

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited		Entered by:
TITLE OF CASE: Manuel Villa vs. Trillium Pumps USA, Inc. / COMPLEX / CLASS ACTION		
LAW AND MOTION MINUTE ORDER		Case Number: 22CECG01104

Hearing Date: **May 23, 2024** Hearing Type: **Motion - Attorney Fees; Motion - Final Approval Class Settlement; Case Management Conference**

Department: **403** Judge: **Jon M Skiles**

Court Clerk: **J. Xiong** Reporter: **Not Reported**

Appearing Parties:	
Plaintiff: Not Present	Defendant: Not Present
Counsel:	Counsel:

☐ Off Calendar

☒ Set for December 5, 2024 at 3:30 PM in Department 403 for Status Conference.

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

☐ Upon filing of points and authorities.

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

☐ Taken under advisement

☒ No party requested oral argument pursuant to Local Rule 2.2.5 and CRC 3.1308(a)(1).

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

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

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

☒ See attached copy of the Tentative Ruling.

☐ Judgment debtor ___ sworn and examined.

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

JUDGMENT:

☐ Money damages ☐ Default ☐ Other ___ entered in the amount of:
Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___

☐ Claim of exemption ☐ granted ☐ denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:

☐ Monies held by levying officer to be ☐ released to judgment creditor. ☐ returned to judgment debtor.

☐ \$___ to be released to judgment creditor and balance returned to judgment debtor.

☐ Levying Officer, County of ___, notified. ☐ Writ to issue

☐ Notice to be filed within 15 days. ☐ Restitution of Premises

☐ Other: ___

(35)

Tentative Ruling

Re: ***Villa v. Trillium Pumps USA, Inc.***
Superior Court Case No. 22CECG01104/COMPLEX

Hearing Date: May 23, 2024 (Dept. 403)

Motion: By Plaintiff Manuel Villa for Final Approval of Class Settlement

Tentative Ruling:

To grant final approval of the class action settlement, costs, class representative enhancement payment, PAGA payment, and settlement administrator's fees. To grant and approve an attorney fees award in the reduced amount of \$147,691.31. Plaintiff Manuel Villa is directed to submit a new proposed order.

To set a status conference for Thursday, December 5, 2024, 3:30 p.m. in Department 403.

Explanation:

1. Class Certification

The court has already granted the motion for preliminary approval and certification of the class and found that the class is sufficiently numerous and ascertainable to warrant certification for the purpose of approving the settlement. There is no reason for the court to reconsider its decision granting certification of the class. Therefore, the court certifies the class for the purpose of final approval of the settlement.

2. Settlement

a. Legal Standards

"When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." (*Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F. 3d 1071, 1079.)

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement . . . The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129.)

"[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished . . . [therefore] the factual record must be before the . . . court must be sufficiently developed." (*Id.* at p. 130.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id.* at p. 129.)

b. Fair and Reasonable

Previously, the parties submitted the Stipulation of Settlement of Class and PAGA Claims and Release of Claims, which contemplated a release of the claims brought by this action in exchange for \$650,000.00. The gross settlement would thereon be apportioned for attorney's fees, costs of suit, and costs to administer the settlement. The settlement administrator confirms that there are 221 class members, who collectively worked 19,482 "Workweeks". The court preliminarily approved these terms, and notice to the putative class of these amounts was given.

The settlement was reached after arm's length negotiations during a mediation with an experienced mediator, which weighs in favor of finding that the settlement was fair, adequate, and non-collusive. In addition, class counsel are highly experienced in class litigation, and provided information as to their assessments of the strength of plaintiffs' case, the risk, expense and complexity of the litigation, and the extent of analysis conducted. Thus, class counsels' opinion that the settlement is fair, adequate, and reasonable is entitled to considerable deference. There is also no evidence that the settlement is the product of collusion. Therefore, the court continues to find that the proposed settlement amount is fair, adequate and reasonable.

3. Attorney's Fees and Costs

This matter originally was set for hearing on April 11, 2024 and continued to the present date to address certain issues raised by the court. Counsel for Plaintiff Manuel Villa ("Plaintiff") filed supplemental declarations in response.

