

FILED
LOS ANGELES SUPERIOR COURT

MAR 10 2021

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
by *N. Navarro* Deputy
NANCY NAVARRO

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

Case No.: 19STCV40561

EMMA ALYCE WEBER, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

KACE ENTERTAINMENT, INC., a
California corporation, dba VOX DJS, INC.;
and DOES 1 through 100,

Defendants.

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITION

Date: March 10, 2021
Dept.: SSC-17
Time: 9:30 a.m.

I. BACKGROUND

This is a wage and hour class action. Kace Entertainment Inc., dba VOX DJS, Inc. (VOX) provides entertainment services, including disc jockeys ("DJ"), emcees, photo

1 booths, lighting and audio-visual, and live music for weddings, corporate events, and
2 other live events throughout Southern California and Arizona.

3 On November 12, 2019 Plaintiff filed a class action lawsuit against VOX. On
4 January 22, 2020, Plaintiff filed the operative First Amended Class and Representative
5 Action Complaint alleging the following causes of action: (i) failure to pay all overtime
6 wages (Labor Code §§ 204, 5110, 1194, 1198); (ii) minimum wage violations (Labor
7 Code §§ 1182,12, 1194, 1194.2, 1197); (iii) rest period violations (Labor Code §§ 226.7,
8 516, 558); (iv) meal period violations (Labor Code §§ 226.7, 512, 558); (v) failure to
9 reimburse all necessary business expenditures (Labor Code §§ 2802, 2804); (vi) wage
10 statement violations (Labor Code §§ 226, 226.2; (vii) waiting time penalties (Labor Code
11 §§ 201-203); (viii) Unfair Competition as a result of the aforementioned violations (Bus.
12 & Prof. Code § 17200 et seq.); and (ix) civil penalties pursuant to the Private Attorneys
13 General Act of 2004 (“PAGA”), California Labor Code § 2698 et seq.

14 After discovery the parties attended a full-day mediation on May 18, 2019 with
15 Francis J. Ortman, Esq., and were ultimately able to come to a Memorandum of
16 Understanding. During the months that followed, the parties finalized the terms of the
17 Settlement and executed the long-form Settlement Agreement, a signed copy of which is
18 attached as Exhibit 1 to the Declaration of Paul Haines (“Haines Decl.”).

19 On December 1, 2020, the Court issued a checklist of items for the parties to
20 address and continued preliminary approval. In response, counsel filed supplemental
21 briefing (“Supp. Brief”) and an Amended Settlement Agreement attached as Exhibit 3 to
22 the Supplemental Declaration of Paul Haines (“Haines Supp. Decl.”). All reference in
23 this Order are to the Amended Settlement Agreement.

24 The proposed settlement payments will be made in installments. Counsel
25 represents that in connection with mediation VOX confidentially provided Counsel’s

1 office with financial records, including profit & loss statements from 2018, 2019, and
2 2020 to date. After reviewing those financial records, and considering that VOX is in the
3 live event/entertainment business which has been impacted by the COVID-19 pandemic
4 and related government shutdowns, counsel contends that it became apparent VOX
5 would not be able to sustain a significant settlement unless it was payable in several
6 installments over a period of time. Accordingly, the parties negotiated the payment
7 schedule reflected in the Settlement, under which VOX will make quarterly payments
8 beginning in the first quarter of 2021. (Haines Decl., ¶33.)

9 Before the Court is Plaintiff's motion for preliminary approval of the settlement.
10 For the reasons set forth below the Court preliminarily grants approval for the settlement
11 on the condition that the "conclusive presumption" in Paragraph 9(F) of the Settlement
12 Agreement is amended to be a "presumption," which amendment may be by Stipulation
13 of Counsel filed on or before March 17, 2021.

14
15 **II. THE TERMS OF THE SETTLEMENT**

16 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

17 Settlement Class means: All current and former non-exempt employees of VOX
18 in the positions of DJ, Roadie for DJ, DJ Roadie, Assistant to DJ, DJ Assistant, and
19 Shadow to DJ ("Covered Position(s)") who worked in California at any time from
20 November 12, 2015 through the date of preliminary approval of the settlement.
21 (Settlement Agreement, ¶1.)

