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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 22 2024

BY Jessica Garcez
JESSICA GARCEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO JUSTICE CENTER

DAVID MELGOZA, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

ECOLOGY RECYCLING SERVICES, LLC,
a California Limited Liability Company; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO.: CIVSB2217232

~~[PROPOSED]~~ AMENDED ORDER
AND JUDGMENT GRANTING FINAL
APPROVAL

1 ~~PROPOSED~~ ORDER AND JUDGMENT

2 The Court has before it Plaintiff's unopposed Motion for Final Approval of Class Action
3 Settlement.

4 On November 22, 2023, Plaintiff filed a motion for preliminary approval requesting that the
5 Court preliminarily approve the Settlement Agreement entered into between Plaintiff David Melgoza,
6 on behalf of himself and the Class ("Plaintiff") and Ecology Recycling Services, LLC. ("Defendant")
7 (collectively, "the Parties").

8 On December 19, 2023, the Court issued an order granting preliminary approval. The Court
9 preliminarily approved that this litigation could be maintained as a class action for settlement purposes
10 and, therefore, it conditionally certified the following Class (the "Class" or "Settlement Class") for
11 settlement purposes:

12 All nonexempt hourly employees who worked at any time for Defendant
13 in the State of California from August 9, 2018, through December 19, 2023.

14 The Court conditionally approved for settlement purposes the PAGA allocation of this
15 settlement to the California Labor and Workforce Development Agency ("LWDA") and PAGA
16 Members ("PAGA Member" or "PAGA Members"), for settlement purposes:

17 All non-exempt employees who were employed by Defendant in the
18 State of California, at any time from June 3, 2021, through December 19, 2023.

19 The Court appointed, for settlement purposes, the Law Office of Scott Ernest Wheeler as Class
20 Counsel, Plaintiff as representative for the Class, and Phoenix Settlement Administrators as the
21 Settlement Administrator.

22 The Court further directed the Parties to provide notice to the Class via U.S Mail to each Class
23 Members' last known mailing address. The Class Notice was mailed to Class Members in both English
24 and Spanish, informed them of the material terms of the Settlement, including, *inter alia*, (a) the nature
25 of the case and claims asserted, (b) each Class Member's estimated individual settlement payment; (c)
26 the payments to Class Counsel for attorneys' fees and costs, payment to the Class Representatives as
27 service awards, payment to the Settlement Administrator for settlement administration costs, and
28 payment to the California Labor and Workforce Development Agency for PAGA penalties; (d) the

1 claims that Class Members release if they do not exclude themselves from the Settlement, (e) the right
2 of any Class Member to object to the proposed Settlement, and an explanation of the procedures to
3 exercise that right; (f) the right of any Class Member to exclude themselves from the proposed
4 Settlement, and an explanation of the procedures to exercise that right; (g) the right of any Class
5 Member to dispute compensable work weeks and attributable to them; and (h) the date, time, and
6 location of the Final Approval Hearing which is now before the Court.

7 The Court, upon Notice having been given in conformance with the Preliminary Approval
8 Order, and having considered the proposed Settlement, as well as all papers filed, hereby **ORDERS,**
9 **ADJUDGES, AND DECREES AS FOLLOWS:**

10 1. This Court has jurisdiction over the subject matter of the action and over all Parties to
11 the action, including all members of the Settlement Class.

12 2. The Settlement Class, defined as “All nonexempt hourly employees who worked at any
13 time for Defendant in the State of California from August 9, 2018, through December 19, 2023”, is
14 certified as a Class for settlement purposes pursuant to California Code of Civil Procedure § 382 in
15 that: (a) the Class is so numerous that joinder is impractical; (b) there are questions of law and fact that
16 are common, or of general interest, to the Class, which predominate over any individual issues; (c)
17 Plaintiff’s claims are typical of the claims of the Class; (d) Plaintiff and Plaintiff’s counsel will fairly
18 and adequately protect the interests of the Class; and (e) a class action is superior to other available
19 methods for the fair and efficient adjudication of the controversy.

20 3. There have been no objections, and only two requests for exclusion.

21 4. No disputes have been submitted by any Class Members or PAGA Member.

