

1 **COHELAN KHOURY & SINGER**

Michael D. Singer (SBN 115301)

2 msinger@ckslaw.com

3 Jeff Geraci (SBN 151519)

4 jgeraci@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

5 Telephone: (619) 595-3001 / Facsimile: (619) 595-3000

6 Attorneys for Plaintiff Christopher Murrell, on behalf of himself
7 and all others similarly situated

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF CONTRA COSTA**

10 CHRISTOPHER MURRELL, on behalf of
11 himself and all others similarly situated,

12 Plaintiff

13 v.

14 SAN RAMON VALLEY UNIFIED SCHOOL
15 DISTRICT, a California Public Entity; and
DOES 1 through 10, inclusive,

16 Defendants.

Case No. MSC19-00784

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Charles S. Treat

Department 12

CLASS ACTION

**ORDER GRANTING PRELIMINARY
APPROVAL OF
CLASS AND REPRESENTATIVE
ACTION SETTLEMENT**

Date: March 16, 2023

Time: 9:00 a.m.

Dept: 12

Judge: Honorable Charles S. Treat

Complaint filed: April 24, 2019

Trial date: Not set

1 Plaintiff's Motion for Order Granting Preliminary Approval of Class and Representative
2 Action Settlement ("Motion") filed on February 14, 2023 is Granted as follows:

3 **JOURNAL ENTRIES:**

4 No appearance either party.

5 There being no opposition to the tentative ruling, the tentative ruling becomes the order
6 of the court as follows:

7 Plaintiff Christopher Murrell moves for preliminary approval of his class action and
8 PAGA settlement with defendant San Ramon Valley USD. The motion is **granted**.

9 **Background and Settlement Terms**

10 Defendant is a public-school district. Plaintiff has worked for defendant as a school bus
11 driver.

12 The original complaint was filed on April 24, 2019 as a class action. PAGA claims were
13 added by amendment shortly thereafter. The first amended complaint is the operative pleading.

14 The settlement would create a gross settlement fund of \$150,000. The class
15 representative payment to the plaintiff would be \$5,000. Attorney's fees would be \$50,000
16 (one-third of the settlement). Litigation costs would not exceed \$12,000. The settlement
17 administrator's costs are estimated at \$5,000. PAGA penalties would be \$3,000, resulting in a
18 payment of \$2,250 to the LWDA. The net amount paid directly to the class members would be
19 about \$75,500. The fund is non-reversionary. There are an estimated 87 class members. Based
20 on the estimated class size, the average net payment for each class member is approximately
21 \$755. The individual payments will vary considerably, however, because of the allocation
22 formula prorating payments according to the number of weeks worked during the relevant time.
23 The number of aggrieved employees for PAGA purposes is smaller, because the starting date of
24 the relevant period is later.

25 The entire settlement amount will be deposited with the settlement administrator within
26 5 days after the effective date of the settlement.

27 The proposed settlement would certify a class of all current and former non-exempt
28 employed at Defendants' California facilities as bus drivers or transportation vehicle drivers

1 between April 24, 2016 and May 10, 2022. For PAGA purposes, the period covered by the
2 settlement is April 24, 2018 through May 10, 2022.

3 The class members will not be required to file a claim. Class members may object or opt
4 out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the
5 settlement.) Funds would be apportioned to class members based on the number of workweeks
6 worked during the class period.

7 A list of class members will be provided to the settlement administrator within 14 days
8 after preliminary approval. Various prescribed follow-up steps will be taken with respect to mail
9 that is returned as undeliverable. Settlement checks not cashed within 180 days will be
10 cancelled, and the funds will be directed to Legal Aid At Work as a *cy pres* beneficiary. (While
11 some members of plaintiff's counsel's law firm have some involvement with that organization,
12 the Court is convinced that their involvement is a matter of assisting in its work and poses no
13 conflict of interest.)

14 The settlement contains release language covering all claims and causes of action,
15 alleged or which could have reasonably been alleged based on the allegations in the operative
16 pleading, including a number of specified claims. Under recent appellate authority, the
17 limitation to those claims with the "same factual predicate" as those alleged in the complaint is
18 critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ("A court
19 cannot release claims that are outside the scope of the allegations of the complaint.") "Put
20 another way, a release of claims that goes beyond the scope of the allegations in the operative
21 complaint' is impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D.
22 Cal.2020) 469 F.Supp.3d 942, 949.)

