

**NOTICE:**

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7858 (Department 53) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 1.06.

Until further notice, **NO IN-PERSON APPEARANCES WILL BE PERMITTED**. All court users are required to appear via Zoom [which includes telephonic and video options]. **NO COURTCALL APPEARANCES WILL BE ACCEPTED**. The Department 53 Zoom link is <http://saccourt.zoom.us/my/dept53.54a> . The Department 53 Zoom ID is: 841 204 6267. To appear on Zoom telephonically, call (888) 475-4499 or (877) 853-5257 (toll-free) and enter the Zoom ID referenced above.

Consistent with Local Rule 1.06(B), any party requesting oral argument on any matter on this calendar must comply with the following procedure.

To request oral argument, on any matter on this calendar, you must call the Department 53 clerk at (916) 874-7858 by 4:00 p.m. the court day before the hearing and advise opposing counsel. At the time of requesting oral argument, the requesting party shall leave a voice mail message to advise the clerk that it has notified the opposing party of the following: a) its intention to appear and b) that opposing party may appear via Zoom using the Zoom ID indicated above. If no request for oral argument is made, the tentative ruling becomes the final order of the Court. Local Rule 1.06.

The hearings will also be live-streamed on the Court's YouTube page for the benefit of the public. Although the hearings will be live-streamed on the Court's YouTube page, the broadcast will not be saved/preserved. Thus, if any party wishes to preserve the hearing for future use, a court reporter will be required.

During the COVID-19 emergency, the Court will supply a court reporter upon request. Any party desiring a court reporter shall so advise the clerk upon request for oral argument. Unless a fee waiver has been granted, the reporter's fee must be paid to the Court prior to the hearing. Local Rule 1.12 and Government Code § 68086.

**Department 53  
Superior Court of California  
813 Sixth Street, 2nd Floor  
Shama H. Mesiwala, Judge  
P. Lopez, Clerk  
T. Elder, Bailiff**

**Tuesday, September 14, 2021, 1:30 PM**

Item 1 **2017-00207975-CU-BC**

**Quest Media & Supply, Inc. vs. Aerojet Rocketdyne, Inc.**

Nature of Proceeding: Application for Order Sealing Record

Filed By: Warne, William R.

Defendant Aerojet Rocketdyne, Inc.'s unopposed application to seal is granted.

Defendant moves to seal certain documents filed in connection with its motion for summary adjudication. Specifically, it seeks to seal three exhibits attached to supporting declarations in addition to references to certain information in its motion. Defendant indicates that the material was designated by the parties as confidential

coverage, Defendant discounted the dealer's information regarding the condition of the Camper prior to the sale, and the dealer's response to the post-loss photos and instead continued to rely on claims of deterioration, etc. Plaintiff stresses that there had never been any water damage inside the Camper until after the incident, that the Camper had not leaked any time prior to the incident or after its repair, and that most of the water intrusion occurred directly below the location of the hole. Plaintiff argues that this is a question that must be resolved by the trier of fact. The Court agrees. The Court concludes that this is not a case where the facts "undisputed **and only one** reasonable inference can be drawn from the evidence" such that application of the genuine dispute doctrine is a question of law for the Court. (*Paslay, supra*, 248 Cal.App.4<sup>th</sup> at 653 [emphasis added].) Rather the evidence here creates a triable issue of material fact as to whether Defendant denied the water intrusion claim without a full investigation of the grounds for denial and instead focused only on facts supporting denial. This is a question of fact that cannot be resolved on the instant motion.

The Court notes in reply there is also a legal dispute regarding whether there is a covered loss, because even if water entered through the roof tear, did the roof tear occurred contemporaneously with the water intrusion as required under the Policy. Defendant points to the fact that Plaintiff had not inspected the roof for about a month prior to making the water intrusion claim and initially thought a tree limb fell on the camper. Defendant argues that its employee searched the areas provided by Plaintiff but did not see trees with braches high enough to support that theory. Defendant emphasizes that Plaintiff does not know what caused the tear. Defendant reasons that only inference would allow one to assume that if water entered through the hole as opposed to cracked seals and sealant that the tear took place contemporaneously with the water intrusion. This does not change the above given the factual disputes regarding whether Defendant, for example, made a full investigation of the grounds for denial.

As a result, Defendant's motion for summary adjudication with respect to the second cause of action is denied.

#### Punitive Damages

Defendant's motion for summary adjudication as to Plaintiff's claim for punitive damages is granted. Plaintiff expressly concedes this portion of the motion.

As a result, the motion is denied as to the second cause of action and granted as to the claim for punitive damages.

Defendant's evidentiary objections are overruled.

Defendant's counsel shall submit an order pursuant to CRC 3.1312 and CCP § 437c (g).

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Item 8    **2019-00270803-CU-OE**

**Kijana Wicker vs. ASC Profiles, LLC**

Nature of Proceeding: Motion for Preliminary Approval of Class Action Settlement

Filed By: Han, Douglas

Plaintiff Kihana Wicker's unopposed motion for preliminary approval is granted. (Code of Civil Procedure § 382, California Rules of Court, Rule 3.769).

