

FILED
Superior Court of California
County of Los Angeles

FEB 08 2023

David W. Slayton, Executive Officer/Clerk of Court
By: N. Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

THOMAS PENA, an individual,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

AYZENBERG GROUP, INC., a California
Corporation; ERIC AYZENBERG, an
individual; ADRIANE ZAUDKE, an
individual; KRISTEN VAIK VAZQUEZ, an
individual; and DOE 1 through and
including DOE 10,

Defendants.

Case No: 21STCV15447
Related to Case No. 21STCV42580

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

I. BACKGROUND

Plaintiffs Thomas Pena, Eric Ulbrich and Mark Ramsey sue their former
employers, Defendants Ayzenberg Group, Inc. ("Ayzenberg"), Eric Ayzenberg,
Adriane Zaudke and Kristen Vaik Vazquez (collectively, "Defendants") for alleged

1 wage and hour violations. Defendants employed Plaintiffs as crew members for the
2 production of a motion picture. Plaintiffs seek to represent a class of Defendants'
3 current and former non-exempt employees.

4 On April 22, 2021, Plaintiff Pena filed a class action complaint against
5 Defendants. On August 17, 2021, Pena filed a First Amended Complaint.

6 On March 29, 2022, Pena filed a Second Amended Complaint adding Plaintiffs
7 Ulbrich and Ramsey to the action, and alleging causes of action for: (1) continuing
8 wages (Labor Code §§ 201.5, 203); (2) failure to provide compliant pay stubs (Labor
9 Code § 226(a)); (3) failure to pay overtime (Labor Code §§ 510, 515, 1198); (4) failure
10 to pay minimum wages (Labor Code §§ 1194, 1197, 1197.1); (5) failure to provide
11 meal breaks (Labor Code §§ 226.7, 512(a)); (6) failure to provide rest breaks (Labor
12 Code § 226.7); (7) unfair competition (Bus. & Prof. Code § 17200, et seq.); (8) failure
13 to provide employment records (Labor Code § 226(b)); (9) failure to provide
14 employment records (Labor Code § 1198.5); (10) violation of the Private Attorneys
15 General Act ("PAGA") (Labor Code § 2698, et seq.); and (11) violation of the Fair
16 Labor Standards Act ("FLSA") (29 U.S.C. § 201, et seq.).

17 The present settlement also seeks to resolve the claims alleged by Plaintiff
18 Ulbrich in his PAGA action filed against Defendants on November 18, 2021 (LASC
19 Case No. 21STV42580). Plaintiff Pena filed a notice of related case on December 20,
20 2021.

21 On November 17, 2021, Plaintiff Pena and Defendant Ayzenberg participated in
22 a mediation before Joel Grossman, which ultimately resulted in settlement. The terms
23 were finalized in a Joint Stipulation and Settlement of Class, Collective, and
24 Representative Action, which was executed by the parties on June 9, 2022, a copy of
25 which is attached to the Declaration of Alan Harris ("Harris Decl.") as Exhibit 1.

1 On July 6, 2022, the Court issued a “checklist” to the parties pertaining to
2 deficiencies in the proposed settlement. In response, the parties filed further briefing,
3 including the Amended Settlement Agreement attached to the Declaration of Alan
4 Harris in Support of Continued Motion for Preliminary Approval (“Supp. Harris Decl.”)
5 as Exhibit 1.

6 The matter came on for hearing on December 2, 2022, at which time the Court
7 and counsel discussed the amount of the settlement and why it should be considered
8 reasonable. Further briefing was filed January 4, 2023 and the matter was heard
9 February 7, 2023.

10 For the reasons set forth below, the Court preliminarily grants approval for the
11 settlement.

12 **II. THE TERMS OF THE SETTLEMENT**

13 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

14 “Class Member(s)” or “Settlement Class” means all persons paid compensation
15 (directly or through a loan-out entity) on account of services provided for Defendant in
16 the production of Motion Pictures, as defined by California Labor Code § 201.5 from
17 October 24, 2016 through the preliminary approval of this settlement. (¶I.11)

18 “Class Period” or “Settlement Period.” The Class Period will begin on October
19 24, 2016, and end on the date the Court enters an order preliminarily approving the
20 Parties’ Settlement. (¶I.14)

21 “PAGA Members” means all persons paid compensation (directly or through a
22 loan-out entity) on account of services provided for Defendant in the production of
23 Motion Pictures, as defined by California Labor Code § 201.5 from October 24, 2019
24 through the preliminary approval of this settlement. (“PAGA Period”). (¶I.35)
25

