Tentative Rulings for December 18, 2025
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.

22CECG01150 ***Terralee Perez v. James Rossetti*** **is continued to Thursday, January 15, 2026 at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

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(34)

Tentative Ruling

Re: ***Ung v. Broder Bros. Co.***
Superior Court Case No. 23CECG01529

Hearing Date: December 18, 2025 (Dept. 403)

Motion: by Plaintiffs 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 August 20, 2026 at 3:30 p.m. in Department 403. Papers for such motions need be filed and served no later than August 6, 2026.

Explanation:

Plaintiffs Pina Ung and Timothy Peraza reached a settlement of their consolidated putative class action and PAGA action alleging wage and hour violations against their former employer, defendant Broder Bros. Co. Plaintiffs move to have the class certified for the purpose of settlement and to have the court preliminarily approve the settlement. From the gross settlement amount of $900,000 the following payments will be made: $315,000 (35%) to class counsel, up to $30,000 in litigation costs, $10,000 to each class representative plaintiff, $19,750 to the settlement administrator Phoenix Class Action Administration Solutions. From the gross settlement, $40,000 is designated to settle the PAGA claims and will be paid $30,000 to the LWDA and $10,000 in penalties apportioned to the aggrieved employees.

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 hourly, non-exempt employees who worked for defendants Broder Bros. Co. between April 21, 2019 and July 24, 2024. Class members can be ascertained from defendants' payroll and business records. Shelley LeHenaff, Vice President Human Resources for defendant, indicates the putative class consists of an estimated 1,688 members and is readily identifiable. (LeHenaff 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"].)

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 reimburse employees for necessary business expenses, and PAGA. (Han Decl., ¶ 25.)

The First Amended Complaint alleges generic violations of the Labor Code sections at issue but includes no factual allegations of what policies or practices were in place, the business defendants were engaged in, or plaintiffs' positions within that business. Although the issues may be common between members of the putative class, class counsel's declaration is not sufficient evidence to demonstrate commonality.

Plaintiff Timothy Peraza, a Picker and Box Handler for defendant, attests to his experiences providing the basis of the alleged Labor Code violations. Plaintiff attests to defendant's uniform practices of understaffing, heavy workloads and pressures from supervisors preventing him from taking breaks and working shifts in excess of 10 hours. (Peraza Decl., ¶ 12.) Peraza additionally attests to his personal non-receipt of all wages owed at the time of his termination due to the failure to pay missed meals, breaks and overtime. (*Id*. at ¶ 14.) Plaintiff Pina Ung, a Material Handler for defendant, also attests to the same clocking in "traffic jam" and non-compliant meal periods experienced by Peraza. (Ung Decl., ¶¶ 4-6.) She additionally attests to defendant's failure to reimburse her for necessary attire expenditures. (Ung Decl., ¶ 7.) Ung attests to the abcense of paper wage statements provided to employees and the inability to print what was provided online and the missing compensation due to missed breaks and meals and unpaid time on the premises not being reflected in the wage statement. (Ung Decl., ¶ 8.)

Here, there appear to be sufficient common issues between the putative class members for purposes of the commonality requirement, as plaintiffs allege defendant's policies resulted in its failure to pay for off-the-clock work and failure to provide meal and rest breaks, which led to the inaccurate wage statements and failure to timely pay final wages. Plaintiffs also alleged defendants failed to provide expense reimbursement for the purchase of required attire. These allegations of the complaint are sufficiently supported with evidence of the representative plaintiffs' experiences.

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

Usually, in wage and hour class actions, the distinctive feature that permits class certification is that the employees have the same job title or perform similar jobs, and the employer treats all in that discrete group in the same allegedly unlawful fashion. In *Brinker Restaurant v. Superior Court* (2012) 53 Cal.4th 1004, 1017, "no evidence of common policies or means of proof was supplied, and the trial court therefore erred in certifying a subclass."

The declarations of plaintiffs Peraza and Ung adequately demonstrate commonality and typicality to support class certification for purposes of the settlement.

