

20230621

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**FILED**  
Superior Court of California  
County of Los Angeles

**JUN 20 2023**

David W. Slayton, Executive Officer/Clerk of Court  
By: P. Herrera, 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

  
**[PROPOSED] ORDER GRANTING  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

Date: June 20, 2023  
Time: 9:00 a.m.  
Dept.: SSC-17

**I. BACKGROUND**

Plaintiffs Thomas Pena, Eric Ulbrich and Mark Ramsey sue their former  
employers, Defendants Ayzenberg Group, Inc. ("Ayzenberg"), Eric Ayzenberg,

1 Adriane Zaudke, and Kristen Vaik Vazquez (collectively, “Defendants”) for alleged  
2 wage and hour violations. Defendants employed Plaintiffs as crew members on a  
3 motion picture production. Plaintiffs seek to represent a class of Defendants’ current  
4 and former non-exempt employees.

5 On April 22, 2021, Plaintiff Pena filed a class action complaint against  
6 Defendants. On August 17, 2021, Pena filed a First Amended Complaint. On March  
7 29, 2022, Pena filed a Second Amended Complaint adding Plaintiffs Ulbrich and  
8 Ramsey to the action and alleging causes of action for: (1) continuing wages (Labor  
9 Code §§ 201.5, 203); (2) failure to provide compliant pay stubs (Labor Code § 226(a));  
10 (3) failure to pay overtime (Labor Code §§ 510, 515, 1198); (4) failure to pay minimum  
11 wages (Labor Code §§ 1194, 1197, 1197.1); (5) failure to provide meal breaks (Labor  
12 Code §§ 226.7, 512(a)); (6) failure to provide rest breaks (Labor Code § 226.7); (7)  
13 unfair competition (Bus. & Prof. Code § 17200, et seq.); (8) failure to provide  
14 employment records (Labor Code § 226(b)); (9) failure to provide employment records  
15 (Labor Code § 1198.5); (10) violation of the Private Attorneys General Act (“PAGA”)  
16 (Labor Code § 2698, et seq.); and (11) violation of the Fair Labor Standards Act  
17 (“FLSA”) (29 U.S.C. § 201, et seq.).

18 The present settlement also seeks to resolve the claims alleged by Plaintiff  
19 Ulbrich in his PAGA action filed against Defendants on November 18, 2021 (Case No.  
20 21STV42580). Plaintiff Pena filed a notice of related case on December 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, a copy of which was attached to the Declaration of Alan Harris  
25 filed June 15, 2022 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 Joint Stipulation and Settlement of Class, Collective, and  
4 Representative Action (Settlement Agreement) attached to the Declaration of Alan  
5 Harris in Support of Continued Motion for Preliminary Approval filed September 29,  
6 2022 as Exhibit 1. All references below are to that agreement.

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

11 On February 8, 2023, the Court issued its order granting preliminary approval of  
12 the settlement. Notice was given to the Class Members as ordered (see Declaration of  
13 Tarus Dancy). Now before the Court is Plaintiffs’ motion for final approval of the  
14 Settlement Agreement, including for payment of fees, costs, and a service award to the  
15 named plaintiffs. For the reasons set forth below, the Court grants final approval of the  
16 settlement.

17  
18 **II. THE TERMS OF THE SETTLEMENT**

19  
20 **A. SETTLEMENT CLASS DEFINITION**

21 “Class Member(s)” or “Settlement Class” means all persons paid compensation  
22 (directly or through a loan-out entity) on account of services provided for Defendant in  
23 the production of Motion Pictures, as defined by California Labor Code § 201.5 from  
24 October 24, 2016 through the preliminary approval of this settlement. (§I.11)  
25

1 “Class Period” or “Settlement Period.” The Class Period will begin on October  
2 24, 2016, and end on the date the Court enters an order preliminarily approving the  
3 Parties’ Settlement. (¶I.14)