22 "Class Period" means at any November 12, 2015 through the date of preliminary
23 approval of the settlement. (¶1)

24 "Waiting Time Period" means November 12, 2016, through the end of the Class
25 Period. (¶4.B.iii)

1 “PAGA Period” means November 15, 2018 through the end of the Class Period.

2 (¶2.A)

3 Defendant represents that there are approximately 196 members of the proposed
4 Settlement Class. (Haines Decl., ¶16.)

5 Based on data produced by VOX in connection with mediation, the Parties believe
6 the data reflects that there were approximately 10,050 Work Events worked by
7 Settlement Class members during the Class Period. If the number of Work Events worked
8 by Settlement Class members during the Class Period is more than 10% greater than this
9 figure (i.e., if there are 11,055 events or more), Plaintiff has the option, at her sole
10 discretion, to void the Settlement Agreement. (¶3.H)

11 The Parties stipulate and agree to the conditional certification of this Action for
12 purposes of this Settlement only. (¶1)

13 **B. THE MONETARY TERMS OF SETTLEMENT**

14 The essential monetary terms are as follows:

15 The Maximum Settlement Amount (“MSA”) is \$1,000,000 (¶3). This includes
16 payment of a PAGA penalty of \$40,000 to be paid 75% to the LWDA (\$30,000) and 25%
17 to the Settlement Class Members (\$10,000) (¶3.E.4);

18 The Net Settlement Amount (“Net”) (\$569,166.67) is the MSA less:

- 19 ○ Up to \$333,333.33 (33 1/3%) for attorney fees (¶5);
 - 20 ■ Fee Split: Haines Law Group PC will receive 67.5% of any
 - 21 attorneys’ fee award and Tojarieh Law, PC will receive 32.5% of
 - 22 any attorneys’ fee award. (Haines Decl., ¶32 and Exhibit 2
 - 23 thereto.)
- 24 ○ Up to \$40,000 for attorney costs (¶5);
- 25 ○ Up to \$7,500 for a service award to the proposed class representative (¶6);

- \$40,000 allocated as PAGA Penalties (§3.E.4); and
- Estimated \$10,000 for settlement administration costs (§7). The Declaration of Lawrence indicates an estimate of \$9,000. (See Ex. F to Amended Dec. of Lawrence).

- VOX's share of payroll taxes as an employer (e.g., FICA, FUTA) on the portion of Settlement Awards designated as "wages" shall be paid by VOX separately from, and in addition to, the Maximum Settlement Amount. (§3.D)

- Assuming the Court approves all maximum requested deductions, including \$10,000 for settlement administration, approximately \$569,166.67 will be available for distribution to participating class members. Assuming full participation, the average settlement share will be approximately \$3,367.85. ($\$569,166.67 \text{ Net} \div 169 \text{ class members} = \$3,367.85$). In addition, each class member will receive a portion of the PAGA penalty, estimated to be \$59.17 per class member. ($\$10,000 \text{ (25\% of } \$40,000 \text{ PAGA penalty)} \div 169 \text{ class members} = \59.17), assuming all class members are Aggrieved Employees.

- There is no claim requirement (§4).

- The settlement is not reversionary (§3.E).

- Payments to the Settlement Class: From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Award based on the following formula:

- PAGA Amount. As noted above, \$10,000.00 has been designated as the "PAGA Amount." Each participating Settlement Class member (whether or not they opt out) who was employed by VOX in a Covered Position at any time during the PAGA Period shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked

1 for VOX in a Covered Position in California during the Wage
2 Statement/PAGA Period. This will be calculated by multiplying the PAGA
3 Amount by a fraction, the numerator of which is the participating
4 Settlement Class member's number of pay periods worked during this
5 period, and the denominator of which is the total number of pay periods
6 worked by all participating Settlement Class members during that time
7 period. (§4.B.i)

