**1. ADRICH v. KALANI'S AT LAKE TAHOE, ET AL., 23CV0980**

**Motion for Preliminary Approval of Class Action and PAGA Settlement**

In this putative class action, plaintiffs Daniella Sabrina-Marie Adrich and Josefina Marquez move for preliminary approval of their settlement with defendant 3LB, LLC doing business as Kalani's at Lake Tahoe ("defendant").

**1. Background and Settlement Terms**

The operative pleading is a Second Amended Class Action Complaint recently filed by stipulation of the parties.[1] It alleges that defendant 3LB, LLC and Kalani's at Lake Tahoe violated the Labor Code by failing to pay minimum wages, failing to pay overtime, failing to provide meal and rest breaks, failing to provide proper expense reimbursements, failing to pay timely wages at termination, failing to provide accurate itemized wage statements, engaging in unfair business practices, and violating civil penalty provisions recoverable under the Private Attorneys General Act ("PAGA"), Labor Code section 2698, *et seq*.

Defendant is a restaurant located in South Lake Tahoe, California. Plaintiff Marquez worked for defendant from approximately March 2021 until approximately May 2023. Plaintiff Adrich worked for defendant from approximately June 2021 until approximately June 2022. Throughout their employment, plaintiffs were employed in an hourly paid, non-exempt position. Plaintiffs both contend that they and their coworkers were subject to the same unlawful labor practices, including failure to pay wages for all hours worked.

The settlement would create a gross settlement fund of $216,000, subject to an increase under the escalator clause,[2] and excludes defendant's employer's share of

[1] Plaintiff Adrich initially filed this action on June 20, 2023, as the sole plaintiff. That same day, plaintiff Marquez filed a separate class action lawsuit against defendant in El Dorado County Superior Court, Case No. 23CV0985. The parties stipulated to file the second amended complaint in the instant action to add plaintiff Marquez. It is the court's understanding that plaintiff Marquez intends to dismiss the other action.

[2] If the number of workweeks worked by settlement class members in California during the Class Period, as determined by the settlement administrator, after preliminary

payroll taxes. The class representative payment to each of the two plaintiffs would be $5,000 (for a total of $10,000). Counsel's attorney fees would be one-third of the total settlement (i.e., $71,999.28). Litigation costs would not exceed $20,000. Settlement administration costs would not exceed $10,000 (the settlement administrator, Phoenix Settlement Administrators, has submitted a bid of $7,250). PAGA penalties would be $20,000, resulting in a payment of $15,000 to the Labor and Workforce Development Agency ("LWDA") and $5,000 to the settlement class members who worked during the PAGA period. Thus, the net settlement amount available to the class would be approximately $84,000.72. The fund is non-reversionary.

The settlement amount would be paid to the settlement administrator in 36 equal monthly installments of $6,000, from July 1, 2024, to June 1, 2027.[3]

The proposed settlement class for purposes of the settlement would contain approximately 249 members and is defined as: All current and former non-exempt employees who worked for defendant in California at any time from June 20, 2019, to July 5, 2024 (the "Class Period"). The net settlement amount would be distributed to all participating settlement class members based on each member's proportionate number of workweeks worked for defendant during the Class Period.

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approval is more than 10 percent greater than 8,200 (i.e., if the settlement class members worked 9,021 or more workweeks during the Class Period), then the gross settlement amount shall increase by the increase in workweeks over 9,021 (i.e., over 10 percent). For example, if the number of workweeks worked by settlement class members during the Class Period is 12 percent greater than 8,200, then the gross settlement amount will increase by two percent. If this escalator clause is triggered, defendant shall have the option to increase the gross settlement amount as described above or defendant may adjust the release period so that the escalator clause is not triggered.

[3] Defendant would not be required to submit the first payment until 14 days after the court enters final approval of the settlement. The first payment amount would, however, accrue from July 1, 2024, forward, so the first payment amount would be equal to the monthly accrual until final approval. For example, if 10 months have elapsed from July 1, 2024, until 14 days after the final approval, the first payment amount would be $60,000.

