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**ELECTRONICALLY
FILED**

7/8/2021

K. BIEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA - MARTINEZ
A.Stewart, DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

CHEYENNE ROBLES, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

WESTERN STONE & METAL CORP., a
Colorado corporation; and DOES 1 through
100,

Defendants.

CASE NO. MSC20-00392

*[Case assigned for all purposes to the Hon.
Edward G. Weil, Dept. 39]*

**ORDER GRANTING PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES AND COSTS, AND
CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT**

Date: June 17, 2021
Time: 9:00 a.m.
Dept.: 39

Action Filed: February 26, 2020
Trial Date: None Set

ORDER GRANTING FINAL APPROVAL OF SETTLEMENT

ORDER

Plaintiff Cheyenne Robles' Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement Payment came on regularly for hearing before this Court on June 17, 2021, at 9:00 a.m., pursuant to California Rule of Court 3.769 and this Court's Order Granting Preliminary Approval of Class Action Settlement signed March 2, 2021 ("Preliminary Approval Order"). Having considered the parties' Settlement Agreement ("Settlement" or "Settlement Agreement"), and all other documents and evidence presented in support thereof, and recognizing the sharply disputed factual and legal issues involved in this case, the risks of further prosecution, and the benefits to be received by the Settlement Class Members pursuant to the Settlement, the Court hereby makes a final ruling that the proposed Settlement is fair, reasonable, and adequate, and is the product of good faith, arms'-length negotiations between the parties. Good cause appearing therefor, the Court hereby GRANTS Plaintiff's Motion for Final Approval of Class Action Settlement and HEREBY ORDERS THE FOLLOWING:

1. The Court GRANTS final approval of the class action settlement as set forth in the Settlement Agreement for the reasons set forth in the Court's June 17, 2021 tentative ruling attached hereto as **Exhibit A**.

2. The conditional class certification contained in the Preliminary Approval Order is hereby made final, and the Court thus certifies, for purposes of the Settlement, a Settlement Class consisting of:

Settlement Class – all current and former non-exempt employees who worked for Western Stone & Metal Corp. dba Shane Co. ("Shane Co.") in California from February 26, 2016 until the date of preliminary approval.

3. Plaintiff Cheyenne Robles is hereby confirmed as the Class Representative and Fletcher W. Schmidt, Paul K. Haines, and Alexandra R. McIntosh of Haines Law Group, APC are hereby confirmed as Class Counsel.

4. Notice was provided to the Class Members as set forth in the Settlement Agreement, which was approved by the Court on March 2, 2021, and the notice process has

1 been completed in conformity with the Court’s Preliminary Approval Order. The Court finds
2 that said notice constituted reasonable notice under the circumstances, and constituted valid,
3 due, and sufficient notice to all Settlement Class Members. The Notice of Class Action
4 Settlement provided due and adequate notice of the proceedings and matters set forth therein,
5 informed Settlement Class Members of their rights, and fully satisfied the requirements of
6 California Code of Civil Procedure § 382, California Rules of Court 3.766 and 3.769, the
7 California and United States Constitutions, and other applicable law.

8 5. The Court finds that no Settlement Class Members objected to the Settlement
9 and that one individual requested to be excluded from the Settlement.

10 6. The Court finds that the 100% participation rate supports final approval.

11 7. The Court hereby approves the Settlement as set forth in the Settlement
12 Agreement as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement
13 Agreement according to its terms.

14 8. For purposes of settlement only, the Court finds that: (a) the Settlement Class
15 Members are ascertainable and so numerous that joinder of all members is impracticable; (b)
16 there are questions of law or fact common to the Settlement Class Members, and there is a well-
17 defined community of interest among Settlement Class Members with respect to the subject
18 matter of the litigation; (c) the claims of the Class Representative are typical of the claims of the
19 Settlement Class Members; (d) the Class Representative has fairly and adequately protected the
20 interests of the Settlement Class Members; (e) a class action is superior to other available
21 methods for an efficient adjudication of this controversy; and (f) Class Counsel is qualified to
22 serve as counsel for the Class Representative and the Settlement Class Members.

23 9. The Court finds that given the absence of objections, and objections being a
24 prerequisite to appeal, this Order shall be considered final as of the date it is signed by this
25 Court.

26 10. The Court orders Shane Co. to deposit the Gross Settlement Payment with
27 Phoenix Settlement Administrators (the “Settlement Administrator”) within 30 calendar days of
28 this Order being signed by this Court.

1 11. The Court finds that the Individual Settlement Payments, as provided for in the
2 Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to
3 distribute these payments in conformity with the terms of the Settlement.

