Tentative Rulings for June 5, 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.***

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

_____

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(34)

Tentative Ruling

Re: ***In re: Carlos Rodriguez***
Superior Court Case No. 21CECG02536

Hearing Date: June 5, 2025 (Dept. 502)

Motion: by Mercury Insurance Company to File an Interpleader of Funds and Discharge of Liability

Tentative Ruling:

To deny without prejudice.

Explanation:

On August 28, 2024 and October 23, 2024, the hearing on the motion to file an interpleader was continued to allow plaintiff to serve all defendants. On January 8, 2025, plaintiff's motion was ultimately denied without prejudice due to the failure to provide proof of service. Plaintiff's renewed motion was filed on February 5, 2025 and no proofs of service have been filed.

Plaintiff Mercury Insurance Company's application to serve summons on defendants Ronnie Rodriguez, Adrianna Rodriguez, Raquel Rodriguez, Carlos Rodriguez and Michelle Rodriguez by publication was granted on July 29, 2024. No proof of service by publication has been filed. (Cal. Rules of Court, rule 3.1300, subd. (d).) Defendant Christina Rodriguez was not included in the July 29, 2024 order and there is no proof of service of the motion for defendant Christina Rodriguez. Accordingly, plaintiff Mercury Insurance Company's motion is denied without prejudice.

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 06/03/25.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***King Wynn, SR v. Deniz Baysal***
Superior Court Case No. 24CECG05275

Hearing Date: June 5, 2025 (Dept. 502)

Motion: Defendant's Demurrer and Motion to Strike

Tentative Ruling:

To sustain the demurrer to the complaint, with Plaintiff granted 30 days' leave to file a First Amended Complaint. Plaintiff must indicate which causes of action are alleged and include cause of action attachments for each cause of action if filing a Judicial Council form complaint. (Code Civ. Proc., § 430.10, subd. (e), (f).) The time in which the complaint may be amended will run from service of the order by the clerk.

To grant Defendant's motion to strike the prayer for punitive damages. (Code Civ. Proc., §§ 436, 425.13; Civ. Code, § 3294.)

The striking of the punitive damages allegations is without prejudice to Plaintiff filing a motion under Code of Civil Procedure section 425.13, subdivision (a).

Explanation:

Demurrer

The Judicial Council form complaint does not indicate which causes of action are alleged against Defendant. Also, there are no cause of action attachments.

Use of the Judicial Council form complaint requires the use of attachments for alleging the causes of action. Paragraph 10 of the form pleading states, "[t]he following causes of action are attached and the statements above apply to each *(each complaint must have one or more causes of action attached)*: …" The plaintiff is to check the boxes indicating the causes of action being alleged, and add to the form complaint attachments alleging the elements and facts pertinent to each cause of action. Having 1) failed to check the boxes indicating which causes of action are alleged and 2) failed to include any cause of action attachments, the complaint fails to state facts sufficient to state any cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

Moreover, a party may object by demurrer to any pleading on the ground that it is uncertain. (Code Civ. Proc., § 430.10, subd. (f).) As used in this subdivision, 'uncertain' includes ambiguous and unintelligible." Demurrers for uncertainty are disfavored. (*Khoury v. Maly's of California, Inc*. (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty may be sustained when the complaint is drafted in a manner that is so vague or uncertain that the defendant cannot reasonably respond, e.g., the defendant cannot determine what issues must be admitted or denied, or what causes of action are directed against the defendant. (*Ibid*.) Demurrers for uncertainty are appropriately overruled where "ambiguities can reasonably be clarified under modern rules of discovery." (*Ibid*.)

Here, no causes of action have been selected in the form complaint. Also, no facts are pled to allow the defendant to determine what issues must be admitted or denied. Accordingly, the complaint is uncertain and the special demurrer is sustained.

Leave to amend is granted so that Plaintiff can select which causes of action are alleged and include the relevant cause of action attachments if he opts to utilize the Judicial Council form complaint again.

Motion to Strike

Defendant moves the court for an order striking the prayer for punitive damages pursuant to Code of Civil Procedure section 425.13.

Code of Civil Procedure section 425.13, subdivision (a), provides,

> (a) In any action for damages arising out of the professional negligence of a health care provider, **no claim for punitive damages shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed**. The court may allow the filing of an amended pleading claiming punitive damages on a motion by the party seeking the amended pleading and on the basis of the supporting and opposing affidavits presented that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294 of the Civil Code. The court shall not grant a motion allowing the filing of an amended pleading that includes a claim for punitive damages if the motion for such an order is not filed within two years after the complaint or initial pleading is filed or not less than nine months before the date the matter is first set for trial, whichever is earlier. (Emphasis added.)

