

TENTATIVE RULINGS

JUDGE RANDALL J. SHERMAN

DEPARTMENT CX105

MAY 9, 2025

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_Reporters_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	Herrera vs. W.L. Butler Construction, Inc. 2023-01335445	<p>Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement, Attorneys' Fees and Costs, Enhancement Payment, and Settlement Administration Costs is granted. The court concludes that the \$1,475,000 class action and PAGA settlement is fair, adequate and reasonable, and approves the following specific awards:</p> <ul style="list-style-type: none">• \$516,250.00 to plaintiff's counsel for plaintiff's attorneys' fees, as requested;• \$16,264.58 to plaintiff's counsel for plaintiff's attorney costs, as requested;• \$7,500.00 to plaintiff Alfonso Herrera as an enhancement award, as requested;• \$6,990.00 to the Administrator, Apex Class Action, LLC, as requested; and• \$37,500.00 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 \$890,495.42.</p> <p>The court sets a Final Report Hearing for February 13, 2026 at 10:00 a.m. At least 16 days before the Final Report Hearing date, class counsel must file a summary accounting of the distribution of the settlement funds, identifying the distributions made pursuant to this ruling, as well as the number and total amount of any uncashed checks, and the status of any unresolved issues, such as to confirm whether distribution efforts are fully completed, including the distribution of the amount of the uncashed class member and aggrieved employee checks to the State Controller's Office Unclaimed Property Fund in the names of the applicable payees after 180 days, whether the Administrator's work is complete, and whether 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 and aggrieved employees.</p> <p>Plaintiff is ordered to give notice of the ruling to the LWDA and to defendants.</p>
2	In-N-Out Wage and Hour Cases JCCP 5359	<p>Petitioners Tom Piplack, Donovan M. Sherrod, Elissa Bristow, Brianna Marie Taylor, Arianna Carrera, Ryan Accurso and Tayler Andrews' Petition for Coordination is denied.</p> <p>Petitioners are seven plaintiffs who seek an order coordinating their six PAGA actions (and now also a seventh PAGA action) pending against defendant In-N-Out Burgers. Defendant opposes coordination.</p> <p>Some of these cases might never be decided by a judge. The Piplack Action, Bristow Action, Taylor Action, Carrera Action and Andrews Action are all stayed pending arbitration of those plaintiffs' individual claims. The Accurso Action is stayed and is pending before the California Supreme Court, which took the case after the plaintiffs in the Piplack Action and Taylor Action unsuccessfully sought to intervene in the Accurso Action. The relatively new Vanbreeman Action is currently stayed, and defendant intends to move to compel arbitration of plaintiffs Accurso's and Vanbreeman's "individual" PAGA claims (PAGA claims based on violations allegedly suffered by the named plaintiffs). Thus, merits decisions in all these cases might be made by different arbitrators, regardless of whether these cases are coordinated.</p> <p>The oldest of the seven cases, the Piplack Action, alleges violations only as to employees' clothing. The Carrera Action alleges claims based only on sick leave and payment on termination. The other cases are different, alleging multiple typical wage and hour violations. The Vanbreemen Action is the only action brought on behalf of</p>

