**Tentative Rulings for January 29, 2026**
**Department 503**

**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)**

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**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.***

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

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**(Tentative Rulings begin at the next page)**

# Tentative Rulings for Department 503

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(41)

**Tentative Ruling**

Re: ***Yellow Brick Road, Inc. v. Brandon Watson***
Superior Court Case No. 23CECG00594

Hearing Date: January 29, 2026 (Department 503)

Motion: Default Prove-up

**Tentative Ruling:**

To deny without prejudice.

**Explanation:**

The court denies the request for default judgment without prejudice for the following reasons:

Evidence of Damages

Plaintiff submits a summary of the case, in which plaintiff references "affidavits submitted concurrently herewith" and the declaration of James Henderson, but the court has no record of any declarations or affidavits submitted by plaintiff. Although the court's docket includes an entry for November 18, 2025, listed as "Declaration Filed," the filed document is plaintiff's summary of the case, with no supporting declarations. Thus, plaintiff fails to submit evidence that would tend to show plaintiff is entitled to the requested amount of actual damages.

Proposed Judgment

Upon resubmission, the court directs plaintiff to revise the proposed judgment lodged with the court on November 18, 2025, by deleting paragraph 5.

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: JS on 1/27/2026.**
(Judge's initials) (Date)

(47) **Tentative Ruling**

Re: ***Tara Sirvent v. Fresno Public University***
Superior Court Case No. 24CECG04954

Hearing Date: January 29, 2026 (Dept. 503)

Motion: By Defendants for Judgment on the Pleadings

**Tentative Ruling:**

To grant defendants' motion for judgment on the pleadings with respect to the first and second causes of action, without leave to amend.

**Explanation:**

A motion for judgment on the pleadings has the same function as a general demurrer but is made after the time for demurrer has expired, and so the rules governing demurrers apply. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.)

As in demurrers, grounds for the motion must appear on the face of the challenged pleading or on facts which the court may judicially notice. (*Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.)

When reviewing a pleading, a demurrer or motion for judgment on the pleadings admits the truth of all material allegations and a Court will "give the complaint a reasonable interpretation by reading it as a whole and all its parts in their context." (*People ex re. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300.) The standard of pleading is very liberal and a plaintiff need only plead "ultimate facts." (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) However, a plaintiff must still plead facts giving some indication of the nature, source, and extent of the cause of action. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719.)

Defendants Fresno Pacific University ("FPU") and Sherri L. Hughes ("Hughes") seek an order for judgment on the pleadings seeking dismissal of plaintiff Tara Sirvent's ("Plaintiff") first and second causes of action for, respectively, wrongful termination in violation of public policy and violation of the California Fair Employment and Housing Act ("FEHA").

*First Cause of Action*

Plaintiff's first cause of action is wrongful termination in violation of public policy. While an at-will employee may ordinarily be terminated for no reason at all, or even for one that is considered to be arbitrary or irrational, an employer is not permitted to terminate an employee for a reason which contravenes a well-established fundamental public policy. *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 172. This is commonly referred to as a *Tameny* claim.

The elements of a *Tameny* claim are "(1) an employer-employee relationship, (2) the employer terminated the plaintiff's employment, (3) the termination was substantially motivated by a violation of public policy, and (4) the discharge caused the plaintiff harm. [Citation omitted.]" (*Yau v. Allen* (2014) 229 Cal.App.4th 144, 154.)

In *TRW Inc v. Superior Court* (1994) 25 Cal. App. 4th 1834, the plaintiff refused to submit to an investigatory security interview requested by his employer based on the employee's alleged right against self-incrimination under the Fifth Amendment and Miranda v. Arizona (1996) 384 U.S 436. The plaintiff was terminated for refusing to submit to the interview, and subsequently sued his former employer for wrongful termination in violation of public policy. The Court of Appeal rejected the plaintiff's *Tameny* claim based on the Court's determination that the Fifth Amendment right against self-incrimination and right to the presence of an attorney does not apply to a non-government, private employer. *TRW*, supra, 25 Cal. App. 4th at 1844.

*TRW* further explained that "[i]n the absence of evidence that the government required or encouraged the particular deprivation of which Ma complains, TRW's private conduct was not transformed into governmental action constrained by the Fifth Amendment merely because TRW was contractually obligated to make some inquiry. [Citations.]" *TRW*, supra, 25 Cal. App. 4th at 1847.

Defendants properly submit a request to take judicial notice (RJN) of the Complaint (Ex. 1).

In this case, plaintiff alleges that FPU forced plaintiff to attend a meeting with law enforcement, not part of the university; and make an oral and written statement to law enforcement that was prepared by FPU which plaintiff believed was untrue. (RJN Ex. 1, ¶¶ 9-13.) Here, it is undisputed FPU is not a governmental agency or public employer (RJN Ex. 1, ¶¶ 2 – 3), nor has plaintiff alleged that the government required or encouraged FPU's actions.

