Tentative Rulings for April 22, 2026
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.

24CECG03651 ***Severino Santos v. Natalia Marquez*** **is continued to Wednesday, May 27, 2026, at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

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(46)

Tentative Ruling

Re: ***Pafoday Kanu v. Geil Enterprises, Inc.***
Superior Court Case No. 23CECG05121

Hearing Date: April 22, 2026 (Dept. 403)

Motion: by Plaintiff for Approval of PAGA Settlement Agreement

Tentative Ruling:

To deny, without prejudice, for lack of evidence demonstrating the reasonableness of the award amount to be received by the aggrieved employees.

Explanation:

1. Introduction

Under Labor Code section 2699, "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA]. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (Lab. Code, § 2699, subd. (i)(2).)

'"'A representative action under PAGA is not a class action'"', and is instead a 'type of qui tam action', a standard requiring the trial court to determine independently whether a PAGA settlement is fair and reasonable is appropriate. Class actions and PAGA representative actions have many differences, with one salient difference being that certain due process protections afforded to unnamed class members are not part of PAGA litigation because aggrieved employees do not own personal claims for PAGA civil penalties. Nonetheless, the trial court must 'review and approve' a PAGA settlement, and the Supreme Court has in dictum referred to this review as a 'safeguard[ ].' The Supreme Court has also observed that trial court approval 'ensur[es] that any negotiated resolution is fair to those affected.' When trial court approval is required for certain settlements in other qui tam actions in this state, the statutory standard is whether the settlement is 'fair, adequate, and reasonable under all the circumstances.' Thus, while PAGA does not require the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for settlements that prevents 'fraud, collusion or unfairness', and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77, internal citations omitted.)

"Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes and

policies. We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.*, *supra*, 72 Cal.App.5th at p. 77, internal citations and footnote omitted.)

On the other hand, "PAGA does not provide that aggrieved employees must be heard on the approval of PAGA settlements… PAGA provides no mechanism for aggrieved employees, including those pursuing PAGA lawsuits, to be heard in objection to another PAGA settlement. This concession is dispositive, and we will not read a requirement into a statute that does not appear therein." (*Moniz v. Adecco USA, Inc.*, *supra*, 72 Cal.App.5th at p. 79, internal citation omitted.)

2. Notice to Labor and Workforce Development Agency

Labor Code section 2699, subdivision (l)(2), states: "The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court."

Here, the moving party has given notice of the settlement to the LWDA, so it may address the court regarding it, if it so chooses. (Lab. Code, § 2966, subd. (l)(2); see Proof of Service – online submission on or about March 13, 2026.)

3. Fairness of the Settlement Amount

As mentioned above, the Court of Appeal in *Moniz v. Adecco USA, Inc.* stated that the trial court should review PAGA settlements to determine whether they are fair, adequate and reasonable. (*Moniz v. Adecco USA, Inc.*, *supra*, 72 Cal.App.5th at pp. 75-77.) "Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Id.* at p. 77.)

A. Strength of Case: In reaching the settlement, it is asserted that the parties had the opportunity to review information, documents, and data regarding plaintiff's and the aggrieved employees' employment with defendant, in an effort to determine the potential value and strength of the PAGA claim. The parties have considered the recommendations of the mediator Hon. Howard R. Broadman (Ret.), who is highly experienced in mediation complex labor and employment matters. (See Madoyan Decl., ¶ 30.)

Plaintiff has not provided evidence of payrolls taken into consideration, or other data and statistical analysis based on timekeeping records and/or other employee data that evidence the reasonableness of the settlement. Plaintiff does not elaborate on how the estimated number of PAGA members was reached.

Regarding weaknesses of the claims, plaintiff spends much time discussing the defendant's challenges to plaintiff's PAGA claim. Plaintiff goes so far as to say that "at the time that the Parties reached the settlement, and also now, there is uncertainty regarding the PAGA claim." (Madoyan Decl., ¶ 28.) Plaintiff states that while he disagrees with defendant's contentions and maintains the PAGA claim has merit, the strengths, weaknesses, and "uncertainty" of the PAGA claim were taken into consideration when considering the potential and realistic value of the PAGA claim.

