Tentative Rulings for June 3, 2025
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.***

23CECG04926 ***Diego Gonzalez v. Michael Mendoza*** **(Dept. 502)**

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

25CECG01085 ***In Re Petition of: Peachtree Settlement Funding, LLC*** **is continued to Tuesday, July 22, 2025 at 3:30 p.m. in Department 502**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

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(03)

Tentative Ruling

Re: ***McCarthy Farms, Inc. v. Sandridge Partners, L.P.***
Superior Court Case No. 24CECG05220

Hearing Date: June 3, 2025 (Dept. 502)

Motion: Plaintiff's Application for Writ of Attachment

Tentative Ruling:

To grant plaintiff's application for a writ of attachment against defendant's real and personal property. To order plaintiff to post an undertaking of $10,000.

Explanation:

"In California, the procedures and grounds for obtaining orders for prejudgment writs of attachment are governed by California Code of Civil Procedure sections 481.010–493.060." (*Blastrac, N.A. v. Concrete Solutions & Supply* (C.D. Cal. 2010) 678 F.Supp.2d 1001, 1004.) "Attachment is a prejudgment remedy that allows a creditor to have a lien on the debtor's assets until final adjudication of the claim sued upon (see CCP § 481.010 *et seq*.)." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (2021), Attachment, § 9:853.) Since attachment is purely a creature of statute, the party seeking the attachment order must strictly comply with the statute or the application will be denied. (*Balstrac*, *supra*, at p. 1004.) "A judge does not have the authority to order any attachment procedure that is not specifically provided for by the Attachment Law." (Cal. Judges Benchbook Civ. Proc. Before Trial § 14.55, internal citation omitted.)

"Section 484.090 provides that before an attachment order is issued, the Court must find all of the following: (1) the claim upon which the attachment is based is one upon which an attachment may be issued; (2) the applicant has established 'the probable validity' of the claim upon which the attachment is based; (3) the attachment is not sought for a purpose other than the recovery on the claim upon which the request for attachment is based; and (4) the amount to be secured by the attachment is greater than zero. This is true '[u]nder the Attachment Law, "[w]hether or not the defendant appears in opposition...."' To establish the 'probable validity' of the claim, the applicant must show 'it is more likely than not' it will obtain a judgment against the defendant on its claim." (*VFS Financing, Inc. v. CHF Express, LLC* (C.D. Cal. 2009) 620 F.Supp.2d 1092, 1096, citations omitted.)

"Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars ($500) exclusive of costs, interest, and attorney's fees." (Code Civ. Proc., § 483.010, subd. (a).) However, an attachment may not issue on a claim that is secured by any interest in real property. (Code Civ. Proc., § 483.010, subd. (b).) Also, "If the action is against a defendant who is a natural person, an attachment may be issued only on a claim which arises out of the conduct by the defendant of a trade, business, or profession." (Code Civ. Proc., § 483.010.)

"The requirement of specificity appears designed to avoid unnecessary hearings where an individual defendant is willing to concede that certain described property is subject to attachment. We do not understand it to prohibit a plaintiff from targeting for attachment everything an individual defendant owns. So long as the property descriptions are adequate, section 484.020, subdivision (e), allows for the possibility that a plaintiff may want to make such a comprehensive attempt, possibly in order to provoke and resolve an individual defendant's exemption claims all at once. When a plaintiff notices a hearing on an attachment application, the defendant must assert any exemption claims for targeted personal property five days before the hearing or such claims are deemed waived, absent a change of circumstances. (§§ 484.070, subds. (a), (e); 482.100.)" (*Bank of America v. Salinas Nissan, Inc.* (1989) 207 Cal.App.3d 260, 268.)

Here, plaintiff has satisfied the requirements of the attachment statutes. It has shown that its claim is based on a contract, as its claim arises out of defendant's alleged breach of the settlement agreement that required defendant to pay plaintiff 50% of the amount of income allocated to plaintiff for the 2023 tax year, as determined by Wayne Long. (Exhibit A to McCarthy decl., Settlement Agreement, ¶ 2.3.) The amount that defendant seeks to secure by the writ of attachment is also fixed or readily ascertainable, as the court and the parties can readily determine the total amount owed by reference to the Form 1065 Schedule K-1 tax form provided by Mr. Long. (Exhibit B to McCarthy decl.) The amount that plaintiff claims defendant owes under the terms of the settlement agreement is 50% of the income allocated to plaintiff on Schedule K-1, or $5,664,541.00. (McCarthy decl., ¶ 17.) This amount is more than $500, so the claimed damages are also large enough to qualify for an attachment.

The amount plaintiff seeks to attach is not secured by real property. (McCarthy decl., ¶ 22.) The plaintiff's claim has not been discharged in a bankruptcy proceeding, nor has the claim been stayed by a bankruptcy filing. (*Id*. at ¶ 23.) The claim is based on a business transaction between the parties. (*Id*. at ¶ 22.) The property plaintiff seeks to attach is all defendant's property, and it is the type of property that is properly subject to attachment, including defendant's accounts receivable, chattel paper, and general intangibles arising out of the conduct of defendant's trade, business, or profession; defendant's equipment and any money on the premises where a trade, business or profession is conducted by defendant, and money located elsewhere than on such premises and deposit accounts. Attachment of such assets is allowed under Code of Civil Procedure section 487.010. In addition, plaintiff seeks to attach several parcels of real property owned by defendant. Attachment of real and personal property of the defendant is allowed under Code of Civil Procedure section 481.0195.

Plaintiff has also shown that its claim is probably valid, as it has alleged that defendant has failed to pay the amount it agreed to pay under the terms of the settlement agreement, despite repeated demands from plaintiff for it to pay. (Quall decl., ¶¶ 3, 4, McCarthy decl., ¶ 19.) While defendant contends that plaintiff has not established that its claim is probably valid, defendant does not deny that it owes plaintiff money under the terms of the settlement, or that failed to pay as it has agreed to do.

Defendant contends that the amount it owes is subject to dispute, and that plaintiff has not provided sufficient documentation of the amounts its partners owe in taxes to determine the amount that it must pay. However, defendant's argument is inconsistent with the terms of the settlement agreement, which provide a simple formula for determining the amount of money that defendant must pay to plaintiff, namely 50%

of the income allocated to plaintiff as determined by Mr. Long. (Settlement Agreement, ¶ 2.3.) There is no need for plaintiff's partners to produce other documents regarding their tax liabilities, as the parties have already agreed that the amount to be paid to cover plaintiff's 2023 taxes will be determined by the formula set forth in the settlement agreement. Since defendant does not deny that it failed to pay as it agreed to under the terms of the settlement it signed, defendant has failed to show that plaintiff's claim is not probably valid.

