PARTIES/ATTORNEYS

Plaintiff	Elias Talamantes	Ronald H. Bae Olivia D. Scharrer Carson M. Turner AEQUITAS LEGAL GROUP
Defendant	Pacific Petroleum California, Inc.	Gary W. Bethel Andrew H. Woo LITTLER MENDELSON, P.C.

This is a class action. On May 12, 2023, plaintiff filed his complaint alleging the following causes of action based on wage and hour violations: (1) Violation of California Labor Code §§ 510, 1194, and 1198 (Failure to Pay Regular and Overtime Wages); (2) Violation of California Labor Code §§ 510, 1771, 1774, 1194, 1811, and 1815 (Failure to Pay Prevailing Wages on Public Works Projects); (3) Violation of California Labor Code §§ 226.7 and 512(a) (Failure to Provide Compliant Meal Periods or Pay Premium Compensation in Lieu Thereof); (4) Violation of California Labor Code § 226.7 (Failure to Provide Compliant Rest Periods or Pay Premium Compensation in Lieu Thereof); (5) Violation of California Labor Code §§ 201 – 203 (Failure to Pay Wages Timely Upon Termination); (6) Violation of California Labor Code § 204 (Failure to Pay Wages Timely During Employment; (7) Violation of California Labor Code § 226(a) (Failure to Provide Accurate Itemized Wage Statements); (8) Violation of California Business & Professions Code §§ 17200, et seq.; and (9) Penalties pursuant to California Labor Code §§ 2698, et seq. (Private Attorneys General Act).

On Calendar

Plaintiff seeks Preliminary Approval of a $650,000 class action settlement for approximately 251 current and former employees from May 12, 2019 through the date of entry of Preliminary Approval, except for employees that Defendant classified as drivers.

Settlement Details

The class is defined as:

> All non-exempt employees who have been employed by Defendants in the State of California [from May 12, 2019] and the [preliminary approval], except for employees that Defendant classified as drivers.

(Settlement Agreement attached to Bae Decl. as Exh. A, ¶¶ 1.5, 1.12 [Settlement Agreement].)

It is expected there will be 251 members of the class. The gross settlement of $650,000 will be paid into a common fund. The fund will be reduced as follows:

Gross Settlement Amount	$650,000
Class Counsel Fees	$216,666
Class Counsel Expenses	$ 20,000
PAGA Allocation LWDA	$ 48,750
PAGA Allocation to Aggrieved Employees	$ 16,250
Settlement Administration Costs	$ 9,000
Plaintiffs Service Award	$ 10,000
Net Class Settlement Amount	$329,334

The amount of the Settlement Share to be paid to each Participating Class Member will be apportioned based on the number of workweeks worked by each of the Participating Class Members. The estimated 251 Class Members will achieve monetary recovery amounting to an average recovery per class member of approximately $1,312.09 net.

More specifically, each participating class member shall receive "An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks." (Settlement Agreement, ¶ 3.2.4.)

The gross settlement amount is non-reversionary. (Settlement Agreement, ¶ 3.1.)

Settlement Discussion

1. General Standards for Approval of a Class Action Settlement

Review of a proposed class action settlement typically involves a two-step process: preliminary approval and a subsequent final approval hearing. (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118—"Rule 3.769 of the California Rules of Court [CRC] sets forth the procedures for settlement of class actions in California.")

Procedurally, a party must move for "preliminary approval of the settlement." (CRC 3.769(c).) After the hearing, the court makes an order approving or denying

"certification of a provisional settlement class." (CRC 3.769(d).) If the court grants preliminary approval, it must set a final approval hearing, and provide for notice to be given to the class. (CRC 3.769(e).) "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (CRC 3.769(f).) At the final approval hearing, "the court must conduct an inquiry into the fairness of the proposed settlement." (CRC 3.769(g).) If the court approves the settlement agreement, it enters judgment accordingly. (CRC 3.769(h).) (See *Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.)

