Tentative Rulings for July 25, 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

(03)

Tentative Ruling

Re: ***Braulio Javier v. Helena Agri-Enterprises, LLC***
Superior Court Case No. 22CECG02269 [Lead Case]

Hearing Date: July 25, 2024 (Dept. 502)

Motion: Plaintiff's Motion for Preliminary Approval of Class Action Settlement and PAGA Settlement Agreement

Tentative Ruling:

To grant plaintiff's motion for preliminary approval of the class action settlement and PAGA settlement.

Explanation:

1. Class Certification

a. Standards

First, the court must determine whether the proposed class meets the requirements for certification before it can grant preliminary approval of the proposed settlement. "Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.)

b. Numerosity and Ascertainability

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

Here, plaintiff seeks to certify a class for the purpose of approving the settlement consisting of all current and former non-exempt California employees of defendant during the class period. There are two proposed class periods. The first is the so-called

"Proctor Settlement" class[1], which is from March 2, 2020 to January 20, 2024. The second is the remaining class period, which is from July 29, 2018 to January 20, 2024. The class appears to be ascertainable, as defendants' personnel records should be sufficient to allow the parties to identify the class members. The class is also sufficiently numerous to justify certification, as plaintiff's counsel claims that there are approximately 678 class members. Therefore, the court intends to find that the class is sufficiently numerous and ascertainable for certification.

c. Community of Interest

"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.) "The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) "[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 669.)

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

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

In addition, the declaration of plaintiff's counsel establishes that class counsel are experienced and qualified to represent the class. (Hawkins decl., ¶ 63.) Therefore, the court intends to find that the community of interest requirement has been met.

d. Superiority of Class Certification

It does appear that certifying the class would be superior to any other available means of resolving the disputes between the parties. Absent class certification, each employee of defendants would have to litigate their claims individually, which would result in wasted time and resources relitigating the same issues and presenting the same

[1] The Proctor Settlement class is necessary because there was a prior class action against the defendant in San Diego that resulted in a settlement and release of the class members' claims through March 1, 2020, except for the reimbursement class.

testimony and evidence. Class certification will allow the employees' claims to be resolved in a relatively efficient and fair manner. (*Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) Therefore, it does appear that class certification is the superior means of resolving the plaintiffs' claims.

Conclusion: Plaintiff has met his burden of showing that the class should be certified for the purposes of settlement.

2. Settlement

a. Legal Standards

"When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." (*Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F. 3d 1071, 1079.)

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement… The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal. App. 4th 116, 129.) "[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished… [therefore] the factual record must be before the … court must be sufficiently developed." (*Id*. at p. 130.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id*. at p. 129.)

b. Fairness and Reasonableness of the Settlement

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

Here, plaintiff's counsel has presented a sufficient discussion of the strength of the case if it went to trial, the risks, complexity, and duration of further litigation, and an explanation of why the settlement is fair and reasonable in light of the risks of taking the case to trial. (See Hawkins decl., ¶¶ 45-54.) Plaintiff's counsel has provided a detailed explanation of the claims and defenses raised by the parties, and the problems and risks inherent in plaintiff's case. Counsel's analysis supports a finding that the risks, costs and uncertainties of taking the case to trial weigh in favor of settling the action for $600,000 as opposed to the potential maximum recovery of $21,263,112, including $10,748,112 in damages and $10,515,000 in penalties under PAGA, and a realistic exposure of approximately $2,687,028, exclusive of PAGA penalties, and $2,886,888 including PAGA penalties. The proposed settlement amount of $600,000 is 20.1% of the realistic liability, which appears to be well within the ballpark of reasonableness.

Plaintiff also offers evidence regarding the views and experience of counsel, who state that he believes that the settlement is fair and reasonable based on his experience with class litigation. Plaintiff also points out that the settlement was reached after arm's length mediation, and that counsel conducted extensive discovery to investigate the claims and learn the strengths and weaknesses of the case. These factors also weigh in favor of finding that the settlement is fair, adequate, and reasonable.

c. Proposed Class Notice

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

3. Attorney's Fees and Costs

Plaintiff's counsel seeks attorney's fees of 35% of the gross settlement, or $210,000. They also seek court costs not to exceed $20,000. Plaintiff's counsel describes the education, skill, and experience of the attorneys who worked on the case, as well as the challenges presented in the litigation. The firm took the case on a contingent basis, so they assumed the risk that they would receive nothing if they were unsuccessful.

Counsel has also now filed a supplemental declaration that states his hourly rates, the hourly rates of any other attorneys who worked on the case, and how many hours they spent working on the case. (Supplemental Hawkins decl., ¶¶ 5-12.) In total, plaintiff's counsel incurred 309.6 hours on the case, billed at rates from $200 per hour for paralegals to $1,050 per hour for Mr. Hawkins. (*Id*. at ¶¶ 5, 6.) He also sets forth the experience and background of himself and the other attorneys who worked on the case, as well as a general description of the work they did. (*Id*. at ¶¶ 7-12.) Total lodestar fees are $211,757.50, which is slightly more than the requested fee amount of $210,000. (*Id*. at ¶ 5.) The lodestar multiplier to obtain the settlement fees would be .99. (*Ibid*.)

