TENTATIVE RULINGS

JUDGE RANDALL J. SHERMAN

DEPARTMENT CX105

MAY 10, 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	**Palomino vs. Zara USA, Inc. 2018-00992682**	Plaintiffs have shown that the Administrator's work is complete, and that the court's file may now be closed. The OSC re Monetary Sanctions is vacated. Plaintiffs are ordered to give notice to defense counsel unless notice is waived.
2	**County of Orange vs. Southern California Edison Company 2023-01353934**	The tentative ruling is to continue the hearing on 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 to July 19, 2024 at 10:00 a.m. T-Mobile did not comply with CRC Rule 9.40(c)(1) because it did not timely serve the State Bar of California with copies of the applications and the notice of hearing at its San Francisco office. T-Mobile mail-served the State Bar on May 9, 2024, the day before this hearing, which is

		insufficient notice under Rule 9.40(c)(1), which cites CCP §1005. T-Mobile is ordered to give notice of the ruling, including to the State Bar.
3	**Cruz vs. SA Recycling LLC** **2021-01218757**	The tentative ruling is to continue the hearing on plaintiff's Motion for Preliminary Approval of Joint Stipulation of Class Action and PAGA Settlement and Release to August 9, 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 settlement agreement submitted as an exhibit to the Declaration of Grant Joseph Savoy is not text-searchable, as required by CRC Rule 2.256(b)(3). Counsel must comply with that rule in the future. The settlement agreement does not explain if the settlement is reversionary or non-reversionary. The court will require it to be non-reversionary. The court sees no "foregoing amount" of administration fees, as referenced in ¶51(c) of the settlement agreement at 16:10. Nor does the court see anywhere in the settlement agreement or the class notice any proposed amount for administration fees. In ¶51(g) of the settlement agreement, the escalator clause, defendant has the option of either an increase to the settlement amount or a change to the Class Period such that some of the class members who receive the class notice will no longer be included in the settlement. However, this court will not approve a settlement that results in class members being told they are in the class but later being told they are not in the class. Thus, defendant will have to either rely on or take another look at its workweek estimates or select the increased payment option. If the parties want to preserve the option calling for a reduction of the class period, rather than just an increase in the settlement amount, they must determine if the escalator clause applies before mailing the class notice, and then change the class period before mailing the class notice. The workweek dispute provision in ¶57c of the settlement agreement must be amended at 26:12 to allow the court to make a final decision if a class member, not just the

		parties, dispute the administrator's workweek determination. The court will not issue an injunction against class members or aggrieved employees. Res judicata and collateral estoppel arguments should provide defendants with sufficient protection against facing these same claims again. The settlement agreement's injunctive language must be amended: • ¶14, "Final Settlement Approval Hearing", which presumes the court will enter an order barring Class Members and PAGA Members from asserting Settled Claims against Released Parties. The court will not enter such an order, but the provision may state that the order will note that barring Class Members and aggrieved employees might be barred as a matter of law from asserting Settled Claims against Released Parties. • ¶¶31 and 32, which provide that the Judgment will state that it bars as a matter of law the class members and aggrieved employees who don't opt out from asserting any settled claims in the future. The court will not allow the Judgment to provide that, except as to the named plaintiff, but the Judgment may provide that it might bar as a matter of law the future assertion of settled claims. The injunctive language in the class notice also must be amended: • On p. 2, in the second paragraph under "What Is a Class and Representative PAGA Action?", change "may not" to "may not be entitled to". • On p. 3, under "Individual Settlement Allocation", change "will be forever barred" to "may be forever barred". • On p. 4, in the first paragraph under "What Am I Releasing Under the Class Action Portion of the Settlement?", delete "(and covenant not to sue or otherwise pursue claims, whether known or unknown, against)". • At the top of p.7, change "will be barred" to "may be barred". • In the middle of p. 7, change "will bar" to "may bar". At the bottom of p. 1 of the class notice, correct the PAGA cause of action to be #11, not #12. On the 6th line of p. 4 of the class notice, there is an extra comma after "($30,000.00)". The class notice states on p. 4 that the class members are releasing claims on behalf of a long list of people, but in ¶48 of the settlement agreement, the class members are releasing claims only on behalf of themselves. The class

