Tentative Rulings for August 27, 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.

24CECG05236 — ***Scott v. Tsarevskiy*** **is continued to Thursday, October 1, 2026, at 3:30 p.m. in Department 501.**

25CECG05075 — ***Hercules v. Cuevas*** **is continued to Thursday, October 1, 2026, at 3:30 p.m. in Department 501.**

25CECG05815 — ***Srivatsa, M.D. v. Jagpreet Mukker*** **is continued to Thursday, October 1, 2026, at 3:30 p.m. in Department 501.**

24CECG03425 — ***Mercado, JR v. County of Fresno*** **is continued to Tuesday, September 29, 2026, at 3:30 p.m. in Department 501.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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(34)

Tentative Ruling

Re: ***Porraz v. Quality Group Homes, Inc.***
Superior Court Case No. 24CECG01665

Hearing Date: August 27, 2026 (Dept. 501)

Motion: for Preliminary Approval of Class Action and PAGA Settlement

Tentative Ruling:

To lift the stay pursuant to the parties agreement to pursue court approval of the settlement.

To grant Plaintiff's motion for Preliminary Approval of Class Action and PAGA Settlement.

The motion for final approval and for an award of fees and costs will be heard on May 27, 2027 at 3:30 p.m. in Department 501. Papers for such motions need be filed and served no later than May 5, 2027.

Explanation:

Plaintiff Cynthia Porraz moves for preliminary approval of the settlement of her class action and PAGA action against defendant Quality Group Homes, Inc. The proposed gross settlement amount is $1,175,000 for the Class Claims and PAGA Claims. (Settlement, ¶ 3.1.) From this amount the following payments will be made: $391,666.67 (one-third) to class counsel and actual litigation costs not to exceed $32,000, $7,500 to the class representative, up to $7690 to the Settlement Administrator, Apex Class Action, LLC, and $60,000 for the PAGA claim. (Settlement, ¶¶ 3.2.1-3.2.3.) The PAGA amount of $60,000 will be paid $45,000 to the LWDA and $15,000 in penalties apportioned to the Aggrieved Employees – a 75/25 apportionment. (*Id*., ¶ 3.2.5.) The balance for payments to class members is $676,143.33.

1. CLASS CERTIFICATION

a. Standards

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.)

b. Numerosity and Ascertainability

Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata. (*Bell v. Superior Court* (2007) 158 Cal.App.4th 147, 166.) "Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271.)

To determine the identity of potential class members, the court will look to whether there are any objective criteria to describe them and whether they can be found without unreasonable expense or effort through business or official records. (*Lewis v. Robinson Ford Sales, Inc*. (2007) 156 Cal.App.4th 359, 369-370, citing *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 706 [proposed class action of taxi cab users from 1960 to 1964 who paid by coupons identifiable where they could be identified by serial numbers which were kept manually, not in computerized form]; *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 [plaintiff safety members denied uniform allowances, ammunition allowance, holiday pay and lump sum unused sick leave pay as factors used calculating their "final compensation," used in PERS' service retirement formula easily identifiable from PERS records].)

Here, the class members are current and former non-exempt employees who worked for defendant Quality Group Homes, Inc. in the State of California between April 16, 2020 and March 22, 2026. (Rose Decl., ¶ 29, Ex. 3, Settlement Agreement, ¶¶ 1.5, 1.12.) Identifying information for class members was provided to defense counsel together with time and pay data. (Hammond Decl., ¶ 1.) Defense counsel Brooke Hammond estimates there are 275 putative class members based on her review of the data provided by defendant. (*Ibid*.)

This is sizeable enough for class treatment and the ability to identify potential members appears feasible without unreasonable expense through defendant's payroll records. This number would certainly satisfy the numerosity requirement. (*Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2009) 670 F.Supp.2d 1114, 1121 ["Courts have routinely found the numerosity requirement satisfied when the class comprises 40 or more members"].)

The numerosity and ascertainability factors are adequately supported and putative class members can be readily identified by reference to defendant's payroll or other business records. This factor weighs in favor of approval.

c. Community of Interest

The community of interest factor requires consideration of three separate factors: (1) predominant common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3) class representatives and counsel who can adequately represent the class. (*Brinker Restaurant Corp., supra,* 53 Cal.4th at 1021.) The community of interest requirement for certification does not mandate uniform or identical claims, but focuses on internal policies, pattern and practice in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate. (*Capitol People First v. Dept. Developmental Servs.* (2007) 155 Cal.App.4th 676, 692.)