Therefore, counsel has now provided enough information for the court to perform a lodestar cross-check of the requested fees. The settlement fees are actually slightly

lower than the lodestar fees incurred, so it appears that the requested amount of fees is reasonable here. As a result, the court intends to grant preliminary approval of the fees.

Counsel also seeks $20,000 in costs. Counsel now states in his supplemental declaration that his firm has incurred $18,404.14 in costs, and he anticipates that they will incur more costs before the case is concluded. (Suppl. Hawkins decl., ¶ 16.) Therefore, the request for $20,000 in costs appears to be reasonable under the circumstances, and the court intends to grant preliminary approval of the costs.

4. Payment to Class Representative

Plaintiff seeks preliminary approval of a $10,000 service award to the named plaintiff/class representative, Mr. Javier. Mr. Javier has provided his own declaration explaining what work he did on the case and why the requested service payment is reasonable. (Javier decl., ¶¶ 7-12.) Plaintiff's counsel also states that Mr. Javier assisted counsel with various tasks. (Hawkins decl., ¶ 54.) Therefore, the court intends to find that the $10,000 service payment to the named class representative is fair and reasonable.

5. Payment to Class Administrator

Plaintiff seeks approval of up to $15,000 for the settlement administrator's fees. According to the declaration of Anthony Rogers, the representative of ILYM Group, the class administrator, ILYM will charge $10,950 to administer the class settlement. The requested administrator's fees are somewhat higher than the actual amount that ILYM has charged. However, it appears that the higher amount may be to account for any additional costs that might be incurred, and the settlement only allocates "up to $15,000" for administration fees. Therefore, any amounts that are not actually incurred to administer the settlement will presumably go back into the settlement fund and be paid out to the class members. Therefore, the court intends to grant preliminary approval of the administrator's fees.

6. PAGA Settlement

Plaintiff proposes to allocate $16,000 of the settlement to the PAGA claims, with 75% of that amount being paid to the LWDA as required by law and the other 25% being paid out to the class members. Plaintiff's counsel has also sent notice of the settlement to the LWDA, and they have not objected to the settlement. (Hawkins decl., ¶ 7.)

Counsel has now provided his supplemental declaration in which he explains the reasoning for settling the PAGA claim for $16,000. (Suppl. Hawkins decl., ¶ 18.) He explains that the PAGA claim is potentially worth about $200,000, but this is based on the assumption that "everything goes right." It was vulnerable to being substantially devalued, especially since the court has the discretion to reduce the PAGA penalties as unjust, oppressive, and confiscatory. Therefore, the parties decided to negotiate a settlement of the PAGA claims for $16,000, which ensures that the penalties are substantial enough to serve PAGA's objectives, yet not so large as to detract from the damages available to the class.

Therefore, counsel has now provided enough information to allow the court to conclude that the PAGA settlement is fair, adequate, and reasonable. Also, the LWDA has been served with notice of the PAGA settlement and has not objected, so there is no evidence that the government believes that the settlement is unfair, inadequate, or unreasonable. As a result, the court intends to grant preliminary approval of the PAGA settlement.

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 07/23/24.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Joey Reyes v. Valley Chrome Plating, Inc.***
Superior Court Case No. 22CECG01415

Hearing Date: July 25, 2024 (Dept. 502)

Motion: Motion for Final Approval of Class Settlement

Tentative Ruling:

To grant final approval of the settlement and certification of the class, as set forth in the proposed Judgment and Order submitted, except $396,305 is awarded for attorneys' fees, and $5,000 for enhancement payment to plaintiff. A revised proposed order shall be submitted to this department, with all dollar amounts filled in, within 5 days of the clerk's service of this order.

To set a hearing at July 17, 2025, at 3:30 p.m. in Department 502 as a hearing date for an Amended Judgment pursuant to Code of Civil Procedure section 384. A verified report of payouts of settlement funds and a proposed amended judgment shall be submitted no later than July 3, 2025.

Explanation:

"Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) "The trial court has broad discretion to determine whether a class action settlement is fair. It should consider factors such as the strength of plaintiffs' case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement." (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336.)

The court has already considered these factors and found the settlement to be fair and reasonable.

As a general rule, the lodestar method is the primary method for calculating the amount of class counsel's attorney's fees; however, the percentage-of-the benefit approach may be proper when there is a common fund. In some cases, it may be appropriate, when the monetary value of the class benefit can be determined with a reasonable degree of certainty, such as this one, for the judge to cross-check or adjust the lodestar amount in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation. (See *Laffitte v. Robert Half Int'l, Inc*. (2016) 1 Cal.5th 480, 488–497; *Roos v. Honewell Int'l, Inc*. (2015) 241 Cal.App.4th 1472, 1490–1494; *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

The lodestar analysis is based on a "careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. . . ." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.)

Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type" (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133, emphasis added.)

Pursuant to the settlement agreement, counsel requests a fee award of $420,000, which amounts to 35% of the gross settlement. In granting preliminary approval of the settlement, the court directed plaintiff's counsel to submit a fully supported lodestar analysis.

Counsel says the firm Parker & Minne has spent 204.9 hours litigating this action at the rate of $750 per hour, for a current lodestar of $153,675. (Minne Decl., ¶¶ 58, 59.) Billing details have been provided. The firm Lawyers for Justice spent 230.6 hours on the case, and a Task and Time Chart is attached to the declaration. (Ghosh Decl., ¶ 9, Exh. A.) The proposed lodestar is based on a blended hourly rate of $800 per hour for the Lawyers for Justice firm, resulting in a lodestar for the firm of $184,480, and total lodestar for the two firms of $338,155, well shy of the $420,000 sought.

The court requested further information supporting the blended rate requested by Lawyers for Justice. Counsel submitted a supplemental declaration claiming that attorneys bill at rates of $1,495 and $1,295 for the two shareholders who did the bulk of the work on the case, and varying rates ranging from $575 to $850 for associate work.

These exorbitantly high billing rates are not supported by any evidence, and the court finds them to be unreasonable. The court will approve a $700 per hour blended rate for both firms, resulting in a lodestar of $396,305. Applying a 1.3 multiplier to account for the contingent nature of the representation and risk of not being compensated, the court will approve an allocation of $396,305 to attorneys' fees, to be split between the two firms in proportion to the hours worked on the matter.

The litigation costs of $19,810.57 (less than the $30,000 provided for in the Settlement Agreement) are documented at Exhibit B to the Ghosh Declaration, and Exhibit B to the Supplemental Gosh Declaration. The court approves the costs as incurred.

Plaintiff requests a $7,500 enhancement payment. The court finds that $5,000 would generously compensate plaintiff for his efforts and time expended, and risks taken in pursuing this action.

The settlement administration expense is approved as requested.

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 07/23/24 .
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Arturo Rodriguez v. Ravdeep Singh***
Superior Court Case No. 23CECG04769

Hearing Date: July 25, 2024 (Dept. 502)

Motion: Defendants' Demurrer to the Complaint and Motion to Strike

Tentative Ruling:

To order the hearing off calendar, as no motion was filed for this hearing date, and it does not appear any notice was given to plaintiff of this hearing.

Explanation:

Plaintiff filed a motion for judgment on the pleadings against defendants' answer, which was originally scheduled for March 28, 2024, but was continued to May 14, 2024, to allow plaintiff to correct defects in his proof of service of the motion. His motion was granted on May 14, 2024.

On May 10, 2024, defendants filed a memorandum of points and authorities and four declarations in support of a demurrer, and these papers reflected a hearing date of May 14, 2024. However, defendants had not calendared a hearing for a demurrer, and instead were apparently attempting to use the date for *plaintiff's* motion as a hearing date for their own motion. When defendants appeared for oral argument at this hearing, the court informed them that they did not have a motion on calendar, and they needed to obtain a hearing date from the court's Law and Motion desk before filing moving papers.

After this, defendants obtained a hearing date, but they did not file any moving papers for this hearing date. Perhaps defendants believed that the papers they filed on May 10, 2024, served as the moving papers for the July 25th hearing. This is incorrect. Those papers did not give plaintiff any notice of a hearing on July 25, 2024. Furthermore, there is no Notice of Motion included with the papers filed on May 10, 2024. Nor is there a proof of service of any moving papers on plaintiff for a hearing on July 25, 2024. The statement in the Declaration of June Waara that she verbally informed plaintiff of the hearing on July 25, 2024, does not make for service of the motion on plaintiff.

If defendants desire a hearing on a demurrer to the complaint, they must obtain a hearing date from the Law and Motion clerk, and thereafter *file moving papers* properly indicating the date they obtained, which show timely and proper service of the motion on plaintiff. Even though defendants are self-represented, they are held to the same standards as attorneys and they must follow the rules of civil procedure. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

Also, the declaration of non-party June Waara filed on defendants' behalf on July 12, 2024 indicates that she met and conferred with plaintiff regarding the demurrer, which

defendants are supposed to do. (Code Civ. Proc., § 430.41.) Ms. Waara's status as a licensed and bonded Unlawful Detainer Assistant and Process Server does not give her any authority to meet and confer with plaintiff on defendants' behalf. Ms. Waara should take care not to practice law without a license.

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 07/23/24.
(Judge's initials) (Date)