Tentative Rulings for November 19, 2026
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, the remote appearance will be conducted through Zoom. 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.***

24CECG00472 ***Hernandez v. Poindexter Nut Company*** **(Dept. 502)**

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

21CECG01742 ***Sifuentes v. Fresno Community Hospital and Medical Center*** **is continued to Thursday, January 7, 2027, at 3:30 p.m. in Department 502.**

23CECG02432 ***White v. Colton's Social House Inc.*** **is continued to Thursday, January 7, 2027, at 3:30 p.m. in Department 502.**

26CU00042 ***Ramos v. Costco Wholesale Corporation*** **is continued to Thursday, January 7, 2027, at 3:30 p.m. in Department 502.**

26CU00212 ***Huerta v. Fresno SSYAP, LLC*** **is continued to Thursday, January 14, 2027, at 3:30 p.m. in Department 502.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

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(47)

Tentative Ruling

Re: ***Herrera v. Metiri Group, LLC***
Case No. 24CECG04231

Hearing Date: November 19, 2026 (Dept. 502)

Motion: Plaintiff's Motion for Preliminary Approval of Class and PAGA Settlement

Tentative Ruling:

To deny plaintiff's motion for preliminary approval of class and PAGA settlement, without prejudice.

Explanation:

Plaintiff Sophia Herrera ("Herrera" or "plaintiff") moves for preliminary approval of the settlement of her class action and PAGA action against defendant Metiri Analytical Group, Inc. ("Metiri" or "defendant.") The proposed gross settlement amount is $265,000 for the Class Claims and PAGA Claims. (Hawkins Decl., ¶ 2, Ex. 1, section 9(p).) From this amount the following payments will be made: $92,750 to class counsel and actual litigation costs not to exceed $28,000 (*Id.*, section 13); $10,000 to the class representative (*Id.*, section 14); up to $4,790 to the Settlement Administrator, APEX Class Action Administration (*Id.*, section 15); and $10,000 for the PAGA claim. (*Id*., section 16.) The PAGA amount of $10m00 will be paid $6,500 to the LWDA and $3,500 in penalties apportioned to the Aggrieved Employees – a 65/35 apportionment. (*Id*.) The balance for payments to class members is estimated to be $122,343.53. (*Id*., sections 1-13.)

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 achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible when that identification becomes necessary. While often it is said that class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records, that statement must be

considered in light of the purpose of the ascertainability requirement. Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." (*Nicodemus v. Saint Francis Memorial Hospital* (2016) 3 Cal.App.5th 1200, 1212, internal citations and quote marks omitted.)

Here, the class is ascertainable, as defendant's personnel records should be sufficient to allow the parties to identify the class members. (Hawkins Decl., ¶¶ 6-38.) The class is also sufficiently numerous to justify certification, as plaintiff's counsel claims that there are approximately 71 class members who worked for defendant during the class period. Therefore, the court intends to find that the class is sufficiently numerous and ascertainable for certification.

c. Community of Interest

"[T]he '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.'" (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.) "The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) [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.)

Here, it does appear that there are common questions of law and fact, as all of the proposed class members worked for the same defendant and allegedly suffered the same type of Labor Code violations. Therefore, the proposed class involves common issues of law and fact.

With regard to the requirement of typicality of the representative's claims, it does appear that the named plaintiff's claims are typical of the rest of the class and that she seeks the same relief as the other class members based on her allegations and prayer for relief in the complaint. There is no evidence that she has any conflicts between their interests and the interests of the other class members that would make her unsuitable to represent their interests. Therefore, plaintiff has shown that she has claims typical of the other class members.

Plaintiff's counsel has submitted a declaration showing that they are experienced and qualified to represent the class. (Hawkins Decl., ¶ 40.) The attorney's declaration discusses their background, education, and experience in class action litigation. They clearly have extensive background and experience in class action litigation. There is no indication that they have any conflict of interest that would prevent them from being appointed as counsel for the class. Therefore, the declaration provided is sufficient evidence to support counsel's assertion that they are experienced and qualified to represent plaintiff and the other class members here.

d. Superiority of Class Certification

It does appear that certifying the class would be superior to any other available means of resolving the disputes between the parties. Absent class certification, each employee of defendants would have to litigate their claims individually, which would result in wasted time and resources relitigating the same issues and presenting the same testimony and evidence. Class certification will allow the employees' claims to be resolved in a relatively efficient and fair manner. (*Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) Also, the value of each individual class member's claim is relatively small, so it would not be worthwhile for them to bring their claims on an individual basis. On the other hand, if they bring their claims as a class, then they can recover substantially more money and hopefully deter defendant from committing future violations of the law. Therefore, it does appear that class certification is the superior means of resolving the plaintiff's claims.

Conclusion: The court intends to grant certification of the class for the purpose of settlement.

2. Settlement

a. Legal Standards

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement . . . The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal. App. 4th 116, 129.) "[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished . . . [therefore] the factual record must be before the … court must be sufficiently developed." (*Id*. at p. 130.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id*. at p. 129.)

b. Fairness and Reasonableness of the Settlement

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Here, plaintiff's counsel has presented a sufficient discussion of the strength of the case if it went to trial, the risks, complexity, and duration of further litigation, and an explanation of why the settlement is fair and reasonable in light of the risks of taking the case to trial.