This action involves claims that defendant failed to provide meal and rest breaks, failed to pay overtime and minimum wages, failed to timely pay wages, failed to issue compliant wage statements, failed to timely pay final wages, failed to reimburse employees for necessary business expenses, all of which were unfair business practices under Business and Professions Code section 17200 and are the subject of a PAGA claim for civil penalties. (Blanchard Decl., ¶ 14.)

The Complaint alleges defendant's business practices and procedures caused violations of the Labor Code. Defendant is alleged to have required off-the-clock work resulting in unpaid time and inaccurate timesheets, as well as failing to provide all meal and rest breaks or paying premiums when due, failing to pay wages timely upon termination and failing to pay for business related expenses. (Complaint, ¶¶ 21, 34, 45, 55-56, 65-66, 74, 78, 85, 89.) Plaintiff attests to off-the-clock communication with HR regarding internet issues at the group home where she worked and responding to work-related questions after clocking out and frequent interruptions of her meal or rest breaks. (Porraz Decl., ¶ 3.) Plaintiff additionally attests to using her personal cell phone for work-related communications and the same requirement of her coworkers. (*Ibid*.) Defendant's relevant wage and hour policies are also designated as being applied uniformly to all non-exempt employees, consistent with plaintiff's observations. (Rose Decl., ¶ 37, Ex. 4.)

Class representative, Cynthia Porraz, was employed as a Head of Service and Mental Health Rehabilitation Specialist from approximately November 2021 to April 2024. (Porraz Decl., ¶ 2.) She states in her declaration that she and other employees were regularly required to perform work off-the clock due to technical problems with the timekeeping system, required to use their personal cell phones for communications with each other, and cut their meal periods short to be able to clock in on time. (*Id*., ¶ 3.) The experiences described are described as common between members of the putative class due to the uniform application of the policies between all non-exempt positions at all locations. (*Id*., ¶ 4.) Plaintiff's declaration together with defendant's written policies, which include a policy of adjusting unapproved overtime hours and subjective reimbursement policy for the use of personal devices for official business, are sufficient evidence to demonstrate commonality.

There is also a typicality requirement, i.e. that plaintiffs' claims are significantly similar to those of other class members. (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.) This requires them to arise from the same event, practice, course of conduct, or legal theories (even if they are not identical to the class). (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 874; *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347.)

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."

As discussed with respect to commonality, plaintiff's declaration together with the written policies is adequate evidence of the practices in the workplace forming the basis of the alleged Labor Code violations to demonstrate that her experiences were typical of the putative class.

"[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 have shown that they are experienced and that they have successfully litigated other class actions. (Rose Decl. ¶¶ 2-13, Ex. 1.) The next question is whether other circumstances evidence that the proposed class counsel and representative may have looked more to their own interests than to those of the class. One consideration is the incentive award.

i. Class Representative Incentive Award

> "Where, as here, the class representatives face significantly different financial incentives than the rest of the class because of the conditional incentive awards that are built into the structure of the settlement, we cannot say that the representatives are adequate. *See Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 627, 117 S. Ct. 2231, 138 L Ed 2d 689 (1997) ('The settling parties, in sum, achieved a global compromise with no structural assurance of fair and adequate representation....')"

(*Radcliffe v Experian Information Solutions, Inc.* (2013) 715 F. 3d 1157, 1165.)

"We once again reiterate that district courts must be vigilant in scrutinizing all incentive awards to determine whether they destroy the adequacy of the class representatives. The conditional incentive awards in this settlement run afoul of our precedents by making the settling class representatives inadequate representatives of the class." (*Id*. at p. 1164.)

"There is a serious question whether class representatives could be expected to fairly evaluate whether awards ranging from $26 to $750 is a fair settlement value when they would receive $5,000 incentive awards. Under the agreement, if the class representatives had concerns about the settlement's fairness, they could either remain silent and accept the $5,000 awards or object to the settlement and risk getting as little as $26 if the district court approved the settlement over their objections." (*Id*. at p. 1165.)

> "The propriety of incentive payments is arguably at its height when the award represents a fraction of a class representative's likely damages; for in that case the class representative is left to recover the remainder of his damages by means of the same mechanisms that unnamed class members must recover theirs. The members' incentives are thus aligned. But we should be most dubious of incentive payments when they make the class representatives whole, or (as here) even more than whole; for in that case the class representatives have no reason to care whether the mechanisms available to unnamed class members can provide adequate relief."