Likewise, defendant's contention that plaintiff's damages are not fixed or readily ascertainable is also without merit. As discussed above, the settlement agreement provides a simple formula for computing the amount to be paid to cover plaintiff's 2023 taxes, namely 50% of the amount of plaintiff's income, as determined by Mr. Long. Mr. Long provided a Schedule K-1 form that clearly states the amount of income allocated to plaintiff for 2023, and the parties can readily determine the amount defendant owes based on the form. Again, despite defendant's contention, there is no need for the parties or the court to consult other documents or to determine plaintiff's partners' actual tax liabilities, as the parties already agreed to use the formula set forth in the settlement agreement to determine what defendant owes for plaintiff's taxes. Therefore, defendant has not shown that there is any real dispute about the amount it owes, or that the amount is not readily ascertainable.

Next, defendant has argued that the court should not issue the writ of attachment because the properties that plaintiff seeks to attach are already subject to other liens by senior lenders, and that it would be futile for plaintiff to attempt to seize the properties to satisfy its claimed debt. However, there is nothing in the attachment statute that provides that a party cannot obtain a writ of attachment against a property simply because it already has other senior liens against it. While the senior lenders would have priority if plaintiff attempts to seize the properties, this does not mean that plaintiff has no right to obtain a writ of attachment to secure its own claim, even if its lien does not have priority over the senior lienholders' claims. Here, it appears that plaintiff is attempting to attach the properties in order to have at least some security interest, even if the senior lienholders are first in line and may be able to seize the properties before plaintiff. There is no reason why plaintiff cannot obtain a writ of attachment under the circumstances.

Defendant has also argued that granting plaintiff's application for a writ of attachment would interfere with defendant's ability to run its business and repay the other loans that it owes to the senior lienholders, including US Bank and Farm Credit West. Yet it is unclear why having one more encumbrance against the properties would make it more difficult to operate its businesses or repay the other loans it owes. As long as plaintiff does not attempt to seize the properties, defendant should still be able to operate its business as usual and generate income to pay its loans.

Defendant also contends that granting the writ would constitute a default on its loan agreements to the senior lenders, which would trigger an immediate financial crisis and place defendant in the position of having to immediately pay back millions of dollars in loans. However, defendant admits that it has already been sued by US Bank for defaulting on several loans. (See Defendant's Request for Judicial Notice, Exhibit A, Complaint in *U.S. Bank N.A. v. Sandridge Partners, L.P.*, Kern County Sup. Ct. case no. BCV-25-100888.) Thus, it appears that defendant is already in default on many of its loans owed to other lenders, and it is not clear that issuing a writ of attachment in the present case would cause any additional default.

Next, while defendant claims that plaintiff has an improper purpose for seeking a writ of attachment since it is allegedly using the attachment application to pressure defendant into settling its claims, defendant offers no evidence to show that plaintiff has an improper motive for seeking an attachment. As previously discussed, plaintiff simply appears to be seeking to secure its claim for breach of contract based on defendant's failure to pay under the terms of the settlement agreement. Defendant does not deny that it entered into a valid and binding settlement with plaintiff, or that it is obligated to pay plaintiff under the terms of the agreement. Thus, plaintiff has a clear right to an attachment order. While defendant contends that it owes a different amount than plaintiff has sought, it has not shown that there is any factual or legal basis for the purported dispute. In any event, even if there is a legitimate dispute about the amount defendant owes, defendant has not shown that plaintiff has an improper motive for seeking to attach defendant's property here. Likewise, the fact that there are other senior lienholders who have first priority liens against defendant's property does not mean that plaintiff has no right to a writ of attachment against the property as well, or that it has an improper motive for seeking to attach the property.

Defendant also argues that plaintiff's application is overbroad and improper because it seeks to attach assets with a much greater value than the amount plaintiff claims that it is owed. Defendant alleges that its property is valued at many millions of dollars more than the value of plaintiff's $5,664,541.00 claim. However, defendant also admits that there are senior liens and deeds of trust encumbering most of its properties, which presumably reduce the defendant's equity in the properties. It is not clear how much equity defendant has left in the properties after the amount owed on the other loans is deducted. Also, even assuming that plaintiff's claim is worth less than the total value of the other properties, plaintiff is only seeking a writ of attachment in the total amount of $5,664,541.00, so plaintiff would not be able to recover more than that amount in any event. As a result, defendant has not shown that the application is overbroad or seeks to secure an excessive amount of property.

Finally, defendant argues that the application should be denied because plaintiff has not filed an undertaking as required by Code of Civil Procedure section 489.210.) Defendant notes that the undertaking should be in an amount of $10,000 unless the court orders a different amount. (Code Civ. Proc., § 489.220, subd. (a).) Here, defendant requests that, if the court does grant the writ, it should order plaintiff to post an undertaking of more than $10,000 in light of the amount of property plaintiff seeks to attach, the uncertain nature of plaintiff's claim, the fact that plaintiff's claim is less than the value of the properties, and the fact that there are other senior lienholders.

However, while it is true that the plaintiff is generally required to file an undertaking before a writ of attachment issues, plaintiff is not required to file the undertaking at the same time that it files the application for a writ of attachment. Under Code of Civil Procedure section 489.210, "*Before issuance* of a writ of attachment, a temporary protective order, or an order under subdivision (b) of Section 491.415, the plaintiff shall file an undertaking to pay the defendant any amount the defendant may recover for any wrongful attachment by the plaintiff in the action." (Code Civ. Proc., § 489.210, italics added.) "Except as provided in subdivision (b), the amount of an undertaking filed pursuant to this article shall be ten thousand dollars ($10,000)." (Code Civ. Proc., § 489.220, subd. (a).) However, "If, upon objection to the undertaking, the court determines that the probable recovery for wrongful attachment exceeds the amount of

the undertaking, it shall order the amount of the undertaking increased to the amount it determines to be the probable recovery for wrongful attachment if it is ultimately determined that the attachment was wrongful." (Code Civ. Proc., § 489.220, subd. (b).)

Thus, the plaintiff is generally required to file an undertaking before the writ issues, but not necessarily when the writ application is filed. Therefore, the fact that plaintiff has not yet filed an undertaking does not render the application defective.

As a result, the court intends to grant the application for a writ of attachment against defendant's real and personal property listed in the application. The court will also order plaintiff to file an undertaking in the amount of $10,000. While defendant has argued that the undertaking should be higher, it has not offered any evidence of the amount of damages that it may suffer if the attachment is granted and plaintiff later fails to prevail on its claims. Therefore, the court will require plaintiff to file an undertaking in the default amount of $10,000.

