

**FINAL RULINGS/ORDERS RE: MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Ernesto Delgado v. Kloeckner Metals Corporation, Case No.:
20STCV22503

The Parties' Motion for Final Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$465,000.
- B. The Net Settlement Amount is the GSA minus the following:
 - \$155,000 (33 1/3%) for attorney fees to Class Counsel, Diversity Law Group, P.C (¶44.f);
 - \$18,525.49 for litigation costs to Class Counsel (Ibid.);
 - \$5,000 for a service payment to the named Plaintiff, Ernesto Delgado (¶44.f);
 - \$9,750 for settlement administration costs to Phoenix Settlement Administrators(¶44.g);
 - \$30,000 (75% of \$40,000 PAGA penalty) to the LWDA (¶44.h).
- C. Employer payroll taxes will be paid by Defendant separately from the GSA. (¶15)
- D. Plaintiffs release of Defendants from claims described herein.

By **September 1, 2023**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1) (3).

By **August 1, 2024**, Class Counsel must file a Final Report Re: Distribution of the Settlement Funds.

Court sets **Non-Appearence Case Review for August 8, 2024, 8:30 AM, Department 9.**

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I.
INTRODUCTION

A. Background

Plaintiff Ernesto Delgado sues his former employer, Defendant Kloeckner Metals Corporation, for alleged wage and hour violations. Defendant is a metals manufacturing, supply, and service company based in Roswell, Georgia. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On June 10, 2020, Plaintiff filed his class action complaint against Defendant alleging claims for violations of California Labor Code §§ 201-203, 212-213, 226, 226.7, 512, and 2698, et seq., the Private Attorneys General Act ("PAGA"), and California Business and Professions Code § 17200 et seq.

On August 17, 2020, Defendant filed a Notice of Removal of Action to the United States District Court for the Central District of California. The matter was remanded to this Court on January 28, 2022.

On March 22, 2021, the parties mediated before Steven J. Serratore, Esq., which did not result in settlement. The parties continued negotiations over the course of several months, and ultimately reached an agreement with the aid of the mediator. The terms are finalized in the Amended Stipulated Settlement Agreement and Release of Claims ("Settlement Agreement"), a copy of which was filed with the Court.

On August 23, 2022, the Court issued a "checklist" to the parties pertaining to deficiencies in the proposed settlement. In response, the parties filed further briefing, including the Second Amended Settlement Agreement. All references below are to that agreement.

The court preliminarily approved the settlement on February 15, 2023.

The Parties now move for final approval of the proposed class action settlement.

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B. Definitions

"Settlement Class" or "Settlement Class Members": all persons employed by Defendant in California as an hourly non-exempt employee during the Class Period. (¶36)

"Class Period" or "Released Period": April 6, 2016 through October 4, 2021. (¶6)

"Aggrieved Employees": all persons employed by Defendant in California as an hourly non-exempt employee during the PAGA Period. (¶2)

"PAGA Period": May 20, 2019 through October 6, 2021. (¶22)

"Participating Class Member" or "Participating Class": any and all Settlement Class Members who have not submitted a valid and timely Request for Exclusion. (¶24)

The Parties stipulate to class certification for settlement purposes only. (¶78)

C. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$465,000, non-reversionary. (¶15)
 - o Escalator Clause: Defendant represents that, as of August 6, 2021, there were approximately 339 Settlement Class Members. If, as of the end of the Class Period, the number of Settlement Class Members increases by more than ten percent (10%), Defendant shall increase the Gross Settlement Amount proportionally (i.e., for an increase of eleven percent (11%) in the number of Class Members, Defendant shall add an extra one percent (1%) to the Gross Settlement Amount; for a fifteen percent (15%) increase in the number of Class Members, Defendant shall add an extra five percent (5%) to the Gross Settlement Amount). (¶65)
 - o At final approval, the settlement administrator represents that there are 336 Class Members. (Declaration of Kevin Lee ("Lee Decl.") ¶11.) Accordingly, the escalator clause was not triggered.
- The Net Settlement Amount ("Net") (\$234,000) is the GSA minus the following:
 - o Up to \$155,000 (33 1/3%) for attorney fees (¶44.f);
 - o Up to \$25,000 for litigation costs (Ibid.);