1 “PAGA Period” means the period from October 24, 2019 to the date of
2 Preliminary Approval. (¶I.37)

3 “Participating Class Members” means all Class Members who are entitled to
4 receive their share of the Net Settlement Amount and who do not submit a valid and
5 timely Request for Exclusion. (¶I.40)

6 “Excluded Class Members” means any Class Member who timely and validly
7 submits a written request to be excluded from the Class on or before the Objection /
8 Exclusion Deadline Date. A request for exclusion only applies to the class claims and
9 not the PAGA claim. Accordingly, any Class Member who excludes themselves from
10 the class claims will not be excluded from the PAGA claim release and will be bound
11 by the Judgment entered by this Court. (¶I.20)

12

13 **B. THE MONETARY TERMS OF SETTLEMENT**

14 The essential monetary terms are as follows:

- 15 • The Class Settlement Amount is **\$600,000** (¶I.17). This includes payment of a
16 PAGA penalty of **\$40,000** to be paid 75% to the LWDA (\$30,000) and 25% to
17 PAGA Members (\$10,000) (¶I.36).
- 18 • The Net Settlement Amount (“Net”) (**\$302,500**) is the GSA less:
 - 19 ○ Up to **\$200,000** (33 1/3%) for attorney fees (¶I.4);
 - 20 ○ Up to **\$15,000** for attorney costs (*Ibid.*);
 - 21 ○ Up to **\$22,500** [**\$7,500 each**] for service awards to the proposed class
22 representatives (¶I.16); and
 - 23 ○ Estimated **\$15,000** for settlement administration costs (¶I.5).
- 24 • Employer-side payroll taxes will be paid by Defendant in addition to the Gross
25 Settlement Amount (¶I.17).

- 1 • Assuming the Court approves all maximum requested deductions, approximately
2 \$302,500 will be available for automatic distribution to participating class
3 members. Assuming full participation, the average settlement share will be
4 approximately \$408.78. ($\$302,500 \text{ Net} \div 740 \text{ class members} = \408.78).¹ In
5 addition, each PAGA Member will receive a portion of the PAGA penalty,
6 estimated to be \$33.44 per PAGA Member. ($\$10,000 \text{ or } 25\% \text{ of } \$40,000 \text{ PAGA}$
7 $\text{penalty} \div 299 \text{ PAGA Members} = \33.44).
- 8 • There is no Claim Requirement (§III.1).
- 9 • The settlement is not reversionary (§I.17).
- 10 • Individual Settlement Share Calculation: Defendant will provide the Settlement
11 Administrator with the total number of Pay Periods for each Participating Class
12 Member. Defendant will also provide the total aggregated number of Pay
13 Periods worked by all Participating Class Members during the Class Period. The
14 amount that each Participating Class Member will be eligible to receive will be
15 calculated by dividing each participating Class Member's individual Pay Periods
16 by the total Pay Periods of all Participating Class Members and multiplying the
17 resulting fraction by the Net Settlement Amount. (§IX.1.a)
 - 18 ○ PAGA Payments: The amount that each PAGA Member will receive will
19 be calculated by dividing each participating PAGA Member's individual
20 Pay Periods by the total Pay Periods of all PAGA Members, and
21 multiplying the resulting fraction by the 25% share of the PAGA
22 Penalties designated for distribution to the PAGA Members. PAGA
23

24 ¹ Proposed Class Counsel represents this amount is \$810 per employee. (Supp. Harris Dec. ¶3). This does not take
25 into account deductions for fees, expenses and payment of the PAGA penalty to the LWDA).

1 Members shall receive this portion of their Individual Settlement Payment
2 regardless of whether they request to be excluded from the participation
3 regarding the class claims. (§IX.1.b)

- 4 ○ The Individual Settlement Payments estimate indicated on the Notice are
5 subject to change, depending on factors including how many Class
6 Members become Excluded Class Members (resulting in their Individual
7 Pay Periods being removed from the final Class Pay Periods, thereby
8 increasing the final weekly settlement amount). (§IX.1.c)

- 9 ● Tax Withholdings: Each Participating Class Member's Individual Settlement
10 Payment will be allocated: 20% for wages, 40% for interest and 40% for
11 penalties. (§XIV)
- 12 ● Funding of Settlement: Within thirty (30) calendar days after the Effective Date
13 of the Settlement, Defendant will make a deposit of the Class Settlement
14 Amount into a Qualified Settlement Account to be established by the Settlement
15 Administrator. (§III.4)
- 16 ● Distribution: After receipt of the Class Settlement Amount, the Settlement
17 Administrator will then issue payments within fourteen (14) calendar days to: (a)
18 Participating Class Members/PAGA Members; (b) Named Plaintiffs' Class
19 Representative Incentive Awards; (c) the Labor and Workforce Development
20 Agency for the 75% portion of the PAGA Payment; (d) Class Counsel; and (e)
21 the Settlement Administrator will also issue a payment to itself for Court-
22 approved services performed in connection with the Settlement. (§III.4)
- 23 ● Uncashed Settlement Payment Checks: Any checks issued by the Claims
24 Administrator to Participating Class Members will be negotiable for at least one
25 hundred eighty (180) calendar days. Those funds represented by settlement