<u>Counsel should show his work to explain how the amounts to be received by the employees from the net settlement is reasonable and fair.</u>

B. Stage of Proceeding: A presumption of fairness exists where the settlements is reached through arm's length mediation between adversarial parties, where there has been investigation and discovery sufficient to allow counsel and the court to act intelligently, and where counsel is experienced in similar litigation. (*Dunk v. Ford Motor Company* (1996) 48 Cal. App 4th 1794, 1802.) Here, the case went to mediation, but did not settle until after further settlement negotiations between the parties. Plaintiff's counsel is highly experienced in representative litigation. Plaintiff attests to the settlement as a product of arm's-length negotiations occurring thought out the litigation. (Madoyan Decl. ¶ 18.)

There is no indication of formal discovery having been undertaken or whether interviews were conducted of employees to determine the widespread nature of the allegations. Counsel does not elaborate on the pre-settlement discovery samples and records for PAGA members, or whether assistance by an expert was used in settlement negotiations. The parties "had the opportunity" to review information, documents, and data, but offer no further information as to what was reviewed. (See Madoyan Decl., ¶ 30.) Plaintiff failed to provide evidence to support finding the settlement is reasonable.

C. Risks of Litigating Case Through Trial: Counsel notes that the parties both recognized the cost, time, inconvenience, and delay in the continued litigation PAGA claim. The settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded as litigation continued at trial.

D. Amount of Settlement: The gross settlement is $285,000.00, and to assess the reasonableness of this amount, the court needs a good valuation of the total potential penalties. Here, counsel reviews the potential value of civil penalties and attributed discounts. (See generally Madoyan Decl., ¶ 35.) At issue is the amount of the net settlement to be distributed among the aggrieved employees, as determination of the amount of aggrieved employees and the reasonableness of the amount to be received by them is unclear.

E. Experience and Views of Counsel: Plaintiff's counsel are highly experienced in class and representative litigation. They have stated that the settlement is fair, adequate and reasonable under the circumstances.

F. Government Participation: No government entity participated in the case, so this factor does not favor either approval or disapproval of the settlement.

G. Attorney's Fees and Costs: The settlement agreement provides that plaintiff's counsel would get up to $99,750.00 (35% of the total gross recovery) in attorney's fees, plus costs of up to $20,000. Plaintiff's actual costs are $13,147.82. (Madoyan Decl., ¶ 42.)

Courts have approved awards of fees in class actions that are based on a percentage of the total common fund recovery. (*Laffitte v. Robert Half Internat.* (2016) 1 Cal.5th 480, 503.) It appears that the same reasoning would apply to PAGA settlements, which bear similarities to class actions. However, the court may also perform a lodestar calculation to double check the reasonableness of the fee request. (*Laffitte*, *supra*, at pp. 504-506.) Labor Code section 2699, subdivision (g)(1) states that the prevailing employee "shall be entitled to an award of reasonable attorney's fees and costs." Records by counsel of the time actually spent on a matter are the starting point for any lodestar determination. (*Horsford v. Board of Trustees* (2005) 132 Cal. App. 4th 359, 394.)

A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the '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.)

Here, the fee request is 35% of the total gross settlement, which does not appear to be unreasonable.

Counsel's firm worked 230.40 hours on the case. The billing rates of 13 attorneys spans $575.00 to $1,495.00. At the billing rates claimed, the firm's lodestar is $213,726.00. (Madoyan Decl., ¶ 39.) Mr. Madoyan attests to the hours spent having been reasonable to the conduct of the litigation and the hourly rates to be reasonable. (Madoyan Decl., ¶¶ 40, 41.) Counsel provides some billing entries as Exhibit 3 to assert that the hours spent are reasonable.

The requested fees are less than the lodestar provided, and are reachable based solely on percentage. Thus, the requested fees appear to be reasonable.

