

TENTATIVE RULINGS

JUDGE RANDALL J. SHERMAN

DEPARTMENT CX105

MARCH 22, 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/Privatey_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	Quinteros vs. InternationalHR Services, LLC 2022-01297482	<p>The tentative ruling is to continue the hearing on the motion of Al Mohajerian of Mohjajerian, APLC for an order relieving him as counsel of record for defendant InternationalHR Services, LLC to July 5, 2024 at 10:00 a.m.</p> <p>Counsel failed to use the required declaration form, Judicial Council Form MC-052, Declaration in Support of Attorney's Motion to Be Relieved as Counsel – Civil, as required by California Rules of Court, Rule 3.1362(c). In addition, counsel has not confirmed the client's electronic service address, as required by California Rules of Court, Rule 3.1362(d)(2), because the motion was served on defendant InternationalHR Services, LLC via electronic service.</p> <p>A Status Conference is also set for today and will go forward.</p>

		Moving counsel is ordered to give notice of the ruling and the continuance.
2	Limon vs. E. Excel Services, Inc. 2021-01203213	<p>The tentative ruling is to continue the hearing on plaintiff's Motion for Final Approval of Class Action and PAGA Settlement to May 10, 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.</p> <p>The parties must provide an explanation as to why the number of class members has decreased from 42 to 34.</p> <p>An invoice from the Administrator is required to support its fee request.</p> <p>Counsel should propose a realistic Final Report Hearing date, taking into account the time deadlines associated with funding the settlement, mailing distributions, allowing the check-cashing deadline to pass, and depositing uncashed check funds pursuant to the terms of the settlement agreement. The court usually sets these hearings nine months after final settlement approval if the check cashing deadline is 180 days. 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.</p> <p>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, and to serve the LWDA with her original moving papers as well as any new papers filed for future hearings.</p>
3	Williams vs. Cedar Creek Inn SJC, Inc. 2020-01174105	<p>Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement is granted, except that the class notice must be amended on p. 3 to state, "Payment to the Settlement Administrator, estimated not to exceed \$11,000.00 ...", since the administrator's fee estimate has been increased from \$10,000 to \$11,000 due to the administrator now providing a Spanish translation of the class notice.</p> <p>A Final Approval Hearing is set for July 26, 2024 at 10:00 a.m. 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.</p> <p>Plaintiff is ordered to give notice of the ruling to the LWDA and to defendant.</p>

4	Gutierrez vs. M.M.C.L., Inc. 2021-01182371	<p>Plaintiff has shown that the Administrator’s work is complete, and that the court’s file may now be closed.</p> <p>Plaintiff is ordered to give notice to defense counsel unless notice is waived.</p>
5	Aguilar vs. Vallejos Transport, Inc. 2020-01129017	<p>Plaintiff’s Motion for Court Approval of the Parties’ PAGA Settlement is granted. The court concludes that the \$1,000 PAGA settlement is fair, adequate and reasonable, and approves the following specific awards:</p> <ul style="list-style-type: none"> • \$750.00, which is 75% of the gross settlement amount, to the LWDA as its share of PAGA penalties; and • \$250.00, which is 25% of the gross settlement amount, to the aggrieved employees as their share of PAGA penalties. <p>The court sets a Final Report Hearing for January 10, 2025 at 10:00 a.m., to confirm that distribution efforts are fully completed, including the distribution of uncashed aggrieved employee checks after 180 days, that the administration work is complete, and that the court’s file thus may be closed. All supporting papers must be filed at least 16 days before the Final Report Hearing date.</p> <p>Plaintiff is ordered to give notice of the ruling to the LWDA and to defendant.</p>
6	Lundin vs. Goldman 2022-01290254	Off calendar at moving party’s request.
7	Oropeza vs. Danros, Inc. 2022-01264408	<p>Plaintiffs’ Motion to Compel Defendants to Provide Further Responses to Plaintiffs’ Requests for Production of Documents, Set One, and Request for Monetary Sanctions, is granted. Defendants must serve verified, complete, code-compliant further responses to Plaintiffs’ Request for Production Nos. 14, 19, 20-22, 45, 50, 56, 58-60, 70-72 and 75, without objections, and all documents responsive to those requests, including the pay summaries, time records, commission reports and commission summaries for all putative class members, within 20 days.</p> <p>Plaintiffs served a request for production of documents seeking documents relevant to seeking class certification, including documents concerning the “salaries, wage levels, hourly rates, commissions, and/or bonuses of each and every COVERED EMPLOYEE” (Request for Production No. 72). Defendants provided unverified responses with various objections to these requests, but did agree to produce some responsive documents. During the meet and confer process, defendants agreed to produce “redacted copies of the payroll records for all employees from the relevant time period”, and “redacted copies of all commission reports and summaries for all employees from the relevant time period”. (Sunukjian Dec., Ex. A.) After plaintiffs granted multiple extensions, defendants provided two productions to plaintiffs on November 10 and 15, 2023. (Sunukjian Dec. ¶¶2-3.) However, those productions were incomplete, did not include the promised commission reports and commission summaries, and did</p>