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

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

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

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

19  
20 **B. THE MONETARY TERMS OF SETTLEMENT**

21 The essential monetary terms are as follows:

- 22 • The Class Settlement Amount is **\$600,000** (¶I.17). This includes payment of a  
23 PAGA penalty of **\$40,000** to be paid 75% to the LWDA (\$30,000) and 25% to  
24 PAGA Members (\$10,000) (¶I.36).
- 25 • The Net Settlement Amount (“Net”) (**\$302,500**) is the GSA less:

3  
2  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- Up to **\$200,000** (33 1/3%) for attorney fees (§II.4);
  - Up to **\$15,000** for attorney costs (*Ibid.*);
  - Up to **\$22,500 [\$7,500 each]** for service awards to the proposed class representatives (§II.16); and
  - Estimated **\$15,000** for settlement administration costs (§II.5).
- Employer-side payroll taxes will be paid by Defendant in addition to the Gross Settlement Amount (§II.17).
  - Assuming the Court approves all maximum requested deductions, approximately \$308,437 will be available for automatic distribution to participating class members. Assuming full participation, the average settlement share will be approximately \$430.17. ( $\$308,437 \text{ Net} \div 717 \text{ class members} = \$430.17$ ). In addition, each PAGA Member will receive a portion of the PAGA penalty, estimated to be \$35.21 per PAGA Member. ( $\$10,000 \text{ or } 25\% \text{ of } \$40,000 \text{ PAGA penalty} \div 284 \text{ PAGA Members} = \$35.21$ ).
  - There is no Claim Requirement (§III.1).
  - The settlement is not reversionary (§II.17).
  - Individual Settlement Share Calculation: Defendant will provide the Settlement Administrator with the total number of Pay Periods for each Participating Class Member. Defendant will also provide the total aggregated number of Pay Periods worked by all Participating Class Members during the Class Period. The amount that each Participating Class Member will be eligible to receive will be calculated by dividing each participating Class Member's individual Pay Periods by the total Pay Periods of all Participating Class Members and multiplying the resulting fraction by the Net Settlement Amount. (§IX.1.a)

- 1           ○ PAGA Payments: The amount that each PAGA Member will receive will  
2           be calculated by dividing each participating PAGA Member's individual  
3           Pay Periods by the total Pay Periods of all PAGA Members, and  
4           multiplying the resulting fraction by the 25% share of the PAGA  
5           Penalties designated for distribution to the PAGA Members. PAGA  
6           Members shall receive this portion of their Individual Settlement Payment  
7           regardless of whether they request to be excluded from the participation  
8           regarding the class claims. (§IX.1.b)
- 9           ○ The Individual Settlement Payments estimate indicated on the Notice are  
10           subject to change, depending on factors including how many Class  
11           Members become Excluded Class Members (resulting in their Individual  
12           Pay Periods being removed from the final Class Pay Periods, thereby  
13           increasing the final weekly settlement amount). (§IX.1.c)
- 14          • Tax Withholdings: Each Participating Class Member's Individual Settlement  
15           Payment will be allocated: 20% for wages, 40% for interest and 40% for  
16           penalties. (§XIV)
- 17          • Funding of Settlement: Within thirty (30) calendar days after the Effective Date  
18           of the Settlement, Defendant will make a deposit of the Class Settlement  
19           Amount into a Qualified Settlement Account to be established by the Settlement  
20           Administrator. (§III.4)
- 21          • Distribution: After receipt of the Class Settlement Amount, the Settlement  
22           Administrator will then issue payments within fourteen (14) calendar days to: (a)  
23           Participating Class Members/PAGA Members; (b) Named Plaintiffs' Class  
24           Representative Incentive Awards; (c) the Labor and Workforce Development  
25           Agency for the 75% portion of the PAGA Payment; (d) Class Counsel; and (e)

1 the Settlement Administrator will also issue a payment to itself for Court-  
2 approved services performed in connection with the Settlement. (§III.4)