Plaintiff's counsel estimates that the overall value of the class claims at approximately $1,477,129 in damages, unreimbursed expenses and penalties should Plaintiff prevail at the class certification stage and at trial and survive any appeals and win on all claims and be awarded maximum damages for call class members for all shifts, and that certain assumptions and extrapolations were confirmed with further discovery. (Hawkins Decl., ¶ 24.)

However, there were substantial barriers to recovery, including defendants' contention that the claims were without merit and were not suitable for class certification. Thus, plaintiff substantially discounted the defendant's liability based on the inherent risks of trying the class claims.

Therefore, plaintiff has shown that the settlement is fair, reasonable, or adequate in light of the unique facts and legal issues raised by the plaintiff's case. Even though plaintiff has a strong case and defendant's liability is potentially much higher than the gross settlement amount of $265,000, plaintiff reasonably accepted less than the maximum potential liability based on the risks of going to trial, the possibility that she might not be able to establish willful violations of the law, and the danger that the court might reduce the amount of penalties even if plaintiff did prevail at trial. (Hawkins Decl., ¶¶ 17-24.) As a result, the court intends to find that the settlement is fair, adequate and reasonable under the circumstances.

c. Proposed Class Notice

The proposed notice appears to be adequate. (Hawkins Decl., ¶ 2, Ex. A.) The notices will provide the class members with information regarding their time to opt out or object, the nature and amount of the settlement, 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 representatives. As a result, the court intends to find that the proposed class notice is adequate.

3. Attorney's Fees and Costs

Plaintiffs' counsel seeks attorney's fees of $92,750, which is 35 percent of the gross settlement. Plaintiff's counsel has provided a declaration to describe their education, skill, and experience, as well as the challenges presented in the litigation. (Hawkins Decl., ¶¶ 16, 40.) The declaration generally discusses the attorney's background, education, skill, and experience. He relies on the fact that courts have chosen to allow attorneys in class and representative actions to recover fees based on a percentage of the common fund that they obtained for the class. Such fees are commonly in the range of one-third of the total recovery.

While the court may award fees based on a percentage of the total recovery (i.e. the "common fund" method), it may also perform a lodestar cross-check to ensure that the requested amount of fees is reasonable. (*Laffitte v. Robert Half International, Inc*. (2016) 1 Cal.5th 480, 504.) Here, counsel has not provided the court with enough information to conduct a lodestar cross-check of the requested fees. Counsel has not provided any evidence regarding the amount of hours they spent on the case, their hourly rates, and the tasks that they performed. They have also failed to submit any evidence showing that the time they spent on the case was reasonable and necessary for the litigation. They merely request fees of up $92,750 without any further explanation of why that amount is reasonable under the circumstances in light of the work done, the hourly rates of counsel, and the difficulty and complexity of the case.

Therefore, counsel has not shown that the requested fees are reasonable and necessary, and the court reserves approval of the fees sought at this time. It should be noted that the court does not deny plaintiff's motion for preliminary approval of class and PAGA settlement for these reasons. (Hawkins Decl., ¶ 2 and Ex. 1, section 13.) However, the court approves the notice to the class as sought.

Also, while counsel requests up to $28,000 for court costs, plaintiff's counsel has not provided a list of their itemized litigation costs. Therefore, plaintiff's counsel has not supported the request for court costs with any evidence, and the court reserves approval the requested costs. However, the court approves notice to the class as sought.

4. Payment to Class Representatives

Plaintiff seeks preliminary approval of a $10,000 service award to the named plaintiff. Plaintiff has provided her declaration, which supports the request for a service award, as she states that she worked closely with plaintiff's counsel, provided documents, answered questions, and participated in meetings about the case with counsel. The service award appears to be fair and reasonable in light of the work done by the named plaintiff. Therefore, the court intends to grant preliminary approval of the incentive award to the named plaintiff.

5. Payment to Class Administrator

Plaintiff's counsel states that the class administrator, APEX Class Action Administration, will receive a maximum of up to $4,790 to administer the settlement. (Hawkins Decl., ¶¶ 2, 16, and Ex. 1 thereto, § 16.) Plaintiff fails to provide a declaration from a representative of the administrator stating how much it will cost to administer the settlement. Plaintiff further fails to provide background information about the administrator's qualifications. As such, plaintiff has not provided enough information to allow the court to appoint APEX Class Action Administration as settlement administrator, or the amount in costs thereon. On these grounds, the motion for preliminary approval is denied.

6. PAGA Settlement

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. (i)(2).)

"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." (*Moniz v. Adecco USA, Inc.*, *supra*, 72 Cal.App.5th at p. 77, internal citations and footnote omitted.)

Plaintiff proposes to allocate $10,000 of the settlement to the PAGA claims, with 65 percent of that amount being paid to the LWDA, and the other 35 percent being paid out to the aggrieved employees. However, plaintiff's counsel does not include a proof of service showing that he served the LWDA, as required by Labor Code section 2699, subdivision (s)(2). Accordingly, any further consideration of the PAGA settlement is reserved for final approval.

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: lmg on 11-17-26.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re:	***Tarn Taran Logistics, Inc. v. Gracefully Transportation, Inc. et al.*** Superior Court Case No. 25CECG00801
Hearing Date:	November 19, 2026 (Dept. 502)
Motion:	By Defendants Palomar Excess and Surplus Insurance Company and Palomar Holdings, Inc. to Strike

Tentative Ruling:

To grant.