As pled, the complaint is unclear as to which cause of action Plaintiff prays for punitive damages. Also, no facts have been alleged to provide clarity to this request. Seeking punitive damages from a healthcare provider based upon an intentional act does not necessarily relieve plaintiffs of the requirements of Code of Civil Procedure section 425.13. Where the injury is alleged to have arisen out of the manner in which the professional services were provided, the cause of action falls under the purview of Code of Civil Procedure section 425.13. (*Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 192.)

As such, the Court strikes the prayer for punitive damages. If Plaintiff amends the complaint and still wishes to seek punitive damages based on services provided by a medical professional, he must first seek leave of the court pursuant to Code of Civil Procedure section 425.13.

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 06/03/25.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Eduardo Velazquez v. Carlucci Transport Inc.***
Superior Court Case No. 22CECG03945

Hearing Date: June 5, 2025 (Dept. 502)

Motion: By Plaintiff for Approval of PAGA Settlement

Tentative Ruling:

To deny without prejudice.

Explanation:

On May 5, 2023, Eduardo Velazquez filed his first amended complaint against his former employer, Carlucci Transport, Inc. 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.

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 Kim Decl., Exhs. 2-4.)

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.

Plaintiff argues the settlement is reasonable and will redress the alleged civil code violations experienced by the approximately 375 PAGA members. Defendant provided time and payroll data representing a 20% sample of the PAGA members which was in turn analyzed by plaintiff's counsel who determined the potential maximum exposure for defendant was $1,542,700. This figure is said to represent the assessment of a $100 penalty and 15,427 pay periods. The moving papers provide no evidence to support the estimated maximum penalty exposure. There is no evidence to support the estimated number of PAGA members. As such, the court cannot evaluate whether the settlement is fair.

Regarding weaknesses of the claims, plaintiff notes the court's discretion to reduce the civil penalties and defendant's defenses. Defendant asserted a clerical error omitting pay period end dates on less than 6% of the pay periods at issue and contends this was corrected prior to receiving notice of the lawsuit. 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. Defendant also asserts that the Motor Carrier Safety Act preempts the overtime and meal and rest period claims. Plaintiff's counsel applied a discount of 80% to the maximum potential exposure to get a potential exposure of $308,540 (15,427 pay periods x $20 penalty). This conclusory, generalized discussion provides little to assist in determining whether the settlement is reasonable.

The discussion of the strengths and weaknesses of the case is conclusory and insufficient to justify the settlement amount.

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 occurring thought out the litigation and resulting in a settlement amount that reflects the best feasible recovery. (Kim Decl. ¶¶ 8-13.)

Regarding pre-settlement discovery, counsel states that defendant provided a 20% sample of time and payroll records for PAGA members and that these records were analyzed by counsel for use in settlement negotiations. (Kim Decl., ¶ 9.) There is no indication of formal discovery having been undertaken or whether interviews were conducted of employees other than plaintiff to determine whether the violations were as widespread as alleged.

The case settled after a mediation session, and plaintiff's counsel are also highly experienced in representative litigation such as this. However, the pre-settlement discovery or information exchange appears to have been limited. Additionally, while there is a cost in the attached costs that could be for an expert, there is no discussion that any expert was actually consulted. (See Kim Decl., Exh. 6.) Counsel asserts that he determined the potential exposure himself.

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.

d. *Amount of Settlement*

The gross settlement is $225,000, and to assess the reasonableness of this amount, the court needs a good valuation of the total potential penalties. Here, counsel states that the settlement represents 73% of the realistic potential exposure of $308,540, which represents a good result in light of the defenses. However, there is limited foundation provided for the potential exposure presented by plaintiff's counsel.

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. Attorney's Fees and Costs

The settlement agreement provides that plaintiff's counsel would get up to $75,000 (1/3 of the total gross recovery) in attorney's fees, plus costs of up to $15,000. Plaintiff's actual costs are $8,126.87. (Kim Decl., Exh. 6.)