1 checks returned as undeliverable and those settlement checks remaining
2 uncashed for more than one hundred eighty (180) calendar days after issuance
3 shall be forwarded to the Controller of the State of California pursuant to the
4 Unclaimed Property Law, California Civil Code § 1500, et seq., to be held in
5 trust for those Participating Class Members and PAGA Members who did not
6 timely cash their Settlement checks. (§XIII.3)

7
8 **C. TERMS OF RELEASES**

- 9 • Class Release. It is the desire of the Named Plaintiffs, Class Members (except
10 those who exclude themselves from the Settlement), and Defendant to fully,
11 finally, and forever settle, compromise, and discharge the Released Claims as to
12 the Released Parties. Thus, following the Effective Date and after Defendant
13 fully funds the Class Settlement Amount, and except as to such rights or claims
14 as may be created by this Settlement Agreement, the Class Members shall fully
15 release and discharge the Released Parties from any and all Released Claims for
16 the entire Class Period. This release shall be binding on all Class Members who
17 have not timely submitted a valid and complete Request for Exclusion, including
18 each of their respective attorneys, agents, executors, representatives, guardians
19 ad litem, heirs, successors, and assigns, and shall inure to the benefit of the
20 Released Parties, who shall have no further or other liability or obligation to any
21 Settlement Class Member with respect to the Released Claims, except as
22 expressly provided. (§XVI.2)
- 23 • “Released Claims.” This term is defined as follows: Following the Effective
24 Date, and upon Defendant fully funding the Class Settlement Amount, all Class
25 Members shall fully and finally release Released Parties of the Released Claims

1 for the Class Period. The Released Claims include any and all claims, wage and
2 hour claims, rights, demands, liabilities and causes of action of any nature or
3 description arising from the facts and claims asserted in the Operative
4 Complaint, as amended, and/or that could have been asserted based on the facts
5 alleged in the Operative Complaint, as amended, against Defendant, including
6 without limitation, statutory, constitutional, contractual or common law claims
7 for wages, damages, unpaid costs, penalties, liquidated damages, interest,
8 attorneys' fees, litigation costs, restitution, equitable relief or other relief under
9 Business & Professions Code § 17200, et seq., based on the following
10 categories: (a) any and all claims involving any alleged failure to pay the
11 minimum wages required by federal, state or local law, including prevailing
12 wages; (b) any and all claims arising under federal, state or local law involving
13 any alleged failure to pay for all hours worked, including but not limited to any
14 claim for minimum, straight time, overtime, or double time wages; (c) any and
15 all claims arising under federal, state or local law involving any alleged failure to
16 pay straight time, overtime or double time wages, including but not limited to
17 any claim involving "off the clock" work, and any claim involving Defendant's
18 workday or workweek, and any claim involving failure to include shift
19 differentials, bonuses, other incentive pay, or compensation of any kind in the
20 "regular rate" of pay; (d) any and all claims arising under federal, state or local
21 law involving any alleged failure to properly provide meal periods and/or
22 authorize and permit rest periods, to pay premiums for missed, late, short or
23 interrupted meal and/or rest periods, or to pay such premiums at the regular rate
24 of compensation required by Labor Code § 226.7; (e) any and all claims arising
25 under federal, state or local law involving any alleged failure to keep accurate

1 records or to issue proper wage statements; (f) any and all claims arising under
2 federal, state or local law involving any alleged failure to timely pay wages,
3 including but not limited to any claim that Defendant violated Labor Code §§
4 201 or 202, and any claim for waiting time penalties under Labor Code § 203;
5 (g) any and all claims arising under federal, state or local law involving any
6 alleged failure to reimburse for necessary business expenses, including under
7 Labor Code §§2800 or 2802; (h) any and all claims for unfair business practices
8 in violation of California Business and Professions Code sections 17200, et seq.;
9 and (i) any and all penalties pursuant to the Private Attorneys General Act
10 (“PAGA”) of 2004 (collectively, the “Released Claims”). (¶1.44)

