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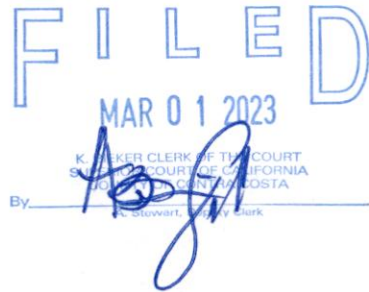
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

ANGELO KALAVERAS and EMAD
MISSREEZADAH,

Plaintiffs,

v.

NCR CORPORATION; and DOES 1-100,
inclusive,

Defendants.

CASE NO.: **MSC20-01186**

**ORDER AFTER HEARING GRANTING
MOTION FOR PRELIMINARY
APPROVAL**

Hearing Date: February 23, 2023

Hearing Time: 9:00 a.m.

Judge: Hon. Charles S. Treat

Dept.: 12

Action Filed: June 25, 2020

Trial Date: None Set

ORDER AFTER HEARING GRANTING MOTION FOR PRELIMINARY APPROVAL

1 Plaintiffs Angelo Kalaveras and Emad Missreездadah move for preliminary approval of
2 their class action and PAGA settlement with defendant NCR Corporation. The motion is **granted**.

3 **Background and Settlement Terms**

4 The two plaintiffs in this case initially filed separate actions in different counties.
5 Kalaveras filed a class action in this County, and amended the complaint to add a PAGA claim.
6 NCR removed the case to federal court based on the Class Action Fairness Act. Kalaveras's class
7 claims were then dismissed, and the action remanded to this Court. Meanwhile, Missreездadah
8 filed a PAGA-only case in Los Angeles County. The latter case was dismissed voluntarily, and
9 Missreездadah was added by amendment as a plaintiff in the Contra Costa action. After a
10 successful mediation, by agreement and pursuant to the settlement agreement, plaintiffs filed the
11 present operative complaint including both class and PAGA claims.

12 The settlement would create a gross settlement fund of \$1,000,000. The class
13 representative payment to the plaintiffs would be \$10,000 each, totaling \$20,000. Attorney's fees
14 would be \$333,333 (one-third of the settlement). Litigation costs would not exceed \$21,000. The
15 settlement administrator's costs are capped at \$12,000. PAGA penalties would be \$50,000,
16 resulting in a payment of \$37,500 to the LWDA. The net amount paid directly to the class
17 members would be about \$576,000. The fund is non-reversionary. There are an estimated 781
18 class members. Based on the estimated class size, the average net payment for each class member
19 is approximately \$1,280, although the payment will vary from class member to class member
20 based on proration.

21 The entire settlement amount will be deposited with the settlement administrator within 15
22 days after the Effective Date. Checks will be mailed to participating class members within 15 days
23 after funding.

24 The proposed settlement would certify a class of all current and former hourly non-exempt
25 employees employed by NCR in California between June 25, 2019 and July 19, 2022.

26 The class members will not be required to file a claim. Class members may object or opt
27 out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the

1 settlement.) Funds would be apportioned to class members based on the number of work weeks
2 worked during the class period.

3 Settlement checks must be cashed within 180 days. Reminders will be sent 120 days after
4 the check mailings to any class members who have not cashed their checks. Any funds remaining
5 uncashed will be paid to the Controller's Unclaimed Property Fund.

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

14 Formal discovery was undertaken, resulting in the production of substantial documents.
15 The matter settled after arms-length negotiations, which included a session with an experienced
16 mediator in April 2022.

17 Counsel also has provided an analysis of the case, and how the settlement compares to the
18 potential value of the case, after allowing for various risks and contingencies. This included an
19 estimate of class claims at a maximum damages liability of a little under \$4 million. The
20 settlement is about a quarter of that amount. Counsel explained that the claims in the case center
21 on allegations of violations with respect to meal, rest, and other breaks. Defendant contends that it
22 has facially valid policies and timekeeping systems, and that there is no evidence that actual
23 practice diverges materially from the policies. Moreover, these factors cast doubt on whether the
24 claims would prove suitable for class treatment.

25 The potential liability needs to be adjusted for various evidence and risk-based
26 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number
27 of reasons: they derive from other violations, they include "stacking" of violations, the law may

1 only allow application of the “initial violation” penalty amount, and the total amount may be
2 reduced in the discretion of the court. (See Labor Code § 2699(c)(2) [PAGA penalties may be
3 reduced where “based on the facts and circumstances of the particular case, to do otherwise would
4 result in an award that is unjust arbitrary and oppressive, or confiscatory.”])

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

7 **A. Legal Standards**

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

15 Because this matter also proposes to settle PAGA claims, the Court also must consider the
16 criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco*
17 *USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found
18 that the “fair, reasonable, and adequate” standard applicable to class actions applies to PAGA
19 settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness of the
20 settlement’s allocation of civil penalties between the affected aggrieved employees[.]” (*Id.*, at 64-
21 65.)

22 California law provides some general guidance concerning judicial approval of any
23 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*
24 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
25 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412;
26 *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender its
27 duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in

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1 the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d
2 658, 664.) As a result, courts have specifically noted that *Nearv* does not always apply, because
3 “[w]here the rights of the public are implicated, the additional safeguard of judicial review, though
4 more cumbersome to the settlement process, serves a salutatory purpose.” (*Consumer Advocacy*
5 *Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

6 **B. Attorney Fees**

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

17 Similarly, litigation costs and the requested representative payment of \$10,000 for each
18 plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative
19 payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175
20 Cal.App.4th 785, 804-07.

21 **C. Discussion and Conclusion**

22 Subject to the submission of the declaration in question, the Court finds that the settlement
23 is sufficiently fair, reasonable, and adequate to justify preliminary approval.

24 Counsel is directed to prepare an order reflecting this entire tentative ruling, the other
25 findings in the previously submitted proposed order, and to obtain a hearing date for the motion
26 for final approval from the Department clerk. Other dates in the scheduled notice process should
27 track as appropriate to the hearing date. The ultimate judgment must provide for a compliance

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1 hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a
2 compliance statement one week before the compliance hearing date. Five percent of the attorney's
3 fees are to be withheld by the claims administrator pending satisfactory compliance as found by
4 the Court.

5 **IT IS HEREBY ORDERED:**

6 1. The Court preliminarily approves the Class and Representative Action Settlement
7 Agreement ("Agreement") attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in
8 Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. This is based
9 on the Court's determination that the Settlement set forth in the Agreement is within the range of
10 reasonableness which could ultimately be given final approval, pursuant to the provisions of
11 Section 382 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

12 2. This Order incorporates by reference the definitions in the Agreement, and all
13 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

14 3. The Gross Settlement Amount is One Million Dollars (\$1,000,000.00). It appears
15 to the Court on a preliminary basis that the settlement amount and terms are fair, adequate and
16 reasonable as to all potential Class Members and Aggrieved Employees when balanced against the
17 probable outcome of further litigation and the significant risks relating to certification, liability and
18 damages issues. The Court finds that the \$50,000 PAGA Payment amount allocated as payment to
19 the California Labor and Workforce Development Agency and Aggrieved Employees, as their
20 share of the Settlement of civil penalties under the Private Attorneys Generals Act is fair,
21 reasonable, and appropriate. It further appears that investigation and research have been
22 conducted such that counsel for the Parties are able to reasonably evaluate their respective
23 positions. It further appears to the Court that settlement at this time will avoid substantial
24 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the
25 further prosecution of the Action. It further appears that the Settlement has been reached as the
26 result of serious and non-collusive, arms-length negotiations. The Court therefore preliminarily
27 finds that the Settlement is fair, adequate, and reasonable when balanced against the probable

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1 outcome of further litigation and the significant risks relating to certification, liability, and
2 damages issues.

3 4. The Agreement specifies for an attorneys' fees award not to exceed one-third (1/3)
4 of the Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$21,000,
5 and proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed
6 \$10,000 each. The Court will not approve the amount of attorneys' fees and costs, nor the amount
7 of any service award, until the Final Approval Hearing. Plaintiffs will be required to present
8 evidence supporting these requests, including lodestar, at the time of final approval.

9 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
10 certification of a class for settlement purposes only. This stipulation will not be deemed
11 admissible in this or any other proceeding should this Settlement not become final. For settlement
12 purposes only, the Court conditionally certifies the following Class: "all individuals who were
13 employed by Defendant in California as hourly, non-exempt employees during the Class Period."
14 The Class Period is June 25, 2019 through July 19, 2022.

15 6. The Court concludes that, for settlement purposes only, the Class meets the
16 requirements for certification under section 382 of the California Code of Civil Procedure in that:
17 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
18 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
19 community of interest amongst the members of the Class with respect to the subject matter of the
20 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class; (d)
21 the Plaintiffs can fairly and adequately protect the interests of the members of the Class; (e) a class
22 action is superior to other available methods for the efficient resolution of this controversy; and (f)
23 counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are adequate
24 representatives of the Class.

25 7. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
26 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
27 of Blumenthal Nordrehaug Bhowmik De Blouw LLP and Robert J. Wasserman and Jenny D.

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1 Baysinger of Mayall Hurley P.C.as Class Counsel for the Class.

2 8. The Court hereby approves, as to form and content, the Notice of Proposed
3 Settlement of Class Action and Hearing Date for Final Court Approval ("Class Notice") attached
4 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
5 accurately inform the Class of all material elements of the proposed Settlement, of the Class
6 Members' right to be excluded from the Class by submitting a written opt-out request, and of each
7 member's right and opportunity to object to the Settlement. The Court further finds that the
8 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
9 and this Order meets the requirements of due process, is the best notice practicable under the
10 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
11 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
12 the Agreement.