		notice must be amended to be consistent with the settlement agreement. The page numbering on the class notice is incorrect, since the class notice is eight pages, but the numbering on each page states "Page x of 7". Rather than having class members prepare their own opt-out requests, the class notice must include an exclusion form that class members can complete and submit. The form should be referenced in the class notice. Counsel should propose a realistic Final Approval Hearing date, bearing in mind that all papers in support of the Final Approval Hearing, including detailed hourly breakdowns of plaintiff's attorneys to support a lodestar cross-check, detailed plaintiff attorney cost breakdowns, an Administrator declaration and invoice, and plaintiff's declaration to support the enhancement request, must be filed at least 16 calendar days before the Final Approval Hearing date, to provide enough time for court review, and must be served in compliance with CCP notice of motion requirements. Plaintiff is ordered to give notice of the ruling to the LWDA and to defendants.
4	**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 August 9, 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. Plaintiff has not provided the court with the estimated high and low payments to class members under the proposed settlement. These estimates are needed to assist the court in properly determining the fairness of the proposed settlement. If the figures are not available now, they must be provided in the motion for final approval. The moving papers do not include a copy of the letter that counsel asserts was sent to the LWDA. The court needs a copy of the letter to verify that the settlement terms are consistent with the notice provided to the LWDA. The settlement agreement and class notice provide for a payment of $5,000 relating to plaintiff's PAGA claims, $3,750 to the LWDA and $1,250 to the Participating Class

		Members, and the settlement includes a release of PAGA claims, but there are no definitions of "aggrieved employees" or the "PAGA Period". Counsel should confirm that the parties are using the definitions of class members and class period for the definitions of aggrieved employees and the PAGA Period. The definition of "Released Class Claims" in §I(X) on p. 3 of the settlement agreement (and in the class notice on p. 3) is overbroad. The release must be limited to claims that are asserted in the operative pleading or that could be asserted based on the facts alleged in the operative pleading. Amaro vs. Anaheim Arena Management, LLC (2021) 69 Cal. App. 5th 521, 537. The phrase "or reasonably related to" must therefore be deleted. The definition of "Released Class Claims" also fails to state that the released claims are only those arising during the Release Period. The class release in the settlement agreement includes the following claims that were not raised in the Complaint and thus should be removed from the class release: "(8) claims for working more than six days in seven; (9) payroll recordkeeping; (10) reporting time; (11) improper deduction of wages; (12) failure to provide workers' compensation insurance; (13) sick leave". in §III(G)(4)(a) of the settlement agreement, after the sentence, "Any Notice of Dispute shall be directed to the Settlement Administrator.", add "Although the Administrator and the parties will attempt to resolve any such dispute, the court ultimately will decide any unresolved dispute." The allocation of only 25% of the class action portion of the settlement payments for wages appears to be low. The estimated exposure analysis in the motion allocates over 40% of the class members' potential (non-PAGA) recovery to wages. Either an increase to 33 1/3% or an adequate explanation of why the figure is not at least 33 1/3% is required. The cy pres to receive uncashed check funds is identified as Public Law Center in §III(I) of the settlement agreement and in the class notice, but is identified as Legal Aid at Work in §III(J)(a) of the settlement agreement. The parties have not provided the court with any declaration from counsel as to any potential conflict of interest as to the proposed cy pres recipient, as required by CCP §382.4. The injunctive language in the "Covenant Not to Sue" provision in §III(L) of the settlement agreement is not acceptable as to Participating Class Members. Res judicata and collateral estoppel arguments should provide defendants with sufficient protection against facing these

