Tentative Rulings for August 26, 2025
Department 502

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.***

24CECG02986 ***Hernandez v. Singh***

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

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(37)

Tentative Ruling

Re: ***Mark Meier v. Larry Davis***
Superior Court Case No. 25CECG02055

Hearing Date: August 26, 2025 (Dept. 502)

Motion: Defendant Air-O-Fan Products Corp.'s Demurrer and Motion for Bond

Tentative Ruling:

To continue to Tuesday, September 16, 2025 at 3:30 p.m. in Department 502, in order to allow Defendant to file a supplemental declaration regarding the meet and confer efforts. If this resolves the issues, Defendant shall call the court to take the demurrer off calendar. If it does not resolve the issues, counsel for Defendant shall file a declaration on or before September 5, 2025, stating, with detail, the efforts made. The declaration shall be by the individual who made the efforts.

The motion for bond is also continued to Tuesday, September 16, 2025 at 3:30 p.m. in Department 502.

Explanation:

Code of Civil Procedure section 430.41 makes it clear that meet and confer must be conducted "in person or by telephone." (*Id.*, subd. (a).) The moving party is not excused from this requirement unless they show that the plaintiff failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (*Id.*, subd. (a)(3)(B).) Here, counsel's declaration regarding telephonic meet and confer efforts are based off of information and belief of another counsel's efforts. A declaration should be filed by the person who engaged in the telephonic meet and confer efforts. The matter is continued so that the appropriate counsel can provide a declaration regarding the telephonic meet and confer efforts.

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 08/25/26.
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Perez v. Fresno Postacute Care, LLC***
Superior Court Case No. 22CECG02916

Hearing Date: August 26, 2025 (Dept. 502)

Motion: PAGA Settlement Approval

Tentative Ruling:

To grant, with the exception of the $7,500 allocation to plaintiff. Within five days plaintiff's counsel shall submit to the court a revised proposed order and judgment consistent with this order.

Explanation:

"PAGA settlements are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549, citing Labor Code section 2699(l)(2) ["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."])

The trial court is to "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." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 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." (*Ibid*.)

1. Notice to LWDA

The moving party has given notice of the settlement to the LWDA, so it may address the court regarding it, if it so chooses. (Lab. Code, § 2966, subd. (l)(2).)

2. Fairness of the settlement amount

a. Strength of the Case

In this third attempt, plaintiff's counsel has provided an adequate valuation of the various claims set forth in the Complaint. Counsel details the discovery and documentation obtained from defendant that enabled counsel to adequately assess the value of the various claims for penalties. Counsel has valued the penalty claims at $66,447.80, after discounting for risks associated with defendant's arbitration agreements and demonstrating manageability, the risks associated with succeeding on the merits and establishing liability, and the risks associated with the court exercising its discretion to

reduce and/or assess lower penalties and obtaining a recovery (See Supp. Zabehi Decl., 9.) Alternative valuations are $78,098 (per capita basis) and $87,585 (unstacked basis.) (Supp. Zabehi Decl., ¶¶ 10, 11.)

In light of the valuation provided, the court finds that the strength of the case supports approval of the settlement.

a. Stage of the Proceeding

A presumption of fairness exists where the settlements 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 parties scheduled meditation but ended up canceling it, and settling the case after conducting ample discovery. This factor does favor approval of the settlement.

c. *Risks of Litigating Case Through Trial*

The risks of litigating the case through trial favors approval, as explained in counsel's declaration. (See Supp. Zabehi Decl., ¶ 9.)

d. *Amount of Settlement*

The gross settlement is $141,128.63. In light of the discounted value of the various claims for penalties, this settlement is fair and reasonable.

e. *Experience and Views of Counsel*

Plaintiff's counsel are highly experienced in class and representative litigation.

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

The settlement agreement provides that plaintiff's counsel would receive up to $49,395.02 (35% of the total gross settlement) in attorney's fees, plus $5,269.58 in costs.

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. (*Id.* at pp. 504-506.)

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* (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.)

After claiming billing rates ranging from $525 to $1,495, counsel requests a blended rate of $850 per hour. The purported billing rates are ridiculously high, apparently having been made up for the purpose of justifying the fee award. The court would be more inclined to approve a $600 per hour blended rate, as opposed to the $850 requested.