- o Up to \$10,000 for a service payment to the named Plaintiff (§44.f);
- o Up to \$11,000 for settlement administration costs (§44.g); and
- o Payment of \$30,000 (75% of \$40,000 PAGA penalty) to the LWDA (§44.h).
- Employer payroll taxes will be paid by Defendant separately from the GSA. (§15)
- No Claim Form. Class Members will not have to submit a claim form in order to receive their settlement payment. (Notice p. 1)
- Response Deadline. "Response Deadline" is 45 calendar days from the date the Notice is mailed to the Settlement Class Members. (§32) Settlement Class Members will have until the Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court. (§61)
 - o Any Settlement Class Member who timely requests exclusion will not be entitled to receive any payments under this Agreement other than for their share of the PAGA award and will not be bound by this Agreement, or the Judgment other than as it relates to the release of PAGA claims. (§63.a)
 - o If more than 10% of the total Settlement Class Members ("Blow-Up Number") request exclusion from the Settlement and/or object to the terms of the Settlement pursuant to Paragraph 59 then Defendant may, in its sole discretion, elect to terminate this Agreement. (§73)
- Individual Settlement Payment Calculation. The Individual Settlement Amount for each Settlement Class Member will be calculated by the Settlement Administrator using the Class List and Data provided by Defendant as follows. The Settlement Administrator will determine the aggregate number of Weeks Worked by Settlement Class Members during the Class Period ("Total Weeks Worked"). The Settlement Administrator will then divide the Net Settlement Amount by the Total Weeks Worked to determine a per workweek value ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks Worked by each Settlement Class Member during the Class Period to determine the distribution, prior to legal deductions, for each Settlement Class Member. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Amounts for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount. (§44.c)
 - o PAGA Payments: The PAGA Individual Settlement Amount for each Aggrieved Employee will be calculated by the Settlement Administrator using the Class List and Data provided by

Defendant as follows. The Settlement Administrator will determine the aggregate number of Weeks Worked by Aggrieved Employees during the PAGA Period ("PAGA Total Weeks Worked"). The Settlement Administrator will then divide the portion of the Net Settlement Amount that is going to Aggrieved Employees PAGA Net Settlement Amount by the PAGA Total Weeks Worked to determine a per workweek value ("PAGA Workweek Value"). The PAGA Workweek Value will be multiplied by the number of PAGA Weeks Worked by each Aggrieved Employee during the PAGA Period to determine the distribution, prior to legal deductions, for each Aggrieved Employee. (§44.e)

- o Tax Allocation. Each individual settlement payment will be allocated as 20% to wages, 80% to penalties and interest.

(§44.d) All amounts paid to Aggrieved Employees will be considered 100% penalties and will be reported on a Form 1099. (§44.e)

- Funding and Distribution of Settlement. Defendant shall make a one-time deposit into the QSF of the Gross Settlement Amount, as described in Paragraph 44(a) that is necessary to make all payments required under this Settlement, within ten (10) days after the Effective Date, plus shall separately pay its share of employer payroll taxes as calculated and directed by the Settlement Administrator. (§66) No later than ten (10) calendar days after the deposit of the Gross Settlement Amount into the QSF, the Settlement Administrator will mail the payments to the Participating Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service Payment to the Class Representative, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement Administration Costs. (§67)

- Uncashed Checks. Participating Class Members shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Participating Class Member's check is not cashed within that period, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California State Controller's Office, Unclaimed Property Division, in the name of the Class Member, unless the Court directs the Parties to issue unpaid residue to other fund. (§68)

- Phoenix Class Action Administration Solutions will perform notice and settlement administration. (§34)

- The Settlement Agreement was submitted to the LWDA on January 25, 2023. (Supp. Rosenthal Decl. ISO Prelim, Exhibit D.)

- Notice of Entry of Judgment will be posted on the administrator's website. (§56.n)