23 Formal discovery was undertaken, resulting in the production of substantial documents.
24 The matter settled after arms-length negotiations, which included a session with an experienced
25 mediator.

26 Counsel also has provided an analysis of the case, and how the settlement compares to
27 the potential value of the case, after allowing for various risks and contingencies. Plaintiff's
28 claims center on allegations that the class member drivers, who previously worked non-fixed

1 hours, were not being paid for such time as split-shift periods, meal breaks, time spent bidding
2 for routes, and DMV renewals. The District responded that these potential problems were both
3 overestimated and very difficult to establish on a class basis. Moreover, in 2020 (after this case
4 was filed) the District switched to paying all drivers for a straight eight-hour shift, eliminating
5 virtually all of the potential for such violations. Plaintiff’s counsel provides a reasonable and
6 detailed analysis, showing that the settlement represents approximately 100% compensation for
7 a reasonable estimate of the value of the claims.

8 The potential liability needs to be adjusted for various evidence and risk-based
9 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a
10 number of reasons: they derive from other violations, they include “stacking” of violations, the
11 law may only allow application of the “initial violation” penalty amount, and the total amount
12 may be reduced in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties
13 may be reduced where “based on the facts and circumstances of the particular case, to do
14 otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.”))

15 Counsel attest that notice of the proposed settlement was transmitted to the LWDA
16 concurrently with the filing of the motion.

17 **A. Legal Standards**

18 The primary determination to be made is whether the proposed settlement is “fair,
19 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,
20 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
21 further litigation, the risk of maintaining class action status through trial, the amount offered in
22 settlement, the extent of discovery completed and the state of the proceedings, the experience
23 and views of counsel, the presence of a governmental participant, and the reaction ... to the
24 proposed settlement.” (See also *Amaro*, 69 Cal.App.5th 521.)

25 Because this matter also proposes to settle PAGA claims, the Court also must consider
26 the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v.*
27 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the
28 court found that the “fair, reasonable, and adequate” standard applicable to class actions applies

1 to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the
2 fairness of the settlement’s allocation of civil penalties between the affected aggrieved
3 employees”. (*Id.*, at 64-65.)

4 California law provides some general guidance concerning judicial approval of any
5 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*
6 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
7 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,
8 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “The court cannot surrender
9 its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere
10 puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990)
11 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always
12 apply, because “Where the rights of the public are implicated, the additional safeguard of
13 judicial review, though more cumbersome to the settlement process, serves a salutatory
14 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141
15 Cal.App.4th 48, 63.)

16 **B. Attorney Fees**

17 Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common
18 fund” theory. Even a proper common fund-based fee award, however, should be reviewed
19 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480,
20 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine
21 whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means
22 of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether
23 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable
24 range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)
25 Following typical practice, however, the fee award will not be considered at this time, but only
26 as part of final approval.

27 Similarly, litigation costs and the requested representative payment of \$5,000 for the
28 plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative

1 payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175
2 Cal.App.4th 785, 804-07.

3 **C. Discussion and Conclusion**

4 The Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify
5 preliminary approval. Counsel is directed to prepare an order reflecting this entire tentative
6 ruling, the other findings in the previously submitted proposed order, and to obtain a hearing
7 date for the motion for final approval from the Department clerk by phone. Other dates in the
8 scheduled notice process should track as appropriate to the hearing date. The ultimate judgment
9 must provide for a compliance hearing after the settlement has been completely implemented.
10 Plaintiffs' counsel are to submit a compliance statement one week before the compliance
11 hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator
12 pending satisfactory compliance as found by the Court.

13 PURSUANT TO THE COURT'S MARCH 16, 2023 ORDER ATTACHED AS
14 EXHIBIT 1, THE COURT MAKES THE FOLLOWING DETERMINATIONS AND
15 ORDERS:

16 Having fully reviewed the Motion, supporting memorandum of Points and Authorities,
17 Declarations of Class Counsel Jeff Geraci, Class Representative Christopher Murrell, and
18 Michael E. Moore for Phoenix Settlement Administrators, Stipulation of Class and
19 Representative Action Settlement and Release, ("Settlement Agreement"), attached as Exhibit 1
20 to the Geraci Declaration, and the proposed Notice of Class Action Settlement and Change of
21 Address Form attached as Exhibits A and B to the Settlement Agreement ("Notice Packet"),
22 having carefully analyzed the Settlement Agreement and the Notice Packet, and in recognition
23 of the Court's duty to make a preliminary determination as to the reasonableness of a proposed
24 class action settlement, and if preliminarily determined reasonable, to ensure proper notice to
25 Class Members in accordance with due process requirements, and to set a Final Approval
26 Hearing to consider the good faith, fairness, adequacy and reasonableness of the proposed
27 Settlement, THE COURT GRANTS THE MOTION AND MAKES THE FOLLOWING
28 DETERMINATIONS AND ORDERS:

