TENTATIVE RULINGS

JUDGE RANDALL J. SHERMAN

DEPARTMENT CX105

AUGUST 9, 2024

Appearances, whether remote or in person, must be in compliance with Code of Civil Procedure §367.75, California Rules of Court, Rule 3.672, and Superior Court of California, County of Orange, Appearance Procedure and Information, Civil Unlimited and Complex, located at https://www.occourts.org/media-relations/covid/Civil_Unlimited_and_Complex_Appearance_Procedure_and_Information.pdf. Unless the court orders otherwise, remote appearances will be conducted via Zoom through the court's online check-in process, available at https://www.occourts.org/media-relations/civil.html. Information, instructions and procedures to appear remotely are also available at https://www.occourts.org/media-relations/aci.html. Once online check-in is completed, counsel and self-represented parties will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room while the clerk provides access to the video hearing.

Court reporters will not be provided for motions or any other hearings. If a party desires a court reporter for a motion, it will be the responsibility of that party to provide its own court reporter. Parties must comply with the court's policy on the use of pro tempore court reporters, which can be found on the court's website at www.occourts.org/media/pdf/Privately_Retained_Court_Reporter_Policy.pdf.

If you intend to submit on the tentative ruling, please advise the other parties and the court by calling (657) 622-5305 by 9:00 a.m. on the hearing date. Make sure the other parties submit as well before you forgo appearing, because the court may change the ruling based on oral argument. Do not call the clerk about a tentative ruling with questions you want relayed to the court. Such a question may be an improper ex parte communication.

#	Case Name & No.	Tentative Ruling
1	**Blanquet vs. ASFC, LLC 2021-01191653**	The tentative ruling is to continue the Final Report Hearing to September 20, 2024 at 10:00 a.m., to confirm that the amount of the uncashed checks has been delivered to the cy pres recipient and that the court's file thus may be closed. All supporting papers must be filed at least 16 days before the new hearing date. Plaintiff is ordered to give notice to defense counsel unless notice is waived.
2	**Hopper vs. FM Orange County LLC 2021-01199454**	The tentative ruling is to continue the Final Report Hearing to September 19, 2025 at 10:00 a.m., to confirm that the amount of the uncashed checks has been delivered to the State Controller's Office Unclaimed Property Fund in the names of the applicable payees and that the court's file thus may be closed. All supporting papers must be filed at least 16 days before the new hearing date. Plaintiff is ordered to give notice to defense counsel unless notice is waived.

3	**Sgontz vs. Crossmark, Inc.** **2021-01204377**	The tentative ruling is to continue the hearing on plaintiffs' Motion for Approval of Settlement Under Private Attorneys General Act to December 13, 2024 at 10:00 a.m. Counsel must file supplemental papers addressing the court's concerns (not fully revised papers that would have to be re-read) at least 16 days before the next hearing date. Counsel should submit an amendment to the settlement agreement rather than any amended settlement agreement. Counsel also should provide a red-lined version of any revised papers, including the proposed letter to the aggrieved employees. Counsel also should provide the court with an explanation of how the pending issues were resolved, with references to any corrections to the settlement agreement and the proposed letter to the aggrieved employees, rather than with just a supplemental declaration or brief simply asserting that the issues have been resolved. Plaintiffs failed to file the First Amended Complaint they agreed in ¶9.1 of the settlement agreement that they would file. Thus, the operative pleading in this case now involves only one plaintiff, only one PAGA letter, and limited claims that could be the subject of a release. This court cannot even analyze many of the issues it normally reviews on a motion for settlement approval for this reason. Those issues will be reserved for the next hearing. The definition of Aggrieved Employees is overbroad in including employees of entities who are not defendants in this case. The release is overbroad in including named entities who are not defendants in this case. The parties should know by now if the escalator clause applies, and thus ascertain the actual Gross Settlement Amount. Paragraph 5.1 of the settlement agreement, entitled, "Release and Waiver of Claims by the LWDA and Aggrieved Employees", provides that the LWDA releases PAGA claims. This court will not approve a direct release by the LWDA, but will approve language that the LWDA shall be deemed to have released claims. The proposed cover letter to be sent to the aggrieved employees with their penalty checks explains the purpose of the checks, but it fails to explain that no claims for any unpaid or underpaid wages have settled, and that this settlement is without prejudice to any pursuit of such claims. The letter must be revised accordingly. Plaintiffs are ordered to give notice of the ruling to defense counsel unless notice is waived.

