Tentative Rulings for September 10, 2026
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

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

25CECG00488 ***Elizondo v. Nissan North America, Inc*. is continued to Wednesday, September 30, 2026, at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(20) **<u>Tentative Ruling</u>**

Re: ***Pismo's of Fresno, LLC v. Villagio Shopping Center, LLC, et al.***
Superior Court Case No. 25CECG04448

Hearing Date: September 10, 2026 (Dept. 403)

Motion: By Villagio Shopping Center, LLC, to Disqualify Counsel

Tentative Ruling:

Demurrer: To sustain the demurrer to the fifth cause of action without leave to amend. To overrule demurrers to all other causes of action. (Code Civ. Proc., § 430.10, subd. (e), (f).)

Motion to Strike: To grant in part and strike FAC ¶ 47 and Prayer for Relief item 5 (punitive damages allegations), but to otherwise deny. (Code Civ. Proc., § 436.)

Explanation:

This is a contract dispute between Villagio Shopping Center, LLC ("Villagio") and Pismo's of Fresno, LLC ("Pismo's") concerning the terms of the parties' commercial real estate lease. Pismo's alleges that Villagio violated Pismo's lease by leasing property to Tsukihi Ayce Fresno, Inc. ("TAF"), a sushi restaurant, in violation of section 2.06(b) of the lease:

> For so long during the Term of this Lease as Tenant is not in breach of any of its representations, warranties, covenants or obligations set forth herein, but only if and for so long as Tenant's primary business in the Premises is and continues to be the sale of seafood, steaks and food items flavored primarily with barbecue sauce (the "Exclusive Items") as its primary use, Landlord shall not enter into a new lease for premises within the Shopping Center in which the tenant thereunder would be permitted to sell or offer for sale, the Exclusive Items as its primary business . . . The Incidental Sale (as hereinafter defined) of the Exclusive Item in connection with the overall business of another tenant or operator shall not be deemed a violation of this Paragraph 2.06(b). As used herein, "Incidental Sale" shall mean the sale of the Exclusive Item constituting not more than twenty percent (20%) of the gross sales at such tenant's or operator's premises.

"Seafood" is an "Exclusive Item."

Demurrer

First, Second, Fourth, Ninth, and Tenth Cause of Action

The elements of a cause of action for breach of contract are: 1) Plaintiff and Defendant entered into contract; (2) Plaintiff did all, or substantially all of the significant things that the contract required; (3) Defendant failed to do something that the contract required it to do; (4) Plaintiff was harmed; (5) Defendant's breach of contract was a substantial factor in causing Plaintiff's harm. (CACI 303.)

The first cause of action alleges that Villagio breached the Pismo's Lease by allowing TAF to operate a business within the Shopping Center wherein its primary business is for the sale of seafood. (FAC ¶ 21.)

The demurrer relies on FAC ¶ 13, where Pismo's alleges "that TAF's lease with VSC contains a notification of the PISMO'S exclusive right to sell seafood as a primary business." Villagio contends in conclusory fashion that entering into the TAF lease as described in paragraph 13 "is not a breach of the Pismo's Lease," without elaboration or citation to relevant authorities (a common theme in Villagio's points and authorities).

However, the FAC alleges that TAF's primary business is selling sushi, and that Villagio leased space to TAF. That certainly appears to be a breach of section 2.06(b) of the Pismo's lease, even if Villagio notified TAF of Pismo's exclusivity provision. In fact, with knowledge of TAF's sale of sushi, Villagio worked with TAF to change its name so as to not bring attention to the sushi sales, and requested that Pismo's amend its lease to acknowledge that the sale of sushi would not violate the lease. (FAC ¶¶ 14-16.) The allegations indicate that Villagio was aware that TAF sold sushi as its primary business.

Villagio also argues that Pismo's claim for specific performance is defective. Specific performance of a contract may be decreed whenever: (1) its terms are sufficiently definite; (2) consideration is adequate; (3) there is substantial similarity of the requested performance to the contractual terms; (4) there is mutuality of remedies; and (5) plaintiffs legal remedy is inadequate. (Civ. Code, § 3390, subd. 5 [court may not specifically enforce '[a]n agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable]; *Tamarind Lithography Workshop, Inc. v. Sanders* (1983) 143 Cal.App.3d 571, 575 [193 Cal. Rptr. 409])" (*Blackburn v. Charnley* (2004) 117 Cal.App.4th 758, 766.)