Explanation:

Defendants Palomar Excess and Surplus Insurance Company, and Palomar Holdings, Inc. (together "Defendants") seek to strike the First Amended Complaint ("FAC") filed by plaintiff Tarn Taran Logstics, Inc. ("Plaintiff") on the grounds that Plaintiff's counsel has passed away, and no new counsel has been substituted in.

Corporations may not represent themselves before the court in *propria persona*, nor can corporations represent themselves through their officers, directors, or any other employee who is not an attorney. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145.) Corporations must be represented by an appropriately licensed attorney in court proceedings. (*Ibid*.) The prohibition against corporations appearing in *propria persona* is because a corporation is an artificial entity that can only act through natural persons. (*Id.* at p. 1146.) If the corporation's representative is not an attorney, that person would be engaged in the unlicensed practice of law. (*Ibid*.) Where a corporation has appeared in a matter and subsequently becomes unrepresented, the corporation must obtain new counsel or potentially risk forfeiting rights. (*Thomas G. Ferruzzo, Inc. v. Superior Court* (1980) 104 Cal.App.3d 501, 504.)

Here, Defendants declare that Plaintiff's counsel of record, Richard L. Grant, passed away on December 12, 2025. (Cochran Decl., ¶ 2.) Defendants declare that on January 20, 2026, Grant Law mailed a Notice of Death of Counsel to the court, which was rejected due to e-filing requirements. (*Id.*, ¶ 3.) On February 11, 2026, Defendants notified the Estate of Richard L. Grant that the notice was not filed. (*Id.*, ¶ 4.) To date, no further action appears to have been taken. (*Id.*, ¶ 5.)

Based on the above and as a final notice, the court issued an order to show cause as to why the action should not be dismissed. No response was filed to the order to show cause. Accordingly, the motion is granted, and the court strikes the operative FAC, and the matter is dismissed without prejudice.

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: lmg on 11-17-26.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Julie Werfelmann vs. State Farm Mutual Automobile Insurance Company***
Superior Court Case No. 26CECG00221

Hearing Date: November 19, 2026 (Dept. 502)

Motions: (1) By Plaintiff for Reconsideration
(2) By Plaintiff to Supplement Minutes

Tentative Ruling:

To deny plaintiff's motion for reconsideration (Code Civ. Proc., §1008); and to deny plaintiff's motion to supplement September 30, 2026 minutes (Code Civ. Proc., §§128, 473).

Explanation:

On July 31, 2026, Plaintiff Julie Werfelmann (Plaintiff) moved to disqualify McCormick, Barstow, Sheppard, Wayte & Carruth LLP (McCormick Barstow) as counsel of record for defendant State Farm Mutual Automobile Insurance Company (State Farm). The hearing on the motion was originally set for August 26, 2026, then continued by the court to September 30, 2026. Plaintiff's counsel filed a Notice of Remote Appearance on September 29, 2026, but did not follow the procedural rules to request the presence of an official court reporter at the hearing. After full consideration of the papers filed, the authorities submitted by counsel, and the oral argument of counsel, the court (Lisa M. Gamoian, Judge) denied the motion by written minute order on September 30, 2026.

Plaintiff now moves for reconsideration under Code of Civil Procedure section 1008 of the court's September 30, 2026 order denying her motion to disqualify McCormick Barstow as State Farm's counsel. Plaintiff also brings a separate motion to supplement the court's September 30, 2026 minutes.

Reconsideration

Plaintiff bases her motion for reconsideration on Code of Civil Procedure section 1008, subdivision (a), which provides:

> When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.

Code of Civil Procedure section1008, subdivision (e) explicitly states the requirements set forth in the statute are jurisdictional:

> This section specifies the court's jurisdiction with regard to applications for reconsideration of its orders and renewals of previous motions, and applies to all applications to reconsider any order of a judge or court, or for the renewal of a previous motion, whether the order deciding the previous matter or motion is interim or final. No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section.

Thus, " '[a]ccording to the plain language of the statute, a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon "new or different facts, circumstances, or law." ' " *Pazderka v. Caballeros Dimas Alang, Inc.* (1998) 62 Cal.App.4th 658, 670 (*Pazderka*) [trial court lacked jurisdiction to reconsider its prior order where moving party's declaration failed to raise any new facts or law], quoting *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500.)

Plaintiff cites *Baldwin v. Home Sav. of America* (1997) 59 Cal.App.4th 1192, where the court held "the diligence requirement applicable to motions to reconsider on the basis of different facts is also applicable to motions to reconsider on the basis of different law. [Fn.]" (*Id.* at p. 1200.) In *Baldwin*, the plaintiff made no effort to explain the failure to present a two-year old case, therefore, the trial court exceeded its jurisdiction by granting the motion for reconsideration. (*Id.* at pp. 1195-1196; see *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 687 [rejecting as inadequate counsel's explanation that counsel failed to present important facts and evidence earlier due to "inadvertent oversight"]; *Crotty v. Trader* (1996) 50 Cal.App.4th 765, 771 [court may grant reconsideration only if presented with new or different facts, circumstances, or law].)

