

FOSTER v IRBC 2 Properties, LLC

21CV45573

**PLAINTIFF'S SECOND AMENDED MOTION TO COMPEL FURTHER VERIFIED
RESPONSES TO REQUESTS FOR ADMISSION**

Plaintiff Larry Foster brings a motion to compel further responses to discovery.

The motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court [emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

The Court previously denied a similar motion for the same reason. Plaintiff is admonished to review and follow the local rules before filing any further matters in this Court.

Based on the foregoing, the motion is **DENIED**, without prejudice to refile.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.

LURA v C.H.I.P.S.

23CV46783

**PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS &
REPRESENTATIVE ACTION SETTLEMENT**

Kristina Lura ("Plaintiff") as the representative plaintiff, filed this class action lawsuit against Calaveras Healthy Impact Product Solutions ("C.H.I.P.S." or "Defendant"). Plaintiff's First Amended Complaint ("FAC") alleges causes of action for wage and hour violations, including failure to pay overtime wages, wage statement violations, waiting time penalties and unfair competition. Plaintiff seeks penalties and damages under the Labor Code, Business and Professional Code, and the Private Attorney General's Act ("PAGA").

Plaintiff reports the matter has settled and moves for preliminary approval of settlement agreement ("Agreement"). (Code Civ. Proc., § 382, Cal. Rules of Court, rule 3.769.) Plaintiff has failed to file a proposed order with the motion as required by Cal Rule of Court 3.769(c). However, in the interest of judicial efficiency and because the motion is unopposed, the Court will consider the substance of the motion.

I. Settlement Approval Process

There are three stages to the Court's settlement approval process: (1) preliminary approval of the proposed settlement at an informal hearing; (2) notice of the settlement to all affected class members; and (3) final approval after a formal hearing. The current motion is the first stage of the process. The Court may approve settlements reached before or after certification of the class. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269.) Here, the class was not certified prior to the settlement, and Plaintiff seeks class certification at this time. The certification issue is addressed below.

When an action includes PAGA claims, the Court must review and approve the settlement and the proposed settlement shall be submitted to the Labor and Workforce Development Agency (LWDA) at the same time that it is submitted to the Court. (Lab. Code, § 2699, subd. (l)(2).) Plaintiff has provided notice to the LWDA.

II. The Proposed Settlement

The terms of the Agreement provide that Defendant shall pay a Gross Settlement Amount ("GSA") of \$175,000 to be allocated across approximately 229 Class Members on a pro rata basis according to the number of weeks each Class Member worked during the Class Period. Costs to be deducted from the GSA are: (1) a maximum of up to 1/3 of the GSA (\$58,333.33) and up to \$25,000 in costs to Plaintiff's counsel for

services rendered; (2) an award of up to \$10,000 to the Plaintiff as the class representative; (3) \$8,500 for to Phoenix Settlement Administrators for their fees and costs; and (4) \$10,000 in PAGA penalties, which will be allocated 75% (\$7,500) to the LWDA, and the remaining 25% (\$2,500) added to the fund distributed to class members. (Agreement section 3.06(e).)

After deductions, the Net Settlement Amount (“NSA”) will be \$63,166.67. Plaintiff reports there are approximately 229 Class Members, and the projected average individual payment will be approximately \$275.00 (MPA, p. 1.) Class Members will not need to do anything to participate in the settlement and the gross settlement is non-reversionary. (MPA p. 5.)

III. Ascertainable Class

Under California law, the basic requirements to sustain a class action are an ascertainable class, a well-defined community of interest in the questions of law and fact involved, and substantial benefits from certification that render proceeding as a class superior to the alternatives. (Code Civ. Proc. § 382; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

The Agreement defines the Settlement Class as: “all current and former non-exempt employees who are or were employed by Defendant in California at any time during the Class Period.” The “Class Period” is defined as the time between December 18, 2018 through August 19, 2024. Additionally, “PAGA Group Members” means all Class Members employed by Defendant at any time during the PAGA Period, which is defined as June 19, 2022 through August 19, 2024. (Agreement Article I, sections bb and cc.) Each PAGA Group Member will receive a portion of the \$10,000 allocated as part of PAGA penalties, after deductions to the LWDA.

The Court finds the proposed Settlement Class is ascertainable and satisfies the numerosity requirement, that the action raises common wage and hour questions for class members, and that Plaintiff is an adequate representative of the class. The Court therefore conditionally certifies the proposed Settlement Class.

IV. Reasonableness of the Settlement

The purpose of preliminarily evaluating class action settlements is to determine whether the proposed settlement is within the “range of reasonableness” for possible approval, and whether it is worthwhile to issue notice to the class and schedule a formal hearing. (Cabraser, Cal. Class Actions and Coordinated Proceedings (2d ed. 2020) ¶ 14.02.) A presumption of fairness applies if there has been arm’s length bargaining, investigation has been sufficient to allow counsel and the court to act intelligently, class counsel is experienced in similar litigation, and the percentage of class members who object to the settlement is small. (*Ibid.*) “[P]re-certification settlements are routinely approved if found to be fair and reasonable.” (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 240.)