The court requested that counsel provide the court with contemporaneous billing records. These have not been provided. Apparently they do not exist, calling into question how the time spent on the case was tracked. However, even if the court were to significantly reduce the recoverable attorney hours, at a $600 per hour blended rate, the lodestar still likely would exceed the $49,395.02 sought. Accordingly, the court intends to approve the fee award as set forth in the settlement agreement.

i. *Scope of the release*

> … PAGA's statutory scheme and the principles of preclusion allow, or "authorize," a PAGA plaintiff to bind the state to a judgment through litigation that could extinguish PAGA claims that were not specifically listed in the PAGA notice where those claims involve the same primary right litigated. Because a PAGA plaintiff is authorized to settle a PAGA representative action with court approval (§ 2699, (*l*)(2)), it logically follows that he or she is authorized to bind the state to a settlement releasing claims commensurate with those that would be barred by res judicata in a subsequent suit had the settling suit been litigated to judgment by the state.

(*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 83.)

"The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." (Lab. Code, § 2699.3, subd. (a)(1)(A).) The release is appropriately limited to the claims and Labor Code section specified in the notice to the LWDA.

j. *Incentive Payment*

The settlement allocates $7,500 to plaintiff for executing an individual release (including Civ. Code, § 1542 waiver), though the Complaint asserts no individual causes of action, and also as an incentive award. None of the cases cited by plaintiff authorize incentive payments to plaintiffs in PAGA actions. (See MPA p. 31.) The court pointed this out multiple times previously, but counsel still cites to no supportive appellate authority. This will not be approved. The $7,500 shall be added back into the net 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 08/25/26 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Alexander Sherriffs, Jr. v. Chrissy Burkett-Johnson, et al.***
Superior Court Case No. 24CECG04695

Hearing Date: August 26, 2025 (Dept. 502)

Motion: (1) by Plaintiffs for Interlocutory Judgment
(2) by Defendant Chrissy Burkett-Johnson to Set Aside Default

Tentative Ruling:

To grant Plaintiffs' motion for entry of interlocutory judgment and sign the proposed judgment filed August 11, 2025.

To deny Defendants Chrissy Burkett-Johnson and John T. Johnson's motion to vacate default judgment.

Explanation:

Interlocutory Judgment

Plaintiff trustees are seeking interlocutory judgment of their cause of action for quiet title against defaulted defendants Chrissy Burkett-Johnson and John Johnson ("Johnson Defendants"). Plaintiffs' cause of action alleges plaintiffs are the sole owners of the Farm Parcel at APN 345-110-39 and seeks to quiet claims to the title of all defendants arising from the grant deed and deed of trust recorded against the Homesite Parcel at APN 345-110-38 and incorrectly including the legal description of both parcels.

As evidence to support the request for default judgment against the Johnson Defendants plaintiffs include the escrow instructions, May 2, 2022 grant deed and deed of trust recorded following the sale of the Farm Parcel, APN 345-110-38 to the Johnson Defendants. (Wagnon Decl., Exh. A, B, C.) These documents reflect the Johnsons' owning the Homesite Parcel. Plaintiffs have additionally filed a supplemental declaration of Patrick J. Gorman including grant deed demonstrating the ownership interest in the Farm Parcel vested in the trustees of the Sullivan Reynolds From trust dated December 22, 1999 and the Sherriffs-Rubinstein Family Trust dated September 14, 2004. (Suppl. Gorman Decl., ¶¶3-4, Exh. A-D.) Plaintiffs' have provided evidence of their superior ownership interests in the Farm Parcel to support a judgment quieting title of defendants Chrissy L. Burkett-Johnson and John T. Johnson with respect to the Farm Parcel.

Accordingly, the court intends to grant the motion for interlocutory judgment and sign the proposed interlocutory judgment filed August 11, 2025.

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Motion to Vacate Default

Defendant Chrissy L. Burkett-Johnson moves for an order vacating the default entered against herself and John T. Johnson on January 8, 2025.[1] She asserts her failure to respond to the complaint was the result of excusable neglect following the illness and death of a family member in December 2024. Defendant filed the motion at bench on July 22, 2025, over six months after the default was entered.

Under section 473(b), "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Code Civ. Proc., § 473, subd. (b).) Relief pursuant to section 473, subdivision (b) is mandatory where the entry of default or dismissal was solely caused by the attorney, i.e., the party did not contribute to the dismissal in any way. (See *Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1248; *Todd v. Thrifty Corp*. (1995) 34 Cal.App.4th 986, 991.) Relief must be granted even where the default resulted from inexcusable neglect by defendant's attorney. (*Standard Microsystems Corp. v. Winbond Electronics Corp.* (2009) 179 Cal.App.4th 868, 897.) "Public policy dictates that disposition on the merits be favored over judicial efficiency." (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 392.) Whether relief is sought pursuant to the court's discretion or under the mandatory relief provision of section 473(b), the application shall be made no more than six months after the judgment, dismissal, order or proceeding was taken.