- 11 ○ The Released Claims include all such claims arising under the California
12 Labor Code (including, but not limited to, sections 201, 201.3, 201.5, 202,
13 203, 204, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 226.8, 227.3,
14 246, 256, 510, 511, 512, 515, 516, 551, 552, 558, 558.1, 1174, 1174.5,
15 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1198.5, 1199, 1770 et
16 seq., 2800, 2802, 2810.5, 2698 et seq., and 2699 et seq.); the Wage
17 Orders of the California Industrial Welfare Commission; California
18 Business and Professions Code section 17200 et seq.; the California Civil
19 Code, to include but not be limited to claims under § 3336; the California
20 common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201
21 et seq.; and federal common law. (*Ibid.*)
- 22 ○ Participating Class Members who negotiate or otherwise deposit their
23 Settlement Payment Check will be deemed to have opted into the Action
24 for purposes of the Fair Labor Standards Act (“FLSA”) and as to those
25 Class Members they expressly waive and release any FLSA claims

1 arising during the Class Period and reasonably related to the claims and
2 allegations in the Operative Complaint, as amended. This release excludes
3 the release of claims not permitted by law. The following language will
4 be printed on the reverse of each Settlement Payment Check, or words to
5 this effect: "By endorsing or otherwise negotiating this check, I
6 acknowledge that I read, understood, and agree to the terms set forth in
7 the Notice of Class Action Settlement and I consent to join in the Fair
8 Labor Standards Act ("FLSA") portion of the Action, elect to participate
9 in the settlement of the FLSA claims, and agree to release all of my FLSA
10 claims that are covered by the Settlement." (*Ibid.*)

- 11 ○ It is the intent of the Parties that the judgment entered by the Court upon
12 final approval of the Settlement shall have res judicata effect and be final
13 and binding upon Plaintiff and all Class Members who have not expressly
14 requested to be excluded from of the Settlement. Participating Class
15 Members do not release any other claims, including claims for vested
16 benefits, wrongful termination, violation of the FEHA, unemployment
17 insurance, disability, social security, workers' compensation, or claims
18 based on facts occurring outside the Class Period. (*Ibid.*)
- 19 ○ In addition to the releases given above, PAGA Members release Released
20 Parties, from all claims for PAGA penalties that were alleged, or
21 reasonably could have been alleged, based on the PAGA Period facts
22 contained in Plaintiffs' notices to the LWDA and the Operative
23 Complaint. (*Ibid.*)
- 24 ○ This release shall apply to claims arising during the Class Period. (*Ibid.*)
25

1 ○ The Second Amended Complaint is the operative complaint in the Action
2 (the “Operative Complaint”). (¶II.1)

3 ● “Released Parties.” The Released Parties include Ayzenberg Group, Inc., Eric
4 Ayzenberg, Adriane Zaduke, and Kristen Vaik Vazquez as named by Named
5 Plaintiffs in the Operative Complaint, as amended, and Ayzenberg Group, Inc.’s
6 past, present and/or future, direct and/or indirect, parents, subsidiaries, equity
7 sponsors, related companies/corporations and/or partnerships (defined as a
8 company/ corporation and/or partnership that is, directly or indirectly, under
9 common control with Defendant or any of its parents), divisions, assigns,
10 predecessors, successors, insurers, consultants, joint venturers, joint employers,
11 affiliates, alter-egos, any entity with potential joint liability, employee benefit
12 plans, and fiduciaries thereof, and all of their respective directors, officers,
13 agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service
14 providers, and assigns. (¶I.45)

15 ● The named Plaintiffs will also each provide a general release and a waiver of the
16 protections of Cal. Civ. Code §1542 in separate stand-alone agreements.

17 (¶XVI.3) Class Counsel represents that these General Release Agreements do
18 not require the payment of additional sums to Plaintiffs. (Supp. Harris Decl. at
19 8:3-11, Exhibit 3 thereto.)

20 ● The releases are effective following the Effective Date and after Defendant fully
21 funds the Class Settlement Amount, which will occur within thirty (30) calendar
22 days after the Effective Date (¶III.4).

