

Tentative Rulings for June 3, 2025
Department 403

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

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

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

23CECG00212	<i>Thomas Akande v. State Center Community College District</i> is continued to Wednesday, June 4, 2025 at 3:30 p.m. in Department 403.
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Tentative Rulings for Department 403

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(03)

Tentative Ruling

Re: ***Ziegler v. Marihart Restaurant Group, Inc.***
Case No. 23CECG00301

Hearing Date: June 3, 2025 (Dept. 403)

Motion: Plaintiff's Motion for Final Approval of Class and
Representative Action Settlement and Motion for Award of
Attorney's Fees, Reimbursement of Costs, and Service
Payment to Plaintiff

**If oral argument is timely requested, it will be entertained on
Thursday, June 5, 2025, at 3:30 p.m. in Department 403.**

Tentative Ruling:

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

Explanation:

1. Class Certification

The court has already determined that the class should be certified for the purpose of settlement in its order granting preliminary approval of the class settlement. Nothing has happened since the court granted its last order that would tend to cast doubt on its previous decision. Therefore, the court intends to find that the class should be certified for the purpose of settlement.

2. 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, the court has already granted preliminary approval of the class settlement. As the court previously found, 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. 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 \$120,000 as opposed to the potential maximum recovery of \$374,920.75. The proposed settlement amount of \$120,000 is 32% of defendant's maximum liability, which appears to be well within the ballpark of reasonableness.

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

Nothing has changed since the last hearing that would cause the court to change its decision. The class members were given notice of the settlement, and they submitted no objections or opt-out requests. The fact that no objections or opt-out requests have been received after notice was given to the class tends to reinforce the conclusion that the settlement is fair, adequate, and reasonable. Therefore, the court intends to grant final approval of the class settlement.

3. Attorney's Fees and Costs

The court has already granted preliminary approval of the requested attorney's fees of \$39,600, finding that the fees are fair and reasonable in light of the work done on the case, counsel's education, skill and experience, and the excellent results obtained in the case. Counsel has now submitted his declaration, which adds information about the lodestar fees incurred. Counsel incurred 73 hours billed at \$950 per hour, which would result in total fees of \$69,350.00. Thus, the requested fees are actually less than the lodestar fees, which tends to show that the requested fees are reasonable. Also, there have been no objections to the fee award since the court granted the preliminary approval order, which supports the conclusion that the requested fees are reasonable. As a result, the court intends to grant final approval of the requested fees.

Counsel also seeks an award of 5,242.12 in costs. The court has already found that the requested amount of costs is reasonable and necessary when it granted preliminary approval. The lack of any objections from the class only tends to support the conclusion that the requested costs are reasonable. Therefore, the court intends to approve the requested amount of costs.

4. Payment to Class Representative

Plaintiff seeks final approval of a \$10,000 service award to the named plaintiff/class representative, Robert Ziegler. Again, the court has already found that the incentive award to Mr. Ziegler is fair and reasonable. No class members have objected to the fee award. Also, counsel has now provided further evidence in support of the requested award including the declaration of Mr. Ziegler, who describes the work he did on the case. Therefore, the court intends to grant final approval of the incentive award to the named plaintiff.

5. Payment to Class Administrator

6. 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.

Issued By: img on 5-29-25
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: **Ruben Gutierrez v. Fresno Community Hospital and
Medical Center**
Superior Court Case No. 24CECG00942

Hearing Date: June 3, 2025 (Dept. 403)

Motion: by defendant Daniel Wiest, M.D. for Summary Judgment

**If oral argument is timely requested, it will be entertained on
Thursday, June 5, 2025, at 3:30 p.m. in Department 403.**

Tentative Ruling:

To grant defendant Daniel Wiest, M.D.'s request for judicial notice, only to the extent that such records exist. (Evid. Code § 452 subd. (d).)

To grant defendant Daniel Wiest, M.D.'s motion for summary judgment. (Code Civ. Proc., § 437c, subd. (c).) Moving party is directed to submit to this court, within 5 days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

Legal Standard

As the moving party, the defendant bears the initial burden of proof to show that plaintiffs cannot establish one or more elements of their cause of action or to show that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Only after the moving party has carried this burden of proof does the burden of proof shift to the other party to show that a triable issue of one or more material facts exists – and this must be shown via specific facts and not mere allegations. (*Ibid.*)

Where the moving party produces competent expert opinion declarations showing that there is no triable issue of fact on an essential element of the opposing party's claim (e.g. that a medical defendant's treatment fell within the applicable standard of care), the opposing party's burden is to produce competent expert opinion declarations to the contrary. (*Ochoa v. Pacific Gas & Elec. Co.* (1998) 61 Cal.App.4th 1480, 1487.)