4	**Weissenbach vs. California Pizza Kitchen, Inc. 2022-01278828**	Plaintiffs' Motion for Approval of PAGA Settlement is granted, except that the court awards enhancements to plaintiffs only in the amount of $2,500 for each of the three plaintiffs. Enhancement awards totaling $7,500 are sufficient and proper for an aggrieved employee group and settlement of this size, and considering that there was nothing extraordinary about plaintiffs' contributions to the case, as well as the time plaintiffs spent on the case. The court concludes that the $712,563.50 PAGA settlement, as approved, is fair, adequate and reasonable, and approves the following specific awards: • $237,521.17 to plaintiffs' counsel for plaintiffs' attorneys' fees ($220,645.11 to Matern Law Group, PC, $11,876.06 to Bibiyan Law Group, P.C., and $5,000.00 to Bradley/Grombacher, LLP), as requested; • $19,689.71 to plaintiffs' counsel for plaintiffs' attorney costs ($12,370.04 to Matern Law Group, PC, $1,835.83 to Bradley/Grombacher, LLP, and $5,483.84 to Bibiyan Law Group, P.C.), as requested; • $2,500.00 to each of the three plaintiffs, Kurt Weissenbach, German Vaca and Maribel Caballero, as enhancement awards, reduced from the $10,000.00 each requested; • $24,207.00 to the Administrator, Rust Consulting, Inc., as requested; • $317,734.21, which is 75% of the remaining balance of $423,645.62, to the LWDA for its share of PAGA penalties; and • $105,911.41, which is 25% of the remaining balance of $423,645.62, to the aggrieved employees for their share of PAGA penalties. The court sets a Final Report Hearing for June 13, 2025 at 10:00 a.m., to confirm that distribution efforts are fully completed, including the distribution of uncashed aggrieved employee checks after 180 days, that the Administrator's work is complete, and that the court's file thus may be closed. The parties must report to the court the total amount that was actually paid to the aggrieved employees. All supporting papers must be filed at least 16 days before the Final Report Hearing date. Plaintiffs are ordered to give notice of the ruling to the LWDA and to defendants.
5	**Carmichael vs. Tzell Holdings LLC 2019-01120005**	The tentative ruling is to continue the hearing on plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement to November 15, 2024 at 10:00 a.m. Counsel must file supplemental papers addressing the court's concerns (not fully revised papers that would have to be re-read) at least 16 days before the next hearing date. Counsel should submit an amendment to the settlement agreement rather than any amended settlement agreement. Counsel also should provide a red-lined version of any revised papers, including the class notice. Counsel also should provide the court with an explanation of how the pending issues were resolved, with references

		to any corrections to the settlement agreement and the class notice, rather than with just a supplemental declaration or brief that simply asserts the issues have been resolved. The class release in the settlement agreement includes the following claim that was not raised in the Complaint and thus should be removed from the class release: "(8) claims for working more than six days in seven". The parties have not provided the court with any declaration from plaintiff's counsel as to any potential conflict of interest as to the proposed cy pres recipient, as required by CCP §382.4. Plaintiff is ordered to give notice to defense counsel unless notice is waived.
6	**Ledesma vs. Shrin, LLC** **2020-01145279**	Plaintiff Sofia Ledesma's Motion for Class Certification is granted in part as to the following classes and subclasses: • Class: All current and former non-exempt, hourly employees of Defendants in California at any time from June 26, 2016 through the present (the "Class" or "Class Members"). • Minimum Wage Subclass: All Class Members who were not paid at least minimum wage for all hours worked. • Overtime Subclass: All Class Members who were not paid all overtime wages on hours worked beyond eight (8) in one day or forty (40) in one workweek. • Meal Period Subclass: All Class Members who worked more than five (5) hours in a workday, and were not provided with a lawful, timely uninterrupted thirty (30) minute meal period or compensation in lieu thereof. • Rest Period Subclass: All Class Members who worked more than three and one-half (3½) hours in a workday and were not authorized or permitted to take one net ten (10) minute rest period for every four hours worked or major fraction thereof, or compensation in lieu thereof. • Wage Statement Subclass: All Class Members employed from June 26, 2019 to the present who received a wage statement and were not paid all wages owed. • Reimbursement Subclass: All Class Members who used a personal cell phone to perform their job duties and were not reimbursed. • Unfair Competition Subclass: All Class Members who (1) were subject to unlawful, illegal, unfair or deceptive business acts or practices by Defendants and (2) are entitled to restitution for unpaid wages, unpaid meal or rest premiums or unreimbursed expenses from Defendants. The court declines to certify the following subclasses because plaintiff has failed to provide any basis for certifying these subclasses:

