

Tentative Rulings for March 15, 2023
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

21CECG03425 *Adriana Villegas-Ceja v. Jose Gomez Morales (Dept. 502)*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

21CECG01460 *Sabina Pacheco v. Boghosian Raisin Packing Company Inc.*
continued to Thursday, March 16, 2023, at 3:30 p.m. in Department
502

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(27)

Tentative Ruling

Re: **Paul Singer v. Brian Weldon**
Superior Court Case No. 18CECG03151

Hearing Date: March 15, 2023 (Dept. 502)

Motion: By Defendant Brian Weldon for Monetary Sanctions against Plaintiff Paul Singer

Tentative Ruling:

To grant in the amount of \$1,316.98, payable to Defendant Brian Weldon's counsel within thirty (30) days from this order.

Explanation:

Misuse of the discovery process may result in monetary sanctions (Code Civ. Proc., § 2023.030, subd. (a). Misuse includes, "[m]aking or opposing a motion to compel or limit discovery unsuccessfully and *"without substantial justification."* (Code Civ. Proc., § 2023.010, subd. (h), emphasis added.)

On December 28, 2022 plaintiff Paul Singer ("plaintiff") filed a motion to deem requests for admissions admitted. The motion was denied because there was no proof of service showing service of the request for admissions on November 8, 2022 or at any other time. (Code Civ. Proc., § 2033.070.) In addition, responses were served on January 12, 2023, and thus the merits of the motion were moot. (Waters, Decl., Ex. I; *Sinaiiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409; *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 778.)

Defendant Brian Weldon ("Weldon") has produced evidence that his counsel requested plaintiff withdraw the motion to deem the requests for admissions admitted, in light of the service defects and the production of the subject discovery, on January 3, 2023. (See Waters Decl. ¶ 15; Ex. F.) Despite the production of the subject discovery, and although he did not file a reply, plaintiff did not withdraw his motion. Weldon's evidence (to which plaintiff has not opposed) tends to show that plaintiff lacked substantial justification in filing and maintaining his motion. Furthermore, plaintiff's refusal to withdraw his motion required defendant to file an opposition and the court to issue a determination.

Defendant seeks \$3,685 in attorneys' fees and \$77.48 in costs incurred in opposing plaintiff's discovery motion. Support for the costs is shown in Exhibit K of moving counsel's declaration. However, the supporting fee statement (Waters, Decl. Ex. J), indicates that the opposition resulted in an expenditure of \$837.50 and preparation of this motion an expenditure of \$402.00. The total of these two expenditures is \$1,239.50, which is more commensurate with the dereliction. Accordingly, the amount of sanctions imposed is \$1,239.50 plus \$77.48 for a total of \$1,316.98.

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: KCK **on** 03/13/23 .
 (Judge's initials) (Date)

(27)

Tentative Ruling

Re: **Narek Avetisyan v. United Health Centers of the San Joaquin Valley**
Superior Court Case No. 22CECG00285

Hearing Date: March 15, 2023 (Dept. 502)

Motion: by Plaintiffs for Final Approval of Class Settlement

Tentative Ruling:

To grant.

To also order the parties to return on March 19, 2024, at 3:30 p.m. in Department 502 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 March 5, 2024.

Explanation:

1. Class Certification

The court has already granted the motion for preliminary approval and certification of the class and found that the class is sufficiently numerous and ascertainable to warrant certification for the purpose of approving the settlement. In addition, there does not appear to be any reason for the court to reconsider its decision granting certification of the class. Therefore, the court intends to certify the class for the purpose of final approval of 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. The Settlement Is Fair and Reasonable

Previously, the court found that the settlement was fair and reasonable based on the evidence that plaintiff submitted in support of the motion for preliminary approval. It does not appear that there is any reason for the court to reconsider its decision in this regard.

Counsel's joint declaration in support of the motion for preliminary approval stated that defendant provided plaintiff with information concerning how the data-breach occurred, in addition to insurance coverage and defendant's financials. (Joint Decl. ¶ 13.) This information was reviewed in plaintiffs' consideration to mediate. (*Id.* at ¶ 14.) At mediation with a retired federal magistrate, the risks, uncertainties, costs, and delays were evaluated, and the subject settlement was reached. (*Id.* at ¶ 16.)