(In re Dry Max Pampers Litigation (6th Cir. 2013) 724 F.3d 713, 722.)

The settlement agreement in the instant case provides that the named plaintiff is to receive an enhancement payment of up to $7,500 as class representative. It is unclear if this payment is in addition to their respective individual settlement payment as a class member and/or PAGA group member. After deduction of administration expenses, attorney costs and fees, PAGA settlement, and the incentive award, approximately $676,143.33 is left to be distributed to the class members. (Rose Decl., ¶ 30.) The mathematical average payment determined by dividing the remaining amount by the estimated number of class members amounts to approximately $2,450 per person. The actual amounts will vary based on the class member's amount of workweeks.

The class representative incentive award is 3 times the mathematical average payment to class members and represents less than 1% of the gross settlement. The usual amount approved is 1.5% or less and this request is within that range. Cynthia Porraz attests to spending approximately 50-55 hours assisting with the prosecution of her case. (Porraz Decl., ¶ 11.) She additionally attests to understanding that she was accepting significant personal, professional, and financial risks by pursuing this lawsuit. (*Id*., ¶ 9.) The incentive payment is not greatly disproportionate to the mathematical average payment to a class member and supported by plaintiff's representations of time spent assisting with the case. This factor weighs in favor of preliminary approval.

d. Superiority of Class Certification

Wage and hour Labor Code cases are particularly well-suited to class resolution because of the small amounts of each employee's claim, which makes it impractical to bring wage and hour cases on an individual basis. The large number of proposed class members (once established with admissible evidence) would also make it impractical to bring the claims separately. There is sufficient evidence of commonality of the Labor Code violations alleged and typicality of the plaintiff's claims with respect to the experiences of the putative class.

The court finds that class certification is superior at this time.

2. SETTLEMENT

a. Legal Standards

"When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." (*Koby v. ARS Nat'l. Serv. 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 before the ... court must be sufficiently developed." (*Id*. at p. 130, internal citation omitted.) "The court 'must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case,' but nonetheless it 'must eschew any rubber stamp approval in favor of an independent evaluation.'" (*Id*. at p. 130, internal citation omitted.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id.* at p. 129.)

b. The Adequacy 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 Declaration of Alexandra Rose presents counsel's assessment of the realistic exposure and maximum recovery for plaintiff's claimed Labor Code violations. (Rose Decl., ¶¶ 40-52.) Counsel's summary is based upon her analysis of all available data and that of retained expert Bennett Berger. (*Id*., ¶ 40; Berger Decl., ¶ 2.) Mr. Berger's declaration describes his methodology and analysis to provide sufficient foundation for the damage estimates forming the basis of plaintiff counsel's evaluation for the potential recovery. (Berger Decl., ¶¶ 6-14.)

The potential value for each of the alleged violations is reduced based on perceived risks in pursuing the claims based on counsel's experience. Counsel ultimately opines that the maximum potential recovery of $7,070,217 for the class claims and $1,077,700 for the PAGA claim should be adjusted to realistic potential damages of $3,259,167 and further adjusted for merit-based risk factors to only $1,303,667. (Rose Decl., ¶¶40, 52.) In light of the significant risks in pursuing the claims to finality – the greatest being that plaintiff was ordered to arbitration – the settlement of $1,175,000 is a very good result for the class. (*Id*., ¶ 52.) Counsel opines that the settlement is fair reasonable and adequate. (*Id*., ¶ 53.)

Plaintiff points out that the settlement was reached after arm's length mediation, and that counsel conducted informal discovery and document exchange to investigate the claims and learn the strengths and weaknesses of the case. Counsel also appear to have experience in wage and hour litigation. These factors generally weigh in favor of finding that the settlement is fair, adequate, and reasonable.

The court intends to find the gross settlement amount is fair and reasonable for purposes of preliminary settlement approval.

c. Proposed Class Notice

The proposed notice procedures described within the settlement agreement appear to be adequate. (See Rose Decl., Ex. 3, Settlement Agreement, ¶ 1.11, Ex. A.) The notification procedure is designed to provide the greatest likelihood that each class member will receive the settlement notification. The notices should provide the class members with information regarding their time to opt out, object, or challenge the number of workweeks, the nature and amount of the settlement, the amount to be received by the class member, the impact on class members if they do not opt out, the amount of attorney's fees and costs, and the service award to the named class representative. The notice also advises PAGA group members they may opt-out of the class settlement but cannot exclude themselves from the PAGA claims and will receive a PAGA penalty payment should the court grant final approval of the settlement. The court intends to find that the proposed class notice is adequate.