Plaintiff describes the new facts as follows: "The new matter consists of Casheros's [State Farm counsel's] October 1, 2026 firsthand objection to Plaintiff's account of the retention hearing and his October 2 response declining further email discussion without identifying the factual disagreement." (Ntc., p. 2:6-8.) In the declaration of Plaintiff's counsel, Mr. Dixon describes the new facts as follows:

> The new facts relied on for reconsideration are Casheros's October 1 intervention concerning the minutes and his October 2 response, described in paragraphs 10–11 and reproduced in Exhibits D–E. Those communications occurred after the September 30 decision. I could not have presented them before that decision because they did not yet exist. I sought clarification on October 1 and October 2. The transcript forwarded to me on October 5 corroborates the opening exchange, as described in paragraph 3. I do not claim the hearing events themselves first became known to me when I received the transcript.

(Dixon decl., ¶ 15.)

In sum, Plaintiff bases her motion on new circumstances that occurred after her counsel failed to follow the required procedural rules to request the presence of an official court reporter at the hearing on Plaintiff's motion to disqualify State Farm's counsel. Plaintiff cites no authority to support a finding that an opposing counsel's appropriate response to an attorney's nonstatutory efforts to correct a procedural error or oversight meet the jurisdictional prerequisites for relief under Code of Civil Procedure section 1008.

The Superior Court of Fresno County, Local Rules, rule 1.1.18, sets forth the procedure to request the presence of an official court reporter, and provides in part:

> If a party wishes to provide a court reporter for a hearing or trial, prior to the hearing or trial date, such party must file a statement with the Court requesting the presence of an official court reporter, stating therein their intent to provide their own official court reporter.

The court's website includes a link to the required forms to obtain the necessary court order. If the party selects a reporter from the court-approved list, the party must submit a one-page Form PGN-59 (Order Appointing Court-approved Report as Official Reporter Pro Tempore), signed by the court reporter to obtain a written court order appointing the court reporter pro tempore. Otherwise, the court requires submission of a two-page Form PGN-63 (Stipulation and Order to use Certified Shorthand Reporter), which requires the court reporter's signature as well as a stipulation signed and dated by counsel for the appearing parties on the second page to obtain the required court order.

In the declaration of Plaintiff's counsel, Mr. Dixon states at paragraph three that Jaime Ply, CSR No. 13323, appeared remotely as Plaintiff's privately-retained court reporter. Mr. Dixon then describes the beginning of the hearing and references, as exhibit A, the following partial transcript of the hearing on the disqualification motion:

> MR. DIXON: Good afternoon, your Honor. My apologies if you called our case. The audio just now came on.
> THE COURT: Thank you.
> Can you state your name, please.
> MR. DIXON: Jordan Dixon on behalf of Plaintiff Julie Werfelmann.
> THE COURT: Thank you.
> THE REPORTER: Your Honor, this is the court reporter, Jaime Ply, CSR 13323.
> Can counsel in court please state and spell your first and last name.
> THE COURT: No. I don't allow court reporters to appear remotely.
> THE REPORTER: Okay, your Honor. Thank you. I will not report the matter.
> THE COURT: Thank you. You can leave the session.

(Dixon decl., ex. A, p. 2:7-24.)

The court also has procedural rules for all remote appearances. Under the California Rules of Court, rule 3.672(d), the court has discretion to require in-person appearances. A court's local rules permitting remote appearances *must include* "[a] requirement that notice of intent to appear remotely be given to the court and to all parties or persons entitled to receive notice of the proceedings[.]" (Cal. Rules of Court, rule 3.672(e)(1)(A).) Plaintiff's Notice of Remote Appearance, filed on September 24, 2026, gives no notice to State Farm or the court of Plaintiff's intent for the court reporter to appear remotely.

In his declaration, Mr. Dixon describes his efforts to correct his failure to follow the required procedural rules to secure a verbatim transcript of the hearing. Plaintiff does not challenge the court's procedural rules to request the presence of a court reporter at the hearing or the court's discretion to require the reporter to appear in person. Plaintiff simply suggests the required "new facts" consist of "unprofessional conduct" by State Farm's counsel, when counsel refused to participate in Mr. Dixon's unorthodox attempts "to supplement" the minute order.

Specifically, after the court issued its original minute order on September 30, 2026, denying Plaintiff's motion to disqualify McCormick Barstow, Mr. Dixon sent the court and State Farm's counsel an e-mail requesting that the minute order be corrected to reflect that he had attended remotely, and be supplemented to reflect that Mr. Dixon had provided a court reporter, but the Court would not allow the reporter to appear remotely, nor did the court grant a brief continuance for Mr. Dixon to locate a court reporter.

Mr. Casheros responded to all parties as follows:

> I do agree with Mr. Dixon's proposed correction related to his remote appearance. He did appear via Zoom. I disagree with the remainder of his characterization of what transpired, including the issues related to the court reporter. Therefore, the defense request would be that the minute order be modified only insofar as reflecting that Mr. Jordan appeared remotely, and the remainder be adopted as is.

After the clerk corrected the minute order to list Mr. Dixon's Zoom appearance, Mr. Dixon sent another e-mail to the court and State Farm's counsel asking Mr. Casheros to clarify the nature of his disagreement and to "identify any specific factual disagreement[.]" (Casheros decl., ex. F.) The next day, Mr. Dixon sent another e-mail requesting further additions to the minute order, a detailed explanation from Mr. Casheros about his position, and a continued request to the court "that the minutes reflect my objection to proceeding without a reporter, my request for approximately 30 minutes to obtain an in-person reporter, my alternative request for an available court reporter, and the Court's disposition of each." (*Id.*, ex. G.) Mr. Casheros then replied to all by e-mail as follows: "Mr. Dixon, I've already stated my position and don't believe this is the appropriate forum to address these issues, after the fact. Therefore, I won't be responding any further to these e-mails." (*Id.*, ex. H.) Mr. Dixon cites no procedural rules authorizing his unorthodox e-mail demands.

