SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

Superior Court of California, County of Ventura, Hall of Justice, Department 44

202200564058CUOE January 8, 2026
Jose Perez Ventura vs. Boskovich Farms Inc 8:20 AM

Judge: Honorable Charmaine H Buehner
Judicial Assistant: Jerry Ricardez
CSR: None

APPEARANCES:

David D. Bibiyan, counsel, is not present.

Jeffrey C Bils, counsel, is not present.

Donald Burris, counsel, is not present.

Brandon Michael Chang, counsel, is not present.

TIMOTHY B. MCCAFFREY, counsel, is not present.

Anthony Robert Strauss, counsel, is not present.

NATURE OF PROCEEDINGS: Hearing on Motion for Final Approval of Settlement

8:58 a.m. Court convenes in this matter with no appearance by any party.

Counsel have received and read the Court's written tentative ruling.

Counsel Brandon Michael Chang for Plaintiff has contacted the court (previous to the hearing) and is submitting on the Tentative Ruling and will not appear.

Counsel Timothy B. McCaffrey for Defendant has contacted the court (previous to the hearing) and is submitting on the Tentative Ruling and will not appear.

Counsel Anthony R. Strauss for Defendant has contacted the court (previous to the hearing) and is submitting on the Tentative Ruling and will not appear.

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling as follows:

Ruling:

Plaintiffs' Motion for Final Approval of Class Action and Representative Action Settlement is GRANTED subject to a reduction in the amount of the requested attorney's fees and litigation

costs.

The approved settlement breakdown is as follows:

Gross Settlement Amount	**$1,450,000.00**
Attorney's Fees (25% of GSA)	($362,500.00)
Litigation Costs	($9,059.47)
Administrator Costs	($15,575.00)
PAGA Penalties to LWDA 75% of $72,500.00	($54,375.00)
Service Award to Class Representatives	($15,000.00)
Net Settlement Inclusive of 25% PAGA penalties ($18,125)	**$993,490.53**

The Court will set a compliance and distribution hearing in consultation with counsel at the hearing in accordance with Code of Civil Procedure section 384.

General Principles

1. Class Actions

"A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing." (Cal. Rules of Court, rule 3.769, subd. (a); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) At the final approval stage, the court must ensure that the proposed class settlement is fair, adequate, and reasonable. (*Dunk*, *supra*, at p. 1801; Cal. Rules of Court, rule 3.769, subd. (g).) The purpose of the process is to prevent fraud, collusion, or unfairness to the class. (*Dunk*, *supra*, at p. 1800.)

"If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. 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." (Cal. Rules of Court, rule 3.769, subd. (f).)

"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.'" (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801].) "The list of factors is not exclusive and the court is free to 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 in *Hernandez*

v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

"[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*, *supra*, at p. 1802 [citing Newberg & Conte, Newberg on Class Actions (3d ed. 1992) § 11.41, pp. 11–91]; see also *Kullar*, *supra*, at p. 128 [quoting presumption factors in *Dunk*].) To make this determination, the record before the court must be sufficiently developed. (*Kullar*, *supra*, at p. 130.) While the court must not issue a rubber stamp approval of the settlement, it "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case[.]" (*Ibid*. [internal quotation marks and citations omitted].)

"As a general rule, California courts are not bound by the federal rules of procedure but may look to them and to the federal cases interpreting them for guidance or where California precedent is lacking." (*Wershba*, *supra*, at pp. 239-240.)

"The trial court has broad discretion to determine whether the settlement is fair." (*Dunk*, *supra*, at p. 1801.) "Ultimately, the district court's determination is nothing more than an amalgam of delicate balancing, gross approximations and rough justice." (*Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625 [internal quotation marks and citation omitted].)

"The burden is on the proponent of the settlement to show that it is fair and reasonable." (*Wershba*, *supra*, at p. 245; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1165.)

"If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment." (Cal. Rules of Court, rule 3.769, subd. (h).)

2. PAGA Actions

A PAGA action is a representative action on behalf of the State. It is a dispute between an employer and the State. (*Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 681.) "As such, a PAGA action functions as a substitute for an action brought by the government itself." (Id. at p. 682 [internal quotation marks omitted].)

"For cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action pursuant to this part, provide the Labor and Workforce Development Agency with a file-stamped copy of the complaint that includes the case number assigned by the court." (Lab. Code, § 2699, subd. (s)(1).)