3. ATTORNEYS' FEES AND COSTS

Plaintiff's counsel seeks a fee award of one-third of the gross settlement, or $391,666.67. There has been considerable debate in the Courts of Appeal as to whether a percentage fee should be permitted in class action settlements, or whether the courts should employ the lodestar fee calculation method. However, the California Supreme Court has determined that a percentage fee method is allowable where there is a common fund settlement.

"Whatever doubts may have been created by *Serrano III* [citation], or the Court of Appeal cases that followed, we clarify today that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Laffitte v. Robert Half Intern. Inc*. (2016) 1 Cal.5th 480, 503.)

However, the Supreme Court also observed that the trial court has discretion to double-check a proposed fee percentage award by using the lodestar method. "Nor do we perceive an abuse of discretion in the court's decision to double check the reasonableness of the percentage fee through a lodestar calculation. As noted earlier, '[t]he lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the results achieved.' [Citation.] A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee. If a comparison between the percentage and lodestar calculations produces an imputed multiplier far outside the normal range, indicating that the percentage fee will reward counsel for their services at an extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage. [Citation.]" (*Id*. at p. 504.)

Here, counsel is seeking preliminary approval of $391,666.67 in attorney fees, and actual litigation costs of up to $32,000.00. The Declaration of Alexandra Rose provides the qualifications for each of the attorneys and a chart summarizing the rates and hours billed by each attorney of the Blackstone Law, APC. (Rose Decl., ¶ 56.) The rates within the chart are noted as reduced based on rates previously approved by Fresno County Superior Court. Counsel provides a summary of costs incurred totaling $27,062.41. (Id., ¶ 58, Ex. 5.)

The current lodestar is approximately $237,265. The imputed multiplier is approximately 1.65, which appears high. However, considering the court previously granted the defendant's motion to compel arbitration this is an excellent result for the class.

Counsel shall provide an updated lodestar analysis with the final approval motion with a discussion of any factors counsel believes are relevant to the enhancement of the lodestar fee and documentation of all costs sought to be recovered with the motion for final approval.

4. PAYMENT TO CLASS ADMINISTRATOR

The parties agreed to retain Apex Class Action LLC to administer the settlement. The declaration of Kimberly Sutherland summarizes the qualifications and experience of the firm and provides an itemized estimate to support the proposed amount of $7,690 for their services. (Sutherland Decl., ¶¶ 4-7 Ex. B.) The evidence provided adequately supports the requested amount from the settlement.

5. PAGA CLAIM AND NOTICE TO LWDA

"An employee plaintiff suing, as here, under [PAGA], does so as the proxy or agent of the state's labor law enforcement agencies." *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal. App. 5th 667, 674. For that reason, Labor Code section 2699(l)(2) requires that any proposed settlement of a PAGA claim be submitted to the Labor Workforce Development Agency at the same time it was submitted to the Court.

Plaintiffs' counsel has provided evidence that notice of the settlement has been sent to the LWDA. (Rose Decl., ¶ 63, Ex. 6.)

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)

(49)

Tentative Ruling

Re: ***Borton Petrini, LLP v. Arshad***
Superior Court Case No. 25CECG04350

Hearing Date: August 27, 2026 (Dept. 501)

Motion: By Defendant Muhammad Arshad to Set Aside the Default and Default Judgment

Tentative Ruling:

To deny defendant Muhammad Arshad's motion to set aside the default and default judgment. (Code Civ. Proc., §§ 473, subd. (b), 473.5.)

Explanation:

Defendant Muhammad Arshad ("Defendant") moves to set aside the default judgment that was entered against him by plaintiff Borton Petrini, LLP ("Plaintiff"). The bases for the motion to set aside in the moving papers are Code of Civil Procedure sections 473, subdivision (b), and 473.5, and equitable relief under *Kramer v. Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13. Each of the bases raised are heavily fact dependent. The court lays out the following timeline of events based on what was presented in the declarations.

