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individually and on behalf of all other similarly
situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

CHARLES YNIGUEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

AIRGAS USA, LLC, a Delaware limited
liability corporation; AIRGAS
CARBONIC, INC., a Delaware
corporation; and DOES 1 through 20,
inclusive

Defendants

CASE NO. 20STCV18190

[Assigned to Judge Elihu M. Berle, Dept. 6]

**PLAINTIFF’S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: January 23, 2023

Time: 9:00 a.m.

Dept.: 6

Complaint Filed: May 8, 2020

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff CHARLES YNIGUEZ (“Plaintiff”) respectfully requests this Court grant final
4 approval of the proposed class action and Private Attorney General Act (“PAGA”) settlement with
5 Defendants AIRGAS USA, LLC and AIRGAS CARBONIC, INC., (collectively “Defendant” or
6 “Airgas”) (Plaintiff and Defendant are collectively hereinafter referred to as “the Parties”). This
7 Court preliminarily approved a \$500,000 class action settlement for Class Members employed by
8 Defendant in their Dry Ice Divisions as non-exempt/hourly employees at any time from May 8,
9 2016, through and including September 16, 2022. (Declaration of James R. Hawkins In Support of
10 Motion for Final Approval and Attorneys’ Fees, Costs, and Incentive Award (“Hawkins Final
11 Decl.”), filed concurrently herewith, Ex. 1, Settlement Agreement (“Agreement” or “Settlement”),
12 ¶¶ 7-8). The escalator provision in paragraph 101 of the Settlement was triggered and the Gross
13 Settlement Amount increased to approximately \$564,338.24. (Hawkins Final Decl., ¶ 20.)

14 On October 13, 2022, the Settlement Administrator, CPT Group, Inc. (“CPT”), mailed 307
15 Class Members the Notice Packet. (Hawkins Final Decl., ¶ 18, Ex. 5) The deadline to request
16 exclusion or opt out of the Settlement is December 13, 2022. (Hawkins Final Decl., ¶ 18-21, Ex.
17 5, 9.) As of the date of this filing, the Settlement Administrator received zero objections and zero
18 requests for exclusion. (Id. ¶ 21., Ex. 5.) Similarly, none of the class members have disputed their
19 respective workweek or pay period calculations at this time. (Id.) Thus, to date, the Class has
20 overwhelmingly accepted the Settlement.

21 Given the nature of the claims, the Individual Settlement Payments will be calculated and
22 apportioned from the Net Settlement Amount (“NSA”) based on the percentage of Qualifying
23 Workweeks worked by the Class Member during the Class Period. (Ex. 1, Agreement, ¶ 55.) The
24 NSA is estimated to be \$276,725.42 exclusive of PAGA or \$289,225.42 inclusive of PAGA.
25 (Hawkins Final Decl. ¶ 20.) 25% of the PAGA Allocation of \$50,000 will be distributed to the
26 Aggrieved Employees based on the Qualifying PAGA Workweeks worked during the PAGA
27 Period. (Ex. 1, Agreement, ¶ 54.) Class Members who do not opt out of the Class Settlement will
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1 receive a prorated share of the Class Net Settlement. (Id., ¶ 55.) Any funds not distributed after
2 the expiration of the Individual Settlement Payment and Individual PAGA Payment checks (180
3 days) shall escheat to the State of California Controller’s Office to be held in the name of the Class
4 Member/Aggrieved Employee who is the payee of the check. (Agreement, ¶ 70.) Assuming equal
5 participation and including PAGA penalties, the Participating Settlement Class Members’ average
6 settlement payment from the Settlement is estimated to be \$942.07. (Hawkins Final Decl. ¶ 41.)
7 The Settlement Administrator will submit a declaration after the close of the notice period regarding
8 the mailing process, any responses received, participation, and any updates to the calculations.

9 Plaintiff submits that the Settlement should be approved because it is fair, adequate, and
10 reasonable, and, to date, has been overwhelmingly accepted by the Class. It will result in fair and
11 significant payments to Participating Class Members. The Settlement is non-collusive and was
12 achieved as a result of informed litigation, mediation, and months of continuing arm’s-length
13 negotiations after mediation between counsel experienced in class actions with the assistance of
14 neutral mediator, Michael Dickstein. Indeed, Therefore, the Settlement warrants final approval.