23 //

24 //

25 //

1 **D. SETTLEMENT ADMINISTRATION**

- 2 • The proposed Settlement Administrator is CPT Group, Inc. (¶I.6), which has
3 provided evidence that no counsel are affiliated with it and that it has adequate
4 procedures in place to safeguard the data and funds to be entrusted to it. (See
5 Decl. of Julie Green, attached as Exhibit 10 to Supp. Harris Decl.).
- 6 • Settlement administration costs are estimated to be \$15,000 (¶I.5).
- 7 • Notice: The manner of giving notice is described below.
- 8 • Opt Out/Objection Dates: “Response Deadline” means the deadline by which
9 Class Members must mail or fax to the Settlement Administrator valid Requests
10 for Exclusion or Notices of Objection to the Settlement. The Response Deadline
11 will be sixty (60) calendar days from the initial mailing of the Notice Packet by
12 the Claims Administrator. The Response Deadline for Requests for Exclusion will
13 be extended fifteen (15) calendar days for any Class Member who is re-mailed a
14 Notice Packet by the Settlement Administrator. (¶I.49)
- 15 ○ Eligible PAGA Members will receive their share of the employee portion
16 of the PAGA Penalties and will be deemed to have released any claims
17 arising out of PAGA, regardless of whether they request to be excluded
18 from the release of their class claims. (¶IX.3)
- 19 ○ If more than 5% of the Class Members request to be excluded from the
20 Settlement (opt-out or are otherwise excluded), Defendant, in its sole
21 discretion, shall have the option of nullifying the Settlement Agreement.
22 (¶XI.1)
- 23 • Notice of Final Judgment will be posted on the Settlement Administrator’s website
24 (¶X.1.j).
- 25

1 **III. SETTLEMENT STANDARDS AND PROCEDURE**

2 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
3 of an entire class action, or of a cause of action in a class action, or as to a party,
4 requires the approval of the court after hearing.” “Any party to a settlement agreement
5 may serve and file a written notice of motion for preliminary approval of the settlement.
6 The settlement agreement and proposed notice to class members must be filed with the
7 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
8 Court, rule 3.769(c).

9 “In a class action lawsuit, the court undertakes the responsibility to assess
10 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
11 dismissal of a class action. The purpose of the requirement [of court review] is the
12 protection of those class members, including the named plaintiffs, whose rights may not
13 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
14 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
15 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
16 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
17 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
18 agreement to the extent necessary to reach a reasoned judgment that the agreement is
19 not the product of fraud or overreaching by, or collusion between, the negotiating
20 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
21 concerned.”] [internal quotation marks omitted].

22 “The burden is on the proponent of the settlement to show that it is fair and
23 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
24 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
25 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar

1 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
2 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

3 Notwithstanding an initial presumption of fairness, “the court should not give
4 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
5 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
6 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
7 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
8 members, the court must independently and objectively analyze the evidence and
9 circumstances before it in order to determine whether the settlement is in the best
10 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
11 In that determination, the court should consider factors such as “the strength of
12 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
13 the risk of maintaining class action status through trial, the amount offered in
14 settlement, the extent of discovery completed and stage of the proceedings, the
15 experience and views of counsel, the presence of a governmental participant, and the
16 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
17 factors is not exclusive and the court is free to engage in a balancing and weighing of
18 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
19 245.

20 At the same time, “[a] settlement need not obtain 100 percent of the damages
21 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
22 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
23 substantially narrower than it would be if the suits were to be successfully litigated,’
24 this is no bar to a class settlement because ‘the public interest may indeed be served by
25

1 a voluntary settlement in which each side gives ground in the interest of avoiding
2 litigation.”” *Id.* at 250.

3
4 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

5
6 **A. THERE IS A PRESUMPTION OF FAIRNESS**

7 The settlement is entitled to a presumption of fairness for the following reasons:

8
9 **1. The settlement was reached through arm’s-length bargaining**

10 On November 17, 2021, Plaintiff Pena and Defendant Ayzenberg participated in
11 a mediation before Joel Grossman, which ultimately resulted in settlement.
12 (Declaration of Alan Harris (“Harris Decl.”) at 14:22-24.)

13
14 **2. The investigation and discovery were sufficient**

15 Class Counsel represents that in preparation for mediation, the parties exchanged
16 information pursuant to informal discovery. Counsel and their consulting expert
17 analyzed records and prepared a damages model. (Harris Decl. at 16:27-17:14.)
18 Counsel states that their discovery and investigations included, inter alia, interviews
19 with potential witnesses and the exchange of information regarding payments to a
20 majority of the putative class members. (Harris Decl. at 17:19-21.)

21 Counsel also represents that as part of preparation for settlement discussions and
22 mediation, they reviewed over a dozen film permits issued to Ayzenberg Group, Inc.
23 for work in Los Angeles from 2015 to 2021. In addition, counsel reviewed records
24 reflecting the timing of over 1,000 payments to Defendants’ employees, including daily
25 pay rate; work dates; and paycheck dates. (Harris Decl. at 14:17-20.)