- 8 • The remainder of the Net Settlement Amount (i.e., after the PAGA Amount is
9 deducted) shall be distributed as follows:
 - 10 ○ Payments to all participating Settlement Class members: 80% of the
11 remainder of the Net Settlement Amount will be distributed to all
12 participating Settlement Class members based on each participating
13 Settlement Class member's proportionate number of events worked for
14 VOX in a Covered Position in California during the Class Period ("Work
15 Events"), by multiplying 80% of the remainder of the Net Settlement
16 Amount by a fraction, the numerator of which is the participating
17 Settlement Class member's number of Work Events, and the denominator
18 of which is the total Work Events worked by all participating Settlement
19 Class members.. (§4.B.ii)
 - 20 ○ Waiting Time Amount: 15% of the remainder of the Net Settlement
21 Amount shall be designated as the "Waiting Time Amount." Each
22 participating Settlement Class member whose employment with VOX
23 terminated at any time from November 12, 2016, through the end of the
24 Class Period (the "Waiting Time Period") shall receive an equal share of
25 the Waiting Time Amount. In other words, the Waiting Time Amount will

1 be divided equally among all participating Settlement Class Members
2 whose employment with VOX terminated during the Waiting Time Period.
3 (§4.B.iii)

- 4 ○ Wage Statement Amount: 5% of the remainder of the Net Settlement
5 Amount shall be designated as the “Wage Statement Amount.” Each
6 participating Settlement Class member who was employed by VOX in a
7 Covered Position in California at any time from November 12, 2018 to the
8 end of the Class Period, shall receive a portion of the Wage Statement
9 Amount proportionate to the number of pay periods worked for VOX in a
10 Covered Position in California during that time period. This shall be
11 calculated by multiplying 5% of the remainder of the Net Settlement
12 Amount by a fraction, the numerator of which is the Settlement Class
13 member’s number of pay periods worked during this period, and the
14 denominator of which is the total number of pay periods worked by all
15 participating Settlement Class members during this period. (§4.B.iv)

- 16 ■ Tax Withholdings of Individual Settlement Payments: 20% as
17 wages; 40% as penalties; and 40% as interest. (§4.D)

- 18 ● Uncashed Checks: Each member of the Settlement Class who receives a
19 Settlement Award must cash any Settlement Award check within 180 days from
20 the date the Settlement Administrator mails it. Any funds payable to Settlement
21 Class members whose checks were not cashed within 180 days after mailing will
22 escheat to the California State Controller for deposit in the Unclaimed Property
23 Fund in the name of the Settlement Class member. (§4.E)

1 • Funding of the Settlement: The Maximum Settlement Amount shall be deposited
2 into an escrow account to be established by the Settlement Administrator in 9 bi-
3 monthly installments, as follows:

4 ○ First to Fourth Installments: The first through fourth installments, which
5 collectively equal \$360,000.00 of the Maximum Settlement Amount, shall
6 be deposited in four equal installments of \$90,000.00 each. The first,
7 second, third, and fourth installments of \$90,000.00 each shall be
8 deposited no later than March 31, 2022, May 31, 2022, July 31, 2022, and
9 September 30, 2022, respectively. (§3.B.1)

10 ○ Fifth to Eighth Installments: The fifth through eighth installments, which
11 collectively equal \$480,000.00 of the Maximum Settlement Amount, shall
12 be deposited in four equal installments of \$120,000.00 each. The fifth
13 through eighth installments shall be deposited no later November 30,
14 2022, January 31, 2023, March 31, 2023, and May 31, 2023, respectively.
15 (§3.B.2)

16 ○ Ninth Installment: VOX shall deposit the ninth and final installment of
17 \$160,000.00 by July 31, 2023. (§3.B.3)

18 ■ Personal Guaranty. As part of this Settlement Agreement, VOX's
19 Chief Executive Officer, KC Campbell ("Campbell"), has agreed
20 to provide a personal guaranty of the Maximum Settlement
21 Amount. If VOX fails to pay the Maximum Settlement Amount, or
22 any installment thereof, by the date such payment is due under this
23 Settlement Agreement, Campbell will be personally liable to
24 Plaintiff, Settlement Class members, and Class Counsel for any
25 unpaid amount, and Plaintiff and Class Counsel will be entitled to

1 recover any unpaid amount from Campbell, including reasonable
2 attorneys' fees and costs incurred in securing such payment. (¶3.C)