1 1. The Court conditionally finds, for purposes of approving the settlement only,
2 the proposed Class meets the requirements for certification under section 382 of the California
3 Code of Civil Procedure: (a) the proposed Class is ascertainable and so numerous joinder of all
4 Class Members is impracticable; (b) there are questions of law or fact common to the proposed
5 Class, and a well-defined community of interest among members of the proposed Class with
6 respect to the subject matter of the class action; (c) the claims of the Class Representative,
7 Christopher Murrell, are typical of the claims of proposed Class Members; (d) the Class
8 Representative, Christopher Murrell, has and will fairly and adequately protect the interests of
9 Class Members; (e) a class action is superior to other available methods for efficient
10 adjudication of this controversy for settlement; and (f) counsel of record for the Plaintiff and
11 proposed Class Representative, are qualified to serve as counsel for Plaintiff in his capacity as a
12 representative of the Class, and as counsel for the Class.

13 2. The Court finds on a preliminary basis the Settlement Agreement appears within
14 the range of reasonableness of a settlement which could be given final approval by this Court.

15 3. It appears to the Court on a preliminary basis: (a) the non-reversionary maximum
16 Gross Settlement Amount is fair and reasonable to Class Members when balanced against the
17 probable outcome of further litigation relating to class certification, liability and damages
18 issues, and potential appeals; (b) significant investigation, research, and informal discovery,
19 have been conducted such that counsel for the Parties are able to reasonably evaluate their
20 respective positions; (c) settlement at this time will avoid substantial costs, delay, and risks
21 presented by further prosecution of the litigation; and (d) the proposed Settlement was reached
22 through intensive, serious, non-collusive negotiations facilitated by an experienced mediator.

23 4. Good cause appearing, the Motion for Order Granting Preliminary Approval of
24 Class Action Settlement is GRANTED, and the Court incorporates the Settlement Agreement.

25 5. For purposes of this Settlement, Class Members are defined as:

26 All persons employed by Defendants in California as non-exempt Bus
27 Drivers and Transportation Vehicle Drivers that worked at any time from
28 April 24, 2016 through May 10, 2022.

///

1 6. The Court finds the proposed Notice Packet fairly and adequately advises Class
2 Members of the: (a) nature of the Class Action; (b) principal terms of the Settlement; (c) Class
3 Member and PAGA Member definitions; (d) dates of the Class Period and PAGA Period; (e)
4 number of Class Period workweeks each Class Member is credited with; (f) number of PAGA
5 Period pay period each PAGA Member is credited with; (g) Class Member's estimated
6 Individual Settlement Share; (h) method and timing to submit Disputed Claims, Address
7 Changes, Requests for Exclusion or Objections; (i) claims released in the Settlement
8 Agreement; and (j) date, time and place of the Final Approval Hearing.

9 7. The Court finds the proposed Notice Packet provides the best practicable notice
10 to the Class and comports with all constitutional requirements, including those of due process.
11 Accordingly, good cause appearing, the Court APPROVES the Class Notice.

12 8. The Court further finds that mailing of the Notice Packet to the last known
13 address of all Class Members with measures taken for verification of an address and skip
14 tracing of bad addresses, as specifically described in the Settlement Agreement, is an effective
15 method of notifying Class Members of their rights in the class action and the Settlement.
16 Accordingly, it is ORDERED:

17 A. Phoenix Settlement Administrators be appointed to administer the
18 Settlement of this matter as more specifically stated in the Settlement Agreement;

19 B. Michael D. Singer and Jeff Geraci of Cohelan Khoury & Singer be
20 appointed Class Counsel;

21 C. Plaintiff Christopher Murrell be appointed Class Representative.

22 D. No later than fourteen (14) calendar days after the date the Court grants
23 preliminary approval of the Settlement Agreement (if a weekend or holiday, the next business
24 day), Defendant shall provide the Settlement Administrator the following in a Microsoft Office
25 Excel format for each Class Member: name, most current or last known mailing address,
26 telephone number(s) and email address, social security number, dates of employment, and
27 number of Work Weeks, and number of PAGA Pay Periods ("Class Data List").