4 12. The Court finds that the payment to the State of California Labor and Workforce
5 Development Agency (“LWDA”) in the amount of \$30,000.00 for its 75% share of the civil
6 penalties allocated under the PAGA is fair, reasonable, and adequate, and orders the Settlement
7 Administrator to distribute this payment in conformity with the terms of the Settlement.

8 13. The Court finds that the Class Representative Enhancement Payment in the
9 amount of \$5,000.00 is appropriate in recognition of the risks Plaintiff undertook; for the
10 amount of time and effort spent by Plaintiff as the Class Representative; for the general release
11 provided by Plaintiff as part of the Settlement Agreement; and the service Plaintiff provided to
12 the Class Members. The Court finds that this amount is fair, reasonable, and adequate, and
13 orders that the Settlement Administrator make this payment in conformity with the terms of the
14 Settlement.

15 14. The Court finds that attorneys’ fees in the total amount of \$210,000.00 and
16 litigation costs of \$18,819.10 for Class Counsel are fair, reasonable, and adequate. The Court
17 orders the Settlement Administrator to distribute these payments to Class Counsel in conformity
18 with the terms of the Settlement with the exception of 5% which are to be withheld pending
19 satisfactory compliance as found by the Court.

20 15. The Court orders that the Settlement Administrator shall be paid \$7,250.00 from
21 the Gross Settlement Payment for all of its work done and to be done until the completion of
22 this matter, and finds that sum appropriate.

23 16. A final compliance hearing is set for March 24, 2022 in Department 39.

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1 17. Pursuant to California Code of Civil Procedure § 384(b), Plaintiff will submit to
2 the Court a final report on or before March 17, 2022, setting forth the actual amounts paid to
3 Class Members and other amounts disbursed pursuant to the Settlement. Upon receiving the
4 report, the Court will determine whether further reports and/or a hearing will be necessary.

5 **IT IS SO ORDERED.**

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7 Dated: July 2, 2021



Honorable Edward G. Weil
Judge of the Superior Court

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EXHIBIT A

3. TIME: 9:00 CASE#: MSC20-00392

CASE NAME: CHEYENNE ROBLES VS WESTERN STO

HEARING ON MOTION TO/FOR FINAL APPROVAL OF CLASS ACTION

SETTLEMENT FILED BY CHEYENNE ROBLES

*** TENTATIVE RULING: ***

Plaintiff Cheyenne Robles moves for final approval of her class action settlement with defendant Western Stone & Metal Corp., dba Shane Co, as well as approval of attorney's fees, costs, and a representative enhancement payment.

A. Background and Settlement Terms

The original complaint was filed February 26, 2020. It is a class action complaint alleging that defendant violated the Labor Code by failing to provide meal and rest periods, and premium pay. PAGA allegations were added in the Second Amended Complaint, filed September 14, 2020.

The submitted materials document that initial PAGA notices and notice of the settlement were provided to the LWDA.

The settlement would create a gross settlement fund of \$630,000. The class representative payment would be \$7,500. Counsel's attorney's fees would be \$210,000 (33% of the settlement). Litigation costs would not exceed \$27,500. The settlement administrator (Phoenix Settlement Administrators) capped its costs at \$10,000. PAGA penalties would be \$40,000, resulting in a payment of \$30,000 to the LWDA. Thus, the net settlement amount available to the class would be \$345,000. The fund is non-reversionary.

The class would consist of current or formerly hourly-paid employees who worked for Defendant within California during the period of February 26, 2016, to the date of an order granting preliminary approval of the settlement. Funds would be apportioned among the class based on their number of work weeks during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. They may dispute their number of work weeks. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Uncashed checks would be cancelled and sent to the State Unclaimed Property Fund.

1 Based on the final class list, and deducting for the fees, costs, etc., the average
2 individual settlement payment will be approximately \$1,070.

3 Substantial formal discovery was undertaken, and the matter settled after meeting
4 with an experienced mediator. Plaintiff's counsel describe that Shane Co. contends that it
5 provided the opportunity to take proper breaks, but that employees sometimes chose not
6 to take them, through which they met the requirements of *Brinker*. Shane Co. also
7 contends that some mealbreaks were waived, and that it paid required premium pay
8 where breaks were not taken. The parties dispute whether the premium pay rate must
9 include non-discretionary bonuses. The parties also dispute whether employees were
10 required to remain on premises during breaks.

11 Counsel also has provided a quantitative analysis of the case, and how the settlement
12 compares to the potential value of the case, after allowing for various risks and
13 contingencies.