- 3 • **Uncashed Settlement Payment Checks:** Any checks issued by the Claims  
4 Administrator to Participating Class Members will be negotiable for at least one  
5 hundred eighty (180) calendar days. Those funds represented by settlement  
6 checks returned as undeliverable and those settlement checks remaining  
7 uncashed for more than one hundred eighty (180) calendar days after issuance  
8 shall be forwarded to the Controller of the State of California pursuant to the  
9 Unclaimed Property Law, California Civil Code § 1500, et seq., to be held in  
10 trust for those Participating Class Members and PAGA Members who did not  
11 timely cash their Settlement checks. (§XIII.3)

12  
13 **C. TERMS OF RELEASES**

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

1 Settlement Class Member with respect to the Released Claims, except as  
2 expressly provided. (§XVI.2)

- 3 • “Released Claims.” This term is defined as follows: Following the Effective  
4 Date, and upon Defendant fully funding the Class Settlement Amount, all Class  
5 Members shall fully and finally release Released Parties of the Released Claims  
6 for the Class Period. The Released Claims include any and all claims, wage and  
7 hour claims, rights, demands, liabilities and causes of action of any nature or  
8 description arising from the facts and claims asserted in the Operative  
9 Complaint, as amended, and/or that could have been asserted based on the facts  
10 alleged in the Operative Complaint, as amended, against Defendant, including  
11 without limitation, statutory, constitutional, contractual or common law claims  
12 for wages, damages, unpaid costs, penalties, liquidated damages, interest,  
13 attorneys’ fees, litigation costs, restitution, equitable relief or other relief under  
14 Business & Professions Code § 17200, et seq., based on the following  
15 categories: (a) any and all claims involving any alleged failure to pay the  
16 minimum wages required by federal, state or local law, including prevailing  
17 wages; (b) any and all claims arising under federal, state or local law involving  
18 any alleged failure to pay for all hours worked, including but not limited to any  
19 claim for minimum, straight time, overtime, or double time wages; (c) any and  
20 all claims arising under federal, state or local law involving any alleged failure to  
21 pay straight time, overtime or double time wages, including but not limited to  
22 any claim involving “off the clock” work, and any claim involving Defendant’s  
23 workday or workweek, and any claim involving failure to include shift  
24 differentials, bonuses, other incentive pay, or compensation of any kind in the  
25 “regular rate” of pay; (d) any and all claims arising under federal, state or local



1 law involving any alleged failure to properly provide meal periods and/or  
2 authorize and permit rest periods, to pay premiums for missed, late, short or  
3 interrupted meal and/or rest periods, or to pay such premiums at the regular rate  
4 of compensation required by Labor Code § 226.7; (e) any and all claims arising  
5 under federal, state or local law involving any alleged failure to keep accurate  
6 records or to issue proper wage statements; (f) any and all claims arising under  
7 federal, state or local law involving any alleged failure to timely pay wages,  
8 including but not limited to any claim that Defendant violated Labor Code §§  
9 201 or 202, and any claim for waiting time penalties under Labor Code § 203;  
10 (g) any and all claims arising under federal, state or local law involving any  
11 alleged failure to reimburse for necessary business expenses, including under  
12 Labor Code §§2800 or 2802; (h) any and all claims for unfair business practices  
13 in violation of California Business and Professions Code sections 17200, et seq.;  
14 and (i) any and all penalties pursuant to the Private Attorneys General Act  
15 (“PAGA”) of 2004 (collectively, the “Released Claims”). (¶I.44)

- 16 ○ The Released Claims include all such claims arising under the California  
17 Labor Code (including, but not limited to, sections 201, 201.3, 201.5, 202,  
18 203, 204, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 226.8, 227.3,  
19 246, 256, 510, 511, 512, 515, 516, 551, 552, 558, 558.1, 1174, 1174.5,  
20 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1198.5, 1199, 1770 et  
21 seq., 2800, 2802, 2810.5, 2698 et seq., and 2699 et seq.); the Wage  
22 Orders of the California Industrial Welfare Commission; California  
23 Business and Professions Code section 17200 et seq.; the California Civil  
24 Code, to include but not be limited to claims under § 3336; the California  
25

1 common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201  
2 et seq.; and federal common law. (*Ibid.*)