Villagio argues that with regard to the phrase "sale of seafood," the terms of the Pismo's Lease are not sufficiently definite, claiming that the meaning of the term "seafood" is up for debate and disputed. However, Villagio articulates no basis for any such debate or dispute.

Villagio goes on to argue that specific performance is not available because the Pismo's Lease itself proscribes an adequate legal remedy to Pismo's. Section 2.06 (b) of the Pismo's Lease states:

> If Landlord is in breach of its obligations under Paragraph 2.06(b) for more than thirty (30) days after it receives written notice from Tenant of such breach, for so long as such breach thereafter is continuing Minimum Annual Rent shall abate and Tenant shall pay in lieu of Minimum Annual Rent an amount equal to four percent (4%) of Net Sales...and, if such abatement should continue uninterrupted for a period in excess of thirty (30) days, Tenant thereafter (but only while such breach is continuing) may give written notice to Landlord of Tenant's intention to cancel and terminate this Lease pursuant to this Paragraph 2.06(b), in which even this Lease shall

> terminate as of the date that is thirty (30) days after Landlord shall have received such written notice unless Landlord shall have cured such breach prior to the date on which this Lease would terminate.

(FAC Exh. 1, § 2.06(b).)

Pismo's correctly points out that this argument is refuted by section 22.11 of the Lease, which provides: "No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity." (FAC Exh. 1, § 22.11.) The contract must be read as a whole, and this provision does provide for remedies other than those specifically provided for elsewhere in the Lease. Additionally, when remedies are pled in the alternative, a demurrer should not be sustained as to one over the other. (See *Rogers v. Davis* (1994) 28 Cal.App.4th 1215, 1218, fn. 2 ["performance and damages are simply alternative remedies for breach of contract."])

The court intends to overrule the demurrer to the first cause of action. With regards to the Second, Fourth, Ninth, and Tenth causes of action Villagio references the above arguments without further elaboration or discussion. The demurrers to those causes of action are therefore overruled for the same reasons.

Fifth Cause of Action

Pismo's opposition states that it has dismissed this cause of action as to Villagio only. No such dismissal has been filed. Accordingly, the court intends to sustain the demurrer without leave to amend for the reasons stated in the moving papers.

Sixth Cause of Action

The demurrer to the cause of action for injunctive relief is brought on the ground that it "fails to state the type of injunctive relief that Pismo's seeks," rendering the cause of action uncertain. To the contrary, the FAC alleges that "VSC should be ordered to comply with Lease ¶ 2.06(b)." (FAC ¶ 49.)

Villagio points out contradictory allegations in that Pismo's alleges that it has no adequate remedy at law, yet it claims to be entitled to lost profits. (FAC ¶ 52.)

As the opposition points out, California's general pleading standards allows for pleading in the alternative. (See *Mendoza v. Continental Sales Co.* (2006) 140 Cal.App.4th 1395, 1402 ["the modern practice allows that party to plead in the alternative and make inconsistent allegations."].) A damages award does not preclude additional relief in the form of injunctive relief when a legal remedy cannot adequately address prospective, hard to quantify future harm, which Pismo's claims to be the case here. (See *Grail Semiconductor, Inc. v. Mitsubishi Electric & Electronics USA, Inc.* (2014) 225 Cal.App.4th 786, 800 [the adequacy of the legal remedy not the mere existence of a damages award is controlling].) Whether this is the case is not something not properly resolved at the pleadings stage. Pismo's may be required to elect its remedy at a future point, but for now the cause of action may stand.

Additionally, Villagio contends that Section 2.06(b) of the Pismo's Lease provides Pismo's sole remedy in the event there is an actual breach for the sale of the Exclusive Items within the Pismo's Lease. (FAC, Exhibit I, Pismo's Lease, Section 2.06(b). Again, the demurrer ignores the cumulative remedies provision of section 22.11. The court intends to overrule the demurrer.

Motion to Strike

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading, (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.)

Apparently conceding the merits of the motion with regards to the punitive damages allegations, Pismo's does not address the issue in its opposition. The motion to strike punitive damages allegations is granted for the reasons set forth in the moving papers.

