

SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA

Tentative Ruling

**2024CUBC020894: JAMONTE CLAY vs COMMUNITY MEMORIAL HEALTH
SYSTEM**

**09/01/2026 in Department 44
Hearing Re: Notice to Class Members**

Department Rules. Parties and counsel shall follow the Department 44 rules and Zoom protocols, available at <https://www2.ventura.courts.ca.gov/Courtroom/C44>.

Remote Appearances. The Court allows Zoom appearances as a courtesy to parties and counsel. The Court does not accommodate Court Call appearances. **You MUST register by 3:00 p.m. the court day before your hearing or you will be DENIED entry to the hearing:**

ZOOM Registration Link:

<https://ventura-courts-ca.zoom.us/meeting/register/iqN7uhQSQMuoqs-9TQXgEQ>

No advance notice is required to appear in person.

Tentative Rulings. Oral argument should address the tentative decision. To submit on the tentative decision, email courtroom44@ventura.courts.ca.gov before 8:00 a.m. on the hearing date, copying all other parties. Use the subject line “SUBMISSION ON TENTATIVE”, [Case Number], [Case Title] and [Party]. If not all parties submit, the hearing will proceed, and the tentative ruling may change.

The Court may adopt, modify or reject the tentative ruling after hearing. The tentative ruling has no legal effect unless and until adopted by the Court.

Nature of Proceedings: Supplemental Briefing Re Class Notice to Address Two Issues:
Whether and When Class Notice Should be Given to the Certified Issue Classes.

Tentative Ruling:

The Court, having taken into consideration the parties’ joint case management report dated July 6, 2026, the supplemental briefing concerning the timing and sequencing of class notice, and California Rules of Court, rule 3.766, rules as follows:

Class notice, and an opportunity to opt out of the class, shall be given prior to any ruling on merits issues.

Class notice shall be given to members of the defined class who (1) were assessed an ER Fee, and (2) made a payment on their account or have an amount owing to CMH, with an opportunity to opt out of the class. Notice shall be provided to the class members via email and by regular mail in a tiered manner to be discussed at the hearing. The opt out period shall be 30 days. The third party administrator shall be Xpand Legal. Cost allocation to be determined once the manner of notice is set. The Court will address the competing class notices proposed by the parties

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attached as Exhibits A and B to the joint case management statement, and address the manner in which class notice is to be given in accordance with rule 3.766 at the hearing.

Following hearing on this matter, the parties are ordered to meet and confer and provide a proposed order in accordance with this ruling under 3.766, subdivision (c) and a notice under subdivision (d). Said documents shall be lodged with the Court and provided to the Court via email in both pdf and Word format to courtroom44@ventura.courts.ca.gov.

Notice and the period for requesting exclusion shall be completed before the Court hears or rules upon CMH's anticipated motion for summary judgment and/or summary adjudication concerning the certified issue classes. Nothing in this ruling precludes CMH from filing and briefing its motion while the notice process is underway, provided the opt-out period expires before the hearing and adjudication of the motion.

Plaintiff shall give notice of this ruling.

I. Background

A. Factual Background

Plaintiff Jamonte Clay ("Plaintiff") challenges Defendant Community Memorial Health System's ("CMH") practice of assessing emergency-room patients a separate Emergency Room Visitation Fee ("ER Fee"). Plaintiff alleges that the ER Fee is separate from charges for specific treatment and services, is designed to cover CMH's operating, administrative, and overhead expenses, and is not a charge for services actually rendered to the patient. Plaintiff further alleges that CMH's standard Conditions of Admission Agreement ("COA") permits CMH to charge only for services actually rendered and does not authorize a separate ER Fee. (TAC, ¶¶ 1-3, 9-13.)

Plaintiff alleges that on December 27, 2023, he received treatment in CMH's Ventura emergency room and signed the COA. CMH subsequently billed him \$4,532.27, including a Level 4 ER Fee of \$2,034. After insurance adjustments, Plaintiff alleges that his personal responsibility attributable to the ER Fee was \$482.47 and that he made \$200 in payments on his account. (TAC, ¶¶ 14-17.)