Timeline of Events

On July 9, 2025, Defendant filed a complaint with the State Bar of California concerning misconduct by Defendant's former attorney, who works for Plaintiff. (Arshad Decl., ¶ 5.) On September 16, 2026, Plaintiff filed the present case against Defendant. On October 30, 2026, Defendant was tricked into going to Plaintiff's offices under the impression that they would be discussing the issues Defendant had with his prior representation by Plaintiff. (*Id.*, ¶ 4; Umana Decl., ¶ 3.) Defendant was handed an envelope, told to open the envelope outside, and asked to leave Plaintiff's offices. (*Ibid.*) The envelope contained the summons and complaint such that Plaintiff effectuated personal service on Defendant on October 30, 2025. (Umana Decl., ¶ 3.) During the period of September 1, 2025 through January 16, 2026, Defendant was suffering a lot of stress due to final examinations for his master's program, issues arising from the alleged prior attorney misconduct, and ongoing guardianship proceedings in Pakistan for Defendant's minor daughter. (Arshad Decl., ¶ 7.) On January 8, 2026, default was entered against Defendant. On January 12, 2026, default judgment was entered. On February 13, 2026, Defendant filed his first motion to set aside the judgment.

Applicability of Code of Civil Procedure Section 473, Subdivision (b)

Code of Civil Procedure section 473, subdivision (b), states in pertinent part, "The court may, upon any terms as may be just, relieve a party or the party's legal representative from a judgment, dismissal, order, or other proceeding taken against the party through the party's mistake, inadvertence, surprise, or excusable neglect." "[N]eglect is excusable if a reasonably prudent person under similar circumstances might have made the same error." (*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 929.) "[T]he rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation." (Rappleyea v. Campbell (1994) 8 Cal.4th 975, 984–985.)

Defendant argues excusable neglect as the basis for failing to file a timely responsive pleading. Defendant points to the fact that he was tricked into going to Plaintiff's offices and the different stressors Defendant was going through at the time as to why a reasonably prudent person might fail to file a timely response. However, a reasonably prudent person would open the envelope upon receiving it and read the papers within. The first line of the body of the summons states, "NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below." A reasonably prudent person would realize they have a limited amount of time to take action before the court may rule against them. Defendant had 70 days from the date of service to file any response before default was entered. Defendant's failure to take any action is not excusable. Accordingly, Defendant has failed to demonstrate he is entitled to relief under Code of Civil Procedure section 473, subdivision (b).

Applicability of Code of Civil Procedure Section 473.5

Relief under Code of Civil Procedure section 473.5 requires that Defendant not have received actual notice and the lack of notice was not caused by Defendant's inexcusable neglect. Defendant has not disputed that he was served with the summons and complaint. Defendant disputes the trickery by Plaintiff to get Defendant to Plaintiff's offices. However, the trickery involved does not change that Defendant was personally served. Either Defendant read the papers upon receiving them and had actual notice or Defendant did not read them until months later. No excusable neglect exists here for Defendant to not have read the summons and complaint upon receiving them. A reasonably prudent person would have read the papers upon receiving them and have actual notice. Accordingly, Defendant has failed to demonstrate he is entitled to relief under Code of Civil Procedure section 473.5.

Applicability of Equitable Relief

A party seeking relief under the court's equitable powers must satisfy a three-pronged test: "(1) a satisfactory excuse for not presenting a defense, (2) a meritorious defense, and (3) diligence in seeking to set aside the default." (*Kramer v. Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13, 29; citing *Rappleyea, supra*, 8 Cal.4th at pp. 982-983.) "Relief will be denied, however, if the complaining party's negligence permitted the fraud to be practiced or the mistake to occur. [Citation]" (*Kramer v. Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13, 30.)

Defendant provides the same excuse he used for arguing relief under Code of Civil Procedure section 473, subdivision (b), that Defendant argues the trickery to have him arrive at Plaintiff's offices for service as well as the other stressors excuse why Defendant did not present a timely defense. For the same reasons, Defendant's failure to take action is not a satisfactory excuse. Therefore, relief is denied under the court's equitable powers. Accordingly, the motion to set aside the default and default judgment 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: KCK on 08/25/26 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Babayan v. McMurray***
Superior Court Case No. 24CECG03655

Hearing Date: August 27, 2026 (Dept. 501)

Motion: by Plaintiff for Leave to Amend

Tentative Ruling:

To grant the motion. (Code Civ. Proc., § 473, subd. (a)(1).)

Plaintiff is required to file the First Amended Complaint within 10 days from the service of the clerk of the minute order.