Accordingly, the court grants the motion for judgment on the pleadings as to the first cause of action.

*Second Cause of Action*

In order to establish a prima facie case of discriminatory discharge under the FEHA, a plaintiff must show that (1) he or she belongs to a protected class; (2) his or her job performance was satisfactory; (3) he or she was discharged; and (4) circumstances suggesting a discriminatory motive. (*Guz v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 355.)

In this case, plaintiff alleges that her employment was terminated "in retaliation for her assertion of the right to remain silent and privilege against self incrimination which is appurtenant to and part of her rights of national origin as a citizen of the United States and of California." (RJN Ex. 1, ¶ 23.)

All individuals subject to criminal prosecution in the U.S. are afforded the protections of the Fifth Amendment regardless of immigration status, race, and national

origin. (U.S. Const. amend. V. ["No person…shall be compelled in any criminal case to be a witness against himself"].)

One's "national origin" is entirely independent of whether one is entitled to the protections offered by the Fifth Amendment and plaintiff has not establish any nexus between her "national origin" and the termination of her employment.

Accordingly, the court grants the motion for judgment on the pleadings as to the second cause of action.

Causes of *Action Against Hughes*

There is no individual liability for *Tameny* claims or for retaliation claims under the FEHA. "[A] common law Tameny cause of action for wrongful termination, or a claim of retaliation, lies only against the employer, not against the supervisor through whom the employer commits the tort." (*Lloyd v. County of Los Angeles* 172 Cal.App.4th 320, 330 (2009)). Similarly, FEHA's anti-discrimination and anti-retaliation provisions do not extend liability to supervisors or co-workers in their individual capacity. (*Reno v. Baird* (1998) 18 Cal.4th 640, 656.)

Plaintiff does not mention individual defendant Hughes in her opposition, let alone provide any argument as to how her first and second causes of action may be sustained against Hughes. Plaintiff is considered to have conceded to the merits with respect to Hughes.

Accordingly, the court grants the motion for judgment on the pleadings as to the first and second causes of action with respect to Hughes.

*Leave to Amend*

Plaintiffs have the burden of showing in what manner the amended complaint could be amended and how the amendment would change the legal effect of the complaint, i.e., state a cause of action. (See *The Inland Oversight Committee v City of San Bernardino* (2018) 27 Cal.App.5th 771, 779; *PGA West Residential Assn., Inc. v Hulven Int'l, Inc*. (2017) 14 Cal.App.5th 156, 189.) The plaintiff must not only state the legal basis for the amendment, but also the factual allegations sufficient to state a cause of action or claim. (See *PGA West Residential Assn., Inc. v Hulven Int'l, Inc., supra*, 14 Cal.App.5th at p. 189.)

In this case, plaintiff did not address how the first and second causes of action could be cured. Rather, plaintiff alleges entirely new allegations under Penal Code section 137, which have nothing to do with the first or second causes of action.

Accordingly, the court grants defendants' motion for judgment on the pleadings pertaining to the first and second causes of action, without leave to amend.

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: JS on 1/27/2026 .**
(Judge's initials) (Date)

(37)

**Tentative Ruling**

Re: ***McKelvy v. PBC SolutionOne, Inc.***
Superior Court Case No. 23CECG03633

Hearing Date: January 29, 2026 (Dept. 503)

Motion: For Preliminary Approval of Class Settlement

**Tentative Ruling:**

To deny, without prejudice.

**Explanation:**

**1. Class Certification**

Settlements preceding class certification are scrutinized more carefully to make sure that absent class members' rights are adequately protected, although there is less scrutiny of manageability issues. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 240; see *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1803, fn. 9.) The trial court has a "fiduciary responsibility" as the guardian of the absentee class members' rights to decide whether to approve a settlement of a class action. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.)

A precertification settlement may stipulate that a defined class be conditionally certified for settlement purposes. The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (Cal. Rules of Court, rule 3.769(d).) Before the court may approve the settlement, however, the settlement class must satisfy the normal prerequisites for a class action. (*Amchem Products, Inc. v. Windsor* (1997) 521 US 591, 625-627.)

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 313.)

Plaintiffs bear the burden of establishing the propriety of class treatment *with* admissible evidence. (*Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 470 [trial court's ruling on certification supported by substantial evidence generally not disturbed on appeal]; *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1107-1108 [plaintiff's burden to produce substantial evidence].)

Here, the class members are all non-exempt, hourly paid employees who worked for Defendants during the PAGA Periods. Notably, the Settlement Agreement distinguishes the PAGA Period for Fresno and Non-Fresno Entities. The putative class consists of an estimated 5,100 members. (Halwadjian Decl., ¶ 13.) The numerosity and ascertainability criteria are satisfied.