3
4 **C. TERMS OF RELEASES**

- 5 • Upon the "Effective Date" and the Settlement being fully funded, Plaintiff and
6 every member of the Settlement Class (except those who opt out) shall release
7 and discharge VOX, its current or former subsidiaries, officers, directors,
8 employees, and agents, successors, and assigns (collectively, the "Released
9 Parties") from all claims, demands, rights, liabilities and causes of action that
10 were pled in the Complaint, or which could have been pled in the Complaint¹
11 based on the factual allegations therein, that arose during the Class Period,
12 including the following claims: (1) failure to pay all overtime wages; (2)
13 minimum wage violations; (3) rest period violations; (4) meal period violations;
14 (5) failure to reimburse all necessary business expenditures; (6) wage statement
15 violations; (7) waiting time penalties; and (8) all claims for unfair competition
16 that could have been premised on the factual allegations asserted in the
17 Complaint ("Class Members' Released Claims"). In addition, all Settlement
18 Class members (whether or not they opt out) who were employed by VOX at
19 any time from November 15, 2018 through the end of the Class Period (the
20 "PAGA Period") shall release all claims for civil penalties under the Private
21 Attorneys General Act ("PAGA") that were alleged in Plaintiff's November 15,
22 2019 letter to the LWDA and asserted in the Complaint, including claims for
23 PAGA civil penalties based on alleged violations of Labor Code §§ 201-203,
24

25

¹ "Complaint" is defined as the First Amended Class and Representative Action

1 204, 226, 226.2, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197,
2 and 1198 (“PAGA Released Claims”). The period of the release of Class
3 Members’ Released Claims shall extend to the limits of the Class Period. The
4 period of the release of the PAGA Released Claims shall extend to the limits of
5 the PAGA Period. (¶2.A)

- 6 • The named Plaintiff will also provide a general release and a waiver of the
7 protections of Cal. Civ. Code §1542. (¶¶2.A-B)
- 8 • The releases are effective on the Effective Date and the Settlement being fully
9 funded. (¶2.A)

10 **D. SETTLEMENT ADMINISTRATION**

- 11 • The proposed Settlement Administrator is Phoenix Settlement Administrators,
12 which has provided evidence that no counsel are affiliated with it and that it has
13 adequate procedure in place to safeguard the data and funds to be entrusted to it.
14 (¶3.A; see *passim*, Amended Declaration of Jody Lawrence)
- 15 • Settlement administration costs are estimated to be \$10,000. (¶7)
- 16 • Notice: The manner of giving notice is described below.
- 17 • “Response Deadline” means the date 60 days of the date of the initial mailing of
18 the Notice Packets (¶9.D) Class members have until the Response Deadline to
19 submit Requests for Exclusion, Objections or Disputes. (¶¶9.C-E.) Settlement
20 Class members to whom Notice Packets are re-mailed after having been returned
21 as undeliverable to the Settlement Administrator shall have 14 calendar days
22
23
24
25

1 from the date of re-mailing, or until the Response Deadline has expired,
2 whichever is later, to submit a Request for Exclusion, Objection, or dispute.

3 (¶9.F)

- 4 • Notice of Final Judgment shall be posted to the Settlement Administrator's
5 website, www.phoenixclassaction.com/WebervKace. (Notice, pg. 1.)
- 6 • Counsel contends that English-only Notice is appropriate as Defendant's Chief
7 Executive Officer represents that Settlement Class member are required to read,
8 write, and speak English in order to perform their job duties. (Supp. Brief, 7:10-
9 13; Hayes Decl., ¶11.)

11
12 **D. ATTORNEYS' FEES**

13 Counsel for the proposed class seek \$333,333.33 (33 1/3 %) in attorney's fees and
14 \$40,000 in costs. (¶5).

15 Counsel represents hat there is a fee-sharing agreement in this matter wherein,
16 Haines Law Group, APC will receive 67.5% of any attorneys' fee award and Tojarieh
17 Law, PC will receive 32.5% of any attorneys' fee award. (Haines Decl., ¶32.) This fee-
18 sharing agreement was agreed to in writing by Plaintiff pursuant to California Rule of
19 Professional Conduct 1.5.1. (*Ibid.* and Exhibit 2 thereto.)

