Tentative Rulings for July 23, 2026
Department 501

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.*

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

24CECG00136 ***Isaac Munoz v. CVT, LLC* is continued to Thursday, September 3, 2026, at 3:30 p.m. in Department 501.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(41)

<u>Tentative Ruling</u>

Re:	***Angela Fullilove v. Lisa Ann Golik M.D.*** Superior Court Case No. 23CECG04115
Hearing Date:	July 23, 2026 (Dept. 501)
Motion:	For Summary Judgment by Defendant Saint Agnes Medical Center

Tentative Ruling:

To grant the motion for summary judgment. Defendant Saint Agnes Medical Center is directed to submit to this court, within five days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

Plaintiff, Angela M. Fullilove (Plaintiff or Ms. Fullilove), sued two medical providers, defendants Saint Agnes Medical Center (SAMC) and Lisa Ann Golik, M.D. (Dr. Golik). Plaintiff alleges a single cause of action for general negligence based on medical malpractice against the defendants in connection with the care and treatment provided to Plaintiff on July 5, 2022.

<u>Grounds for Summary Judgment</u>

On a motion for summary judgment, a defendant as the moving party bears the initial burden of proof to show that a plaintiff cannot establish one or more elements of the challenged cause of action or to show that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Only after the moving party has carried this burden of proof does the burden of proof shift to the other party to show that a triable issue of one or more material facts exists—and this must be shown by specific facts and not mere allegations. (*Ibid.*)

In a medical malpractice case, expert testimony is required unless the challenged conduct is within the common knowledge of laymen. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

> California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence. [Citations.]

(*Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984-985, internal quotation marks omitted.)

SAMC Carries Its Initial Burden

To support its motion, SAMC submits the expert declaration of Davina Leary, R.N. (Ms. Leary). In her declarations, Ms. Leary states she has reviewed Plaintiff's complaint filed on October 3, 2023, and Plaintiff's SAMC medical records. SAMC submits 23 volumes of evidence, consisting primarily of Plaintiff's medical records, which exceed 2700 pages.

In paragraph 7 of her declaration, Ms. Leary summarizes the pertinent factual chronology regarding Plaintiff's care and treatment at SAMC as follows:

> (a) On July 5, 2022, at or around 13 :37, Ms. Fullilove, a 48-year-old female, underwent a Hysteroscopy Dilation and Curettage performed by [Dr. Golik] at SAMC.
>
> (b) Prior to the procedure, SAMC nursing staff performed a preoperative evaluation and tested Ms. Fullilove for COVID.
>
> (c) Anesthesia records indicated that Ms. Fullilove remained stable throughout the procedure.
>
> (d) Ms. Fullilove tolerated the procedure well and was returned to recovery in stable condition.
>
> (e) In the recovery room, Ms. Fullilove reported suffering from cramping with a pain level of eight out of ten. However, she responded well to medication and her pain level dropped to a four out of ten by the time she was discharged.
>
> (t) At all times in the recovery room, Ms. Fullilove's vitals remained stable and stayed within 20% of her pre-operative report.
>
> (g) Prior to discharge, Ms. Fullilove's was able to take fluids, was oriented, was able to follow 3 step commands, and had a steady gait while ambulating.
>
> (e) Prior to discharge, Ms. Fullilove's temperature was 98.8 degrees and her vital signs were stable.
>
> (t) On July 5, 2022, at or around 15:15, Ms. Fullilove was discharged from SAMC in a wheelchair.

(Leary decl., ¶ 7 [stmt. of evid., tab 3 (part 23)].)

Based on her review of the medical records as summarized above, Ms. Leary opines that SAMC's nursing, non-physician and non-midlevel staff met the applicable standard of care in providing care and treatment to Plaintiff, and specifically opines:

> 9. The scope of practice for nursing, non-physician and non-midlevel staff does not include performing surgeries, including but not limited to, hysteroscopy surgeries.
>
> 10. SAMC's nursing, non-physician and non-midlevel staff appropriately performed a preoperative evaluation of Ms. Fullilove.
>
> 11. During her recovery, SAMC's nursing, non-physician and non-midlevel staff properly monitored and assessed Ms. Fullilove.
>
> 12. While in the recovery room, there was no indication that Ms. Fullilove was suffering from any complication.
>
> 13. Plaintiff met all criteria for discharge and was timely and appropriately discharged.

