**Tentative Rulings for June 25, 2025**
**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

Begin at the next page

(03)

**Tentative Ruling**

Re: ***Belt v. Phavong***
Case No. 24CECG02930

Hearing Date: June 25, 2025 (Dept. 503)

Motion: Plaintiff's Motion to Set Aside Dismissal

**If oral argument is timely requested, it will be entertained on Wednesday, July 23, 2025, at 3:30 p.m. in Department 503.**

**Tentative Ruling:**

To grant plaintiff's motion to set aside the dismissal entered on April 15, 2025.

**Explanation:**

Code of Civil Procedure section 473(b) provides for discretionary relief from a judgment, dismissal, order or other proceeding that has been entered due to mistake, surprise, inadvertence, or excusable neglect. (Code Civ. Proc. § 473, subd. (b).) The party seeking relief must bring his or her motion within a reasonable time, not to exceed six months from the date of entry of the judgment, dismissal, or order. (*Ibid*.)

"Where the mistake is excusable and the party seeking relief has been diligent, courts have often granted relief pursuant to the discretionary relief provision of section 473 if no prejudice to the opposing party will ensue. In such cases, the law 'looks with [particular] disfavor on a party who, regardless of the merits of his cause, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary.'" (*Ibid*, internal citations omitted.)

"'[T]he provisions of section 473 of the Code of Civil Procedure are to be liberally construed and sound policy favors the determination of actions on their merits.' [Citation.]" (*Zamora v. Clayborn Contracting Group, Inc*. (2002) 28 Cal.4th 249, 256.) "[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.)

In determining whether the default or order was entered against the defendant as a result of his or her reasonable mistake, inadvertence, surprise or excusable neglect, the court must look at whether the mistake or neglect was the type of error that a reasonably prudent person under similar circumstances might have made. (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276.) However, the court will not grant relief if the defendant's default was taken as a result of mere carelessness or other inexcusable neglect. (*Luz v. Lopes* (1960) 55 Cal.2d 54, 62.) "The 'excusable neglect' referred to in the section is that neglect which might have been the act of a reasonably prudent person under the same circumstances. A judgment will not ordinarily be vacated at the demand of a defendant who was either grossly negligent or changed his mind after the judgment." (*Baratti v. Baratti* (1952) 109 Cal.App.2d 917, 921, citations omitted.)

Section 473(b) also contains a provision that requires the court to grant relief from a default, default judgment, or dismissal entered due to the mistake, inadvertence, surprise, or neglect of the party's attorney, regardless of whether the attorney's mistake or neglect was excusable or not. "Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect." (Code Civ. Proc., § 473, subd. (b).)

Thus, "[a]n entirely different standard exists under the *mandatory* relief provisions enacted in 1988. These *require* the court to grant relief if the attorney admits neglect, even if the neglect was *inexcusable*. The purpose of this law is to relieve the innocent client of the burden of the attorney's fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits. Furthermore, in 1991, the Legislature modified the timeliness/diligence requirement. Whereas the 1988 version required the application for mandatory relief to be 'timely,' which the *Billings* court construed to incorporate the diligence requirement, the current version requires only that the application be made within six months after entry of judgment." (*Metropolitan Service Corp. v. Casa de Palms, Ltd.* (1995) 31 Cal.App.4th 1481, 1487, citations omitted, italics in original.)

In the present case, plaintiff's counsel states that she missed the April 15, 2025 OSC hearing due to the fact that the firm's clerk, who was in charge of reserving Court Call appearances, had recently left without notice and therefore the Court Call reservation was not made. She had intended to appear at the OSC hearing, but she was unable to do so without a Court Call reservation, as the court would not allow her to appear telephonically. Therefore, her failure to appear was the result of mistake, surprise, inadvertence, or neglect. The failure to appear was excusable, as a reasonable attorney under the circumstances might have made a similar mistake. However, even if the failure to appear was inexcusable, counsel has provided her affidavit stating that the failure was the result of her mistake or neglect, so relief from the dismissal is mandatory. As a result, the court intends to grant the motion to set aside the dismissal and allow the case to proceed.

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 6/11/2025.**
(Judge's initials) (Date)

(03)

**Tentative Ruling**

Re: ***Reyes v. Next Green Wave, LLC***
Case No. 22CECG02474

Hearing Date: June 25, 2025 (Dept. 503)

Motion: Plaintiff's Motion to Approve PAGA Settlement

**If oral argument is timely requested, it will be entertained on Wednesday, July 23, 2025, at 3:30 p.m. in Department 503.**

**Tentative Ruling:**

To grant plaintiff's motion to approve the PAGA settlement.

**Explanation:**

**1. Introduction**

Under Labor Code section 2699, "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA]. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (Lab. Code, § 2699, subd. (i)(2).)