28 ///

1 E. No later than ten (10) business days after the Settlement Administrator
2 receives the Class Data (if a weekend or holiday, the next business day), the Settlement
3 Administrator shall mail the Notice Packet to each Class member by first class, regular U.S.
4 mail, after taking the measures for updating addresses in the Settlement Agreement. The
5 envelope's exterior shall include the following below the Settlement Administrator's address:

6 **Important Legal Document:**

7 You may get Money from a Class Action Settlement;
8 your prompt reply to correct a bad address is required.

9 F. No later than forty-five (45) calendar days from the date the Class Notice
10 is first mailed to Class Members (if the 45th day falls on a Sunday or holiday, the next business
11 day not a Sunday or holiday), ("Response Deadline"), Class Members who wish to exclude
12 themselves from the Class must submit a written request for exclusion in the manner stated in
13 the Class Notice. The Response Deadline shall be extended fifteen (15) calendar days from the
14 original Deadline for Class Members receiving a re-mailed Class Notice. Class Members who
15 fail to submit a valid, timely written Request for Exclusion on or before the Response Deadline
16 shall be Settlement Class Members, bound by all Settlement terms and any final judgment
17 entered in this Action, if the Settlement is approved by the Court.

18 G. On or before the Response Deadline, any Class Member who wants to
19 object to the proposed Settlement, including the request for attorneys' fees, expenses, or service
20 awards to Class Representatives, may send a written notice of objection in the manner stated in
21 the Class Notice. The Response Deadline for Class Members who received a re-mailed Class
22 Notice shall be extended fifteen (15) calendar days from the original Deadline;

23 H. On or before the Response Deadline, Class Members who want to dispute
24 the basis of their Settlement Payment must postmark and return to the Administrator a written
25 explanation why they believe the information is incorrect, along with any supporting documents
26 as described in the Class Notice. The Response Deadline for Class Members who received a re-
27 mailed Class Notice shall be extended fifteen (15) calendar days from the original Deadline.

28 ///

///

1 9. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held
2 before the undersigned at 9:00 a.m. , on July 27, 2023, in Department 12 of the Superior Court
3 of California, County of Santa Clara located at 725 Court Street, Martinez, California 94553, to
4 consider the fairness, adequacy, and reasonableness of the proposed Settlement preliminarily
5 approved by this Order of Preliminary Approval, and to consider the application for a Class
6 Representative service award, Settlement Administrator expenses, and Class Counsel’s
7 attorneys’ fees and litigation expenses.

8 10. All materials in support of an Order Granting Final Approval, a Class
9 Representative service award, Settlement Administrator expenses, and Class Counsel’s
10 attorneys’ fees and litigation expenses incurred, shall be filed pursuant to Code of Civil
11 Procedure section 1005(b), sixteen (16) Court days before the hearing.

12 11. IT IS FURTHER ORDERED that if for any reason the Court does not enter an
13 Order Granting Final Approval, or if the Effective Date, as defined in the Settlement
14 Agreement, does not occur, the Settlement Agreement shall have no effect, and the Parties shall
15 be restored without prejudice to the status quo ante as stated in the Settlement Agreement.

16 12. IT IS FURTHER ORDERED that pending further order of this Court, all
17 proceedings in this matter, except those contemplated by this Order and the Settlement
18 Agreement are stayed.

19 13. The Court expressly reserves the right to adjourn or continue the Final Approval
20 Hearing from time to time without further notice to Class Members. However, if written
21 objections are submitted, Class Counsel shall notify objecting Class Members of the new date
22 and time set for the Final Approval Hearing.

23 IT IS SO ORDERED.

24
25 Date: _____

The Honorable Charles S. Treat
Judge of the Superior Court

26
27
28 ///

1 **ORDER APPROVED AS TO FORM AND CONTENT:**

2 COHELAN KHOURY & SINGER

3
4 Date: March 17, 2023

5 By: 
6 Joseph Geraci

7 Attorneys for Plaintiff Christopher Murrell, on
8 behalf of himself and all others similarly situated

9 EDRINGTON, SCHIRMER & MURPHY LLP

10 Date: March 17, 2023

11 By: 
12 Timothy F. Murphy

13 Attorneys for Defendant San Ramon Valley
14 Unified School District
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