		<p>not provide all of the documents for all of the putative class members. (Johnson Dec., Exs. N-P; Supp. Johnson Dec., Ex. Q.) Further, defendants failed to verify their responses and failed to meet the requirement that they identify “the specific request number to which the [produced] documents respond”. CCP §2031.280(a).</p> <p>The court rejects defendants’ argument that plaintiffs agreed to a narrower scope of production and accepted the produced documents and thus cannot compel anything further. Because (1) defendants’ document production is incomplete, (2) defendants’ responses are unverified and not code-compliant, and (3) defendants failed to provide any support for their objections in opposition to this motion, the court grants plaintiffs’ motion to compel further responses.</p> <p>Plaintiffs’ request for monetary sanctions against defendants and their counsel of record, Briggs Alexander, APLC, is granted in the amount of \$10,460, jointly and severally, payable within 30 days. CCP §2023.010 provides that misuses of the discovery process include failing to respond or to submit to an authorized method of discovery, making, without substantial justification, an unmeritorious objection to discovery, making an evasive response to discovery, and opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery. Defendants’ objections to plaintiffs’ discovery, and their opposition to this motion, are without substantial justification. Defendants’ request for monetary sanctions is denied.</p> <p>Plaintiffs are ordered to give notice of the ruling unless notice is waived.</p>
8	Burton vs. Monroe Operations, LLC 2022-01277013	Defendant’s Motion to Compel Arbitration is off calendar at the moving party’s request. The Case Management Conference has been advanced to 9:00 a.m.
9	Chung vs. Monroe Operations, LLC 2022-01268754	The Case Management Conference has been advanced to 9:00 a.m.
10	Bren vs. Emerald Bay Community Association 2021-01234635	Continued to July 5, 2024 by Stipulation and Order.
11	Coyle vs. Hyundai Motor America, Inc. 2022-01299026	<p>Defendant Hyundai Motor America’s Demurrer to Plaintiff’s Second Amended Complaint is sustained without leave to amend. Defendant’s Request for Judicial Notice is denied. Defendant’s Motion to Strike Portions of Plaintiff’s Second Amended Complaint is moot and thus ordered off calendar. A Status Conference is also set for today but is now moot.</p> <p>Plaintiff’s Second Amended Complaint contains one cause of action, for Violation of California Unfair Competition Law. Defendant challenges the pleading on the ground that plaintiff has failed to allege a defect in materials or workmanship, as required under 13 C.C.R. §2037(b)(2).</p>

Plaintiff relies on 13 C.C.R. §2037(b)(1), which discusses design issues, but the extended warranty is found only in 13 C.C.R. §2037(b)(2) and requires a defect in materials or workmanship.

Plaintiff's Second Amended Complaint adds legal arguments as to why the Emission Extended Warranty under California law covers design defects up to 15 years or 150,000 miles. 13 C.C.R. §2037(b) provides, "The manufacturer of each motor vehicle or motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that the vehicle or engine is: (1) Designed, built, and equipped so as to conform with all applicable regulations adopted by the Air Resources Board pursuant to its authority in chapters 1 and 2, part 5, division 26 of the Health and Safety Code; and (2) Free from defects in materials and workmanship which cause the failure of a warranted part to be identical in all material respects to the part as described in the vehicle or engine manufacturer's application for certification, including any defect in materials or workmanship which would cause the vehicle's on-board diagnostic malfunction indicator light to illuminate, for a period of three years or 50,000 miles, whichever first occurs . . ." 13 CCR §1962.1(c) provides, "For a vehicle to be eligible to receive a PZEV allowance, the manufacturer must extend the performance and defects warranty period set forth in subdivision 2037(b)(2) and 2038(b)(2) to 15 years or 150,000 miles, whichever occurs first except that the time period is to be 10 years for a zero-emission energy storage device used for traction power (such as a battery, ultracapacitor, or other electric storage device)."

There is no language in 13 CCR §§2037 or 1962.1 that states there is an extended warranty for design defects for up to 15 years or 150,000 miles. Plaintiff argues without any legal support that the applicable regulations require that the design be warranted for the useful life of the subject vehicle, which is "a period of use of 15 years or 150,000 miles, whichever occurs first". 13 CCR §2112(l)(9). The court declines to read into the statutes an extended warranty for design defects for up to 15 years or 150,000 miles, when there is no reference to design defects in the regulations, and the required warranty language in the regulations do not reference the design of the vehicle. 13 CCR §2039. Further, plaintiff does not allege any additional facts that demonstrate that her vehicle had a design or manufacturing defect requiring coverage. Instead, she merely alleges, "Discovery will confirm whether the defect at issue is a design defect or a defect in materials and workmanship." (SAC ¶64.) Plaintiff relies on the identical defective allegations from the First Amended Complaint to argue that she adequately pled a manufacturing or design defect by referencing repair records, the fault codes, and the illumination of the indicator light. Plaintiff speculates from that information that the head gasket was defective in some way. However, these allegations are insufficient to state a claim

		<p>for violation of the UCL. Accordingly, despite the added allegations and the opportunity to cure the defects in her pleading, plaintiff has failed to adequately plead a covered defect. Thus, plaintiff has failed to adequately allege a qualifying defect that would trigger the emissions extended warranty coverage, and plaintiff fails to state a cause of action. The court also concludes that plaintiff cannot cure this defect by further amending her pleading.</p> <p>Defendant is ordered to give notice of the ruling unless notice is waived and to submit a proposed Judgment of Dismissal.</p>
12	<p>Servin vs. Abrazar, Inc. 2022-01250064</p>	<p>Plaintiff's Motion for Final Approval of Class Action Settlement and Attorneys' Fees and Costs is granted, except that the court awards an enhancement to plaintiff Noemi Servin only in the amount of \$5,000. An enhancement award of \$5,000 is sufficient and proper for a class and settlement of this size, and considering that there was nothing extraordinary about plaintiff's contribution to the case, and that plaintiff spent only about 30-40 hours on this case, which still results in an enhancement payment of over \$100 per hour.</p> <p>The court concludes that the \$350,000.00 class action and PAGA settlement, as approved, is fair, adequate and reasonable, and approves the following specific awards:</p> <ul style="list-style-type: none"> • \$116,666.66 to plaintiff's counsel for plaintiff's attorneys' fees, with 70% awarded to Mahoney Law Group, APC and 30% awarded to Employment Rights Lawyers, APC, as requested; • \$13,317.89 to plaintiff's counsel for plaintiff's attorney costs, as requested; • \$5,000.00 to plaintiff Noemi Servin as an enhancement award, reduced from the \$10,000.00 requested; • \$8,950.00 to the Administrator, Phoenix Settlement Administrators, as requested; and • \$7,500.00 to the LWDA for its share of PAGA penalties, as requested. <p>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 \$198,565.45.</p> <p>The court sets a Final Report Hearing for January 10, 2025 at 10:00 a.m., to confirm that distribution efforts are fully completed, including the distribution of uncashed aggrieved employee checks 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.</p> <p>Plaintiff is ordered to give notice of the ruling to the LWDA and to defendant.</p>