Plaintiff's counsel reports that the parties engaged in an all-day, arm's length mediation in August 2024; that prior to mediation, the parties engaged in significant informal discovery, which included production of timekeeping and payroll data, and the employer's written policies. (Declaration of Kristy R. Connolly ("Connolly Decl." ¶5, 6.) The mediator, Jill Sperber, is an experienced mediator. (Connolly Decl., ¶ 6.) Plaintiff's counsel, Kristy Connolly, has provided a declaration showing the Aegis Law Firm has investigated and researched the claims in controversy, related documents and evidence, and the asserted defenses. Plaintiff's law firm is experienced with this type of litigation and had sufficient data to make an informed decision regarding the fairness of the settlement. (Connolly Decl., ¶¶ 24-36 [setting forth the various experience of Plaintiff's attorneys]; ¶¶12 -20.) Based on the firm's investigation, and balancing the risks and obstacles in the various claims, Ms. Connolly concludes that the proposed settlement is a favorable result for the Settlement Class. (Connolly Decl., ¶ 20.) Having reviewed the claims at issue, Plaintiff's arguments in the memorandum of points and authorities, and the evidence submitted in support of the motion, the Court finds, for purposes of this preliminary approval, that the proposed settlement is fair and reasonable.

V. Notice

If the court has certified the litigation as a class action, notice must be given to the class members and must contain an explanation of the proposed settlement, and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement. (Cal. Rules of Court, rule 3.769(f).) Pursuant to California Rules of Court, rule 3.766(d), if class members are to be given the right to request exclusion from the class, the notice must include the following: (1) A brief explanation of the case, including the basic contentions or denials of the parties; (2) A statement that the court will exclude the member from the class if the member so requests by a specified date; (3) A procedure for the member to follow in requesting exclusion from the class; (4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

Here, the proposed notice provides a background of the litigation and claims, sufficiently defines the class members, and informs them of the settlement and their respective rights. The proposed notice sets forth a breakdown of the settlement amount, including the total gross settlement amount, and the maximum amounts of the proposed deductions (i.e., class counsel's fees; class counsel's costs; settlement administrator's costs; representative plaintiff payment; and PAGA penalties). In addition, the proposed notice sets forth how each class member's payment will be calculated and further explains how class members can opt out of or object to the settlement. (Connolly Decl., ¶ 40, Ex. 2.) Having reviewed the proposed notice, the Court finds that it complies with the California Rules of Court discussed above.

VI. Conclusion

Plaintiff has satisfied the procedural requirements for preliminary approval of a class action settlement, and the settlement amount appears fair and reasonable at this stage. The Court grants preliminary approval of the settlement; appointment of Plaintiff as the class representative; appointment of Plaintiff's counsel as class counsel; appointment of Phoenix Settlement Administrators as the third-party settlement administrator; and the proposed method and form of the notice. The Court also conditionally certifies the Settlement Class. Plaintiff's counsel is instructed to prepare an Order outlining the Court's ruling.

Accordingly, the Motion for Preliminary Approval of Class & Representative Action Settlement is **GRANTED**.

The Court sets the hearing for final approval for July 11, 2025, at 9:00 a.m. in Dept. 2.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to submit a formal Order in conformity with this Ruling in compliance with Rule of Court 3.1312.

MULRY v LAKESIDE VENTURE, LLC, et al

23CV47109

DEFENDANT LAKESIDE VENTURE'S MOTION TO SET ASIDE DEFAULT

On the Court's own motion, this matter is continued to 3/21/25 at 9:00 a.m. in Dept. 2 to be heard at the same time as two other scheduled motions in this matter.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.

**CREDITOR'S ADJUSTMENT BUREAU, INC. v
CALIFORNIA CONSTRUCTION and ADU's INC.**

24CF14832

PLAINTIFF'S MOTION TO STRIKE ANSWER

This case involves a dispute over premium payments for a worker's compensation policy. Now before the Court is Plaintiff's Motion to Strike Answer.

The Motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court [emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

Accordingly, the motion is **DENIED**, without prejudice to refile.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.

RICE, et al. v NELSON, et al.

24CV47449

**DEFENDANT McCORMICK'S MOTION TO STRIKE PORTIONS OF
THE FIRST AMENDED COMPLAINT**

On June 18, 2024, Plaintiffs filed their Complaint against Defendants Sharon Nelson, Mark Nelson (collectively, "Sellers") and Wendy McCormick ("McCormick") arising out of a real estate transaction between Plaintiffs and the Sellers.

On November 6, 2024, the Court sustained in part, and overruled in part, the demurrer filed by Defendant McCormick. At that time, the court also granted in part, and denied in part, the motion to strike. Plaintiffs filed a First Amended Complaint ("FAC") on December 18, 2024.