The first step is for the court to review the proposed terms of the settlement at a preliminary hearing and make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms. (CRC 3.769(c); see also Manual for Complex Litigation, (Federal Judicial Center 4th ed. 2021), § 21.632.)[1] The preliminary evaluation requires the court to address two competing concerns: (1) On the one hand, given that the court would have the opportunity to weigh the settlement's strengths and weaknesses with more information at the final approval hearing, the preliminary approval hearing did not need to substitute for that level of review; (2) On the other hand, sending notice to the class costs money and triggers the need for class members to consider the settlement, actions which are wasteful if the proposed settlement is obviously deficient from the outset. (Newberg on Class Actions, Class Actions in State Courts, Preliminary Approval (4th Ed. 2002) § 13:10; see *In re Traffic Executive Association–Eastern Railroads* (2d Cir.1980) 627 F.2d 631, 634.) "The judge should raise questions at the preliminary hearing and perhaps seek an independent review if there are reservations about the settlement, such as unduly preferential treatment of class representatives or segments of the class, inadequate compensation or harms to the classes, the need for subclasses, or excessive compensation for attorneys." (Manual for Complex Litigation, supra, § 21.632.)

Precertification settlements in class actions should be scrutinized carefully. (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 743.) This is accomplished through careful review by the trial court, and precertification settlements are routinely approved where they are found fair, adequate and reasonable. (*Ibid*; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240.)

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[1] The Manual for Complex Litigation is widely relied upon by federal judges as well as practitioners regarding the organization and administration of class actions and other complex litigation matters. (*Parris v. Superior Court* (2003) 109 Cal.App.4th 285, 298.) The Manual does not have the force of law, but in federal court it does "provide a rough guide by which to measure whether the trial judge acted within his discretion." (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir.1979) 594 F.2d 1106, 1124, fn. 22.) The court relies on it here for its useful description of the relative scope of the preliminary approval and final approval process for class settlements.

The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801 (*Dunk*).) This list "is not exhaustive and should be tailored to each case." (*Dunk*, at p. 1801.) "[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk*, at p. 1802.)

This is only an initial presumption; a trial court's ultimate approval of a class action settlement will be vacated if the court "is not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." In short, the trial court may not determine the adequacy of a class action settlement "without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.)

The court undoubtedly gives considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. While an agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections, in the final analysis it is the court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement. (*Munoz, supra*, 186 Cal.App.4th at p. 408, fn. 6.)

With these standards in mind, the court must determine whether there are preliminary matters that must be resolved; whether the settlement agreement is fair, adequate, reasonable; whether preliminary certification of the class is appropriate; whether the proposed procedures appear sound; whether attorney's

fees, costs, and settlement administrator and its costs are appropriate; and whether any class representative enhancement as requested is justified

2. Is the Class Action Settlement Fair, Adequate and Reasonable?

a. Factors Favoring Presumption of Fairness

As noted, a presumption of fairness exists where the settlement is reached through arm's length bargaining; investigation and discovery are sufficient to allow counsel and the court to act intelligently; counsel is experienced in similar litigation; and the percentage of objectors is small. (*Dunk, supra*, at p. 1802.)

Here, private mediation occurred with Tripper Ortman on December 4, 2023, which principally resolved the matter. (Bae Decl., ¶ 19.) The Parties continued settlement negotiations over the next several months and were able to reach a resolution. (Bae Decl., ¶ 19.*)*

The Parties engaged in informal discovery before the first mediation. (Bae Decl, ¶ 12.) Defendant produced Plaintiff's personnel file, time records, and payroll records; a sampling of the putative class members' names and contact information; Defendant's employee handbook; an exemplar arbitration agreement, which Defendant contends some of the putative class members signed; and PDF payroll records and Excel payroll data for 25% of the putative class members from 2019 through 2023. (Bae Decl., ¶ 13.) Plaintiff's counsel also obtained and analyzed over 2,500 pages of timesheets for approximately 30% of the putative class members from 2019 through 2023. (Bae, ¶ 14.)