B. Procedural Background

Plaintiff filed the original putative class action complaint on February 20, 2024. Following a demurrer and a motion for judgment on the pleadings, among other proceedings, Plaintiff filed the operative Third Amended Complaint ("TAC") on July 22, 2025. The TAC asserts a class claim for breach of contract and individual claims under the Unfair Competition Law and Consumers Legal Remedies Act. (TAC, ¶¶ 18, 27-56.) The TAC proposed a breach-of-contract class consisting generally of persons who received treatment in CMH's Ventura emergency room during the class period, signed the COA, were charged an ER Fee, and made a payment on their account. (TAC, ¶ 18.)

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On May 13, 2026, the Court ruled on Plaintiff's motion for class certification. The Court modified the proposed class definition to include:

All individuals who, from February 21, 2020, to May 13, 2026, (1) received treatment at CMH's Ventura emergency room, (2) signed CMH's COA personally or through an agent, (3) were assessed charges under CPT Code Numbers 99281 through 99285 (an "ER Fee"), and (4), after any insurance adjustments, either (i) paid the ER Fee directly to CMH, in whole or in part, or (ii) have an amount owing to CMH attributable to the ER Fee, subject to specified exclusions.

(May 13, 2026 Ruling, pp. 1-2.)

The Court denied certification of the breach-of-contract claim because individualized inquiries concerning the fact of damage and entitlement to recovery would predominate and render classwide adjudication unmanageable. (May 13, 2026 Ruling, pp. 16-20.) The Court instead certified two issues under California Rules of Court, rule 3.765(b):

1. Whether CMH's ER Fees are fees for services rendered to the patient or comprise charges for CMH's overhead, operating, and administration costs during the class period; and
2. Whether CMH's COA prohibits CMH from charging ER Fees to emergency-room patients in connection with its bill for patient treatment during the class period.

(May 13, 2026 Ruling, pp. 1-2.)

The Court concluded that resolving those issues on a classwide basis would materially advance the litigation because the rulings would avoid repeated litigation of the common contract issues, avoid inconsistent adjudications, and "supply a binding ruling that class members can apply in subsequent disputes with CMH." The Court further explained that if the issues are resolved in CMH's favor, the litigation effectively ends; if they are resolved in favor of the class, individual class members may thereafter establish the fact and amount of their damages. (May 13, 2026 Ruling, pp. 20-21.)

The Court directed the parties to address the factors set forth in California Rules of Court, rule 3.766 and to submit proposed class notices and a proposed order under rule 3.766(c). (May 13, 2026 Ruling, p. 2.)

In their July 6, 2026 Joint CMC Statement, Plaintiff advocated notice with an opportunity to opt out, while CMH argued notice was unnecessary because only declaratory or interpretive issues had been certified. Plaintiff proposed giving individual email or mailed notice at least to potential class members who made payments and lesser notice to persons having only outstanding balances. Plaintiff estimated that there were 80,539 visits involving patient payments and 24,365 visits involving an outstanding patient balance, although those figures represent visits rather than unique patients and do not conclusively establish class membership. Plaintiff estimated the notice program would cost approximately \$82,927.08. (Joint CMC Statement, pp. 2-6.)

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On July 16, 2026, the Court reserved CMH’s anticipated MSJ/MSA for January 19, 2027 and ordered supplemental briefing concerning the timing of class notice. The Court directed Plaintiff to address why notice should be given before CMH’s summary judgment motion and directed CMH to address why notice should instead await disposition of that motion. The present hearing was set for September 1, 2026. (July 16, 2026 Minute Order, pp. 1-2.)

Plaintiff filed his supplemental brief on July 31, 2026. CMH filed its response on August 14, 2026. Plaintiff replied on August 21, 2026.

Jury trial is set for July 19, 2027.

II. Preliminary Matters

The issue presented by the supplemental briefing is specifically whether notice should be provided before or after adjudication of CMH’s anticipated MSJ/MSA. Although the parties also dispute the precise notice population, form of notice, and allocation of costs, these matters need not prevent the Court from resolving the threshold sequencing question. Once that question is resolved, the parties can meet and confer concerning an updated proposed order satisfying California Rules of Court, rule 3.766(c).

III. Discussion

A. Legal Standard: Class Notice

California law does not categorically require notice merely because a class has been certified. California Rules of Court, rule 3.766(a) provides that “[i]f the class is certified, the court may require either party to notify the class of the action in the manner specified by the court.” Rule 3.766(c) requires the Court, “[u]pon certification of a class, or as soon thereafter as practicable,” to make an order determining: (1) whether notice is necessary; (2) whether class members may exclude themselves; (3) the time and manner of notice; (4) the content of the notice; and (5) responsibility for its cost.