15 **II. SUMMARY OF LITIGATION**

16 **A. The Complaints and Allegations**

17 As detailed in the Motion for Preliminary Approval, on May 8, 2020, Plaintiff filed his class
18 action complaint in the Superior Court of the State of California, for the County of Los Angeles
19 (Case No. 20STCV18190) alleging claims for (1) failure to pay minimum wages; (2) failure to pay
20 overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to
21 provide accurate itemized wages statements; (6) failure to pay all wages due within the required
22 time an upon separation of employment; and (7) violation of California Business & Professions
23 Code §§ 17200, et seq. (“Class Complaint”). ((Ex. 3, Declaration of James Hawkins in Support of
24 Preliminary Approval [“Hawkins Prelim. Decl.”] ¶ 3.) Plaintiff submitted a PAGA notice to the
25 LWDA on May 7, 2020, which alleged that Defendant had violated, among others, the various
26 California Labor Code sections alleged in his class action complaint. (Ex. 3, Hawkins Prelim Decl.,
27 ¶ 5.) On July 27, 2020, Plaintiff filed a PAGA complaint in which he asserted a single cause of
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1 action under California Labor Code sections 2698, *et seq.* (Private Attorney General Act of 2004)
2 (hereinafter, “PAGA Complaint” or “PAGA Action”). (Ex. 3, Hawkins Prelim Decl., ¶ 6).

3 Defendant timely filed answers to both complaints that generally and specifically denied
4 Plaintiff’s claims of wrongdoing as alleged, while asserting all applicable affirmative defenses.
5 (Hawkins Prelim. Decl., ¶ 7.) Shortly thereafter, Defendant filed a motion to consolidate the two
6 actions. (Id.) Defendant has at all times denied, and continues to deny, all of these allegations, and
7 denies any and all liability for Plaintiff’s claims. Defendant further denies that Plaintiff’s allegations
8 are appropriate for class, and/or representative treatment for any purpose other than for settlement
9 purposes only. (Hawkins Prelim. Decl., ¶ 11-12).

10 On November 30, 2020, the Parties stipulated that Plaintiff would dismiss the PAGA-only
11 case, Case No. 20STCV28508, and would amend his class action complaint to add his PAGA claim
12 to the lower-numbered class action. (Hawkins Prelim. Decl., ¶ 9). On December 11, 2020, Plaintiff
13 filed a First Amended Complaint (“FAC”) to add an eighth cause of action for civil penalties
14 pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”)
15 to the class complaint. (Hawkins Prelim. Decl., ¶ 10). The separate PAGA action was dismissed
16 on January 8, 2021 (Id.) Defendant filed an answer to the FAC on or about January 13, 2021.
17 (Hawkins Prelim. Decl., ¶ 11).

18 **B. The Mediation, Formal and Informal Discovery and Information Exchange,**
19 **and Legal Analysis by Parties’ Counsel**

20 As further detailed in the Motion for Preliminary Approval, after substantial investigation,
21 research, formal and informal information exchange and discovery, the Parties engaged arms-
22 length negotiations by experienced counsel in a voluntary full-day mediation session with highly
23 qualified mediator specializing in wage-and-hour class actions, Michael Dickstein, on June 14,
24 2021. (Hawkins Prelim. Decl., ¶ 13; Hawkins Final Approval Decl. ¶ 23.)

25 **C. Preliminary Approval of the Settlement**

26 On March 24, 2022, Plaintiff initially filed a Motion for Preliminary Approval of Class
27 Action Settlement. On September 16, 2022, the Court granted Plaintiff’s Motion for Preliminary
28

Approval. (Hawkins Final Approval Decl. ¶ 10; Ex. 2, Order Granting Preliminary Approval.) The Court set the hearing on Plaintiff's Motion for Final Approval for January 23, 2023, at 9:00 a.m.

D. Summary of the Settlement Terms Preliminarily Approved

Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the lawsuit upon the terms and conditions and for the consideration set forth in the Settlement Agreement, **Exhibit 1** to the Declaration of James R. Hawkins In Support of Final Approval and Attorneys' Fees and Costs Motion. (Hawkins Final Approval Decl., Ex. 1.)

In summary, the Parties agreed to settle the Class Members' Released Claims against the Released Parties, as defined in the Agreement, in the action for a non-reversionary "Gross Settlement Amount" of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00). (Agreement, ¶ 15.). Pursuant to application of the escalator provision, the Gross Settlement Amount increased to approximately \$564,338.24. (Hawkins Final Decl. ¶ 20; Agreement, ¶ 101.)