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.) Any doubts as to whether a triable issue of material fact exist are to be resolved in favor of the party opposing summary judgment. (*Ibid.*)

"Failure to file opposition including a separate statement of disputed material facts by not less than 14 days prior to the motion 'may constitute a sufficient ground, in the court's discretion, for granting the motion.'" (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257, quoting Code of Civil Procedure § 437c subd. (c).)

Application

Defendant Daniel Wiest ("defendant") supports his motion for summary judgment with a declaration by Philip E. Bickler, M.D., Ph.D., ("Dr. Bickler"), a board certified physician experienced in the area of Anesthesia and Perioperative Care. He is Chief of the Division of Neuroanesthesia, as well as Director of the Department of Anesthesia Human Studies Laboratory, in the Department of Anesthesia and Perioperative Care at University of California, San Francisco. (Statement of Evidence, Tab 1, ¶ 3.) Dr. Bickler reviewed medical records for the decedent, Mary Gutierrez ("decedent"), and the pleadings of this case.¹ He relied on his education, background, training, knowledge, and experience in order to formulate his opinion. Copies of these medical records were provided in the Statement of Evidence and certified by Leticia Alvary, the custodian of medical records at Clovis Community Medical Center. (See Statement of Evidence, Tab 2: Exhibit C.)

Dr. Bickler opined that Dr. Wiest met the standard of care in providing treatment to decedent in January of 2023. Specifically, he opined that Dr. Wiest used the appropriate amount of anesthetic, appropriately used epinephrine, and timely notified the surgeon that the patient was not tolerating carbon dioxide insufflation into the abdomen. (Statement of Evidence, Tab 1, ¶¶ 10-13.) Dr. Bickler stated that "there is nothing that Dr. Wiest did, or did not do, that was below the standard of care." (*Id.*, ¶ 14.)

Dr. Bickler opined that there was no causal connection between defendant Dr. Wiest's conduct and the decedent's death, stating that "there was nothing that Dr. Wiest did, or did not do, that caused Decedent's outcome." (Statement of Evidence, Tab 1, ¶ 15.) Dr. Bickler described Dr. Wiest's medical evaluation of the decedent on January 15, 2023, whereby decedent was identified as an appropriate candidate for planned sedation/anesthesia. (*Id.*, ¶ 9(e).) Following an advisory of the risks and allowed time to ask questions, decedent demonstrated an understanding of the information and agreed to proceed with the planned anesthesia care. (*Ibid.*) "In my opinion, Dr. Wiest met the standard of care in providing treatment to Decedent[.]" (*Id.*, ¶ 10.)

Dr. Bickler's expert opinion is sufficient to shift the burden to the plaintiffs to show the existence of a triable issue of fact. Plaintiffs, however, neither filed an opposition nor an opposing statement of material fact, thus tacitly affirming the merits of Dr. Wiest's motion. (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257.)

Defendant has presented sufficient evidence to meet his burden. Plaintiffs have not opposed this motion and therefore have presented no evidence of any triable issue of fact. As such, the court intends to grant defendant's motion for summary judgment.

¹ Dr. Wiest's Request for Judicial Notice as to the complaint and his answer filed in this matter is granted pursuant to Evidence Code section 452 subdivision (d), only to the extent that such records exist.

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Tentative Ruling

Re: ***In re Tristen Obrist***
Superior Court Case No. 24CECG04482

Hearing Date: June 3, 2025 (Dept. 403)

Motion: Petition to Compromise the Claim of Minor

If oral argument is timely requested, it will be entertained on Thursday, June 5, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant the petition. Order Signed. No appearances necessary. The court sets a status conference for Wednesday, September 17, 2025, at 3:30 p.m., in Department 403, for confirmation of deposit of the minors' funds into the selected accounts.

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 5-29-25
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***In re Ariana Moreno***
Superior Court Case No. 25CECG02239

Hearing Date: June 3, 2025 (Dept. 403)

Motion: Petition to Compromise the Claim of Minor

If oral argument is timely requested, it will be entertained on Thursday, June 5, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant the petition. Order Signed. No appearances necessary.

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 6-2-25
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***In Re: Eliana Moreno***
Superior Court Case No. 25CECG02221

Hearing Date: June 3, 2025 (Dept. 403)

Motion: Petition to Approve Compromise of Claim of Minor

If oral argument is timely requested, it will be entertained on Thursday, June 5, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant. Order signed. No appearances necessary.

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 6-2-25
(Judge's initials) (Date)