

Tentative Rulings
January 7, 2025
Department S-17
Judge Joseph Ortiz

Tentative Rulings for Department S-17 are posted on the court's website (<https://www.sb-court.org/divisions/civil/civil-tentative-rulings>) at 3:00 p.m. or at 7:00 p.m. the court day before the hearing. If no tentative ruling is posted at 3:00 p.m., please check again after 7:00 p.m.

If you do not wish to submit on a tentative ruling, you must appear for the hearing in person, via CourtCall (888-882-6878 or www.courtcall.com), or by ZOOM. Failure to appear is deemed a waiver of oral argument. If all parties submit on a tentative ruling, it will become the ruling of the court. The tentative ruling may note particular issues on which the court requests the parties to provide further argument at the hearing. If so directed, attendance at the hearing is mandatory. The party prevailing on a motion or other hearing shall serve written notice of the court's ruling unless all parties waive notice of the ruling.

ATTENTION: Since January 9, 2023, the Court no longer provides an official Court Reporter to transcribe proceedings in this Department. Parties who wish to have an official record of the proceedings in addition to a minute order must retain a private Certified Shorthand Reporter for the hearing and must submit a "Stipulation and Order to Use Certified Shorthand Reporter." Please contact the department if you would like a copy of this form. If counsel are appearing for the hearing remotely, the Stipulation can be emailed to the Judicial Assistant for Department S-17 at jgarcez@sb-court.org. The Court will sign the Order appointing the Certified Shorthand Reporter as the official Court Reporter Pro Tempore. Parties who do not retain a Certified Shorthand Reporter to be designated as an official Court Reporter Pro Tempore are deemed to have waived an official Court Reporter for the proceeding.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.

15. *Kennedy v. Bolsa Trucking, Inc., et al*, Case No. CIVSB2226992
Motion for Preliminary Approval of Class Action Settlement
1/7/25, 1:30 p.m., S-17

Tentative Ruling

The Court would **GRANT** the motion.

Preliminary Approval of Class Action Settlements in General

Settlement of a class action requires court approval. (Cal. Rules of Court, rule 3.769.) The moving party must demonstrate that “the settlement is fair, adequate and reasonable.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 126; *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337.) The court has “broad discretion in making this determination.” (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.) Relevant factors the court may consider include “the strength of the plaintiffs’ case, the risk, the 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.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) This list of factors “is not exhaustive and should be tailored to each case.” (*Ibid.*) The court may “engage in balancing and weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245, overruled on other grounds in *Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260, 269.)

“Although the court gives regard to what is otherwise a private consensual agreement between the parties, the court must also evaluate the proposed settlement agreement with the purpose of protecting the rights of the absent class members who will be bound by the settlement.” (*Wershba, supra*, 91 Cal.App.4th at p.245 [quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801].) “The court must therefore scrutinize the proposed settlement agreement to the extent necessary to “reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.* [quoting *Officers for Justice v. Civil Service Com’n* (9th Cir. 1982) 688 F.2d 615, 625].)

Nevertheless, the settlement is entitled to a “presumption of fairness . . . where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discover are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and 94) the percentage of objectors is small.” (*Kullar, supra*, 168 Cal.App.4th at p.128 [quoting *Dunk, supra*, 48 Cal.App.4th at p. 1802].)

Provisional Class Certification at Preliminary Approval

Although a lesser standard can be used to provisionally certify a settlement class, the court still needs to review and consider each element for certification. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) But, as settlement eliminates the need for trial, “the case management issues inherent in ascertainable class determination need not be confronted.” (*Ibid.*)

A class should be certified when “the question is one of a common or general interest, of many persons, or when parties are numerous and it is impracticable to bring them all before court.” (Code Civ. Proc., § 382.) There must be both an ascertainable class and a well-defined community of interest, which includes predominate questions of law or fact, class representatives with claims typical of the class, and class representatives who can adequately represent the class. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Settlement Notice

“If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.” (Rules of Court, rule 3.769(f); *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 251.)

“The purpose of the class notice in the context of a settlement is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members. Here, again, the trial court has broad discretion. (*Wershba*, *supra*, 91 Cal.App.4th at p. 252.)

The manner of notice shall be by means reasonably calculated to apprise the class members of the settlement. (Rules of Court, rule 3.766(f).) The standard is “whether the notice has ‘a reasonable chance of reaching a substantial percentage of the class members.’” (*Wershba*, *supra*, 91 Cal.App.4th at p. 251.) The court must consider the interest of the class, type of relief obtained, the state of the individual class members, the costs of notifying the class members, the resources of the parties, the possible prejudice to the class members who do not receive notice, and the *res judicata* effect on the class members. (Rules of Court, rule 3.766(e).)