On appeal, Plaintiff, as the appellant, would have the burden of providing an adequate record. (*Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935.) Plaintiff has remedies to create a record apart from the questionable procedure demanded by Plaintiff's counsel. Although Plaintiff solicited State Farm's consent to the e-mail demands in an effort to minimize the effect of Plaintiff's failure to secure a verbatim transcript, Plaintiff cites no authority requiring State Farm or the court to acquiesce to the novel procedure.[1]

The only possible "new facts" offered by Plaintiff concern Mr. Dixon's efforts post-hearing efforts after failing to follow the required procedure for a court reporter. Mr. Dixon's declaration does not disclose new facts, he simply describes the demands he made to solicit State Farm's consent to change the minute order and State Farm's refusal to consent. "A mistake based on (1) ignorance of the law or (2) imprecision in drafting . . . is not a proper basis for reconsideration." (*Pazderka, supra,* 62 Cal.App.4th at p. 670 [trial court lacked jurisdiction to reconsider its prior order where counsel's declaration merely explained counsel's mistake].) Here, as in *Pazderka*, Plaintiff fails to make the necessary showing. By failing to present the requisite new facts or law, Plaintiff fails to meet the jurisdictional prerequisites for relief under Code of Civil Procedure section 1008. Therefore, the court lacks jurisdiction under section 1008 and it must deny Plaintiff's motion for reconsideration.

Motion to Supplement

Plaintiff brings a separate motion for an order supplementing the September 30, 2026 minutes, as corrected October 1, 2026, "based on the Court's authority to make its records accurately reflect proceedings and rulings that occurred, including Code of Civil Procedure section 128, subdivision (a)(8), and 473, subdivision (d)." (Ntc., p. 2:11-13.) Plaintiff provides no analysis to explain her right to supplement the minutes under the cited code sections.

As State Farm correctly states, the reporter's transcript and the court's minutes serve different functions. In a civil case, a party may request the presence of an official reporter pro tempore to "take down in shorthand all testimony, objections made, rulings of the courts, exceptions taken, . . . arguments of the attorneys to the jury, and statements and remarks made and oral instructions given by the judge[.]" (Code Civ. Proc., § 269, subd. (a)(1).)

Government Code section 69844 requires the court clerk to maintain the minutes and enter orders:

> The clerk of the superior court shall keep the minutes and other records of the court, entering at length within the time specified by law, or forthwith if

[1]In addition to failing to obtain a written court order for an official reporter before the hearing and providing notice of the intent to have the reporter appear remotely, Plaintiff has also disregarded the rule requiring a memorandum that exceeds 10 pages to include a table of contents and authorities. (California Rules of Court, rule 3.1113(f).) And Plaintiff inexplicably cites to slip opinion pages in a decision published in 2021. (Memo., p. 5:14-15 and 11:14-15, citing *Moreci v. Scaffold Solutions, Inc.*; see California Style Manual, § 1:18 ["Official Reports citations must be provided if available"].)

> no time is specified, any order, judgment, and decree of the court which is required to be entered and showing the date when each entry is made. Failure so to enter the date or failure to enter the order, judgment, or decree within the time specified in this section shall not affect the validity or effectiveness of the entry.

An order, by definition, is "made or entered in writing." (Code Civ. Proc., § 1003.) "[T]he trial court may properly file a written order differing from its oral rulings when the rulings have not been entered in the minutes of the court. (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1170.) Preparing a minute order is part of the judicial function of rendering an effective order based on an oral ruling, and it sets the time for entry of the order for purpose of appeal.[2] The purpose of the reporter's transcript is to record what was actually said.

Here, the clerk properly corrected the clerical error regarding Mr. Dixon's remote appearance. As the Supervising Judicial Assistant, Mitchell Tigchelaar, stated in his October 2, 2026, e-mail, included as part of exhibit E, cited in Mr. Dixon's supporting declaration, "The Court's September 30, 2026 minute order reflects the appearances, oral argument, submission of the matter, the Court's ruling, and that the Tentative Ruling became the order of the Court." Plaintiff now seeks to "supplement" the minute order to include a record of what was said, which is the purpose of the reporter's transcript.

The court agrees with State Farm's analysis that Plaintiff's request to supplement the minutes "is a guise to remedy Plaintiff's failure to provide a court reporter to transcribe the hearing in accordance with this Court's local rules." (Opp., p., 2:6-8.) As State Farm explains, Plaintiff's reliance on Code of Civil Procedure sections 128 and 473 does not support her request to supplement the minute order:

> Plaintiff cites C.C.P. § 473(d) in support of her Motion to Supplement. However, C.C.P. § 473(d) provides that "[t]he court may, upon motion of the injured party, or its own motion, correct **clerical** mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.["] This does provide authority in support of Plaintiff's motion as Plaintiff is not requesting the court to *correct* a clerical mistake, but rather to *supplement* the Minute Order regarding the Motion to Disqualify hearing. There are no inaccurate statements contained within the Court's corrected Minute Order. (Casheros Decl., ¶ 5.) Accordingly, the corrected Minute Order is sufficient and does not require this Court to conform the Minute Order to reflect Plaintiff's wishes. (All emphasis added by State Farm.)
>
> C.C.P. § 128(a)(8), also cited by Plaintiff in her moving papers, provides that a court has the power "[t]o amend and control its process and orders so as to make them conform to law and justice." As described

[2] "An order granting or denying a disqualification motion is an appealable order." (*Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1203.)