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 06/02/25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Hugo Villasenor v. J.P. Lamborn Co.***
Superior Court Case No. 22CECG02065

Hearing Date: June 3, 2025 (Dept. 502)

Motion: by Plaintiff for Order Approving PAGA Settlement

Tentative Ruling:

To deny without prejudice.

Explanation:

On September 8, 2022, Hugo Villasenor filed his first amended complaint against his former employer, J.P. Lamborn Co. alleging violations of the Labor Code as the basis of a representative PAGA action. The parties reached a settlement of the PAGA claim for which they seek court approval.

> Because an aggrieved employee's action under the [PAGA] functions as a substitute for an action brought by the government itself, a judgment in that action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. The act authorizes a representative action only for the purpose of seeking statutory penalties for Labor Code violations (Lab.Code, section 2699, subds. (a), (g)), and an action to recover civil penalties 'is fundamentally a law enforcement action designed to protect the public and not to benefit private parties.

(*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 381.)

> A PAGA representative action is therefore a type of *qui tam* action. Traditionally, the requirements for enforcement by a citizen in a qui tam action have been (1) that the statute exacts a penalty; (2) that part of the penalty be paid to the informer; and (3) that, in some way, the informer be authorized to bring suit to recover the penalty. The PAGA conforms to these traditional criteria, except that a portion of the penalty goes not only to the citizen bringing the suit but to all employees affected by the Labor Code violation. The government entity on whose behalf the plaintiff files suit is always the real party in interest in the suit.

(*Id.* at 382, internal citation omitted.)

"PAGA settlements are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549, citing Labor Code section 2699(l)(2): "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.")

> [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. (See *Williams*, *supra*, 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present violations and deter future ones"]; *Arias*, *supra*, 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws].)

(*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)

> "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' " ' " (*Dunk*, *supra*, 48 Cal.App.4th at pp. 1800–1801, 56 Cal.Rptr.2d 483), 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, supra,* (2021) 72 Cal.App.5th 56, 77.)

Under the general provisions of the PAGA scheme, 75% of the civil penalties recovered goes to the state while the remaining amount is given to the aggrieved employees. (Lab. Code, § 2699, subd. (i).) Here, 75% of the settlement amount, *after deduction of attorney fees, costs, administration expenses and incentive payment,* is to be paid to the LWDA. The remaining 25% is to be distributed to aggrieved employees on a pro rata basis.

1. Notice to LWDA

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 Moon Decl., Exh. 2.)

2. Fairness of the Settlement Amount

As mentioned above, the Court of Appeal in *Moniz v. Adecco USA, Inc.*, *supra*, 72 Cal.App.5th 56 stated that the trial court should review PAGA settlements to determine whether they are fair, adequate and reasonable. (*Moniz*, *supra*, 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.)

"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." (*Ibid*, internal citations and footnote omitted.)

a. Strength of the Case

Plaintiff's action was initiated as a wage and hour class action with the PAGA cause of action added in the First Amended Complaint. On July 20, 2023, the court stayed proceedings and plaintiff's representative PAGA claim pending resolution of arbitration. The only remaining cause of action in the complaint is the PAGA claim.

Plaintiff argues the settlement is reasonable and will redress the alleged civil code violations experienced by the approximately 275 PAGA members. Defendant provided time and payroll data representing a 40% sample of the PAGA members which was in turn analyzed by plaintiff's counsel who determined the potential exposure for defendant ranged from $27,500 to $4,080,000 if penalties are stacked. This figure is said to represent the assessment of a $100 penalty. There is no foundation for these figures. Plaintiff has not provided any evidence to support there being 275 aggrieved employees nor has he provided evidence to support there being 8,160 pay periods during the PAGA period.

Plaintiff retained Berger Consulting Group, a statistical expert, to aid in the review and analysis of the sampled data received from defendant. (Moon Decl. ¶ 17.) Plaintiff states the 40% sample analyzed was a statistically significant sample. (Moon Decl., Exh. 6.) Although plaintiff references Berger Consulting Group and is requesting $5,700 for its services to be paid from the settlement, plaintiff provides no evidence from his expert to support the assessment of the potential value of the claims. Exhibit 6, referenced in the declaration to support the statistical analysis of the data received from defendant, is no more than a print out from a web page calculator. The potential value is the foundation of plaintiff counsel's reduction to a realistic exposure value based on his litigation experience.

Plaintiff has provided no evidence to support the conclusion that the settlement is reasonable.

Regarding weaknesses of the claims, plaintiff notes the court's discretion to reduce the civil penalties and defendant's defenses. There is no discussion of the defenses to any particular Labor Code violation alleged or any specific defense generally applicable to the PAGA claims. The moving papers note that defendant continues to deny the allegations of the complaint and the settlement is not to be construed as an admission of the merits of the claims. Plaintiff's counsel details his assessment of the merits and risks of each violation alleged based upon his experience prosecuting such claims. (Moon Decl., ¶¶26-38.)

The court accepts counsel's analysis of the weaknesses and reasonable exposure value based on his litigation experience. However, plaintiff has not provided foundation

for the potential value used as a starting point in that analysis. The conclusion that the settlement amount of $350,000 is reasonable is without foundation.

b. Stage of the Proceeding

A presumption of fairness exists where the settlement 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 settled after the parties attended mediation. Plaintiff's counsel is highly experienced in representative litigation.

Plaintiff attests to the settlement as a product of arm's-length negotiations facilitated by experienced mediator Tripper Ortman. (Moon Decl. ¶ 20.) The mediation on July 2, 2024 resulted in the settlement now before the court. (Ibid.)

Regarding pre-settlement discovery, counsel states that defendant provided a 40% sample of time and payroll records for PAGA members and that these records were analyzed by counsel and statistical expert Berger Consulting Group for use in settlement negotiations. (Moon Decl., ¶ 17.) Counsel attests to a thorough investigation of the facts and legal issues of the case in preparation for mediation and allowing both sides to intelligently negotiate a settlement with the assistance of the mediator. (Moon Decl., ¶¶ 18-19.)

This factor weighs in favor of approval. However, foundational issues with respect to the reasonableness of the settlement amount remain.

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 inability to pursue the class wage and hour claims as originally intended appears to also have played a role in limiting the time spent on this matter.

d. *Amount of Settlement*

The gross settlement is $350,000, and to assess the reasonableness of this amount, the court needs a good valuation of the total potential penalties. In this second submission, plaintiff's counsel provides analysis of the value of the respective violations supporting the PAGA penalties. (Moon Decl., ¶¶ 26-38.) Counsel's analysis, however, is without foundation as plaintiff has provided no evidence to support the use of 275 aggrieved employees or 8,160 pay periods in calculating the potential value of the penalties.

