

TENTATIVE RULINGS

JUDGE RANDALL J. SHERMAN

DEPARTMENT CX105

AUGUST 26, 2022

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/Private_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	Espinoza vs. Galaxy Investments, Ltd. 2021-01194735	The unopposed motion of Elan (Lonny) Osterman of Lawyers for Employee and Consumer Rights to be relieved as counsel of record for plaintiff Gloria Espinoza is granted. Moving counsel has complied with the requirements of CRC Rule 3.1362. The Order will be effective upon the filing of a proof of service showing service of a signed Order on plaintiff.

response to the OSC must be filed at least a week before the hearing.

Plaintiffs are ordered to give notice to defense counsel unless notice is waived.

- 5 Velez vs. Encore Interiors, Inc.** Plaintiff has shown that the Administrator's work is complete, and that the court's file may now be closed.
2018-01019252

Plaintiff is ordered to give notice to defense counsel unless notice is waived.

- 6 Herrera vs. Anixter, Inc.** Plaintiffs' Motion for Preliminary Approval of Class Action Settlement is granted.
2020-01142893

A Final Approval Hearing is set for January 13, 2023 at 10:00 a.m. All papers in support of the Final Approval Hearing, including detailed hourly breakdowns of plaintiffs' attorneys to support a lodestar cross-check, detailed plaintiff attorney cost breakdowns, an Administrator declaration and invoice, and plaintiffs' declarations to support the enhancement requests, 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.

Plaintiffs are ordered to give notice of the ruling to the LWDA and to defendants.

- 7 McCray vs. Los Alamitos Race Course** The tentative ruling is to continue the hearing on plaintiff's Motion for Preliminary Approval of Class Action Settlement and Provisional Class Certification for Settlement Purposes Only to October 7, 2022 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
2020-01131139

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 motion does not provide the court with the estimated high, low or average individual payments to the class members. The average payment must be provided for preliminary approval, but if the high and low estimated payments are not available at this time, they must be provided in the motion for final approval.

The moving papers do not include a copy of plaintiff's PAGA letter 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 allocation in Section XV of the settlement agreement of only 20% of the settlement payments for wages appears to be low. The breakdown in the motion allocates more than 50% of the class members' potential recovery to wages. Either an increase to 33 1/3% or an explanation of why the figure is not at least 33 1/3% is required.

Section IX of the settlement agreement requires written objections, as well as a Notice of Appearance by any attorney who intends to appear for an objector, but those requirements are overly restrictive and arguably inconsistent with CRC Rule 3.769(f). The settlement agreement and class notice must be modified to reflect that either an objection may be in writing, or a class member may orally object or otherwise offer comments at the Final Approval Hearing.

The settlement agreement fails (presumably at 15:4) to provide additional time for class members to respond (opt out, dispute workweeks, or object in writing) if their notice must be re-mailed.

Section X of the settlement agreement provides that the Administrator will resolve any workweek disputes and that their decision is final and

non-appealable. The settlement agreement should reflect instead that the court will resolve any workweek dispute not otherwise resolved by the Administrator and the parties. In addition, a description of the material terms of the workweek dispute handling procedure must be included in §6 of the class notice.

The settlement agreement at 14:19 provides for 45 days to dispute workweeks, but the class notice in §6 on p. 3 provides for 60 days to dispute workweeks. Consistency is required.

In §19 of the class notice, change "Workweek Dispute" to "Workweek Dispute Form".

Since the Workweek Dispute Form attached to the notice is also the form for updating contact information, the title should be amended to reflect that. Further, the instructions in the class notice should indicate that the form should be used by class members to update their contact information.

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 has not shown that he served the LWDA with his moving papers. Plaintiff is ordered to give notice of the ruling to the LWDA and to defendant, to serve the LWDA with his original moving papers as well as any new papers filed for future hearings, and to file a proof of service showing such compliance.