As it relates to the PAGA claims, the PAGA period is the period of time from June 19, 2022, to July 5, 2024. There are an estimated 122 proposed settlement class members who worked a total of 2,595 PAGA pay periods during the PAGA period.

The settlement class members will not be required to file a claim. Class members may object or opt out of the settlement. They may dispute their number of workweeks. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Uncashed checks would be deposited by the settlement administrator with the California Unclaimed Property Fund in the name of the settlement class member whose check is not cashed.

Substantial informal discovery was undertaken and the matter settled after a full day of private mediation before the Honorable Mitchel R. Goldberg (Ret.). Prior to mediation, plaintiffs obtained from defendant timekeeping and payroll records for all its non-exempt employees, plaintiffs' time and pay records and personnel file, defendant's employee handbook, and information regarding the estimated number of current and former settlement class members, workweeks, settlement class members who worked during the PAGA period, PAGA pay periods, and average hourly pay. Class counsel analyzed a statistically significant sample of the timekeeping and payroll records, which allowed counsel to prepare an analysis with a high degree of certainty.

Counsel has provided a summary of a qualitative and quantitative analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. Plaintiffs' claims for unpaid minimum and overtime wages stem from allegations that plaintiffs and the putative settlement class members were required to work off the clock without compensation. Plaintiffs' meal and rest period claims are based on allegations that due to the nature of their work, settlement class members' breaks were often short, late, interrupted, and sometimes missed altogether, and that defendant did not pay premium wages for non-code-compliant breaks. Plaintiffs further bring a claim for unreimbursed necessary business expenses

based on allegations that settlement class members were required to purchase their own uniforms and use their personal cellphones for work purposes without reimbursement. Defendant ardently opposes the merits of this case and denies plaintiffs' factual allegations. Defendant also maintains the claims are improper for class treatment, in part, due to the individualized and testimony-intensive nature of the wage claims that could bar class certification or significantly reduce defendant's overall liability.

**2. Legal Principles**

To protect the interests of absent class members, class action settlements must be reviewed and approved by the court. (*Duran v. Obesity Research Institute, LLC* (2016) 1 Cal.App.5th 635, 646 ["The [trial] court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement"].)

California follows a two-stage procedure for court approval: first, the court reviews the form of the terms of the settlement and form of settlement notice to the class and provides or denies preliminary approval; later, the court considers objections by class members and grants or denies final approval. (Cal. Rules of Ct., rule 3.769.) If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing. (Cal. Rules of Ct., rule 3.769, subd. (e).)

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including "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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction … to the proposed settlement." (*Ibid.*)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

Under PAGA, plaintiffs seek civil penalties that would otherwise be recoverable by the LWDA. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) Any monetary penalties assessed against the defendant are split between the LWDA and aggrieved employees, with 75 percent going to the LWDA.[4] Representative litigants must submit any settlement of a PAGA representative action for court approval. (Lab. Code, § 2699, subd. (s)(2).)

Since the LWDA does not have a proverbial seat at the table, the court's review of a PAGA settlement must make sure that the interests of the LWDA in civil enforcement are defended and that the settlement is fair, adequate, and reasonable under all circumstances. (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110,

[4] The law has recently changed such that, for PAGA notices filed on or after June 19, 2024, 65 percent of the recovered penalties go to the LWDA and 35 percent to the aggrieved employees. (Lab. Code, § 2699, subd. (m).) For PAGA notices filed before June 19, 2024, 75 percent of the recovered penalties go to the LWDA and 25 percent to the aggrieved employees. (Lab. Code, § 2699, subd. (v)(1).) In this case, the PAGA notices were filed in 2023.

1133; see also Gov. Code, § 12652, subd. (e)(2)(B) [requiring false Claims Act qui tam settlements be "fair, adequate, and reasonable under all the circumstances"]; see also *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 62 [noting duty of court to ensure private enforcer brings action in public interest] and *Iskanian*, *supra*, 59 Cal.4th at p. 379 [PAGA cases are brought in public interest].)