Plaintiff relied upon a statistical expert in analyzing payroll data from defendant. (Moon Decl., ¶17.) **A declaration by an expert is required to rely on a sample to determine damages issues such as those before the Court here. "**When using surveys or other forms of random sampling, it is crucial to utilize a properly credentialed expert who will be able to explain to the court the methods used to arrive at his or her conclusions

and persuade the court concerning the soundness of the methodology." (Chin, Wiseman et al. Employment Litigation (TRG, 2017) section 19:975.3.)

> "The essence of the science of inferential statistics is that one may confidently draw inferences about the whole from a representative sample of the whole. Whether such inferences are supportable, however, depends on how representative the sample is. Inferences from the part to the whole are justified [only] when the sample is representative. Several considerations determine whether a sample is sufficiently representative to fairly support inferences about the underlying population."

(*Duran v. U.S. Bank National Ass'n.* (2014) 59 Cal.4th 1, 38.)

Those considerations include variability in the population, whether size of the sample is appropriate, whether the sample is random or infected by selection bias, and whether the margin of error in the statistical analysis is reasonable. (*Id*. at pp. 38–46.)

Although counsel's assessment that the gross settlement representing 82% of the realistic exposure value is a good result is valid, there is inadequate foundation for the realistic exposure value calculated by plaintiff.

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. Therefore, this factor weighs in favor of approval.

f. Government Participation

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

g. *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.)

Here, the settlement agreement provides that the following claims would be released:

> Upon entry of the Approval Order by the Court approving payment of the PAGA penalties as described in this Agreement, Plaintiff, all Aggrieved

> Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from any and all Released Claims, demands, rights, liabilities, and/or causes of action for penalties under PAGA that accrued during the PAGA Release Period including, but not limited to, all claims alleged in the operative Complaints and/or LWDA Notice, or which could have been alleged based on the facts, allegations, and legal theories raised in the operative Complaints and/or LWDA Notice, and which arose during PAGA Release Period, as applicable to the specific claim. Without limiting the foregoing, Released Claims shall include any and all claims for civil penalties or causes of action arising under and/or assertable under PAGA regarding unpaid wages, including but not limited to failure to pay minim wages, straight time wages, overtime compensation, double time compensation, and interest; failure to timely pay regular and final wages; failure to provide compliant meal, rest, and/or recovery periods; failure to pay premiums at all or at the correct rate for any violation of meal, rest, and/or recovery period obligations; invalid meal period waivers or on-duty meal period agreements; payment for all hours worked; reimbursement of business expenses; wage statement and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; unfair business practices related thereto; and any and all related penalties, including recordkeeping penalties, wage statement penalties, minimum wage penalties, waiting time penalties, and other statutory or civil penalties associated with any of the foregoing. Further, such Released Claims shall include, but are not limited to, costs and attorneys' fees and any PAGA claims stemming from or arising under California Labor Code sections 201, 202, 203, 204, 204b, 206, 207, 208, 210, 218.5, 218.6, 221., 222, 223, 225.5, 226, 226.3, 226.7, 246, subd. (i), 248.5, 510, 512, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2698 et seq., and 2699 et seq., and/or those arising under the applicable Industrial Welfare Commission Wage Order(s) (including but not limited to subsections 3, 4, 5, 7, 8, 9, 10, 11, 12, 18, and 20 of the applicable Wage Order(s), such as IWC Wage Order 5-2011 [including the provisions of the California Code of Regulations codifying the applicable Wage Order(s)]), California Business Professions Code 17200 et seq. (including, without limitation, §§ 17200 through 17208); California Civil Code sections 3287 and 3289; California Code of Civil Procedure section 1021.5; PAGA claims related to claimed or unclaimed compensatory, consequential, incidental, liquidated, punitive and exemplary damages, penalties, restitution, interest, injunctive or equitable relief, and any other remedies available at law or equity, and other amounts recoverable under said claims under California law or related claims under the provisions of the Fair Labor Standards Act (29 USC §§ 201, et seq.)

(Moon Decl., Exh. 1, PAGA Settlement Agreement, Section 12.)

The notice of Labor Code violations sent on behalf of plaintiff includes allegations of failure to pay for all hours worked (Lab. Code §§ 510, 1194, 1198), failure to provide meal periods (Lab. Code §§ 210, 558, and 2699(f)(2)), failure to permit rest breaks (Lab.

Code §§210, 558, and 2699(f)(2)), failure to maintain accurate records of hours worked and meal periods (Lab. Code §§ 1174(d), 1174.5; IWC Order § 7(A)(3)), failure to reimburse business expenses (Lab. Code § 2802), failure to pay all accrued vacation wages at termination (Lab. Code §227.3), failure to pay all wages at termination (Lab. Code §§ 201, 202, 203), failure to furnish accurate wage statements (Lab. Code § 226), and failure to pay all earned wages (Lab. Code § 204).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.

3. Attorney's Fees and Costs

The settlement agreement provides that plaintiff's counsel would get up to $116,666.67 (1/3 of the total gross recovery) in attorney's fees, plus costs of up to $25,000. Plaintiff's actual costs are $23,120.96. (Moon Decl., ¶ 75, Exh. 5.)

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 1/3 of the total gross settlement, which does not appear to be unreasonable until compared with the hours actually spent by counsel litigating this action. Mr. Moon's firm worked 134.1 hours on the case, an increase of 11.2 hours from the first submission of this motion to the court. (Moon Decl., ¶ 71.) His hourly rate is $900 and he worked 35.8 hours on this case. (*Ibid*.) His declaration also includes the rates and hours of his associates, Brett Gunther, S. Phillip Song, and Stanley J. Park. Mr. Gunther has been a member of the bar since 2015 and began working at the Moon Law Group in 2015. Mr. Gunther's billing rate is $575, and he worked a total of 40.6 hours in this matter. (Id. at ¶¶ 49-52, 71.) Mr. Song bills at a rate of $650 and worked 20.5 hours in this matter. (*Id*. at ¶ 71.) Mr. Song was admitted to practice law in Texas in 2013 and in California in

2019. (Id. at ¶ 53.) Mr. Park bills at a rate of $450 and worked 35.0 hours in this matter. (Id. at ¶ 71.) Mr. Park has been a member of the bar since 2021 and has worked on class and representative actions for plaintiffs since April 2023. (Id. at ¶ 54.) At these billing rates the Moon Law Group's lodestar is $86,070. (*Id*. at ¶ 71.)

