

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited	Entered by:
TITLE OF CASE: Roger Hernandez vs. Western Power Sports, Inc. / COMPLEX / CLASS ACTION	
LAW AND MOTION MINUTE ORDER	Case Number: 22CECG02123

Hearing Date: March 12, 2026	Hearing Type: General Motion – Re: Awards and Costs
Department: 503	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 February 11, 2027 at 3:30 PM in Department 503 for Status Conference Re: Confirmation of Payments.**

☐ 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: ___

(37)

Tentative Ruling

Re: ***Hernandez v. Western Power Sports, Inc.***
Superior Court Case No. 22CECG02123

Hearing Date: March 12, 2026 (Dept. 503)

Motion: Plaintiff's Motion for Final Approval of Class Action Settlement

If oral argument is timely requested, it will be entertained on

Wednesday, April 1, 2026, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant, but limit the attorney fee award to \$193,627.50. The difference shall be added to the net settlement to be distributed to the settlement class members. Class counsel shall submit to the court a proposed judgment consistent with the law and motion order within seven days of service of the minute order by the clerk.

To also order the parties to return on Thursday, February 11, 2027, at 3:30 p.m. in Department 503 to inform the court of the total amount actually paid to the class members, pursuant to Code of Civil Procedure section 384, subdivision (b), so that the judgment can be amended and the distribution of any cy pres funds can be ordered. Documentation as to the amount paid to class members must be filed on or before January 28, 2027.

Explanation:

"Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) "The trial court has broad discretion to determine whether a class action settlement is fair. It should consider factors such as 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 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." (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336.)

The court has vetted the fairness of the settlement through prior hearings, each with its own filings. The settlement here generally meets the standards for fairness, and the class has approved it, with no objections, disputes, or requests for exclusion. Only four of 241 notices were undeliverable. The court finds that the method of notice followed, which this court approved at the prior hearing, comports with due process and was reasonably calculated to reach the absent class members:

"Individual notice of class proceedings is not meant to guarantee that every member entitled to individual notice receives such notice," but "it is the court's duty to ensure that the notice ordered is reasonably calculated to reach the absent class members." [Citations.] After such appropriate

notice is given, if the absent class members fail to opt out of the class action, such members will be bound by the court's actions, including settlement and judgment, even though those individuals never actually receive notice. Cooper, 467 U.S. at 874, 104 S.Ct. 2794; 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1789 (2d ed.1986).

(Reppert v. Marvin Lumber and Cedar Co., Inc. (1st Cir. 2004) 359 F.3d 53, 56-57 emphasis added.)

Calculation of Class Member Payments

Based on the number of class members known to be participating, Kevin Lee of Phoenix Settlement Administrators has calculated the net settlement fund to be \$406,659.02 after deducting attorney fees and costs, the administration costs of \$6,900, the class representative award totaling \$10,000, and the PAGA payment. (Lee Decl. ¶ 13.) The highest estimated class payment is \$5,689.04, the average payment is \$1,687.38, and the lowest estimated payment is \$19.55. (Id. at ¶ 14.)

PAGA Settlement

Plaintiff also seeks approval of \$30,000 to be paid to settle the PAGA claim, 75% 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. 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.

Payment to Class Representatives

Plaintiff seeks court approval of a \$10,000 payment to the named class representative, Roger Hernandez. The court intends to approve the requested enhancement payment of \$10,000 to the named plaintiff. While this amount is higher than this court usually awards, Mr. Hernandez has provided sufficient detail in his declaration justifying this amount in this instance. Mr. Hernandez worked for defendant from 2006 to 2021. (Hernandez Decl., ¶ 2.) He spent considerable time in assisting with this case, including conducting his own research to further understand the claims and ensure a fair settlement. (Id. at ¶¶ 13-17, 23.) He notes that he has applied to over 50 other employers and has faced rejection since participating in this matter. (Id. at ¶ 22.) This represents a reasonable amount, commensurate with the evidence of risk incurred in conferring a benefit to the class and sufficient to induce the named plaintiff to participate in the suit.

Attorneys' Fees

The settlement provided that the parties agreed to fees calculated at one-third of the gross settlement amount or \$235,000. Counsel has provided evidence of the time expended by the attorneys representing plaintiff and the class throughout this action to support the lodestar amount, as a cross-check of the percentage-based fees requested.

As a general rule, the lodestar method is the primary method for calculating the amount of class counsel's attorney's fees; however, the percentage-of-the benefit approach may be proper when there is a common fund. In some cases, it may be appropriate, when the monetary value of the class benefit can be determined with a reasonable degree of certainty, such as this one, for the judge to cross-check or adjust the lodestar amount in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation. (See *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 488–497; *Roos v. Honewell Int'l, Inc.* (2015) 241 Cal.App.4th 1472, 1490–1494; *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

The lodestar analysis is based on a "careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 48.) As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. . . ." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type." (*Id.* at p. 1133.) Here, plaintiff has explained that he searched for local counsel, but none were willing to take his case. (Hernandez Decl., ¶ 8.) While some of the hourly rates are high for Fresno County, plaintiff has explained why he retained out of town counsel.

Counsel have submitted evidence of the hours expended during litigation by four attorneys. Counsel worked 209.1 hours at hourly rates ranging from \$450 to \$950 for an estimated \$129,085 in attorney fees. While some of these billing rates are high, they will be approved in order to compensate counsel for the contingent nature of the representation and risk of not being paid. Additionally, for the highest billing attorney, the experience described includes, practicing law since 2001, exclusively practicing in plaintiff's employment litigation since 2004, authoring a book on employment litigation, and speaking at seminars regarding employment litigation. (Campbell Decl., ¶¶ 33-35.) In light of plaintiff's attempt to retain local counsel and the experience described, the court finds that the billing amounts are appropriate here.

A multiplier of 1.82 is required to reach the \$235,000 requested in attorney's fees. The fee requested is more than the reasonable value of the legal services provided. The court sets the lodestar at \$129,085, and will apply a 1.5 multiplier, in light of the results obtained by counsel and the risks inherent in taking this matter on a contingency basis. The court will approve \$193,627.50 for attorneys' fees. The remainder of attorney's fees reserved should be returned to the common fund for the benefit of the class members.

Costs

The Settlement Agreement provides that plaintiff's counsel would be reimbursed costs up to \$25,000.00. The request for actual costs of \$16,440.90 is supported with evidence and will be approved. (Campbell Decl., Exh. 2.)

Administrator's Costs

The court intends to find the amount of \$6,900 as requested to be reasonable, and approve the administrator's costs as requested.

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 3/10/2026.
(Judge's initials) (Date)

SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO Civil Unlimited Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-1900		FOR COURT USE ONLY
TITLE OF CASE: Roger Hernandez vs Western Power Sports, Inc.		
CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE		CASE NUMBER: 22CECG02123

I certify that I am not a party to this cause. A true copy of the Minute order and Tentative Ruling has been processed and:

- ☒ I certify that, pursuant to California Rules of Court, rule 2.251, and Code of Civil Procedure section 1010.6, the following document(s) have been electronically served by the Superior Court of California, County of Fresno. The list of electronically served recipients are listed below.
- ☐ Placed in a sealed envelope and:
- ☐ Deposited with the United States Postal Service, mailed first class, postage fully prepaid and addressed as shown below.
 - ☐ Placed for collection and mailing on the date and at the place shown below following our ordinary business practices. 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/e-mailing: **Fresno, California 93724-0002** on:

Date: **March 12, 2026**

Clerk, by J. Xiong, Deputy

J. Xiong

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☐ Clerk's Certificate of Mailing Additional Address Page Attached