"The superior court shall review and approve any settlement of 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." (*Id*., subd. (s)(2); *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549 ["PAGA settlements are subject to trial court review and approval, ensuring that any negotiated

resolution is fair to those affected."]; *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 693 ["[C]ourts performing their statutory review function have a duty to 'ensur[e] that [the] negotiated resolution [of a PAGA claim] is fair to those affected." (quoting *Williams*)].)

There is not a standard by which to judge the fairness or reasonableness of the settlement. (*Hamilton v. Juul Labs, Inc.*[1] (N.D. Cal., Nov. 16, 2021, No. 20-CV-03710-EMC) 2021 WL 5331451, at *7 [noting that, other than the statutory provisions of Labor Code section 2699, "the PAGA does not establish a standard for evaluating PAGA settlements. Indeed, the LWDA has stated that [t]he LWDA is not aware of any existing case law establishing a specific benchmark for PAGA settlements, either on their own terms or in relation to the recovery on other claims in the action." [internal quotation marks omitted]; see also *Basiliali v. Allegiant Air, LLC* (C.D. Cal., July 1, 2019, No. 218CV03888RGKMRW) 2019 WL 8107885, at *3 [stating that "PAGA does not set a clear standard for evaluating settlements," noting that many courts use class action settlement factors, and further stating, "The factors from *Hanlon* that may apply to a PAGA settlement include: (1) strength of plaintiff's case; (2) risk, expense, duration, and complexity of the litigation; (3) fairness of the settlement amount; and (4) experience and views of counsel."].)

"The PAGA also states that courts may exercise their discretion to lower the amount of civil penalties awarded 'if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.'" (*Hamilton v. Juul Labs, Inc.* (N.D. Cal., Nov. 16, 2021, No. 20-CV-03710-EMC) 2021 WL 5331451, at *7.)

"A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order." (*Id*., subd. (s)(3).)

Discussion

1. Adequacy of Notice of Final Approval Hearing

"The principal purpose of notice to the class is the protection of the integrity of the class action process, one of the functions of which is to prevent burdening the courts with multiple claims where one will do." (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 745–746 [quoting *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 970].) "The notice must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members." (*Cho*, *supra*, at p. 746.)

Here, the notice contains explanations of the proposed settlement, the procedures for class members to follow in filing written objections to the settlement, the procedures for arranging to appear at the hearing, and the procedures for stating objections to the proposed settlement. Further, notice was provided in Spanish, as well. (Polites Decl., Exh. A; Cal. Rules of Court, rule 3.769, subd. (f); *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 266 [quoting subd. (f)].)

The Court finds that the notice meets the requirements of Rule of Court 3.769, subdivision (f), and is therefore adequate.

2. Evaluation of Settlement

Strength of Plaintiffs' Case

"The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullar*, *supra*, at p. 130 [internal quotation marks and citation omitted]; *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 799 [quoting *Kullar*].) "[T]he merits of the underlying class claims are not a basis for upsetting the settlement of a class action; the operative word is 'settlement.'" (*7-Eleven Owners*, *supra*, at p. 1150.) "[T]he settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits. Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Officers for Justice*, *supra*, 688 F.2d at p. 625.; see also *Wershba*, *supra*, 91 Cal.App.4th at p. 246 ["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."].)

This is a garden-variety wage-and-hour class and PAGA action that follows a familiar pattern of settling at mediation after an informal discovery process that involved the review and analysis of a sampling of relevant documents. The strength of the case is not known. Defendant never challenged the case via demurrer, motion for judgment on the pleadings, summary judgment motion, or trial. Plaintiffs never attempted to certify a class. The parties did not engage in formal written discovery and did not take depositions to test issues, claims, defenses, or credibility.

But as *7-Eleven* instructs, the operative word is "settlement." The parties were represented by counsel that recommended settlement after mediation with an experienced, impartial mediator, who presumably discussed the strengths and weaknesses of the case with the parties. The Court's job is not to judge the settlement against what might have been achieved with further litigation. Hence, the Court finds that this favor weighs in finally approving the settlement.

Risks, Expense, Complexity, and Likely Duration of Further Litigation

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378.)

As in any case of this type, there are various risks common to both sides in continuing litigation after an early settlement, including, but not limited to the uncertainty of outcomes on dispositive motions or at trial; escalating costs that reduce net recovery or increase net exposure; the risk that early assumptions about the strength of the case will prove to be incorrect once formal discovery begins; the possibility of a change in the law or a decision from a higher court that affects claims or defenses; and, of course, the loss of an immediate, certain resolution. Counsel is aware of these risks.