The Proposed Settlement

Here, Plaintiff Kennedy filed his original wage-and-hour class action against Defendants on July 29, 2022. On December 13, 2022, he filed his operative First Amended Complaint to add Romnas Trucking as an additional Defendant and alleging violations relating to (1) minimum wages; and (2) reimbursements; as well as (3) violation of the unfair competition law.

During the course of the litigation, the parties engaged in sufficient discovery and investigation to value the case. Defendants informally produced timekeeping and payroll data, as well as all salient wage-and-hour policies, (Lidman Decl., ¶8.) In that light, the parties agreed to attend mediation on June 27, 2023, with Seven Pearl, an experienced neutral. (*Id.*, ¶12.) The parties ultimately accepted a mediator's proposal and later reduced it to a long form agreement. (*Id.*, ¶12 & Exh. 1 [Settlement].)

There are an estimated 192 class members. The settlement is proposed on the following terms: Defendants will pay a gross, non-reversionary settlement amount of \$300,000.00, from which will be deducted (1) \$100,000.00 for Class Counsel's attorneys' fees (1/3rd of the gross); (2) costs not to exceed \$25,000.00;¹ (3) Plaintiffs' enhancement fees of no more than \$5,000.00; and (4) claims administration fees not to exceed \$8,500.00. The class is defined to include all drivers having worked for Defendants in California from July 29, 2018 to August 31, 2024.

The parties estimate this will leave a state wage-and-hour only net settlement amount of a non-reversionary \$161,500.00. This amount would be split by the class of approximately 192 employees in proportionate shares determined by number of workweeks within the Settlement Class Period. The average per class member would be \$841.15. Sixty seven percent (67%) will be attributable to penalties and interest and thirty three percent (33%) characterized as wages for tax purposes. (Settlement, ¶4(D).)

Overall, the amount of the settlement is appropriate given the strength of Plaintiff's case, especially in light of Plaintiff's counsel's analysis of exposure. (Lidman Decl., ¶¶16-19.) However, the lower actual settlement appears fair and reasonable in light of varying views on the value of claims and when calculated to include analysis of the risks that the class would not be certified and the various potential defenses, as well as the potential appeal of any judgment should Plaintiff be successful in this venue. Given the presumption of fairness, the Court would find the figure sufficient to satisfy the *Kullar* requirement. Further, adequate discovery and investigation has occurred. There is no evidence of fraud or collusion. Class counsel are well qualified to represent the class. The settlement was reached through an arms-length negotiation with the assistance of an experienced and well-respected mediator. The deductions from the gross settlement fund (attorneys' fees,² costs,³ administration fee, incentive award,

¹ Prior to any final approval, Counsel will provide a break-down of costs at the motion for final approval. Notably, any attorney bills submitted in the guise of services of an expert will require explanation and clarification as to why such bills are not properly considered attorneys' fees. Identified expert fees will identify the expert utilized.

² Counsel must provide a full lodestar analysis in the motion for final approval.

³ Costs must be documented. The court does not award costs for LEXIS or Westlaw usage (which are considered items of overhead), faxes (also overhead), or photocopying in excess of \$0.06 per page.

and taxes) appear to be reasonable and appropriate and are, therefore, *preliminarily* approved in the “not to exceed” amounts in the motion. The proposed notice is, also, adequate.

Counsel and the representative are appointed to represent the class. The motion is *granted*. The court will schedule a hearing to consider final approval at the closest available date to the date recommended by counsel.

The Court (1) conditionally certifies the Settlement Class for purposes of this settlement; (2) appoints Scott Lidman and Milan Moore of Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Settlement Class Counsel; (3) appoints Mark Kennedy as Class Representative; (4) approves Phoenix Class Action Administrators as Settlement Administrator; (5) preliminarily finds the settlement fair, reasonable, and adequate, and (6) approves the form and content of the proposed Class Notice and directs the mailing of the same.

At final approval, counsel must advise the court of any pending cases that will be affected by approval of the settlement. Counsel must also provide the *exact* number of class members and workweeks for the class settlement.

16. *Sierra v. National Retail Transp., Inc., et al*, Case No. CIVSB2222831
Motion for Preliminary Approval of Class Action Settlement
1/7/25, 1:30 p.m., S-17

This matter was continued from its original hearing date on December 6, 2024, to allow for the filing of a First Amended Complaint.