> below, there no equitable basis to conform the Minute Order in the manner requested by Plaintiff as the court has express discretion to require a court reporter to appear in person and Plaintiff failed to abide by the local rules in requesting the remote appearance of a court reporter prior to the hearing.
>
> Further, the purpose of a minute order is to record the court's rulings and actions, not to serve as a transcript of the proceedings. When a conflict exists between what appears in a reporter's transcript and what appears in a minute order, California courts presume the reporter's transcript is more accurate (*In re A.C.* (2011) 197 Cal.App.4th 796, 799–800; see also *Arlena M. v. Superior Court* (2004) 121 Cal.App.4th 566, 569–570; *Garner v. BNSF Ry. Co*. (2024) 98 Cal. App. 5th 660, 668.) This reflects the fundamental principle that minute orders and reporter's transcripts serve distinct functions—the minute order captures the court's orders and rulings, while the reporter's transcript records the full proceedings including argument and statements by counsel.

(Opp., pp. 3:6-4:6.)

Alternatively, Plaintiff suggests "the Court should receive and retain the accompanying Dixon declaration . . . as Plaintiff's sworn account." (Plaintiff's obj. to incomplete minutes and memo., p. 4:23-24.) In her reply, Plaintiff cites *Randall v. Mousseau, supra,* 2 Cal.App.5th 929, where the court discussed the use of a verbatim transcript or settled statement on appeal:

> Litigants in California may exercise their right to appeal without obtaining and transmitting to the Court of Appeal a verbatim transcript of the oral proceedings in the trial court. One alternative mechanism available to litigants is the settled statement, which requires the parties and the court to create an adequate, accurate record of the trial or ruling on appeal.

(*Id.* at p. 931 [affirming trial court's order granting disqualification after forfeiture of review of trial court's improper denial of settled statement].) *Randall* acknowledges the use of a verbatim transcript or a settled statement to preserve the record on appeal. (*Id.* at p. 935 ["Without a record, either by transcript or settled statement, a reviewing court must make all presumptions in favor of the validity of the judgment."]) R*andall* does not support the use of Plaintiff's novel post-hearing e-mail procedure to create a record.

California Rules of Court, rule 8.137, sets forth the appellate procedural rules for an appellant to use a settled statement as the record of the oral proceedings in the superior court, in lieu of a reporter's transcript. In her moving papers, Plaintiff expressly acknowledges that her suggested nonstatutory procedure would not constitute a settled statement under rule 8.137. (Plaintiff's obj. to incomplete minutes and memo., pp. 4:26-5:1 ["Receipt of the fuller account does not adopt disputed assertions, decide reconsideration, or approve a settled statement under rule 8.137."].) Furthermore, Plaintiff fails to follow the proper procedure, prescribed by rule 8.137 to create a settled statement in lieu of a certified transcript of the proceeding. The minute order accurately

contains the required information. Therefore, the court denies Plaintiff's motion to supplement the minute order.

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: lmg on 11-17-26.
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Tyler v. Effortless Investments MGT. Co., LLC***
Superior Court Case No. 26CECG00481

Hearing Date: November 19, 2026 (Dept. 502)

Motion: Demurrer to Complaint

Tentative Ruling:

To overrule. (Code Civ. Proc., § 430.10, subd. (e).) Defendant Effortless Investments MGT. Co., LLC, shall file its answer to the complaint within 10 days of service of the order by the clerk.

Explanation:

In this representative action is brought by Natasha Tyler for Labor Code violations under the Private Attorneys General Act ("PAGA"). Defendant demurs to the Complaint on the ground that it is barred by the statute of limitations.

"A demurrer on the ground of the bar of the statute of limitations lies where it "appear[s] clearly and affirmatively that, upon the face of the complaint, the right of action is necessarily barred." (*Valvo v. Univ. of Southern California* (1977) 67 Cal.App.3d 887, 895; *Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1155.) Where a complaint discloses on its face that the statute of limitations has run on the cause of action stated in the complaint, it fails to state facts sufficient to constitute a cause of action. (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 833, rehg. denied, review denied.)

There is no disagreement between the parties on the point that a one-year limitations period applies. (Code Civ. Proc., § 340, subd. (a); *Brown v. Ralphs Grocery Co.* (2018) 28 Cal. App. 5th 824, 839 ["The statute of limitations for PAGA claims is one year"].) The parties also recognize that there were PAGA reforms in 2024, and this action is governed by pre-reform PAGA statutes and case law.

The primary question appears to be whether the limitations period is satisfied by giving notice to the LWDA, or the filing of the complaint.

Under Labor Code section 2699.3(a)(2)(A), an employee must wait 65 days following notice to the LWDA and the employer before filing a civil lawsuit, unless the LWDA provides notice it does not intend to investigate the alleged violation sooner. The 65-day period effectively tolls the one-year statute of limitations. (Lab. Code, § 2699.3, subd. (c)(2), and (e); *Hutcheson v. Superior Court* (2022) 74 Cal.App.5th 932, 939.)