(Leary decl., ¶¶9-13.)

The evidence presented by SAMC is sufficient to negate Plaintiff's claims against it. Based on this showing, SAMC has shown that Plaintiff cannot establish an essential element of the claim for medical negligence—breach of duty. The burden then shifts to Plaintiff to show the existence of a triable issue of material fact.

<u>Plaintiff Fails to Meet Her Burden</u>

SAMC asks the court to refuse to consider Plaintiff's opposition, which she filed six days late. Resolving all doubts in favor of Plaintiff as the party opposing the summary judgment motion, the court exercises its discretion to consider Plaintiff's late-filed opposition.

As noted above, after considering SAMC's moving papers, the court has determined SAMC meets its initial burden, based on the expert declaration of Ms. Leary, which sets forth a reasoned, detailed, and record-based explanation to show why SAMC's nursing, non-physician, and non-midlevel staff acted within the applicable standard of care. The burden then shifts to Plaintiff to raise a triable issue of material fact.

As SAMC points out in its reply, Plaintiff fails to produce any expert evidence to establish a triable issue of fact on her claims of medical negligence based on the care rendered by SAMC's nursing, non-physician and non-midlevel staff. Plaintiff does not dispute that Ms. Leary possesses the education, training, and experience described in her declaration and is qualified to offer expert opinions. (Fact No. 12.) But Plaintiff offers no expert testimony to rebut Ms. Leary's expert testimony that the care and treatment rendered to Plaintiff by SAMC's nursing, non-physician and non-midlevel staff met the applicable standard of care in providing care and treatment to Plaintiff.

Instead, Plaintiff argues that Ms. Leary's declaration fails to satisfy SAMC's initial burden because she states ultimate conclusions and fails to explain the clinical reasoning. Plaintiff relies on a single case for the proposition that "an opinion unsupported by reasons or explanations does not establish the absence of a material fact issue for trial, as required for summary judgment." (*Kelley v. Trunk* (1998) 66 Cal.App.4th 519, 524, (*Kelley*).) In *Kelley*, the appellate court reversed the trial's court grant of summary judgment for three reasons: (1) the one-and-a-half-page declaration of the defendant physician's expert was inadmissible because it did not disclose the matter relied on in forming the opinion (although this deficiency was waived by the plaintiff's failure to object); (2) the opinion was unsupported by explanations because the expert discussed none of the crucial issues in the case; and (3) the plaintiff presented an opposing expert declaration giving rise to a triable issue of material fact. (*Ibid.*)

Here, Plaintiff herself describes the defendants' failures in her complaint as follows:

> Specifically, Defendants failed to render medical care by the standard of care in their intra-operative surgical techniques and care, pre-operative assessment, and post-operative care. After the July 5, 2023 procedure, Defendants discharged Ms. Fullilove with massive internal injuries[.]

(Comp., p. 4 ¶ GN-1(3).)

Ms. Leary's declaration identifies the voluminous SAMC medical records she reviewed. She opines that the scope of practice for SAMC's non-physician-staff does not include performing surgeries, and the care rendered by the staff pre-operative, post-operative, and through discharge met the appropriate standard of care. In its reply, SAMC explains why Ms. Leary's declaration refutes the premise that her declaration fails to explain the clinical reasoning as follows:

> Ms. Leary describes her education, training, and decades of nursing experience, attached her curriculum vitae, identified the materials she review[ed], cites the pertinent clinical facts, and then gives a reasoned explanation of why SAMC's nursing staff, non-physician staff, and non-midlevel staff met the applicable standard of care including: The scope of practice for nursing, non-physician, and non-midlevel staff does not include performing surgeries, including but not limited to, hysteroscopy surgeries; SAMC's nursing, non-physician, and non-midlevel staff appropriately performed a preoperative evaluation of Ms. Fullilove; During her recovery, SAMC's nursing, non-physician, and non-midlevel staff properly monitored and assessed Ms. Fullilove; While in the recovery room, there was no indication that Ms. Fullilove was suffering from any complications; and Plaintiff met all criteria for discharge and was timely and appropriately discharged.