H. Scope of the Release:

> … PAGA's statutory scheme and the principles of preclusion allow, or "authorize," a PAGA plaintiff to bind the state to a judgment through litigation that could extinguish PAGA claims that were not specifically listed in the PAGA notice where those claims involve the same primary right litigated. Because a PAGA plaintiff is authorized to settle a PAGA representative action with court approval (§ 2699, (*l*)(2)), it logically follows

> that he or she is authorized to bind the state to a settlement releasing claims commensurate with those that would be barred by res judicata in a subsequent suit had the settling suit been litigated to judgment by the state.

(*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 83.)

The scope of the release appears to be appropriately limited to the PAGA claims of which the LWDA was given notice and those supported by the allegations of the complaint.

I. Payment to Named Plaintiff: Plaintiff seeks an enhancement award of $5,000.00 for representing the aggrieved employees. He contends that he has made himself available to his attorneys and gathered relevant employment documents, as well as spent time reviewing documents, providing information, and developing strategy. (Kanu Decl., ¶ 3.) As the case progressed, he remained active and helpful with the litigation and settlement processes. (*Id*., ¶¶ 4-5.) Plaintiff appears to be deserving of an enhancement award.

J. Administration Costs: Plaintiff seeks to nominate Phoenix Class Action Administration Solutions ("Phoenix") to administer the settlement. In support, Plaintiff submits the declaration of Michael Moore, President and Managing Partner of Phoenix. He submits Phoenix's qualifications, proposed work, and a detailed estimate. Phoenix appears to be well qualified for appointment as settlement administrator.

While the settlement appears to be on its way towards approval, the court would like clarification on the reasonableness of the total amount of the award and the resulting net settlement to be distributed to the aggrieved employees. It is unclear how the estimated number of employees was calculated and factored into the settlement amount (e.g. no evidence of review of payrolls), to demonstrate the award to be distributed to the employees as reasonable.

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: Img on 4-21-26.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Esqueda v. Hyundai Motor America***
Superior Court Case No. 23CECG01671

Hearing Date: April 22, 2026 (Dept. 403)

Motion: By Plaintiff for Attorney's Fees

Tentative Ruling:

To grant in the reduced amount of $15,232.28. Payment shall be made by defendant Hyundai Motor America to Quill & Arrow, LLP within 30 days of the clerk's service of the minute order.

Explanation:

Evidentiary Objections

The court overrules defendant's evidentiary objection numbers 1, 3, and 5. The court sustains defendant's evidentiary objection numbers 2 and 4.

Merits

A prevailing buyer in an action under the Song–Beverly Act "shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (Civ. Code, § 1794, subd. (d).)

The statute "requires the trial court to make an initial determination of the actual time expended; and then to ascertain whether under all the circumstances of the case the amount of actual time expended and the monetary charge being made for the time expended are reasonable. These circumstances may include, but are not limited to, factors such as the complexity of the case and procedural demands, the skill exhibited and the results achieved. If the time expended or the monetary charge being made for the time expended are not reasonable under all the circumstances, then the court must take this into account and award attorney fees in a lesser amount. A prevailing buyer has the burden of 'showing that the fees incurred were "allowable," were "reasonably necessary to the conduct of the litigation," and were "reasonable in amount." ' " (*Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 104.)

A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the '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; *Robertson v. Fleetwood Travel Trailers of California, Inc*. (2006) 144 Cal.App.4th 785, 817 [lodestar applies to Song-Beverly

litigation].) Here, plaintiff seeks a lodestar of $14,899.50. 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*, *supra*, 22 Cal.4th at p. 1095, italics added; *Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1134.) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method '"is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.' " (*Serrano III*, *supra*, 20 Cal.3d at p. 48, fn. 23.)

Here, it should be noted that defendant agrees that plaintiff was a "prevailing party" for purposes of receiving attorney's fees. Defendant largely argues that the hours billed were not reasonably incurred and that the billing rates are high. Defendant also argues a multiplier is unwarranted here.