Here, the Complaint alleges that plaintiff was employed "from approximately October 2021 to approximately October 2023." (Complaint, ¶ 8.) Though plaintiff's opposition seems to seek to evade this allegation of the end of plaintiff's employment, the Complaint clearly alleges that plaintiff's employment ended by October 31, 2023 at

the latest. In fact, elsewhere the Opposition explicitly recognizes that "Plaintiff's employment ended in October 2023." (Oppo. 6:12.)

Plaintiff served the PAGA notice on January 16, 2024, approximately three months after her separation and well within the one-year period.

Even "[t]he fact that [the aggrieved employee's] individual claim may be time-barred does not nullify the alleged Labor Code violations nor strip [the plaintiff] of her standing to pursue PAGA remedies" under *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73. (*Johnson v. Maxim Healthcare Services, Inc.* (2021) 66 Cal.App.5th 924, 930.)

Defendant relies on *Williams v. Alacrity Sols. Grp., LLC* (2025) 110 Cal.App.5th 932, review granted July 9, 2025, S291199. But even *Williams* does not support defendant's position that the action is barred by the statute of limitations. The appeals court therein held that "the statute of limitations is tied to the PAGA plaintiff's individual claims, and that the PAGA plaintiff must bring a PAGA action (as noted above, **by serving notice on the Agency**) within one year of the last Labor Code violation he or she individually suffered." (*Id.* at p. 942, emphasis added.)

Plaintiff points to other decisions on which review has been granted as supportive of plaintiff's standing to bring this action. In *CRST Expedited, Inc. v. Superior Court* (2025) 112 Cal.App.5th 872, review granted September 17, 2025, S292005, the Fifth District held that the pre-reform version of PAGA authorized an aggrieved employee to pursue civil penalties for non-individual PAGA claims for Labor Code violations suffered by other employees. And the Fifth District reaffirmed that conclusion in *Galarsa v. Dolgen California, LLC* (2023) 115 Cal.App.5th 1, review granted December 17, 2025, S293545.

All these decisions are persuasive only because review has been granted, but insofar as there is a split in appellate decisions, this court will follow the Fifth District Court of Appeals until the Supreme Court resolves the issue. (See Cal. Rules of Court, rule 8.1115(e)(3) & com., par. 2; Supreme Ct., Admin. Order No. 2021-04-21 (Apr. 21, 2021); *Auto Equity Sales, Inc. v. Superior* Court (1962) 57 Cal.2d 450, 456.)

Even *Williams* recognizes that a PAGA action is timely initiated by giving notice to the LWDA (not filing the lawsuit in civil court) within one year of the last Labor Code violation the plaintiff individually suffered. Based on applicable pre-reform PAGA decisions, the court finds that plaintiff has standing to bring this action, and it is timely because notice to the LWDA was given within one year of the end of plaintiff's employment with defendant.

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: lmg on 11-17-26 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Amescua v. Central California Blood Center***
Superior Court Case No. 24CECG02710

Hearing Date: November 19, 2026 (Dept. 502)

Motion: by Plaintiff for Preliminary Approval of Class Action and PAGA Settlement

Tentative Ruling:

To grant.

The motion for final approval and for an award of fees and costs will be heard on June 24, 2027 at 3:30 p.m. in Department 502. Papers for such motions need be filed and served no later than June 10, 2027.

Explanation:

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, hourly employees who worked for defendant Central California Blood Center between June 24, 2020 and May 1, 2025. (Manus Decl.,, Ex. 1, Settlement Agreement, ¶ 15.) Christine Hayes, President and CEO of defendant, attests to the ascertainability of the class members from personnel and payroll records and her determination from her own review that there were 362 hourly, non-exempt employees during the class period. (Hayes Decl., ¶ 3.) This is sizeable enough for class treatment and the ability to identify potential members appears feasible without unreasonable expense. 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"].)

There is sufficient evidence of numerosity and ascertainability in favor of granting preliminary 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 defendants 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 maintain accurate records or provide requested records, to reimburse employees for necessary business expenses, and a PAGA claim for civil penalties. (Manus Decl., ¶¶ 4-5.)

The First Amended Complaint alleges defendant's business practices and procedures caused violations of the Labor Code. Defendant paid its employees based on scheduled hours rather than those actually worked, deducted meal period without any record of class members receiving them, and failed to keep records of the time employees actually worked. (FAC, ¶ 11.) Employees were compelled to arrive for their scheduled shifts beforehand to prepare for their scheduled workday and were not compensated for this time, were required to complete off-the-clock work during their meal periods, and were not permitted to leave the facility and remain on standby to meet customer needs should a donor arrive during that time. (*Id.*, ¶ 12.) These practices resulted in employees working greater than 8 hours per day and not being compensated overtime, inaccurate wage statements that did not reflect all hours actually worked, and

defendant's failure to pay all wages upon termination of employment. Defendant is also alleged to have failed to provide required sick days to plaintiff pursuant to Labor Code section 246. (*Id*., ¶ 29.) Defendant is further alleged to have required its employees to use personal cell phones in the course of their duties without reimbursement. (*Id*., ¶ 37.) Class representative, Gloria Amescua includes in her declaration a generic description of being subject to the same employment policies and procedures and provides examples of how particular policies and practices applies to all hourly employees like herself resulted in violations of the Labor Code. (Amescua Amended Decl.,¶¶ 7-12.) These policies included completion of tasks in preparation for the start of the work day before clocking in, the required use of personal cell phones, and the automatic deduction of 30 minutes for lunch breaks even where no break was taken. (*Id*., ¶¶ 8-10.) The evidence supports finding there are sufficient common issues between the putative class members for purposes of preliminary approval of the settlement.

