

<b>SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited</b>	Entered by:
TITLE OF CASE: <b>Robert Ziegler vs. Marihart Restaurant Group, Inc. / COMPLEX / CLASS ACTION</b>	
<b>LAW AND MOTION MINUTE ORDER</b>	Case Number: <b>23CECG00301</b>

Hearing Date: **November 14, 2024**      Hearing Type: **Motion - PAGA Settlement**  
Department: **503**      Judge/Temp. Judge: **Hamilton, Jr., Jeffrey Y.**  
Court Clerk: **Lopez, Maria**      Reporter/Tape: **Not Reported**

<b>Appearing Parties:</b>	
Plaintiff: No Appearances	Defendant: No Appearances
Counsel:	Counsel:

Off Calendar

Continued to  Set for \_\_\_ at \_\_\_ Dept. \_\_\_ for \_\_\_

Submitted on points and authorities with/without argument.  Matter is argued and submitted.

Upon filing of points and authorities.

Motion is granted  in part and denied in part.  Motion is denied  with/without prejudice.

Taken under advisement

Demurrer  overruled  sustained with \_\_\_ days to  answer  amend

**Tentative ruling becomes the order of the court. No further order is necessary.**

**Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.**

**Service by the clerk will constitute notice of the order.**

**See attached copy of the Tentative Ruling.**

Judgment debtor \_\_\_ sworn and examined.

Judgment debtor \_\_\_ failed to appear.  
Bench warrant issued in the amount of \$ \_\_\_

**JUDGMENT:**

Money damages  Default  Other \_\_\_ entered in the amount of:  
Principal \$\_\_\_ Interest \$\_\_\_ Costs \$\_\_\_ Attorney fees \$\_\_\_ Total \$\_\_\_  
 Claim of exemption  granted  denied. Court orders withholdings modified to \$\_\_\_ per \_\_\_

**FURTHER, COURT ORDERS:**

Monies held by levying officer to be  released to judgment creditor.  returned to judgment debtor.  
 \$\_\_\_ to be released to judgment creditor and balance returned to judgment debtor.  
 Levying Officer, County of \_\_\_, notified.  Writ to issue  
 Notice to be filed within 15 days.  Restitution of Premises  
 Other: \_\_\_

(27)

**Tentative Ruling**

Re: **Robert Ziegler v. Marihart Restaurant Group, Inc. / Complex / Class Action**  
Superior Court Case No. 23CECG00301

Hearing Date: November 14, 2024 (Dept. 503)

Motion: By Plaintiff for Preliminary Approval of Class Action Settlement

**Tentative Ruling:**

To grant plaintiff's motion for preliminary approval of the class settlement and provisional class certification. Moving counsel shall contact the calendaring clerk to set the final approval hearing.

**Explanation:**

**1. Settlement**

The court "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; see also *Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F.3d 1071, 1079 ["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."].)

"[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." (*Kullar, supra*, 168 Cal.App.4th at p. 130.) The court must cautiously approach 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.)

"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.)

Plaintiff contends and provides evidence that the proposed settlement is the product of arms-length adversarial negotiations between counsel for plaintiff and counsel for defendant, including a mediation session with Scott Radovich, a respected mediator. (See Otkupman, Decl. ¶¶ 16 - 17.) Considering the depth of analysis, the inclusion of realistic probabilities of prevailing verse the attendant risks of not collecting after a trial, the settlement appears reasonable.

#### Proposed Class Notice

The proposed notice appears to be adequate, as the class administrator will mail out notices to the class members. 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, the service award to the named class representatives, and the settlement administrator's fees and costs. (See Otkupman, Decl, Ex. C.) Therefore, the court finds that the proposed class notice is adequate.

#### Attorney Fees and Costs/Payments to Class Representative and Administrator

Plaintiff's counsel claims to seek attorneys' fees of one third not to exceed \$39,600 and include all necessary information in a motion for final approval. Accordingly, at the time of final approval the court can and may award a lesser amount of attorneys' fees. The fees motion should provide a fully supported lodestar analysis, including time/billing statements and justification for the billing rates claimed. Similarly, the motion includes a declaration from plaintiff describing his assistance justifying the proposed service award and the quote from the proposed administrator appears reasonable.

## **2. Conditional Certification**

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; see also Newberg, *Newberg and Rubenstein on Class Actions* (Westlaw, 2017) Section 7:3 ["The parties' representation of an uncontested motion for class certification does not relieve the Court of the duty of determining whether certification is appropriate."])

"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. [Citations.] 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." (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089.)

### Numerosity and Ascertainability

"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.) In essence, 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].)

Here, the anticipated 186 class members are identifiable through defendant's records. (Otkupman, Decl. ¶ 28), and the class can be ascertained through payroll records.

### 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.) Common issues predominate when they would be "the principal issues in any individual action, both in terms of time to be expended in their proof and of their importance." (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 810.) Common questions need only be "sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits." (*ibid.*)

In addition, 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.)

Plaintiff contends that the class members' claims are premised on whether defendant had legally compliant policies and practices. In addition, the named plaintiffs' claims involve similar legal theories as those asserted by the other class



