

Tentative Rulings for April 11, 2024
Department 403

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

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

23CECG03214 *Valeron Kloppenburg v. Paz Kloppenburg*

21CECG03340 *Bernardo Morales v. Kristy Holly-Ray*

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

20CECG02674 *Brittany Ogletree, as Successor in Interest, for Jacob Coronado, Decedent v. Prahalad Jajodia Medical Doctor is continued to Tuesday, May 14, 2024, at 3:30 p.m. in Department 403*

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Tentative Rulings for Department 403

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Tentative Ruling

Re: ***Villa v. Trillium Pumps USA, Inc.***
Superior Court Case No. 22CECG01104/COMPLEX

Hearing Date: April 11, 2024 (Dept. 403)

Motion: By Plaintiff Manuel Villa for Final Approval of Class Settlement

Tentative Ruling:

To deny, without prejudice.

Explanation:

1. Class Certification

The court has already granted the motion for preliminary approval and certification of the class and found that the class is sufficiently numerous and ascertainable to warrant certification for the purpose of approving the settlement. There is no reason for the court to reconsider its decision granting certification of the class. Therefore, the court certifies the class for the purpose of final approval of the settlement.

2. Settlement

a. Legal Standards

“When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair.” (*Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F. 3d 1071, 1079.)

“[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 . . . The courts are supposed to be the guardians of the class.” (*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.) The court must be leery of a situation where “there was

nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id.* at p. 129.)

b. Fair and Reasonable

Previously, the parties submitted the Stipulation of Settlement of Class and PAGA Claims and Release of Claims, which contemplated a release of the claims brought by this action in exchange for \$650,000.00. The gross settlement would thereon be apportioned for attorney's fees, costs of suit, and costs to administer the settlement. The settlement administrator confirms that there are 221 class members, who collectively worked 19,482 "Workweeks". The court preliminarily approved these terms, and notice to the putative class of these amounts was given.

The settlement was reached after arm's length negotiations during a mediation with an experienced mediator, which weighs in favor of finding that the settlement was fair, adequate, and non-collusive. In addition, class counsel are highly experienced in class litigation, and provided information as to their assessments of the strength of plaintiffs' case, the risk, expense and complexity of the litigation, and the extent of analysis conducted. Thus, class counsels' opinion that the settlement is fair, adequate, and reasonable is entitled to considerable deference. There is also no evidence that the settlement is the product of collusion. Therefore, the court continues to find that the proposed settlement amount is fair, adequate and reasonable.

3. Attorney's Fees and Costs

Plaintiff's counsel seeks an award of \$216,667.67 in attorney's fees, or one-third of the gross settlement, plus \$10,075.48 in court costs. The agreement provides for an award of up to 1/3 of the total gross settlement. Therefore, the request for attorney's fees is consistent with the agreement.

The California Supreme Court in *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480 held that a court has discretion to grant attorney's fees in class actions based on a percentage of the total recovery. (*Id.* at pp. 503-504.) However, the trial court may also use a lodestar calculation to double check the reasonableness of the fee award. (*Id.* at pp. 504-506.) The choice of a fee calculation is generally one within the discretion of the trial court, the goal under either approach being the award of a reasonable fee to compensate counsel for their efforts. (*Id.* at p. 504.) If the comparison between the percentage and lodestar calculations produced an imputed multiplier indicating that the percentage fee will reward counsel for their services at an extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage. (*Ibid.*)

The court previously considered submissions by counsel regarding the fee award. As with the evidence submitted in the preliminary approval motion, counsel again does not clearly state hourly rates, though the billing records suggest a range of \$400 to \$550 per hour on the one hand (Lapuyade Decl., Ex. 3) and \$400 to \$600 on the other (Zakay Decl., Ex. 2).

While the rates and entries appear to be consistent as to JCL Law Firm, the court notes discrepancies between the submissions of Zakay Law Firm on preliminary to final approval. The entries previously submitted asserted rates between \$375 and \$595. For example, according to the entries submitted on preliminary approval, Jackland Hom billed at a rate of \$375 for the majority of 2022, and \$395 near the end. According to the entries submitted on final approval, Jackland Hom billed at a rate of \$400 for the entire duration of the case. The entries on preliminary approval had Shani Zakay billing at \$550 and \$575; Zakay now bills only at \$600. Clerical work that was billed at paralegal rates by Donia Saadi at \$165 per hour are now billed at attorney rates by Rachel Newman at \$350 per hour. The court assumes that these changes were unintended consequences of rerunning the time entries in preparation for final approval.