Plaintiff's counsel, Ronald Bae, demonstrates that he and his team are experienced in wage-and-hour litigation and has successfully represented plaintiffs in numerous class actions. (Bae Decl., ¶¶ 38-44.)

Finally, the court must consider the reaction of the class members to the proposed settlement. As this is a request for preliminary approval, there has been no opportunity for the proposed class members to react.

These factors favor the presumption of fairness.

b. Strength of the Case

The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement. While the court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case," it must eschew any rubber stamp approval in favor of an independent evaluation. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*

(2010) 186 Cal.App.4th 399, 407-408 (*Munoz*).) To perform this balance, the trial court must have "a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.' " (*Munoz, supra,* at p. 409; see *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 801; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.) While an express statement of the maximum amount is not required, there must be a record that is sufficiently developed to allow the court to understand the amount in controversy and the realistic ranges of outcomes of the litigation. (See *Munoz, supra*, 186 Cal.App.4th at p. 409.)

The following represents the value of each of the class claims, as reported in the Bae Declaration, paragraphs 25-33.

Claim	**Max. Estimated Exposure**	**Realistic Exposure**
Unpaid Wage Claim	$ 419,998.60	$ 204,749.32
Meal Break Claim	$ 1,259,995.80	$ 377,988.74
Rest Break Claim	$ 1,259,995.80	$ 377,998.74
Waiting Time Penalties	$ 856,800	$ 359,856.00
Wage Statement Claim	$ 700,000	$ 294,000.00
Totals	$4,496,790.20	$ 1,949,902.80

Based on this information, the gross class settlement amount of $650,000 represents 14.5% of the maximum potential exposure and 33% of the realistic exposure. Attorney Bae has detailed defendants' position on these claims in his declaration at paragraphs 25-37.

" 'The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.' [Citation.]" (*7–Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1135,1150.) "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 246.) Class counsel is experienced and details the inherent risks of any continued litigation and the assessments appear reasonable. (*Clark, supra*, 175 Cal.App.4th at p. 801.)

3. Preliminary Certification of Class

Class action certification questions are essentially procedural, and involve an assessment of whether there is a common or general interest between numerous

people. The burden is on the proponent to show an ascertainable class with a well-defined community interest, meaning predominant commons question of law or fact, class representatives with claims or defenses typical of class, and class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

There has been a sufficient preliminary showing of numerosity, ascertainability, and predominance of commonality. The class is not inordinately large, during a defined class period, with names obtained through existing employment records. It appears the claims are sufficiently similar, subject to the same policies or practices, with similar job duties and universal formula. It also appears class representative have typical claims of the class as a whole. A class action appears the superior way to a fair and efficient adjudication of the lawsuit. Certification of the class seems appropriate.

4. Notice Procedures for the Claim Forms and Opt-Out

The class notice and claim form instructions are attached to Exhibit A of the Settlement Agreement. It properly details the nature of the lawsuit and identifies the proposed class. It provides the nature of the class claims and who may be eligible. It states that the parties have agreed to a settlement amount of $650,000.00.

The Notice discloses the proposed deductions that will come from the settlement amount. It explains the terms of the class action settlement, and notably how an individual class member's award will be calculated (i.e., based on the total number of workweeks they were employed by defendant). It indicates that class members need not do anything to be deemed part of the class, what this means, and the nature of the general release required. The notices also explain what the class member can do if he or she does not want to participate (opt out), or if they simply want to object. It explains the nature of the preliminary approval process, culminating in the final approval hearing. The notice also gives a contact number for questions, including plaintiff's class counsel. The procedures seem standard. The times frames discussed in the notices and implementation procedures outline in the order are appropriate. The Notice will be provided to each Class Member in English and Spanish.

5. Settlement Administrator Fees and Costs

The parties propose that the Court appoint Simpluris to serve as the Settlement Administrator. The bid from Simpluris is attached to the Bae Declaration as Exhibit 2. The Notice advises that the $9,000 will be deducted from the gross Settlement Amount to pay claims administration costs.

The costs appear reasonable.