California law favors resolving class certification and notice before deciding substantive issues affecting the class. “A largely settled feature of state and federal procedure is that trial courts in class action proceedings should decide whether a class is proper and, if so, order class notice before ruling on the substantive merits of the action.” (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1074 (“*Fireside Bank*”).) This sequence “promotes judicial efficiency, by postponing merits rulings until such time as all parties may be bound, and fairness, by ensuring that parties bear equally the benefits and burdens of favorable and unfavorable merits rulings. The rule stands as a barrier against the problem of ‘one-way intervention,’ whereby not-yet-bound absent plaintiffs may elect to stay in a class after favorable merits rulings but opt out after unfavorable ones.” (*Id.*) Under California law, the rule against one-way intervention has been extended not only to protect a defendant from “open-ended lawsuits” . . . “but also to protect plaintiffs from a belated motion for decertification; a defendant should not be allowed to

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sandbag a plaintiff, withholding its best case against certification and then seeking decertification if it suffered an unfavorable merits ruling.” (*Fireside Bank, supra*, 40 Cal.4th at p. 1081, citing *Green v. Obledo* (1981) 29 Cal.3d 126, 147 (“*Green*”).) The operative step in the sequencing rule is notice rather than certification alone. This is because absent members are not bound until they are notified. (*Fireside Bank, supra*, 40 Cal.4th at pp. 1074, 1083.)

Whether notice is required under Rule 3.766, subdivision (a), is a distinct question from the *manner* in which notice is given and the factors that should be considered by the Court, which are “[t]he interests of the class,” “[t]he type of relief requested,” “[t]he stake of the individual class members,” “[t]he cost of notifying class members,” “[t]he resources of the parties,” “[t]he possible prejudice to class members who do not receive notice,” and “[t]he res judicata effect on class members.” (Cal. Rules of Court, rule 3.766(e)(1)-(7).)

B. Notice Is Necessary Here to Bind the Class on Subsequent Merits Rulings

CMH correctly observes that notice is discretionary under California law and that courts have dispensed with prejudgment notice in some class actions seeking predominantly declaratory or injunctive relief. (See *Lowry v. Obledo* (1980) 111 Cal.App.3d 14, 23-24; *Frazier v. City of Richmond* (1986) 184 Cal.App.3d 1491, 1499-1503; *Reyes v. San Diego County Bd. of Supervisors* (1987) 196 Cal.App.3d 1263, 1274-1275.) These authorities are distinguishable, however. In *Lowry*, the primary issue was a question of law concerning a governmental benefits regulation, there were no material factual disputes, and the declaratory ruling applied to the class uniformly regardless of notice. (*Lowry, supra*, at pp. 23-24.) Similarly, *Frazier* concerned interpretation of pension provisions whose meaning affected all plan members with equal force. (*Frazier, supra*, at pp. 1500-1503.)

Here, the Court did not certify abstract issues of contractual interpretation divorced from a damages claim. The certified issues are threshold components of Plaintiff’s breach-of-contract theory. Indeed, the Court certified the issues because resolving them once on behalf of the class will materially advance class members’ potential individual billing and damages disputes with CMH. (May 13, 2026 Ruling, pp. 20-21.) In this manner, the Court’s certification is more analogous to a certification under Federal Rule 23(b)(3), in which notice to the class is mandatory, rather than cases certified under Federal Rule 23(b)(2), in which notice is discretionary.

The difference in the consequences of class membership matters. A class member who remains in the class may be bound by an adverse determination that the ER Fee constitutes a fee for services rendered or that the COA permits the challenged charge. A class member who opts out retains the ability to litigate those questions independently. Conversely, a favorable class ruling is intended to provide class members a binding determination they may use in later disputes with CMH. The ability to choose whether to participate therefore has substantive significance that was largely absent from the declaratory-relief cases on which CMH relies.

Plaintiff relies on *Harris v. Medical Transportation Management, Inc.* (D.C.Cir. 2023) 77 F.4th 746, 763-764, in which the court held that an issue class functioning as a Rule 23(b)(3) class because the certified issues were threshold questions of liability in an action seeking monetary

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relief was entitled to the procedural protections applicable to such a class, including notice and an opportunity to opt out. Plaintiff argues that the issue class here is analogous because the certified questions likewise bear directly on potential monetary claims. Although California does not impose the same mandatory-notice requirement, the Court finds *Harris* persuasive in evaluating an issue class such as this one.