The Class Members are all individuals who were employed by Defendant Airgas USA, LLC or Airgas Carbonic, Inc. in California in their Dry Ice Divisions as non-exempt/hourly employees during the "Class Period" of May 8, 2016 through and including September 16, 2022 who did not opt out. (Ex. 1, Agreement, ¶¶ 7-8.) The Net Settlement Amount is the Gross Settlement Amount less: (1) Class Counsel's attorneys' fees (up to 1/3 of the Gross Settlement Amount); (2) Class Counsel's costs and expenses not to exceed \$27,000.00 (to date, costs have totaled \$24,035.10); (3) fees, costs, and expenses associated with a mutually agreed upon Settlement Administrator to administer the settlement currently estimated at \$15,000.00; and (4) Incentive Award to the Plaintiff (up to \$7,500). (Agreement, ¶¶ 15, 16, 49-53). The Net Settlement Amount will be divided amongst the participating Class Members in Individual Settlement Payments on a *pro rata* basis. (Agreement, ¶ 55.). Aggrieved Employees will also receive a Individual PAGA Payment Check for the number of Pay Periods worked between May 8, 2019, and September 16, 2022. (Agreement, ¶ 23-25, 54.). Each Participating Class Member's payment shall be treated 30% as wages; 70% as civil penalties, liquidated damages and interest. The payments will be reported on the subject tax forms. (Agreement, ¶ 72.). Participating Class Members shall have one hundred eighty (180) days

1 to cash their Individual Settlement Payment check. Any funds not distributed after the expiration
2 of the Individual Settlement Payment checks shall escheat to the State of California Controller's
3 Office to be held in the name of the Settlement Class Member who is the payee of the check.
4 (Agreement, ¶ 70.)

5 The escalator provision in paragraph 101 of the Settlement Agreement was triggered and
6 the Gross Settlement Amount increased to approximately \$564,338.24 after Preliminary Approval
7 was granted. (Hawkins Final Approval Decl., ¶ 20, 44).

8 **III. CLASS NOTICE AND RESULTS OF THE NOTICE PROCEDURE**

9 On or about October 3, 2022, counsel for Defendants provided CPT with the contact
10 information and data for each Class Member. (Hawkins Final Approval Decl. ¶ 20.) After updating
11 the Class List against the National Change of Address Database maintained by the U.S. Postal
12 Service, the Settlement Administrator mailed the Class Notice in Spanish and English to 307 Class
13 Members via First Class Mail. (Id., ¶18.)

14 Per the most recent summary provided by the Administrator (attached to the Hawkins
15 Declaration at **Exhibit 5**), the Parties and the Settlement Administrator have successfully delivered
16 notice of the Court's Preliminary Approval Order and the Settlement to the Class. Notice Packets
17 were mailed to the 307 Class Members on or about October 13, 2022. Thus far, one notice has
18 remained undeliverable (i.e. Class Notices that were returned undeliverable with no updated
19 address from the skip trace and/or were returned undeliverable a second time). Thus, at this point,
20 it estimated that the Class Notice will successfully reach 99.6% of the Class (306/307 Class
21 members). (Hawkins Final Approval. Decl. ¶ 18.)

22 The deadline for Class Members to submit requests for exclusions and objections is
23 December 13, 2022. (Id. ¶ 21.) At the completion of the notice period, CPT will provide Class
24 Counsel with a declaration to be filed with the Court regarding any requests for exclusion and
25 objections to the Settlement received. (Id.) At this time, there are 307 Participating Class Members
26 who will receive their share of the Net Settlement Amount.

27 The Settlement Administrator estimates the Participating Class Members' average
28 settlement payment from the Settlement to be \$942.07. (Hawkins Final Approval Decl. ¶ 41.)

IV. EVALUATION OF THE SETTLEMENT

A. The Legal Standard for Final Approval

“[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation...” *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1140, 1151 (2000)(quoting *Officers for Justice v. Civil Serv. Comm. Of the City and Cnty. & S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)). The decision to approve or reject a proposed settlement is committed to the trial court’s sound discretion. *Wershba v. Apple Comp., Inc.*, 91 Cal. App. 4th 224, 234-35 (2001). Thus, when evaluating a class action settlement for final approval, the Court should give “[due] regard to what is otherwise a private consensual agreement between the parties.” *Id.* at 245. The Court’s inquiry thus is limited to whether the proposed settlement is “fair, adequate, and reasonable.” *Id.* at 244-45; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). A settlement is “fair, adequate, and reasonable” warranting final approval when “the interests of the class are better served by the settlement than by further litigation.” *Manual for Complex Litigation* (4th ed. 2008) § 21.61.