(Rpy., p. 3:3-12.) In sum, Plaintiff fails to meet her burden to show that a triable issue of material fact exists as to her single cause of action for medical negligence against SAMC based on the actions of its non-physician staff.

<u>Request for Judicial Notice</u>

The court grants SAMC's request for judicial notice of the complaint filed on October 3, 2023, and SAMC's answer to the complaint filed on May 7, 2025.

Conclusion

The court finds SAMC meets its initial burden to show Plaintiff cannot prove an essential element of medical malpractice. The burden then shifts to Plaintiff to raise a triable issue of material fact, which she fails to do. Therefore, the court grants SAMC's motion for summary judgment.

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: KCK on 07/21/26 .
(Judge's initials) (Date)

(49)

<u>Tentative Ruling</u>

Re: ***Khachatryan v. Volkswagen Group of America, Inc. et al.***
Superior Court Case No. 25CECG01565

Hearing Date: July 23, 2026 (Dept. 501)

Motion: By Plaintiff Syuzanna Arseni Khachatryan for Attorneys' Fees

Tentative Ruling:

To grant plaintiffs' motion for attorney's fees, in the amount of $12,141.25. Payment shall be made by defendant Volkswagen Group of America, Inc. to Quill & Arrow, LLP within 30 days of the clerk's service of this minute order.

Explanation:

Plaintiff Syuzanna Arseni Khachatryan's ("Plaintiff") seeks attorneys' fees in the amount of $19,095.25 which consists of $13,613 in lodestar fees, a 1.25 multiplier enhancement on the attorneys' fees, and an additional $2,079 for time spent on the reply and anticipated time for the hearing. Defendants Volkswagen Group of America, Inc. and CLVW LLC dba Volkswagen of Clovis ("Defendants") oppose the amount requested in the motion.

Right to Recover Attorneys' Fees

An award of attorney fees is proper when authorized by contract, statute, or law. (Code Civ. Proc. §§ 1032, subd. (b),1033.5, subd. (a)(10).) Here, the Song-Beverly Act authorizes a buyer "to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (Civ. Code, § 1794, subd. (d).) Neither side contests Plaintiff's right to attorneys' fees. Therefore, the only issue is the amount of fees Plaintiff should receive.

Calculating Fees

A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. . . ." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method '"is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.'" (*Serrano III*, *supra*, 20 Cal.3d at p. 48, fn. 23.)

While the fee awards should be fully compensatory, the trial court's role is not to simply rubber stamp the request. (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133; *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 361.) Rather, the court must ascertain whether the amount sought is reasonable. (*Robertson v. Rodriguez*, *supra*, 36 Cal.App.4th at p. 361.) However, while an attorney fee award should ordinarily include compensation for all hours reasonably spent, inefficient or duplicative efforts will not be compensated. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321.) The constitutional requirement of just compensation, "cannot be interpreted as giving the [prevailing party] carte blanche authority to 'run up the bill.' " (*Aetna Life & Casualty Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 865, 880.) The person seeking an award of attorney's fees "is not necessarily entitled to compensation for the value of attorney services according to [his] own notion or to the full extent claimed by [him]. [Citations.]" (*Salton Bay Marina, Inc. v. Imperial Irrigation Dist*. (1985) 172 Cal.App.3d 914, 950.)

The basis for the trial court's calculation must be the actual hours counsel has devoted to the case, less those that result from inefficient or duplicative use of time. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 395, citing *Ketchum v. Moses*, supra, 24 Cal.4th at p. 1133.)

Number of Hours Billed

A review of each billing entry shows that most of the time billed by the attorney timekeepers is not excessive. Counsel billed only 31.5 hours for about eight months of work on the case. The amounts of time spent on most of the tasks is also reasonable. Plaintiff is entitled to recover their fees for the time actually and reasonably incurred in prosecuting the action. (Civil Code, § 1794, subd. (d).)

The attached time records show that most of the billing entries are reasonable. (Jacobson Decl., Exh. 26.) However, plaintiffs' counsel claims to have spent a total of 7.2 hours of attorney time to draft and edit the motion for attorney's fees billed at $495 per hour. (*Ibid*.) However, since Plaintiff's counsel uses templates for their pleadings and motions, including their motions for attorney's fees, it should not have taken 7.2 hours to draft the motion for fees here. The court will only allow plaintiffs to recover four hours to draft the fees motion.