6. Class Counsel's Request for Fees and Costs

Counsel asks the court to preliminary approve fees of up to $216,666.66 which is 33.3% of the Gross Settlement Amount of $650,000.00, along with litigation costs of up to $20,000. Attorney Bae simply characterizes the request as customary and states: "Plaintiff's counsel will provide more detailed information regarding the lodestar for the final approval hearing." (Bae Decl., ¶ 47.) He also states that he believes the requested ceiling for litigation costs is preliminarily reasonable. (Bae Decl., ¶ 48.)

In reviewing an attorney fee provision in a class action settlement agreement, the trial court has an independent duty to determine the reasonableness of the award. (*Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 128; *Dunk, supra,* 48 Cal.App.4th at p. 1801.) The percentage-of-fund method of calculating attorneys' fees is appropriate under California law. (*Laffitte v. Robert Half Int'l Inc.* (2016)1 Cal. 5th 480, 503–506.) Thus, under California law a court "may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id*. at 503.) In *Laffitte,* the California Supreme Court affirmed an attorneys' fee recovery for a wage-and-hour class action of one-third of a $19 million settlement fund and a lodestar cross-check that used a multiplier of between 2.03 and 2.13. (*Id*. at 495, 503–506.)

Here, counsel has preliminarily requested fees based on a percentage calculation. The court will preliminarily approve the request but will scrutinize it fully upon petition for final approval.

7. Enhancement for Class Representative

Class counsel asks for an enhancement for plaintiff of $10,000. It is established that a named plaintiff is eligible for reasonable incentive payments to compensate him or her for the expense or risk they have incurred in conferring benefit on other members of the class. (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Relevant factors include actions the plaintiff has taken to protect the interests of the class, the degree to which the class had benefited from those actions, the amount of time and effort the plaintiff has expended, the risk to the class representative of commencing suit, the notoriety and personal difficulties encountered by the class representative, the duration of the litigation, and the personal benefit enjoyed by the class representative. (*Clark, supra*, 175 Cal.App.4th at p. 804.) The rationale in the end is to compensate class representatives for the expense or risk they have incurred in conferring a benefit on other members of the class. (*Id*. at p. 806.)

Plaintiff has submitted a declaration in support of the request. He listed the tasks he performed as class representative (Talamantes Decl., ¶ 6) and states that he has "spent hours" communicating with his lawyers (Talamantes Decl., ¶ 7) and reviewing documents (*Id.).* He has not specified how many hours he has spent. Specificity, however, is required. (*Id.* at p. 807; *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1395 [these "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit].)

The court is willing to *preliminarily* approve an enhancement of *up to* $10,000. However, it expects more specificity from the plaintiff at the final approval hearing quantifying the actual time he spent on this matter.

8. General Standards for PAGA Settlement

Procedurally, section 2699, subdivision (l)(2) provides that the "the superior court shall review and approve any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (See also *Correia v. NB Baker Electric, Inc.* (2019) 32 Cal.App.5th 602, 615.) The proposed settlement was served on the LWDA. (Bae Decl., ¶ 50, Exh. 3.)

On the merits, the court's gatekeeping function in the class action context differs from its role in reviewing PAGA settlements. In class actions, courts have a fiduciary duty to protect the interests of absent class members, whose individual claims for wrongfulness will be discharged. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129 [court acts as guardian of rights of absentee class members].) A PAGA representative action, however, is "not akin to a class action"; it "is a species of *qui tam* action." When reviewing a PAGA settlement, courts do not consider the value of individuals' claims for damages because a PAGA settlement does not release those claims. (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73 87 [PAGA claims have no individual component]; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 197-198 [PAGA damages limited to civil penalties].) "The state's interest in such an action is to enforce its laws, not to recover damages on behalf of a particular individual." (*Huff, supra*, 23 Cal.App.5th at p. 760.) Instead of focusing on fair recovery for individual claims, the goal of PAGA enforcement is to achieve "maximum compliance with state labor laws." (*Huff*, at p. 756.)