		same claims again. The similar language in the last paragraph of §4 of the class notice also must be modified. Rather than having class members prepare their own opt-out requests, the class notice must include an exclusion form that class members can complete and submit. The form should be referenced in the class notice. The middle section of the box on p. 1 of the class notice entitled "SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT" is wrong in stating, " If you request exclusion, you will receive no money from the Settlement." The same is true in §4 on p. 7, where it says, "If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms." Aggrieved employees in a PAGA action may not opt out of a PAGA settlement, and are bound by the PAGA release. Robinson v. Southern Counties Oil Co. (2020) 53 Cal. App. 5th 476, 482. Thus, in an action asserting both class and PAGA claims, employees may opt out only from participating in the settlement of the class claims, not the settlement of the PAGA claims. As a result, the parties here must include class members who opt out to still be part of the PAGA portion of the settlement. In addition, the parties must modify the class notice to reflect that fact, and insert language in the class notice in substantially the following form: "The proposed settlement includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves this settlement, then even if you request exclusion from the settlement, you still will receive an individual settlement share for the PAGA claims and will be deemed to have released the PAGA claims. A request for exclusion will preserve your right to individually pursue only the remaining class claims." The first paragraph of §5 of the class notice mistakenly says that the class period ends on December 12, 2021 rather than December 12, 2022. There is no information as to how many of the class members or aggrieved employees speak and/or read English, which might require that the class notice also be in another language. Counsel should propose a realistic Final Approval Hearing date, bearing in mind that all papers in support of the Final Approval Hearing, including detailed hourly breakdowns of plaintiff's attorneys to support a lodestar cross-check, detailed plaintiff attorney cost breakdowns, an Administrator declaration and invoice, and plaintiff's declaration to support the enhancement request, must be filed at least 16 calendar days before the Final Approval Hearing date, to provide enough time for court review, and must be served in compliance with CCP notice of motion requirements.

		Plaintiff has not shown that she served the LWDA with her moving papers. Plaintiff is ordered to give notice of the ruling to the LWDA and to defendants, to serve the LWDA with her original moving papers as well as any new papers filed for future hearings, and to file a proof of service showing such compliance.
5	**Magallon vs. Transtar Industries, Inc. 2020-01167609**	The tentative ruling is to continue the hearing on plaintiff's Motion for Preliminary Approval of Class Action Settlement to August 2, 2024 at 10:00 a.m. Plaintiff has not filed any documents whatsoever addressing the court's concerns set forth in its ruling of March 15, 2024. Plaintiff's counsel is again ordered to file supplemental papers addressing the court's concerns at least 16 days before the next hearing date. The court also issues an Order to Show Cause why the court should not impose monetary sanctions against plaintiff's counsel for failing to comply with the court's order of March 15, 2024 to file supplemental papers addressing the court's concerns at least 16 days before today's hearing date. The hearing is set for August 2, 2024 at 10:00 a.m. Any response to the OSC must be filed at least 16 days before the hearing. Plaintiff is ordered to give notice of the ruling to defense counsel unless notice is waived.
6	**Gonzalez vs. Innovative Integrated Health, Inc. 2021-01221176**	Plaintiff's Motion to Approve PAGA Settlement Agreement is granted. The court concludes that the $335,000.00 PAGA settlement is fair, adequate and reasonable, and approves the following specific awards: • $111,655.50 to plaintiff's counsel for plaintiff's attorneys' fees, as requested; • $13,287.94 to plaintiff's counsel for plaintiff's attorney costs, as requested; • $8,750.00 to the Administrator, Phoenix Class Action Administration Solutions, as requested; • $150,979.92, which is 75% of the remaining balance of $201,306.56, to the LWDA as its share of PAGA penalties; and • $50,326.64, which is 25% of the remaining balance of $201,306.56, to the aggrieved employees as their share of PAGA penalties. The total amount that will be payable to all aggrieved employees if they are paid the amount to which they are entitled pursuant to the judgment is $50,326.64. The court sets a Final Report Hearing for February 14, 2025 at 10:00 a.m., to confirm that distribution efforts are fully completed, including the distribution of uncashed aggrieved employee checks to the State Controller's Office Unclaimed Property Fund in the names of the applicable payees 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. Plaintiff is ordered to give notice of the ruling to the LWDA and to defendant.
7	**Alcaraz vs. iRhythm Technologies, Inc. 2021-01177810**	Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement and Award for Attorneys' Fees, Costs, and Class Representative Incentive Award is granted, except that the court approves plaintiff's attorney costs only in the amount of $10,516.85. The court disallows the $446.50 claimed for copy costs, because the court believes that such costs are properly part of attorney overhead. The court concludes that the $410,706.77 class action and PAGA settlement, as approved, is fair, adequate and reasonable, and approves the following specific awards: • $136,902.26 to plaintiff's counsel for plaintiff's attorneys' fees, as requested; • $10,516.85 to plaintiff's counsel for plaintiff's attorney costs, reduced from the $10,963.35 requested; • $5,000.00 to plaintiff Juan Alcaraz as an enhancement award, as requested; • $9,771.86 to the Administrator, Simpluris, Inc., as requested; and • $12,000.00 to the LWDA for its share of PAGA penalties, as requested. The total amount that will be payable to all class members and aggrieved employees if they are paid the amount to which they are entitled pursuant to the judgment is $236,515.80. The court sets a Final Report Hearing for February 14, 2025 at 10:00 a.m., to confirm that distribution efforts are fully completed, including the distribution of the amount of the uncashed class member checks to the State Controller's Office Unclaimed Property Fund in the names of the applicable payees 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 class members. All supporting papers must be filed at least 16 days before the Final Report Hearing date. Plaintiff is ordered to give notice of the ruling to the LWDA and to defendant.
8	**Limon vs. E. Excel Services, Inc. 2021-01203213**	Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement is granted. The court concludes that the $200,000.00 class action and PAGA settlement is fair, adequate and reasonable, and approves the following specific awards: • $66,666.00 to plaintiff's counsel for plaintiff's attorneys' fees, as requested;