Mr. Moon attests to the hours spent having been reasonable to the conduct of the litigation and the hourly rates to be reasonable. (Moon Decl., ¶¶ 72-73.) Timekeeping records to support the 134.1 hours attested to have been provided. (*Id*. at Exh. 7.) Counsel describes the significant time invested in litigating this case. Including interviews with plaintiff and reviewing documents provided by plaintiff, researching and investigating the law regarding defendant's practices, drafting the original class action complaint and amended complaint, analyzing and reviewing timekeeping and payroll records of plaintiff, engaging in settlement negotiations, drafting the settlement agreement and drafting this motion for approval of the settlement. (*Id*. at ¶ 57.)

Before any reduction in hourly rates to better match local counsel rates the lodestar is less than the fees requested. A multiplier of 1.36[1] is necessary to meet the requested fees of $116,666.67. In the context of using the lodestar method to cross-check attorney fees in a class action settlement, a multiplier can be used to increase or decrease the award "to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." (*Laffitte v. Robert Half Internat. Inc*., supra, 1 Cal.5th at p. 489, internal citation omitted.)

Counsel's declaration states that the case was taken on a contingent fee basis and requests the court take into consideration "enhancement" factors to adjust the lodestar figure. (Moon Decl., ¶¶ 58-60.) Those factors here include the risks presented by the contingent nature of the action, difficulty of the questions involved, skill presented in negotiating and reaching a settlement in light of defendant's vigorous opposition, the work on this case precluding the ability to take another case, and the meaningful results obtained for the aggrieved employees and State of California. (Id. at ¶ 73.) The factors described are generally true of any plaintiff-side wage and hour litigation and does not speak to anything unique about this action. Moreover, 134.1 hours over the 24-month period between the initial notice to the LWDA on July 4, 2022 and mediation on July 2, 2024 results in a mathematical average of only 5.5 hours per month and cannot support finding this case precluded the Moon Law Group from other employment.

With respect to the reasonableness of counsel's hourly rates, there is no evidence before the court to support the use of Los Angeles-area billing rates rather than rates that better approximate those of local counsel in calculating the lodestar. (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244.) The court finds it reasonable to reduce the rates of the attorneys at the Moon Law Groups to better reflect the rates of local counsel as follows:

[1] The court notes the decrease in the multiplier from 1.47 to 1.36 is due solely to the increase in the lodestar attributed to the need to file a renewed motion for approval after plaintiff's initial motion was denied. The increase in lodestar and decrease in multiplier due to counsel's inability to provide a comprehensive motion for preliminary approval where counsel holds themselves out as highly experienced is not viewed favorably.

For Kane Moon, an attorney admitted to the California Bar in 2007, a rate of $550 per hour.

For Brett Gunther, an attorney admitted to the California Bar in 2015, a rate of $350 per hour.

For S. Phillip Song, an attorney admitted to the Texas Bar in 2013 and admitted to the California Bar in 2019, a rate of $300 per hour.

For Stanley J. Park, an attorney admitted to the California Bar in 2021, a rate of $250 per hour.

Using the reasonable rates of counsel, the court calculates the lodestar to be $49,460. The reduced lodestar requires a multiplier of 2.36 to meet the amount in attorney fees requested from the settlement. The evidence before the court regarding the risk in contingent litigation and preclusion of other work does not support such a multiplier. The court finds it reasonable to apply a 1.25 multiplier and intends to award attorney fees from the settlement in the amount of $61,825.

The court's approval of the actual costs of $23,120.96 is requested. Exhibit 5 to the Declaration of Mr. Moon is an expense ledger of costs for this action. The court intends to approve the costs as requested.

4. Incentive Payment to Plaintiff

Plaintiff Hugo Villasenor is to be paid $10,000 as an "Enhancement Award" in addition to his pro rata share of the settlement. Mr. Villasenor provides a declaration attesting to the hours spend assisting in litigation, consistent with what a representative plaintiff in a class action would represent to support a similar award.

There is nothing in PAGA that specifically authorizes an additional incentive payment to the named plaintiffs. PAGA only authorizes awards of penalties to aggrieved employees based on actual violations of the Labor Code. (Labor Code § 2699(i).) It is unclear whether additional payments to named plaintiffs are proper in PAGA actions, although such payments are common in class actions. (*Rodriguez v. West Publishing Corp*. (2009) 563 F.3d 948, 958.) "Given the potential for recovery of significant civil penalties if the PAGA claims are successful, as well as attorney fees and costs, plaintiffs have ample financial incentive to pursue the remaining representative claims under the PAGA . . .." (*Munoz v. Chipotle Mexican Grill, Inc.* (2015) 238 Cal.App.4th 291, 311.)

The court intends to deny the requested "Enhancement Fee," as it is not within the PAGA statutory scheme. To the extent the payment is based upon plaintiffs' broader release of claims against their employer (Villasenor Decl., ¶ 9), although those individual claims for Labor Code violations may have value, the damages to which plaintiffs may be entitled are distinct from civil penalties recovered on behalf of the state under PAGA. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 381, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 662; see also *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 197.) The moving papers do not provide

evidence or authority to support finding this compensation reasonable in the context of a PAGA-only action.

5. Settlement Administration

The parties request approval of up to $3,000 for settlement administration costs to Simpluris, Inc. (Moon Decl., ¶ 76.) Although the amount appears reasonable, in a subsequent submission the court requests evidence to confirm the services can be performed within the allotted amount.

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 06/02/25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Juan Zavala v. Pacific Grain & Foods, LLC***
Superior Court Case No. 21CECG01658

Hearing Date: June 3, 2023 (Dept. 502)

Motion: by Plaintiff Juan Zavala for Order Deeming Requests for Admission Admitted

Tentative Ruling:

To grant Plaintiff Juan Zavala's motion to deem requests for admissions admitted by Defendant Lee Perkins. The truth of the matters specified in the Requests for Admission, Set One, are to be deemed admitted unless defendant serves, before the hearing, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure section 2033.220.

Explanation:

Where a party fails to timely respond to a propounding party's request for admissions, objections are waived and the court must grant the propounding party's motion requesting that matters be deemed admitted, unless it finds that the party to whom the requests were directed has served, prior to the hearing on the motion, a proposed response that is substantially in compliance with Code of Civil Procedure section 2033.220. (Code Civ. Proc. § 2033.280; see also *St. Mary v. Superior Court (*2014) 223 Cal.App.4th 762, 778.) "Substantial compliance" means compliance with respect to "every reasonable objective of the statute." (*Id*. at p. 779, internal quotation marks and citation omitted.)