Time Expended

As to the time expended, the opposition seeks to have the fee award reduced significantly. Again, the court is to award attorneys' fees "*reasonably incurred by the buyer* in connection with the commencement and prosecution of [the] action." (Civ. Code, § 1794, subd. (d), emphasis added.) "A reduced award might be fully justified by a general observation that an attorney over litigated a case or submitted a padded bill, or that the party has stated valid objections." (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271.) If the time expended is not reasonable, the court must take that into account and award less than requested. (*Goglin v. BMW of North America, LLC* (2016) 4 Cal.App.5th 462, 470.)

<u>Excessive Time.</u> Defendant argues there are entries by multiple attorneys for the same task. The court has carefully reviewed all of the billing and will only be reducing the time for the hours expended in reviewing the opposition to the instant motion and preparing the reply to allow for three hours at a billing rate of $375 per hour.

<u>Anticipated Preparation for and Attendance at Hearing.</u> Plaintiff anticipates spending between two hours for preparing to attend the hearing in this matter. The court will consider this amount only if oral argument is requested.

Reasonable Hourly Compensation

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.) Ordinarily, '"the value of an attorney's time . . . is reflected in his normal billing rate."' (*Mandel v. Lackner* (1979) 92 Cal.App.3d 747, 761.)

Plaintiff is billing Bryan Altman, who has been an attorney for 40 years, at $950 per hour. Altman only billed 0.5 hours in this matter. The court will not be adjusting Altman's billing rate.

Plaintiff is billing Ryan Ardi, who was barred in 2022, at $400 per hour. The court is adjusting Ardi's billing rate to $350 per hour for 2.5 hours.

Plaintiff is billing Andrew Jung, who was barred in 2021, at $400 per hour. The court is adjusting Jung's billing rate to $350 per hour for 0.3 hours.

Plaintiff is billing Donald Mahnke, who was barred in 2021, at $350 per hour in 2023 and $400 per hour in 2024. The court is adjusting Mahnke's billing rate to $350 per hour for 8.9 hours.

Plaintiff is billing Sarah Pfeffer, who was barred in 2020, at $350 per hour in 2023. The court is adjusting Pfeffer's billing rate to $300 per hour for 2.5 hours.

Plaintiff is billing Danja Stocca, who was barred in 2023, at $350 per hour in 2024. The court is adjusting Stocca's billing rate to $300 per hour for 15.9 hours.

Plaintiff is billing Derek Chipman, who was barred in 2019, at $395 per hour in 2025. The court is adjusting Chipman's billing rate to $375 for 10.1 hours, including the three hours discussed above for the reply.

Local, contracted counsel Alicia Hinton, who was barred in 2013, billed $500 per hour for 1.7 hours. The court is not adjusting Hinton's billing rate.

Costs

Plaintiff seeks $1,354.78 in costs. Plaintiff has sufficiently evidenced the costs. Defendant seeks to reduce costs associated with an appearance attorney and with several declarations prepared in response to Orders to Show Cause. The court is not inclined to reduce these amounts. As such, the court intends to award $1,354.78 in costs.

Multiplier

Plaintiff also seeks a multiplier of 1.25. A multiplier enhancement to the lodestar "is primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases as a class." (*Ketchum*, *supra*, 24 Cal.4th at p. 1138.) A multiplier may also be applied where the attorney has shown extraordinary skill, resulting in exceptional results. (*Ibid.*; *Graham*, *supra*, 34 Cal.4th at p. 582.) Courts have substantial discretion to select the factors they deem relevant to their multiplier analysis. (*Lealao v. Beneficial California, Inc*. (2000) 82 Cal.App.4th 19, 40–41.) The factors include: (1) the novelty and difficulty of the questions involved and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; and (3) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the award. (*Robertson v. Fleetwood Travel Trailers of California, Inc*. (2006) 144 Cal.App.4th 785, 819.) Reviewing the case in light of these factors, the court does not find that the application of a multiplier is warranted.

