

FILED
KERN COUNTY

AUG 24 2023

BY  DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

ROGER WESTFALL and JOSEPH M.
ATWELL, as individuals, and on behalf of all
others similarly situated

Plaintiff,


vs.

NAES CORPORATION; and DOES 1 through
20, inclusive,

Defendants.

Case No. BCV-20-101796

*Assigned for All Purposes to the Honorable
Thomas S. Clark
Department 17*


**REVISED [~~PROPOSED~~] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: August 24, 2023
Time: 8:30 AM
Dept: 17

1 WHEREAS, the above-entitled action is pending before this Court as a putative class
2 action (the "Action");

3 WHEREAS, Plaintiffs Roger Westfall and Joseph Atwell ("Plaintiffs"), individually and
4 on behalf of all others similarly situated and on behalf of the general public have applied to this
5 Court for an order preliminarily approving the settlement of the Action in accordance with the
6 Joint Stipulation for Settlement (the "Settlement" or "Agreement") entered into by Plaintiffs and
7 Defendant Naes Corporation ("Defendant") which sets forth the terms and conditions for a
8 proposed settlement upon the terms and conditions set forth therein (Plaintiffs and Defendants
9 shall be collectively referred to herein as the "Parties"); and

10 WHEREAS, the Court has read and considered Plaintiffs' Motion for Preliminary
11 Approval of Class Action Settlement.

12 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
13 THAT:

14 1. This Order incorporates by reference the definitions in the Settlement attached as
15 Exhibit 1 to the Declaration of Daniel E. Ishu in Support of Plaintiffs' Motion for Preliminary
16 Approval of Class Action Settlement and all terms defined therein shall have the same meaning in
17 this Order.

18 2. It appears to the Court on a preliminary basis that (a) the Settlement is fair,
19 adequate and reasonable; (b) the Gross Settlement Amount and Net Settlement Amount are fair,
20 adequate and reasonable when balanced against the probable outcome of further litigation relating
21 to liability and damages issues; (c) sufficient investigation and research have been conducted such
22 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
23 (d) settlement at this time will avoid additional costs by all Parties, as well as avoid the delay and
24 risks that would be presented by the further prosecution of the Action; and (e) the Settlement has
25 been reached as the result of non-collusive, arms-length negotiations.

26 3. With respect to the Class and for purposes of proceeding pursuant to California
27 Code of Civil Procedure § 382 for approval of the settlement only, the Court finds on a
28 preliminary basis that (a) Class Members are ascertainable and so numerous that joinder of all

1 Class Members is impracticable; (b) there are questions of law and fact common to the Class that
2 predominate over any questions affecting only individual Class Members; (c) Plaintiffs' claims
3 are typical of the Class' claims; (d) class certification is a superior method for implementing the
4 Settlement and adjudicating this Action in a fair and efficient manner; (e) the Class
5 Representatives can fairly and adequately protect the Class' interests; and (f) Class Counsel are
6 qualified to serve as counsel for the Class.

7 4. Accordingly, solely for purposes of effectuating this Settlement, this Court hereby
8 conditionally certifies the class for settlement purposes only. The Class is defined as all current and
9 former non-exempt employees who are or were employed by Defendant in California at any time
10 from April 6, 2016 to the date of Preliminary Approval.

11 5. Plaintiffs are hereby preliminarily appointed and designated, for all purposes, as the
12 Class Representative and the attorneys of Aegis Law Firm, PC are hereby preliminarily appointed
13 and designated as counsel for the Class ("Class Counsel"). Class Counsel is authorized to act on
14 behalf of the Class Members with respect to all acts or consents required by, or which may be given
15 pursuant to, the Settlement, and such other acts reasonably necessary to consummate the Settlement.
16 Any Class Member may enter an appearance either personally or through counsel of such
17 individual's own choosing and at such individual's own expense. Any Class Member who does not
18 enter an appearance or appear on his or her own will be represented by Class Counsel.

19 6. Should, for whatever reason, the Settlement not become final, the fact that the
20 Parties were willing to stipulate to certification of the Class as part of the Settlement shall have no
21 bearing on, nor be admissible in connection with, the issue of whether a class should be certified in
22 a non-settlement context.

23 7. The Court hereby preliminarily approves the definition and disposition of the Gross
24 Settlement Amount and Net Settlement Amount and related matters provided for in the Settlement,
25 subject to modification at final approval.