22 5. The Class Notice provided to the Settlement Class conforms with the requirements of
23 California Code of Civil Procedure § 382, California Rules of Court 3.766 and 3.769, the California
24 and United States Constitutions, and any other applicable law, and constitutes the best notice
25 practicable under the circumstances, by providing individual notice to all Class Members who could
26 be identified through reasonable effort, and by providing due and adequate notice of the proceedings
27 and of the matters set forth therein to the other Class Members. The Class Notice fully satisfied the
28 requirements of due process.

1 6. The Court finds the Settlement was entered into in good faith, that the Settlement is fair,
2 reasonable, and adequate, and that the Settlement satisfies the standards and applicable requirements
3 for final approval of this class action settlement under California law, including California Rules of
4 Court, Rule 3.769.

5 7. Neither the Settlement nor any of the terms set forth in the Settlement Agreement and
6 Amendment to the Settlement Agreement are admissions by Defendant, or any of the other Released
7 Parties, of liability on any of the allegations alleged in the action, nor is this Order a finding of the
8 validity of any claims in the action, or of any wrongdoing by the Defendant, or any of the other Released
9 Parties.

10 8. A class action settlement is presumed to be fair if: ““(1) it is reached through arm’s
11 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
12 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
13 small.”” *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 52 (quotation omitted). The Court finds that the
14 Settlement is presumptively fair based on the foregoing factors because it was negotiated based on
15 sufficient information through arm’s length negotiations, under the auspices of a well-respected
16 mediator, by counsel experienced in wage and hour class action litigation.

17 9. Beyond determining whether a settlement is entitled to a presumption of fairness, a court
18 must further consider factors such as: (1) the strength of plaintiffs’ case; (2) the risk and expense of
19 further litigation; (3) the risk of maintaining class status through trial; (4) the amount offered in
20 settlement; (5) the extent of discovery completed; (6) the experience and views of counsel; (7) the
21 presence of a government participant; and (8) and the reaction of the class members to the proposed
22 class settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In re Microsoft I-V Cases*
23 (2006) 135 Cal.App.4th 706, 723. The Court finds that each of these factors weigh in support final
24 approval.

25 10. First, the Court recognizes there are real risks to Plaintiff and the Class if they were to
26 proceed with the litigation.

27 11. Second, the risk and expense of further litigation supports the reasonableness of the
28 Settlement. For example, the Court recognizes that Plaintiff’s ability to prove damages on a classwide

1 basis at trial would be an expensive, time-consuming, and uncertain proposition.

2 12. Third, there are real risks that a Class would not be certified absent this Settlement.

3 13. Fourth, the Settlement was reached based on extensive investigation and informal
4 discovery, including thorough expert analysis of pertinent time and payroll data and other records for
5 the Class.

6 14. Fifth, Class Counsel, who is experienced in wage and our class action litigation, endorse
7 the Settlement as fair and reasonable and in the best interest of the Class.

8 15. Sixth, notice was provided to the California Labor and Workforce Development Agency
9 (“LWDA”) and it has not indicated that it objects to or opposes the Settlement.

10 16. Finally, the reaction of the Class to the Settlement is positive. There have been no
11 objections and two exclusion requests. There are no work week disputes.

12 17. In sum, based on consideration of the foregoing factors, and the Court’s familiarity with
13 the litigation, the Court finds that the Settlement is in all respects fair, reasonable, and adequate, is in
14 the best interest of the Class, and it is hereby finally approved.

15 18. Upon entry of this Order, compensation to the Settlement Class Members shall be
16 effected pursuant to the terms of the Settlement Agreement.

17 19. In addition to any recovery that Plaintiff may receive as a Settlement Class Member
18 under the Settlement, and in recognition of Plaintiff’s efforts on behalf of the Settlement Class, the
19 Court hereby approves the payment of a Class Representative Service Award in the amount of \$3,000
20 to Plaintiff Gerardo Martinez. The Court finds that this amount is appropriate based on the factors
21 articulated in *Golba v. Dick’s Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251. Among other things,
22 Plaintiff Gerardo Martinez took on risk, both financial and in terms of future employment prospects,
23 by agreeing to act as the Class Representative, devoted considerable time and energy time to this action
24 for the benefit of the Class, and achieved an excellent result for the Class.