**3. Attorney Fees and Representative Payment**

Plaintiffs seek one-third of the total settlement amount as attorney fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. The court stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id.*, at p. 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, the litigation costs and the requested representative payment of $5,000 for each plaintiff will be reviewed at the time of final approval. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804–807.

**4. Discussion**

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify preliminary approval. The analysis of the value of the case is sufficient for current purposes.

Additionally, the court finds that the proposed settlement class of approximately 249 persons is sufficiently numerous and its members are readily ascertainable from

defendant's records. The court finds that the class has sufficient common questions of law and fact to support a community of interest, given their allegations of common employment policies and practices and the lessened manageability concerns in the settlement context. Plaintiffs and their counsel will be adequate representatives of the class. The court further finds that class treatment for settlement purposes will provide substantial benefits that render it a superior alternative to individual actions.

The court therefore conditionally certifies the following class for settlement purposes: "All current and former non-exempt employees who worked for defendant in California at any time from June 20, 2019, to July 5, 2024."

The court will not approve the final apportionment of funds to the settlement class members who worked during the PAGA period and the LWDA until the final approval hearing. However, the Court does preliminarily approve of the parties' proposed distribution of the PAGA penalties to the class members in a manner proportional to the total number of pay periods worked by each class member.

The court notes that the moving papers are silent as to the proposed time of settlement payment to the settlement class members. Under the terms of the settlement agreement, defendant is required to make 36 equal monthly installments of $6,000, accruing from July 1, 2024. The risk of non-payment raises a number of issues, including the issue of proper disposition of the funds if some, but not all payments are made. The agreement does not address the plaintiffs' remedies in the event of non-payment. The parties may wish to consider an acceleration clause, a short grace period, a stipulation to entry of a judgment, or other remedies appropriate to protect the class members' interests. Or, the parties could provide for an interim payment once a certain number of the installments have been made. These issues need to be addressed before the settlement can be approved.

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**TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, JANUARY 24, 2025, IN DEPARTMENT FOUR.**

**2. NAME CHANGE OF MOSHERSMITH, 24CV2705**

**OSC Re: Name Change**

**TENTATIVE RULING # 2: PETITION GRANTED AS REQUESTED.**

**3. NAME CHANGE OF BERDAHL, 24CV2625**

**OSC Re: Name Change**

**TENTATIVE RULING # 3: PETITION GRANTED AS REQUESTED.**

**4. JENSEN v. THORNE, ET AL., 24CV1272**

**(A) Demurrer**

**(B) Motion to Strike**

**Demurrer**

Defendants demur to each cause of action in plaintiff's first-amended complaint ("FAC") on the grounds that each cause of action fails to state a claim and is uncertain. (Code Civ. Proc., § 430.10, subds. (e), (f).) Defense counsel declares she met and conferred with plaintiff (who is representing herself in pro per) on November 4, 2024, via video conference, as required under Code of Civil Procedure section 430.41, subdivision (a). (Arico-Smith Decl., ¶ 3.)

**1. Background**

This is a dispute regarding ownership of real property brought by the daughter of former owners of the property that was sold at foreclosure against subsequent owners of the property.

Plaintiff's FAC includes Judicial Council form attachments for negligence and fraud causes of action and exemplary damages, along with a 16-page typewritten document titled, "Civil Complaint," and over 100 pages of attached documents.

**2. Request for Judicial Notice**

Pursuant to Evidence Code section 452, subdivision (d), the court grants defendants' unopposed request for judicial notice of Exhibit 1 (plaintiff's FAC).

**3. Legal Principles**

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true,

however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

**4. Discussion**

Plaintiff's FAC includes Judicial Council form attachments for negligence and fraud causes of action.

"Actionable negligence involves a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury." (*United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 594.) As defendants point out, plaintiff does not allege that defendants owed plaintiff a legal duty of care. Additionally, the FAC does not identify any acts or omissions that would breach such duty. Therefore, the FAC fails to state a claim for negligence and the demurrer is sustained as to this cause of action. The court grants leave to amend because plaintiff has not been afforded a previous opportunity to amend. (*Courtesy Ambulance Serv. v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519, fn. 12.)