More concerning is that certain time entries have increased in duration between preliminary and final approval. (Zakay Decl., Ex. 2, p. 1 [entry on January 20, 2022 by Jackland Hom at 6.0 hours; previously 5.8 hours; January 26, 2022 by Jackland Hom at 0.8 hours, previously 0.5 hours], 2 [entry on July 27, 2023 by Jackland Hom at 0.4 hours, previously 0.2 hours; entry on September 6, 2023 by Jackland Hom at 0.4 hours, previously 0.2 hours], 5 [entry on February 13, 2023 by Jackland Hom at 1.5 hours, previously 1.2 hours; entry on February 16, 2023 by Jackland Hom at 0.8 hours, previously 0.5 hours; entry on June 27, 2023 by Jackland Hom at 2.5 hours, previously 1.8 hours; entry on September 20, 2023 by Jackland Hom for 0.8 hours, previously 0.5 hours], 9 [entry on June 4, 2022 by Shani Zakay at 6.5 hours, previously 3.5 hours], 10 [entry on July 9, 2022 by Shani Zakay for 2.0 hours and expanded entry, previously 0.5 hours; entry on July 25, 2022 by Shani Zakay for 2.5 hours and expanded entry, previously 1.5 hours; entry on October 25, 2022 by Shani Zakay for 5.0 hours, previously 4.0 hours], 12 [entry on March 8, 2023 by Shani Zakay for 6.0 hours, previously 5.0 hours; entry on June 30, 2023 by Shani Zakay for 5.0 hours, previously 2.5 hours; entry on September 4, 2023 by Shani Zakay for 0.7 hours, previously 0.6 hours; entry on January 30, 2022 by Shani Zakay for 4.0 hours, previously 3.0 hours; entry on January 30, 2022 by Shani Zakay for 1.5 hours, previously 1.0 hours].) The court is troubled by these alterations, particularly in light of Zakay Law Group's reported 200 prior class action settlements across the state. Without an explanation as to why these entries were altered, the court will not approve the attorney fees as sought.

Finally, the court notes, by its own estimation, certain categories of tasks that appear to be overstated for those tasks or inappropriate for counsel of such experience: 26 hours in generic legal research; 18 hours to draft the complaint; 8 hours to draft a notice to the LWDA; 10 hours to review the answer; 3 hours to contemplate a demurrer to the answer; 27 hours drafting the settlement; 77 hours preparing for mediation or drafting of a mediation brief, including 30 hours of time in attendance, not including review of discovery or expert consultation; 33 hours preparing the preliminary approval motion; 31 hours preparing the final approval motion; 4 and 6 hours by each firm in administering the settlement; and 23 hours in the preparation of case management statements, joint statements, and general appearances.

The court remains mindful that it is plaintiffs' burden to prove the reasonableness of the number of hours they devote to this action. (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1325.) A trial court may not rubberstamp a request for attorney fees, and must determine the number of hours reasonably expended. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271.)

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Tentative Ruling

Re: ***Hicks v. Jackson***
Superior Court Case No. 23CECG04303

Hearing Date: April 11, 2024 (Dept. 403)

Motion: Defendant's Motion for Stay

Tentative Ruling:

To deny.

Explanation:

An application for a stay is addressed to the sound discretion of the trial court. (*Thomson v. Continental Ins. Co.* (1967) 66 Cal.2d 738, 746.) The court has discretion to “stay civil proceedings, postpone civil discovery, or impose protective orders and conditions when the interests of justice seem to require such action, sometimes at the request of the prosecution [and] sometimes at the request of the defense.” (*Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 886, internal quotes omitted.) “The decision whether to stay civil proceedings in the face of a parallel criminal proceeding should be made in light of the particular circumstances and competing interests involved in the case.” (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 483, quoting *Avant!* at p. 885 (internal quotes omitted).)

Defendant argues that a stay is appropriate because there is an open investigation with the District Attorney Real Estate Fraud Unit pending based on a complaint she made regarding plaintiff, and there is a domestic violence case still pending between plaintiff and defendant. Neither of these provide a basis for the court to order a discretionary stay. The letter plaintiff has produced from the District Attorney’s office regarding the fraud investigation indicates there is no timeframe for completion of its investigation, and in fact this letter advised Ms. Jackson that she could pursue her civil remedies “concurrently.” This appears to indicate that the District Attorney was of the opinion that her pursuit of civil remedies (such as with her cross-complaint filed in this action) would not impede its investigation. The court shares that opinion. As for the domestic violence case, the court has taken judicial notice of that file (Case number 23CEFL04953), and on April 4, 2024, a “Return Letter” was filed regarding Ms. Jackson’s request to renew the restraining order, which indicates the restraining order was denied at a hearing on 3/27/24. Therefore, it is not pending at this time. But even if it was pending, the court fails to see how it would provide a basis for a discretionary stay.