The statute does not explain what exactly the trial court should consider when reviewing a proposed PAGA settlement. However, recently the Court of Appeal in *Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56 did provide some guidance. The court explained that "many federal district courts have applied the 'fair, reasonable, and adequate' standard from class action cases to evaluate PAGA settlements." (*Id.* at pp. 75–76, disapproved on other grounds by *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664.)

"Despite the fact that '"'a representative action under PAGA is not a class action'"', and is instead a 'type of qui tam action', a standard requiring the trial court to determine independently whether a PAGA settlement is fair and reasonable is appropriate. Class actions and PAGA representative actions have many differences, with one salient difference being that certain due process protections afforded to unnamed class members are not part of PAGA litigation because aggrieved employees do not own personal claims for PAGA civil penalties. Nonetheless, the trial court must 'review and approve' a PAGA settlement, and the Supreme Court has in dictum referred to this review as a 'safeguard[ ].' The Supreme Court has also observed that trial court approval 'ensur[es] that any negotiated resolution is fair to those affected.' When trial court approval is required for certain settlements in other qui tam actions in this state, the statutory standard is whether the settlement is 'fair, adequate, and reasonable under all the circumstances.' 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', 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." (*Id*. at pp. 76–77, internal citations omitted.)

"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." (*Id.* at p. 77, internal citations and footnote omitted.)

On the other hand, "PAGA does not provide that aggrieved employees must be heard on the approval of PAGA settlements… PAGA provides no mechanism for aggrieved employees, including those pursuing PAGA lawsuits, to be heard in objection to another PAGA settlement. This concession is dispositive, and we will not read a requirement into a statute that does not appear therein." (*Id.* at p. 79, internal citation omitted.)

**2. Notice to LWDA**

Labor Code section 2699, subdivision (l)(2), states: "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."

Here, plaintiff's counsel states that notice of the settlement was given to the LWDA on May 8, 2025. (Connolly decl., ¶ 32, and Exhibit 3 thereto.) The LWDA has not objected to the settlement. Therefore, plaintiff has complied with the requirement to give notice of the settlement to the LWDA.

**3. Is the Settlement Fair, Adequate, and Reasonable?**

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.)

Here it does appear that the proposed gross settlement of $350,000 is fair, adequate and reasonable under the circumstances.

**A. Strength of Case:** Plaintiff calculated the potential exposure at the initial violation rate of $100.00 per pay period as follows: 5,907 pay periods x $100.00 per pay period is $590,700.00. If the court stacked different types of penalties in each pay period, plaintiff calculated the exposure as follows:

a. 5,907 pay periods x $100 per pay period x 100% violation rate = $590,700 for unpaid wages;

b. 5,907 pay periods x $100 per pay period x 98% violation rate = $578,886 for rest break violations;

c. 5,907 pay periods x $100 per pay period x 28% violation rate = $165,396 for meal period violations;

d. 5,907 pay periods x $100 per pay period x 100% violation rate =$590,700 for wage statement penalties;

e. 5,907 pay periods x $100 per pay period x 100% violate rate= $590,700 for unreimbursed business expenses; and

f. 68 former employees x $100 = $6,800 for waiting time penalties.

However, plaintiff concedes that defendant had raised a number of defenses and had cited to evidence that might have made it difficult for plaintiff to prevail. Also, there was the risk that the court might exercise its discretion to reduce the penalties to avoid an unjust, oppressive or confiscatory result.

Therefore, plaintiff has shown that the case was relatively strong, but entailed considerable risks as well, including the risk that he might not obtain anything at trial, or that, even if he did prevail, the award might be substantially reduced by the court. As a result, this factor weighs in favor of approving the settlement.

**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 exchanged informal discovery and attended mediation. It appears that counsel obtained sufficient information to make an informed decision about settling the case, especially since plaintiff's counsel hired an expert to evaluate the risks and potential exposure involved with each of the claims based on the evidence and records provided by defendant. Plaintiff's counsel's firm is also highly experienced in representative litigation. Therefore, this factor weighs in favor of approving the settlement.

**C. Risks of Litigating Case through Trial:** Plaintiff contends that, while the potential maximum recovery here was substantial, the defendant raised strong defenses and litigating the case through trial would have involved considerable risks for plaintiff. There would also have been substantial costs to both parties in trying the case. There was also the risk that the court would have reduced the amount of penalties substantially even if

plaintiff prevailed at trial. Therefore, this factor weighs in favor of approving the settlement.

**D. Amount of Settlement:** As discussed above, the $350,000 gross settlement amount appears to be reasonable given defendant's strong defenses and the likelihood that plaintiff would not be able to recover the full amount of penalties he sought. There is also a risk that the trial court would exercise its discretion to reduce the amount of penalties even if plaintiff prevailed at trial. Therefore, plaintiff's decision to settle for a gross amount of $350,000 was reasonable under the circumstances.

**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:** Plaintiff's counsel seeks $116,666.67 in attorney's fees, plus up to $25,000 in court costs. The fees are the equivalent of 1/3 of the total gross recovery.