CRC 3.769 explains the procedure for final approval of a class action settlement, which involves three distinct steps: (1) preliminary approval of the proposed settlement by the trial court; (2) dissemination of mailed and/or published notice of the settlement to all affected Class Members; and (3) a “formal fairness hearing,” or final settlement approval hearing, at which Class Members may be heard regarding the settlement, and at which matters concerning the fairness, adequacy, and reasonableness of the settlement may be presented.

In this case, the first step was completed on September 16, 2022, when the Court preliminarily approved the Settlement and determined that it was within the range of possible final approval. (See, Ex. 2, Preliminary Approval Order). The second step, dissemination of Class Notice to the Class, will be completed on December 13, 2022, at the close of the notice period. (Hawkins Final Approval Decl., ¶ 21; Exhibit 5).

“[T]he trial court has broad powers to determine whether a proposed settlement in a class action is fair.” *Mallick v. Super. Ct.*, 89 Cal. App. 3d 434, 438 (1979). Fairness is presumed when: (1) the settlement is reached through arm’s-length bargaining, (2) investigation and discovery are

1 sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar
2 litigation, and (4) the percentage of objectors is low. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
3 1794, 1802 (1996); see also *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010). “Where
4 the settlement terms are fair and reasonable, the settlement is presumptively valid, subject only to
5 objections that may be raised at a final hearing.” Conte & Newberg, *Newberg on Class Actions* §
6 11.26 (4th ed. 2002) (Newberg).

7 “The list of factors is not exclusive, and the court is free to engage in a balancing and
8 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
9 245. Courts must also give:

10 proper deference to the private consensual decision of the parties, [since] the court’s
11 intrusion upon what is otherwise a private consensual agreement negotiated
12 between the parties to a lawsuit must be limited to the extent necessary to reach a
13 reasoned judgment that the agreement is not the product of fraud or overreaching
14 by, or collusion between, the negotiating parties, and the settlement, taken as a
15 whole, is fair, reasonable and adequate to all concerned.

14 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

15 Here, by granting preliminary approval, this Court has already determined that the
16 Settlement Agreement is fair and reasonable subject to objections. (Ex. 2, Preliminary Approval
17 Order.). Accordingly, this Court should grant final approval of the Settlement.

18 **B. Plaintiff’s Counsel Conducted a Thorough Investigation of the Factual and Legal**
19 **Issues and Were Thus Able to Objectively Assess the Settlement’s**
20 **Reasonableness.**

21 “[T]he extent of discovery completed and the stage of proceedings” are factors considered
22 in assessing the fairness, adequacy, and reasonableness of a class action Settlement. *Dunk*, 48 Cal.
23 App. 4th at 1801. “This factor evaluates whether the parties have sufficient information to make
24 an informed decision about settlement.” *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 588,
25 (N.D. Cal. 2015) (citation omitted).

26 Plaintiff and Defendant entered into the Settlement only after conducting an extensive
27 investigation, formal and informal discovery, and engaging in a full-day mediation session with
28 Michael Dickstein. (Ex. 3, Hawkins Prelim. Approval Decl. ¶¶ 13-18; Hawkins Final Approval

Decl. ¶ 23-26.) This enabled Class Counsel and Defense Counsel to thoroughly evaluate the strengths and weaknesses of the claims. (Hawkins Final Approval Decl., ¶ 26; Hawkins Prelim Decl. ¶ 19.) As detailed more extensively in the previously filed Motion for Preliminary Approval, the Parties engaged in extensive exchanges of information and informal and formal discovery. The Parties also engaged in numerous lengthy discussions regarding the information in the data exchanged, the Parties' respective claims and defenses, and the Plaintiff's claimed damages. The Parties shared damages information with the mediator during the mediation session and each other for purposes of reaching a settlement. (Ex. 3, Hawkins Prelim. Approval Decl. ¶¶ 13-19, 23, 26.)

Plaintiff's counsel also conducted a thorough investigation into the factual and legal issues implicated by Plaintiff's claims and were able to objectively assess the settlement's reasonableness. By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, and various defenses asserted by Defendants. (Ex. 3, Hawkins Prelim. Approval Decl., generally; Hawkins Final Approval Decl. ¶¶ 23-26.)