Explanation:

Plaintiff seeks leave to allege two additional causes of action for Elder Abuse pursuant to Welfare & Institutions Code section 15610.63 and intentional infliction of emotional distress. Plaintiff further seeks to amend the complaint to add supporting facts to his claims for assault, battery, and negligence. A declaration pursuant to California Rules of Court, rule 3.1324 is filed in support of the motion. A copy of the proposed amended complaint is attached. (Wagner Decl., Ex. A.)

Plaintiff has met the formalities required of a motion to amend the complaint, and has given due notice to all appearing defendants. Motions for leave to amend the pleadings are directed to the sound discretion of the judge. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading . . ." (Code Civ. Proc., § 473, subd. (a)(1); see also Code Civ. Proc., § 576.) Judicial policy favors resolution of cases on the merits, and thus the court's discretion as to allowing amendments will usually be exercised in favor of permitting amendments. This policy is so strong, that denial of a request to amend is rarely justified, particularly where "the motion to amend is timely made and the granting of the motion will not prejudice the opposing party." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.)

Even so, the court has discretion to deny a motion for leave to amend where there has been inexcusable delay in making the motion that prejudices the opposing party, or where a proposed amendment is legally futile. (See *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 759-761 ["When a trial court denies leave to amend, the decision has been upheld on grounds such as the fact that the amendment contained objectionable subject matter or because of the conduct of the moving party or belated presentation of the amendment."].)

Defendant opposes the motion on several grounds: (1) the declaration supporting the motion fails to comply with California Rules of Court, rule 3.1324; (2) plaintiff cannot split the same primary right between multiple theories of liability; (3) the motion is untimely;

(4) the delay in seeking amendment is prejudicial; and (5) the proposed amended complaint fails to state a cause of action for elder abuse and intentional infliction of emotional distress.

California Rules of Court, rule 3.1324

Defendant contends that the declaration filed in support of the motion fails to to provide "[w]hen the facts giving rise to the amended allegations were discovered; and [¶] [t]he reasons why the request for amendment was not made earlier." (Cal. Rules of Court, rule 3.1324(b)(3)-(4).) Although there is a lack of specific facts in plaintiff's counsel's declaration, counsel at least generally asserts that facts giving rise to the amended allegations were not discovered until counsel began preparing for trial, which counsel estimates to be on or about March 24, 2026. (Wagner Decl., ¶ 9, subd. (c)-(d).) There does not appear to be a specificity requirement for the declaration. The court finds that counsel's declaration at least substantially complies with the rule of court.

Primary Rights

" 'The primary right theory is a theory of code pleading that has long been followed in California. It provides that a "cause of action" is comp[o]sed of a "primary right" of the plaintiff, a corresponding "primary duty" of the defendant, and wrongful act by the defendant constituting a breach of that duty. [Citation.] The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action. [Citation.] A pleading that states the violation of one primary right in two causes of action contravenes the rule against 'splitting' a cause of action' [Citation.]" (*Duncan v. Kihagi* (2023) 96 Cal.App.5th 703, 709, citations omitted.)

" 'The primary right theory has a fairly narrow field of application. It is invoked most often when a plaintiff attempts to divide a primary right and enforce it in two suits. The theory prevents this result by either of two means: (1) if the first suit is still pending when the second is filed, the defendant in the second suit may plead that fact in abatement [citations]; or (2) if the first suit has terminated in a judgment on the merits adverse to the plaintiff, the defendant in the second suit may set up that judgment as a bar under the principles of res judicata. [Citation.] The latter application of the primary right theory appears to be most common: numerous cases hold that when there is only one primary right an adverse judgment in the first suit is a bar even though the second suit is based on a different theory [citation] or seeks a different remedy.' [Citation.] " (*Duncan v. Kihagi, supra,* 96 Cal.App.5th at p. 709, citations omitted.)

The theory is inapplicable in the circumstances presented here, as plaintiff has not split the primary right giving rise to his claims.

"The manner in which a plaintiff elects to organize his or her claims within the body of the complaint is irrelevant to determining the number of causes of action alleged under the primary right theory. '[I]f a plaintiff states several purported causes of action which allege an invasion of the same primary right he has actually stated only one cause of action. On the other hand, if a plaintiff alleges that the defendant's single wrongful act invaded two different primary rights, he has stated two causes of action, and this is so even though the two invasions are pleaded in a single count of the complaint.' [Citation.] " (*Hindin v. Rust* (2004) 118 Cal.App.4th 1247, 1257.) In other words, " '[w]hen a complaint alleges multiple theories of liability or "counts," the counts "are merely ways of stating the same cause of action differently." ' [Citation.]" (*Ibid*., citations omitted.)[1]

Here, there is no evidence of a separate action. Defendant concedes that the proposed causes of action are based on the same facts giving rise to the three causes of action raised in the original complaint. Accordingly, all of plaintiff's causes of action, including the two proposed causes of action, are based on the same alleged invasion of plaintiff's primary right.