20
21 **E. SERVICE AWARDS**

22 The named plaintiff seeks a service award of \$7,500. (¶6).

23 //

24 //

25 //

1 **III. SETTLEMENT STANDARDS AND PROCEDURE**

2 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
3 of an entire class action, or of a cause of action in a class action, or as to a party,
4 requires the approval of the court after hearing.” “Any party to a settlement agreement
5 may serve and file a written notice of motion for preliminary approval of the settlement.
6 The settlement agreement and proposed notice to class members must be filed with the
7 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
8 Court, rule 3.769(c).

9 “In a class action lawsuit, the court undertakes the responsibility to assess
10 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
11 dismissal of a class action. The purpose of the requirement [of court review] is the
12 protection of those class members, including the named plaintiffs, whose rights may not
13 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
14 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
15 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
16 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
17 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
18 agreement to the extent necessary to reach a reasoned judgment that the agreement is
19 not the product of fraud or overreaching by, or collusion between, the negotiating
20 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
21 concerned.”] [internal quotation marks omitted].

22 “The burden is on the proponent of the settlement to show that it is fair and
23 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
24 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
25 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar

1 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
2 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

3 Notwithstanding an initial presumption of fairness, “the court should not give
4 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
5 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
6 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
7 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
8 members, the court must independently and objectively analyze the evidence and
9 circumstances before it in order to determine whether the settlement is in the best
10 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
11 In that determination, the court should consider factors such as “the strength of
12 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
13 the risk of maintaining class action status through trial, the amount offered in
14 settlement, the extent of discovery completed and stage of the proceedings, the
15 experience and views of counsel, the presence of a governmental participant, and the
16 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
17 factors is not exclusive and the court is free to engage in a balancing and weighing of
18 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
19 245.

20 At the same time, “[a] settlement need not obtain 100 percent of the damages
21 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
22 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
23 substantially narrower than it would be if the suits were to be successfully litigated,’ this
24 is no bar to a class settlement because ‘the public interest may indeed be served by a
25

1 voluntary settlement in which each side gives ground in the interest of avoiding
2 litigation.” *Id.* at 250.

3
4 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

5
6 **A. THERE IS A PRESUMPTION OF FAIRNESS**

7 The settlement is entitled to a presumption of fairness for the following reasons:

8
9 **1. The settlement was reached through arm’s-length bargaining**

10 The parties attended a full-day mediation on May 18, 2019 with Francis J.
11 Ortman, and were ultimately able to come to a Memorandum of Understanding. (Haines
12 Decl., ¶14.)

13
14 **2. The investigation and discovery were sufficient**

15 Counsel represents that the parties engaged in discovery wherein VOX produced
16 “invoice sheets” for a “majority” of the Settlement Class members indicating the date of
17 each event worked and the amount paid for each event; payroll data for all Settlement
18 Class members during the Class Period; “Wrap Up” sheets indicating the date, arrival
19 time, and location of events worked; VOX’s relevant written policies; and other
20 documents and information. (*Id.* at ¶13.) Plaintiff hired an expert with a Ph.D. in
21 economics to conduct analyses and extrapolation of the data. (*Ibid.*) It is further
22 represented that VOX also confidentially produced financial records, which revealed,
23 inter alia, a dramatic drop in revenue as a result of COVID-19. (*Ibid.*) Defendant has
24 provided a Declaration evidencing its financial condition. Specific information as to its
25

1 profit and losses or assets and liabilities is not provided but the information provided is
2 adequate in the circumstances. (See Declaration of Rickey Hayes).

3 This is sufficient to value the case for settlement purposes.
4

5 **3. Counsel is experienced in similar litigation**

6 Class Counsel represent they are experienced in class action litigation, including
7 wage and hour class actions. (*Id.* at ¶¶3-6; Declaration of Tuvia Korobkin (“Korobkin
8 Decl.”), ¶¶ 2-6.)
9

10 **4. Percentage of the class objecting**

11 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
12 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
13 the court receive objections to the proposed settlement, it will consider and either sustain
14 or overrule them at the fairness hearing.”].
15

16 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED** 17 **FAIR, ADEQUATE, AND REASONABLE**

18 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
19 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
20 does when it approves a settlement as in good faith under Code of Civil Procedure
21 section 877.6, the court must at least satisfy itself that the class settlement is within the
22 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
23 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
24 consider and weigh the nature of the claim, the possible defenses, the situation of the
25 parties, and *the exercise of business judgment* in determining whether the proposed

1 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
2 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

3
4 **1. Amount Offered in Settlement**

5 The most important factor is the strength of the case for plaintiffs on the merits,
6 balanced against the amount offered in settlement.” *Id.* at 130.