		• $15,000.00 to plaintiff's counsel for plaintiff's attorney costs, as requested; • $7,500.00 to plaintiff Yolanda Aguilar Limon as an enhancement award, as requested; • $6,900.00 to the Administrator, ILYM Group, Inc., as requested; and • $7,500.00 to the LWDA for its share of PAGA penalties, as requested. The total amount that will be payable to all class members and aggrieved employees if they are paid the amount to which they are entitled pursuant to the judgment is $96,434.00. The court sets a Final Report Hearing for February 28, 2025 at 10:00 a.m., to confirm that distribution efforts are fully completed, including the distribution of the amount of the uncashed class member checks to the State Controller's Office Unclaimed Property Fund in the names of the applicable payees 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 class members. All supporting papers must be filed at least 16 days before the Final Report Hearing date. Plaintiff is ordered to give notice of the ruling to the LWDA and to defendant.
9	**Raczkowski vs. State of Cal. Dept. of Transportation 2023-01363888**	Defendant State of California, acting by and through the Department of Transportation's Demurrers to Plaintiff's Complaint are sustained with 14 days leave to amend. Defendant's Request for Judicial Notice is granted. Plaintiff brought this action as an individual, but the subject property which defendant allegedly damaged is not owned by plaintiff as an individual, but as a trustee of The Raczkowski Trust, which she concedes in her opposition. The court in Pillsbury v. Karmgard (1994) 22 Cal. App. 4th 743, 753, held that if any person other than a real party in interest brings an action, it is subject to general demurrer. In the case of a trust, the real party in interest is the trustee of the trust. Id. at 753-54. Thus, to establish standing, plaintiff must amend her Complaint to state facts establishing her status as a trustee of the trust that owns the subject property. Defendant demurs to the first cause of action for inverse condemnation based on a lack of requisite particularity in plaintiff's allegations. Plaintiff claims that her property was damaged due to road cuts and maintenance of Pacific Coast Highway that destabilized a hillside supporting plaintiff's property "during 2023, among other times", creating landsliding and lateral earth movement resulting in severe damage to the property. (Complaint ¶¶5-7.) Plaintiff also details the issues with defendant's work that allegedly led to damage to her property. (Id. ¶16.) The court concludes that these allegations are adequately pled,