- 3 ○ Participating Class Members who negotiate or otherwise deposit their  
4 Settlement Payment Check will be deemed to have opted into the Action  
5 for purposes of the Fair Labor Standards Act (“FLSA”) and as to those  
6 Class Members they expressly waive and release any FLSA claims  
7 arising during the Class Period and reasonably related to the claims and  
8 allegations in the Operative Complaint, as amended. This release excludes  
9 the release of claims not permitted by law. The following language will  
10 be printed on the reverse of each Settlement Payment Check, or words to  
11 this effect: “By endorsing or otherwise negotiating this check, I  
12 acknowledge that I read, understood, and agree to the terms set forth in  
13 the Notice of Class Action Settlement and I consent to join in the Fair  
14 Labor Standards Act (“FLSA”) portion of the Action, elect to participate  
15 in the settlement of the FLSA claims, and agree to release all of my FLSA  
16 claims that are covered by the Settlement.” (*Ibid.*)
- 17 ○ It is the intent of the Parties that the judgment entered by the Court upon  
18 final approval of the Settlement shall have res judicata effect and be final  
19 and binding upon Plaintiff and all Class Members who have not expressly  
20 requested to be excluded from of the Settlement. Participating Class  
21 Members do not release any other claims, including claims for vested  
22 benefits, wrongful termination, violation of the FEHA, unemployment  
23 insurance, disability, social security, workers’ compensation, or claims  
24 based on facts occurring outside the Class Period. (*Ibid.*)

- 1           ○ In addition to the releases given above, PAGA Members release Released  
2           Parties, from all claims for PAGA penalties that were alleged, or  
3           reasonably could have been alleged, based on the PAGA Period facts  
4           contained in Plaintiffs’ notices to the LWDA and the Operative  
5           Complaint. (*Ibid.*)
- 6           ○ This release shall apply to claims arising during the Class Period. (*Ibid.*)
- 7           ○ The Second Amended Complaint is the operative complaint in the Action  
8           (the “Operative Complaint”). (¶II.1)
- 9           ● “Released Parties.” The Released Parties include Ayzenberg Group, Inc., Eric  
10          Ayzenberg, Adriane Zaduke, and Kristen Vaik Vazquez as named by Named  
11          Plaintiffs in the Operative Complaint, as amended, and Ayzenberg Group, Inc.’s  
12          past, present and/or future, direct and/or indirect, parents, subsidiaries, equity  
13          sponsors, related companies/corporations and/or partnerships (defined as a  
14          company/ corporation and/or partnership that is, directly or indirectly, under  
15          common control with Defendant or any of its parents), divisions, assigns,  
16          predecessors, successors, insurers, consultants, joint venturers, joint employers,  
17          affiliates, alter-egos, any entity with potential joint liability, employee benefit  
18          plans, and fiduciaries thereof, and all of their respective directors, officers,  
19          agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service  
20          providers, and assigns. (¶I.45)
- 21          ● The named Plaintiffs will also each provide a general release and a waiver of the  
22          protections of Cal. Civ. Code §1542 in separate stand-alone agreements.  
23          (¶XVI.3) Class Counsel represents that these General Release Agreements do  
24          not require the payment of additional sums to Plaintiffs. (Decl. of Harris filed  
25          September 29, 2022 at 8:3-11, Exhibit 3 thereto.)

- 70730521
- 1 • The releases are effective following the Effective Date and after Defendant fully  
2 funds the Class Settlement Amount, which will occur within thirty (30) calendar  
3 days after the Effective Date (§III.4)  
4

5 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

6 “Before final approval, the court must conduct an inquiry into the fairness of the  
7 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the  
8 settlement agreement after the final approval hearing, the court must make and enter  
9 judgment. The judgment must include a provision for the retention of the court’s  
10 jurisdiction over the parties to enforce the terms of the judgment. The court may not  
11 enter an order dismissing the action at the same time as, or after, entry of judgment.”  
12 Cal. Rules of Court, rule 3.769(h).