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 4-21-26 .
(Judge's initials) (Date)

(49)

Tentative Ruling

Re: ***De La Cruz v. Hernandez***
Superior Court Case No. 24CECG02299

Hearing Date: April 22, 2026 (Dept. 403)

Motion: by Defendant Rosanna Hernandez for Terminating Sanctions

Tentative Ruling:

To grant. Defendant Rosanna Hernandez is directed to submit a proposed judgment within five days of service of the order by the clerk.

Explanation:

Defendant Rosanna Hernandez seeks imposition of sanctions, up to and including terminating sanctions pursuant to Code of Civil Procedure sections 2023.010 and 2023.030 and California Rules of Court, rule 3.1348.

Code of Civil Procedure section 2023.010, subdivision (g), makes "[d]isobeying a court order to provide discovery" a "misuse of the discovery process," but sanctions are only authorized to the extent permitted by each discovery procedure. For failure to obey the court's discovery orders or to appear at a noticed deposition, the court may:

> [M]ake those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010). (Code Civ. Proc., §§ 2030.290, subd. (c) [interrogatories]; and 2031.300, subd. (c) [inspection demands].)

The factors for determining which sanction is relevant are:

> 1) the time which has elapsed since interrogatories were served, 2) whether the party served was previously given a voluntary extension of time, 3) the number of interrogatories propounded, 4) whether the unanswered questions sought information which was difficult to obtain, 5) whether the answers supplied were evasive and incomplete, 6) the number of questions which remain unanswered, 7) whether the questions which remain unanswered are material to a particular claim or defense, 8) whether the answering party has acted in good faith, and with reasonable diligence, 9) the existence of prior orders compelling discovery and the answering party's response thereto, 10) whether the party was unable to comply with the previous order of the court, 11) whether an order allowing more time to answer would enable the answering party to supply the necessary information, and, 12) whether a sanction short of dismissal or default would

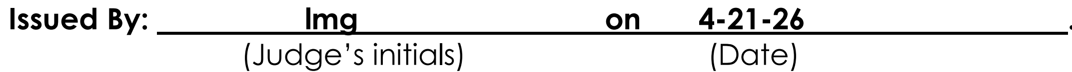
be appropriate to the dereliction. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796–797.)

Once a motion to compel discovery is granted, continued failure to comply may support a request for more severe sanctions.

Here, plaintiff Joshuamir Delacruz ("Plaintiff") was served with discovery over a year ago on March 14, 2025. Plaintiff was initially given two time extensions to file a response. On August 27, 2025, Defendant thereafter sought and obtained a court order directing Plaintiff to respond and pay monetary sanctions. To date, Plaintiff fails to comply with the court's orders, serve any responses, or pay sanctions. Plaintiff further failed file a response to this motion. Nothing indicates the discovery sought is burdensome, complex, or that Plaintiff, acting in good faith and reasonable diligence, should not have been able to provide the discovery to Defendant.

Normally, the court would allow the offending party another opportunity to respond and comply with the court's orders. Here however, the discovery has been pending over a year. Plaintiff has given no indication that he is interested in continuing to participate in this litigation, or that further monetary sanctions would have different results from the previous monetary sanctions. Therefore, terminating sanctions are appropriate, and the motion 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: lmg on 4-21-26.

(Judge's initials) (Date)

(48)

Tentative Ruling

Re:	***Grayson v. County of Fresno et al.*** Superior Court Case No. 22CECG01628
Hearing Date:	April 22, 2026 (Dept. 403)
Motion:	by Defendants County of Fresno, Sheriff Margaret Mims, Captain Joe Smith, Sergeant Ivana Hamilton-Cortez, and Andrew Machoin for Leave to File a Cross-Complaint

Tentative Ruling:

To grant. Defendants County of Fresno, Sheriff Margaret Mims, Captain Joe Smith, Sergeant Ivana Hamilton-Cortez, and Andrew Machoin are directed to file the proposed cross-complaint within five days of service of the order by the clerk.