		• Pre-2016 Handbook Subclass: All Class Members whose first day of work was before the issuance of the 2016 Shrin Handbook. • Pre-2019 Handbook Subclass: All Class Members whose first day of work was before the issuance of the 2019 Shrin Handbook. • Primary Shift Subclass: All Class Members who were part of the largest shift (i.e., Class Members who are scheduled to begin work at the time when the largest number of employees are scheduled to start their shift). • Piece-Rate Eligible Subclass: All Class Members who were eligible to earn a piece rate bonus. • Piece-Rate Earning Subclass: All Class Members who were paid a piece rate bonus. The court declines to certify the following subclass because plaintiff has failed to demonstrate that class members other than plaintiff were not timely paid all wages at separation of employment: • Final Pay Subclass: All former employee Class Members employed from June 26, 2017 to the present who were not timely paid all wages at separation of employment. A party advocating class treatment must establsih the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. 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. Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal. 4th 1004, 1021. These elements are typically referred to as (1) ascertainability; (2) numerosity; (3) commonality; (4) typicality; (5) adequacy; and (6) superiority. Capitol People First v. State Dept. of Developmental Services (2007) 155 Cal. App. 4th 676, 681. Plaintiff bears the burden of proof on these elements. In class actions, California courts may look to federal rules on procedural matters. Gonzales v. San Gabriel Transit, Inc. (2019) 40 Cal. App. 5th 1131, 1150. The Ninth Circuit has held that because a class certification decision is far from a conclusive judgment on the merits of the case, it is not accompanied by the traditional rules and procedure applicable to civil trials. Sali v. Corona Regional Medical Center (9th Cir. 2018) 909 F.3d 996, 1004. The evidence needed to prove a class's case often lies in a defendant's possession and may be obtained only through discovery. Limiting class-certification-stage proof to admissible evidence risks terminating actions before a putative class may gather crucial admissible evidence. And transforming a preliminary stage into an evidentiary shooting match inhibits an early determination of the best manner to conduct the action. Accordingly, the evidence provided in support of a class certification motion need not be

		admissible, and it is an abuse of discretion to reject evidence that likely could have been presented in an admissible form at trial. Id. at 1006. Admissibility must not be dispositive. Instead, an inquiry into the evidence's ultimate admissibility should go to the weight that evidence is given at the class certification stage." Id. As a result, this court overrules defendant's objections to plaintiff's evidence in support of this motion, which consists of admissible factual declarations by plaintiff's counsel, admissible factual declarations by defendant's former employees, and records produced by defendant in discovery, including wage statements, employee handbooks, and time records, some of which were not yet authenticated by defendant, but as to which defendant does not argue are inaccurate or incorrect records. The court concludes that these records likely could be presented in admissible form at trial. Some of plaintiff's evidence consists of information regarding defendant's policies implemented prior to the beginning of the class period, which the court concludes is or is likely to lead to the discovery of admissible evidence of defendant's policies during the class period. Defendant does not dispute that the class and subclasses proposed by plaintiff are ascertainable and can be determined based on defendant's employee records. Plaintiff has presented evidence that up to 107 employees may be included in the class and various subclasses, which satisfies the numerosity requirement. Plaintiff has demonstrated that her claims are typical of the class as to the minimum wage, overtime wage, meal period, rest period, wage statement, reimbursement and unfair competition claims. Plaintiff also has demonstrated that she is an adequate representative for the class. While defendant may argue that its piece bonus policy is beneficial to some class members, plaintiff's claims are not necessarily antagonistic to the interests of other class members who may want a bonus but also likely have an interest in defendant's compliance with California labor laws. The court concludes that it is immaterial that plaintiff was not employed by defendant for the entirety of the class period, and she still may demonstrate that her claims are typical of employees employed by defendant even after her employment ended with evidence that the relevant policies have not changed, the timekeeping system has remained the same, and the wage statement has not changed. Shah Depo. at pp. 86, 96-97. Plaintiff also demonstrates that there are common issues of law and fact as to the claims for each class and subclass based on these alleged policies of defendant: (1) an improper rounding policy that existed at least until July 2020; (2) a policy requiring employees to wait in line to clock in before their shift and at the end of breaks with insufficient time clocks available; (3) a policy that required