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. Kim's firm worked 172.7 hours on the case. (Kim Decl., ¶ 35.) His hourly rate is $750 and he worked 10.6 hours on this case. (*Ibid*.) His declaration also includes the rates and hours of his associates, Roman Shkodnik, Robert Payaslyan, Emma Geesaman, Norayr Zakaryan, Amanda Fazio, and Mason Doidge. Shkodnik bills at $700 per hour and billed 55.30 hours on this case. (Ibid.) Payaslyan bills at $400 per hour and billed 42.6 hours on this case. (Ibid.) Geesaman bills at $425 per hour and billed 32.7 hours in this case. (Ibid.) Zakaryan bills at $400 per hour and billed 29.2 hours on this case. (Ibid.) Fazio bills at $475 per hour and billed 2.1 hours on this case. (Ibid.) Doidge bills at $425 per hour and billed 0.2 hours in this case. (Ibid.) At these billing rates D.Law, Inc.'s lodestar is $90,360. (Ibid.) David Yeremian bills at $950 per hour and billed 29.7 hours on this case. (Yeremian Decl., ¶ 8.) At this billing rate, David Yeremian & Associates' lodestar is $28,215. (Ibid.) The memorandum only discusses D.Law, Inc.'s lodestar and billing amounts.

Kim attests to the hours spent having been reasonable to the conduct of the litigation and the hourly rates to be reasonable. (Kim Decl., ¶ 35.) 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. (Ibid.) Billing entries for all counsel are attached to Kim's Declaration. (Id. at Exh. 5.)

Before any reduction in hourly rates to better match local counsel rates the lodestar is more than the fees requested. 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.)

Here, no multiplier is requested. However, the moving papers do not include evidence in support of the use of the requested billing rates rather than rates that better approximate those of local counsel.

The court's approval of the actual costs of $8,126.87 is requested. Exhibit 6 to the Declaration of Kim is an expense ledger of costs for this action. The ledger reflects an arbitration fee of $400 which is unclear, particularly as the Court denied the motion to compel arbitration in this matter. There is also an expert mediation analysis fee for Berger Consulting Group in the amount of $1,395 which has no explanation in the papers. Counsel will need to address these.

The court intends to approve the settlement administration costs to Phoenix Class Action Administration Solutions as requested. (Lawrence Decl., ¶ 16.)

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.)

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

> Upon entry of judgment, all Aggrieved Employees will be bound by the judgment and are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action, including but not limited to, civil penalties pursuant to PAGA for or related to alleged violations of Labor Code §§ 226 & 226.6 (Wage Statements); Labor Code §§ 510 & 1194 (Overtime); Labor Code § 226.7

(Rest Periods); Labor Code § 512 (Meal Periods); Labor Code §§ 204, 210, 226.2, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 1670.5 (Pay All Hours Worked); Labor Code §§ 201-203 (Waiting Time); declaratory relief as it relates to the claims listed above, penalties recoverable pursuant to the claims listed above, interest, fees, costs, as well as all other claims and allegations alleged in the Action, throughout the PAGA Period ("Released PAGA Claims").

(Kim Decl., Exh. 1, PAGA Settlement Agreement, Section 5.2.)

The notice of Labor Code violations sent on behalf of plaintiff includes allegations of failure to pay minimum wages (Lab. Code, § 1197); failure to pay wages and overtime (Lab. Code, § 510); meal-period liability (Lab. Code, § 226.7); rest-break liability (Lab. Code, § 226.7); failure to issue accurate and itemized wage statements (Lab. Code, § 226); failure to issue semi-monthly payments (Lab. Code, § 204); failure to keep records (Lab. Code, § 1174); waiting time penalties (Lab. Code, § 203); and unfair competition (Bus. & Prof. Code, §§ 17200, et seq.). 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.

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 06/03/25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Pacific Choice Brands, LLC v. Jesus Peralez, JR***
Superior Court Case No. 23CECG02160

Hearing Date: June 5, 2025 (Dept. 502)

Motion: Default Prove-Up

Tentative Ruling:

To grant cross-complainants' request for judicial notice.

To grant entry of judgment by default, but judgment only to include the principal amount of damages sought and costs. The court denies the inclusion of interest in the judgment. The total judgment will therefore be for $176,772.92. Cross-complainant is directed to submit a revised judgment for signature.

Explanation:

Judicial Notice

Cross-complainants Jesus G. Peralez, Jr., Cooper Chase Construction, and VP Specialty Foods and Brokerage, Inc. request the court take judicial notice of the cross-complaint filed in this action, and the entries of default entered against Bonifacio Villalobos and Lydia Torrez on October 30, 2024. The court will grant judicial notice pursuant to Evidence Code section 452 subdivision (d), as these are all records of the court.

Default Judgment on Cross-Complaint

If a defendant files a cross-complaint against another defendant, a default may be entered against that party on that cross-complaint if the cross-defendant has been served with that cross-complaint and has failed to timely file a responsive pleading. However, no judgment may separately be entered on that cross-complaint unless a separate judgment may, in fact, be properly awarded on that cross-complaint and the court finds that a separate judgment on that cross-complaint would not substantially delay the final disposition of the action between the parties. (Code Civ. Proc., § 585 subd. (e).)