Villagio also moves to strike the prayer for jury trial, as under section 22.29 of the Lease, both Villagio and Pismo's waived their right to a jury trial. (FAC Exh. I, § 22.29.) Once again Villagio cites to no authority whatsoever in support of this part of the motion to strike.

Pismo's contends that the waiver is unenforceable. Article I, § 16 of the California Constitution holds, "Trial by jury is an inviolate right and shall be secured to all … In a civil cause a jury may be waived by the consent of the parties expressed *as prescribed by statute*." (Emphasis added.) A predispute agreement that any lawsuit between parties would be adjudicated in a court trial, and not by jury trial, is unenforceable. (See *Grafton Partners v. Superior Court* (2005) 36 Cal.4th 944, 951–956.) Villagio's reply does not address the issue. This part of the motion should be denied.

Villagio next argues that the request for injunctive relief must be stricken for the same reason stated in the demurrer. The motion to strike should be denied for the same reasons as noted above.

The Court notes some frustration that both parties abandoned positions set forth in the moving papers, opposition, and reply. While motion practice may serve to refine the parties' positions, the law (and the Court) prefers that such refinement occur during the meet-and-confer process, thereby narrowing the issues presented for resolution and promoting judicial economy.

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: <u>SMC</u> on <u>September 9, 2026</u> .
(Judge's initials) (Date)

(29)

Tentative Ruling

Re:	***Kesting v. Boots in the Park*** Superior Court Case No. 23CECG03677
Hearing Date:	September 10, 2026 (Dept. 403)
Motions (x2):	Demurrer Sanctions

Tentative Ruling:

To take both motions off calendar, as no moving papers have been filed.

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: **SMC** **on** **September 9, 2026** .
(Judge's initials) (Date)

(48)

Tentative Ruling

Re: ***Fisher v. Lags Spine & Sportscare Medical Centers, Inc. et al.***
Superior Court Case No. 24CECG03448

Hearing Date: September 10, 2026 (Dept. 403)

Motion: Defendants Department of State Hospitals and Brandon Price's Demurrer to the First Amended Complaint

Tentative Ruling:

To sustain defendants Department of State Hospitals and Brandon Price's demurrer to the First Amended Complaint, with leave to amend. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs Jeffery Fisher and Mishakal Clark are granted 15 days leave to file a Second Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

Defendants State of California, by and through the Department of State Hospitals ("DSH"), and Brandon Price (collectively "Defendants") demur to the First Amended Complaint filed by plaintiffs Jeffery Fisher and Mishakal Clark aka Brocco (collectively "Plaintiffs"). Defendants challenge the first cause of action, the sole cause of action asserted against them, based on several immunities from suit.

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc.* (1974) 12 Cal.3d 915, 918.)

A court may sustain a demurrer without granting plaintiff leave to amend the complaint if plaintiff did not request leave to amend and an effective amendment is not "apparent and consistent with the plaintiff's theory of the case." (*Camsi IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1542.)

Government Tort Immunity

Government Code section 815 provides that "[e]xcept as otherwise provided by statute…[a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." In other words, "all government tort liability must be based on statute." (*County of San Bernardino v.*

Superior Court (2022) 77 Cal.App.5th 1100, 1107; Gov. Code, § 810, et seq.) "[I]n the absence of some constitutional requirement, public entities may be liable *only* if a statute declares them to be liable." (*Id*. at p. 1108 [emphasis in original].) Plaintiff bears the burden of setting forth facts in the complaint sufficiently detailed and specific to support an inference that the statutory elements of liability are satisfied. (*Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 5.) Plaintiffs must plead specific facts showing what each individual defendant did or failed to do, and how that conduct caused injury. (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1183.)

Here, Plaintiffs concede that the First Amended Complaint is insufficient as to the first cause of action against Defendants, and request leave to amend to specifically include a basis for liability for the public entity and public employee. Plaintiffs submit that an amendment is apparent because the amended complaint will plead that Defendants are liable under Government Code sections 854.8, 855, 818.6, and 821.4.

Government Mental Institutions Immunity (Gov. Code, §§ 854.8 & 855.)