That being said, "section 2699, subdivision (l)(2) requires the trial court to review and approve any PAGA settlement," and in so doing, the court "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.)

When evaluating the fairness, adequacy, and reasonableness of a PAGA penalty, courts compare the potential penalty amount (its verdict value, as some

courts refer to it) with the actual recovery under the settlement. (See *Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, 87, disapproved on other grounds by *Turrieta v. Lyft, Inc*. (August 1, 2024, S271721) ___ Cal.5th ____ [2024 WL 3611975].) There is no express or even baseline percentage of recovery required. Under the express terms of the PAGA, a verdict value is not guaranteed even if the plaintiff prevails, as courts have discretion to lower the amount of penalties based on the circumstances of a particular case. (Lab. Code § 2699, subd. (e)(2).)

In addition, the court must review the PAGA settlement to ascertain whether the settlement is fair in view of PAGA's purposes and policies. "[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, 77; see *Williams*, *supra,* 3 Cal. 5th at 546 [describing how the Legislature "sought to remediate present violations and deter future ones" by passing PAGA].) Through this review, the trial court "must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests and hence the public's interest." (*Moniz, supra,* 72 Cal.App.5th at 89.)

Thus, the court must consider whether the $65,000 settlement is fair, reasonable and adequate in view of the PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.

Here, plaintiff attributes $ 670,600.00 maximum value to PAGA penalties. Thus, the $65,000 allocation to PAGA is about 10% of the maximum value. Attorney Bae further explains that the realistic exposure is approximately $335,300.

Plaintiffs do not address the reasonableness in view of the PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws. This would be an easy question to resolve if there were evidence defendants voluntarily or by injunction altered employment practices to comply with current labor laws. (*Boddie v. Signature Flight Support Corporation* (N.D. Cal. 2021) 2021 WL 2651369, at *8 ["Additionally, the settlement provides for injunctive relief by which Defendants will modify their rest break policy for California employees and distribute and post the modified policy in the workplace. Although the court does not find that the injunctive relief is 'significant,' the modified policy makes clear to employees that rest breaks must be duty-free and shall be in the middle of each work period where feasible, and that employees are entitled to cool down periods in addition to rest breaks"]; see *Manuel Perez and Macario Perez v. All AG, Inc.* (E.D. Cal.) 2021 WL 3129602, at *3 ["in light of the substantial amount of penalties to be paid under the PAGA fund distribution, *the inclusion of non-monetary relief in the PAGA Agreement*, the lack of objection from the LWDA despite being provided timely notice of the terms of this proposed

settlement, and the fact that the individual PAGA group members are not precluded from bringing actions against defendants to seek recovery, . . . the court concludes the parties PAGA agreement is [] fair, reasonable, and adequate in view of the PAGA's public policy goals"].)

In the court's experience, however, this is rarely the case as most defendants expressly deny liability. That is the case here. (Settlement Agreement, ¶ 12.1.) This hampers the court's ability to make a finding that the settlement is reasonable in light of PAGA's purposes.

However, some courts have noted that when PAGA claims are settled in the same agreement as the underlying Labor Code claims, courts may apply a sliding scale approach to determine whether the two recoveries together serve PAGA's purposes. (See *O'Connor v. Uber Techs., Inc.* (ND Cal. 2016) 201 F. Supp. 3d 1110, 1134 ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of the class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA;" see *Manuel Perez and Macario Perez v. All AG, Inc.* (E.D. Cal. 2021) 2021 WL 3129602, at *3—referring to the "substantial amount of penalties to be paid . . .") This argument will prevail only if the court finds the class settlement to be reasonable (which will be addressed at the hearing) and that the settlement is of a sufficient substantial monetary nature as to serve as a deterrent to future violations of the Labor Code.

Attorney Bae should be prepared to address this at the hearing.

Tentative Ruling

Attorney Bae is directed to appear at the hearing to address whether the PAGA settlement is reasonable in view of PAGA's purposes and policies, particularly in light of the fact defendants admitted no liability and denied any wrongdoing.