

Tentative Rulings for June 7, 2023
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.*

22CECG01294	Toni Carmona v. City of Fresno
22CECG03439	Kishver Amjad v. Hyundai Motor America

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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(03)

Tentative Ruling

Re: **Smith v. Grundfos Pumps Manufacturing Corp.**
Superior Court Case No. 20CECG00674

Hearing Date: June 7, 2023 (Dept. 403)

Motion: Plaintiff's Motion for Final Approval of Class Settlement, and
Motion for Attorney's Fees, Costs and Expenses, and Class
Representative Service Award

Tentative Ruling:

To grant plaintiff's motion for final approval of the class action settlement. To grant plaintiff's motion for attorney's fees, costs and expenses, and a class representative service award.

Explanation:

1. 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." (*Ibid.*)

2. Fairness 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, the court has already granted preliminary approval of the class settlement, as well as certifying the class for the purpose of settlement. Thus, the court has already found that the settlement amount is fair, reasonable, and adequate. The class administrator has now mailed notice of the settlement to the class members, and no class members have objected to or opted out of the settlement. Therefore, the court intends to find that the settlement is fair, reasonable and adequate, and it will grant final approval of the settlement.

3. Attorney's Fees and Costs

Plaintiff's counsel seeks attorney's fees of \$400,000 and costs of \$20,000. The fees are equivalent to 1/3 of the gross settlement amount. Plaintiff's counsel contends that courts routinely approve attorney's fees of 1/3 of the gross settlement fund in class actions, so the court should approve a 1/3 payment here. Counsel has also now provided a declaration setting forth the hours billed on the case and the hourly rates of counsel. (Perez decl., ¶ 21.) While counsel's rates are high compared to Fresno attorneys' rates, they appear to be comparable to other class action attorneys in Southern California. Applying the hourly rates to the number of hours incurred in the case results in a lodestar fee of \$250,910. (*Ibid.*) Awarding \$400,000 in fees would be equivalent to applying a multiplier of 1.59, which appears to be reasonable. Counsel has also provided a declaration summarizing the costs incurred in the case, which appear to be reasonable. (*Id.* at ¶ 25.) Also, no class members have objected to the attorney's fees and costs after being given notice of the proposed settlement, which indicates that the class has no concerns with the amount of fees requested by counsel. Therefore, the court intends to grant final approval of the requested fees and costs.

4. Payment to Class Representative

Plaintiff seeks preliminary approval of a \$10,000 "service award" to the named plaintiff/class representative, Mr. Smith. The court has already made a preliminary finding that the requested service award to Mr. Smith is reasonable under the circumstances. No class members have objected to the service award, so the court intends to grant final approval of the payment to Mr. Smith.

5. Payment to Class Administrator

Plaintiff seeks approval of up to \$11,500 for the settlement administrator's fees. The court has already granted preliminary approval of the settlement administrator's fees, and no class members have objected to the requested fees. Therefore, the court intends grant final approval of the settlement administrator's fees.

6. PAGA Settlement

Plaintiff proposes to allocate \$80,000 of the settlement to the PAGA claims, with \$60,000 being paid to the LWDA as required by law and the other \$20,000 being paid out to the class members. Plaintiff's counsel has also sent notice of the settlement to the

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.

Issued By: JS on 6/6/2023
(Judge's initials) (Date)