

Tentative Rulings for December 10, 2024
Department 501

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 501

Begin at the next page

(27)

Tentative Ruling

Re: **Eduardo Rodriguez v. Jawad Co.**
Superior Court Case No. 24CECG00157

Hearing Date: December 10, 2024 (Dept. 501)

Motion: by Defendants to Compel Arbitration and Stay Proceedings

Tentative Ruling:

To grant. The action is stayed pending completion of arbitration. (Code Civ. Proc., § 1281.4.)

Explanation:

“California law, like federal law, favors enforcement of valid arbitration agreements.” (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 97.) “When presented with a petition to compel arbitration, the initial issue before the court is whether an agreement has been formed.” (*Diaz v. Sohnen Enterprises* (2019) 34 Cal.App.5th 126, 129.)

Moving defendant's motion is supported by a declaration from its General Manager who possesses personal knowledge of customer records (including plaintiffs) and confirmation of the agreement to resolve pertinent disputes through arbitration. (Jawad, Decl. *passim*.) The subject signed arbitration agreement is attached to the declaration. (*Id.* Ex. 1, p. 5.) This evidence of plaintiffs' acceptance of the subject arbitration agreement satisfies defendants' burden to show an enforceable agreement to arbitrate. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 850.) Plaintiffs' opposition to the motion is not persuasive, and the arbitration agreement should be enforced. Defendants' motion to compel arbitration and stay these proceedings is granted.

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: DTT on 10/28/2024.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: **Manuel Hernandez Diego v. James Marshall Farm Service / Complex / Class Action**
Superior Court Case No. 23CECG03758

Hearing Date: December 10, 2024 (Dept. 501)

Motion: by Plaintiff for Final Approval of Class Action Settlement

Tentative Ruling:

To grant.

To also order the parties to return on Thursday, December 11, 2025, at 3:30 p.m., in Department 501 to inform the court of the total amount actually paid to the class members, pursuant to Code of Civil Procedure section 384, subdivision (b), so that the judgment can be amended and the distribution of any cy pres funds can be ordered. Documentation as to the amount paid to class members must be filed no later than December 1, 2025.

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. In addition, there does not appear to be any reason for the court to reconsider its decision granting certification of the class. Therefore, the court intends to certify 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 (*Kullar*).

“[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.” (*Kullar, supra*, 168 Cal.App.4th 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 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.

Plaintiff contends and provides evidence that the proposed settlement is the product of arms-length adversarial negotiations between counsel for plaintiff and counsel for defendant, including a mediation session with Tripper Ortman, a well-known mediator. (See Brown, Decl. ¶ 20.) Plaintiffs’ counsel has also engaged an expert whose findings support the alleged non-compliance. (*Ibid.*) Considering the depth of the expert’s analysis, the inclusion of realistic probabilities of prevailing verse the attendant risks of not collecting after a trial, the settlement appears reasonable.

In addition, the settlement administrator, Phoenix Settlement Administrators sent out the notice to class members on August 6, 2024. (Lee, Decl. ¶ 5.) No exclusions or objections were received. (*Id.* at ¶¶ 8-9.) The lack of any objections or disputes supports plaintiff’s contention that the settlement is fair, adequate, and reasonable.

The settlement was reached after investigation and discovery, and was the product of arms’ length negotiations and mediation between the parties. Furthermore, class counsel is experienced in similar types of class action litigation. These factors also weigh in favor of finding that the settlement is fair and reasonable. Receipt of the notice of proposed settlement to the Labor and Workforce Development Agency is also provided. (Brown, Decl. Ex. I.)

Therefore, the court finds that the settlement is fair, reasonable and adequate.

3. Attorney Fees and Costs

Plaintiff’s counsel seeks an award of \$110,250 in attorney fees, or 35% of the gross settlement, and \$20,934.69 for costs. The California Supreme Court has found that fee awards based on a percentage of the gross settlement in class action cases are proper. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503-505.) However, the Supreme Court further held that the trial court may also double-check the reasonableness of the

fees by performing a lodestar analysis to ensure that the requested amount of fees is reasonable based on the difficulty of the issues, the amount of work done, and the attorney's hourly rate. (*Ibid.*) In essence, “[a]s noted earlier, ‘[t]he lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the results achieved.’ A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee. If a comparison between the percentage and lodestar calculations produces an imputed multiplier far outside the normal range, 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.” (*Id.* at p. 504, internal citations omitted.)

Here, plaintiff's motion includes tables and hourly rates and provides sufficient information to perform a lodestar calculation/cross check. In addition, the requested attorney fees comport with the figures already approved in the motion for preliminary approval. Therefore, the court approves the request for attorney fees and costs.

4. Payment to Class Representative

The class representative has submitted declaration a describing his familiarity of the dispute and participation in the case. Counsel's declaration incorporates this evidence in the request for the payment to the class representative and assistants. (See Brown, Decl. ¶ 29.) Accordingly, given this evidence, there is a basis to grant the \$5,000 service award.

5. Payment to Class Administrator

The settlement administrator's fees for administering the settlement is included in the settlement funding up to \$8,250. The claims administrator's case manager has filed a declaration describing the efforts undertaken and the costs incurred. (See Lee, Decl.) Therefore, the court grants the requested payment to the class administrator.

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: DTT on 12/6/2024.
(Judge's initials) (Date)