13 As discussed more fully in the Order conditionally approving the settlement, “[i]n  
14 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to  
15 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class  
16 action. The purpose of the requirement [of court review] is the protection of those class  
17 members, including the named plaintiffs, whose rights may not have been given due  
18 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*  
19 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks  
20 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245  
21 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*  
22 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the  
23 extent necessary to reach a reasoned judgment that the agreement is not the product of  
24 fraud or overreaching by, or collusion between, the negotiating parties, and that the  
25

1 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal  
2 quotation marks omitted].

3 “The burden is on the proponent of the settlement to show that it is fair and  
4 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is  
5 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to  
6 allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
7 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91  
8 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,  
9 1802. Notwithstanding an initial presumption of fairness, “the court should not give  
10 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th  
11 116, 130. “Rather, to protect the interests of absent class members, the court must  
12 independently and objectively analyze the evidence and circumstances before it in order  
13 to determine whether the settlement is in the best interests of those whose claims will be  
14 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In  
15 that determination, the court should consider factors such as “the strength of plaintiffs'  
16 case, the risk, expense, complexity and likely duration of further litigation, the risk of  
17 maintaining class action status through trial, the amount offered in settlement, the extent  
18 of discovery completed and stage of the proceedings, the experience and views of  
19 counsel, the presence of a governmental participant, and the reaction of the class  
20 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and  
21 the court is free to engage in a balancing and weighing of factors depending on the  
22 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

23 **A. A PRESUMPTION OF FAIRNESS EXISTS**

24 The Court preliminarily found in its Order of February 8, 2023 that the  
25 presumption of fairness should be applied. No facts have come to the Court’s attention

1 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a  
2 presumption of fairness as set forth in the preliminary approval order.

3  
4 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

5 The settlement was preliminarily found to be fair, adequate and reasonable.

6 Notice has now been given to the Class and the LWDA. The notice process resulted in  
7 the following:

8 Number of class members: 717

9 Number of notices mailed: 717

10 Number of undeliverable notices: 31

11 Number of opt-outs: 0

12 Number of objections: 0

13 Number of participating class members: **717**

14 (Declaration of Tarus Dancy (“Dancy Decl.”) ¶¶3-10.)

15 The Court finds that the notice was given as directed and conforms to due process  
16 requirements. Given the reactions of the Class Members and the LWDA to the proposed  
17 settlement and for the reasons set for in the Preliminary Approval order, the settlement is  
18 found to be fair, adequate, and reasonable.

19 **C. CLASS CERTIFICATION IS PROPER**

20 For the reasons set forth in the preliminary approval order, certification of the  
21 Class for purposes of settlement is appropriate.

22 **D. ATTORNEY FEES AND COSTS**

23 Class Counsel requests **\$200,000** (33 1/3%) for attorney fees and **\$14,063** for  
24 costs. (Motion for Attorneys’ Fees at 10:10-21, 13:13-15.)

1 Courts have an independent responsibility to review an attorney fee provision and  
2 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*  
3 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is  
4 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,  
5 503.

6 In the instant case, fees are sought pursuant to the percentage method, as cross-  
7 checked by lodestar. (Motion for Attorneys' Fees at pp. 2-13.) The \$200,000 fee request  
8 is one-third of the Class Settlement Amount.

9 A lodestar is calculated by multiplying the number of hours reasonably expended  
10 by the reasonably hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,  
11 1095-1096 (*PLCM*). "Generally, '[t]he lodestar is calculated using the reasonable rate  
12 for comparable legal services in *the local community* for noncontingent litigation of the  
13 same type, multiplied by the reasonable number of hours spent on the case.' "

14 *Environmental Protection Information Center v. Dept. of Forestry & Fire Protection*  
15 (2010) 190 Cal.App.4th 217, 248, quoting *Nichols v. City of Taft* (2007) 155  
16 Cal.App.4th 1233, 1242-1243.