7 Class Counsel estimated Defendant’s maximum exposure at **\$4,768,373**, and an
8 estimated reduced exposure at **\$1,122,406**, based on the following analysis:

9

Violation	Maximum Exposure	Reduced Exposure
Unpaid Non-Productive Time	\$2,058,623	\$432,311
Unpaid Minimum Wage	\$442,178	\$88,436
Rest Breaks	\$406,523	\$156,511
Meal Periods	\$406,523	\$121,957
Reimbursements (Travel)	\$198,000	\$59,400
Reimbursements (Other)	\$131,280	\$27,569
Wage Statement Penalties	\$93,550	\$28,065
Waiting Time Penalties	\$844,596	\$152,027
PAGA Penalties	\$187,100	\$56,130
Total	\$4,768,373	\$1,122,406

10
11
12
13
14
15
16
17
18
19
20

(Haines Decl., ¶¶17-26.)

21

22 Class Counsel obtained a gross settlement valued at \$1,000,000. This is 21% of
23 Defendant’s maximum exposure and 89% of Defendant’s reduced exposure valuation.

24 //

25 //

2. The Risks of Future Litigation

1
2 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
3 motion practice and appeals) are also likely to prolong the litigation as well as any
4 recovery by the class members. Even if a class is certified, there is always a risk of
5 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
6 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
7 conducting class actions, which means, under suitable circumstances, entertaining
8 successive motions on certification if the court subsequently discovers that the propriety
9 of a class action is not appropriate.”].) Further, the settlement was negotiated and
10 endorsed by Class Counsel who, as indicated above, are experienced in class action
11 litigation. Based upon their investigation and analysis, the attorneys representing
12 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
13 adequate. (Motion, 12:5.)

14 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
15 which has been served with a copy of the Settlement Agreement and has not yet objected.
16 Any objection by it will be considered at the final fairness hearing. (See Proofs of Service
17 to LWDA.)

3. The Releases Are Limited

18
19
20 The Court has reviewed the Releases to be given by the absent class members and
21 the named plaintiffs. The releases, described above, are tailored to the pleadings and
22 release only those claims in the pleadings. There is no general release by the absent
23 class. The named plaintiff’s general releases is appropriate given that he was
24 represented by counsel in its negotiation.
25

1 **4. Conclusion**

2 Class Counsel estimated Defendant’s maximum exposure at **\$4,768,373**, and an
3 estimated reduced exposure at **\$1,122,406**. Class Counsel obtained a gross settlement
4 valued at \$1,000,000. This is 21% of Defendant’s maximum exposure and 89% of
5 Defendant’s reduced exposure valuation, which, given the uncertain outcomes, including
6 the potential that the class might not be certified, that liability is a contested issue, and
7 that the full amount of penalties would not necessarily be assessed even if the class is
8 certified and liability found, along with the uncertainties surrounding Defendant’s
9 financial condition in light of the ongoing pandemic, the settlement is within the
10 “ballpark of reasonableness.”

11
12 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

13 A detailed analysis of the elements required for class certification is not required,
14 but it is advisable to review each element when a class is being conditionally certified.
15 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
16 advocating class treatment must demonstrate the existence of an ascertainable and
17 sufficiently numerous class, a well-defined community of interest, and substantial
18 benefits from certification that render proceeding as a class superior to the alternatives.”
19 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

20 **1. The Proposed Class is Numerous**

21 There are 169 putative Class Members. (Haines Decl., ¶16.) Numerosity is
22 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
23 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
24 *class action is liberally construed,*” and citing examples wherein classes of as little as
25

1 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
2 (1972) 28 Cal.App.3d 1017, were upheld).

3 **2. The Proposed Class Is Ascertainable**

4 “A class is ascertainable, as would support certification under statute
5 governing class actions generally, when it is defined in terms of objective
6 characteristics and common transactional facts that make the ultimate identification
7 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
8 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

9 The class is defined above. Class Members are ascertainable through
10 Defendant’s employee and payroll files. (Motion, 21:9-10.)