Also, Plaintiff originally requested an additional $4,000 in anticipatory fees to respond to Defendants' opposition and to attend the hearing. Defendants challenged the amount. Plaintiff's reply included the actual time to complete the reply at 2.2 hours. Plaintiff is additionally requesting 2 hours of time needed to attend and prepare for the hearing. The court will grant the 2.2 hours needed by Plaintiff to prepare the reply and declaration. The court will not grant anticipatory hours for a hearing that might not occur. If a hearing does occur, the court will augment its ruling.

Reasonable Hourly Compensation

Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type" (*Ketchum v. Moses, supra*, 24 Cal.4th at p. 1133.) Ordinarily, '"the value of an attorney's time . . . is reflected in his normal billing rate."' (*Mandel v. Lackner* (1979) 92 Cal. App. 3d 747, 761.)

The "experienced trial judge is the best judge of the value of professional services rendered in his court." (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 832.) Based on a consideration of various factors, the trial court may rely on its own expertise and knowledge to calculate reasonable attorney fees. (*Niederer v. Ferreira* (1987) 189 Cal. App. 3d 1485, 1507.) "When the trial court is informed of the extent and nature of the services rendered, it may rely on its own experience and knowledge in determining their reasonable value." (*In re Marriage of Cueva* (1978) 86 Cal. App. 3d 290, 300.) The court is not limited to the affidavits submitted by the attorney. (*Melnyk v. Robledo* (1976) 64 Cal. App. 3d 618, 625.)

Here, plaintiffs' counsel seeks hourly rates of $375 to $595. Some of these rates are high for Fresno and will be reduced.

"[I]n the 'unusual circumstance' that local counsel is unavailable," a trial court may award an out-of-town counsel's higher rates. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 399.) In such rare cases, the justification for awarding the higher rate is that out-of-town rates are needed "to attract attorneys who are sufficient to the cause." (*Ibid*.) At a minimum, therefore, the party seeking out-of-town rates is required to make a "sufficient showing ... that hiring local counsel was impracticable," and the exception is accordingly inapplicable where "no effort was made to retain local counsel." (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244.)

Here, plaintiffs have not provided a declaration stating what efforts they made to retain local counsel, or that they were unable to find a local attorney with experience in lemon law to represent them, such that they had to resort to hiring an out-of-town law firm that charges higher rates. In fact, they have not provided any evidence at all on the issue of whether they attempted to retain local counsel before hiring a Los Angeles firm. This is unlike the situation in *Horsford*, where plaintiff presented declarations from multiple attorneys with whom plaintiff had spoken and who declined to represent him. (*Horsford*, *supra*, at pp. 398-399.) Accordingly, the court should award fees based on local rates.

The court finds that the reasonable value of the services of Kevin Jacobson, an attorney admitted to the California Bar in 2018 who possesses substantial experience litigating lemon law matters and who is the managing partner of Quill & Arrow, is $525 per hour.

The court finds that the reasonable value of the services of Derek Chipman, who was admitted to the California Bar in 2018 and who has substantial experience in lemon law, is $400 per hour.

The court finds that the reasonable value of the services of Stephen Basinger, who was admitted to the California Bar in 2013 and who has substantial experience in lemon law, is $525 per hour.

The court finds that the reasonable value of the services of Siyun Yang, who was admitted to the California Bar in 2020 and who has substantial experience in lemon law, is $350 per hour.

The court finds that the reasonable value of the services of Donald Mahnke, who was admitted to the California Bar in 2020 and who has substantial experience in lemon law, is $350 per hour.

Finally, the court finds that a reasonable value for the services of Joshua Kohanoff, who was admitted to the California Bar in 2022 and who has substantial experience in consumer law, is $350 per hour.

Based on 28.3 hours of work done on the case up to the filing of the fees motion, the court sets the lodestar fees at $10,157.5.

Plaintiff additionally spent 2.2 hours drafting the reply and declaration attached to the reply for an additional $880.

Thus, total lodestar fees including the cost of the reply are $11,037.50.

