

**Tentative Rulings for April 29, 2025**  
**Department 403**

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

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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 403**

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(03)

**Tentative Ruling**

Re: ***Alcala v. Certified Meat Products, Inc.***  
Case No. 22CECG03628

Hearing Date: April 29, 2025 (Dept. 403)

Motion: Plaintiffs' Motion for Preliminary Approval of Class Action Settlement

**Tentative Ruling:**

To grant plaintiffs' motion for preliminary approval of class and PAGA settlement.

**Explanation:**

**1. Class Certification**

**a. Standards**

First, the court must determine whether the proposed class meets the requirements for certification before it can grant preliminary approval of the proposed settlement. An agreement of the parties is not sufficient to establish a class for settlement purposes. There must be an independent assessment by a neutral court of evidence showing that a class action is proper. (*Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81 (rev. denied); see also Newberg, *Newberg on Class Actions* (T.R. Westlaw, 2017) Section 7:3: "The parties' representation of an uncontested motion for class certification does not relieve the Court of the duty of determining whether certification is appropriate.")

"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.)

**b. Numerosity and Ascertainability**

"Ascertainability is achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible when that identification becomes necessary. While often it is said that class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records, that statement must be considered in light of the purpose of the ascertainability requirement. Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." (*Nicodemus v. Saint Francis Memorial Hospital* (2016) 3 Cal.App.5th 1200, 1212, internal citations and quote marks omitted.)

Here, the class is ascertainable, as defendants' personnel records should be sufficient to allow the parties to identify the class members. The class is also sufficiently numerous to justify certification, as plaintiff's counsel claims that there are approximately 319 class members who worked for defendant during the class period. Therefore, the court intends to find that the class is sufficiently numerous and ascertainable for certification.

**c. Community of Interest**

"[T]he '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.'" (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.) "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.) [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.)

Here, it does appear that there are common questions of law and fact, as all of the proposed class members worked for the same defendant and allegedly suffered the same type of Labor Code violations. Therefore, the proposed class involves common issues of law and fact.

With regard to the requirement of typicality of the representative's claims, it does appear that Mr. Alcala's and Mr. Alvarado's claims are typical of the rest of the class and that they seek the same relief as the other class members based on their allegations and prayer for relief in the complaint. There is no evidence that they have any conflicts between their interests and the interests of the other class members that would make them unsuitable to represent their interests. Therefore, plaintiffs have shown that the named plaintiffs have claims typical of the other class members.

Plaintiff's counsel has submitted declarations showing that they are experienced and qualified to represent the class. (See Melmed decl., ¶¶ 8-13; Leviant decl., ¶¶ 21-25.) The attorneys' declarations discuss their background, education, and experience in class action litigation. They clearly have extensive backgrounds and experience in class action litigation. Therefore, the declarations provide sufficient evidence to support counsels' assertion that they are experienced and qualified to represent plaintiffs and the other class members here.

**d. Superiority of Class Certification**

It does appear that certifying the class would be superior to any other available means of resolving the disputes between the parties. Absent class certification, each employee of defendants would have to litigate their claims individually, which would result in wasted time and resources relitigating the same issues and presenting the same

testimony and evidence. Class certification will allow the employees' claims to be resolved in a relatively efficient and fair manner. (*Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) Also, the value of each individual class member's claim is relatively small, so it would not be worthwhile for them to bring their claims on an individual basis. On the other hand, if they bring their claims as a class, then they can recover substantially more money and hopefully deter defendant from committing future violations of the law. Therefore, it does appear that class certification is the superior means of resolving the plaintiff's claims.

**Conclusion:** The court intends to grant certification of the class for the purpose of 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. Fairness, Adequacy, and Reasonableness of the Settlement**

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations

omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Here, plaintiffs' counsel has presented a sufficient discussion of the strength of the case if it went to trial, the risks, complexity, and duration of further litigation, and an explanation of why the settlement is fair and reasonable in light of the risks of taking the case to trial. Plaintiffs' counsel has provided a detailed explanation of the claims and defenses raised by the parties, and the problems and risks inherent in plaintiff's case. Counsel also explains why they decided to accept \$190,000 to settle the claims even though they might potentially have recovered much more money if they prevailed at trial. They note that there was a risk that the class might not be certified, or that defendant might try to settle each individual class member's claim separately. The court might also exercise its discretion to reduce or even refuse to award PAGA penalties. In addition, plaintiffs might not have been able to prove that any Labor Code violations were intentional. The issues of the case were hotly contested, and defendant might have prevailed on its defenses. Plaintiffs' counsel and their expert conducted discovery and reviewed a sample of 33% of the employees' records to determine what potential damages might be. As a result, plaintiffs concluded that settling for \$190,000 was reasonable under the circumstances.