The Court finds that this factor weighs in favor of approving the settlement.

Risk of Maintaining Class Action Status Through Trial

"After certification, a trial court retains flexibility to manage the class action, including to decertify a class if the court subsequently discovers that a class action is not appropriate." (*Kight v. CashCall, Inc.* (2014) 231 Cal.App.4th 112, 125 [internal quotation marks omitted].) "Decertification requires new law or newly discovered evidence showing changed circumstances." (*Williams v. Superior Court* (2013) 221 Cal.App.4th 1353, 1360; *Green v. Obledo* (1981) 29 Cal.3d 126, 148.) "A motion for decertification is not an opportunity for a disgruntled class defendant to seek a do-over of its previously unsuccessful opposition to certification." (*Williams*, *supra*, at p. 1360.)

As set forth above, this is a significant risk, given that Plaintiffs have not moved to certify a class. Further, even if a class were to be certified, there would still exist a risk of decertification, although such a risk is smaller given the legal requirements for granting such a motion.

The Court finds that this factor weighs in favor of approving the settlement.

Amount Offered in Settlement

The settlement is non-reversionary. Final distribution is as follows:

Settlement Amount	**$1,450,000.00**
Attorney's Fees (35% of GSA)	($507,500.00)
Litigation Costs	($21,659.47)
Administrator Costs	($15,750.00)
PAGA Penalties Payable to LWDA (75%)	($54,375.00)
Service Award to Class Representatives	($15,000.00)
Net Settlement Before PAGA penalties	**$817,590.53**
Plus PAGA Penalties (25%)	**$18,125.00**
Net Settlement	**$835,715.53**

"It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." (*Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 628.)

There are 5,105 Class Members and 3,303 aggrieved employees. (Polites Decl., ¶¶ 6, 17.) The range of payments to Class Members is estimated to be from $6.34 on the low end to $2,080.21 on the high end, with the average payment being $160.15. (Polites Decl., ¶ 16; Chang Decl., ¶ 9.) The range of PAGA payments is estimated to be from $.24 on the low end to $44 on the high

end, with the average being $5.49. (*Id*., ¶ 18.)

These payments are extremely low when compared to the attorney's fees requested in this matter ($507,500) and even compared to the requested expert's fee ($12,600). For this reason, the Court finds that the amount offered in settlement does not support approval of the settlement in the absence of a reduction in attorney fees, which is discussed below.

Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378.

Here, lead class counsel is experienced in these types of cases. (Bibiyan Decl., ¶¶ 2-13.)

Hence, the Court finds that this factor weighs in favor of approving the settlement.

Presence of a Governmental Participant

No evidence has been presented with this motion to indicate that the LWDA was notified of the settlement. However, it appears that the settlement submission was made to LWDA on July 31, 2025, as established in connection with the motion for preliminary approval. There is no evidence of any objection by LWDA and it has not intervened in the case. Accordingly, this factor favors approving the settlement.

Reaction of Class Members

The Court has discretion to find a favorable reaction to the settlement among class members when the number of objections to the settlement is a small percentage. (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 967 [district court did not abuse discretion where notice sent to 376,301 putative class members generated 52,000 claim forms and 54 objections]; see also *Churchill Village, L.L.C. v. General Electric* (9th Cir. 2004) 361 F.3d 566, 577 [notice to 90,000 class members generated 45 objections and 500 opt-outs; no abuse of discretion in finding favorable reaction].)

Here, no class members opted out of the settlement or objected prior to the December 1, 2025, deadline for submitting written objections. (Polites Decl., ¶¶ 11-13.) However, 763 Class Notice Packets have been deemed undeliverable. (*Id*., ¶ 10.) That is just under 15% of class members, which is very high.

Given the absence of any objection from the 85% of the Class Members who received notice of the settlement, however, the Court finds that this factor weighs in favor of approving the settlement.

3. Attorney Fees

"Because of the potential for fraud, collusion or unfairness, thorough judicial review of fee applications is required in all class action settlements and the fairness of the fees must be

assessed independently of determining the fairness of the substantive settlement terms." (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 555.) "The court has a duty, independent of any objection, to assure that the amount and mode of payment of attorneys' fees are fair and proper, and may not simply act as a rubber stamp for the parties' agreement." (*Id*.)

