

Tentative Rulings for July 21, 2022

Department 1

**To request oral argument, you must notify Judicial Secretary
Amy Norton at (760) 904-5722
and inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings. (See Riverside Superior Court Local Rule 3316.) Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

If the Court has issued a tentative ruling, no hearing will be conducted on the motion unless one of the parties requests oral argument. To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 1 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

If oral argument is requested, the hearing will be conducted at 8:30 A.M., even if the hearing had been scheduled to begin at 9:00 A.M.

IN LIGHT OF THE CORONAVIRUS PANDEMIC, IF ORAL ARGUMENT HAS BEEN REQUESTED, THE COURT ENCOURAGES COUNSEL AND SELF-REPRESENTED PARTIES TO APPEAR AT THE HEARING OF THE MOTION TELEPHONICALLY RATHER THAN IN PERSON.

TO APPEAR TELEPHONICALLY: On the day of the hearing, call into one of the phone numbers listed below, and input the meeting number (followed by #):

- Call-in Numbers: 1-833-568-8864 (Toll Free), 1-669-254-5252,
1-669-216-1590, 1-551-285-1373 or 1-646-828-7666
- Meeting Number: **160 638 4172**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php>

Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1)

1.

CIV208568	CITY OF BARSTOW VS CITY OF ADELANTO	MOTION FOR LEAVE TO FILE SECOND AMENDED CROSS-COMPLAINT BY THE MOJAVE WATER AGENCY
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Tentative Ruling:

The Mojave Water Agency’s motion for leave to file a second amended cross-complaint is denied.

Analysis:

The Court has no doubt that the Agency is authorized by the judgment to bring a motion within the current action to enforce the judgment against any party to that judgment who is violating the terms of that judgment. However, it appears that the proposed cross-complaint would be alleged against cross-defendants who are not parties to the underlying judgment.

Similarly, the Court has no doubt that the Agency is authorized by the judgment to bring an action to abate the unauthorized or excessive use of water within the basin against water producers who are not now parties to the judgment. That is what the Agency proposes to do by way of its second amended cross-complaint. The question is whether such an action must be brought as a separate action, or whether it may be filed as a cross-complaint in this action.

In *City of Hanford v. Superior Court* (1989) 208 Cal.App.3d 580 (“*Hanford*”), the issue was “whether a party can file a cross-complaint after judgment has been entered on the underlying complaint but before the case is finally determined on appeal” (*Id.*, p. 584.) The appellate court held that a “cross-complaint cannot be filed after judgment has been entered in the trial court on the underlying complaint.” (*Ibid.*) The trial court had abused its discretion by allowing such a cross-complaint to be filed. (*Id.*, pp. 584 & 589.)

The *Hanford* court noted that Code of Civil Procedure section 428.50, subdivision (c), provides that a cross-complaint may be filed “at any time during the course of the action.” It interpreted that language to mean that the cross-complaint may only be filed until judgment is entered. (*Hanford*, p. 587.) The court found that interpretation to be supported by policy reasons, explaining: “The reason for allowing cross-complaints is to have a complete determination of a controversy among the parties in one action, thus avoiding circuity of action and duplication of time and effort. [Citation.] While it makes sense to join multiple causes of action at the outset in order to permit efficient resolution of a controversy, it makes no sense to add new causes of action to a controversy which has been resolved and the result of which cannot be altered by any issue raised in the new pleading.” (*Id.*, p. 587-588.)

It concluded: “No purpose is served by permitting [the cross-complaint] to file a cross-complaint after judgment has been entered on the underlying complaint. [The cross-complainant] is not prejudiced by the holding. Its claims are not precluded but merely are denominated what they are -- a new action.” (*Hanford*, pp. 588-589.)

Here, both the underlying complaint and the Agency’s first amended cross-complaint were resolved decades ago by the entry of judgments. Therefore, it would be an abuse of this Court’s discretion to grant leave to add a new cross-complaint against individuals or entities that were not parties to the prior action and who those are not bound by the prior judgments.

In resisting this conclusion, the Agency argues that a cross-complaint is proper here, notwithstanding the entry of the prior judgments, because it involves substantially the same issues as in the underlying complaint, and it does not seek to raise a new claim that is independent of the issues resolved in the underlying complaint. Instead, it seeks to enforce the underlying judgment.

The Court is not persuaded.

Had the prior judgment adjudicated the water rights of all producers within the basin, the Court might agree that the cross-complaint is one to enforce the judgment. But the underlying judgment did not result from such an adjudication. Instead, the judgment was entered pursuant to the stipulation of some but not all the producers within the basin. The cross-complaint does not seek to enforce that stipulation -- or the judgment that resulted from it -- against parties to that stipulation. Instead, it seeks to enforce the stipulated judgment against parties who did not stipulate to it.

Although the proposed cross-complaint may involve issues similar to those resolved in the judgment, it does not seek to resolve them against the same parties as those involved in the underlying litigation. Because it is to be asserted against new parties, it is independent of the underlying judgment.

The Court is sympathetic to the desire to coordinate the on-going enforcement of the judgments in this action with the Agency's efforts to bring non-party producers within the scope of the stipulated judgment. The Court can also appreciate the Agency's desire to take advantage of the experience that this Court has gained over the last several years concerning the physical solution imposed by the judgment and the issues with the annual adjustment of production rights. However, those conveniences and whatever efficiencies result from the Court's experience are not foreclosed as a result of this ruling. Were the Agency to bring a new action in San Bernardino County, where venue would be proper, and then petition for coordination with this action, the same advantages could be achieved. However, the Court cannot grant the Agency leave to bypass those steps by filing the proposed cross-complaint directly in this action.