- Release by the Settlement Class. Upon payment of the Gross Settlement Amount by Defendant, and except as to such rights or claims as may be created by this Stipulation of Settlement, each Participating Class Member will forever completely release and discharge the Released Parties from the Released Claims for the Release Period. Each Participating Class Member will be deemed to have made the foregoing release as if by manually signing it. (§47)
- "Released Claims" by the Participating Class Members means: (§29)
 - o All claims, including penalties, costs and attorneys' fees related thereto, that were or could have been brought under the facts and allegations made in the operative Complaint for violation of Labor Code sections 226.7 and 512, that accrued during the Class Period; (§29.b)
 - o All claims, including penalties, costs and attorneys' fees related thereto, that were or could have been brought under the facts and allegations made in the operative Complaint for violation of Labor Code section 226, that accrued during the period of April 6, 2019 through October 4, 2021; (§29.c)
 - o All claims, including penalties, costs and attorneys' fees related thereto, that were or could have been brought under the facts and allegations made in the operative Complaint for violation of Labor Code sections 201, 202 and 203, that accrued during the period of June 26, 2018 through October 4, 2021; (§29.d)
 - o All claims for penalties under the California Private Attorneys' General Act, including costs and attorneys' fees related thereto, predicated on the violation of Labor Code sections 201, 202, 203, 212, 213, 226(a), 226.3, 226.7 and 512, that accrued during the PAGA Period. Plaintiff administratively exhausted these claims in his letter to the LWDA dated May 20, 2020. (§26.e)
 - o The Parties expressly acknowledge that the Released Claims encompass all claims alleging that Defendant improperly rounded meal periods, that Defendant improperly rounded time generally, that employees were not permitted to leave the work site during their rest periods, and that separated employees received their final wages on a pay card that necessitated them paying a fee in order to retrieve their wages. (§29)
- Release by the Aggrieved Employees: Upon payment of the Gross Settlement Amount by Defendant, and except as to such rights or claims as may be created by this Stipulation of Settlement, each Aggrieved Employee and the LWDA will forever completely release and discharge the Released Parties from the PAGA Released Claims for the PAGA Period. Each Aggrieved Employee will be deemed to have made the foregoing release as if

by manually signing it. (§50) Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by the LWDA and each and all of the Aggrieved Employees to obtain a recovery for any and all of the PAGA Released Claims. The Aggrieved Employees shall be so notified in the Notice. (§51)

o "PAGA Released Claims" by the Aggrieved Employees means: All claims for penalties under the California Private Attorneys' General Act, including costs and attorneys' fees related thereto, predicated on the violation of Labor Code sections 201, 202, 203, 212, 213, 226(a), 226.3, 226.7 and 512, that accrued during the PAGA Period. Plaintiff administratively exhausted these claims in his letter to the LWDA dated May 20, 2020. (§23)

• Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery for any and all of the Released Claims. The Settlement Class Members shall be so notified in the Notice. This paragraph does not apply to any Settlement Class Member who timely and validly opts out of the Settlement. (§48)

• "Released Parties" means Defendant and their present and former officers, directors, members, managers, shareholders, agents, subsidiaries, insurers, operators, partners, professional employment organizations, successors and assignees. (§30)

• Named Plaintiff will additionally provide a general release and §1542 waiver. (§§52-54)

II. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On March 22, 2021, the parties mediated before Steven J. Serratore, Esq., which did not result in settlement. The parties continued negotiations over the course of several months, and ultimately reached an agreement with the aid of the mediator. (Rosenthal Decl. ISO Prelim §§4-6.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Class Counsel represents that they propounded special interrogatories and

requests for production of documents, obtained and reviewed discovery responses and Defendant's document production, and took the depositions of Defendant's FRCP 30(b)(6) witnesses regarding its meal and rest break and payroll policies and procedures. Plaintiff's counsel also communicated with various class members regarding the claims in this lawsuit. (Declaration of Larry W. Lee ISO Prelim ¶7.) Class Counsel also represents that prior to mediation, Defendant produced data for the entire class, which allowed Class Counsel to conduct damage analysis. Counsel also performed damages calculations prior to mediation and retained an expert statistician to assist in performing those calculations. (Id. at ¶4).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Rosenthal Decl. ISO Prelim ¶14).

4. What percentage of the class has objected? No objectors. (Lee Decl. ¶9.)

The Court concludes that the settlement is presumptively fair.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.) Class Counsel has provided information, summarized below, regarding the factual basis for, and estimated maximum exposure for each of the claims alleged.

Violation	Maximum Exposure
Meal Break Violations	\$1,559,572
Rest Break Violations	\$3,602,033
Waiting Time Penalties	\$174,567
Wage Statement Penalties	\$248,600
PAGA Penalties	\$2,364,500
Total	\$7,949,272

(MPA at pp. 15-17; Rosenthal Decl. ISO Prelim ¶12.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the

case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."].)

4. Amount offered in settlement. Plaintiff's counsel estimated Defendant's maximum exposure at \$7,949,272. The \$465,000 settlement amount represents approximately 5.8% of Defendant's total maximum exposure and 8.3% of Defendant's exposure excluding PAGA penalties which, given the uncertain outcomes, is within the "ballpark of reasonableness."

The settlement amount, after the requested deductions, leaves approximately \$231,724.51 to be divided among approximately 336 participating class members. The resulting payments will average approximately \$689.66 per class member.

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement.

