Tentative Rulings for August 22, 2024
Department 502

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

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

24CECG01238 ***Alex Varela v. Juan Chavez***

23CECG01367 ***Jasvir Singh v. Knack Help, Inc.***

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(24)

Tentative Ruling

Re: ***Pilibos Sisters, Inc. v. Mavericks Ranch, LLC***
Superior Court Case No. 24CECG01500

Hearing Date: August 22, 2024 (Dept. 502)

Motion: Applications of Jennifer L. Campbell and Paul J. Lopach to Appear as Counsel *Pro Hac Vice* for Defendant Nutrien Ag Solutions

Tentative Ruling:

To grant. The applicants have satisfied the requirements of California Rules of Court, Rule 9.40. No appearance required.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 08/19/24.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Melody Rushing v. George Hadjinlian***
Superior Court Case No. 23CECG04665

Hearing Date: August 22, 2024 (Dept. 502)

Motion: Plaintiff's Motion to Strike Cross-Complaint

Tentative Ruling:

To continue the hearing on the motion to strike to September 26, 2024 at 3:30 p.m. in Department 502. To order plaintiff to meet and confer with defense counsel. If the parties are unable to resolve their dispute, then plaintiff's counsel shall file a declaration regarding the meet and confer efforts by the close of business on September 25, 2024.

Explanation:

Under Code of Civil Procedure section 435.5, a party who wishes to move to strike a pleading must meet and confer with the other party regarding the deficiencies of the pleading at least five days before the motion must be filed, and must file a declaration regarding their meet and confer efforts concurrently with their motion to strike. (Code Civ. Proc., § 435.5, subd. (a)(1)-(3).) However, "[a] determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion to strike." (Code Civ. Proc., § 435.5, subd. (a)(4).)

Here, plaintiff's counsel has not filed a declaration regarding any efforts to meet and confer with defense counsel before he filed the motion to strike the cross-complaint. Defense counsel denies that plaintiff's counsel contacted him or co-counsel for defendant before filing the motion to strike. Therefore, plaintiff did not comply with the meet and confer requirement before filing the motion to strike the cross-complaint.

On the other hand, the court cannot deny the motion to strike for failure to meet and confer alone. (Code Civ. Proc., § 435.5, subd. (a)(4).) Instead, the court intends to continue the motion for several weeks and order plaintiff's counsel to meet and confer with defense counsel regarding the alleged deficiencies in the cross-complaint. If the parties are unable to resolve the dispute, plaintiff's counsel shall file a declaration regarding the meet and confer efforts before the next hearing date.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 08/20/24.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Agustin Perez Cruz v. Ashton Castillo***
Superior Court Case No. 21CECG00250

Hearing Date: August 22, 2024 (Dept. 502)

Motion: Plaintiff's Motions to Compel Responses and Further Responses to: 1) Form Interrogatories, Set One; 2) Special Interrogatories, Set One; and 3) Request for Production, Set One, and for Monetary Sanctions Against Defendant and his Attorneys

Plaintiff's Motion to Strike Objections and Deem the Truth of Matters Specified in Plaintiff's Request for Admissions, Set One, or in the alternative, to Compel Responses and Further Responses to Request for Admissions, Set One, and for Monetary Sanctions Against Defendant and his Attorneys

Tentative Ruling:

To grant the motions for further responses. To grant the motion to deem the truth of matters specified in plaintiff's request for admissions, set one.

Defendant Aston Cruz shall provide further responses, without objection, within twenty (20) days from the date of this order. Defendant Ashton Cruz shall pay monetary sanctions in the amount of $840 payable to counsel for plaintiffs within twenty (20) days from the date of this order.

Explanation:

Defendant Ashton Cruz ("defendant") responded to plaintiff's discovery requests with only the same vaguely worded objections, even to those requesting basic information (e.g. Form Interrogatory no. 02.02), thus prompting plaintiff to file these motions. Defendant only raised a procedural challenge in his oppositions and did not address the merits of the discovery dispute. At the initial hearing on these motions on July 2, 2024, the court provided a specific deadline for defendant to file a supplemental opposition. A supplemental opposition has not been filed. Accordingly, defendant has not justified his objections to what appears to be reasonable and straight-forward requests - thus the motions are granted.

Evasive responses and objections lacking substantial justification constitutes conduct subject to sanctions. (Code Civ. Proc., § 2023.010.) Among other things, moving counsel requests monetary sanctions for each motion, and the accompanying declarations provide a calculation for the requested total. Considering, however, the minimal opposition, the court intends to limit the requested attorneys' fees to two hours @ $300 per hour and costs to the four filing fees ($60/per).

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 08/20/24.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Noemi Peraza Lopez v. Noble Credit Union/COMPLEX/CLASS ACTION***
Superior Court Case No. 24CECG00076

Hearing Date: August 22, 2024 (Dept. 502)

Motion: By Plaintiff Noemi Peraza Lopez for Preliminary Approval of Class Action Settlement

Tentative Ruling:

To grant preliminary approval of the class action settlement.

