifically referred to in the operative pleading, in the Second Amended Complaint.

As both parties aptly demonstrate, lawsuits filed under the authority granted by AB 218 have been abundant. While the facts that each case presents differs, none of those cases may sit in perpetuity for want of guidance, and the lack of prosecution of these cases will prevent the requisite foundation for further review. The matters submitted for the premise as having potential to control the outcome of this litigation, however, are not full reviews, but writs of mandate to the Courts of Appeal. Writs of mandate are subject to the possible outcome of summary denial, resulting in no guidance, constituting unwarranted delay. Courts must control the pace of litigation, reduce delay, and maintain a current docket as to enable the just, expeditious, and efficient resolution of cases. (Gov. Code § 68607; *In re Alpha Media Resort Inv. Cases* (2019) 39 Cal.App.5th 1121, 1132-1133.)

Neither party sufficiently demonstrates a prejudice, either for a stay in the case of Defendant as the moving party, or against a stay in the case of Plaintiff as the opposing party. However, Defendant, as the moving party bears the burden. Defendant does not suggest any prejudice it would suffer if it were made to wait until the writs of mandate are decided. At present, on the filings before the court based on existing, valid law, the Second Amended Complaint is at issue. Trial is already scheduled, at more than 10 months away, for April 28, 2025. Accordingly, the court finds that staying the matter pending outcome of the identified petitions for writs of mandate will not promote judicial efficiency, and the motion is denied.

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

Tentative Ruling
Issued By: KCK on 06/11/24 .
(Judge's initials) (Date)