Plaintiff's counsel seeks an award of \$216,666.67 in attorney's fees, or one-third of the gross settlement, plus \$10,075.48 in court costs. The agreement provides for an award of up to 1/3 of the total gross settlement. Therefore, the request for attorney's fees is consistent with the agreement.

The California Supreme Court in *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480 held that a court has discretion to grant attorney's fees in class actions based on a percentage of the total recovery. (*Id.* at pp. 503-504.) However, the trial court may also use a lodestar calculation to double check the reasonableness of the fee award. (*Id.* at pp. 504-506.) The choice of a fee calculation is generally one within the discretion of the trial court, the goal under either approach being the award of a reasonable fee to compensate counsel for their efforts. (*Id.* at p. 504.) If the comparison between the percentage and lodestar calculations produced an imputed multiplier indicating that the percentage fee will reward counsel for their services at an extraordinary rate even

accounting for the factors customarily used to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage. (*Ibid.*)

The court previously considered submissions by counsel regarding the fee award on Plaintiff's motion for preliminary approval. Certain discrepancies were noted between Plaintiff's motion for preliminary approval and motion for final approval. Counsel indicates a software error in submitting hourly rates on final approval. After consideration of the supplemental declarations, the court continues to find that the rates are somewhat high compared to local rates. As on preliminary approval, the court further evaluates the time entries provided to ensure that the work performed is commiserate with the experience of counsel to assert elevated hourly rates. Accordingly, the billed time should not include tasks that would be expected knowledge from, or disproportionate to, that breadth of experience.

The court acknowledges the supplemental declarations submitted by the Zakay Law Group. The court does not credit any of the additional time captured on review for final approval for entries previously submitted for preliminary approval. Accordingly, the court renews its findings as to all entries submitted on preliminary approval. The court does not credit \$17,958.00 of billed time by Jean Claude Lapuyade for generic legal research that should have been factored into his 15 years of experience; and \$80.00 of billed time by Sydney Castillo-Johnson for purely clerical tasks that may not be billed at attorney rates. Further, the court does not credit \$3,362.50 of billed time by Shani Zakay for generic legal research that should have been factored into his 12 years of experience, as well as time billed for the twice-prepared motion for preliminary approval; \$1,686.00 of billed time by Jackland Hom for the same, as well as for purely clerical tasks; and \$396.00 of billed time by Jaclyn Joyce for the same. In sum, the court does not credit \$23,482.50 of the time proffered for work up to the motion for preliminary approval.

Upon careful review of all papers filed with this motion, including the supplemental declarations, the court again notes approximately 33 hours of billed time in preparation for preliminary approval, approximately 31 hours in preparation, and 22 hours of settlement management. The court credits each law firm only 4 hours deemed billed by Jean Claude Lapuyade and Shani Zakay, for preparation of the present motion given that much of the preparation of final approval rests on the work already performed for preliminary approval. The court credits each law firm only 4 hours deemed billed by Jean Claude Lapuyade and Shani Zakay, for settlement administration time. Accordingly, the court approves fees billed by JCL Law Firm in the total amount of \$73,285.33, and by Zakay Law Firm in the total amount of \$60,979.50. The court sets the lodestar at \$134,264.83. The lodestar multiplier sought is therefore 1.62.

As explained by the California Supreme Court regarding lodestar multipliers, sometimes referred to as fee enhancements:

...the trial court is *not required* to include a fee enhancement to the basic lodestar figure for contingent risk, exceptional skill, or other factors, although it retains discretion to do so in the appropriate case; moreover, the party seeking a fee enhancement bears the burden of proof. In each case, the trial court should consider whether, and to what extent, the attorney and client have been able to mitigate the risk of nonpayment,