Government Code section 854.8 states in pertinent part:

> (a) Notwithstanding any other provision of this part, except as provided in this section and in Sections 814, 814.2, 855, and 855.2, a public entity is not liable for:
> (1) An injury proximately caused by a patient of a mental institution.
> (2) An injury to an inpatient of a mental institution.

Government Code section 855 provides in relevant part:

> (a) A public entity that operates or maintains any medical facility that is subject to regulation by the State Department of Health Services, Social Services, Developmental Services, or Mental Health is liable for injury proximately caused by the failure of the public entity to provide adequate or sufficient equipment, personnel or facilities *required by any statute or any regulation* of the State Department of Health Services, Social Services, Developmental Services, or Mental Health prescribing minimum standards for equipment, personnel or facilities, unless the public entity establishes that it exercised reasonable diligence to comply with the applicable statute or regulation. (emphasis added.)

Plaintiffs concede that defendant DSH is afforded immunity under Government Code section 854.8 for injuries to an inpatient of a mental institution. However, it is argued that an exception applies under Government Code section 855, which states that a public entity is liable for injury proximately caused by the failure to provide "adequate or sufficient equipment, personnel, or facilities required by any statute or any regulation" unless reasonable diligence to comply is shown. Plaintiff solely cites Title 22, section 71537 of the California Code of Regulations, which states in relevant part:

> (a) A written hospital infection control program shall be adopted. The program shall conform to the guidelines contained in Infection Control in the Hospital, 1974, published by the American Hospital Association, 840 North Lake Shore Drive, Chicago, IL 60611.

The aforementioned regulation does not state with specificity a requirement that would give a public entity notice to comply. "Government Code section 855 was intended to impose liability only when the statute or regulation sets forth a specific standard that gives the public medical facility clear notice as to the minimum requirements with which it must comply. (*Lockhart v. County of Los Angeles* (2007) 155 Cal.App.4th 289, 308.) The statute only generally requires that a compliant infection control program be adopted by a hospital. This statute does not specify what equipment, personnel, or facilities are required. However, while the aforementioned regulation may not provide for an exception to the immunity afforded to DSH under section 854.8, leave to amend is afforded in the event that one may be applicable.

Inspection Immunity (Gov. Code, §§ 818.6 & 821.4.)

Defendants also demur to the first cause of action on the grounds that Defendants are afforded inspection immunity under Government code section 818.6 as to DSH and section 821.4 as to Brandon Price.

A public entity, or public employee, is not liable for injury caused by the failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than the property of the public entity, (as defined in subdivision (c) of Section 830), for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety. (Gov. Code, §§ 818.6 [applying to public entities] 821.4 [applying to public employees].)

Under Government Code section 830, subdivision (c) defines "property of a public entity" as real or personal property owned or controlled by the public entity, but does not include easements, encroachments and other property that are located on the property of the public entity but are not owned or controlled by the public entity.

Here, Defendants assert that the mobile pain treatment clinic was owned and operated by Dr. Lagattuta and is not property of a public entity despite it occasionally operating on the hospital grounds, and thus they are immune from liability arising from a duty to inspect it. Plaintiffs' response states that the immunity does not extend to the inspection of Dr. Lagattuta's practice, as opposed to inspection of the property. Plaintiffs request leave to amend the First Amended Complaint to include this language. Plaintiffs filed to present authority for the position that inspection immunity does not extend to a medical provider's practice. Nonetheless, Plaintiffs are provided an opportunity to plead any authority precluding the immunity.

Negligent Hiring or Supervision (§§ 820 & 820.2.)

Government Code section 815.2 provides:

> (a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.
>
> (b) Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.

Government Code section 820 provides:

> (a) Except as otherwise provided by statute (including Section 820.2), a public employee is liable for injury caused by his act or omission to the same extent as a private person.
> (b) The liability of a public employee established by this part (commencing with Section 814) is subject to any defenses that would be available to the public employee if he were a private person.

Ultimately a public entity and its employee are liable to the same extent as a private employer and employee. An employer can be liable to a third person for harm caused by an employee if the employer knew or should have known of the risk of that harm upon hiring, or by negligently supervising or retaining the unfit employee. (*Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1054.)