17 As to the reasonableness of the rate and hours charged, trial courts consider  
18 factors such as "the nature of the litigation, its difficulty, the amount involved, the skill  
19 required in its handling, the skill employed, the attention given, the success or failure,  
20 and other circumstances." *PLCM, supra*, 22 Cal.4th at p. 1096. "The evidence should  
21 allow the court to consider whether the case was overstaffed, how much time the  
22 attorneys spent on particular claims, and whether the hours were reasonably expended."  
23 *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320.

24 Here, attorney Harris represents that five attorneys and a paraprofessional at his  
25 firm spent a total of 372.8 hours on this action. (Harris Decl. ISO Final ¶24.) At hourly

70730671

1 rates starting at \$210 for the paraprofessional and \$650 to \$890 for the attorneys, counsel  
2 incurred a lodestar of \$284,793. (*Ibid.*) The lodestar implies a multiplier of 0.70 to reach  
3 the requested fees.

4 Attorney Harris represents that his firm’s hourly rates have been approved by  
5 other courts in California, citing one case for a settlement granted final approval in  
6 Alameda County. (*Id.* at ¶26.) He further “requests judicial notice” of several attached  
7 orders showing that his firm was granted final approval of settlements in the Los Angeles  
8 Superior Court (*id.* at ¶¶27-29, Exhibits 6-10), though no separate motion requesting  
9 judicial notice of those documents was filed or served. See CRC Rule 8.252(a)(1). The  
10 attached orders show the fee award that Harris’s firm was granted in settlements of five  
11 cases from 2017 and 2022, though only three of the orders attached (Exhibits 6, 9, 10)  
12 specify the percentage of the settlement amount that counsel was awarded a fee for (25%  
13 in one case, 33 1/3% in two others). (*Id.*) Harris further contends that his requested rates  
14 are within the range of rates approved by both this Court and the Central District for  
15 complex class actions, including wage-and-hour actions. (*Id.* at ¶¶30-31.)

16 In addition, counsel argues in the fee motion that the case presented novel and  
17 complex issues, “more so than most wage and hour cases” ... “because of the paucity of  
18 legal authority addressing Labor code 226(a)(6) for day players in the motion picture  
19 industry, this case was more complex and challenging than any other wage and hour class  
20 litigation.” (Motion for Attorneys’ Fees at 11:5-12.) The specific novel or complex  
21 issues that counsel faced are not specified, nor exactly what made this particular wage  
22 and hour action more challenging in regard to Labor Code 226(a)(6) as a result of the  
23 supposed paucity of legal authority. Also, counsel asserts that the case had a “broad  
24 impact” on the public, but further argues that Plaintiffs’ litigation “vindicated the



1 hundreds of workers' rights under California labor law" without specifying what may  
2 have differentiated it from any other wage and hour class action. (*Id.* at 12:21-13:3.)

3         Nonetheless, the **\$200,000** fee request represents a reasonable percentage of the  
4 total funds paid by Defendant. Further, the notice expressly advised class members of  
5 the fee request, and no one objected. (Dancy Decl. ¶6, Exhibit A thereto.) Accordingly,  
6 the Court awards fees in the amount of **\$200,000**.

7         Class Counsel requests **\$14,063** in costs. This is less than the \$15,000 cap  
8 provided in the settlement agreement (¶I.4). The amount was disclosed to Class  
9 Members in the Notice, and no objections were received. (Dancy Decl. ¶6, Exhibit A  
10 thereto.) Costs include: Mediation (\$5,450), Expert (\$3,685.50), and Filing Fees  
11 (\$2,590.28). (Harris Decl. ISO Final, Exhibits 3-4.)

12         The costs appear to be reasonable and necessary to the litigation, are reasonable  
13 in amount, and were not objected to by the class.