1 Counsel further represents that their analysis was based on a review of pay
2 records for all Class Members. (Supp. Harris Decl. at 3:20-22.) The data provided by
3 the defense included information regarding pay periods, the productions on which Class
4 Members performed work, rates of pay, hours worked, meal break penalty payments,
5 additional payments for reimbursement of expenses, equipment or kit rentals, covid
6 testing as well as wages paid. This information was provided for all Class Members for
7 a period of approximately thirty-nine months, from April 2018 to July 2021. (Supp.
8 Harris Decl. at 3:23-4:2.)

9 This is sufficient to value the case for settlement purposes.

10 **3. Counsel is experienced in similar litigation**

11
12 Class Counsel represent that they are experienced in class action litigation,
13 including wage and hour class actions. (Harris Decl. at pp. 21-26.)
14

15 **4. Percentage of the class objecting**

16
17 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
18 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
19 the court receive objections to the proposed settlement, it will consider and either sustain
20 or overrule them at the fairness hearing.”].
21

22 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED** 23 **FAIR, ADEQUATE, AND REASONABLE**

24
25 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
entirety. The evaluation of any settlement requires factoring unknowns. “As the court

1 does when it approves a settlement as in good faith under Code of Civil Procedure
 2 section 877.6, the court must at least satisfy itself that the class settlement is within the
 3 'ballpark' of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
 4 38 Cal.3d 488, 499–500. While the court is not to try the case, it is 'called upon to
 5 consider and weigh the nature of the claim, the possible defenses, the situation of the
 6 parties, and *the exercise of business judgment* in determining whether the proposed
 7 settlement is reasonable.' (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
 8 462, italics added.)" *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

9
 10 **1. Amount Offered in Settlement**

11 The most important factor is the strength of the case for plaintiffs on the merits,
 12 balanced against the amount offered in settlement." (*Id.* at 130.)

13 Class Counsel estimates of Defendant's maximum exposure have varied. At
 14 present they are valued at approximately \$9,456,954, based on the following analysis:

Violation	Maximum Exposure
Failure to Timely Pay Wages Upon Termination	\$8,047,098
Wage Statements	\$18,850
Unpaid Overtime	\$1,000.00
Minimum Wages/Liquidated Damages	\$146,016
Failure to Provide Meal Periods	\$40,000.00
Failure to Provide Rest Breaks	\$88,800.00
PAGA Penalties	\$110,690
Fair Labor Standards Act	\$1,000,000
Records requests (Plaintiffs Only)	4,500
Total	9.456,954

1 (Harris Decl. at pp. 3-13; Supp. Harris Decl. at p. 5 [needs clarification].)

2 Class Counsel obtained a gross settlement valued at \$600,000. This is
3 approximately 6.3% of Defendant's maximum exposure.

4 5 **2. The Risks of Future Litigation**

6 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
7 motion practice and appeals) are also likely to prolong the litigation as well as any
8 recovery by the class members. Even if a class is certified, there is always a risk of
9 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
10 ["Our Supreme Court has recognized that trial courts should retain some flexibility in
11 conducting class actions, which means, under suitable circumstances, entertaining
12 successive motions on certification if the court subsequently discovers that the propriety
13 of a class action is not appropriate."].) Further, the settlement was negotiated and
14 endorsed by Class Counsel who, as indicated above, are experienced in class action
15 litigation. Based upon their investigation and analysis, the attorneys representing
16 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
17 adequate. (Supp. Harris Decl. at 5:17-19.) Counsel emphasize that many of the damages
18 are discretionary and that proving "willfulness" under Labor Code section 203, which is
19 by far the largest claim, is particularly difficult. It is also emphasized that some members
20 of the class are covered by collective bargaining agreements respecting their meal break
21 times. Finally, it was noted that were the case litigated and the proposed class prevailed
22 entirely, a bankruptcy filing would be a real possibility.

23 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
24 which was sent a copy of the Settlement Agreement on September 29, 2022 and has not
25

1 yet objected. (Supp. Harris Decl., Exhibit 9.) Any objection by it will be considered at
2 the final fairness hearing.

3 4 **3. The Releases Are Limited**

5 The Court has reviewed the Releases to be given by the absent class members and
6 the named plaintiffs. The releases, described above, are tailored to the pleadings and
7 release only those claims in the pleadings. There is no general release by the absent
8 class. The named plaintiffs' general releases are appropriate given that each was
9 represented by counsel in its negotiation.