In the original action, judgment has already been entered against cross-defendants, Bonifacio Villalobos and Lydia Torrez. The cross-complainants, Jesus G. Peralez, Jr.; Cooper Chase Construction; and VP Specialty Foods and Brokerage, Inc., have been dismissed from the original action, thus a separate judgment would not substantially delay the final disposition.

Default Judgment

A defaulting defendant admits only facts well pled in the complaint. (*Molen v. Friedman* (1998) 64 Cal.App.4th 1149, 1153-1154.) It is erroneous to grant a default judgment where the complaint fails to state a cause of action. (*Rose v. Lawton* (1963) 215 Cal.App.2nd 18, 19-20; *Williams v. Foss* (1924) 69 Cal.App. 705, 707-708.) Where a cause of action is stated in the complaint, a plaintiff merely needs to introduce evidence establishing a prima facie case for damages. (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361.)

Cross-complainants pled that any damages recovered from them by plaintiffs were a result of the cross-defendants' negligence, fraud, and other tortious acts alleged by plaintiffs in the underlying complaint. Cross-complainants allege that they are entitled to defense and indemnification from cross-defendants. Cross-complainant Jesus G. Peralez, Jr. attested by declaration that he was fully unaware of the tortious actions alleged to have been taken by cross-defendants, and that he removed himself from the situation once he became suspicious of cross-defendants' intents and activities. Mr. Peralez states he was only sued due to the conduct of cross-defendants.

Cross-complainants seek only a reimbursement of what they paid to plaintiffs due to the alleged actions of cross-defendants. Cross-complainants have a well-pled cause of action for equitable indemnity and the defaulted cross-defendants have therefore admitted the well-pled allegations.

Deny Inclusion of Interest

Cross-complainants did not provide any authority that would allow recovery of interest on the settlement amount paid to plaintiffs, therefore the court will decline to include a recovery of interest in the judgment.

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 06/03/25.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Russell Douglas v. ABC Cooling & Heating Services, LLC***
Superior Court Case No. 24CECG01926

Hearing Date: June 5, 2025 (Dept. 502)

Motions (x4): by Defendant ABC Cooling & Heating Services, LLC Compelling Plaintiffs Russell Douglas and Rachel Ebert's Responses to Form Interrogatories, Set One, Special Interrogations, Set One, Requests for Production of Documents, Set One, and for Monetary Sanctions

Tentative Ruling:

To grant and to award monetary sanctions in the total amount of $1,115 against plaintiffs Russell Douglas and Rachel Ebert payable within 20 days of the date of this order, with the time to run from the service of this minute order by the clerk.

Plaintiff Russell Douglas shall serve verified responses without objections, to defendant ABC Cooling & Heating Services, LLC's Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One, no later than 20 days from the date of this order, with the time to run from the service of this minute order by the clerk.

Plaintiff Rachel Ebert shall serve verified responses without objections to defendant ABC Cooling & Heating Services, LLC's Form Interrogatories, Set One, no later than 20 days from the date of this order, with the time to run from the service of this minute order by the clerk.

Explanation:

Interrogatories and Document Production

Plaintiffs have had ample time to respond to the discovery propounded by defendant, and they have not done so. Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and work product protection. (Code Civ. Proc., §§ 2030.290, subd. (a), 2031.300, subd. (a); see *Leach v. Sup.Ct. (Markum)* (1980) 111 Cal.App.3d 902, 905-906.)

Monetary Sanctions

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (Code Civ. Proc., §§ 2030.290, subd. (c) [Interrogatories], 2031.300, subd. (c) [Document demands].) Since no opposition was filed, no facts were presented to warrant finding sanctions unjust. The court finds it reasonable to allow only 2.5 hours for the preparation of these simple discovery motions at the hourly rate of $350, provided by counsel, and

$240 for the cost of filing these motions. Therefore, the total amount of sanctions awarded is $1,115.

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 06/03/25.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Baljinder Riar v. Serges Dhaliwal***
Superior Court Case No. 22CECG00775

Hearing Date: June 5, 2025 (Dept. 502)

Motion: Plaintiff's Application for Default Judgment

Tentative Ruling:

To deny the application for default judgment, without prejudice.

Explanation:

Property Description

The complaint for partition of real property must set forth: 1) a description of the subject property, including both its legal description and its street address; 2) all interests the plaintiff has or claims in the property; 3) all interests of record or actually known to the plaintiff, and all persons plaintiff "reasonably believes will be materially affected by the action, whether the names of such persons are known or unknown to the plaintiff" (i.e., this includes "persons unknown to be served by publication); 4) the estate as to which partition is sought and a prayer for partition of the interests therein; and 5) where the plaintiff seeks sale of the property, an allegation of the facts justifying such relief in ordinary and concise language. (Code Civ. Proc., § 872.230.)