There is relief available for the party who failed to timely respond. The responding party can move the court for relief from waiving objections by (1) serving responses in substantial compliance and (2) demonstrating that the failure to serve responses was the result of mistake, inadvertence or excusable neglect. (Code. Civ. Proc. § 2033.280(a)(1) and (2).) By simply serving substantive responses to the requests for admission prior to the hearing date for this motion the court must deny the motion. (Code Civ. Proc. § 2033.280(c); see also *St. Mary*, *supra*, 223 Cal.App.4th at 776.)

Request for Admission, Set One, were served by mail to defendant Lee Perkins on December 18, 2024. (Little Decl., ¶¶ 3-5, Exh. A, B.) No opposition has been filed demonstrating any excusable reason for defendant's failure to respond to the requests for admission propounded by plaintiff Juan Zavala. There is no evidence that responses have been served. As such, the court intends to grant the motion unless responses to the requests are served before the hearing on the motion.

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 06/02/25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***George Talatinian v. Mai Thao***
Superior Court Case No. 23CECG03659

Hearing Date: June 3, 2025 (Dept. 502)

Motion: by defendant Krikor Panos Havandjian for Terminating Sanctions

Tentative Ruling:

To deny the motion for terminating sanctions, without prejudice. (Code Civ. Proc. §§ 2023.030, subd. (d).)

To impose monetary sanctions in the amount of $231.19 against plaintiff George Talatinian and in favor of defendant Krikor Panos Havandjian, to be paid to defendant's counsel, Jeanette N. Little & Associates, within 20 calendar days from the date of service of the minute order by the clerk. (Code Civ. Proc., § 2030.290, subd. (c).)

Explanation:

Legal Standard

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. Once a motion to compel answers is granted, continued failure to respond or inadequate answers may result in more severe sanctions, including evidence, issue or terminating sanctions, or further monetary sanctions. (Code Civ. Proc. §§ 2030.290, subd. (c).)

Sanctions for failure to comply with a court order are allowed only where the failure was willful. (*Biles v. Exxon Mobil Corp*. (2004) 124 Cal.App.4th 1315, 1327.) If there has been a willful failure to comply with a discovery order, the court may strike out the offending party's pleadings or parts thereof, stay further proceedings by that party until the order is obeyed, dismiss that party's action, or render default judgment against that party. (Code Civ. Proc. § 2023.030, subd. (d).)

The imposition of terminating sanctions is a drastic consequence, one that should not lightly be imposed, or requested. (*Ruvalcaba v. Government Employees Ins. Co*. (1990) 222 Cal.App.3d 1579, 1581.) However, where lesser sanctions have been ordered, such as an order compelling compliance with discovery requests, and the party persists in disobeying, the party does so "at his own risk, knowing that such a refusal provided the court with statutory authority to impose other sanctions" such as dismissing the action. (*Id.* at p. 1583; *Todd v. Thrifty Corp.* (1995) 34 Cal. App. 4th 986 [appropriate to dismiss action without resort to lesser sanctions where plaintiff had failed to respond to discovery and further failed to comply with the court's order compelling the requested discovery.])

Generally, no terminating sanctions will be ordered for failure to pay sanctions. Terminating sanctions for a party's nonpayment of the monetary sanctions would constitute a windfall to the moving party, which is not the goal of discovery sanctions. (*Caryl Richards, Inc. v. Superior Court In and For Los Angeles County*, *supra*, 188 Cal.App.2d at 302; *Rutledge v. Hewlett-Packard Company* (2015) 238 Cal.App.4th 1164, 1194.) Orders for monetary sanctions are enforceable as money judgments.

Analysis

Here, on December 18, 2024, the court ordered plaintiff George Talatinian ("plaintiff") to provide verified objection-free responses to the Form Interrogatories, Set Two propounded by defendant Krikor Panos Havandjian ("defendant"). Plaintiff was ordered to serve defendant with these discovery responses within 10 days of service of the court's order. Plaintiff was served with this order by the clerk on December 30, 2024 by mail. However, plaintiff did not serve his responses to the discovery requests within 10 days, despite the passage of more than 10 days since the order was served on him, nor has plaintiff paid any portion of the monetary sanctions issued. (Hitchcock Decl., ¶ 9.)

Defendant argues that terminating sanctions are warranted because plaintiff has not complied with his legal obligations and is in violation of the court's order, despite being offered multiple opportunities and ample time to comply. However, defendant has failed to satisfy the necessary element of willfulness. Numerous cases hold that severe sanctions, such as terminating sanctions, for failure to comply with a court order are allowed only where the failure was willful. (See *R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545; *Biles v. Exxon Mobil Corp*. (2004) 124 Cal.App.4th 1315, 1327.) Defendant argues only that terminating sanctions "are warranted" but does not address whether plaintiff's lack of compliance is willful.

The court intends to deny the motion for terminating sanctions. It would be a windfall to defendant if such severe sanctions were to be imposed at this time.

Monetary Sanctions

Once a motion to compel responses is granted, continued failure to respond may result in further monetary sanctions. (Code Civ. Proc. §§ 2030.290, subd. (c).) Defendant seeks monetary sanctions in the amount of $231.19. It is undisputed that plaintiff did not timely provide responses to the second set of form interrogatories, as previously ordered by the court. Thus, bringing this motion was reasonable and within defendant's rights. The court intends to grant monetary sanctions 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 06/02/25.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Juan Torres v. Rosalia Solis***
Superior Court Case No. 22CECG00075

Hearing Date: June 3, 2025 (Dept. 502)

Motion: 1) By Plaintiff for Terminating Sanctions, or in the Alternative, Evidentiary and/or Issue Sanctions; To Find Defendant in Contempt of Court; and for Monetary Sanctions
2) By Plaintiff to Strike the Motion for Summary Judgment, To Find Defendant in Contempt of Court; and for Monetary Sanctions

Tentative Ruling:

To deny the request for terminating sanctions. To reserve the request for evidentiary and/or issue sanctions for the trial judge. To deny the request to hold Defendant in contempt of court. To award Plaintiff monetary sanctions in the amount of $12,185.50. The Court finds it appropriate to order the sanctions payable jointly and severally by Defendant City of Parlier and counsel Neal Costanzo.

To strike the Motion for Summary Judgment filed April 16, 2025 and to take the July 10, 2025 hearing off calendar. To deny the request to hold Defendant in contempt of court. To impose monetary sanctions in the amount of $6,585 payable by defense counsel Neal Costanzo.