2.

RIC2001600	FRANCHINI VS GENERAL CONSOLIDATED CONSTRUCTORS INC	MOTION FOR APPROVAL OF PAGA SETTLEMENT
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Tentative Ruling:

The plaintiff's unopposed motion for approval of a proposed PAGA settlement is not yet granted. Counsel shall appear to address the following issues and to determine how long of a continuance is necessary to revise the affected documents.

1. The title of the order shall be revised to make it obvious that it is an order.
2. The order (at p. 1 and ¶ 8) shall be revised to dismiss the action without prejudice rather than with prejudice.
3. ¶ 2 of the order shall be revised to delete the reference to "claims of the Aggrieved Employees." The aggrieved employees have no claims, only the state and the named plaintiff.
4. The order states that the amount of the administrator's fees is \$4,000, but the administrator quotes a fee of not-to-exceed \$3,600. The order (¶ 4.b.) shall be revised to match the quote.
5. The amount of the net settlement amount in ¶ 5 is wrong. It shall be corrected.
6. The settlement agreement shall not be appended to the order. Instead, the order shall refer to the settlement agreement and cite to the declaration (by name of declarant and date of filing) to which it is attached and by which it is authenticated.
7. The notice is inconsistent with the order regarding the scope of the releasors. The order provides that the release binds only the plaintiff and the State. However, the notice states that the aggrieved employees are part of the "Settlement Group" and that the "Settlement approved by the Court includes a release by Settlement Group of any and all claims under PAGA of whatever kind or nature, whether known or unknown, arising during the Covered Period...."

8. The agreement (¶ 17) provides that the defendant will not fund the settlement until December of 2022. Why is that, particularly given that the releases are apparently effective upon entry of the order (¶ 19)? When was the plaintiff's \$55,000 individual settlement paid?

9. ¶ 26 of the agreement shall be revised to provide that any amendment requires court approval.

10. The supplemental declaration of Lo says (at ¶ 5) that the maximum penalties would be \$170,400, calculated on the basis of \$100 per violation and 1,704 pay periods. But that assumes that there would be only one violation per pay period, affecting only one employee during that pay period. Is that what the evidence suggested?

11. Lo says that the \$55,000 individual settlement was calculated on the basis of "1) past lost wages and benefits 2) future lost wages and benefits and 3) potential statutory penalties and damages for wage and hour violations." (¶ 15.) In justifying the plaintiff's individual settlement, the supplemental declaration of Lo (at ¶ 12) compares the plaintiff's claims with those in Flanigan v. Rheumatology Diagnostic Laboratory, in which the jury awarded, inter alia, \$500,000 in economic damages. What were the amount of the plaintiff's past lost wages and benefits? What is the amount of the plaintiff's estimated future lost wages and benefits? Did the plaintiff obtain any mitigating employment after his allegedly wrongful termination? What were the "potential statutory penalties and damages for wage and hour violations" suffered by the plaintiff?

12. Were any attorney's fees paid out of the plaintiff's \$55,000 individual settlement? If so, how much?

13. Where is the declaration that complies with § D.3. of the CMO regarding the total amount of time spent by counsel, a description of the work performed, and the reasonableness of the fees charged?

3.

RIC2001777	RUSSELL VS CIMC REEFER TRAILER INC	MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT BY ANTHONY QUINN RUSSELL
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Tentative Ruling:

The plaintiff's first unopposed motion for preliminary approval of a proposed class action settlement is denied. Any renewed motion shall be filed no later than 8-19-22, and shall fully comply with the most recent case management order, i.e., that filed on 11-29-21.

A status conference concerning a second motion for preliminary approval shall be conducted on 9-7-22.

Analysis:

The motion fails to comply with the applicable CMO, filed 11-29-22. To pick three examples: the compliance chart is inconsistent with that CMO; the release ignores the limitations prescribed by § G.3.e.i. (see agreement, ¶ 1.W.); and there is no proposed order.

That is not an exclusive list. Because of the significance of those failures to comply and the lack of attention to the Court's order that they illustrate, the Court suspended its review of the motion. Therefore, it is likely that there are more failures to comply than those listed above. Indeed, although the Court has not confirmed it, the Court's staff reports that there are additional failures to comply with the CMO as follows: § G, subsections (3)(a)(iv)-(v); (3)(d)(ii)(D), (3)(k)(i)&(ii), (4), (5)(c), (5)(f), (7), (8), (9)(b)(v)-(vi), (9)(c), and (9)(d)(i)-(ii).

Regardless of the number of such failures in the plaintiff's initial motion, the renewed motion shall fully comply with all terms of the 11-29-21 CMO.

PROOF OF SERVICE

**STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO}**

I am employed in the County of the San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 13846 Conference Center Drive, Apple Valley, California 92307.

On July 20, 2022, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing each document being served, to each Party or its designee according to the official service list, a copy of which is attached hereto, and which shall be maintained by the Mojave Basin Area Watermaster pursuant to Paragraph 37 of the Judgment. Served documents will be posted to and maintained on the Mojave Water Agency's internet website for printing and/or download by Parties wishing to do so.

Document(s) filed with the court and served herein are described as follows:

NOTICE OF REQUEST FOR ORAL ARGUMENT ON COURT'S TENTATIVE RULING

 X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 20, 2022 at Apple Valley, California.



Jeffrey D. Ruesch

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Mojave Basin Area Watermaster Service List as of July 20, 2022

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Mojave Basin Area Watermaster Service List as of July 20, 2022

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Mojave Basin Area Watermaster Service List as of July 20, 2022

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Mojave Basin Area Watermaster Service List as of July 20, 2022

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