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

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Tentative Ruling

Re: **Barrena v. Three Palms MH Park, LLC**
Superior Court Case No. 20CECG02062

Hearing Date: April 11, 2024 (Dept. 403)

Motion: by Defendant to Compel Appearance of Plaintiff Aylin Tapia at Deposition

Tentative Ruling:

To grant defendant Three Palms MH Park LLC's motion to compel plaintiff Aylin Tapia to appear at a deposition as noticed. (Code Civ. Proc. §§ 2025.450(a), 2025.280(a).)

To impose monetary sanctions in favor of defendant Three Palms MH Park, LLC, and against plaintiff Aylin Tapia. (Code Civ. Proc. §§ 2023.010 (d), 2023.030 (a), 2025.450(g)(1).) Plaintiff is ordered to pay \$245 in sanctions to the Wasson & Associates, Inc. law firm, within 30 days of the clerk's service of the minute order.

Explanation:

Any party to litigation may obtain discovery by taking the deposition of any person, including one who is a party to the action. (Code Civ. Proc. § 2025.010; *Beverly Hills Nat. Bank & Trust Co. v. Superior Court In and For Los Angeles County* (1961) 195 Cal.App.2d 861, 865.) "If, after service of a deposition notice, a party to the action...without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it...the party giving the notice may move for an order compelling the deponent's attendance and testimony[.]" (Code Civ. Proc. § 2025.450, subd. (a).) Where a party objects to the deposition, the party must serve a written objection, specifying the error or irregularity to which he or she objects, within 3 calendar days of the date scheduled for the deposition. (Code Civ. Proc. § 2025.010, subd. (a).) The court shall impose monetary sanctions against a deponent who does not appear at a properly noticed deposition, where that party did not serve a valid objection. (Code Civ. Proc. §2025.450, subd. (g)(1).)

Here, defendant noticed plaintiff's deposition to take place on April 7, 2023. (Ezzati Decl. ¶ 3, Exh. A.) Plaintiff did not appear for the deposition as noticed. (*Ibid.*) Defendants subsequently noticed plaintiff Tapia's deposition to take place on July 21, 2023, October 17, 2023 and October 12, 2023. (*Id.* at ¶¶ 4-6, Exh. B-D.) Plaintiff has refused to appear and plaintiff's counsel's motion to be relieved has since been granted due to Tapia's lack of responsiveness. (*Id.* at ¶6, Exh. E.) Accordingly, the court intends to grant the motion to compel Plaintiff Frias to attend her deposition.

The court finds it reasonable to award reduced sanctions of \$245, reflecting one hour of attorney time in preparing the motion and the filing fee. (Code Civ. Proc. § 2023.010, subd. (d); 2023.030, subd. (a); 2025.450, subd. (g)(1).) Plaintiff Aylin Tapia is

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Tentative Ruling

Re: ***Tpine Leasing Capital L.P. v. Gurpreet Singh***
Superior Court Case No. 23CECG03393

Hearing Date: April 11, 2024 (Dept. 403)

Motion: Plaintiff's Motion for Order Establishing Admissions

Tentative Ruling:

To grant the motion regarding requests for admissions. The truth of the matters specified in the Requests for Admissions, Set One, are to be deemed admitted unless defendant Gurpreet Singh serves, before the hearing, a proposed response to the requests for admissions that is in substantial compliance with Code of Civil Procedure section 2033.220. (Code Civ. Proc., § 2033.280, subd. (c).)

To grant monetary sanctions against defendant Gurpreet Singh in the total amount of \$950.00 for two (2) hours spent preparing the motion that is granted at the rate of \$475.00 per hour. Monetary sanctions are ordered to be paid within 20 calendar days from the date of service of the minute order by the clerk.

Explanation:

Admissions

A party who has propounded requests for admissions but not received a timely response may move for an order, under Code of Civil Procedure section 2033.280, whereby the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted. The propounding party may also move for monetary sanctions.

Failure to timely respond to requests for admissions results in a waiver of all objections to the requests. (Code Civ. Proc. § 2033.280, subd. (a).) "The law governing the consequences for failing to respond to Requests for Admission may be the most unforgiving in civil procedure. There is no relief under section 473. The defaulting party is limited to the remedies available in [Code of Civil Procedure Section 2033.280]...." (*Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 394-395, brackets added, disapproved on other grounds in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 983, fn. 12.)

Accordingly, if no responses that are in substantial compliance with Section 2033.220 are served by defendant prior to the hearing on the motion, the court must grant a motion to establish admissions. (see Code Civ. Proc., § 2033.280, subd. (c).) "If the party manages to serve its responses before the hearing, the court has no discretion but to deny the motion.... Everything, in short, depends on submitting responses prior to the hearing." (*Demyer v. Costa Mesa Mobile Homes Estates, supra*, 36 Cal.App.4th at