Superior Court of California, Contra Costa County

Department 12
925-608-1000
www.cc-courts.org



K. Bieker
Court Executive Officer

MINUTE ORDER	
MURREL VS SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT	MSC19-00784
HEARING DATE: 03/16/2023	
PROCEEDINGS: *HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS AND REP ACTION SETTLEMENT	
DEPARTMENT 12 JUDICIAL OFFICER: CHARLES S TREAT	CLERK: DENESE JOHNSON COURT REPORTER: NOT REPORTED
<u>JOURNAL ENTRIES:</u>	
<p>No appearance either party.</p> <p>There being no opposition to the tentative ruling, the tentative ruling becomes the order of the court as follows:</p> <p style="padding-left: 40px;">Plaintiff Christopher Murrell moves for preliminary approval of his class action and PAGA settlement with defendant San Ramon Valley USD. The motion is granted.</p> <p style="padding-left: 40px;">Background and Settlement Terms</p> <p style="padding-left: 40px;">Defendant is a public-school district. Plaintiff has worked for defendant as a school bus driver.</p> <p style="padding-left: 40px;">The original complaint was filed on April 24, 2019 as a class action. PAGA claims were added by amendment shortly thereafter. The first amended complaint is the operative pleading.</p> <p style="padding-left: 40px;">The settlement would create a gross settlement fund of \$150,000. The class representative payment to the plaintiff would be \$5,000. Attorney’s fees would be \$50,000 (one-third of the settlement). Litigation costs would not exceed \$12,000. The settlement administrator’s costs are estimated at \$5,000. PAGA penalties would be \$3,000, resulting in a payment of \$2,250 to the LWDA. The net amount paid directly to the class members would be about \$75,500. The fund is non-reversionary. There are an estimated 87 class members. Based on the estimated class size, the average net payment for each class member is approximately \$755. The individual payments will vary considerably, however, because of the allocation formula prorating payments according to the number of weeks worked during the relevant time. The number of aggrieved employees for PAGA purposes is smaller, because the starting date of the relevant period is later.</p> <p style="padding-left: 40px;">The entire settlement amount will be deposited with the settlement administrator within 5 days after the effective date of the settlement.</p> <p style="padding-left: 40px;">The proposed settlement would certify a class of all current and former non-exempt employed at Defendants’ California facilities as bus drivers or transportation vehicle drivers between April 24, 2016 and May 10, 2022. For PAGA purposes, the period covered by the settlement is April 24, 2018 through May 10, 2022.</p>	

Superior Court of California, Contra Costa County

Department 12
925-608-1000
www.cc-courts.org



K. Bieker
Court Executive Officer

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

A list of class members will be provided to the settlement administrator within 14 days after preliminary approval. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to Legal Aid At Work as a *cy pres* beneficiary. (While some members of plaintiff's counsel's law firm have some involvement with that organization, the Court is convinced that their involvement is a matter of assisting in its work and poses no conflict of interest.)

The settlement contains release language covering all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the operative pleading, including a number of specified claims. Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ("A court cannot release claims that are outside the scope of the allegations of the complaint.") "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." *Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Formal discovery was undertaken, resulting in the production of substantial documents. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. Plaintiff's claims center on allegations that the class member drivers, who previously worked non-fixed hours, were not being paid for such time as split-shift periods, meal breaks, time spent bidding for routes, and DMV renewals. The District responded that these potential problems were both overestimated and very difficult to establish on a class basis. Moreover, in 2020 (after this case was filed) the District switched to paying all drivers for a straight eight-hour shift, eliminating virtually all of the potential for such violations. Plaintiff's counsel provides a reasonable and detailed analysis, showing that the settlement represents approximately 100% compensation for a reasonable estimate of the value of the claims.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties may be reduced where "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."))

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

Superior Court of California, Contra Costa County

Department 12
925-608-1000
www.cc-courts.org



K. Bieker
Court Executive Officer

A. Legal Standards

The primary determination to be made is whether the proposed settlement is “fair, reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “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 the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction ... to the proposed settlement.” (See also *Amaro*, 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the “fair, reasonable, and adequate” standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness of the settlement’s allocation of civil penalties between the affected aggrieved employees”. (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “The court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because “Where the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutary purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

B. Attorney Fees

Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common fund” theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative payment of \$5,000 for the plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative

Superior Court of California, Contra Costa County

Department 12
925-608-1000
www.cc-courts.org



K. Bieker
Court Executive Officer

payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07.

C. Discussion and Conclusion

The Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify preliminary approval.

Counsel is directed to prepare an order reflecting this entire tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk by phone. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

DATED: 3/16/2023

BY: _____

D. JOHNSON, DEPUTY CLERK