11 **3. There Is A Community of Interest**

12 “The community of interest requirement involves three factors: ‘(1) predominant
13 common questions of law or fact; (2) class representatives with claims or defenses typical
14 of the class; and (3) class representatives who can adequately represent the class.’”
15 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

16 Counsel contends that common factual and legal issues predominate because
17 Plaintiff’s claims are predicated on VOX’s alleged failures to pay wages, provide meal
18 and rest periods, and reimburse business expenses. (Motion, 21:14-17.) Further, counsel
19 contends the typicality requirement is met because Plaintiff was employed by Defendant
20 during the Class Period, was subject to the same alleged unlawful policies as other class
21 members, and was injured in the same manner as the Settlement Class. (Motion, 21:22-
22 25.)

23 Finally, counsel contends that Plaintiff and Class Counsel will adequately
24 represent the Settlement Class as there are no conflicts between the named Plaintiff and
25

1 the Settlement Class, and Class Counsel have experience in class action litigation.
2 Motion, 22:1-3; see *passim* Declaration of Emma Alyce Webber).

3 4 **4. Substantial Benefits Exist**

5 Given the relatively small size of the individual claims, a class action is superior to
6 separate actions by the class members.

7 8 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 9 OF DUE PROCESS**

10 The purpose of notice is to provide due process to absent class members. A practical
11 approach is required, in which the circumstances of the case determine what forms of
12 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
13 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
14 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
15 stake of the individual class members; (4) the cost of notifying class members; (5) the
16 resources of the parties; (6) the possible prejudice to class members who do not receive
17 notice; and (7) the res judicata effect on class members.

18 **1. Method of class notice**

19 Within 10 business days after entry of an order preliminarily approving this
20 Agreement, Defendants will provide the Settlement Administrator with the Class Data.
21 (§9.A) Within 10 business days from receipt of this information, the Settlement
22 Administrator shall (i) run the names of all Settlement Class members through the
23 National Change of Address (“NCOA”) database to determine any updated addresses
24 for Settlement Class members; (ii) update the addresses of any Settlement Class
25 member for whom an updated address was found through the NCOA search; (iii)

1 calculate the estimated Settlement Share for each Settlement Class member; (iv)
2 provide its calculations to Counsel for approval; and (v) mail a Notice Packet to each
3 Settlement Class member at his or her last known address or at the updated address
4 found through the NCOA search, and retain proof of mailing. (¶9.B) Any Notice
5 Packets returned to the Settlement Administrator as non-delivered on or before the
6 Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no
7 forwarding address is provided, the Settlement Administrator shall make reasonable
8 efforts, including utilizing a “skip trace,” to obtain an updated mailing address within 5
9 business days of receiving the returned Notice Packet. If an updated mailing address is
10 identified, the Settlement Administrator shall resend the Notice Packet to the Class
11 Member immediately, and in any event within 3 business days of obtaining the updated
12 address. The address identified by the Settlement Administrator as the current mailing
13 address shall be presumed to be the best mailing address for each Settlement Class
14 member.

15 The Settlement Agreement provides that it will be “conclusively presumed” that,
16 if an envelope so mailed has not been returned within 30 calendar days of the mailing,
17 the Settlement Class member received the Notice Packet (although the Settlement
18 Administrator will continue to conduct a skip-trace on any Notice Packets that are
19 returned as undeliverable with no forwarding address throughout the Notice period). If
20 a Settlement Class member’s Notice Packet is returned to the Settlement Administrator
21 more than once as non-deliverable, then an additional Notice Packet shall not be
22 mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or
23 Defendants’ Counsel to provide notice of the proposed settlement. (¶9.F)

24 As discussed at hearing, although rare, it is occasionally the case that a class
25 member establishes that the notice process failed and/or was not constitutionally

1 adequate. A “conclusive presumption” could be used to argue against having those
2 facts addressed. Counsel may amend the term by stipulation.