Under the community of interest requirement, the class representative must be able to represent the class adequately. (*Caro v. Procter & Gamble* (1993) 18 Cal.App.4th 644, 669.) "[I]t has never been the law in California that the class representative must have identical interests with the class members . . . The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Usually, in wage and hour class actions, the distinctive feature that permits class certification is that the employees have the same job title or perform similar jobs, and the employer treats all in that discrete group in the same allegedly unlawful fashion. In *Brinker Restaurant v. Superior Court* (2012) 53 Cal.4th 1004, 1017, "no evidence of common policies or means of proof was supplied, and the trial court therefore erred in certifying a subclass."

Common questions in this class include that defendant failed to pay overtime and minimum wages and associated premium pay, failed to provide compliant meal and rest periods and accurate wage statements, failed to pay timely wages upon termination, failed to maintain payroll records, and failure to reimburse business expenses. (Halwadjian Decl., ¶ 14.) The motion is supported by a declaration from counsel. However, plaintiffs' declarations are insufficient. They do not establish a basis for belief that other employees had similar experiences. They do not describe plaintiffs' experiences working for defendants and do not include any job descriptions.

The adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit. "'The adequacy inquiry … serves to uncover conflicts of interest between named parties and the class they seek to represent.' [Citation.] '… To assure "adequate" representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class. [Citation.]' [Citation.]" (*J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 212.)

"[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 669.) Counsel has shown that the law firm is experienced and that the firm has successfully litigated other class actions. (Halwadjian Decl., ¶¶ 16-19.) Therefore, it does appear that class counsel has shown that the firm is adequate to represent the interests of the class. However, the issue remains that plaintiffs' declarations are insufficient to establish a community of interest here.

The community of interest element is not satisfied.

**2. Settlement Approval**

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 129.) "[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished … [therefore] the factual record must be before the … court must be sufficiently developed." (*Id.* at p. 130.)

In support of the proposed settlement amounts, counsel has provided counsel's declaration. The declaration states that counsel reviewed the records. (Halwadjian Decl., ¶ 22.) A sampling of records was provided by defendant. (Ibid.) 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.)

In the case at bench the declaration provides that there are 5,100 class members. There is no discussion of the average hours worked, hourly wages of the class members and no discussion of the evidence supporting any figures used by the parties to arrive at the settlement before the court. Plaintiff has not submitted an expert declaration or provided sufficient discussion or analysis as to how the information submitted supports plaintiffs' counsel's damages estimates. In fact, plaintiffs' counsel has provided no information regarding whether any attempt was made to estimate damages here.

Plaintiffs' counsel seeks a fee award based on 35% of the gross settlement. While it is true that courts have found fee awards based on a percentage of the common fund are reasonable, the California Supreme Court has also found that the trial court has discretion to conduct a lodestar "cross-check" to double check the reasonableness of the requested fees. (*Laffitte v. Robert Half Intern. Inc*. (2016) 1 Cal.5th 480, 503-504 [although class counsel may obtain fees based on a percentage of the class settlement, courts may also perform a lodestar cross-check to ensure that the fees are reasonable in light of the number of hours worked and the attorneys' reasonable hourly rates].) Here, plaintiffs' counsel has not provided any information about the amount of work done on the case, the hourly rates charged, or whether a lodestar multiplier is sought. Plaintiffs' counsel simply seeks a percentage of the total gross settlement as fees without any evidence linking that number to the actual work done in the case. Failure to provide such information makes it impossible for the court to double check the requested fees against some objective evidence of the work done in the case. With any final approval motion, counsel shall submit a full lodestar analysis, supported by full and complete billing records and evidence supporting the hourly rates claimed.

The motion seeks preliminary approval of a $10,000 "service award" to each of the plaintiffs. This award is in addition to plaintiffs' share of the settlement fund as a class member. There is no "presumption of fairness" in review of an incentive fee award. (*Clark v. Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) This amount is high. A lower amount may be awarded at final approval, as there is limited evidence indicating any substantive contributions by the plaintiffs during the period of time between the case being filed and ultimately settled, neither is there evidence of any real risk to plaintiffs in being named in a representative action apart from the theoretical.

The parties agreed to use Simpluris, Inc. as settlement administrator. The motion represents that the cost of administration will not exceed $20,000. A declaration from a representative at Simpluris, Inc. was not included to address what costs are anticipated by the settlement administrator. Therefore, the court finds this information is insufficient at this time.

Plaintiffs have not provided sufficient information to establish whether there is a community of interest in this matter. Also, plaintiffs' counsel has not presented sufficient evidence for the determination of whether the settlement agreement is fair. Therefore, the court denies the motion for preliminary approval of the class action settlement agreement, 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: JS on 1/27/2026.**
(Judge's initials) (Date)