"In *Serrano v. Priest* (1977) 20 Cal.3d 25, 141 Cal.Rptr. 315, 569 P.2d 1303, the Supreme Court acknowledged the use of a percentage method in common fund cases[.]" (*Dunk*, *supra*, 48 Cal.App.4th at p. 1809.) "Later cases have cast doubt on the use of the percentage method to determine attorney fees in California class actions." (*Ibid*.) "Even if the method is permissible, it should only be used where the amount was a 'certain or easily calculable sum of money.'" (Id. [quoting *Serrano*, *supra*, 20 Cal.3d at p. 35].)

"The use of the lodestar method for calculating attorney fees was established in California in *Serrano III*." (*Thayer v. Wells Fargo Bank, N.A.* (2001) 92 Cal.App.4th 819, 833.) "Under *Serrano III*, the lodestar is the basic fee for comparable legal services in the community; it may be adjusted by the court based on factors including, as relevant herein, (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Ibid*.) "A contingent fee contract, since it involves a gamble on the result, may properly provide for a larger compensation that would otherwise be reasonable." (*In re Raphael's Estate* (1951) 103 Cal.App.2d 792, 796.)

"In so-called 'fee shifting' cases, in which the responsibility to pay attorney fees is statutorily or otherwise transferred from the prevailing plaintiff or class to the defendant, the primary method for establishing the amount of 'reasonable' attorney fees is the lodestar method. The lodestar (or touchstone) is produced by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative 'multiplier' to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26.) "The reasonable hourly rate is that prevailing in the community for similar work." ((*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095 [95 Cal.Rptr.2d 198, 997 P.2d 511], *as modified* (June 2, 2000); *Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 1002.)

"To fulfill its role in protecting absent class members, the class action court must consider the potential effect of a fee-splitting agreement *before* approving a proposed settlement. Evaluating the substance of the settlement separate from the attorney fees is insufficient. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219, 227 [82 Cal.Rptr.3d 569, 574], *as modified on denial of reh'g* (Sept. 17, 2008).)

"While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable by refining the choice of a percentage or by checking the percentage result against a lodestar-multiplier calculation." (*Laffitte v. Robert Half*

Internat. Inc. (2016) 1 Cal.5th 480, 494-495.) "Some courts have employed a benchmark percentage, with upward or downward adjustments justified by a multifactor analysis. The Ninth Circuit has approved a 25 percent benchmark." (*Id.*; see also *Six (6) Mexican Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1311; *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1176 ["Some California courts have also found this guideline reasonable in class actions."]; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13].) "The most significant trend has been a blending of the two fee calculation methods, an approach in which one method is used to confirm or question the reasonableness of the other's result. Where the court uses the percentage method as its primary approach, the technique is referred to as a 'lodestar cross-check[.]'" (*Laffitte*, *supra*, 1 Cal.5h at p. 496.)

A trial court is not required to follow the *Laffey* Matrix. (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 702.)

"[T]he trial court has broad authority to determine the amount of a reasonable fee." (*Drexler*, *supra*, 22 Cal.4th at p. 1095.) "The choice of a fee calculation method is generally one within the discretion of the trial court, the goal under either the percentage or lodestar approach being the award of a reasonable fee to compensate counsel for their efforts." (*Laffitte*, *supra*, 1 Cal.5th at p. 504.)

Here, Plaintiffs seek a contingent award of 35% of the gross settlement amount, which amounts to $507,500. (Bibiyan Decl., ¶ 17.) Although the Court noted in its August 27, 2025 Minute Order Preliminarily approving the settlement that a one-third contingent fee is reasonable and within the range of fees routinely approved, the Court also stated that it would require substantial evidence of counsel's experience, results, and actual efforts expended in this case to justify a higher percentage. Here, the Court finds that Plaintiffs have failed to present such substantial evidence.