As noted in the court's previous ruling on plaintiff's prior application for default judgment, the complaint is vague and ambiguous regarding the number of parcels that plaintiff wishes to partition and sell. The first page of the complaint alleges that there are five lots that need to be partitioned, but plaintiff lists only three parcels in the body of the complaint. While this ambiguity is clarified in plaintiff's declaration filed in support of the instant application for default judgment, wherein plaintiff explains that this matter involves three lots that contain five assessor parcel numbers ("APN"), this does not cure the defect in the property description of the complaint. This is pertinent in an application for default judgment, because a defendant who defaults admits only facts well pleaded in the complaint. (*Molen v. Friedman* (1998) 64 Cal.App.4th 1149, 1153-1154.)

It is further noted that there are some inconsistencies contained within the APNs themselves in the complaint. The caption page of the complaint lists: (1) 453-302-08, (2) 453-292-12, (3) 454-054-08, (4) 454-054-09, and (5) 454-054-28. While these are the APNs listed on the first page of the preliminary title report attached as an untitled exhibit to the complaint, the APNs listed in Exhibit "A" to that preliminary title report which purportedly provides the legal description of the properties are as follows: 453-292-38, 453-302-24, and 454-054-28. The proposed judgment indicates that "[t]he parcels of land including the five APN numbers as set forth in the Verified Complaint. . ." shall be sold; however, as explained, the complaint itself is ambiguous.

Service of Summons

Although plaintiff admits that he has lost all contact with the defendant and that he has no idea where defendant is, according to the proof of service, his process server has located someone with the same name in Mountain View, California and has served that individual by substitute service at an address which is purportedly defendant's place of business.

Plaintiff explains that his process server and investigator were able to locate the defendant in Mountain View, California by using defendant's driver's license number. However, it is unexplained how these individuals were able to find a business address for the defendant through his driver's license number. Accordingly, it remains unclear whether plaintiff has actually served the correct person with the summons and complaint.

Right to Reimbursement and Accounting

According to the proposed judgment, plaintiff is also seeking reimbursement of all reasonable costs and expenses concerning the sale, property taxes, insurance, maintenance and other related expenses incurred by plaintiff.

A cotenant who has advanced funds to pay common expenses is entitled to be reimbursed from the sale proceeds before the balance is divided and distributed to the cotenants. (*Southern Adjustment Bureau, Inc. v. Nelson* (1964) 230 Cal.App.2d 539, 541 [discussing payment of taxes, insurance, and mortgage payments].) The party paying such expenses "is entitled to be reimbursed his entire advancement before the balance is equally divided." (*Southern Adjustment Bureau* at p. 541.)

However, there is no right to reimbursement without notice to the defendant. In *Finney v. Gomez* (2003) 111 Cal.App.4th 527, 537, the trial court awarded plaintiff more for reimbursement of common expenses than he had prayed for in the complaint. The appellate court held that the trial court had abused its discretion, concluding that Code of Civil Procedure Section 580 "limits the monetary relief available on a default judgment in a partition action to the specific dollar amount requested in the complaint." (*Id.* at p. 534, emphasis added.)

In partition actions plaintiffs have two options:

> "They can either (1) include an estimate of the amount of money due, and receive a default judgment limited to such an amount or (2) similar to the procedure outlined for personal injury suits, serve the defendant with a precise statement of damages at a reasonable time *before the default is entered.*" [… .]
>
> In conclusion, a plaintiff who seeks a partition can provide post-complaint, *pre-default notice* to the defendant of the amount to be sought if the defendant defaults. Otherwise, in a partition action, generally, an amount awarded on default in excess of the specific dollar amount listed in the complaint is beyond the jurisdiction of the court.

(*Finney v. Gomez, supra*, 111 Cal.App.4th at p. 543-544, emphasis added.)

Therefore, to obtain monetary relief, plaintiff would need to amend the complaint to allege a dollar amount of damages sought, which would set the "ceiling" for damages. Another option the court in *Finney* said the plaintiff had was "similar to the procedure outlined for personal injury suits, [to] serve the defendant with a precise statement of damages at a reasonable time *before the default is entered*." (*Finney v. Gomez, supra,* 111 Cal.App.4th at p. 543-544, emphasis and brackets added.) Either method would reverse the defendant's defaulted status and give him another opportunity to appear in the action.

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 06/04/25.
(Judge's initials) (Date)