Multiplier

Plaintiffs seek a multiplier of 1.25 to apply to the lodestar. A multiplier enhancement to the lodestar "is primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases as a class." (*Ketchum*, *supra*, 24 Cal.4th at p. 1138.) A multiplier may also be applied where the attorney has shown extraordinary skill, resulting in exceptional results. (*Ibid*.; *Graham*, *supra*, 34 Cal.4th at p. 582.) Courts have substantial discretion to select the factors they deem relevant to their multiplier analysis. (*Lealao v. Beneficial California, Inc*. (2000) 82 Cal.App.4th 19, 40–41.) The factors include: (1) the novelty and difficulty of the questions involved and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; and (3) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the award. (*Robertson v. Fleetwood Travel Trailers of California, Inc*. (2006) 144 Cal.App.4th 785, 819.)

Novelty and Complexity of the Issues

In *Blum v. Stenson* (1984) 465 U.S. 886, the Supreme Court discussed what might be a basis for an upward adjustment to the lodestar. (*Blum*, *supra*, 465 U.S. at p. 886.) The Court noted that certain suggested bases for an upward adjustment were not warranted because they were already reflected in the lodestar. (*Id*. at p. 898.) Specifically, "[t]he novelty and complexity of the issues presumably were fully reflected in the number of billable hours recorded by counsel and thus do not warrant an upward adjustment in a fee based on the number of billable hours times reasonable hourly rates." (*Ibid.*) This was a lemon law case of ordinary complexity. Counsel was appropriately compensated through their time.

The Skill Displayed

In general, "special skill and experience of counsel should be reflected in the reasonableness of the hourly rates." (*Blum*, *supra*, 465 U.S. at p. 889.) As our Supreme Court has observed, "[t]he factor of extraordinary skill, in particular, appears susceptible to improper double counting; … a more skillful and experienced attorney will command a higher hourly rate. (*Ketchum*, *supra*, 24 Cal.4th at p. 1138-1139.) "Thus, a trial court should award a multiplier for exceptional representation only when the quality of representation far exceeds the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation. Otherwise, the fee award will result in unfair double counting and be unreasonable." (*Id*. at p. 1139.)

Here, the Court has read all of the pleadings filed in this case. The skill displayed by Plaintiff was expected, not extraordinary. Counsel's hourly rates are adequate compensation.

The Contingent Nature of the Case

This is the most important factor in awarding a multiplier. Our Supreme Court has explained: "[The multiplier] for contingent risk [brings] the financial incentives for attorneys enforcing important constitutional rights . . . into line with incentives they have to undertake claims for which they are paid on a fee-for-services basis." (*Ketchum*, *supra*, 24 Cal.4th at p. 1138.) The court further noted that applying a fee enhancement does not inevitably result in a windfall to attorneys: "Under our precedents, the unadorned lodestar reflects the general local hourly rate for a fee-bearing case; it does not include any compensation for contingent risk … The adjustment to the lodestar figure, *e.g*., to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees." (*Ibid*; see also *Horsford v. Board of Trustees*, *supra*, 132 Cal. App. 4th at pp. 399-400.) This factor weighs in favor of a multiplier.

Results Obtained

Plaintiff's counsel obtained a good but not excellent result. This factor weighs against a multiplier.

Preclusion of Other Work

Plaintiff's counsel is a firm with many attorneys that handles a large amount of Song-Beverly Warranty cases. Counsel was able to take other work while still handling this case. This factor weighs against a multiplier.

Considering all of the lodestar factors, the court will impose a multiplier in favor of plaintiff, in the amount of 1.1, which compensates counsel for the risk of taking the case on a contingent fee basis, the need to advance costs, and the delay in payment, but also takes into account the fact that the case was a fairly routine lemon law action.

This 1.1 multiplier results in an additional $1,103.75 in fees. [Multiplier of .1 * $11,037.50 (lodestar) = $1,103.75.]

Total Attorney's Fees Awarded

The lodestar of $11,037.50 and the multiplier enhancement of $1,103.75, bring the total attorney's fee award to $12,141.25.