The monetary sanctions are to be paid to Vladi Law Group within 30 days of the clerk's service of the minute order.

Explanation:

Evidentiary Objections

The Court overrules all of Defendant's evidentiary objections to the Declarations of Susana Oganesian.

Sanctions

Once a motion to compel discovery is granted, continued failure to comply may support a request for more severe sanctions. 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, 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. §§ 2025.450, subd. (d) [depositions]; 2030.290, subd. (c) [interrogatories]; and 2031.300, subd. (c) [production demands].) Factors relevant to determining which sanction is appropriate include:

1. The time which has elapsed since the discovery was served;
2. Whether the party received extensions of time to answer;
3. The amount of discovery propounded;
4. The importance of the discovery sought;
5. Whether the party failing to answer acted in good faith and with reasonable diligence (i.e. whether he or she was aware of the duty to furnish the requested information and had the ability to do so);
6. Whether answers were supplied that were evasive or incomplete;
7. The amount of unanswered discovery remaining;
8. Whether the unanswered discovery requested information that was difficult to obtain;
9. The existence of prior discovery orders and the responding party's compliance with those prior orders;
10. Whether the responding party was unable to comply with prior discovery orders;
11. Whether an order allowing more time to answer would enable the responding party to comply; and
12. Whether a sanction short of dismissal or default would be appropriate to the dereliction.

(Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2022), ¶ 8:2205, citing *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796.)

Sanctions are supposed to further a legitimate purpose under the Discovery Act, i.e. to compel disclosure so that the party seeking the discovery can prepare their case, and secondarily to compensate the requesting party for the expenses incurred in enforcing discovery. Sanctions should not constitute a "windfall" to the requesting party; *i.e.* the choice of sanctions should not give that party more than would have been obtained had the discovery been answered. (Weil & Brown, *supra*, at ¶ 8:2212.) "The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment." (*Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 304.)

On December 19, 2024, when defense counsel failed to appear for oral argument, the Court adopted its tentative ruling ordering Defendant to provide further responses to Form Interrogatories—General (Set One), Form Interrogatories—Employment (Set One), Special Interrogatories (Set One), and Request for Production of Documents (Set One). (Minute Order, December 19, 2024.) On January 7, 2025, the Court heard Defendant's ex parte application to vacate the December 19, 2024 order. (Minute Order, January 7, 2025.) After allowing defense counsel to make the oral argument he would have made had he appeared for the December 19, 2024 hearing, the tentative ruling remained

adopted and Defendant was ordered to "produce the responsive documents within 10 days from today's date." (Ibid.)

"[R]esponsive documents" does not mean just the documents relevant to the Request for Production of Documents. (Minute Order, January 7, 2025.) Rather, it means the documents counsel would need to prepare which would be responsive to **all** of the discovery for which the Court ordered further production by Defendant. These would be Defendant's Responses to Form Interrogatories—General (Set One), Form Interrogatories—Employment (Set One), Special Interrogatories (Set One), and Request for Production of Documents (Set One). (Minute Order, December 19, 2024.) The Court expected defense counsel would correctly understand this to mean that all of the ordered responses were due January 17, 2025, which was 10 days after the January 7, 2025 order. Given trial was set to begin on January 21, 2025, no other interpretation makes sense. The bench made its expectations clear during the hearing and would not order discovery to be produced after the trial had already commenced. Additionally, to read "responsive documents" as just those for the Request for Production of Documents requires a narrow reading of the orders, ignores the context, and appears to intentionally misconstrue the clerk's wording of this Court's orders.

Counsel misreading and then misrepresenting these court orders reeks of gamesmanship and deliberate noncompliance. The Court is all too familiar with defense counsel's repeated misreading, misinterpreting, and misrepresenting the history of this case, in particular with regard to this Court's orders. The record is replete with evidence of Defendant's pattern of gamesmanship, which includes withholding and delaying discovery and blaming the Court and everyone else for defense counsel's mistakes.

Despite this, the Court is not inclined at this time to implement the severe sanction of terminating sanctions. Additionally, the Court is reserving the question of whether evidentiary and/or issue sanctions should be implemented for the trial judge to determine. The Court is awarding the lesser sanction of monetary sanctions in the amount of $12,185.50. These are to be paid, jointly and severally, by Defendant City of Parlier and defense counsel.

Striking Motion for Summary Judgment

On January 22, 2025, the trial in this matter was continued following Plaintiff's ex parte application to continue trial. (Minute Order, January 22, 2025.) Judge Tharpe stated on the record that the only matter that was opened up following the trial continuance was Plaintiff's motion for terminating, issue, and/or evidentiary sanctions. (Oganesian Decl., Exh. Q, 63:5-17.) Despite this, on March 20, 2025, Defendant filed a motion for summary judgment. On April 10, 2025, this Court granted Plaintiff's ex parte application to strike the motion for summary judgment. Six days later, on April 16, 2025, Defendant filed the motion for summary judgment again.

Code of Civil Procedure section 177 provides that judicial officers have the power to compel obedience to the judicial officer's lawful orders. (Code Civ. Proc., § 177, subd. (b).) Judge Tharpe was clear that the only issue which was open following the trial continuance was that of terminating, issue, or evidentiary sanctions. (Oganesian Decl., Exh. Q, 63:5-17.) The Court would note that the trial date was only continued because of

evidence that Defendant had engaged in abuses of the discovery process. Defendant cannot use that abuse to its advantage and then file a motion for summary judgment when the Court, to avoid significant prejudice to Plaintiff, continued trial. Striking a motion filed contrary to this Court's orders is appropriate.

Defendant concedes that sanctions may be available arising from this motion pursuant to Code of Civil Procedure section 2023.030. Though this is in the context of Defendant requesting the Court impose sanctions against Plaintiff. The Court is awarding sanctions in favor of Plaintiff in the amount of $6,585. These are imposed against defense counsel, Neal Costanzo.

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 06/02/25.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***McKenney v. Johnson***
Superior Court Case No. 23CECG00216

Hearing Date: June 3, 2025 (Dept. 502)

Motions (x2): by Defendant Indemnity Insurance Company of North America for (1) Leave to File a First Amended Answer to Plaintiff's Complaint; and (2) for Leave to File a Cross-Complaint

Tentative Ruling:

To grant both motions. (Code Civ. Proc., §§ 473, 426.50.)

Defendant Indemnity Insurance Company of North America is granted 10 days from the service of the clerk of the minute order to file the amended answer and cross-complaint.