Finally, the considerations CMH identifies in subdivision (e) of rule 3.766(e) do not go to *whether* notice is required but rather, the *manner* in which it is provided. The Court is unpersuaded by CMH's contention that notice is impracticable because the spreadsheet alone cannot conclusively identify every member of the certified class. The May 13 ruling already found the Court-revised class ascertainable. The Court recognized that identification of particular members could require review of CMH records and, in some instances, third-party insurance records, but concluded that the class was defined by objective characteristics and that prospective members could be identified from those records. (May 13, 2026 Ruling, pp. 14-15.) California law does not require that every class member be conclusively identified before class proceedings may continue. (See *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704, 706.) A notice directed to persons identified as potential class members may appropriately explain that receipt of notice does not itself establish membership.

On balance, the Court concludes that the ordinary class-action sequence (certification and notice before adjudication of the merits) is appropriate here, rather than CMH's proposed merits-first procedure. *Fireside Bank* strongly favors notice before a substantive ruling affecting the certified class absent compelling justification by the party advocating for a different sequence. The Supreme Court explained that courts ordinarily should decide class status, provide notice, and only then determine the substantive merits, thereby permitting a single ruling that fairly binds the affected parties. (*Fireside Bank*, *supra*, 40 Cal.4th at pp. 1074, 1083.) The Court held that the trial court abused its discretion by deciding a principal merits question simultaneously with certification and before class notice had issued. (*Id.* at p. 1087.) Here, the rationale for following that sequence is similarly strong because the Court has already determined that the purpose of certifying the two issues is to obtain a binding classwide ruling that avoids inconsistent adjudications. (May 13, 2026 Ruling, p. 21.) Resolving CMH's MSJ/MSA first, and only afterward determining whether to give notice, would substantially diminish that benefit.

CMH argues that it will expressly waive its protection against one-way intervention and any right to bind absent class members with a favorable summary judgment ruling. CMH is correct that such protection may be waived. (*Civil Service Employees*, *supra*, at pp. 373-374; *Fireside Bank*, *supra*, 40 Cal.4th at pp. 1082-1083.) Plaintiff therefore goes too far in arguing that waiver is categorically unavailable because the class has already been certified. But CMH's waiver does not give CMH the right to control the sequence of proceedings. It removes CMH's objection based on one-way intervention; it does not require the Court to adjudicate the merits before notice. The Court retains broad authority to structure the class proceedings in a manner that promotes fairness and efficient resolution. (*Fireside Bank*, *supra*, 40 Cal.4th at pp. 1083-1087.) Additionally, the rule against one-way intervention, as explained above is not only to protect defendants from open-ended lawsuits, but has been extended to protect both parties to ensure they equally bear the benefits and burdens of favorable and unfavorable merits rulings. (*Fireside Bank*, *supra*, 40 Cal.4th at p. 1074; *Green*, *supra*, 29 Cal.3d at pp. 147-148.)

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Accepting CMH's proposed sequence would also produce an awkward result. If CMH prevailed, the ruling would bind Clay but, under CMH's proposed waiver, would not bind absent class members, notwithstanding the Court's certification of the issues precisely so they could be resolved once on a binding classwide basis. If CMH lost, CMH would have knowingly accepted the risk of a favorable ruling benefiting the class despite the absence of prior notice. That procedure may be permissible where the defendant waives its rights, but it is not the procedure that best effectuates the Court's May 13 certification order and promotes judicial efficiency.

This does not necessarily require postponing the filing or briefing of CMH's MSJ/MSA. The concern addressed by *Fireside Bank* is that the trial court made a substantive merits determination before the affected class has been defined, notified, and had the opportunity to opt out. The Court will consider a briefing that is concurrent with the notice and opt out period, but such opt out period must expire before the hearing on the CMH's motion. This approach preserves the existing January 19, 2027, hearing reservation to the extent practicable while ensuring that any merits ruling is entered only after the participating class has been fixed.

Accordingly, the Court finds that notice and an opportunity for class members to opt out should be provided prior to any merits ruling.