Delay and Prejudice

"[I]t is an abuse of discretion to deny leave to amend where the opposing party was not misled or prejudiced by the amendment." (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761; see also *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564 ["Where no prejudice is shown to the adverse party, the liberal rule of allowance prevails."].) "Courts must apply a policy of liberality in permitting amendments at any stage of the proceeding, including during trial, when no prejudice to the opposing party is shown. (*Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 746 (*Huff*).) 'However, " 'even if a good amendment is proposed in proper form, unwarranted delay in presenting it may—of itself—be a valid reason for denial.' " ' (*Ibid*.; *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 488 ["Where the trial date is set, the jury is about to be impaneled, counsel, the parties, the trial court, and the witnesses have blocked the time, and the only way to avoid prejudice to the opposing party is to continue the trial date to allow further discovery, refusal of leave to amend cannot be an abuse of discretion."].) (*P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345 (*P&D Consultants*).)

Defendant contends that plaintiff's requested amendment is prejudicial, since it would impose significant burdens, including additional discovery, legal costs, and delays in resolving the case. However, the ordinary burdens a litigant may face are not ordinarily considered prejudice in the context of opposing a motion to for leave to amend. If this were the case, this would serve to defeat every plaintiff's motion to amend the complaint as it could be said that any amendment could result in additional discovery, legal costs, and delay. Moreover, plaintiff's proposed amendment does not add any new parties or allege any new factual circumstances that were not already known to all of the parties. Trial has not been set. Therefore, the court does not find that defendants will be sufficiently prejudiced by the proposed amendment so as to preclude plaintiff from amendment.

Further, the court is not inclined to deny plaintiff's motion for leave solely based on plaintiff's delay.

[1] Neither party cites to any authority explaining the application of the primary right theory when only one action is involved. The court acknowledges that neither party has cited to this case. *Hindin v. Rust* (2004) 118 Cal.App.4th 1247 is discussed for the purpose of providing clarity on the primary right theory on this issue only.

While neither party provides any authority delineating a clear definition for "unwarranted delay," it does not appear to apply in the instant case. As distinguished from the case at bench, the plaintiff in *Huff* moved for an ex parte for an order shortening the time for his motion for leave to amend 3 days before the summary judgment hearing. (*Id*., at p. 746.) Similarly, in *Record v. Reason* (1999) 73 Cal.App.4th 472, the moving party moved for leave to amend his complaint to be heard at the same time as the summary judgment motion. (*Id*., at pp. 486-487.) In *Roemer v. Retail Credit Co.* (1975) 44 Cal.App.3d 926, the court affirmed the trial court's denial of defendants' request for leave to amend its answer on the basis of unwarranted delay where defendant did not make his request until the day of trial, after the close of his case and just prior to the giving of jury instructions. (*Id*., at pp. 938-941.) In *Miles v. City of Los Angeles* (2020) 56 Cal.App.5th 728, the plaintiffs were denied leave to amend since the motion was filed after the trial court indicated its intent to grant summary judgment in favor of defendant city. (*Id*., at p. 739.) In *P&D Consultants*, the trial court did not err in denying plaintiff's motion for leave to amend, since plaintiff did not seek leave to amend until after the trial readiness conference. (*Id*. at p. 1345.) The commonality between each of these cases discussing unwarranted delay is that the plaintiff did not move for leave until a motion for judgment was filed and/or trial was set, which is not the case here.

Failure to State a Claim

Ordinarily, the court does not consider the validity of the proposed amended pleading in deciding whether to grant leave to amend. Generally, "the preferable practice would be to permit the amendment and allow the parties to test its legal sufficiency by demurrer, motion for judgment on the pleadings or other appropriate proceedings." (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048; *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 760 ["the better course of action would [be] to allow [plaintiff] to amend the complaint and then let the parties test its legal sufficiency in other appropriate proceedings."].)

Accordingly, the motion for leave to amend is granted.

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