This motion comes over six months after the default at issue was entered. The statute states that an application for relief must be made "no more than six months after entry of judgment." (Code Civ. Proc. § 473, subd. (b).) "The six-month limit is mandatory; a court has no authority to grant relief under section 473, subdivision (b), unless an application is made within the six-month period." (*Arambula v. Union Carbide Corp.* (2005) 128 Cal.App.4th 333, 340.) As such, the court lacks jurisdiction to grant it pursuant to Code of Civil Procedure section 473, subdivision (b).

Where relief is sought more than six months after the entry of default, the motion is directed to the court's inherent equitable power to set aside a judgment on the ground of extrinsic fraud or mistake. (*Olivera v. Grace* (1942) 19 Cal.2d 570, 576-578; *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1300; *Bae v. T.D. Service Co.* (2016) 245 Cal.App.4th 89, 97.) The terms "extrinsic fraud or mistake" are given a broad interpretation and cover almost any circumstance by which a party has been deprived of a fair hearing. There need be no actual fraud or mistake in the strict sense. (*Marriage of Park* (1980) 27 Cal.3d 337, 342; *Sporn v. Home Depot USA, Inc.*, *supra,* 126 Cal.App.4th at p. 1300 [requires evidence "that the papers were lost, stolen, forwarded to the wrong person or eaten by the dog"]; *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1233.)

With regard to extrinsic mistake in particular, the term is broadly applied to cover situations in which circumstances extrinsic to the litigation have cost a party a hearing on the merits. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.) These are usually cases

[1] The moving papers additionally request the default also be set aside as entered against defendant John T. Johnson. However, the moving party is not an attorney and cannot represent Mr. Johnson.

of excusable neglect by defendant or defendant's attorney in failing to appear and present a defense: "If such neglect results in an unjust judgment, without a fair adversary hearing, the basis for equitable relief is present, and is often called 'extrinsic mistake.'" (*Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 471; *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 47.) Relief will be denied, however, if the complaining party's negligence permitted the mistake to occur. (*Kulchar v. Kulchar, supra*, 1 Cal.3d at p. 473; *Manson, Iver & York v. Black*, *supra,* 176 Cal.App.4th at p. 47; see also Wilson v. Wilson (1942) 55 Cal.App.2d 421.)

Nevertheless, there are three essential requirements to obtain relief. The party seeking relief must show: (1) a meritorious case; (2) a satisfactory excuse for not presenting a defense to the original action; and (3) diligence in seeking to set aside the default once it was discovered. (*Rappleyea v. Campbell, supra,* 8 Cal.4th at p. 982; *Sporn v. Home Depot USA, Inc.*, *supra,* 126 Cal.App.4th at p. 1301.) This rule applies equally where the motion is to vacate an order of dismissal. (*Aldrich v. San Fernando Valley Lumber Co*. (1985) 170 Cal.App.3d 725, 738.)

The requirement of diligence is "inextricably intertwined with prejudice" to the plaintiff. (*Rappleyea v. Campbell*, *supra,* 8 Cal.4th at pp. 983-984; *Lee v. An* (2008) 168 Cal.App.4th 558, 566 [relief denied where defendant waited more than 2 years after discovering default judgment to seek relief].) It goes without saying then, that beyond the six month period in which relief can be obtained under Code of Civil Procedure section 473, subdivision (b), "there is a strong public policy in favor of the finality of judgments and only in exceptional cases should relief be granted." (*Rappleyea v. Campbell*, *supra,* 8 Cal.4th at p. 982.)

In the present case, defendant includes correspondence dated January 15, 2025, after default was entered, explaining her inability to respond to the complaint due to the hospitalization and subsequent death of her father. The recipient of the correspondence is not identified. She additionally includes a letter dated October 30, 2024 noting the wrong address is listed for herself and defendant John T. Johnson but the letter's relationship to this litigation is unclear as the parties identified in the letter are not parties to this action and the sender of this letter is not identified. This evidence is not sufficient to demonstrate diligence in seeking to set aside the default. Neither does plaintiff's evidence support finding she has a meritorious defense to plaintiffs' action.

Therefore, the motion to set aside defaults entered against Chrissy L. Burkett-Johnson and John T. Johnson is denied. This does not preclude the parties from stipulating to set aside the default and stipulating to an interlocutory judgment to address the claims of the complaint.

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 08/25/26.
(Judge's initials) (Date)