There is also a typicality requirement, i.e. that plaintiff's 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.)

As discussed with respect to commonality, plaintiff's declaration includes adequate evidence of the practices in the workplace forming the basis of the alleged Labor Code violations to demonstrate 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. (Manus Decl. ¶¶ 29-39.) Therefore, it does appear that class counsel have shown that they are adequate to represent the interests of the class. The 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 $10,000 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 payment to the LWDA, and the $10,000 incentive award, approximately $176,780.06 is left to be distributed to the class members. (Manus decl., ¶ 8.) The moving papers represent that dividing the remaining amount by the number of class members amounts to approximately $488.34 per person. (*Ibid*.) The actual amounts will vary based on the class member's amount of workweeks.

The class representative incentive award is over 20 times the mathematical average payment to class members and represents over 2% of the gross settlement. The usual amount approved is 1.5% or less. Gloria Amescua initially attested to spending approximately 18 hours assisting with the prosecution of her case. (Amescua Decl., ¶ 12.) She now attests to having spent 90 hours assisting with the prosecution of her case. (Amescua Amended Decl., ¶ 18.) She additionally attests to signing a general release of claims against her employer resulting in the relinquishment of a potential wrongful termination claim. (*Id*., ¶ 23.) Plaintiff also describes the risk of responsibility for defendant's costs in the event this action was unsuccessful and the ease with which potential employers can search her name on the internet and find this lawsuit. (*Id*., ¶¶ 22, 24.)

Although this doesn't prevent granting preliminary approval, plaintiff's declaration submitted with a motion for final approval must include evidence of their involvement in the case and risks taken, beyond speculation, to support the incentive award greatly disproportionate to the recovery of an average class member. The court additionally

expects an explanation as to how plaintiff's hours spent assisting in this case, describing activities before the settlement on May 1, 2025, increased from 18 to 90 hours in the in the amended declaration.

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. This factor weighs in favor of approval of the settlement.

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 Marta Manus presents counsel's assessment of the realistic exposure and maximum recovery for plaintiff's claimed Labor Code violations. (Manus Decl., ¶¶ 19-27.) Counsel's assessment is based on the expert analysis of Jarrett Gorlick of Berger Consulting Group and counsel's experience to discount the maximum exposure to an adjusted realistic exposure. Gorlick attests to his analysis of the data sample provided in discovery and using the data to query recorded meal break compliance and payment of overtime wages and calculate potential penalties that could stem from such violations. (Manus Decl., Ex. 4, Gorlick Decl., ¶ 6.) Gorlick attests to calculating the potential exposure based on the raw data provided to him together with plaintiff's allegations. (*Ibid*.) The declaration of Mr. Gorlick adequately explains the basis of the figures relied upon by plaintiff's counsel in her analysis to conclude that the settlement is reasonable.

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 appears to be adequate. The notification procedure is designed to provide the greatest likelihood that each class member will receive the settlement notification. The notices will 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. (Settlement, Exh. A.) 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. Therefore, the court finds 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. 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, is seeking preliminary approval of $116,666.67 in attorney fees, representing 33.33% of the gross settlement and actual litigation costs of $17,780.44. Plaintiff's counsel has provided a brief summary of the qualifications of the attorneys within the D.Law, Inc. law firm and summarized the number of hours each of seven attorneys contributed to the case along with their billing rate. The court notes that the billing rates are extraordinarily high[3] for the local community and any lodestar analysis with the final approval will reflect reduced rates to accurately reflect those of the community. The court anticipates a thorough discussion of factors to support the use of a multiplier for the lodestar to support finding the percentage-based fee is reasonable for the roughly 11 months this case was actively litigated before a settlement was reached.

The evidence provided is sufficient to support preliminary approval. Counsel shall provide an updated lodestar analysis with the final approval motion, including

[3] The court additionally notes that these billing rates also greatly exceed those submitted by D.Law, Inc. in the pending Fresno Superior Court case *Daisy Ramirez v. Behavioral Intervention Association*, case no. 24CECG01917 for a settlement reached less than two months before the mediation in the case at bench.

contemporaneous billing records, and documentation of all costs sought to be recovered.

4. PAYMENT TO CLASS ADMINISTRATOR

The settlement provides that the settlement administrator will be paid up to $9,550. (Sutherland Decl., ¶ 7, Ex. B.) The court is concerned that this figure is high for a class of this estimated size. Although this does not prevent preliminary approval of the allowance of up to $9,550 for the administration of the settlement the court anticipates an updated invoice reflecting actual costs of the settlement administration with the motion for final approval.

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. (Manus Decl., Ex. 8.)

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: lmg on 11-17-26.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Jimenez v. Orozco et al.***
Superior Court Case No. 16CECG03729

Hearing Date: November 19, 2026 (Dept. 502)

Motion: Withdrawal of Attorney

Tentative Ruling:

To take 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: lmg on 11-17-26.
(Judge's initials) (Date)