Tentative Rulings

The Court would **GRANT** the motion. *Please note the footnote instructions and requests.*

Preliminary Approval of Class Action Settlements in General

Settlement of a class action requires court approval. (Cal. Rules of Court, rule 3.769.) The moving party must demonstrate that “the settlement is fair, adequate and reasonable.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 126; *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337.) The court has “broad discretion in making this determination.” (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.) Relevant factors the court may consider include “the strength of the plaintiffs’ case, the risk, the 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.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) This list of factors “is not exhaustive and should be tailored to each case.” (*Ibid.*) The court may “engage in balancing and weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245, overruled on other grounds in *Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260, 269.)

“Although the court gives regard to what is otherwise a private consensual agreement between the parties, the court must also evaluate the proposed settlement agreement with the purpose of protecting the rights of the absent class members who will be bound by the settlement.” (*Wershba, supra*, 91 Cal.App.4th at p.245 [quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801].) “The court must therefore scrutinize the proposed settlement agreement to the extent necessary to “reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.* [quoting *Officers for Justice v. Civil Service Com’n* (9th Cir. 1982) 688 F.2d 615, 625].)

Nevertheless, the settlement is entitled to a “presumption of fairness . . . where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discover are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and 94) the percentage of objectors is small.” (*Kullar, supra*, 168 Cal.App.4th at p.128 [quoting *Dunk, supra*, 48 Cal.App.4th at p. 1802].)

Provisional Class Certification at Preliminary Approval

Although a lesser standard can be used to provisionally certify a settlement class, the court still needs to review and consider each element for certification. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) But, as settlement eliminates the need for trial, “the case management issues inherent in ascertainable class determination need not be confronted.” (*Ibid.*)

A class should be certified when “the question is one of a common or general interest, of many persons, or when parties are numerous and it is impracticable to bring them all before court.” (Code Civ. Proc., § 382.) There must be both an ascertainable class and a well-defined community of interest, which includes predominate questions of law or fact, class representatives with claims typical of the class, and class representatives who can adequately represent the class. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Settlement Notice

“If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any

objections to the proposed settlement.” (Rules of Court, rule 3.769(f); *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 251.)

“The purpose of the class notice in the context of a settlement is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members. Here, again, the trial court has broad discretion. (*Wershba, supra*, 91 Cal.App.4th at p. 252.)

The manner of notice shall be by means reasonably calculated to apprise the class members of the settlement. (Rules of Court, rule 3.766(f).) The standard is “whether the notice has ‘a reasonable chance of reaching a substantial percentage of the class members.’” (*Wershba, supra*, 91 Cal.App.4th at p. 251.) The court must consider the interest of the class, type of relief obtained, the state of the individual class members, the costs of notifying the class members, the resources of the parties, the possible prejudice to the class members who do not receive notice, and the *res judicata* effect on the class members. (Rules of Court, rule 3.766(e).)

The Proposed Settlement

Here, Plaintiff Sierra first sent a notice to the Labor and Workforce Development Agency (LWDA) on October 7, 2022. On that same date, he filed a wage-and-hour class action (CIVSB2222831). Later, after the exhaustion of administrative remedies with the LWDA, he filed a representative action for civil penalties pursuant to the Private Attorneys General Act (PAGA) (CIVSB2227785). About a year later, on October 20, 2023, Plaintiff Haller filed a wage-and-hour class action against Defendant (CIVSB2326201). Plaintiff Haller also filed a PAGA against Defendant in Los Angeles County’s Superior Court. In furtherance of the settlement, the parties filed an *amended* complaint that consolidates the *Sierra* matters (CIVSB2222831 & CIVSB2227785) and the *Haller* matters (e.g., CIVSB2326201).

The currently operative *amended* complaint includes both Plaintiffs Sierra and Haller as proposed representatives and alleges violations relating to (1) minimum & overtime wages; (2) final pay; (3) wage timeliness; (4) accurate wage statements; (5) reimbursements; (6) deductions; (7) meal periods; (8) rest breaks; (9) sick leave; (10) suitable seating; as well (11) violation of the unfair competition law; (12) civil penalties pursuant to PAGA.

Per the terms of the currently proposed settlement, Plaintiffs would represent all of Defendant’s non-exempt employees who worked in California from January 5, 2019 to April 30, 2024. The PAGA period would be October 7, 2021 to April 20, 2024.

During the course of the litigation, the parties engaged in sufficient discovery and investigation to value the case. Defendant provided Plaintiffs a 30% sampling of time and pay records, as well

as all salient policy documents and the operative collective bargaining agreements⁴ applicable to the class. (Hawkins Decl., ¶¶11-12.) In that light, the parties agreed to attend mediation on January 31, 2024, with Jeffrey Fuchsman, an experienced neutral. (*Id.*, ¶¶8 & 10.) The parties ultimately accepted a mediator's proposal. (*Id.*, ¶¶12, 10 & Exh. 1 [Settlement].) The LWDA was notified of the Settlement on November 4, 2024. (Proof of Service.)