Counsel asserts that a total of 666.8 hours will have been spent on this matter, comprised of work performed by the following:

Individual	Hourly Rate	Number of Hours	Total
David Bibiyan (Attorney)	$1,200	"Approx. 63.9 hours"	$76,680.00
Diego Aviles (Attorney)	$900	"Approx. 141.3 hours"	$127,170.00
Vedang Patel (Attorney)	$900	"Approx. 44.3 hours"	$39,870.00
Jeffrey Bils (Attorney)	$850	"Approx. 41.8 hours"	$35,530.00
Henry Glitz (Attorney)	$750	"Approx. 63.6 hours"	$47,700.00
Brandon Chang (Attorney)	$700	"Approx. 74.2 hours"	$51,940.00
Jasmin Aradi (Attorney)	$650	"Approx. 178.7 hours"	$116,155.00
Joshua Shirian (Attorney)	$550	"Approx. 22.2 hours"	$12,200.00
Paralegals	$200	"Approx. 21.3 hours"	$4,260.00
Legal Assistants	$75	"Approx. 15.5 hours"	$1,162.60
		Total	$512,667.50

(Bibiyan Decl., ¶ 16.)

In this case, there is no explanation of why eight attorneys worked on this case. This level of staffing and time is unreasonably disproportionate to the work performed and suggests duplication and inefficiency rather than necessity. The request is further undermined by Plaintiffs' failure to submit contemporaneous, detailed billing records; instead, lead counsel lists hours as "approximate." Without detailed billing records, the Court cannot determine whether time was spent on compensable versus non-compensable tasks; whether multiple attorneys billed for the same work; whether senior attorneys performed tasks that should have been delegated; or whether the time claimed bears any reasonable relationship to the work required. The absence of billing detail is also problematic given the high hourly rates sought by attorneys whose experience in matters of this type is unknown in six of eight cases.

The Court was able to glean some information about the attorneys, such as dates of admission, from the State Bar's website in order to ascertain years of experience as an attorney. This information is as follows:

Individual	Admission	Years of Exp.
David Bibiyan (Attorney)	Dec. 2012	13
Diego Aviles[2] (Attorney)	June 2017	8.5
Vedang Patel (Attorney)	Dec. 2019	6
Jeffrey Bils[3] (Attorney)	Dec. 2014	11
Henry Glitz (Attorney)	May 2023	2.5
Brandon Chang (Attorney)	Sept. 2017	8.25
Jasmin Al-Aradi[4] (Attorney)	Mar. 2021	4.75
Joshua Shirian[5] (Attorney)	Dec. 2021	4

As can be seen in the footnotes, several of the lawyers who worked on this case appear not to be currently employed by Plaintiffs' lead counsel. Their relationship with Plaintiffs' lead counsel's firm during the workup of this case is unknown. But this calls into question lead counsel's personal knowledge about the hours worked by those individuals.

As can also be seen, the senior-most attorney, who is lead counsel, has been admitted to practice for 13 years and only one other attorney has been admitted for more than 10 years.

To justify the hourly rates tendered, Plaintiffs offer the declaration of Richard Pearl, filed in a Los Angeles case 14 years ago. (Chang Decl., Exh. 3.) Given that Mr. Pearl is not opining about the attorneys who worked on this matter, the declaration is irrelevant and is disregarded by the Court.

Plaintiffs also offer a "Firm-by-Firm Sampling of Billing Rates Nationwide" in support of their claims for their attorneys' hourly rates. (*Id*., Exh. 2.) This document is over 20 years old and appears to be a survey of the nation's 250 largest law firms. Consequently, this document is also irrelevant to the determination of whether the suggested hourly rates are reasonable for purposes of conducting a lodestar cross-check. For purposes of conducting the cross-check, the Court

finds that the following rates are reasonable:

Individual	Admission	Years of Exp.	Reas. Hourly Rate
David Bibiyan (Attorney)	Dec. 2012	13	$525
Diego Aviles (Attorney)	June 2017	8.5	$400
Vedang Patel (Attorney)	Dec. 2019	6	$350
Jeffrey Bils (Attorney)	Dec. 2014	11	$475
Henry Glitz (Attorney)	May 2023	2.5	$250
Brandon Chang (Attorney)	Sept. 2017	8.25	$400
Jasmin Al-Aradi (Attorney)	Mar. 2021	4.75	$300
Joshua Shirian (Attorney)	Dec. 2021	4	$300

The Court finds that a reasonable hourly rate for paralegals in Ventura County is $75.

The Court declines to consider an award of attorney's fees for the work of legal assistants. That unfairly passes overhead costs pertaining to routine administrative tasks to Defendants and takes settlement money away from the employees who were harmed by Defendants' alleged violations of the law.

Given the lack of detailed billing records and what amounts to an estimate of the hours spent by a large group of attorney on this matter, the Court finds that it cannot conduct the lodestar cross-check and instead will determine a reasonable contingency percentage.