14         For all of the foregoing reasons, costs of **\$14,063** are approved.

15         **E. SERVICE AWARDS TO CLASS REPRESENTATIVES**

16         Service awards are established in California and the Ninth Circuit in class  
17 actions. *See Cellphone Termination Fee Case* (2010), 186 Cal.App.4th 1380, 1393-  
18 1394 (noting the "scholarly debate about the propriety of individual awards to named  
19 plaintiffs" and the "surprising dearth of California authority directly addressing this  
20 question"); *In re Apple Device Litigation* (9<sup>th</sup> Cir. 2022) 50 F. 4<sup>th</sup> 769, 785; *Roes, 1-2 v.*  
21 *SFBSC Mgmt., LLC* (9<sup>th</sup> Cir. 2019) 944 F.3d 1035, 1057 (reasonable incentive  
22 awards are permitted to compensate class representatives for work on behalf of the class  
23 and financial or reputational risk undertaken in bringing the action).

1           Their apparent purpose is to reimburse actual expenses or where the market would  
2 not otherwise produce a plaintiff. *In Re Continental Securities Litigation* (7<sup>th</sup> Cir. 1992)  
3 962 F. 2d 566, 571-572. There is some question as to their continuing viability.  
4 *See Johnson v. NPAS Solutions* (11th Cir. 2020) 975 F.3d 1244; *Fikes Wholesale, Inc. v.*  
5 *Visa U.S.A., Inc.* (2d Cir. 2023) 62 F.4th 704 (Concurring opinions). However, under  
6 existing California and Ninth Circuit authority they are permitted where there is a  
7 showing of the time and effort expended by the individual and a reasoned explanation of  
8 financial or other risks undertaken by the class representative. *See Clark v. American*  
9 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone*  
10 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [“Criteria courts may  
11 consider in determining whether to make an incentive award include: (1) the risk to the  
12 class representative in commencing suit, both financial and otherwise; (2) the notoriety  
13 and personal difficulties encountered by the class representative; (3) the amount of time  
14 and effort spent by the class representative; (4) the duration of the litigation and; (5) the  
15 personal benefit (or lack thereof) enjoyed by the class representative as a result of the  
16 litigation. (Citations.)”]. Although no amount is set, in the Ninth Circuit many courts  
17 have found \$5,000 presumptively reasonable. *See Morrison v. Am. Nat’l Red*  
18 *Cross* (N.D.Cal. Jan. 8, 2021, No. 19-cv-02855-HSG) 2021 U.S.Dist.LEXIS 4043, at \*24  
19 (citing cases).

20           In determining the reasonableness of a requested incentive award, some courts  
21 have considered, among other factors, the proportionality between the incentive award  
22 requested and the average class member's recovery. *Id.* In addition, a service award is  
23 not additional consideration for a release of additional claims. *See Grady v. RCM Techs.,*  
24 *Inc.* (C.D.Cal. May 2, 2023, No. 5:22-cv-00842 JLS-SHK) 2023 U.S.Dist.LEXIS 84145,  
25 at \*24-32 and cases cited therein.

1 Incentive awards are not proper in PAGA only cases. The Legislature has  
2 specifically determined how PAGA awards are to be distributed: “75 percent to the Labor  
3 and Workforce Development Agency for enforcement of labor laws . . . and 25 percent to  
4 the aggrieved employees.” Labor Code § 2699, subd. (i). The 25 percent awarded to  
5 employees is the incentive to bring the action. *Huff v. Securitas Security Services USA,*  
6 *Inc.*(2018) 23 Cal.App.5th 745, 760 (“Since the Legislature sought to give individual  
7 employees an incentive to enforce labor laws in place of understaffed state agencies, it  
8 provided for some of the penalties to be paid to the plaintiff employees.”). That incentive  
9 is supplemented by the statutory right to recover reasonable attorneys’ fees. Labor Code  
10 § 2699, subd. (g). In light of this express legislative directive, the various policies that  
11 may support judicially sanctioned incentive awards in class and other types of qui tam  
12 actions (see e.g. *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-  
13 1395) do not apply to PAGA actions

14 Here, the Class Representatives request enhancement awards of **\$7,500 each**,  
15 totaling **\$22,500**. (Motion for Attorneys’ Fees at 13:17-19.) They urge that the awards  
16 are appropriate for the following reasons:

17 Plaintiff Pena represents that his contributions to this action include: gathering  
18 information and documents, reviewing the facts of the case with his counsel, having  
19 phone calls with his counsel throughout the proceedings, assisting his counsel regarding  
20 informal discovery, analyzing and providing data, and reviewing the settlement. He  
21 estimates spending at least 20 hours on the case. He contends that he took a risk of  
22 being responsible for the opposing parties’ costs, from which the Court infers that his fee  
23 agreement with counsel made him personally liable for potential costs. He indicates he  
24 is giving a general release but does not show he has any claims to release. (Declaration  
25 of Thomas Pena ISO Final ¶11-15.)