Therefore, plaintiffs have shown that the settlement is fair, reasonable, and adequate in light of the unique facts and legal issues raised by the plaintiffs' case.

### **c. Proposed Class Notice**

The proposed notice appears to be adequate. The notices will provide the class members with information regarding their time to opt out or object, the nature and amount of the settlement, the impact on class members if they do not opt out, the amount of attorney's fees and costs, and the service award to the named class representatives. As a result, the court intends to find that the proposed class notice is adequate.

### **3. Attorney's Fees and Costs**

Plaintiff's counsel seeks attorney's fees of \$63,333.33, which is one-third of the gross settlement. Plaintiff's counsel has provided two declarations to describe their education, skill, and experience, as well as the challenges presented in the litigation. (Melmed decl.; Leviant decl.) The declarations generally discuss the attorneys' background, education, skill, and experience. They rely on the fact that courts have chosen to allow attorneys in class and representative actions to recover fees based on a percentage of the common fund that they obtained for the class. Such fees are commonly in the range of one-third of the total recovery.

Plaintiffs' counsel has now provided declarations from two attorneys, Jonathan Melmed and H. Scott Leviant, in support of their request for attorney's fees. They provide information about their education, experience, and billing rates, as well as the amounts of fees incurred in the case. They have incurred total lodestar fees of \$53,419.30 on the case. (Melmed decl., ¶ 6.) Therefore, the requested fees of \$63,333.33 are only equivalent to a 1.18 multiplier on the actual fees incurred so far in the case. (*Ibid.*) Also,

counsel anticipates incurring another 10-15 hours on the case before it concludes, including drafting the final approval hearing papers, overseeing and approving the notice process, preparing for and appear at the final approval hearing, corresponding with opposing counsel through the settlement administration process, corresponding with plaintiffs, notifying the LWDA of the final approval order and judgment, responding to class members, and other tasks. (*Id.* at ¶ 10.)

As a result, plaintiffs' counsel has now provided sufficient evidence to support the requested amount of fees, and the court intends to find that the requested fees are fair, reasonable and adequate.

#### **4. Payment to Class Representative**

Plaintiff seeks preliminary approval of a \$15,000 service award to the named plaintiffs/class representatives, with Mr. Alcala and Mr. Alvarado each receiving a payment of \$7,500. Plaintiffs have provided their declarations, which support the request for a service award, as they state that they worked closely with plaintiff's counsel, provided documents, answered questions, and participated in meetings about the case with counsel. The service awards appear to be fair and reasonable in light of the work done by the named plaintiffs. Therefore, the court intends to grant preliminary approval of the incentive award to the named plaintiffs.

#### **5. Payment to Class Administrator**

Plaintiff's counsel states that the class administrator, Apex Class Action Administration, will receive \$7,000 to administer the settlement. (Melmed decl., ¶ 67, Leviant decl., ¶ 33.) Apex presented the lowest qualified bid for administration services. (*Ibid.*) Plaintiffs' counsel has no relationship with Apex, other than as a third-party vendor of services in an arm's length transaction. (*Ibid.*) Therefore, plaintiffs propose to use Apex for administration of the settlement.

Plaintiffs have now provided a declaration from a representative of the class administrator, Michael Sutherland, who states that Apex will charge a capped amount of \$7,000 for its services to administer the settlement. (Sutherland decl., ¶ 7, and Exhibit B thereto.) This amount appears to be reasonable, and the court intends to grant preliminary approval of the class administrator's fee.

#### **6. PAGA Settlement**

Plaintiff proposes to allocate \$15,000 of the settlement to the PAGA claims, with 75% of that amount being paid to the LWDA as required by law and the other 25% being paid out to the aggrieved employees. Plaintiffs' counsel states that he gave notice of the settlement to the LWDA, and includes a copy of the email confirming that the LWDA received the notice. (Melmed decl., ¶ 76, and Exhibit D to Melmed decl.) Therefore, plaintiffs' counsel has shown that he complied with PAGA's requirement to give notice of the settlement to the LWDA. (See Labor Code, § 2699, subd. (s)(2).)

Plaintiff's counsel has also adequately discussed the reasons why they allocated \$15,000 of the total settlement to the PAGA claims. As a result, the court intends to find