		and that any purported facts concerning defendant's potential defenses are not required to state a claim for inverse condemnation. Defendant demurs to the second cause of action for nuisance on the ground that plaintiff has not adequately pled the elements of a public nuisance. However, plaintiff asserts that she is alleging a private nuisance, not a public nuisance, rendering defendant's arguments irrelevant. Defendant also argues that its conduct is immune because under Civil Code §3482, nothing which is done or maintained under the express authority of a statute can be deemed a nuisance. Defendant relies on Streets and Highways Code Sections 27 (maintenance of road) and 91 (improvement and maintenance of highways), but neither of those statutes grant "express authority" for the road cuts at issue in this action, and thus the court is not persuaded that defendant is immune for such conduct under Civil Code §3482. Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc. (2010) 190 Cal. App. 4th 1502, 1532 ("cases that apply the protection [under Section 3482] do so where the alleged nuisance is exactly what was lawfully authorized"). Defendant contends that the third cause of action for dangerous condition of public property is not pled with requisite specificity as to the dangerous condition. Plaintiff alleges that the excavated road cuts in the hillside to build the highway were made at an excessive angle, impairing the support of the hillside and making it unstable. (Complaint ¶16.) This allegation is adequate to plead a dangerous condition. Defendant is ordered to give notice of the ruling unless notice is waived.
10	**D. W. vs. Doe 1** **2023-01348903**	Defendant Doe 2's Demurrer to Complaint is sustained with 14 days leave to amend. The relevant version of CCP §340.1(a) in effect during 2023, when this lawsuit was filed, provides: "In an action for recovery of damages suffered as a result of childhood sexual assault, the time for commencement of the action shall be within 22 years of the date the plaintiff attains the age of majority or within five years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period expires later." The first part of this provision therefore requires childhood sexual assault lawsuits to be filed by the plaintiff's 40th birthday. However, the then-effective CCP §340.1(q) extended the statute by up to three years, with the limitations period expiring by no later than January 1, 2023. Plaintiff alleges she was 43 years old as of September 5, 2023, when she filed this action. Since "within 22 years of the date the plaintiff attains the age of majority" is age 40,

		plaintiff had to have filed this action by January 1, 2023, but she did not do so. Plaintiff relies on a December 12, 2022 tolling agreement that tolled any and all applicable statute of limitations against Doe 1 and "its affiliated entities, including, but not limited to Family Services, and any ecclesiastical officers". (Complaint ¶7.) Plaintiff alleges that defendant Doe 2 was an ecclesiastical officer of Doe 1 at the time of the childhood sexual assaults, but does not allege that defendant Doe 2 was an ecclesiastical officer of Doe 1 at the time Doe 1 executed the tolling agreement. Moreover, CCP §360.5 provides, "No waiver shall bar a defense to any action that the action was not commenced within the time limited by this title unless the waiver is in writing and signed by the person obligated." Since plaintiff does not allege that defendant Doe 2 personally signed the tolling agreement, it cannot serve to extend the statute of limitations as against him. Plaintiff cites Carlton Browne & Co. v. Superior Court (1989) 210 Cal. App. 3d 35, 41, in which the court held that the statutory requirement that a waiver of the statute of limitation be signed by the "person obligated" is ambiguous in that it can reasonably be construed to mean that such a waiver must be signed by the defendant personally, or given fundamental principles of agency, that it may alternatively be signed by the defendant's authorized agent. Here, however, plaintiff alleges that defendant Doe 2 was an agent of Doe 1, not that defendant Doe 1 was an agent of Doe 2, especially as of the date of the signing of the tolling agreement. Since plaintiff does not allege any facts that would trigger the five-year provision in the 2023 version of CCP §340.1(a) as to when plaintiff discovered or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, she has not pled around the statute of limitations. A Case Management Conference is also set for today and will go forward. Defendant Doe 2 is ordered to give notice of the ruling unless notice is waived.
11	**Peck vs. Grad 2020-01159713**	Continued to May 24, 2024 by Ex Parte Application.