10 11 **4. Conclusion**

12 Class Counsel estimated Defendant's maximum exposure at \$10,239,673. Class
13 Counsel obtained a gross settlement valued at \$600,000. Given the uncertain outcomes,
14 including the potential that the class might not be certified, that liability is a contested
15 issue, and that the full amount of penalties would not necessarily be assessed even if the
16 class is certified and liability found, the settlement is within the "ballpark of
17 reasonableness."

18 19 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

20 A detailed analysis of the elements required for class certification is not required,
21 but it is advisable to review each element when a class is being conditionally certified.
22 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
23 advocating class treatment must demonstrate the existence of an ascertainable and
24 sufficiently numerous class, a well-defined community of interest, and substantial
25

1 benefits from certification that render proceeding as a class superior to the alternatives.”
2 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

3 **1. The Proposed Class is Numerous**

4 There are approximately 740 putative Class Members. (Supp. Harris Decl. at
5 4:7-10.) Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax*
6 *Refund Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there*
7 *be many parties to a class action is liberally construed,*” and citing examples wherein
8 classes of as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28,
9 *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

10 **2. The Proposed Class Is Ascertainable**

11 “A class is ascertainable, as would support certification under statute
12 governing class actions generally, when it is defined in terms of objective
13 characteristics and common transactional facts that make the ultimate identification
14 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
15 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

16 The class is defined above. Class Members are ascertainable through
17 Defendant’s records. (Harris Decl. at 19:19-20.)

18 **3. There Is A Community of Interest**

19 “The community of interest requirement involves three factors: ‘(1) predominant
20 common questions of law or fact; (2) class representatives with claims or defenses typical
21 of the class; and (3) class representatives who can adequately represent the class.’”
22 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

23 As to predominant questions of law or fact, Plaintiffs contend that issues that are
24 common across the Class include: (1) whether Defendant failed to provide compliant
25 wage statements; (2) whether Defendant failed to provide compliant meal and rest breaks;

1 (3) whether any alleged on-call meal breaks resulted in unpaid minimum wage and
2 overtime; (4) whether the alleged late payment of final wages resulted in Defendant's
3 responsibility to pay liquidated damages; and (5) whether Defendant failed to pay all
4 wages in a timely fashion upon each employee's discharge from, or resignation of,
5 employment. (MPA at 5:7-8:3.)

6 As to typicality, Plaintiffs contend, as the putative class representatives, that their
7 claims are like those of absent Class Members, all of whom formerly worked or currently
8 work for Defendant, and all of whom were allegedly subject to similar violations. (MPA
9 at 6:5-13.)

10 As to adequacy, each Plaintiff represents that he is aware of his fiduciary
11 obligation to the class, does not have conflicts of interest with the class, and has
12 participated in the litigation. (Declaration of Thomas Pena ¶¶ 8-10; Declaration of Mark
13 Ramsey ¶¶ 8-10; Declaration of Eric Ulbrich ¶¶ 8-10.) As previously stated, Class
14 Counsel have experience in class action litigation.

15 16 **4. Substantial Benefits Exist**

17 Given the relatively small size of the individual claims, a class action is superior to
18 separate actions by the class members.

19 20 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 21 **OF DUE PROCESS**

22 The purpose of notice is to provide due process to absent class members. A practical
23 approach is required, in which the circumstances of the case determine what forms of
24 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
25 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the

1 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
2 stake of the individual class members; (4) the cost of notifying class members; (5) the
3 resources of the parties; (6) the possible prejudice to class members who do not receive
4 notice; and (7) the res judicata effect on class members.

5 **1. Method of class notice**

6 Within fourteen (14) calendar days of Preliminary Approval, Defendant will
7 provide the Class List to the Settlement Administrator. If any deficiencies are identified
8 by the Settlement Administrator, Defendant shall work with the Claims Administrator
9 in good faith to resolve any issues. (§X.2)

10 Within fourteen (14) calendar days after receiving the Class List from Defendant,
11 the Settlement Administrator will mail a Notice Packet to all Class Members via regular
12 First-Class U.S. Mail, using the most current, known mailing addresses identified in the
13 Class List. (§X.3)

14 Prior to mailing, the Settlement Administrator will perform a search based on the
15 National Change of Address Database for information to update and correct for any
16 known or identifiable address changes. Any Notice Packets returned to the Settlement
17 Administrator as non-deliverable on or before the Response Deadline will be sent
18 promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and
19 the Settlement Administrator will indicate the date of such re-mailing on the Notice
20 Packet. If no forwarding address is provided, the Settlement Administrator will
21 promptly attempt to determine the correct address using a skiptrace, or other search
22 using the name, address and/or Social Security number of the Class Member involved,
23 and will then perform a single re-mailing. Those Class Members who receive a
24 remailed Notice Packet, whether by skip-trace or by request, will have between the later
25 of (a) an additional fourteen (14) calendar days or (b) the Response Deadline to