Explanation:

Amended Answer

Defendant Indemnity Insurance Company of North America ("IICNA") has met the formalities required of a motion to amend the answer, and has given due notice to all appearing parties. Motions for leave to amend the pleadings are directed to the sound discretion of the judge. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading . . ." (Code Civ. Proc., § 473, subd. (a)(1); see also Code Civ. Proc., § 576.) Judicial policy favors resolution of cases on the merits, and thus the court's discretion as to allowing amendments will usually be exercised in favor of permitting amendments. This policy is so strong, that denial of a request to amend is rarely justified, particularly where "the motion to amend is timely made and the granting of the motion will not prejudice the opposing party." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.)

Even so, the court has discretion to deny leave to amend where the proposed amendment fails to state a valid cause of action (*Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230), or the party seeking the amendment has been dilatory and the delay has prejudiced the opposing party. (*Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 490.) No opposition was filed, so no facts were presented to warrant denial of IICNA's motion for leave to amend.

Accordingly, the motion for leave to amend the answer is granted.

Cross-Complaint

IICNA seeks leave to file a cross-complaint against plaintiff Paul McKenney for rescission of an insurance contract and declaratory relief. IICNA contends that it recently discovered that plaintiff provided materially false information when he applied for auto insurance from IICNA. Specifically, IICNA alleges that plaintiff indicated in his insurance application that his 2015 Chevrolet Tahoe was garaged in Idaho, and based on that representation, IICNA charged plaintiff a premium applicable to Idaho. However, IICNA has discovered in a recent deposition in this case that the vehicle was always garaged in Clovis, California and has never been outside of California. IICNA moves under Code of Civil Procedure section 426.50, on the grounds that the cross-complaint is compulsory and there is a lack of bad faith. On opposition, plaintiffs contend that the cross-complaint is based on alleged misconduct that is unrelated to the causes of action in plaintiff's complaint, there is evidence of bad faith, and plaintiff will be prejudiced should the motion be granted.

> A party who fails to plead a cause of action subject to the requirements of this article [governing compulsory cross-complaints], whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action.

(Code Civ. Proc., § 426.50.)

"[I]f a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) he has against the plaintiff, such party may not thereafter in any other action assert against the plaintiff the related cause of action not pleaded. (Code Civ. Proc., § 426.30, subd. (a).) Accordingly, to be considered a compulsory cross-complaint, these causes of action asserted must "arise[] out of the same transaction, occurrence, or series of transactions or occurrences as the cause of action which the plaintiff alleges in his complaint." (Code Civ. Proc., § 426.10, subd. (c).)

The relevant allegations of the operative complaint, the Second Amended Complaint ("SAC") , provide as follows:

Prior to 2020, all defendants maintained a $1,000,000 liability and underinsured and uninsured motorist coverage on plaintiff's 2015 Chevrolet Tahoe. Sometime in 2020, plaintiff's wife was in a collision that totaled the vehicle. Plaintiff informed defendants of the collision and indicate that he was rebuilding the vehicle and instructed defendants to retain an auto insurance policy with IICNA for the above coverage. Defendants Mark Johnson and Dibuduo & Defendis informed plaintiff that they would in early November 2020. On November 10, 2020, plaintiff was operating the vehicle when he was struck by another driver. (SAC, ¶¶ 9-21.) The main issue raised by the SAC pertains to the coverage of the subject vehicle at the time of the November 10, 2020 incident. Of note, while this fact is not actually alleged in plaintiff's complaint, plaintiff raises it on opposition: shortly

following the accident involving plaintiff's wife, the vehicle was removed from the insurance policy in September 29, 2020.

IICNA argues that its proposed cause of action for rescission of the auto insurance contract is logically related to plaintiffs' causes of action for breach of that same contract and bad faith denial of benefits thereto. However, plaintiff argues that IICNA's rescission claim is unrelated, because IICNA seeks to rescind a policy that is not at issue in this case. More specifically, plaintiff argues that IICNA seeks to a rescind the auto insurance policy that was cancelled on September 29, 2020, and that this insurance policy is unrelated to the at-issue November 10, 2020 injury and subsequent policy denial. Plaintiff's argument is unfounded as it concedes that IICNA's cross-complaint relates to the auto insurance policy that gave rise to the contractual relationship between plaintiff and the defendants in the first place. To be compulsory, causes of action need only be *logically* related to the causes of action in the complaint. The term " 'transaction' is construed broadly; it is 'not confined to a single, isolated act or occurrence . . . but may embrace a series of acts or occurrences logically interrelated [citations].' [citations]" (*Heshejin v. Rostami* (2020) 54 Cal.App.5th 984, 994, citations omitted.) The court finds there to be a sufficient showing that the causes of action alleged in the proposed cross-complaint are related to plaintiff's operative complaint so as to find IICNA's cross-complaint to be compulsory.

Plaintiff next argues that the motion is sought in bad faith, because IICNA has misrepresented facts and the causes of action are barred by the applicable statute of limitations. Plaintiff argues that IICNA has previously claimed that the second policy, which plaintiff describes to be the policy relating to the November 10, 2020 incident, does not exist, as opposed to the first policy, the one which was terminated on September 29, 2020, and thus, it should not be allowed to now seek to rescind the second policy. On reply, IICNA clarifies that it has not claimed that the policy never existed, rather, it previously indicated that the 2015 Tahoe was removed from plaintiff's insurance policy, effective on September 29, 2020. IICNA's clarification appears to have merit and the court does not find the existence of bad faith here.[2]

Accordingly, the motion for leave to file the cross-complaint is granted. "[A] strong showing of bad faith [must] be made in order to support a denial of the right to file a cross-complaint under this section." (*Foot's Transfer & Storage Co. v. Superior Court* (1980) 114 Cal.App.3d 897, 903 [discussing Code of Civil Procedure section 426.50].)

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 06/02/25.
(Judge's initials) (Date)

[2] Plaintiff's statute of limitations argument is not addressed herein, as it is not a proper ground to deny a motion for leave to file a cross-complaint under Code of Civil Procedure section 426.50.

(27)

Tentative Ruling

Re: ***Eric Herzog v. Board of Trustees of the California State University***
Superior Court Case No. 23CECG04195

Hearing Date: June 3, 2025 (Dept. 502)

Motion: (1) Petition to Compromise the Claim of Minor Alice Pagesmith

(2) Petition to Compromise the Claim of Minor Coren Pagesmith

Tentative Ruling:

To grant both petitions. Orders Signed. No appearances necessary. The court sets a status conference for Tuesday, September 16, 2025, at 3:30 p.m., in Department 502, for confirmation of deposit of the minors' funds into the blocked accounts. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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 06/02/25.
(Judge's initials) (Date)