"[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. (Han Decl. ¶¶ 3-7, Exh. 1; Perlman Decl., ¶¶50-58.) Therefore, it does appear that class counsel have shown that they are adequate to represent the interests of the class.

Another question in assessing "adequacy" is whether other circumstances evince that the proposed class counsel and representatives 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 each of the two named plaintiffs gets 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 $20,000 in incentive awards, less than $500,000 is left to be distributed to the class members. The moving papers represent that dividing the remaining amount by the estimated number of class members amounts to only $281 per person. The actual amounts will vary based on the class member's amount of workweeks.

The class representative incentive award is 35 times the mathematical average payment to class members. Pina Ung attests to spending in excess of 40 hours assisting with the prosecution of her case. (Ung Decl., ¶ 12.) Timothy Peraza provides details of the activities he has participated in during the litigation process. (Peraza Decl., ¶¶ 10-11.) Neither demonstrates their efforts and risks support an incentive significantly disproportionate to the average class member. Although this doesn't prevent granting preliminary approval, plaintiffs' declarations submitted with a motion for final approval should include evidence of risks taken in assuming the role of class representative to support an incentive award greatly disproportionate to the payments to class members. The court may award less than the agreed upon amount on final approval.

d. Superiority of Class Certification

Wage and hour Labor Code cases are particularly well-suited to class resolution because of the small amounts of each employee's claim, which makes it impractical to bring wage and hour cases on an individual basis. The large number of proposed class members (once established with admissible evidence) would also make it impractical to bring the claims separately. It would be far more efficient to bring all of the claims in one action, rather than forcing the employees to bring their own separate cases. Therefore, the court intends to find that class certification is the superior method of resolving the case, and it intends to grant the request to certify the class for the purpose of approving 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.)

The memorandum presents data tables and states the time and payroll data produced by defendant was analyzed by plaintiffs' expert, Aaron Woolfson. The declaration of retained expert Aaron Woolfson is now included and attests to the evidence reviewed, methodology and conclusions supporting his assessment of the frequency of claims and their potential value. (Woolfson Decl., ¶¶ 28-67.)

Plaintiffs' counsel attests to a comprehensive analysis of liability and potential damages such that the case reached the state where the parties understand the strength of the case, reasonableness in light of the attendant risks of litigation sufficient to support the reasonableness of the settlement. (Han Decl., ¶ 24.) Defendant continues to deny liability. (*Id*., ¶ 26.) Counsel further attests that the settlement falls within the range of fair and reasonable settlement. (*Id*., ¶ 27.)

Plaintiffs' counsel further 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. 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 intends to find that the proposed class notice is adequate.

3. ATTORNEYS' FEES AND COSTS

Plaintiffs' counsel seeks a fee award of thirty-five percent 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 $315,00 in attorney fees, representing 35% of the gross settlement and litigation costs of $30,000. Plaintiffs' counsel has provided a brief summary of the qualifications of the attorneys within the Justice Law Corporation and table summarizing the billing events and time spent by each attorney along with their billing rates. (Han Decl., ¶¶ 33-34, Exh. 2.) There is also evidence of the qualifications of the attorneys for Rastegar Law Group, their rates and summary of hours spent litigating this action. (Perlman Decl., ¶ 47.) The court notes that the billing rates for counsel are significantly higher than those of the local community and there is no showing that local counsel was unavailable to support an award of attorney fees based on Los Angeles

area rates. The court does not intend to assess the fees without adjusting counsel's billable rates to those commensurate with local counsel. Based on the hours submitted with this motion, evidence to support the application of a multiplier to meet the requested $315,000 in attorney fees will be necessary at the motion for final approval.

The evidence provided is sufficient to support preliminary approval. Counsel shall provide an updated lodestar analysis with the final approval motion and documentation of all costs sought to be recovered.

4. PAYMENT TO CLASS ADMINISTRATOR

The settlement provides that the settlement administrator Phoenix Settlement Administrators will be paid $19,750. The declaration of Jodey Lawrence of Phoenix Class Action Settlement Solutions is provided and details the scope of work to be accomplished and estimated costs in support of the request for payment. (Lawrence Decl., ¶¶ 12-16, Exh. B.) The administrator shall provide an update of the expected total actual costs with the final approval motion.

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 served to the LWDA with the proof of service of the moving papers.

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 12-17-25.
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***In re Petition of CBC Settlement Funding, LLC***
Superior Court Case No. 25CECG04001

Hearing Date: December 18, 2025 (Dept. 403)

Motion: Petition to Approve Transfer of Structured Settlement Payments

Tentative Ruling:

To deny without prejudice.

Explanation:

Petitioner apparently has made no attempt to comply with or supply the information required by Insurance Code section 10139.5, subdivisions (a)-(c), or Local Rule 2.8.7. Declarations from payee and petitioner must be filed, along with points and authorities showing how all statutory requirements are met.

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 12-17-25 .
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Kevin Assemi v. Farid Assemi***
Superior Court Case No. 23CECG05154

Hearing Date: December 18, 2025 (Dept. 403)

Motion: to Disqualify Law Firm

Tentative Ruling:

To deny, as moot.

Explanation:

Plaintiff Kevin Assemi moves to disqualify the law firm of McDermott Will & Schulte LLP ("McDermott Firm") from Representing Elevated Ag, LLC. The McDermott Firm previously represented Assemi Group, Inc., Farid Assemi, Farshid Assemi, John Bezmalinovic, and Maricopa Orchards, LLC in this action. On November 13 and 14, 2025, the McDermott Firm filed substitutions of attorney for the aforementioned defendants, effectively removing itself from any representation in the present action. Therefore, the motion to disqualify is moot, as the McDermott Firm's representation is no longer at issue.

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 12-17-25.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Christina Kleim v Jeremy Danielson***
Superior Court Case No. 24CECG05542

Hearing Date: December 18, 2025 (Dept. 403)

Motion: Default Prove-Up

Tentative Ruling:

To deny without prejudice.

Explanation

a) No Prove-Up Brief or Any Supporting Declarations:

Plaintiff has not filed a prove-up brief or any declarations to his support his request for damages. (Cal. Rules of Court, Rules 3.1800, subd. (a)(1); *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 288.) [Although no evidence relating to liability is necessary for a prove-up hearing, evidence establishing a prima facie case for damages is required.]

Plaintiff has not provided any documents to support their request for damages.

b) Failure to Dismiss all Parties:

Plaintiff did not dismiss parties Does 1-10 provided for in its civil complaint as per California Rules of Court section 3.1800(a)(7).

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 12-17-25.
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Sanchez, Jr. v. Jim Crawford Construction Company, Inc.***
Superior Court Case No. 24CECG01421

Hearing Date: December 18 2025 (Dept. 403)

Motion: Plaintiff's Motion for Preliminary Approval of Class Action Settlement

Tentative Ruling:

To grant.

Explanation:

Certification of Class for Settlement

Settlements preceding class certification are scrutinized more carefully to make sure that absent class members' rights are adequately protected, although there is less scrutiny of manageability issues. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 240; see *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1803, fn. 9, 19.a) The trial court has a "fiduciary responsibility" as the guardian of the absentee class members' rights to decide whether to approve a settlement of a class action. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.)

A precertification settlement may stipulate that a defined class be conditionally certified for settlement purposes. The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (Cal. Rules of Court, rule 3.769(d).) Before the court may approve the settlement, however, the settlement class must satisfy the normal prerequisites for a class action. (*Amchem Products, Inc. v. Windsor* (1997) 521 US 591, 625-627.)

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

Plaintiff bears the burden of establishing the propriety of class treatment *with admissible evidence*. (*Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 470 [trial court's ruling on certification supported by substantial evidence generally not disturbed on appeal]; *Lockheed Martin Corp. v. Superior Court*, *supra,* 29 Cal.4th at pp. 1107-1108 [plaintiff's burden to produce substantial evidence].)

There are 153 purported class members, identifiable through defendant's payroll records. This satisfies the numerosity and ascertainability requirements.

Under the community of interest requirement, the class representative must be able to represent the class adequately. (*Caro v. Procter & Gamble* (1993) 18 Cal.App.4th 644, 669.) "[I]t has never been the law in California that the class representative must have identical interests with the class members . . . The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Usually, in wage and hour class actions or PAGA class claims, the distinctive feature that permits class certification is that the employees have the same job title or perform similar jobs, and the employer treats all in that discrete group in the same allegedly unlawful fashion. In *Brinker Restaurant v. Superior Court* (2012) 53 Cal.4th 1004, 1017, "no evidence of common policies or means of proof was supplied, and the trial court therefore erred in certifying a subclass."

Plaintiff has submitted evidence that plaintiff and the other "Field Employees," as well as fuelers and mechanics employed by defendant, experienced the same Labor Code violations, and were subjected to the same practices and policies. (See Rose Decl., ¶ 25, Sanchez Decl., ¶¶ 4-6.) Plaintiff has satisfied the community of interest requirement.

The adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit. " 'The adequacy inquiry … serves to uncover conflicts of interest between named parties and the class they seek to represent.' [Citation.] '… To assure "adequate" representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class. [Citation.]' [Citation.]" (*J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 212.)

"[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 669.) This consideration is satisfied, as counsel has substantial class action experience.

Settlement Approval

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 129.) "[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished … [therefore] the factual record must be before the … court must be sufficiently developed." (*Id.* at p. 130.)

Clark v. America Residential Services (2009) 175 Cal.App.4th 785 vacated approval of a class settlement coupled with class certification, an award of $25,000 each to two named plaintiffs, and more. The problem was that the plaintiffs presented "no evidence regarding the likelihood of success on any of the 10 causes of action, or the number of unpaid overtime hours estimated to have been worked by the class, or the average hourly rate of pay, or the number of meal periods and rest periods missed, or the value of minimum wage violations, and so on." (*Id*. at p. 793.)

Defendant produced a sampling of payroll records to plaintiff's counsel, which was evaluated by plaintiff's expert. Plaintiff's counsel obtained sufficient information and data to adequately evaluate the value of the claims asserted. Following mediation involving arms-length negotiation the parties entered into a settlement agreement.

Class counsel determined that the total potential best-case-scenario liability is $5,985,577. Counsel provides a reasoned analysis of the strengths and weaknesses of the various causes of action, showing that due to the weaknesses, the realistic value of the claims, discounted for likelihood of success and difficulty in obtaining certification, is $448,918. In light of the realistic value of the claims, the settlement amount of $325,000 is reasonable.

Plaintiff's counsel seeks up to $108,333.33 in attorney's fees, which is 1/3 of the total gross settlement, plus actual costs of up to $30,000. 1/3 is within the range of fees that have been approved by other courts in class actions, which frequently approve fees based on a percentage of the common fund. (*City & County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-11; *Quinn v. State* (1975) 15 Cal.3d 162, 168; see also *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26.)

While it is true that courts have found fee awards based on a percentage of the common fund are reasonable, the California Supreme Court has also found that the trial court has discretion to conduct a lodestar "cross-check" to double check the reasonableness of the requested fees. (*Laffitte v. Robert Half Intern. Inc*. (2016) 1 Cal.5th 480, 503-504 [although class counsel may obtain fees based on a percentage of the class settlement, courts may also perform a lodestar cross-check to ensure that the fees are reasonable in light of the number of hours worked and the attorneys' reasonable hourly rates].)

The court prefers to do a lodestar analysis as a cross-check on the reasonableness of the fees. Counsel provides presents information showing that their claimed lodestar is $82,700, based on billing rates ranging from $300 to $500 per hour, and 202.9 hours worked. The court will preliminarily approve the fee award, though with the final approval motion, counsel will have to provide an updated lodestar analysis fully supported by documentation, justify the billing rates claimed, and address whether any multiplier should be applied to bring the lodestar close to the fee award sought.

Counsel claims that actual costs to date total $27,740.44. (See Rose Decl., Exh. 6.) The court will approve actual and reasonable costs. In the final approval motion counsel must provide documentary evidence of the largest components of the costs – the

$18,000 paid for mediation, and approximately $6,000 paid to Berger Consulting Group. The court notes that only half of the mediation fee will be approved to be paid from the settlement fund. Defendant is responsible for its half of the mediation fee. If $18,000 is only half of the mediation fee, the court will require an explanation for why the parties are paying $36,000 for a single day of mediation.

The court has already indicated that it will approve a $5,000 enhancement payment to plaintiff.

The settlement provides that class administrator Apex Class Action LLC will be paid up to $7,000. Apex was selected as the lowest bidder after accepting bids from multiple experienced settlement administrators. The court will approve the actual cost of $5,990.

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 12-17-25 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Parra v. General Motors LLC***
Superior Court Case No. 21CECG03251

Hearing Date: December 18, 2025 (Dept. 403)

Motion: by Plaintiff for Attorney Fees

Tentative Ruling:

To continue the hearing to Tuesday, January 13, 2026, at 3:30 p.m., in Department 403, to allow plaintiff an opportunity to resubmit its moving papers. The papers should be submitted no later than on Tuesday, January 6, 2026. The deadlines for the opposition and reply papers otherwise remain the same as for the original hearing date.

Explanation:

All moving and support papers must be served and filed at least 16 court days before the hearing. (Code Civ. Proc., § 1005, subd. (b).) The court's electronic filing system shows that plaintiff attempted to e-file documents in support of its motion for attorneys' fees on September 5, 2025. However, this attempt was rejected because the date, time, and department in the caption of the documents did not match the reserved hearing date. As a result, the only document actually filed for this motion is the notice of motion. Since an opposition addressing the merits of the motion is filed, it appears that defendant has waived this notice defect. As such, the court continues the hearing to allow time for counsel to resubmit its moving papers. In the event the moving papers are not timely submitted, the court intends to take the motion off calendar.

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 12-17-25.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Cuevas v. Harris Feeding Company***
Case No. 25CECG02311

Hearing Date: December 18, 2025 (Dept. 403)

Motion: Defendant's Motion to Compel Arbitration

Tentative Ruling:

To grant defendant's motion to compel arbitration of plaintiff's claims. To grant the motion to stay the pending court action until the arbitration has been resolved.

Explanation:

California Code of Civil Procedure section 1281.2 states that, "[o]n petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement. (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact." (Cal. Code Civ. Proc., § 1281.2, paragraph breaks omitted.)

"[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement - either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see § 1281.2, subds. (a), (b)) - that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal v. Great Western Fin. Securities Corp*. (1996)14 Cal. 4th 394, 413.) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and general principles of California contract law guide the court in making this determination. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534.)

In the present case, defendant has met its burden of showing that the parties agreed to arbitrate the claims raised by plaintiff. Defendant has presented a copy of the agreement signed by plaintiff, which states that he agrees to arbitrate "all claims between them", including all claims that plaintiff may have against the defendant. (Exhibit A to Martin decl., Agreement, ¶ 1.) Defendant has also presented the declaration

of its Human Resources Manager, Berenice Orozco, who states that she presented the Spanish language version of the agreement to plaintiff on May 13, 2024, explained the agreement to him in Spanish, and executed the agreement with him. (Orozco decl., ¶¶ 7, 8.) She further states that plaintiff had no questions or concerns after she explained the agreement to him. (*Id*. at ¶ 7.) He was given a copy of the agreement for his records after he signed it. (*Id*. at p 8.) Thus, defendant has met its burden of showing that plaintiff executed the agreement to arbitrate his causes of action, all of which arise out of his employment with defendant. As a result, the burden shifts to plaintiff to show that there is a defense to the agreement that prevents it from being enforced.

In his opposition, plaintiff argues that the agreement is unconscionable and thus should not be enforced. "'[U]nconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.' Phrased another way, unconscionability has both a 'procedural' and a 'substantive' element. [¶] The procedural element focuses on two factors: 'oppression' and 'surprise.' 'Oppression' arises from an inequality of bargaining power which results in no real negotiation and 'an absence of meaningful choice.' 'Surprise' involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in a prolix printed form drafted by the party seeking to enforce the disputed terms. Characteristically, the form contract is drafted by the party with the superior bargaining position." (*A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 486, citations omitted.)

"Substantive unconscionability is less easily explained. 'Cases have talked in terms of "overly harsh" or "one-sided" results. [Citations.] One commentator has pointed out, however, that ' ... unconscionability turns not only on a 'one-sided' result, but also on an absence of 'justification' for it" [citation], which is only to say that substantive unconscionability must be evaluated as of the time the contract was made." (*Stirlen v. Supercuts, Inc.* (1997) 51 Cal.App.4th 1519, 1532, citations omitted.) In other words, the contract terms must be so one-sided as to "shock the conscience." (*Ibid*.) "The prevailing view is that these two elements must *both* be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability." (*Id.* at p. 1533, citations omitted, italics in original.)

Here, plaintiff claims that the agreement is procedurally unconscionable because it was presented to him shortly before he was hired, even though defendant had never before required employees to sign an arbitration agreement, he has only a third-grade education in Mexico and does not have any legal training, and he was pressured to sign the agreement because defendant stated that he had to sign the agreement or be fired. (Guevara Cuevas decl., ¶¶ 4-8.) He claims that defendant threatened to fire him if he consulted with a lawyer. (*Id*. at ¶ 5.) He claims that he was given no genuine chance to negotiate its terms. (*Id*. at ¶ 7.) He claims that he was not given a copy of the agreement after he signed it. (*Id*. at ¶ 6.) He also points out that he was fired on May 25, 2024, about two weeks after he signed the agreement. (*Id*. at ¶ 9.)

On the other hand, defendant denies that it pressured plaintiff to sign the agreement, and claims that it explained the agreement's terms in Spanish, gave him time to review the agreement in Spanish, ask questions, and take the agreement home and consult with an attorney if he wished. (Orozco decl., ¶¶ 6-8.) Plaintiff signed the agreement without voicing any concerns or asking any questions. (*Ibid*.) He was allowed to take a copy of the agreement home for his records. (*Id*. at ¶ 8.) Also, in her reply

declaration, Orozco states that neither she nor anyone else threatened plaintiff with firing if he did not sign the agreement or if he tried to take it home or consult an attorney before signing it. (Reply Orozco decl., ¶¶ 10, 11.)

Thus, there is a factual dispute with regard to the circumstances surrounding the execution of the agreement. It is impossible to know which version of the facts is true based on the filed declarations alone. However, assuming that plaintiff's statements are true, then the agreement is procedurally unconscionable, since plaintiff was allegedly pressured into signing the agreement and threatened with firing if he refused to sign or tried to consult with an attorney before signing. Such pressure tends to show that the agreement was signed under circumstances that were oppressive and that the agreement was the result of pressure by the employer, the party with superior bargaining power, including the threat to fire plaintiff if he did not sign. Employment arbitration contracts that are imposed as contracts of adhesion on a "take it or leave it" basis are frequently found to be procedurally unconscionable. (*Carmona v. Lincoln Millennium Car Wash, Inc.* (2014) 226 Cal.App.4th 74, 84.)

However, even though the agreement may be procedurally unconscionable, plaintiff still needs to show that the agreement is also substantively unconscionable in order to meet his burden of showing that the agreement is unenforceable. "The prevailing view is that [procedural and substantive unconscionability] must *both* be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability. But they need not be present in the same degree. Essentially a sliding scale is invoked which disregards the regularity of the procedural process of the contract formation, that creates the terms, in proportion to the greater harshness or unreasonableness of the substantive terms themselves. In other words, the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Carmona, supra,* at p. 83, citations and quote marks omitted, italics in original.)

In *Armendariz v. Foundation Health Pyschcare Services, Inc*. (2000) 24 Cal.4th 83, the California Supreme Court found that an employment arbitration agreement must meet several criteria in order to be found substantively conscionable, including (1) providing for the appointment of neutral arbitrators, (2) providing for more than minimal discovery, (3) requiring a written award, (4) providing for all types of relief that would otherwise be available in court, and (5) not requiring the employee to pay for any unreasonable costs or fees as condition of access to the arbitration forum. (*Armendariz, supra*, at p. 102.)

Here, plaintiff argues that the agreement does not meet requirement to provide all relief that would otherwise be available in court because it does not allow him to recover his attorney's fees, which are available to the prevailing plaintiff in FEHA cases. Plaintiff points out that the agreement states that "Each Party will be responsible for compensating their own attorneys and witnesses unless the arbitrator orders otherwise." (Arbitration Agreement, ¶ 5.) However, plaintiff has ignored the fact that the agreement also states that "The arbitrator will have the authority to award either Party the same types of costs and/or attorney's fees as would be available in a court of competent jurisdiction." (*Ibid*.) Thus, the agreement's language clearly allows the arbitrator to award attorney's fees to a prevailing party if allowed under the law. As a result, the agreement does not deprive plaintiff of the remedy of a fees award under FEHA.

Plaintiff also argues that the agreement unfairly denies him the right to appeal the arbitrator's decision. The agreement states that "The arbitrator's decision will not be subject to judicial review, except in cases of fraud, professional misconduct, or unless there is a clear error of law or the award results in substantial injustice." (*Ibid*.) However, the fact that an arbitration agreement limits the parties' right to appeal the arbitrator's decision does not make the agreement unconscionable. (*Brown v. Wells Fargo Bank, N.A.* (2008) 168 Cal.App.4th 938, 956.) "A limitation on appeals is consistent with the California public policy of encouraging expeditious, binding and final resolutions of disputes through arbitration." (*Ibid*, citation omitted.) Thus, the fact that the arbitration agreement limits the parties' rights to appeal is not evidence that the agreement is substantively unconscionable.

Finally, plaintiff contends that the arbitration clause is unconscionable because it contains a class action and PAGA waiver. However, courts have found that class action waivers in arbitration clauses are not invalid or unconscionable. (*Sanchez v. Valencia Holdings Co., LLC* (2015) 61 Cal.App.4th 899, 923.) Thus, the existence of a class action waiver in the agreement does not render it unconscionable.

On the other hand, the California Supreme Court has found that waivers of PAGA representative actions in employee arbitration agreements are unenforceable. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 383-384, abrogated on other grounds in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906.) Thus, the PAGA waiver in the agreement is invalid and unenforceable.

However, the court has the power to sever unconscionable provisions from the agreement and enforce the rest of the agreement where the entire agreement is not so permeated with unconscionability that severing the offending terms would require the court to rewrite the terms of the agreement. "Where appropriate, courts have discretion to sever or limit the application of unconscionable provisions and enforce the remainder of an arbitration agreement under Civil Code section 1670.5, subdivision (a). In assessing severability, 'Courts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate.'" (*Ramos v. Superior Court* (2018) 28 Cal.App.5th 1042, 1068, quoting *Armendariz*, *supra*, 24 Cal.4th at p. 124.)

Here, the central purpose of the agreement is to require the parties to arbitrate their disputes out of court, not to prevent representative PAGA claims from being heard. At most, the PAGA waiver is collateral to the main purpose of the agreement. Also, the court may sever the PAGA waiver language without substantially affecting the rest of the agreement or rewriting its terms.

Therefore, the court will not refuse to enforce the agreement simply because it contains one minor unconscionable provision. Instead, it will sever the PAGA waiver from the rest of the agreement, enforce the remainder of the agreement and compel the parties to arbitrate their dispute, and stay the pending action until the arbitration is complete.

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 12-17-25.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Judith Estrada v. Michelle Parker***
Superior Court Case No. 20CECG02910

Hearing Date: December 18, 2025 (Dept. 403)

Motion: Enforce Settlement

Tentative Ruling:

This motion is taken off calendar as it does not appear from the court's record that moving papers were 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 12-17-18.
(Judge's initials) (Date)