14 Since the settlement was given preliminary approval, the Settlement Administrator
15 has implemented the notice provisions. Notice was mailed to 333 class members. 34
16 notice packages were returned as undeliverable. After follow-up found new addresses,
17 they were re-sent, and only one was returned as undeliverable. No objections were
18 received. No opt-outs were received.

19 The Settlement Administrator's costs are \$7,250.

20 **B. Legal Standards**

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

28 Because this matter also proposes to settle PAGA claims, the Court also must
consider the criteria that apply under that statute. The Legislature's express command that
PAGA settlements be approved by the court necessarily implies that there is some
substantive dimension to the review. (Labor Code § 2699(l).) The Court's review, however,
is somewhat hampered by the lack of guidance in the statute or case law concerning the
basis upon which a settlement may be approved. The Court has found no binding authority,
but one federal District Court has addressed the issue. In *O'Connor v. Uber Techs, Inc.*
(N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133, the court denied approval of class action
settlements that included PAGA claims in part because the plaintiffs' claims added up to as
much as \$1 billion in PAGA penalties but parties settled those claims for \$1 million, or 0.1%
of their alleged maximum value. As the court stated, "where plaintiffs bring a PAGA
representative claim, they take on a special responsibility to their fellow aggrieved workers
who are effectively bound by any judgment. [citation omitted] Such a plaintiff also owes
responsibility to the public at large; they act, as the statute's name suggests, as a private
attorney general, and 75% of the penalties go to the LWDA 'for enforcement of labor laws .
. . and for education of employers and employees about their rights and responsibilities
under this code.'" (*Id.*, at 1134.) In that case, the LWDA itself filed a brief stating that "[i]t is
thus important that when a PAGA claim is settled, the relief
provided for under the PAGA be genuine and meaningful, consistent with the underlying

1 purpose of the statute to benefit the public and, in the context of a class action, the court
2 evaluate whether the settlement meets the standards of being 'fundamentally fair,
3 reasonable, and adequate' with reference to the public policies underlying the PAGA." (*Id.*,
4 at 1133.) The *Uber Techs* court noted that "a court may reduce the penalty when 'to do
5 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.'"
6 (*Id.*, at 1134, citing Labor Code § 2699(e)(2).) Nonetheless, the court noted that the plaintiff
7 had provided no "coherent analysis" to justify the "relatively meager value" assigned to the
8 PAGA claim.

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

21 **C. Attorney fees costs, and representative enhancement payment**

22 Plaintiffs seek one-third of the total settlement amount as fees, relying on the
23 "common fund" theory. Even a proper common fund-based fee award, however, should be
24 reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1
25 Cal. 5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way
26 to determine whether the percentage allocated is reasonable. It stated: "If the multiplier
27 calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court
28 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
was not considered at preliminary approval, but is considered now.

Counsel have provided an estimated lodestar of \$156,696.50. It is based on
attorney's hourly rates ranging from \$350 to \$650. The rates appear to be reasonable for
these purposes. The work was performed by different attorneys charging at all of the
applicable rates, including substantial work by the least expensive attorneys, which
indicates that work was allocated, where possible, to attorneys charging lower rates. The
implied multiplier resulting from a
\$210,000 fee is 1.34. There are no considerations present that would make it appropriate
to adjust the fee, and it is approved.

The litigation costs are reasonable and are approved.

The Settlement Administrator's costs of \$7,250 are reasonable and are approved.

Plaintiff requests a representative payment of \$7,500. Criteria for evaluation of
such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175
Cal.App.4th

1 785, 804-807. Plaintiff attests that she took a risk that participation in the suit could affect
2 her future employment, and that she spent at least 20 hours total on activities associated
3 with the case. She does not indicate any actual adverse effects, nor does she indicate that
4 as part of the settlement she released any claims that had real value. The representative
5 payment is approved in the amount of \$5,000.

6 **D. Discussion**

7 The moving papers sufficiently establish that the proposed settlement is fair,
8 reasonable, and adequate to justify final approval.

9 **E. Conclusion**

10 The motion is granted, with the representative payment modified to \$5,000. Counsel
11 are directed to prepare an order reflecting this tentative ruling and the other findings in the
12 previously submitted proposed order, and a judgment. The ultimate judgment must provide
13 for a compliance hearing after the settlement has been completely implemented. Counsel
14 should obtain a date for the hearing through the Department 39 Courtroom Clerk.
15 Plaintiffs' counsel are to submit a compliance statement one week before the compliance
16 hearing date. 5% of the attorney's fees are to be withheld by the claims administrator
17 pending satisfactory compliance as found by the Court.
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