Explanation:

1. Class Certification

a. Standards

First, the court must determine whether the proposed class meets the requirements for certification before it can grant preliminary approval of the proposed settlement. An agreement of the parties is not sufficient to establish a class for settlement purposes. There must be an independent assessment by a neutral court of evidence showing that a class action is proper. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93-95.)

"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 re Tobacco II Cases* (2009) 46 Cal.4th 298, 313, *citing Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089, internal citations omitted.)

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, plaintiff Noemi Peraza Lopez ("Plaintiff") seeks to certify a class consisting of all individuals who sought a loan using a limited-term driver's license and were affected by policy practices that resulted in defendant Noble Credit Union ("Defendant") allegedly committing discriminatory acts in violation of the California Unruh Civil Rights

Act, from the period of January 5, 2022 through January 5, 2024. Plaintiff estimates that the class has 53 members. Therefore, it appears that the class is sufficiently numerous to warrant certification. Also, the class of all individuals who used a limited-term driver's license and were denied a loan on those grounds would be readily ascertainable. Therefore, the proposed class is sufficiently numerous and ascertainable to be certified for the purpose of settlement.

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.'" (*Fireside Bank v. Superior Court*, *supra*, 40 Cal.4th at p. 1089, *citing Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.)

"The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502, internal citations omitted.) "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1020.) "It is axiomatic that a putative representative cannot adequately protect the class if [his] interests are antagonistic to or in conflict with the objectives of those he purports to represent. (*Richmond v. Dart Industries, Inc.*, *supra*, 29 Cal.3d at p. 470.)

Here, it appears that there are common questions of law and fact, as Defendant allegedly denied the putative class's individual applications based on the use of a limited-term driver's license. The named class representative also has the same claims as the other class members. It appears that Plaintiff will be able to adequately represent the class. Nothing in the evidence submitted suggests that Plaintiff has any conflicts that would make her unable to represent the class. Plaintiff also has experienced and qualified counsel for her and the rest of the class. There is also evidence to establish that class counsel are experienced and qualified to represent the class based on the declarations of counsel.

Therefore, the proposed class has a sufficient community of interests to be certified for the purpose of settlement.

d. Superiority of Class Certification

It also appears that certifying the class would be superior to any other available means of resolving the disputes between the parties. Absent class certification, the individuals 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 individual's 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.) Therefore, the proposed class's claims are sufficient superior to be certified for the purpose of settlement.

2. Settlement

a. Legal Standards

"[I]t 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, internal citations omitted.) "[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." (*Id.* at p. 130.)

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, it does appear that the settlement is fair and reasonable. The gross settlement is $159,000.00. The individuals will each receive $3,000.00. The value of the claim reflects 75 percent of the maximum statutory damage, and came after the exchange of discovery and negotiations amongst the parties. Under the terms of the settlement, Defendant further agrees to review its policies in light of the facts of this case, and to train its staff accordingly.

In addition, class counsel are highly experienced in complex litigation, and provided information as to their assessments of the strength of Plaintiff's case, the risk, expense and complexity of the litigation, the risk of maintaining class action status, and the extent of discovery completed. Thus, class counsel's opinion that the settlement is fair, adequate, and reasonable is entitled to considerable deference. There is also no evidence that the settlement is the product of collusion. Therefore, the court finds that the proposed settlement amount is fair, adequate and reasonable.

c. Proposed Class Notice

The proposed notice appears to be adequate, as the class administrator will mail out notices to the class members based on the Defendant's records. 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, and the service award to the named class representative. Therefore, the court finds that the proposed class notice is adequate.

3. Attorney's Fees and Costs

The parties have agreed not to seek attorney's fees or costs from the proposed settlement. (Saenz Decl., ¶ 19, and Ex. A, §§ 5(e), 11(d).)

4. Payment to Class Representative

Plaintiff seeks preliminary approval of a $5,000 "service payment". Incentive payments to class representatives are routinely awarded in class action wage and hour settlements, and similar payments have been approved in other cases. Here, counsel submits certain statements, and only details the general terms the work Plaintiff did on the case. The court approves the proposed notice regarding a service award to Plaintiff. Plaintiff is directed to support her request for a service reward with the final approval motion.

5. Payment to Class Administrator

The parties have agreed not to seek costs of administration from the proposed settlement. (Saenz Decl., ¶ 19, and Ex. A, §§ 5(e), 11(d).) Plaintiff however does seek the appointment of RG2 Claims Administration, LLC ("RG2") to administer the settlement. While no bid was offered for review, the court finds that based on the evidence presented, RG2 is sufficiently qualified, and appoints RG2 as administrator. The court notes that the terms of the settlement suggest that the costs of administration are expected not to exceed $10,000. (Saenz Decl., Ex. A. § 11(d)(iii). The class size here is 53, and the payout is fixed, requiring no complex calculations. Counsel is directed to submit a declaration from RG2 providing evidence of actual costs of providing service.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 08/21/24.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Phylis Mcgrue v. Rodney Bernaldo/LEAD CASE***
Superior Court Case No. 19CECG03950

Hearing Date: August 22, 2024 (Dept. 502)

Motion: by Defendant for Determination of Good Faith Settlement

Tentative Ruling:

To grant defendants Rodney Bernaldo and Ruanne Bernaldo, Trustees of Bernaldo Family Trust's (the "Bernaldo Defendants") motion for order determining good faith settlement. To find that the settlement between plaintiffs and the Bernaldo Defendants is in good faith.

Explanation:

This is a continuation from the August 6, 2024 hearing on the Bernaldo Defendants' motion for good faith settlement. The matter was continued to allow the Bernaldo Defendants an opportunity to make a sufficient showing of the factors laid out in *Tech-Bilt , Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488.)

"Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005." (Code Civ. Proc. § 877.6, subd. (a)(1).)

"[T]he intent and policies underlying section 877.6 require that a number of factors be taken into account including a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants. [Citation.] Finally, practical considerations obviously require that the evaluation be made on the basis of information available at the time of settlement. '[A] defendant's settlement figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant's liability to be.' [Citation.] The party asserting the lack of good faith, who has the burden of proof on that issue (§ 877.6, subd. (d)), should be permitted to demonstrate, if he can, that the settlement is so far 'out of the ballpark' in relation to these factors as to be inconsistent with the equitable objectives of the statute. Such a demonstration would establish that the proposed settlement was not a 'settlement made in good faith' within the terms of section 877.6." (*Tech-Bilt , Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.)

The settling parties, the Bernaldo Defendants, have reached a settlement with plaintiffs Phylis McGrue, Francine Ward, Alex Lewis, Larry Kauffman, Alveda Tarlton by and through her successor in interest Barbara Guy, Antonio Pulido, Curtis Malone by and through his successor in interest Tyrone Malone, Theodore White, Charles Wherry, Jerry Garcia, Vikki Robertson, Frank Chancelor, Vivian Evans by and through her successor in interest Jason Evans, Cynthia Turner, Anita Bowling, Edward Bailey, and Daria Manning, for $850,000 in exchange for a release of all claims against the settling parties.

The Bernaldo Defendants represent that cases involving habitability issues typically settle for $20,000 - $50,000 per plaintiff, and indicate that the proposed settlement ($850,000 = 17 plaintiffs x $50,000) exceeds verdicts obtained in similar cases. As the opposition points out, limited evidence is provided in support of the Bernaldo Defendants' motion. However, the court finds the estimation of the plaintiffs' potential recovery to be aligned with the typical recovery a plaintiff in this type of case might expect. Judicial notice of the four trial court cases involving habitability issues and their settlement amounts is granted. (Evid. Code, § 452, subd. (d).)

While no evidence is provided to show the Bernaldo Defendants' proportionate liability or their potential liability for indemnity to joint tortfeasors, counsel for the settling defendants, Mr. Peel, indicates that plaintiffs have not ever produced a single document evidencing their personal injury or property damage claims, which suggests plaintiffs' claims (against all defendants) may be difficult to prove at trial. (Peel Supp. Decl., filed on Aug. 16, 2024, ¶ 2.) Moreover, based on the plaintiffs' potential recovery in similar habitability cases (above), the proposed settlement amount appears to be on the higher end of the typical recovery.

The allocation of the settlement is not challenged. The settlement is a product of arm's length negotiations and there is no evidence of collusion, fraud, or tortious conduct aimed to injure the interests of the nonsettling defendants. (Peel Decl., filed on June 27, 2024, ¶ 5.)

In light of these factors, the proposed settlement of $850,000 does not appear to be grossly disproportionate to what a reasonable person would estimate the Bernaldo Defendants' liability to be.

The settlement is contested by defendant FGV Fresno, LP ("FGV Fresno") on the basis that the settling defendants have downplayed their role in the management of the property and share a greater proportion of liability than they have allocated themselves. FGV Fresno highlights the fact that they are currently seeking leave to file claims against certain tenants for vandalism, and are investigating whether they have viable claims against the settling defendants for the failure to disclose material defects.

As the parties challenging the settlement, they bear the burden of demonstrating the settlement submitted for approval is too far out of the ballpark to be found to have been reached in good faith. However, FGV Fresno has not challenged either the reasonableness of the settlement amount or the estimated total recovery amount. Nor has FGV Fresno presented any evidence to suggest that the settlement amount is too far out of the ballpark of the Bernaldo Defendants' potential liability. FGV Fresno merely

alludes to an investigation on potential claims against the Bernaldo Defendants. Further, without more, the claims FGV Fresno has against plaintiffs seemingly has no relevance on the settlement between plaintiffs and the settling defendants. The oppositions have not demonstrated that the settlement reached between plaintiffs and the Bernaldo Defendants is grossly disproportionate or too far out of the ballpark to be considered reasonable *based on information available at the time of the settlement.*

Nonsettling defendants' request to continue the hearing on this motion in order to conduct further discovery is denied. The trial date for this matter is approximately one month away. The parties have had ample opportunity to exchange and participate in discovery since the commencement of these proceedings in 2019.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 08/21/24.
(Judge's initials) (Date)