Number of class members: 336 (Lee Decl. ¶3.)
Number of notice packets mailed: 336 (Id. at ¶5.)
Number of undeliverable notices: 0 (Id. at ¶7.)
Number of opt-outs: 0 (Id. at ¶8.)
Number of objections: 0 (Id. at ¶9.)

Number of Participating Class Members: 336 (Id. at ¶11.)
Average individual payment: \$689.66 (Id. at ¶14.)
Highest estimated payment: \$1,219.60 (Ibid.)

The Court concludes that the settlement is fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel requests an award of \$155,000 in fees and \$18,525.49 in costs. (MFA at 27:21-28.) The Settlement Agreement provides for fees up to \$155,000 (33 1/3%) and costs up to \$25,000 (¶44.f).

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.) Here, class counsel requests attorney fees using the lodestar method. (MFA at pp. 22-27.)

In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) The fee request represents approximately one-third of the gross settlement amount, which is the average generally awarded in class actions. (See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].)

Class Counsel has provided information, summarized below, from which the lodestar may be calculated.

Attorney	Rate	Hours	Totals
Larry W. Lee	\$750	11.5	\$8,625.00
Kristen M. Agnew	\$700	36.4	\$25,480.00
Nicholas Rosenthal	\$700	155.7	\$108,880.00
Totals		198.6	\$142,985.00

(Lee Decl. ISO Final ¶¶9-10; Agnew Decl. ISO Final ¶¶13-14; Rosenthal Decl. ISO Final ¶¶9-11.)

Counsel's percentage-based fee request is higher than the unadjusted lodestar, which would require the application of an approximate 1.08x multiplier to reach the requested fees.

Here, the \$155,000 fee request represents a reasonable percentage of the total funds paid by Defendant. Notice of the fee request was provided to class members in the notice packet and no one objected. (Lee Decl. ¶9, Exhibit A thereto.)

As for costs, Class Counsel is requesting \$18,525.49. This is less than the \$25,000 cap provided in the Settlement Agreement, for which Class Members were given notice and did not object. (Lee Decl. ¶9, Exhibit A thereto.) Counsel include: Mediation (\$9,000), Experts (\$4,358.13), and Deposition Transcripts (\$2,795.15). (Lee Decl. ISO Final, Exhibit B.) The costs appear to be reasonable in amount and reasonably necessary to this litigation.

Based on the above, the court awards \$155,000 for attorneys' fees and \$18,525.49 for attorneys' costs.

D. Claims Administration Costs

The settlement administrator, Phoenix Settlement Administrators, requests administration costs of \$9,750 (Lee Decl. ¶17). This is less than the estimated cost of \$11,000 provided for in the Settlement Agreement (¶44.g) and disclosed to Class Members in the Notice, to which no one objected. (Lee Decl. ¶9, Exhibit A thereto).

The court awards costs in the requested amount of \$9,750.

E. Incentive Award to Class Representative

Plaintiff Ernesto Delgado seeks an enhancement award of \$10,000 for his contributions to the action. (MFA at 20:13.)

In connection with the final fairness hearing, the named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude

that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit' (Id. at 806-807, italics and ellipsis in original.)

Plaintiff represents that his contributions to this action include: meeting with his attorneys, providing them with documents and information, reviewing the complaint and discovery responses, participating in the settlement process, having his deposition taken, and reviewing case documents. (Decl. of Ernesto Delgado ISO Final ¶7.) He estimates spending 60 hours on the case. (Ibid.)

Based on the above, the court grants the enhancement award in the reduced amount of \$5,000 to Plaintiff, Ernesto Delgado.

III. CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Final Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$465,000.

B. The Net Settlement Amount is the GSA minus the following:

\$155,000 (33 1/3%) for attorney fees to Class Counsel, Diversity Law Group, P.C (¶44.f);

\$18,525.49 for litigation costs to Class Counsel (Ibid.);

\$5,000 for a service payment to the named Plaintiff, Ernesto Delgado (¶44.f);

\$9,750 for settlement administration costs to Phoenix Settlement Administrators(¶44.g);

\$30,000 (75% of \$40,000 PAGA penalty) to the LWDA (¶44.h).

C. Employer payroll taxes will be paid by Defendant separately from the GSA. (¶15)

D. Plaintiffs release of Defendants from claims described herein.

3) By September 1, 2023, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1) (3).

4) By August 1, 2024, Class Counsel must file a Final Report Re: Distribution of the Settlement Funds.

5) Court sets Non-Appearence Case Review for August 8, 2024, 8:30 AM, Department 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: August 1, 2023

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT