

<p align="center"><b>SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO</b>          Civil Department, Central Division          1130 "O" Street          Fresno, California 93724-0002          (559) 457-2000</p>	<p align="center"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE:  <b>Sergio Martinez Garcia vs. Tri-Valley Plastering, Inc. / COMPLEX / CLASS ACTION</b></p>	
<p align="center"><b>CLERK'S CERTIFICATE OF MAILING</b></p>	<p>CASE NUMBER:  <b>22CECG00591</b></p>


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

**04/20/2023 Minute Order and copy of Tentative Ruling**

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(20)

**Tentative Ruling**

Re: **Garcia v. Tri-Valley Plastering, Inc.**  
Superior Court Case No. 22CECG00591

Hearing Date: April 20, 2023 (Dept. 503)

Motion: By Plaintiff for Preliminary Approval of Class Action Settlement

**Tentative Ruling:**

To grant.

**Explanation:**

**1. Class Certification**

**a. Standards**

First, the court must determine whether the proposed class meets the requirements for certification before it can grant preliminary approval of the proposed settlement. An agreement of the parties is not sufficient to establish a class for settlement purposes. There must be an independent assessment by a neutral court of evidence showing that a class action is proper. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81 (rev. denied); see also Newberg, *Newberg on Class Actions* (T.R. Westlaw, 2017) Section 7:3: "The parties' representation of an uncontested motion for class certification does not relieve the Court of the duty of determining whether certification is appropriate.")

"Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there will be no trial. But other specifications of the rule -- those designed to protect absentees by blocking unwarranted or overbroad class definitions -- demand undiluted, even heightened, attention in the settlement context." (*Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620, internal citation omitted.)

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 313.)

**b. Numerosity and Ascertainability**

"Ascertainability is achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible when that identification becomes necessary. While often it is said that class members are ascertainable where they may be readily identified without

unreasonable expense or time by reference to official records, that statement must be considered in light of the purpose of the ascertainability requirement. Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." (*Nicodemus v. Saint Francis Memorial Hospital* (2016) 3 Cal.App.5th 1200, 1212, internal citations and quote marks omitted.)

Here, plaintiff seeks to certify a class for the purpose of approving the settlement consisting of approximately 858 current and former hourly, non-exempt employees of defendants during the class period. The number of proposed class members thus satisfies the numerosity requirement. (*Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2009) 670 F.Supp.2d 1114, 1121 ["Courts have routinely found the numerosity requirement satisfied when the class comprises 40 or more members"].)

Plaintiff has submitted evidence showing that there are approximately 858 putative class members identifiable through records provided by defendant. This criteria is satisfied.

### **c. Community of Interest**

"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.' " (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.)

"The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) "[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 669.)

Plaintiff shows that predominance and community of interest are satisfied here. Plaintiff discusses his experience with the various Labor Code violations alleged, which the putative class members experienced as well according to plaintiff and the First Amended Complaint. The court finds that the claims of plaintiff Smith, the class representative, would also be typical of the other proposed class members' claims, common questions of law and fact predominate, and plaintiff can adequately represent the class. The community of interest requirement is satisfied.

### **d. Superiority of Class Certification**

The court intends to find that certifying the class would be superior to any other available means of resolving the disputes between the parties. Wage and hour Labor Code cases are particularly well-suited to class resolution because of the small amounts of each employee's claim, which makes it impractical to bring wage and hour cases on an individual basis. The large number of proposed class members would also make it impractical to bring the claims separately. It would be far more efficient to bring all of

the claims in one action, rather than forcing the employees to bring their own separate cases. Therefore, the court intends to find that class certification is the superior method of resolving the case, and it intends to grant the request to certify the case for the purpose of approving 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. Fairness and Reasonableness of the Settlement**

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant 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.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Plaintiff's counsel provides a reasoned discussion of how the various claims asserted in the complaint were valued, supported by analysis from an expert hired by counsel. Counsel also discusses the strengths and weaknesses of those claims, and



explains the extent to which the claims were discounted to reach the realistic potential recovery. Defendant's total realistic exposure is \$1,678,311.67. The \$1,200,000 settlement represents 74% of the maximum realistic recovery. The court intends to preliminarily find this to be a fair and reasonable settlement.

### **c. Proposed Class Notice**

The proposed notice will provide the class members with information regarding their time to opt out or object, the nature and amount of the settlement, the amount to be received by the class member, the impact on class members if they do not opt out, the amount of attorney's fees and costs, and the service award to the named class representative. Therefore, the court intends to find that the proposed class notice is adequate.

### **3. Attorney's Fees and Costs**

Plaintiff's counsel seeks up to \$416,666.67 in attorney's fees, which is 1/3% of the total gross settlement, plus costs of up to \$20,000 (currently \$11,765.12). Plaintiff's counsel contends that the requested attorney's fees are reasonable and well within the range of fees that have been approved by other courts in class actions, which frequently approve fees based on a percentage of the common fund. (*City & County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-11; *Quinn v. State* (1975) 15 Cal.3d 162, 168; see also *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26.)

However, while it is true that courts have found fee awards based on a percentage of the common fund are reasonable, the California Supreme Court has also found that the trial court has discretion to conduct a lodestar "cross-check" to double check the reasonableness of the requested fees. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503-504 [although class counsel may obtain fees based on a percentage of the class settlement, courts may also perform a lodestar cross-check to ensure that the fees are reasonable in light of the number of hours worked and the attorneys' reasonable hourly rates].)

Here, plaintiff's counsel has not provided any evidence of the hours worked on the case or the tasks performed to allow the court to determine whether the requested amount of fees is reasonable. Nor does counsel state their billing rates. However, inasmuch as the percentage is in the ballpark, the lodestar check can be done at the time of final approval. The court intends to preliminarily approve the request, but counsel shall submit a fully supported lodestar analysis with the final approval motion.

### **4. Payment to Class Representative**

The motion seeks preliminary approval of a \$7,500 "enhancement payment" to the named plaintiff/class representative. This is within the range of what is commonly approved. However, with the final approval motion plaintiff will have to submit a more detailed declaration describing the time spend and services provided in support of the class claims.

## 5. Payment to Class Administrator

The settlement provides that the class administrator would be paid up to \$20,000, though the estimated cost is currently estimated to be \$12,000. The court intends to preliminarily find that \$12,000 is reasonable, and it is supported by a quote from the selected administrator. With the final approval motion plaintiff shall submit a declaration from the administrator of the final cost.

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:    jyh    on    4/17/23     
(Judge's initials) (Date)