The terms of the agreement address the harms caused by the data-breach, including a verification that defendant has improved its security. It also provides the affected patients with monitoring services and allows limited reimbursement. It also establishes those protections relatively soon, as opposed to awaiting the completion of prolonged litigation. Therefore, the settlement appears reasonable.

The settlement class is defined as "[a]ll persons subject to notification of this settlement, comprised of any person whose personal information, which may include health information, was exposed to unauthorized access as a result of a data security incident affecting Defendant's computer network that occurred on or around August 28, 2021." (Settlement Agreement, § 4.1.) The parties estimate that there are approximately 111,950 class members.

The gross settlement amount is \$1,638,000. It additionally provides for the availability of three years of credit monitoring and identity restoration services, reimbursement of documented economic losses up to \$2,500 per class member, and compensation for non-economic losses up to \$500 per class member with no documentation required. (Mtn. at p.3:8-23; Settlement Agreement, § 4.5.)

The settlement administrator, A.B. Data, sent out the notice packets on October 5, 2022, after the court granted preliminary approval of the settlement. 1,573 of the notice packets could not be delivered. As of January 27, 2023 a total of 919 valid non-economic loss claims have been submitted and 1,517 settlement class members have enrolled in the three year credit monitoring. Ten class members have excluded

themselves and none have objected. (Cowen Decl., ¶¶ 28, 29.) The lack of any objections or disputes supports plaintiff's contention that the settlement is fair, adequate, and reasonable.

Also, the settlement was reached after investigation and discovery, and was the product of arms' length negotiations and mediation between the parties. Furthermore, class counsel are experienced in similar types of class action litigation. These factors also weigh in favor of finding that the settlement is fair and reasonable.

Therefore, the court finds that the settlement is fair, reasonable, and adequate.

3. Attorney's Fees and Costs

Plaintiff's counsel seeks an award of \$562,674.78 in attorney's fees, or 33.3% of the gross settlement, and \$16,674.78 for costs. The California Supreme Court has found that fee awards based on a percentage of the gross settlement in class action cases are proper. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503-505.) However, the Supreme Court further held that the trial court may also double-check the reasonableness of the fees by performing a lodestar analysis to ensure that the requested amount of fees is reasonable based on the difficulty of the issues, the amount of work done, and the attorney's hourly rate. (*Ibid.*) In essence, "[a]s noted earlier, '[t]he lodestar method better accounts for the amount of work done, while the percentage of the fund method more accurately reflects the results achieved.' A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee. If a comparison between the percentage and lodestar calculations produces an imputed multiplier far outside the normal range, indicating that the percentage fee will reward counsel for their services at an extraordinary rate even accounting for the factors customarily used to enhance a lodestar fee, the trial court will have reason to reexamine its choice of a percentage." (*Id.* at p. 504, internal citations omitted.)

Here, counsel has provided a supplemental joint declaration reciting the hours each attorney and staff has worked on the case and their hourly rates. The original declaration filed on November 3, 2022 also describes each law firm and describes the work expended on this case. Counsel requests a lodestar multiplier of 2.378, which is within the range approved in other cases. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 488.) Considering the description contained in the original joint declaration, in conjunction with counsels' supplemental joint declaration, the requested fees appear reasonably supported. Similarly, counsels' supplemental joint declaration provides detail of the total fees sought of \$12,982.57.

Therefore, the court approves the request for attorney's fees and costs.

4. Payment to Class Representative

Plaintiffs also seek court approval of a \$5,000 payment to the named class representative, Narek Avetisyan. The amount of the payment does not appear to be unreasonable in comparison to the awards approved in other cases. Counsels' supplemental joint declaration explains Mr. Avetisyan participation in the litigation,

particularly drawing his background as an attorney. Therefore, the court approves the service payment.

5. Payment to Class Administrator

The settlement administrator's fees for administering the settlement is included in the settlement funding. (See Proposed Order, ¶ 10.) The administrator in this case claims that it has already incurred \$466,331.84 in administrative costs and expects to incur an additional \$28,214.49 for future costs. The administrator also notes the large postage expenses necessary to provide notice to this large a class. It further notes that \$134,000 has been incurred to effectuate the credit monitoring benefits to class members. Therefore, considering the unique circumstances in administering this settlement (e.g. the large class size, credit monitoring, etc.), the court intends to grant the requested payment to the class administrator.

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: **KCK** **on** **03/13/23** .
(Judge's initials) (Date)