Explanation:

Defendants County of Fresno, Sheriff Margaret Mims, Captain Joe Smith, Sergeant Ivana Hamilton-Cortez, and Andrew Machoin (together "Defendants") filed a motion for leave to file a cross-complaint against proposed cross-defendants Community Regional Medical Center, Jordan L. Beshore, DO, and Brandon Kuang, MD (collectively hereafter "Proposed Cross-Defendants"). Defendants submit that the course of fact discovery of the original action produced certain records. Upon review of those records by an expert, Defendants discovered a potential claim for indemnity against existing parties.

A defendant may file a cross-claim against a codefendant or a third party not yet a party to the action where the cause of action asserted is related, meaning it arises out of the same transaction, occurrence, or series of transactions or occurrences, or asserts a claim, right, or interest in the property or controversy which is at issue in the cause of action brought against the defendant. (Code Civ. Proc., § 428.10, subd. (b).) Code of Civil Procedure, section 426.30, states that cross-complaints against the plaintiff that are related to the causes of action that exist at the time of service of the answer to the complaint are compulsory. Otherwise, cross-complaints are permissive.

Here, Defendant's cross-complaint is not compulsory, thus, Code of Civil Procedure, section 428.50 is applicable.

Once a trial date has been set, leave of court is required prior to filing a cross-complaint. (Code Civ. Proc., § 428.50, subd (c).) Leave may be granted in the interest of justice at any time during the course of the action. (Code Civ. Proc., § 428.50, subd. (c).) The court shall grant a party's request for leave to file a cross-complaint if the party acted in good faith. (Code Civ. Proc., § 426.50.)

What constitutes good faith, or a lack of it under Code of Civil Procedure section 426.50 must be determined in light of and in conformity with great liberality. (*Foot's Transfer & Storage Co. v. Superior Court* (1980) 114 Cal.App.3d 897, 902.) A motion to file

a cross-complaint at any time during the course of the action must be granted unless bad faith of the moving party is demonstrated where forfeiture would otherwise result. (*Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94, 98-99.) Factors such as oversight, inadvertence, neglect, mistake or other cause, are insufficient grounds to deny the motion unless accompanied by bad faith. (*Ibid.*) The showing of bad faith must be strong. (*Foot's Transfer & Storage Co. v. Superior Court*, *supra*, 114 Cal.App.3d at p. 902.)

As noted above, Defendants submit that they discovered claims against Proposed Cross-Defendants through the course and scope of discovery. Defendants acknowledge that a substantial amount of time has passed since the claims became knowable. However, oversight and inadvertence, neglect or mistake, are insufficient grounds to deny the motion. The court finds that the delay here does not amount to a strong showing of bad faith. Moreover, no opposition was filed. Accordingly, the motion is granted.

Code Civil Procedure, § 428.10, subdivision (b), requires that the cross-claim be related to the complaint. It is very likely that cross-complaints for comparative equitable indemnity would always be transactionally related to the main action. (*Time for Living, Inc. v. Guy Hatfield Homes/All American Development Co.* (1991) 230 Cal.App.3d 30, 38.) "Under the equitable indemnity doctrine, defendants are entitled to seek apportionment of loss between the wrongdoers in proportion to their relative culpability so there will be 'equitable *sharing* of loss between multiple tortfeasors.' (*American Motorcycle Assn. v. Superior Court* (1978) 20 Cal.3d 578, 595, 597–598, emphasis in original.)" (*Gem Developers v. Hallcraft Homes of San Diego, Inc.* (1989) 213 Cal.App.3d 419, 426.)

Here, Defendants assert that the cross-complaint is related to the action because Proposed Cross-Defendants are at least partially responsible for Grayson's death and will be pursuing equitable indemnification. Thus, the Court finds that the cross-complaint arises out of the same transaction, occurrence, or series of transactions or occurrences in the cause of action brought against the Defendants.

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