1 postmark or electronically submit a Request for Exclusion or an objection to the
2 Settlement. (§X.4)

3 **2. Content of class notice.**

4 A copy of the proposed class notice is attached to the Supp. Decl. of Harris as
5 Exhibit 4. The notice includes information such as: a summary of the litigation; the
6 nature of the settlement; the terms of the settlement agreement; the maximum
7 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
8 the enhancement award, and claims administration costs); the procedures and deadlines
9 for participating in, opting out of, or objecting to, the settlement; the consequences of
10 participating in, opting out of, or objecting to, the settlement; and the date, time, and
11 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
12 given only in English, as Class Counsel represents that the Class is fluent in English.
13 (Harris Decl. at 27:3-4.)

14 **3. Settlement Administration Costs**

15 Settlement administration costs are estimated at **\$15,000**, including the cost of
16 notice (§I.5). Prior to the time of the final fairness hearing, the settlement administrator
17 must submit a declaration attesting to the total costs incurred and anticipated to be
18 incurred to finalize the settlement for approval by the Court.

19
20 **E. ATTORNEY FEES AND COSTS**

21 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
22 implied, that has been entered into with respect to the payment of attorney fees or the
23 submission of an application for the approval of attorney fees must be set forth in full in
24 any application for approval of the dismissal or settlement of an action that has been
25 certified as a class action.”

1 Ultimately, the award of attorney fees is made by the court at the fairness
2 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
3 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
4 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
5 1132-1136. In common fund cases, the court may use the percentage method. If
6 sufficient information is provided a cross-check against the lodestar may be conducted.
7 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
8 agreement by the parties to the contrary, “the court ha[s] an independent right and
9 responsibility to review the attorney fee provision of the settlement agreement and
10 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
11 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

12 The question of class counsel’s entitlement to **\$200,000** (33 1/3%) in attorney
13 fees will be addressed at the final fairness hearing when class counsel brings a noticed
14 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
15 the court with current market tested hourly rate information and billing information so
16 that it can properly apply the lodestar method and must indicate what multiplier (if
17 applicable) is being sought.

18 Class counsel should also be prepared to justify the costs sought (capped at
19 **\$15,000**) by detailing how they were incurred.

20 21 **F. SERVICE AWARDS**

22 The Settlement Agreement provides for a service award of up to **\$7,500 each** for
23 the class representatives. Trial courts should not sanction enhancement awards of
24 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
25 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the

1 form of quantification of time and effort expended on the litigation, and in the form of
2 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
3 required in order for the trial court to conclude that an enhancement was ‘necessary to
4 induce [the named plaintiff] to participate in the suit’” *Clark v. American*
5 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
6 original.

7 In connection with the final fairness hearing, named Plaintiffs must submit a
8 declaration attesting to why they should be compensated for the expense or risk they
9 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

10 The Court will decide the issue of the enhancement award at the time of final
11 approval.

12
13 **V. CONCLUSION AND ORDER**

14 The Court hereby:

15 (1) Grants preliminary approval of the settlement as fair, adequate, and
16 reasonable;

17 (2) Grants conditional class certification;

18 (3) Appoints Thomas Pena, Eric Ulbrich and Mark Ramsey as Class
19 Representatives;

20 (4) Appoints Harris & Ruble as Class Counsel;

21 (5) Appoints CPT Group, Inc. as Settlement Administrator;

22 (6) Approves the proposed notice plan; and

23 (7) Approves the proposed schedule of settlement proceedings as follows:

- 24 • Preliminary approval hearing: February 7, 2023
25

- 1 • Deadline for Defendant to provide class list to settlement administrator:
2 February 21, 2023 (within 14 calendar days from preliminary approval)
- 3 • Deadline for settlement administrator to mail notices: March 7, 2023 (within 14
4 calendar days from receipt of the Class List)
- 5 • Deadline for class members to opt out: May 8, 2023 (60 calendar days from the
6 initial mailing of the Notice Packets)
- 7 • Deadline for class members to object: May 8, 2023 (60 calendar days from the
8 initial mailing of the Notice Packets)
- 9 • Deadline for class counsel to file motion for final approval: May 25, 2023 (16
10 court days prior to final fairness hearing)
- 11 • Final fairness hearing: June 20, 2023 at 9:00 a.m.

12 Any failure to fully and timely comply with the contingencies may result in the
13 revocation of this Order in its entirety.

14
15 Dated:

2/8/23



MAREN E. NELSON

Judge of the Superior Court