25 20. With respect to attorneys’ fees, the Court approves the amount of \$300,000 based on a
26 percentage of the recovery method. *See Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480,
27 503 (“when class action litigation establishes a monetary fund for the benefit of class members, and
28 the trial court in its equitable powers awards class counsel a fee out of that fund, the court may

1 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.”).
2 The Gross Settlement Amount represents a true common fund, as Defendants are obligated to pay this
3 entire amount, and no portion of the Gross Settlement Amount will revert to Defendants. In addition,
4 the Court finds that \$300,000, which represents one-third of the Gross Settlement Amount, is
5 reasonable and appropriate. *See In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13
6 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is
7 used, fee awards in class actions average around one-third of the recovery.”); *Chavez v. Netflix, Inc.*
8 (2008) 162 Cal.App.4th 43, 66 n.11 (recognizing that fee awards in class actions average around one-
9 third of the recovery).

10 21. Cross-checking the reasonableness of this amount against Class Counsel’s lodestar
11 further supports the reasonableness of the attorneys’ fees award. *See Laffitte*, 1 Cal.5th at 506 (trial
12 courts have “discretion to conduct a lodestar cross-check on a percentage fee.”). Based on Class
13 Counsel’s lodestar to date of \$316,250, which the Court finds is reasonable, an award of \$300,000
14 represents an implied negative multiplier.

15 22. The Court also finds that the \$17,000 in litigation costs incurred by Class Counsel were
16 necessary and appropriate.

17 23. Accordingly, the Court approves the payment of attorneys’ fees to Class Counsel in the
18 amount of \$300,000 and reimbursement of reasonable litigation expenses in the amount of \$17,000.

19 24. The Court approves the payment of settlement administration costs in the amount of
20 \$10,000 to Phoenix Settlement Administrators.

21 25. The Court approves and orders payment in the amount of \$100,000 allocated as PAGA
22 penalties (75% or \$75,000 allocated to the LWDA and 25% or \$25,000 allocated to the PAGA Group
23 Members) which represents a fair and equitable sum for resolution of claims raised pursuant to
24 California Labor Code section 2698 *et seq.*

25 26. The Gross Settlement Amount, the Net Settlement Amount, and the methodology used
26 to calculate and pay each Settlement Class Member’s individual settlement payment are fair and
27 reasonable, and the Court authorizes the Settlement Administrator to issue individual settlement
28 payments to each Settlement Class Member pursuant to the terms of the Settlement Agreement.

1 27. Upon the Effective Date, Plaintiff and all members of the Settlement Class, shall have,
2 by operation of this Order and the accompanying Judgment, fully, finally, and forever released,
3 relinquished, and discharged Defendant and Released Parties from all Released Claims as defined by
4 the terms of the Amended Settlement Agreement.

5 28. A final accounting status conference regarding the status of settlement administration
6 shall take place on April 23, 2025, at 8:30 a.m., in Department S-17. The final report from Phoenix
7 Settlement Administrators Re: Status of Settlement Administration shall be filed at least ten (10)
8 calendar days prior to the hearing.

9 29. Plaintiff's Motion for Final Approval of Class Action Settlement is hereby granted and
10 the Court directs that a judgment shall be entered in accordance with the terms stated herein.

11 30. Judgment in this matter is entered in accordance with the terms of the Settlement
12 Agreement against Defendants in favor of Plaintiff and the Settlement Class.


13 31. This document shall constitute a Judgment for purposes of California Rule of Court
14 3.769(h). This Judgment is intended to be a final disposition of the above captioned action in its
15 entirety, and is intended to be immediately appealable.

16 32. This Judgment shall be posted online on Phoenix Settlement Administrator's website
17 for one-hundred and eighty (180) days.

18 33. This Court shall retain jurisdiction with respect to all matters related to the
19 administration and consummation of the Settlement, to enforce the terms of the judgment, and any and
20 all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including but not
21 limited to all matters related to the Settlement and the determination of all controversies relating
22 thereto, pursuant to Code of Civil Procedure, §664.6 and California Rules of Court, Rule
23 3.769(h).

24 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

25
26 DATED: April 22, 2024

27 
28 _____
HONORABLE JOSEPH T. ORTIZ
JUDGE OF THE SUPERIOR COURT