" 'The elements of fraud … are: (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.' " (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, quoting 5 Witkin, Summary of Cal. Law (9th ed. 1988), § 676, p. 778.) Defendants argue the fraud cause of action attachment fails to identify any alleged misrepresentation of facts by defendants; it only alleges, "just took over the home changing locks extorting reverse mortgage funds … complaint 1–16, 2016 began plotting on reverse mortgage." The court agrees with defendants that plaintiff's FAC fails to allege facts sufficient to state a cause of action for fraud. The demurrer is

sustained as to this cause of action with leave to amend. (*Courtesy Ambulance Serv.*, *supra*, 8 Cal.App.4th at p. 1519, fn. 12.)

The FAC does not expressly identify any additional causes of action. However, there are references to alleged elder abuse, white-collar crime, grand larceny, theft, extortion, rescission, wire fraud, etc. To the extent that any of these allegations could be construed as an alleged cause of action, the court sustains the demurrer on the ground of uncertainty with leave to amend. (*Courtesy Ambulance Serv.*, *supra*, 8 Cal.App.4th at p. 1519, fn. 12.)

**Motion to Strike**

Pursuant to Code of Civil Procedure sections 435 and 436, defendants move to strike the Exemplary Damages Attachment to plaintiff's FAC on the ground that plaintiff fails to allege any conduct by defendants that rises to the level of "oppression, fraud, or malice." Defense counsel declares she met and conferred with plaintiff on November 4, 2024, via video conference, as required under Code of Civil Procedure section 435.5, subdivision (a). (Arico-Smith Decl., ¶ 3.)

On January 16, 2025, defendants filed a notice of non-opposition to their motion to strike.

**1. Request for Judicial Notice**

Pursuant to Evidence Code section 452, subdivision (d), the court grants defendants' unopposed request for judicial notice of Exhibit 1 (plaintiff's FAC).

**2. Legal Principles**

A motion to strike is generally used to address defects appearing on the face of a pleading that are not subject to demurrer. (*Pierson v. Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342.) Further, "[t]he court may, upon a motion [to strike] …, or at any time in its discretion … [¶] … [s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 436, subd. (a).) Like a demurrer, the grounds for a motion to strike must appear on the face of the pleading or from any matter which the

court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).) On a motion to strike, the trial court must read the complaint as a whole, considering all parts in their context, and must assume the truth of all well-pleaded allegations. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519.)

**3. Discussion**

Civil Code section 3294 allows a plaintiff to recover exemplary (or "punitive") damages "[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294, subd. (a).) For the purposes of awarding exemplary damages, " '[m]alice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) " 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) " 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c)(3).)

Defendants argue that plaintiff's prayer for exemplary damages is not supported by specific facts demonstrating that defendants acted with oppression, fraud, or malice. (Mtn. at 7:3–6.) The court agrees. Plaintiff's FAC is replete with conclusory, and sometimes unintelligible, allegations. Additionally, some of the allegations pertain to unrelated third parties (e.g., Kaiser, Lendus LLC, Dan Morrison). Overall, none of the alleged facts rise to the level of malice, oppression, or fraud necessary under Civil Code section 3294 to state a claim for exemplary damages against defendants.

The court also notes that plaintiff's FAC seeks $1.9 million dollars in exemplary damages. However, the amount or amounts of exemplary damages sought may not be alleged. (Civ. Code, § 3295, subd. (e).)

Based on the foregoing, the court grants the motion to strike the Exemplary Damages Attachment to plaintiff's FAC with leave to amend.

**TENTATIVE RULING # 5: THE DEMURRER IS SUSTAINED WITH LEAVE TO AMEND AND THE MOTION TO STRIKE IS GRANTED WITH LEAVE TO AMEND. PLAINTIFF SHALL FILE AN AMENDED COMPLAINT WITHIN 10 DAYS AFTER THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.**