

**Tentative Rulings**  
December 9, 2024  
Department S-17  
Judge Joseph Ortiz

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Tentative Rulings for Department S-17 are posted on the court's website (<https://www.sb-court.org/divisions/civil/civil-tentative-rulings>) at 3:00 p.m. or at 7:00 p.m. the court day before the hearing. If no tentative ruling is posted at 3:00 p.m., please check again after 7:00 p.m.

If you do not wish to submit on a tentative ruling, you must appear for the hearing in person, via CourtCall (888-882-6878 or [www.courtcall.com](http://www.courtcall.com)), or by ZOOM. Failure to appear is deemed a waiver of oral argument. If all parties submit on a tentative ruling, it will become the ruling of the court. The tentative ruling may note particular issues on which the court requests the parties to provide further argument at the hearing. If so directed, attendance at the hearing is mandatory. The party prevailing on a motion or other hearing shall serve written notice of the court's ruling unless all parties waive notice of the ruling.

**ATTENTION:** Since January 9, 2023, the Court no longer provides an official Court Reporter to transcribe proceedings in this Department. Parties who wish to have an official record of the proceedings in addition to a minute order must retain a private Certified Shorthand Reporter for the hearing and must submit a "Stipulation and Order to Use Certified Shorthand Reporter." Please contact the department if you would like a copy of this form. If counsel are appearing for the hearing remotely, the Stipulation can be emailed to the Judicial Assistant for Department S-17 at [jgarcez@sb-court.org](mailto:jgarcez@sb-court.org). The Court will sign the Order appointing the Certified Shorthand Reporter as the official Court Reporter Pro Tempore. Parties who do not retain a Certified Shorthand Reporter to be designated as an official Court Reporter Pro Tempore are deemed to have waived an official Court Reporter for the proceeding.

**UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

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18. *Quintero v. JC Resorts LLC, et al*, Case NO. CIVSB2115731 (consol: CIVSB2220246)  
Motion for Final Approval of Class Action Settlement  
3/4/24, 1:30 p.m., S-17

The Court would **GRANT**.

Here, Plaintiff Quintero first filed his wage-and-hour class action against Defendants on May 28, 2021. On June 4, 2021, he filed a notice letter with Labor and Workforce Development Agency (LWDA) in anticipation of a Private Attorneys General Act (PAGA) cause of action. He then filed a First Amended Complaint (FAC) on August 10, 2021, to add a claim for civil penalties pursuant to PAGA. On October 15, 2021, he filed a Second Amended Complaint (SAC) to add Plaintiff Parmiter. Separately, Plaintiff Pena filed his own wage-and-hour class and PAGA representative action on October 12, 2022 (CIVSB2220246). The Pena PAGA claim was rested on a LWDA notice that was sent on October 15, 2021. The matters were consolidated on June 20, 2023.

On August 15, 2023, Plaintiffs filed the operative Third Amended Complaint (TAC) naming all Plaintiffs and claiming alleging violations relating to (1) overtime wages; (2) minimum wages; (3) meal periods; (4) rest breaks; (5) recovery periods; (6) accurate wage statements and payroll records; (7) final pay; (8) wage timeliness; (9) consecutive work days; (10) reimbursements; as well as claims for (11) civil penalties pursuant to PAGA and (12)-(13) violation of the unfair competition law.

After commencing litigation, Plaintiff sought and received extensive informal discovery, including a robust sampling (15%) of time and payroll records relating to all putative class members. Plaintiff also received handbooks and other policy documents. Thereafter, on June 16, 2022, the parties engaged in a full-day, arms-length mediation with Eve Wagner, a well-known neutral. The parties, unfortunately, did not reach a settlement at that session, but they narrowed the gap and continued to negotiate. With Mediator Wagner's guidance, and after months of back and forth, the parties eventually were able to reach settlement. The settlement was eventually memorialized in a long form by March of 2024. Notice of the settlement was sent to the LWDA on April 18, 2024.

The Parties successfully moved for Preliminary Approval of the Settlement before this Court on July 15, 2024. Thus, as preliminary matter, this Court found the total settlement amount of \$1,570,000.00 to be fair, reasonable, and adequate given the strength of the Plaintiff's case and the risks involved in litigation. Adequate discovery and investigation had occurred, and there was no evidence of fraud or collusion.

There are 3,102 Class Members and 1,791 PAGA aggrieved employees. (Cutler Decl., ¶¶9[class] & 10[aggrieved].) The administrator first mailed packets to 3,071 class members on or about August 15, 2024, and supplemented with an additional 37 mailings on October 4, 2024. (Cutler Decl., ¶¶4-5.) Three hundred and fourteen notice packets were returned but two hundred and seventy three were re-mailed after skip-tracing efforts. (*Id.*, ¶16.) Altogether, fifty packets were

deemed undeliverable. (*Ibid.*) As of the date of this motion, the administrator has received six requests for exclusion. (Cutler Decl., ¶17.) Thus, there are 3,102 *operative* class members. The administrator received *no* objections to the settlement. (*Id.*, ¶18.) This motion seeks final approval on the proposed settlement.

### **Statement of the Law**

Settlement of a class action requires court approval. (Rules of Court, rule 3.769.) The moving party must demonstrate that the settlement is “fair, adequate and reasonable.” (*Kullar v. Foot Locker Retail* (2008) 168 Cal.App.4th 116, 126.) The court has “broad discretion in making this determination.” (*In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.) Relevant factors may include “the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintain class action status through trial, the amount offered in settlement, the extent of discovery completed and the 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.) This list of factors “is not exhaustive and should be tailored to each case.” (*Ibid.*) The court may “engage in a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 overruled on other grounds.)

“Although the court gives regard to what is otherwise a private consensual agreement between the parties, the court must also evaluate the proposed settlement agreement with the purpose of protecting the rights of the absent class members who will be bound by the settlement.” (*Wershba, supra*, 91 Cal.App.4th at p. 245, quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801.) “The court must therefore scrutinize the proposed settlement agreement to the extent necessary to ‘reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” (*Ibid.*, quoting *Officers for Justice v. Civil Service Com’n* (9th Cir. 1982) 688 F.2d 615, 625.) The settlement is entitled to “a presumption of fairness . . . 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.” (*Kullar v. Foot Locker Retail* (2008) 168 Cal.App.4th 116, 128, quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)

### **Summary of the Proposed Class Settlement**

The proposed final settlement terms are largely in line with those approved preliminarily: Defendants will pay a gross, non-reversionary<sup>1</sup> settlement amount of \$1,570,000.00, from

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<sup>1</sup> The settlement utilizes a *Cy Pres* recipient for uncashed settlement amounts.

which will be deducted (1) \$523,333.00 for Class Counsel's attorneys' fees (1/3rd of the total);<sup>2</sup> (2) costs of \$29,319.61; (3) Plaintiff's enhancement fee of \$30,000.00 (\$10,000 each); (4) claims administration fees of \$19,900.00; and (5) PAGA penalties of \$80,000.00 (of which 75%, or \$60,000, will go to the LWDA and 25%, or \$20,000, to the aggrieved employees).

This will leave an estimated wage-and-hour only net settlement amount of a non-reversionary \$887,447.39. This class of 3,102 employees splits the amount in proportionate shares determined by number of workweeks within the Settlement Class Period. The average per employee is \$286.09. Twenty five percent (25%) of the net settlement payments would be considered wages with the remaining seventy five percent (75%) considered representative of penalties and interest. Given the 1,791 PAGA aggrieved employees, the average PAGA payout would be \$11.67.

### ***Tentative***

The Court finds no evidence of fraud or collusion. Class counsel are able, experienced, and well-qualified to represent the class. The representative is also well qualified to represent. The settlement was the result of an arms-length negotiation. The Court incorporates the reasons for the preliminary approval into its ruling by this reference and would:

1. Certify the Class for settlement.
2. Approve the settlement as fair and reasonable, finding that class members were given notice, advised of their rights and to object or exclude themselves.
3. Appoint Anthony Quintero, Jason Parmiter, and Jose Pena as Class Representatives and approves their service awards of \$30,000.00 (\$10,000 each).
4. Appoint The Capstone Law, APC; Moon Law Group, PC; and Rastegar Law Group, APC, as Class Counsel for settlement purposes.
5. Approve administrative expenses, as stated, to CPT Group at \$19,900.00.
6. Approve the attorneys' fees as stated at \$523,333.00, with costs of \$29,319.61. The Court notes that the lodestar analysis supports attorneys' fees and costs in line with the settlement provision. While the Court does not necessarily accept the rates forwarded, it notes that, even at an industry standard rate for the region, the award is supported in light of a modifier sufficient to acknowledge the benefit to the class and the risks undertaken. (See, e.g., Perez Decl., ¶47[590.8 hrs]; Moon Decl., ¶34 [112 hrs]; Rastegar Decl., ¶19 [78.5 hrs].)
7. Direct the clerk to enter the Court's order as final judgment.
8. Reserve continuing jurisdiction for the purposes of implementing, enforcing, or administering the Settlement or enforcing the terms of the Judgment.

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<sup>2</sup> The Court notes that the various firms representing Plaintiffs are splitting fees pursuant to the terms submitted in the motion and included in the accompanying proposed Order.