26 8. The Court hereby preliminarily approves Class Counsel attorneys' fees of
27 \$266,667.00, Class Counsel litigation expenses not to exceed \$30,000.00, an Incentive Award up
28

1 to \$10,000.00 for each Named Plaintiff (\$20,000.00 total), payment to the LWDA in the amount
2 of \$30,000.00, and costs of administration not to exceed \$10,000.00, subject to final approval.

3 9. The Court hereby approves, as to form and content, the Class Notice, to be
4 distributed to Class Members. The Court finds that distribution of the Class Notice, substantially in
5 the manner and form set forth in the Settlement and this Order, meets the requirements of due
6 process, is the best notice practicable under the circumstances, and shall constitute due and
7 sufficient notice to all persons entitled thereto.

8 10. The Court hereby appoints Phoenix Settlement Administrators Inc., as Settlement
9 Administrator and hereby directs the Settlement Administrator to mail or cause to be mailed to
10 Class Members the Class Notice using the procedures set forth in the Settlement Agreement. Class
11 Members who wish to participate in the settlement provided for by the Settlement Agreement do
12 not need to respond to the Class Notice.

13 11. All costs of mailing of the Class Notice, whether foreseen or not, shall be paid
14 from the Gross Settlement Amount, including the cost of searching for Class Members' addresses
15 as provided in the Settlement, and all other reasonable costs of the Settlement Administrator up
16 to \$10,000.00 as provided in the Settlement.

17 12. Any Class Member may choose to opt-out of and be excluded from the Class as
18 provided in the Class Notice. Any such person who chooses to opt-out of and be excluded from the
19 Class will not be entitled to any recovery under the Settlement and will not be bound by the
20 Settlement or have any right to object, appeal or comment thereon. Class Members who have not
21 requested exclusion/opted-out shall be Participating Class Members and bound by all
22 determinations of the Court, the Settlement, and the Final Judgment.

23 13. A Final Fairness and Approval Hearing shall be held before this Court on **January**
24 **30, 2024 at 8:30 AM** in Department 17 of the Superior Court for the State of California, County of
25 Kern, located at 1415 Truxtun Ave., Bakersfield, CA 93301. All papers in support of final approval
26 and related awards for fees, costs, and Plaintiffs' incentive award must be filed and served at least
27 16 court days before the final approval hearing.

1 14. Any Participating Class Member must object to the Settlement by following the
2 instructions for submitting written objections that are set forth in the Settlement Agreement and
3 Class Notice, and may appear at the Final Fairness and Approval Hearing. The Court shall retain
4 final authority with respect to the consideration and admissibility of any objections. Any
5 Participating Class Member who objects to the Settlement shall be bound by the order of the Court.

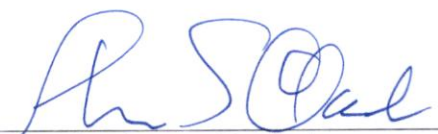
6 15. The Settlement is not a concession or admission, and shall not be used against the
7 Released Parties, as an admission or indication with respect to any claim of any fault or omission
8 by the Released Parties. Whether or not the Settlement is finally approved, neither the Settlement,
9 nor any document, statement, proceeding or conduct related to the Settlement, nor any reports or
10 accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as
11 or deemed to be evidence of a presumption, concession, indication or admission by Defendant of
12 any liability, fault, wrongdoing, omission, concession or damage in the Action, or in any other
13 action or proceeding, except for purposes of enforcing the Settlement once it receives final approval.

14 16. Pending the Final Approval and Fairness Hearing, all proceedings in this Action,
15 other than proceedings necessary to carry out or enforce the terms of the Settlement and this Order,
16 are hereby stayed.

17 17. Jurisdiction is hereby retained over this Action, the Parties to the Action, and each
18 of the Class Members for all matters relating to this Action, and this Settlement, including
19 (without limitation) all matters relating to the administration, interpretation, effectuation, and/or
20 enforcement of this Settlement and this Order.

21 18. The Court reserves the right to adjourn or continue the date of any hearing and all
22 dates provided for in the Settlement without further notice to Class Members, and retains
23 jurisdiction to consider all further applications arising out of or connected with the proposed
24 Settlement.

25
26 DATED: 8-24-23



Honorable Thomas S. Clark
JUDGE OF THE SUPERIOR COURT