Defendant Brandon Price demurs on the grounds that the first cause of action fails to identify a supervising employee's specific negligent act or omission. Plaintiff argues that Brandon Price was negligent in failing to conduct a background check on Dr. Lagattuta. However, the First Amended Complaint insufficiently states a cause of action under this theory because it is not stated why defendant Brandon Price had a duty to supervise defendant Dr. Lagattuta. However, it may be possible that an amendment can cure the insufficiency.

For the foregoing reasons, the demurrer as to the first cause of action is sustained, with leave to amend.

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: SMC on September 9, 2026 .
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Mendez v. Fresno's Chaffee Zoo Corporation***
Case No. 23CECG04628

Hearing Date: September 10, 2026 (Dept. 403)

Motion: Plaintiff's Motion for Approval of PAGA Settlement

Tentative Ruling:

To grant as to the approval of the settlement, costs, and settlement administration. (Lab. Code, §§ 2698 et seq.) To approve attorney's fees in the reduced amount of $40,606.25. To approve an incentive award to plaintiff Javier Mendez in the reduced amount of $3,000. Plaintiff is directed to file a revised proposed judgment within five days of the service of the minute order by the clerk.

Explanation:

1. Introduction

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

The statute does not explain what exactly the trial court should consider when reviewing a proposed PAGA settlement. However, in *Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, the Court of Appeal did provide some guidance. The court explained that "many federal district courts have applied the 'fair, reasonable, and adequate' standard from class action cases to evaluate PAGA settlements." (*Id.* at pp. 75–76, disapproved on other grounds by *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664.) "Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes and policies. We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77, internal citations and footnote omitted.) On the other hand, "PAGA does not provide that aggrieved employees must be heard on the approval of PAGA settlements… PAGA provides no mechanism for aggrieved employees, including those pursuing PAGA lawsuits, to be heard in objection to another PAGA settlement. This concession is dispositive, and we will not read a requirement into a statute that does not appear therein." (*Id.* at p. 79, internal citation omitted.)

2. Notice to LWDA

Labor Code section 2699, subdivision (s)(2), states: "The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." Plaintiff's counsel has shown that notice of the settlement was provided to the LWDA. (Moon Decl., Exhs. 2-3.)

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

As mentioned above, the Court of Appeal in *Moniz v. Adecco USA, Inc., supra*, 72 Cal.App.5th 56 stated that the trial court should review PAGA settlements to determine whether they are fair, adequate and reasonable. (*Moniz*, *supra*, at pp. 75-77.) "Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Id.* at p. 77.)

"Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes and policies. We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Ibid*, internal citations and footnote omitted.)

a. Strength of the Case

The operative pleading, the First Amended Complaint, alleges a sole cause of action for penalties pursuant to PAGA, based on various Labor Code violations. Plaintiff argues the settlement is reasonable and will redress the alleged civil code violations experienced by the PAGA members. (Moon Decl., ¶ 22.) Defendant provided time and payroll data representing an 18% sample of the PAGA members which was in turn analyzed by plaintiff's counsel who determined the realistic exposure for defendant was $320,000. (Moon Decl., ¶ 32.) Defendant has provided a declaration confirming there are 506 aggrieved employees and 17,564 PAGA pay periods. (Gonzales-Warkentin, ¶ 5.) Plaintiff relied upon a statistical expert in analyzing payroll data from defendant. (Moon Decl., ¶ 12.)

Regarding weaknesses of the claims, plaintiff notes the court's discretion to reduce the civil penalties and defendant's defenses. Plaintiff's counsel details his assessment of the merits and risks of each violation alleged based upon his experience prosecuting such claims. (Moon Decl., ¶¶ 25-41.)

The court finds there is sufficient evidence to support the figures presented in the moving papers and to find that the settlement figure is reasonable.

b. Stage of the Proceeding

A presumption of fairness exists where the settlement is reached through arm's length mediation between adversarial parties, where there has been investigation and discovery sufficient to allow counsel and the court to act intelligently, and where counsel is experienced in similar litigation. (*Dunk v. Ford Motor Company* (1996) 48 Cal. App 4th

1794, 1802.) Here, the case settled after the parties attended mediation. Plaintiff's counsel are highly experienced in representative litigation.