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.)

Here, counsel's fees are about 1/3 of the total gross settlement, which does not appear to be unreasonable. Also, counsel claims to have done 150.4 hours of work on the case, billing at rates from $625 to $950 per hour. (Connolly decl., ¶ 29.) Counsel claims that their work was equivalent to at least $118,000 in work on the case. (*Ibid*.) The hours incurred appear to be reasonable. The hourly rates are high in comparison to the rates charged by Fresno attorneys, but they do appear to be in line with what other Southern California attorneys of similar background and experience charge. Therefore, the court intends to find that the hourly rates charged by plaintiff's counsel are reasonable.

The requested fees are actually somewhat lower than the lodestar fees incurred on the case, which also tends to show that the requested fees are reasonable here. Therefore, the court intends to find that the requested fees are reasonable under the circumstances.

Likewise, the request for $25,000 in costs is reasonable, as counsel states that they incurred $24,229.99 in costs over the course of the litigation, and they anticipate incurring more costs before the case is finished. (Connolly decl., ¶ 28.) Therefore, the court intends to approve the request for $25,000 in costs.

**H. Administration Costs:** The settlement administrator, ILYM Group, Inc. will receive up to $3,250 to cover administration costs. ILYM has provided a declaration from one of its representatives stating that it will charge fees of $3,250 for administration costs. (See decl. of Lisa Mullins.) These costs for administering the settlement appear to be

reasonable. Therefore, plaintiff has shown that the requested amount of administration costs is reasonable here.

**I. Incentive Award to Named Plaintiff:** The settlement also provides that the named plaintiff will receive an incentive award of $2,500. This amount will compensate plaintiff for his work on the case, as well as for the release of his individual claims. Plaintiff has provided his own declaration, in which he discusses the amount of work he has done on the case and the risks that he took in agreeing to be the named plaintiff. (Reyes decl., ¶¶ 5-9.) His declaration does support the requested incentive payment. Therefore, the court intends to find that the incentive payment is fair and reasonable.

**4. Conclusion:** The court intends to grant the motion to approve the PAGA settlement.

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 6/11/2025.**
(Judge's initials) (Date)

(47) **Tentative Ruling**

Re: ***Wells Fargo Bank. National Association vs. Renee S. Miranda, Donald Miranda Trucking, Inc., and Donald E. Miranda***
Superior Court Case No. 24CECG01343

Hearing Date: June 25, 2025 (Dept. 503)

Motion: By Defendant to Compel Responses to Form Interrogatories, Special Interrogatories and Request for Production of Documents

**If oral argument is timely requested, it will be entertained on Wednesday, July 23, 2025, at 3:30 p.m. in Department 503.**

**Tentative Ruling:**

Motion is moot, except to grant reasonable sanctions in the sum of $720 against plaintiff in favor of defendant, to be paid to defendant's counsel within 30 days of service of the minute order by the clerk.

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 6/20/2025 .**
(Judge's initials) (Date)

(36)

**Tentative Ruling**

Re: ***Taylor, et al. v. Lepe***
Superior Court Case No. 23CECG03734

Hearing Date: June 25, 2025 (Dept. 503)

Motion: by Plaintiffs for Reconsideration

**If oral argument is timely requested, it will be entertained on Wednesday, July 23, 2025, at 3:30 p.m. in Department 503.**

**Tentative Ruling:**

To deny. (Code Civ. Proc., § 1008.)

**Explanation:**

Plaintiffs seek reconsideration of the court's order granting its own motion for judgment on the pleadings, entered on April 1, 2025. A reconsideration motion is governed under Code of Civil Procedure section 1008, which provides in material part:

> When an application for an order has been made to a judge, or to a court, and ... granted ... any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon *new or different facts, circumstances, or law*, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.

(Code Civ. Proc., § 1008, subd. (a), emphasis added.)

"According to the plain language of [Code of Civil Procedure section 1008], a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon 'new or different facts, circumstances or law.' " (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500 ["a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon 'new or different facts, circumstances or law.' "].) This burden has been found to be comparable to that of a party seeking a new trial based on new evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial." (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212-213.) Thus, the party seeking reconsideration based on "new or different facts" must provide a satisfactory explanation for failing to present the information at the first hearing. (*Ibid*.)

Here, there is no attempt at establishing new or different facts or circumstances. Instead, plaintiffs argue that they did not present certain evidence due to health and surgical complications, and the court's closure on March 31, 2025 in observance of the Cesar Chavez holiday. However, the order for granting judgment on the pleadings was premised on plaintiffs' failure to *allege* facts sufficient to state a cause of action it the operative complaint, and therefore plaintiffs' inability to present certain evidence is irrelevant. Therefore, this motion fails to meet the jurisdictional requirements for reconsideration under Code of Civil Procedure section 1008, and the motion is denied.

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 6/24/2025.**
(Judge's initials) (Date)