e.g., because the client has agreed to pay some portion of the lodestar amount regardless of outcome. It should also consider the degree to which the relevant market compensates for contingency risk, extraordinary skill, or other factors under *Serrano III*. We emphasize that when determining the appropriate enhancement, a trial court should not consider these factors to the extent they are already encompassed within the lodestar. The factor of extraordinary skill, in particular, appears susceptible to improper double counting; for the most part, the difficulty of a legal question and the quality of representation are already encompassed in the lodestar. A more difficult legal question typically requires more attorney hours, and a more skillful and experienced attorney will command a higher hourly rate. (See *Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1004, 185 Cal.Rptr. 145.) Indeed, the " 'reasonable hourly rate [used to calculate the lodestar] is the product of a multiplicity of factors ... the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case.' " (*Ibid.*) Thus, a trial court should award a multiplier for exceptional representation only when the quality of representation far exceeds the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation. Otherwise, the fee award will result in unfair double counting and be unreasonable. Nor should a fee enhancement be imposed for the purpose of punishing the losing party. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138-1139 [emphasis original].)

Once a lodestar is fixed, the lodestar may be adjusted based on certain factors, including: (1) the novelty and difficulty of the questions involved; (2) the skill displayed in presenting them; (3) the extent to which the nature of the litigation precluded other employment by the attorneys; and (4) the contingent nature of the fee award. (*Id.* at p. 1132, citing *Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 49.)

The court acknowledges the contingent nature of the fee award sought. The court finds that the claims in this action are typical to all wage and hour claims regarding minimum wage, overtime wages, meal periods, rest periods, itemized statements and failure to reimburse business expenses. There were no demonstrated deviations from the typical course these actions generally follow: the making of the claim, some informal discovery, some data analysis, a mediation, and a settlement. (E.g., Lapuyade Decl. in support of Final Approval, ¶¶ 9-13.) The court awards a 1.1 multiplier in recognition of the contingent risk borne by counsel. The final award of attorney fees is therefore \$147,691.31.

Neither counsel addresses by supplemental declaration the concerns raised by the court as to the potential for duplicative costs. With the understanding of the duty of candor owed to the court by attorneys (Rules Prof. Conduct, rule 3.3(a)), and the lack of opposition, the court assumes that the costs are not duplicative and are in fact split costs, despite entries by JCL Law Firm indicating a partial refund from JAMS, which is not indicated in Zakay Law Firm's costs, and despite the lack of split of expert costs. (Lapuyade Decl., Ex. 2; compare Zakay Decl., Ex. 3.) The court approves costs as sought in the amount of \$10,075.48.

4. Payment to Class Representative

Plaintiff seeks approval of a \$10,000 "service payment". Incentive payments to class representatives are routinely awarded in class action wage and hour settlements, and similar payments have been approved in other cases. Here, Plaintiff submits a declaration explaining the general terms the work he did on the case, including providing information about work history and Defendant's practices and operations, assisting in investigation and reviewing documents, and participating in mediation efforts. The court approves a \$10,000 payment to plaintiff Manuel Villa.

5. Payment to LWDA under PAGA

Plaintiff also seeks approval of \$40,000.00 to be paid to settle the PAGA claim, 75 percent of which will be paid to the LWDA pursuant to Labor Code section 2699, subdivision (i). The amount to be paid to settle the PAGA claim appears to be reasonable. In addition, the LWDA has been served with a copy of the settlement as well as preliminary and final approval motions, and it has not objected to the request to approve the settlement. Therefore, the court finds that the payment to settle the PAGA claim is reasonable and approves it.

6. Payment to Class Administrator

Plaintiff seeks approval for administrative costs of \$9,900.00. The administrative cost payment appears to be reasonable given the amount of work to be performed in sending out class notices, tracking down missing class members, handling questions from class members and parties, and sending out payments to class members, as well as providing declarations in support of the motions for class settlement approval. The court finds the administration costs of \$9,900.00 as reasonable, and approves it.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JS on 5/21/2024
(Judge's initials) (Date)

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000	<i>FOR COURT USE ONLY</i>
TITLE OF CASE: Manuel Villa vs. Trillium Pumps USA, Inc. / COMPLEX / CLASS ACTION	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: 22CECG01104

I certify that I am not a party to this cause and that a true copy of the:

Minute Order and Tentative Ruling

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002**

On Date: **05/24/2024**

Clerk, by _____, Deputy


J. Xiong

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☐ Clerk's Certificate of Mailing Additional Address Page Attached