C. The Settlement Was Reached Through Arm's-Length Bargaining in Which All Parties Were Represented by Experienced Counsel

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

As discussed above, , the Parties settled this matter with the assistance of an experienced wage and hour class and PAGA action mediator, Michael Dickstein. (Ex. 3, Hawkins Prelim. Approval Decl. ¶¶ 13, 44) The process was so adversarial, the Parties were unable to reach an agreement regarding the settlement of the Class and PAGA actions on the day of the mediation and

1 needed additional assistance from Mr. Dickstein in negotiations over the course of several months
2 before reaching an agreement. (Hawkins Prelim Decl., ¶ 13.) The mediator helped to manage the
3 Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides.
4 See *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of
5 a neutral mediator is a factor weighing in favor of finding of no collusion); *In re Apple Computer,*
6 *Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5,
7 2008 (mediator's participation weighs considerably against any inference of a collusive settlement);
8 *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-
9 certification settlement negotiations helps to ensure that the proceedings were free of collusion and
10 undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012 WL 5878390, at *6
11 (N.D. Cal. Nov. 21, 2012 (participation in mediation "tends to support the conclusion that the
12 settlement process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon,*
13 *Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014 (participation in mediation "tends to support the
14 conclusion that the settlement process was not collusive"). At all times, the Parties' negotiations
15 were adversarial and non-collusive, conducted at arm's length, and supported by a knowledgeable
16 mediator. (Ex. 3, Hawkins Prelim. Approval Decl. ¶ 13.)

17
18 The Parties were represented by experienced class action counsel throughout the
19 negotiations resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC.
20 Plaintiff's counsel are seasoned class action attorneys who regularly litigate wage and hour claims
21 through certification and on the merits and have considerable experience settling wage and hour
22 class actions. (Ex. 3, Hawkins Prelim Approval Decl. ¶ 22, 46.). Defendants are represented by
23 Faegre Drinker Biddle & Reath, LLP, a respected defense firm.

24 **D. The Proposed Settlement Is Reasonable Given the Strength of Plaintiff's Case,**
the Risks and Expense of Continued Litigation

25 In seeking approval, a settling party must provide sufficient information to "enable the court
26 to make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker*
27 *Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash
28 settlement amounting to only a fraction of the potential recovery will not per se render the

1 settlement inadequate or unfair.” See *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of*
2 *San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). “The proposed settlement is not to be judged
3 against a hypothetical or speculative measure of what might have been achieved by the
4 negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the
5 risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often
6 measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act*
7 *(FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims within
8 a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims
9 for risks such as changes in the law, the probability of success, and other factors.

10 Settling parties are not, however, required to partake in a hypothetical accounting exercise:
11 **“Kullar does not ... require any such explicit statement of [maximum] value;** it requires a
12 record which allows ‘an understanding of the amount that is in controversy and the realistic range
13 of outcomes of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-
14 10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most
15 important factor” in determining “whether a settlement is fair and reasonable” is the “strength of
16 the case for Plaintiff on the merits, balanced against the amount offered in the settlement.” *Id.* at
17 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130).

18 Based on their analysis of documents and data produced by Defendants, Plaintiff’s counsel
19 was able to assess the value of each of the asserted claims for settlement purposes (discussed in
20 more detail in Ex. 3, Hawkins Prelim. Approval Decl., ¶¶ 29-33, 36-39.) As detailed in the Hawkins
21 Preliminary Approval Declaration, Plaintiff estimated Defendants’ maximum potential liability
22 including PAGA to be approximately \$5.38 million. (Ex. 3, Hawkins Prelim. Approval Declaration,
23 ¶¶ 36.). After reviewing Defendants’ additional records, evidence produced, and class information,
24 taking into account the risks associated with continued litigation and certification, Defendant’s
25 defenses, and differences in the Parties’ estimates of violation rates, Plaintiff estimated that the total
26 realistic liability for the crux of Plaintiff’s claims was approximately \$1.34 million. (*Id.* at ¶¶ 37.)
27 This estimate assumes, however, that each and every one of Plaintiff’s claims would have been
28 certified for class-wide resolution, that Plaintiff would have prevailed at trial, and that the jury’s

1 verdict would have been affirmed on appeal. In other words, this estimate assumes complete and
2 total victory. Understandably, for purposes of evaluating the settlement's reasonable, this estimate
3 must be "tempered by factors such as the risk of losing at trial, the expense of litigating the case,
4 and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.--*
5 *Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).