		employees to remain on-premises during rest periods at least until 2019; (4) a meal and rest break policy that was tethered to a buzzer system controlled by defendant that affected compliance with meal and rest break laws; (5) a timekeeping system that allegedly resulted in systemic off-the-clock work; (6) a piece-rate production bonus that allegedly uniformly discouraged employees from taking breaks; (7) uniform wage statements that allegedly lack required information and stating inaccurate information; and (8) a policy requiring employees to purchase their own supplies without reimbursement. While defendant challenges the merits of plaintiff's claims and whether the policies existed for the entire class period, plaintiff has demonstrated that these claims can be adjudicated based on common law and fact. In light of the common proof, plaintiff also has demonstrated that a class action would be superior, since it allows the class to obtain relief that it would not otherwise pursue due to the expense of litigation in light of the small value of the individual claims, avoids a duplicity of lawsuits and prevents a waste of resources, and would allow the class to obtain damages and penalties for defendant's alleged wrongful conduct. As such, plaintiff has demonstrated adequate bases for certifying the class and subclasses described above. However, plaintiff has not established that her final pay claim is typical of that of any other members of the proposed subclass or that there are common facts and law as to this claim among putative class members. Thus, the Final Pay Subclass is not suitable for class treatment. Plaintiff's counsel also has demonstrated that they can adequately serve as class counsel, which defendant does not dispute. Thus, plaintiff has established all the elements required for class certification. Plaintiff is ordered to give notice of the ruling unless notice is waived.
7	**Abdelghany vs. Southern California Edison 2021-01195715**	Defendant and cross-complainant T-Mobile USA, Inc.'s unopposed motion to have attorneys Peter Karanjia and Whitney Cloud admitted pro hac vice to represent it in this action is granted. T-Mobile has complied with CRC Rule 9.40. If the attorneys remain counsel for T-Mobile on the anniversary of the date this motion is granted, they must pay an annual renewal fee of $500 for each year that they maintain pro hac vice status in this case, pursuant to Gov. Code §70617(e)(2). The tentative ruling as to defendant and cross-complainant T-Mobile USA, Inc.'s unopposed motion to have attorney

		David Freeburg admitted pro hac vice to represent it in this action, set for hearing on August 16, 2024, is to advance the hearing to today but to then continue the hearing to November 1, 2024 at 10:00 a.m. T-Mobile did not comply with CRC Rule 9.40(c)(5) because the application did not state the title of every court and cause in which attorney David Freeburg has filed an application to appear as counsel pro hac vice in California in the preceding two years, the date of each application, and whether or not it was granted. Supplemental documentation addressing this issue must be filed at least two weeks before the new hearing date. T-Mobile is ordered to give notice of the ruling unless notice is waived.
8	**American Modern Home Ins. Co. vs. Southern California Edison Co. 2023-01308733**	Plaintiffs AXA XL Insurance Company UK, Endurance Worldwide Insurance, Starr Surplus Lines Insurance Company, Liberty Insurance Corporation, and Liberty Mutual Fire Insurance Company's Motion for Protective Order is granted. The moving party plaintiffs need not respond to defendant T-Mobile, USA Inc.'s first sets of form interrogatories, special interrogatories, requests for admissions, and requests for production of documents. CCP §§ 2030.090(a)-(b), 2031.060(a)-(b) and 2033.080(a)-(b) provide, "The court, for good cause shown, may make any order that justice requires to protect any party or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." Plaintiffs have shown that good cause exists to excuse them from responding to T-Mobile's subject discovery. The requests are intended to support T-Mobile's contention that plaintiffs' claims are barred under the anti-subrogation doctrine. The discovery requests seek information regarding non-party insurance entities that allegedly issued separate and distinct liability or excess policies covering T-Mobile. The requests also seek information about plaintiffs' affiliate relationships with T-Mobile's insurers, such as whether plaintiffs and their affiliates have common officers and directors, share offices and claims handling functions, and can access each other's claims information. The requests also seek copies of plaintiffs' relevant underwriting files, claims files, insurance policies, and communications with their insureds regarding their subrogation claims. The anti-subrogation doctrine provides that an insurer has no right of equitable subrogation against its own insured with respect to a loss or liability for which the insured is covered under the policy because, as between the insurer and the insured, the insurer assumes responsibility for the loss or liability. Truck Ins. Exchange v. County of Los Angeles (2002) 95 Cal. App. 4th 13, 21. However, if the policy does not cover the insured for a particular loss or liability, it would neither undermine the insured's coverage

		nor be inequitable to impose the loss or liability on the insured if the insured caused or was otherwise responsible for the loss or liability. Id. If a policy does not cover an insured for the particular loss or liability that the insurer seeks to impose on the insured, there is no obstacle to equitable subrogation. Id. at 22-23. The policies that are the subject of T-Mobile's discovery requests were not issued by plaintiffs and do not insure against the risk at issue in this action. T-Mobile seeks this discovery for an anti-subrogation defense based on its contention that four of plaintiffs' close affiliates provided liability insurance to T-Mobile and are involved in T-Mobile's defense in other Silverado fire cases. However, the anti-subrogation defense does not apply here because the affiliates' policies did not insure the same risks as did the policies at issue in this case. This court will not accept a ruling by a federal trial court in the State of Washington as convincing. Finally, this court has stayed discovery as to issues other than defendants' liability for the Silverado fire, regardless of which plaintiffs are asserting such liability, and all other issues are reserved for the second phase. Thus, even if the subrogation defense applied here, discovery on that issue is stayed, further justifying the requested protective order. Plaintiffs are ordered to give notice of the ruling unless notice is waived.
9	**Pacific Bell Telephone Co. vs. Southern California Edison Co. 2023-01354789**	Defendants Southern California Edison Company and Edison International's Motion for Leave to File Cross-Complaint Against T-Mobile USA, Inc. is granted. Edison must file the Cross-Complaint as a separate document within one week. The proposed Cross-Complaint will not be deemed filed. CCP §428.50(c) provides that leave of court to file a cross-complaint may be granted in the interest of justice at any time during the course of the action. The court concludes that it is in the interest of justice to allow Edison to file its proposed cross-complaint. Judicial efficiency favors having these pleadings on file in the same case at the soonest possible time, and the indemnity claims are already being litigated in several related cases. T-Mobile's argument that the claims are barred by the statute of limitations may be raised through a demurrer, motion for summary judgment, or other appropriate motion, which is consistent with the preferred practice to permit the proposed pleading to be filed subject to a later motion. Kittredge Sports Co. v. Superior Court (1989) 213 Cal. App. 3d 1045, 1048. The court sees no prejudice to T-Mobile by permitting this filing. Edison is ordered to give notice of the ruling unless notice is waived.

10	**Gibson vs. Mercy House Living Centers 2023-01303453**	Continued to December 6, 2024 by Stipulation and Order.
11	**Gibson vs. Mercy House Living Centers 2023-01303619**	Continued to December 6, 2024 on the court's own motion.
12	**Beck vs. Catanzarite 2020-01145998**	Off calendar at moving party's request.