3 **2. Content of class notice.**

4 A copy of the proposed class notice is attached to the Supplemental Declaration
5 of Paul Haines as Exhibit 5. The notice includes information such as: a summary of the
6 litigation; the nature of the settlement; the terms of the settlement agreement; the
7 maximum deductions to be made from the gross settlement amount (i.e., attorney fees
8 and costs, the enhancement award, and claims administration costs); the procedures and
9 deadlines for participating in, opting out of, or objecting to, the settlement; the
10 consequences of participating in, opting out of, or objecting to, the settlement; and the
11 date, time, and place of the final approval hearing. See Cal Rules of Court, rule
12 3.766(d).

13 **3. Settlement Administration Costs**

14 Settlement administration costs are estimated at **\$10,000**, including the cost of
15 notice. Prior to the time of the final fairness hearing, the settlement administrator must
16 submit a declaration attesting to the total costs incurred and anticipated to be incurred to
17 finalize the settlement for approval by the Court.

18
19 **E. ATTORNEY FEES AND COSTS**

20 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
21 implied, that has been entered into with respect to the payment of attorney fees or the
22 submission of an application for the approval of attorney fees must be set forth in full in
23 any application for approval of the dismissal or settlement of an action that has been
24 certified as a class action.”

1 Ultimately, the award of attorney fees is made by the court at the fairness
2 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
3 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
4 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
5 1132-1136. In common fund cases, the court may use the percentage method. If
6 sufficient information is provided a cross-check against the lodestar may be conducted.
7 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
8 agreement by the parties to the contrary, “the court ha[s] an independent right and
9 responsibility to review the attorney fee provision of the settlement agreement and
10 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
11 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

12 Counsel represents that there is a fee-sharing agreement in this matter wherein
13 Haines Law Group, APC will receive 67.5% of any attorneys’ fee award and Tojarieh
14 Law, PC will receive 32.5% of any attorneys’ fee award. (Haines Decl., ¶32.) This fee-
15 sharing agreement was agreed to in writing by Plaintiff pursuant to California Rule of
16 Professional Conduct 1.5.1. (*Ibid.* and Exhibit 2 thereto.)

17 The question of class counsel’s entitlement to \$333,333.33 (33 1/3%) in attorney
18 fees will be addressed at the final fairness hearing when class counsel brings a noticed
19 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
20 the court with current market tested hourly rate information and billing information so
21 that it can properly apply the lodestar method and must indicate what multiplier (if
22 applicable) is being sought.

23 Class counsel should also be prepared to justify the costs sought (capped at
24 **\$40,000**) by detailing how they were incurred.

25 //

1 **F. SERVICE AWARD**

2 The Settlement Agreement provides for a service award of up to \$7,500 for the
3 class representative. Trial courts should not sanction enhancement awards of thousands
4 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
5 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
6 quantification of time and effort expended on the litigation, and in the form of reasoned
7 explanation of financial or other risks incurred by the named plaintiffs, is required in
8 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
9 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
10 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

11 The Court will decide the issue of the enhancement award at the time of final
12 approval.

13
14 **V. CONCLUSION AND ORDER**

15 Contingent upon modification of the Settlement Agreement to delete the
16 conclusive presumption in Paragraph 9(F), on or before March 17, 2021 the Court
17 hereby:

- 18 (1) Grants preliminary approval of the settlement as fair, adequate, and
19 reasonable;
- 20 (2) Grants conditional class certification;
- 21 (3) Appoints Emma Alyce Weber as Class Representative;
- 22 (4) Appoints Haines Law Group, APC, as Class Counsel;
- 23 (5) Appoints Phoenix Class Action Administration Solutions as Settlement
24 Administrator;
- 25 (6) Approves the proposed notice plan; and

1 (7) Approves the proposed schedule of settlement proceedings as follows:

- 2 • Preliminary approval hearing: March 10, 2021
- 3 • Deadline for Defendant to provide class list to settlement administrator: March
4 24, 2021
- 5 • Deadline for settlement administrator to mail notices: April 7, 2021
- 6 • Deadline for class members to opt out: June 7, 2021
- 7 • Deadline for class members to object: June 7, 2021
- 8 • Deadline for class counsel to file motion for final approval: August 3, 2021 (16
9 court days prior to final fairness hearing)
- 10 • Final fairness hearing: August 25, 2021, at 9:30 a.m.

11
12 Dated: 3/10/2021



13 MAREN E. NELSON

14 Judge of the Superior Court
15
16
17
18
19
20
21
22
23
24
25