Although a one-third fee is commonly sought in class action cases, usually relying on the Supreme Court's decision in *Laffitte*, there is no evidence that such a fee is a benchmark. A fee of one-third in this case would amount to $482,850. A twenty-five percent fee, which is the Ninth Circuit's benchmark percentage, would amount to $362,500. Here, Plaintiffs seek thirty-five percent, or $507,500. Such a fee is nearly 244 times higher than the highest estimated class member payment of $2,080.21. Even a twenty-five percent fee is 174 times higher than the highest estimated class member payment.

A comparison of this case with *Laffitte* will shed light on why the trial court awarded a one-third fee based on a percentage of the common fund in that case. In *Laffitte*, the case settled for $19 million before trial. The settlement agreement provided that no more than a third of the recovery would go to class counsel as attorney fees. Class counsel then sought the full third, or $6,333,333.33. The trial court approved the fee after considering the hours worked on the case, the course of the pretrial litigation, and the potential recovery and litigation risks. (*Laffitte*, *supra*, 1 Cal.5th at p. 485.) The issue on appeal was not whether a one-third contingency fee was reasonable, but rather whether a fee based on a percentage of the common fund was permissible at all in light of the Supreme Court's holding in *Serrano III*. (*Id*. at pp. 485-486; see also *id*. at p. 488 ["[W]hether *Serrano III* permits a trial court to calculate an attorney fee award from a class action common fund as a percentage of the fund, while using the lodestar-multiplier method as a cross-check of the selected percentage."].)

Class counsel's declaration in support of the fee request in *Laffitte* indicated that the "litigation included extensive written discovery, extensive law and motion practice, 68 depositions, three Motions for Summary Judgment, a Class Certification Motion, subsequent Reconsideration motion and then another Motion to Decertify, numerous experts, consultation with an economist regarding potential damage exposure and two full day mediations." Litigation had lasted eight and a half years before settlement was achieved. (*Id*. at p. 487.)

Here, unlike *Laffitte*, there was no written discovery, let alone extensive discovery; no summary judgment motion, let alone multiple motions for summary judgment; no class certification motion; no motion for reconsideration; and no motion for decertification. In this case, the only two motions were the motions for preliminary and final approval of the settlement. And even those are unopposed. Finally, litigation in this case did not last for eight and a half years.

As set forth above, the Supreme Court in *Laffitte* noted that some courts have not only used a benchmark percentage, but, once employed, have adjusted it *both* upward *and downward* depending on the circumstances of a particular case. (*Id.* at pp. 494-495.)

In sum, the Court declines to consider one-third of a common fund to be a benchmark percentage here. Rather, it is nothing more than a fee that may be reasonable, depending on the circumstances of a particular case. Instead, the Court considers twenty-five percent to be a reasonable benchmark in a settlement case, and that such benchmark percentage may be adjusted upward or downward after consideration of relevant factors. The Court has considered the following factors in this case: the amount of formal written discovery conducted; the number of depositions taken; the number and nature of challenges to the case (e.g., demurrer, motion for judgment on the pleadings, motion for summary judgment, class certification motion, motion for reconsideration, motion for decertification); the factual and legal issues presented by the case, including whether any legal issues are novel; the number of class members; the average payment per class member; and the duration of the litigation. The Court has also considered these additional factors: the number of attorneys who worked on the case; the education and relevant experience of each attorney, to the extent such information was provided; the hourly rate sought by each attorney; the number of hours claimed by each attorney, to the extent it could be determined; and the tasks performed.

In this case, after considering all of these factors, and in exercising its discretion, the Court finds that the fee requested is unreasonable under any method of calculation and is not in the best interests of the class members. The lack of objections to the settlement is a factor the Court also considered; however, the class members did not have the information that the Court has before it and, in any event, it is the Court's duty to independently evaluate the information, which it has done.

Consequently, the Court conditions final approval of the settlement in part on acceptance of a downward reduction in the fee to twenty-five percent of the gross settlement, which would amount to $362,500. Mathematically, and assuming full credit for all 666.8 hours claimed, the average hourly rate would be $543.64, which is reasonable for a settlement ink a case the merits of which have not been challenged at all, such as this case.

4. Costs

Counsel seeks reimbursement of costs in the amount of $21,659.47. (Bibiyan Decl., ¶ 21.) The following were attached in support of the claim for costs: lead counsel's printout of expenses incurred; an invoice from Katherine Edwards (mediator) in the amount of $5,500; and an invoice from Berger Consulting (economist) in the amount of $12,600.