Now before the Court is Defendant McCormick's motion to strike portions of the First Amended Complaint.

I. FACTS AND PROCEDURAL HISTORY

The facts and procedural history were laid out in detail in the Court's November 6, 2024, ruling. In short, this case involves the purchase of real property ("Property") by Plaintiffs and their subsequent discovery of multiple structural issues with the Property.

In the original complaint, Plaintiffs brought causes of action against McCormick for violation of Cal. Code section 2079, constructive fraud, negligent misrepresentation, and breach of fiduciary duty. The Court sustained (with leave to amend) the demurrer to the section 2079 cause of action. In doing so, the Court found that section 2079 requires either a written contract between McCormick and Plaintiffs or that McCormick was a "a broker who acts in connection with that broker to find and obtain a buyer." Accordingly, the Court found that the Complaint did not allege a duty on the part of McCormick towards the Plaintiffs.

The Court also granted the motion to strike portions of the Complaint on the grounds that Plaintiff had not alleged a statute entitling them to attorney's fees and had also not alleged facts giving rise to malice as required for punitive damages.

II. LEGAL STANDARD FOR MOTION TO STRIKE

A motion to strike lies either to strike: (1) any “irrelevant, false or improper matter inserted in any pleading”; or (2) any pleading or part thereof “not drawn or filed in conformity with the laws of this state, a court rule or order of court.” (CCP § 436.) A motion to strike may also be used to strike allegations related to an improper request for relief. (*Saberi v. Bakhtiari* (1985) 169 Cal.App.3d 509, 517.) A motion to strike can be used to attack the entire pleading, or any part thereof—i.e., even single words or phrases. (*Warren v. Atchison, Topeka & Santa Fe Ry. Co.* (1971) 19 Cal.App.3d 24, 40.)

III. Analysis

A. Civil Code 2079.16

McCormick moves to strike the FAC’s cause of action for violation of Civil Code section 2709.16 on the grounds that this is a new cause of action not covered by the earlier demurrer. McCormick’s argument is unpersuasive. In the prior ruling, the Court sustained the demurrer on the grounds that Plaintiffs had not identified any statutory duty under the Civil Code that would give rise to a cause of action against McCormick. In the FAC, the Plaintiffs bring causes of action under the same provision of the statute but find the existence of a duty in section 2709.16.

Civil Code section 2079.16 sets out the language that must be found in any disclosure form provided to potential buyers or sellers. Pursuant to that code section, any disclosure form must inform the buyer and seller of the legal duties imposed upon the Seller’s Agent, including to the Buyer. These duties, outlined in the required disclosure, include:

- (a) Diligent exercise of reasonable skill and care in performance of the agent’s duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

While this code section addresses what must be contained in the legally required disclosure and does not itself set out a duty, it would be superfluous to require information about an agent’s legal duties if those duties were not in fact real. Contrary to Defendant’s arguments, Plaintiffs are not raising an entirely new cause of action, but are instead providing exactly what the Court said was missing: a basis for imposing a statutory duty on McCormick.

Accordingly, the motion to strike the cause of action for violation of Civil Code section 2079.16 is **DENIED**.

B. Punitive Damages

Punitive damages are recoverable where a plaintiff proves “by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice.” (Civ. Code, § 3294.) Relevant to this case, “malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of rights or safety of others. (*Ibid.*)

In the prior ruling, the Court sustained the motion to strike punitive damages with leave to amend because Plaintiff had simply made formulaic recitations of the standard required for punitive damages. However, in the FAC, Plaintiff provides greater factual allegations alleging that McCormick knowingly and willfully acted in a manner that she knew would cause harm to Plaintiffs and did so because she prioritized her profits over their safety. At this stage of the proceedings, this is sufficient to allege conduct which could give rise to punitive damages.

Accordingly, the motion to strike punitive damages is **DENIED**.

C. Disgorgement of Fees

A broker who obtains secret profits must return them to the principal on the theory that all profits in the transaction, without full disclosure and a specific agreement to the contrary, belong to the principal. (*Menzel v. Salka* (1960) 179 Cal. App. 2d 612.) However, disgorgement may also be non-restitutionary. (*American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1482.) Thus, a defendant who has been unjustly enriched by her conduct may be required to surrender her profits, even where the Plaintiff did not suffer a compounding loss. (*Ibid.*) Essentially, where the Plaintiff alleges that a defendant acted with conscious disregard of his rights, the defendant may be required to disgorge her profits in order to deter such conduct in the future. (*Ibid.*)

Here Plaintiff alleges that McCormick knowingly hid information about the safety of the Property in order to ensure that the sale went through and she received a profit. At this stage of the proceedings, this is sufficient to seek disgorgement of fees as a remedy.

Accordingly, the motion to strike disgorgement of fees is **DENIED**.

IV. Conclusion

The motion to strike is **DENIED** as to 2079.16 damages, punitive damages, and disgorgement of fees.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to submit a formal Order in conformity with this Ruling in compliance with Rule of Court 3.1312.