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: KCK on 07/22/26 .
(Judge's initials) (Date)

(37)

<u>Tentative Ruling</u>

Re: ***Flores Amado v. Odyssey Agricultural Development LLC***
Superior Court Case No. 24CECG00055

Hearing Date: July 23, 2026 (Dept. 501)

Motion: By Plaintiffs for Preliminary Approval of Class Settlement

Tentative Ruling:

To deny, without prejudice.

Explanation:

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 proposed class members are 40 to 60 non-exempt employees who worked at defendants' Mendota farm during April, May, June, and July of 2023 in the crew of agricultural workers recruited by a Carlos Lopez. Based on this, it does appear that the numerosity criteria is met. While ascertainability may prove more challenging, plaintiffs have clarified to the court that community organizer Fritz Conle has maintained contact with a group of more than 40 workers who would make up the class. As such, the court is satisfied that the ascertainability criteria is sufficiently met.

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, failed to provide compliant meal and rest periods and accurate wage statements, failed to pay timely wages upon termination, and violation of Unfair Competition Laws. The motion is supported by a declaration from counsel and plaintiffs.

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. (Mallison Decl., ¶¶ 3-5.) Therefore, it does appear that class counsel has shown that the firm is adequate to represent the interests of the class.

The community of interest element is satisfied.

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 declarations. The declaration states that counsel reviewed the records. (Mallison Decl., ¶ 22; Bolce Decl., ¶ 2.) However, it is also noted that defendants do not have comprehensive records. (Bolce Decl., ¶ 7.) Plaintiffs provide that there are likely 40 to 60 class members. There is no discussion of the average hours worked or hourly wages of the class members and limited discussion of the evidence supporting any figures used by the parties to arrive at the settlement before the court. Plaintiffs' counsel acknowledges reliance on information gleaned by the community organizer, who met with workers. (Bolce Decl., ¶ 7.)

Plaintiffs' counsel seeks a fee award based on 40% 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, counsel has provided a "lodestar summary report" with 15 individuals listed, hourly rates ranging between $277 and $1,227, and the number of hours worked by each individual. The court has insufficient information about each individual, what their role was in this litigation, or the experience justifying their hourly rates. As such, the court cannot assess whether the requested attorney's fees are fair and appropriate.

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 higher than the court would typically award. However, plaintiffs have each provided their declarations and have demonstrated the risks taken in becoming involved as representatives as well as their contributions toward resolving this matter.

The parties agreed to use CPT Group as settlement administrator. The motion represents that the cost of administration will not exceed $10,000. A declaration from a representative at CPT Group was not included. However, counsel has attached a bid to administer the settlement for $5,000, with a breakdown of the estimated administrative costs. (Bolce Decl., Exh. 1.)

Impermissible Opt-In

The court previously indicated a concern regarding the plan to utilize class membership verification declarations to determine who will be in the class. Plaintiffs were provided an opportunity to file supplemental briefing addressing the court's concern that membership verification declarations amounted to an impermissible opt-in to the settlement.

Plaintiffs argue that these verifications do not amount to an impermissible opt-in. They assert that the verification process will confirm whether an individual is part of the class and whether the individual elects to participate in the settlement. Plaintiffs acknowledge that the declarations appear similar to an opt-in structure which is disfavored under the Federal Rules of Civil Procedure Rule 23, but assert that this rule does not govern here. Plaintiffs do not cite to any legal authority for this position.

It is settled law "that under Rule 23, prior to the determination of liability, members of a plaintiff class may not be advised that unless they affirmatively request inclusion in class or *perform some other act they will be excluded*." (*Hypertouch, Inc. v. Superior Court* (2005) 128 Cal.App.4th 1527, 1546, emphasis added.) Requiring individuals to affirm their participation in the class will likely reduce the class size, acting as a bar to otherwise appropriate class members, and can open defendants to the possibility of repeated litigation. (*Id*. at p. 1542.)

The court does not find plaintiffs' arguments persuasive. The proposed declarations are designed to affirm participation in the class, which is impermissible. (*Id*. at p. 1546.) Additionally, it appears that this issue may be resolved by addressing the appropriate means for providing notice to potential class members or by recognizing that here, instead of defendants providing a list of employees, the list may come from the another source. The court will not be ordering potential class members to sign membership verification declarations as these amount to an impermissible opt-in to the class 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: KCK on 07/22/26 .
(Judge's initials) (Date)