Plaintiff attests to the settlement as a product of arm's-length negotiations facilitated by mediator Tripper Ortman. (Moon Decl. ¶ 13.) The mediation on February 18, 2025 resulted in the settlement now before the court. (Ibid.) Regarding pre-settlement discovery, counsel states that defendant provided an 18% sample of time and payroll records for PAGA members and that these records were analyzed by counsel and a statistical expert for use in settlement negotiations. (Moon Decl., ¶ 12.)

This factor weighs in favor of approval.

c. *Risks of Litigating Case through Trial*

Counsel notes that the parties both recognized the cost, time, inconvenience, and delay in the continued litigation of the PAGA claim.

d. *Amount of Settlement*

The gross settlement is $285,000, and to assess the reasonableness of this amount, the court needs a good valuation of the total potential penalties. Foundation for the number of employees and pay periods has been provided. (Gonzales-Warkentin Decl., ¶ 5.) Plaintiff relied upon a statistical expert in analyzing payroll data from defendant. (Moon Decl., ¶ 12.) Counsel asserts that the settlement amount is about 89% of the realistic recovery. (Id. at ¶ 32.) This is a reasonable settlement amount.

e. *Experience and Views of Counsel*

Plaintiff's counsel are highly experienced in class and representative litigation. They have stated that the settlement is fair, adequate and reasonable under the circumstances. Therefore, this factor weighs in favor of approval.

f. Government Participation

No government entity participated in the case, so this factor does not favor either approval or disapproval of the settlement.

g. *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.)

Here, the settlement agreement provides that the following claims would be released:

> "…all claims, transactions, or occurrences related to their employment including all claims alleged in the Action, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Complaint and the PAGA Notice, including but not limited to claims for meal and rest period penalties, Labor Code section 203 (waiting time penalties) and Labor Code section 226 (wage statements)."

(Moon Decl., Exh. 1, PAGA Settlement Agreement, Section 5.)

This is consistent with the Notice sent by plaintiff. (Moon Decl., Exh. 2.) The scope of the release appears to be appropriately limited to the PAGA claims of which the LWDA was given notice and those supported by the allegations of the complaint.

4. Attorney's Fees and Costs

Plaintiffs' attorneys seek an award of $85,500 in attorneys' fees (30% of the gross settlement), and up to $25,000 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.)

Counsel have agreed to reduce their billing rates to $500 per hour for Moon and $450 per hour for Park. The court does find these rates more reasonable. With these rates, the lodestar is $32,485.

After reducing the hourly rates to better match local counsel rates the lodestar is less than the fees requested. A multiplier of 2.63 is necessary to meet the requested fees of $85,500. In the context of using the lodestar method to cross-check attorney fees in a class action settlement, a multiplier can be used to increase or decrease the award "to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." (*Laffitte v. Robert Half Internat. Inc*., supra, 1 Cal.5th at p. 489, internal citation omitted.)

Counsel's declaration states that the case was taken on a contingent fee basis and requests the court take into consideration "enhancement" factors to adjust the lodestar figure. (Moon Decl., ¶ 62.) Those factors here include the risks presented by the contingent nature of the action, difficulty of the questions involved, skill presented in negotiating and reaching a settlement in light of defendant's vigorous opposition, the work on this case precluding the ability to take another case, and the meaningful results obtained for the aggrieved employees and State of California. (Ibid.) The factors described are generally true of any plaintiff-side wage and hour litigation and does not speak to anything unique about this action. The court would be inclined to apply a multiplier of 1.25. Thus, the court would be inclined to award attorney's fees in the amount of $40,606.25. The remaining $44,893.75 set aside can be added to the common fund for the benefit of all aggrieved employees.

The court's approval of the actual costs of $24,250.86 is requested. Exhibit 4 to the Declaration of Mr. Moon is an expense ledger of costs for this action. These costs are supported and are approved.

5. Administration Costs

The settlement agreement provides that settlement administrator Phoenix Class Action Administration Solutions will receive $5,750 to cover administration costs. The court intends to approve the settlement administration costs to Phoenix.

6. Incentive Award to Named Plaintiffs

The settlement also provides that the plaintiff will receive an incentive award of $10,000. The court is inclined to award $3,000 as a more reasonable amount, commensurate with the evidence of risk and time expended by plaintiff. The remaining $7,000 set aside can be added to the common fund for the benefit of all aggrieved employees.

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: SMC on September 9, 2026.
(Judge's initials) (Date)