There are an estimated 1,070 class members and 738 PAGA aggrieved employees. The settlement is proposed on the following terms: Defendants will pay a gross, non-reversionary settlement amount of \$1,050,000.00, from which will be deducted (1) \$367,500.00 for Class Counsel's attorneys' fees (35%⁵ of the total); (2) costs not to exceed \$25,000.00;⁶ (3) Plaintiffs' enhancement fees of no more than \$20,000.00 (\$10,000 each); (4) claims administration fees not to exceed \$12,500.00; and (5) PAGA penalties of \$75,000.00 (of which, \$56,250.00, or 75%, will go to the LWDA, and \$18,750.00, or 25%, will go to the aggrieved employees).

The parties estimate this will leave a state wage-and-hour only net settlement amount of a non-reversionary \$550,000.00. This amount would be split by the class of approximately 1,070 employees in proportionate shares determined by number of workweeks within the Settlement Class Period. The average per class member would be \$514.02. *Ninety* percent (90%)⁷ will be attributable to penalties and interest and ten percent (10%) characterized as wages for tax purposes. (Settlement, ¶54.) Given the 738 PAGA aggrieved employees, the average PAGA payout would be \$25.41.

Overall, the amount of the settlement is appropriate given the strength of Plaintiff's case, especially in light of Plaintiff's counsel's estimated maximum potential liability exposure. (Hawkins Decl., ¶¶26-30.) However, the lower actual settlement appears fair and reasonable in light of varying views on the value of claims and when calculated to include analysis of the risks that the class would not be certified and the various potential defenses, as well as the potential appeal of any judgment should Plaintiff be successful in this venue. Given the presumption of

⁴ Prior to any final approval, Counsel will provide a more detailed analysis regarding union representation of the class. Specifically, the Court would like information as to whether the salient union(s) were notified and whether the relevant collective bargaining agreements provided sufficient remedy to the represented portion of the class. A copy of the relevant collective bargaining agreements will be provided.

⁵ The Court is usually *not* inclined to grant 35% in attorneys' fees unless there is some sort of unusual complexity or risk that would warrant such an upward deviation. On motion for final approval, Counsel will provide an analysis of that complexity or risk.

⁶ Prior to any final approval, Counsel will provide a breakdown of costs at the motion for final approval. Notably, any attorney bills submitted in the guise of services of an expert will require explanation and clarification as to why such bills are not properly considered attorneys' fees. Identified expert fees will identify the expert utilized.

⁷ Prior to final approval, Counsel will provide an analysis as to why this wage-and-hour settlement has only ten percent (10%) of the payments considered as wages. This issue is not addressed in the preliminary approval motion, and it is unclear from the valuation analysis.

fairness, the Court would find the figure sufficient to satisfy the *Kullar* requirement. Further, adequate discovery and investigation has occurred. There is no evidence of fraud or collusion. Class counsel are well qualified to represent the class. The settlement was reached through an arms-length negotiation with the assistance of an experienced and well-respected mediator. The deductions from the gross settlement fund (attorneys' fees,⁸ costs,⁹ administration fee, incentive award, PAGA penalties, and taxes) appear to be reasonable and appropriate and are, therefore, *preliminarily* approved in the "not to exceed" amounts in the motion. The proposed notice is, also, adequate.

Counsel and the representatives are appointed to represent the class. The motion is *granted*. The court will schedule a hearing to consider final approval at the closest available date to the date recommended by counsel.

The court (1) conditionally certifies the Settlement Class for purposes of this settlement; (2) appoints James Hawkins APLC and Blumenthal Nordrehaug Bhowmik DeBlouw LLP as Settlement Class Counsel; (3) appoints David Sierra and Keith Haller as Class Representatives; (4) approves APEX Class Action Settlement Administrators as Settlement Administrator; (5) preliminarily finds the settlement fair, reasonable, and adequate, and (6) approves the form and content of the proposed Class Notice and directs the mailing of the same.

At final approval, counsel must also advise the court of any pending cases that will be affected by approval of the settlement. Counsel must provide proof that the LWDA was properly notified of the PAGA settlement. Counsel must provide the *exact* number of class members and work weeks for the class settlement and the exact number of aggrieved employees and pay periods for the PAGA settlement.

⁸ Counsel must provide a full lodestar analysis in the motion for final approval.

⁹ Costs must be documented. The court does not award costs for LEXIS or Westlaw usage (which are considered items of overhead), faxes (also overhead), or photocopying in excess of \$0.06 per page.