		<p>employees who work in a warehouse, rather than in defendant's restaurants.</p> <p>This court concludes that the criteria set forth in CCP §404.1 weigh against coordination, and that coordination of these actions at this time would be unwarranted. It is currently unknown which of the seven cases and which of their causes of action, if any, will still be at issue after the arbitrations are concluded in the five of the seven cases that have been ordered to arbitration, and indeed the other two cases are potentially subject to arbitration after their stays are lifted. This court cannot conclude that one judge hearing all of these actions for all purposes will promote the ends of justice, taking into account whether the common questions of fact or law are predominating and significant to the litigation, the convenience of the parties, witnesses and counsel, the relative development of the actions and the work product of counsel, the efficient utilization of judicial facilities and manpower, the calendar of the courts, the disadvantages of duplicative and inconsistent rulings, orders or judgments, and the likelihood of settlement of the actions without further litigation should coordination be denied.</p> <p>Many of plaintiffs' alleged common questions of fact or law are actually discovery issues, and the Piplack Action, the only case pending in Orange County, involves only clothing issues. These cases are spread throughout California, making it inconvenient for the six other cases to be litigated in Orange County. It appears that settlement will be more likely, not less likely, if the cases stay separate. In fact, since the cases would be coordinated, not consolidated, one of the cases could settle without the other plaintiffs' attorneys having to consent. Thus, plaintiff's concerns of a reverse auction would not be allayed by coordination. In short, these are separate cases which should stay separate, especially with most of them being subject to arbitration that might result in those cases never being subject to court litigation.</p> <p>Petitioners are ordered to give notice of the ruling and to comply with CRC Rule 3.529(a).</p>
3	Koppi vs. Brown 2020-01164593	<p>Plaintiff's Motion for Attorney's Fees and Costs is granted in part, in that the court awards plaintiff Megan Koppi, as Trustee of the MMD Trust Dated July 14, 2015, reasonable attorneys' fees against defendant John G. Petit in the amount of \$200,000. The court denies costs to plaintiffs without prejudice to plaintiff filing a Memorandum of Costs and defendant potentially filing a Motion to Tax Costs.</p> <p>Defendants Anna Marie Brown, an individual and Trustee of The Anna Marie Brown Separate Property Trust established September 19, 2013; John G. Petit, an individual and Trustee of The RND Trust created under the Survivor's Trust created under the Daily Family Trust, dated August 4, 1981; JGTG Enterprises, LLC; KAMCO Unlimited LLC; Daily Realty Partners, LP; and Daily Downey Avenue, LLC's</p>

		<p>Motion for Attorney's Fees and Costs is granted in part, in that the court awards defendants Anna Marie Brown, JGTG Enterprises, LLC, KAMCO Unlimited LLC, Daily Realty Partners, LP and Daily Downey Avenue, LLC reasonable attorneys' fees against plaintiff Megan Koppi, as Trustee of the MMD Trust Dated July 14, 2015, in the amount of \$300,000. The court denies costs to defendants without prejudice to defendants filing a Memorandum of Costs and plaintiff potentially filing a Motion to Tax Costs.</p> <p>All parties take the position that two contractual attorneys' fees clauses apply to this case, Section 10.15 of the DRP agreement and Section 14.9 of DDA agreement. Section 10.15 of the DRP agreement provides, "Should a legal proceeding be instituted to interpret or enforce this Agreement, the prevailing party therein shall be entitled to recover all costs including reasonable attorney's fees." Section 14.9 of DDA agreement provides, "In the event that any dispute between the Company and the Members or among the Members should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party." The court agrees that the prevailing party is entitled to recover reasonable attorneys' fees for this case. Plaintiff alleged that defendants breached the two agreements, and she was seeking to enforce them.</p> <p>Plaintiff prevailed at trial against only defendant John G. Petit, including on a cause of action for breach of the covenant of good faith and fair dealing, which is a claim to enforce the agreements. Defendants Anna Marie Brown, JGTG Enterprises, LLC, KAMCO Unlimited LLC, Daily Realty Partners, LP and Daily Downey Avenue, LLC prevailed at trial against plaintiff, including on a cause of action for breach of contract. Thus, both sides are entitled to a fee award. However, both sides' fees must be substantially reduced from their requested amounts, which are \$1,257,823.50 for plaintiff and \$1,283,026.54 for defendants. Plaintiff prevailed against only one defendant, and on only one theory of recovery. The prevailing defendants were represented by the same attorneys who represented the non-prevailing defendant. Their work appears to have been done jointly for all defendants in defense of plaintiffs' claims, essentially all of which were asserted against all defendants. Thus, defendants' attorneys' efforts in defense of the successful defendants were unsuccessful in part as to their representation of defendant John G. Petit. In addition, Petit's withholding of plaintiff's sales proceeds was done within his authority as General Partner of defendant DRP, both individually and as Manager of defendant KAMCO, and as Manager of defendant DDA, through defendant KAMCO.</p> <p>The court, having considered all the arguments and evidence, concludes in its discretion that a reasonable attorney fee award for plaintiff against defendant John G. Petit is in the amount of \$200,000, and that a reasonable</p>
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