13 9. The Court hereby appoints Simpluris, Inc. as Settlement Administrator. No later
14 than thirty (30) days after preliminary approval of the Settlement by the Court, Defendant shall
15 provide the Settlement Administrator with the Class Data. The Settlement Administrator will
16 perform address updates and verifications as necessary prior to the mailing of the Class Notice.
17 Using best efforts to mail it as soon as possible, and in no event later than fourteen (14) calendar
18 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice to all
19 Class Members via first-class U.S. Mail.

20 10. The Court hereby preliminarily approves the proposed procedure for exclusion
21 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
22 from the Class as provided in the Class Notice by following the instructions for requesting
23 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
24 postmarked by no later than forty-five (45) calendar days after the date of the mailing of the Class
25 Notice and received by the Settlement Administrator. If the Class Notice Packet is re-mailed, the
26 response date for requests for exclusion will be extended an additional 15 calendar days. Any such
27 person who chooses to opt out of and be excluded from the Class will not be entitled to any

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1 recovery under the Settlement and will not be bound by the Settlement or have any right to object,
2 appeal or comment thereon. Class Members who have not requested exclusion shall be bound by
3 all determinations of the Court, the Agreement and the Judgment. A request for exclusion may
4 only opt out that particular individual, and any attempt to effect an opt out of a group, class, or
5 subclass of individuals is not permitted and will be deemed invalid. Subject to the Court's final
6 approval of the Settlement, those Aggrieved Employees that worked during the PAGA Period
7 (June 25, 2019 through July 19, 2022) will still be paid their allocation of the PAGA Payment and
8 will remain subject to the release of the Released PAGA Claims in the Agreement regardless of
9 any request for exclusion from the Class.

10 11. Any Class Member who has not opted out may appear at the final approval hearing
11 and may object or express the Member's views regarding the Settlement, and may present
12 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
13 and determined by the Court as provided in the Notice. Class Members will have forty-five (45)
14 calendar days from the date of the mailing of the Class Notices to submit their written objections
15 to the Settlement Administrator in accordance with the instructions in the Class Notice. If the
16 Class Notice Packet is re-mailed, the response date for written objections will be extended an
17 additional 15 calendar days. Alternatively, Class Members may appear at the Final Approval
18 Hearing to make oral objections.

19 12. A Final Approval Hearing shall be held before this Court on July 27, 2023 at 9:00
20 a.m. in Department 12 at the Contra Costa County Superior Court to determine all necessary
21 matters concerning the Settlement, including: whether the proposed settlement of the Action on
22 the terms and conditions provided for in the Agreement is fair, adequate and reasonable and
23 should be finally approved by the Court; whether the Final Approval Order and Judgment should
24 be entered herein; whether the plan of allocation contained in the Agreement should be approved
25 as fair, adequate and reasonable to the Class Members; and to finally approve attorneys' fees and
26 costs, the service awards, and the expenses of the Settlement Administrator. All papers in support
27 of the motion for final approval and the motion for attorneys' fees, costs and service awards shall

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1 be filed with the Court and served on all counsel no later than sixteen (16) court days before the
2 hearing and both motions shall to be heard at the Final Approval Hearing.

3 13. Neither the Settlement nor any exhibit, document, or instrument delivered
4 thereunder shall be construed as a concession or admission by Defendant in any way that the
5 claims asserted have any merit or that this Action was properly brought as a class or representative
6 action, and shall not be used as evidence of, or used against Defendant as, an admission or
7 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
8 omission by Defendant or with respect to the truth of any allegation asserted by any person.
9 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
10 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
11 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
12 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
13 evidence of a presumption, concession, indication or admission by Defendant of any liability,
14 fault, wrongdoing, omission, concession or damage.

15 14. In the event the Settlement does not become effective in accordance with the terms
16 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
17 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
18 and the Parties shall revert to their respective positions as of before entering into the Agreement,
19 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
20 including all available defenses and affirmative defenses, and arguments that any claim in the
21 Action could not be certified as a class action and/or managed as a representative action. In such
22 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
23 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
24 the Agreement with respect to the effect of the Agreement if it is not approved.

25 15. The Court reserves the right to adjourn or continue the date of the final approval
26 hearing and all dates provided for in the Agreement without further notice to Class Members, and
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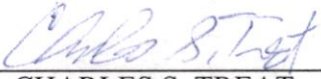
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1 retains jurisdiction to consider all further applications arising out of or connected with the
2 proposed Settlement.

3 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
4 further orders of the Court at the Final Approval Hearing.

5 **IT IS SO ORDERED.**

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7 Dated: FEB 28 2023


8 HON. CHARLES S. TREAT
9 JUDGE, SUPERIOR COURT OF CALIFORNIA
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