The Court disapproves of the $12,600 cost from Berger Consulting. The invoice indicates that 25.20 hours were spent on this matter but fails to indicate who performed the work; fails to describe the education and experience of the individual who performed the work; fails to specify the dates on which the work was performed; fails to describe the tasks performed and the date on which they were formed; and fails to indicate the time spent on each task. Consequently, the Court cannot determine whether the work was compensable or non-compensable and cannot determine whether the hourly rate and time spent on each task was reasonable.

The other costs listed appear to be reasonable and standard for this type of matter.

The Court thus conditions final approval on Plaintiffs' agreement to accept a $12,600 reduction in costs requested and, if such reduction is agreed to, awards costs in the amount of $9,059.47.

5. Incentive Awards

"[A]n incentive award is appropriate 'if it is necessary to induce an individual to participate in the suit,' and have noted 'relevant factors' to consider in deciding whether such an award is warranted." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804 [quoting *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016].) "[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citation.]" (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394–1395 [113 Cal.Rptr.3d 510, 522], *as modified* (July 27, 2010).)

"These 'incentive awards' to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit." (*Id*. at p. 1395; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 ["it is established that named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class"]; see also *Clark*, *supra*, at p. 805 ["An enhancement that gives the named plaintiffs at least 44 times the average payout to a class member simply cannot be justified on the record in this case."]; *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 975-978 [disapproving awards to 237 named class members that were 16 times greater than payments to unnamed class members]; *In re Mego Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454, 457, 463, *as amended* (June 19, 2000) [affirming award of $5,000 to each of two named class members from settlement of $1.725 million]; *In re U.S. Bancorp Litigation* (8th Cir. 2002) 291 F.3d 1035, 1038 [affirming award of $2,000 to each of five named class members from settlement of $3 million].)

Incentive awards may corrupt a settlement. (*Radcliffe v. Experian Information Solutions Inc.* (9th Cir. 2013) 715 F.3d 1157, 1163-1167 [reversing approval of settlement where settlement

agreement explicitly conditioned incentive awards on the class representatives' support for the settlement]; see also *Rodriguez*, *supra*, 563 F.3d at pp. 958-961 [sliding scale incentive agreements "created an unacceptable disconnect between the interests of the contracting representatives and class counsel, on the one hand, and members of the class on the other"].)

Reasoned argument and evidence are required to support an award of incentive payments. The Court should not accept conclusory statements offered in support of such awards. (*Clark*, *supra*, at p. 805.)

Here, Plaintiffs each estimate they have spent "at least 26 hours" on this matter. Tasks generally consisted of conferring with their attorneys and looking for documents. (Ventura Decl., ¶ 15; Hernandez Decl., ¶ 15.) The two declarations are nearly identical, except for the dates of employment listed.

The description of the tasks performed by Plaintiffs and the boilerplate nature of the declarations cast doubt on Plaintiffs' claims regarding the number of hours spent on this matter. On the other hand, by signing a general release involving a waiver of their rights under Civil Code section 1542, the Court believes that Plaintiffs should receive an amount higher than the average class member, given that they are waiving more rights than the class members and aggrieved employees.

For these reasons, the Court finally approves a service award of $7,500 per Plaintiff, for a total of $15,000.

6. Claims Administration Costs

Administration fees are $15,575. The Tasks performed are described in sufficient detail. The size of the class is large and there were many Class Notices returned. (Polites Decl., ¶¶ 3-10, 19.) The fees are reasonable given the size of the class, the tasks performed, and the number of returned notices that the administrator had to deal with. Thus, the Court finally approves this cost.

7. Cy Pres

"Damage distribution . . . poses special problems in consumer class actions. Often, proof of individual damages by competent evidence is not feasible. Each individual's recovery may be too small to make traditional methods of proof worthwhile. In addition, consumers are not likely to retain records of small purchases for long periods of time." (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 471-472.) "In response to these problems, the courts have turned to the equitable doctrine of *cy pres*. This doctrine originated in the law of charitable trusts. Where compliance with the literal terms of a charitable trust became impossible, the funds would be put to 'the next best use,' in accord with the dominant charitable purposes of the donor. [citation] In the class action context, the *cy pres* doctrine is generally denominated 'fluid recovery.'" (*Id*. at p. 472.) "The propriety of fluid recovery in a particular case depends upon its usefulness in fulfilling the purposes of the underlying cause of action. [citations] Fluid recovery may be essential to ensure that the policies of disgorgement or deterrence are realized. [citation] Without fluid recovery, defendants may be permitted to retain ill gotten gains simply because their conduct harmed large numbers of people in small amounts instead of small numbers of people in large amounts." (Id. at p. 472 [citations omitted].)

"The implementation of fluid recovery involves three steps. [citation] First, the defendant's total damage liability is paid over to a class fund. Second, individual class members are afforded an opportunity to collect their individual shares by proving their particular damages, usually according to a lowered standard of proof. Third, any residue remaining after individual claims have been paid is distributed by one of several practical procedures that have been developed by the courts." (Id. at pp. 472-473 [citation omitted].)

"In order to assess the propriety of the fluid recovery method selected by the trial court in the present case, it is necessary to review briefly the available alternatives. The principal methods include a rollback of the defendant's prices, escheat to a governmental body for either specified or general purposes, establishment of a consumer trust fund, and claimant fund sharing. All of these methods promote the policies of disgorgement and deterrence by ensuring that the residue of the recovery does not revert to the wrongdoer. However, they differ substantially in their compensatory effect and in their suitability for particular cases." (*Id*. at p. 473.) "In determining which method to employ, the courts should consider: (1) the amount of compensation provided to class members, including nonclaiming (or 'silent') members; (2) the proportion of class members sharing in the recovery; (3) the extent to which benefits will 'spill over' to nonclass members and the degree to which the spillover benefits will effectuate the purposes of the underlying substantive law; and (4) the costs of administration." (*Id*.)

Here, the funds from uncashed checks will be distributed to Legal Aid Work for use in Ventura County. (Chang Decl., ¶ 22, at 8:8-11, and Exh. 1 [Settlement Agr. ¶ 4.4.3]; Polite Decl., Exh. A [Class Notice at p. 3 of 12 under "Tax Reporting"].)

Given that the unclaimed funds will not revert to Defendant, the Court approves of this manner of distribution of the unclaimed settlement funds and will set a date for a final accounting of this disbursement pursuant to Code of Civil Procedure section 384.

8. Proposed Order and Judgment

"The judgment in an action maintained as a class action must include and describe those whom the court finds to be members of the class." (Cal. Rules of Court, rule 3.771, subd. (a).) "Notice of the judgment must be given to the class in the manner specified by the court." (*Id*., subd. (b).)

Here, a proposed order has been submitted but will need to be amended in accordance with this order. Judgment will not be entered until approval of final disbursement in accordance with Code of Civil Procedure section 384.

Conclusion

The motion is granted conditioned on Plaintiffs' acceptance of a reduction in attorney's fees and costs, as set forth herein. If the reductions are not agreed to, the motion shall be denied.

Plaintiff's counsel is directed to submit a proposed amended order.

Clerk is directed to give notice of the Court's ruling.

[1] California courts may cite unpublished *federal* opinions. (*Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1096 fn. 18 ["Citing unpublished *federal* opinions does not violate our rules."]; *Landmark Screens, LLC v. Morgan, Lewis & Bockius, LLP* (2010) 183 Cal.App.4th 238, 251 fn. 6 ["Although we may not rely on unpublished California cases, the California Rules of Court do not prohibit citation to unpublished federal cases, which may properly be cited as persuasive, although not binding, authority."]; *Nungaray v. Litton Loan Servicing, LP* (2011) 200 Cal.App.4th 1499, 1501 fn. 2 ["California Rules of Court do not prohibit citation to unpublished federal cases, which may be properly cited as persuasive authority."].)

[2] Mr. Aviles's employer, per the State Bar's website, is listed as Wilshire Law Group. He is not listed on Bibiyan Law Group's website.

[3] Mr. Bils's employer, per the State Bar's website, is listed as Wilshire Law Group. He is not listed on Bibiyan Law Group's website.

[4] The State Bar does not list a "Jasmin Aradi." Through some google searching, it appears this lawyer's correct name is Jasmin Al-Aradi. She does not currently appear to be employed by Bibiyan Law Group, but rather by Wood Smith Henning Berman. She is not listed on Bibiyan Law Group's website.

[5] Per the State Bar's website, Mr. Shirian appears to be self-employed and not employed by Bibiyan Law Group. He is not listed on Bibiyan Law Group's website.

Certificate of Clerk's Service is attached.