6 Ultimately, Plaintiff's counsel determined an appropriate range of recovery for settlement
7 purposes by offsetting Defendant's maximum theoretical liability by: (i) the strength of the defenses
8 to the merits of Plaintiff's claims; (ii) the risk of class certification being denied; (iii) the risk of
9 losing on any of a number of dispositive motions that could have been brought between certification
10 and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in
11 *limine*) that might have eliminated all or some of Plaintiff's claims, or barred evidence/testimony
12 in support of the claims; (iv) the risk of losing at trial; (v) the chances of a favorable verdict being
13 reversed on appeal; and (vi) the difficulties attendant to collecting on a judgment. (Hawkins Final
14 Approval Decl. ¶ 32.)

15 Plaintiff determined that a settlement amounting to \$500,000, or approximately 37.3% of
16 the estimated realistic liability for the thrust of Plaintiff's class claims, was fair and reasonable in
17 view of the odds of: (i) overcoming Defendants' arguments and evidence that it properly provided
18 meal and rest breaks, timely and lawfully paid for all hours of work, and provided lawful itemized
19 wage statements; (ii) the obstacles inherent in satisfying the requirements to certify a class and
20 satisfy manageability requirements; (iii) the challenges of proving the elements of each cause of
21 action; (iv) the derivative nature of many of the claims; (v) the expenses of further litigation; and
22 (vi) the recovery rate, even if Plaintiff were to prevail, after years of continued and costly litigation.
23 (Ex. 3, Hawkins Prelim Approval Decl. ¶ 26, 27, 34-38; Hawkins Final Approval Decl. ¶33.)

24 Courts have routinely approved settlements that provided an even greater discounted range
25 of the maximum potential recovery. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D.
26 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14%
27 of the total estimated damages); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D.
28 Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved);

1 *In re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of
2 damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July
3 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the
4 range of possible initial approval based on the strength of plaintiff’s case and the risk and expense
5 of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal.
6 2008) (approving settlement of 6% to 8% of estimated damages).

7 **E. The Endorsement of the Parties’ Counsel Favors Final Approval**

8 The endorsement of experienced and well-informed counsel of a settlement as fair, reasonable,
9 and adequate is entitled to significant weight. *Dunk*, 48 Cal. App. 4th at 1801-02; *see also Larsen*
10 *v. Trader Joe’s Company*, No. 11cv05188-WHO, 2014 WL 3404531 (N.D. Cal. July 11, 2014) (“A
11 [trial] court is entitled to give consideration to the opinion of competent counsel that the settlement
12 is fair, reasonable, and adequate.”) Here, counsel for both Parties have significant experience
13 litigating wage and hour class actions and endorse the Settlement as being fair, adequate and
14 reasonable. Class Counsel believes that the Settlement is the best interest of the Class, and an
15 excellent result for the Class. (See, Ex. 3, Hawkins Prelim Approval Decl., generally; *see also*
16 *Hawkins Final Approval Decl.* ¶ 31, 33.) This endorsement of counsel is entitled to significant
17 weight in favor of final approval. *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. Aug.
18 22, 1979) (“The recommendation of Plaintiff’s counsel should be given a presumption of
19 reasonableness.”) *In re Salomon Inc. Sec. Litig.*, 1194 U.S. Dist. LEXIS 8038, at *42 (S.D.N.Y.
20 June 15, 1994).

21 **F. The Settlement Class Has Responded Positively to the Settlement**

22 In evaluating the fairness of a Settlement, the “absence of a large number of objections to a
23 proposed class action settlement raises a strong presumption that the terms of a proposed class
24 settlement action are favorable to the class members.” *National Rural Tele. Coop. v. DIRECTV,*
25 *Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). To date, none of the Class Members have opted out or
26 submitted an objection to the Settlement thus far. (Hawkins Final Approval Decl. ¶ 21.) Thus, so
27 far, the Class’s response is “overwhelmingly positive,” supporting approval of the Settlement. *See*
28 *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1152-53 (finding support for the