1 In a virtually duplicative Declaration plaintiff Ramsey similarly represents that  
2 his contributions to this action include: gathering information and documents, reviewing  
3 the facts of the case with his counsel, having phone calls with his counsel throughout the  
4 proceedings, assisting his counsel regarding informal discovery, analyzing and providing  
5 data, and reviewing the settlement. He estimates spending at least 15 hours on the case.  
6 He too indicates he is personally liable for costs and is giving a general release  
7 (Declaration of Mark Ramsey ISO Final ¶11-15.)

8 Finally, Plaintiff Ulbrich represents that his contributions to this action include:  
9 gathering information and documents, reviewing the facts of the case with his counsel,  
10 having phone calls with his counsel throughout the proceedings, assisting his counsel  
11 regarding informal discovery, analyzing and providing data, and reviewing the  
12 settlement. He estimates spending at least 15 hours on the case. (Declaration of Eric  
13 Ulbrich ISO Final ¶11-13.) He does not contend he is giving a release nor does he  
14 indicate he is responsible for costs. It appears Ulbrich brought only PAGA claims and  
15 was joined in this action so as to resolve those claims.

16 The amounts requested are well in excess of that which can be approved,  
17 particularly given the average amount payable to class members (\$430.17). None of the  
18 plaintiffs participated in formal discovery, attended the mediation, or are shown to have  
19 significantly added to the outcome of the case. A \$4,000 service award to each Plaintiff  
20 is reasonable and approved.

21 **F. SETTLEMENT ADMINISTRATION COSTS**

22 The Settlement Administrator, CPT Group, Inc., requests \$15,000 in  
23 compensation for its work in administrating this case. (Dancy Decl. ¶11.) At the time of  
24 preliminary approval, costs of settlement administration were estimated at \$15,000  
25

1 (¶I.5). Class Members were provided with notice of this amount and did not object.  
2 (Dancy Decl. ¶6, Exhibit A thereto.)

3 Accordingly, settlement administration costs are approved in the amount of  
4 **\$15,000.**

5  
6 **IV. CONCLUSION AND ORDER**

7 The Court hereby:

- 8 (1) Grants class certification for purposes of settlement;  
9 (2) Grants final approval of the settlement as fair, adequate, and reasonable;  
10 (3) Awards **\$200,000** in attorney fees to Class Counsel, Harris & Ruble;  
11 (4) Awards **\$14,063** in litigation costs to Class Counsel;  
12 (5) Approves payment of **\$30,000** (75% of \$40,000 PAGA penalty) to the LWDA;  
13 (6) Awards **\$4,000 each** as Class Representative Service Awards to Thomas Pena,  
14 Eric Ulbrich and Mark Ramsey;  
15 (7) Awards **\$15,000** in settlement administration costs to CPT Group, Inc.;  
16 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling  
17 and containing the class definition, full release language, and a statement that no  
18 class members opted out by 6/28/2023;  
19 (9) Orders class counsel to provide notice to the class members pursuant to  
20 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor  
21 Code §2699 (l)(3); and  
22 (10) Sets a Non-Appearance Case Review re: Final Report re: Distribution of  
23 Settlement Funds for 3/5/2024, at 9:00 a.m.  
24  
25

1 Final Report is to be filed by

2 2/28/24

3  
4  
5 Dated: 4/20/23

Maren E. Nelson

6 MAREN E. NELSON

7 Judge of the Superior Court

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25