The trial court has broad discretion to determine whether a proposed settlement in a class action is fair. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal. App.3rd 1117, 1138.)

Newberg on Class Actions (4<sup>th</sup> Ed.), the authoritative treatise on class actions, discusses the process for approving the settlement of a class action. At § 11.24, "Procedure for Submitting Class Settlement for Approval," Newberg describes the review at the preliminary stage as the submission by the parties of the essential terms of the agreement for informal review of the settlement papers by the Court. In reviewing a request for preliminary approval of a class action settlement, the Court's task is to determine whether the proposed settlement is within the "range of reasonableness" that would warrant sending out a notice of the settlement and giving the class members the opportunity to object. (Newberg on Class Actions, 4<sup>th</sup> Ed. (2002) § 11.25). In making its fairness determination, the Court should consider the relevant factors, such as the strength of the Plaintiffs' case, the risk, expenses, 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, and the experience and views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1801.) Preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. (See, e.g. *Kullar v. Footlocker Retail Inc.* (2008) 168 Cal.App.4<sup>th</sup> 116.) Generally, the Court will presume the absence of fraud or collusion in the negotiation of the settlement unless evidence to the contrary is offered. In short, there is a presumption that negotiations were conducted in good faith. (Newberg, *supra*, at §11.51.)

The Court finds that the proposed settlement, reached after mediation, appears not to be the product of fraud or overreaching and appears to be fair, reasonable, adequate and in the best interests of the members of the putative class and thereby meets the criteria for preliminary approval. (*Nordstrom Com. Cases* (2010) 186 Cal.App.4<sup>th</sup> 576, 581.)

In this wage and hour action, Plaintiff allege, among other things, that Defendants ASC Profiles, LLC, et al, committed wage and hour violations by failing to pay overtime, failing to pay meal and rest break premiums, failing to pay minimum wages, failing to timely pay final wages, failing to provide compliant wage statements, failing to keep payroll records, failing to reimburse business expenses, and failing to pay sick leave. Plaintiff also allege that Defendants violated Business and Professions Code § 17200. Plaintiff also seeks penalties pursuant to PAGA.

According to the proposed settlement reached after mediation, Defendants have agreed to pay a gross settlement amount of \$5,000,000 to all current and former non-exempt employees of Defendants in California from October 30, 2015 through June 30, 2021. Payments will be allocated to class members on a pro rata basis based on the number of weeks a class member worked. There are approximately 550 class members. The settlement also includes a \$10,000 service award to the named Plaintiff. The settlement allows Plaintiff's counsel to seek fees up to \$1,900,000 (38% of the gross settlement) and up \$30,000 in costs, all of which will be deducted from the

gross settlement amount. The settlement also provides that class administration fees of up to \$15,000 will be deducted from the gross settlement amount. \$200,000 is allocated to the PAGA portion of the settlement with 75% (\$150,000) being paid to the LWDA and 25% (\$50,000) to aggrieved employees as defined in the settlement.

The Court therefore preliminarily approves the settlement and proposed notice, provisionally certifies the class for settlement purposes, confirms Plaintiff as the class representative, and Plaintiff's counsel as class counsel.

The Court has in several other cases required the following Notice to Class be included with regard to Additional Information and is ordering that such language be included in this notice of class settlement.

**Notice to Class**

**The Court will require the creation, by class counsel, of a website for this settlement in which all documents filed with the Court will be accessible by the class members at the listed and stated website address. The proposed notice to class currently states that class members may access the case information only at the main courthouse. While it is true that the only way to access the case information at no fee is to come to the main court house and use the kiosks, it is also possible to utilize the online Public Case Access System to access the court docket. However, because there is a download fee to obtain the case information, the court is also requiring a website for easy access to the information by the proposed class members. Counsel shall also add instructions for anyone wishing to appear remotely at the final fairness hearing. Remote appearances must be made Zoom, which includes telephonic or video options. For telephonic appearances, the Zoom call-in number is (888) 475-4499 and the Zoom ID is 841 204 6267. For video appearances, the Zoom link is <http://saccourt.zoom.us/my/dept53.54a> These revisions shall be made prior to service of the Class Notice upon settlement class members.**

In addition to identifying the Objection by case number and case title, the notice shall provide that the class member's Objection must also identify the correct department, Department 53, as well as the date and time of the Final Approval hearing, January 25, 2022 at 1:30 p.m.

The final fairness hearing shall take place on January 25, 2022 at 1:30 p.m. in this department.

Plaintiff shall file the motion for final approval pursuant to the Code of Civil Procedure.

The Court will sign a proposed order as modified above, after compliance with CRC 3.1312.

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Item 9    **2020-00273135-CU-PO**

**Janette Harris vs. Costco Wholesale Corporation**

Nature of Proceeding: Motion for Summary Judgment and/or Adjudication

Filed By: Sullivan, Richard A.