1 settlement where 80 out of 5,454 class members elected to opt out and nine class members
2 objected); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (finding
3 0 objections and 16 opt-outs out of 329 class members [4.86%] “strongly support[] settlement”);
4 *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW EMC, 2010 WL 1687832, at *15
5 (N.D. Cal. Apr. 22, 2010) (finding an opt-out rate of 0.4% supported settlement). In other words,
6 “[t]he fact that the overwhelming majority of the class willingly approved the offer and stayed in
7 the class presents at least some objective positive commentary as to its fairness.” *Hanlon v.*
8 *Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

9 In addition, the Participating Settlement Class Members’ average settlement payment from
10 the Net Settlement Amount is estimated to be \$942.07 and the highest estimated payment is
11 \$3,103.06. (Hawkins Final Decl., ¶ 41.) This average net recovery is significantly higher than
12 many wage and hour class action settlements approved by California state and federal courts. *See,*
13 *e.g., Badami v. Grassroots Campaigns, Inc.*, Case No. C 07-03465 JSW (N.D. Cal. Sept. 15, 2008)
14 (average net recovery of approximately \$195); *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-
15 00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi*
16 *v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately
17 \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.)
18 (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case
19 No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v.*
20 *Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net
21 recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD
22 (E.D. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria’s Secret Stores, Inc.*, Case
23 No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and
24 *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of
25 approximately \$20). Thus, the Settlement should be approved.

1 **V. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE**
2 **REASONABLE**

3 In accordance with the Court's Preliminary Approval Order (Ex. 2), the Parties retained
4 CPT Group, Inc. to administer the notice process. CPT's duties include: (i) compile and send via
5 U.S. Mail to the Class Members and Aggrieved Employees the Class Notice; (ii) confirm the
6 accuracy of the addresses of Class Members and Aggrieved Employees through the United States
7 Post Office's National Change of Address database before mailing; (iii) perform one skip trace on
8 any Class Notice returned as undeliverable; (iv) re-mail Class Notice one time only by First Class
9 Mail if the Class Notice was returned undeliverable and a new address is located or upon a Putative
10 Class Member's or PAGA Releasees request; (v) send deficiency letters as needed; (vi) the
11 allocation duties described below; (vii) process Workweek Disputes, Requests for Exclusion, and
12 Objections; (viii) calculate and distribute all payments due under the Settlement Agreement; (ix)
13 undertake tax reporting, withholding, remittances, and calculation of Employer Taxes; and (x)
14 create and operate the settlement website and toll-free call center. The Settlement Administrator
15 will provide a declaration under penalty of perjury ("Administrator's Declaration") which
16 summarizes its findings and the results of the notice process, including and not limited to, stating:
17 the number of individuals, the Workweek Value, and Qualifying Workweeks reflected in the data
18 provided by Defendant; the number of mailings; the number of Workweek Disputes, Objections,
19 and Requests for Exclusion received; and other information as is required to obtain Final Approval
20 of the Settlement and the Settlement Agreement. (Agreement ¶ 51, 57-69.)

21 CPT Group, Inc. is an experienced class administrator and has, and will continue to,
22 adequately perform the administration tasks required by the preliminary approval order. CPT has
23 estimated that the total fees and costs for services in connection with the administration of the
24 Settlement are \$15,000 (Hawkins Final Approval Decl., ¶ 22; Ex. 2, Order) Plaintiff's counsel
25 believes this sum is appropriate and respectfully requests the Court award to CPT. (Id.)

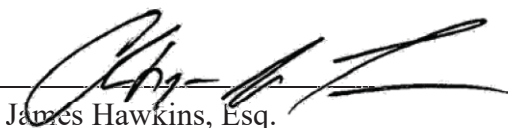
26 **VI. CONCLUSION**

27 For the foregoing reasons, and in accordance with the above and the Parties' Settlement
28 Agreement, the Settlement should be approved as fair, adequate, and reasonable. It will result in

1 fair payment to Participating Class Members, is non-collusive, and was achieved as a result of
2 informed, extensive litigation, and arm's-length negotiations conducted by counsel for the
3 respective parties who are experienced in wage and hour class action litigation, with the assistance
4 of an experienced and well-regarded mediator. Accordingly, Plaintiff respectfully request that the
5 Court grant final approval to the Settlement.

6
7 Dated: November 14, 2022

JAMES HAWKINS APLC

8
9 By: 

10 James Hawkins, Esq.

Christina M. Lucio, Esq.

11 Attorneys for Plaintiff CHARLES
12 YNIGUEZ and the conditionally certified
13 class
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