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FILED
AUG 18 2023
BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By: *ASJ*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

ANGELO KALAVERAS and EMAD
MISSREEZADAH,

Plaintiff,

vs.

NCR CORPORATION; and DOES 1-100,
inclusive,

Defendants.

Case No.: MSC20-01186

**FINAL APPROVAL ORDER AFTER
HEARING**

Date: July 27, 2023

Time: 9:00 a.m.

Dept.: 12

Judge: Charles S. Treat

1 Plaintiffs Angelo Kalaveras and Emad Missreezadah move for final approval of their class
2 action and PAGA settlement with defendant NCR Corporation. The motion is **granted**. They also
3 move for award of attorney's fees and costs. The motion is **granted**.

4 Since preliminary approval was granted, the administrator has mailed notices to class
5 members. 65 packets were returned by the post office. Follow up resulted in 61 new addresses, leaving
6 only 4 non-deliverable. No objections or requests to opt out have been received.

7 The motion is **granted**.

8 **A. Background and Settlement Terms**

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

17 As preliminarily approved, the settlement was to be a gross settlement fund of \$1,000,000. An
18 escalator clause in the settlement agreement has resulted in a slight increase, to \$1,009,480. The class
19 representative payment to the plaintiffs will be \$10,000 each, totaling \$20,000. Attorney's fees will be
20 \$333,333 (one-third of the original settlement amount). Litigation costs are \$20,334, slightly under the
21 \$21,000 cap allowed in the preliminary approval. The settlement administrator's costs are \$10,520, less
22 than the preliminarily approved cap. PAGA penalties are \$50,000, resulting in a payment of \$37,500 to
23 the LWDA. The net amount paid directly to the class members will be about \$574,627. The fund is
24 non-reversionary. There are 777 class members. Based on the class size, the average net payment for
25 each class member is approximately \$740, although the payment will vary from class member to class
26 member based on proration.

1 The entire settlement amount will be deposited with the settlement administrator within
2 15 days after the Effective Date. Checks will be mailed to participating class members within 15
3 days after funding.

4 The proposed settlement would certify a class of all current and former hourly non-
5 exempt employees employed by NCR in California between June 25, 2019 and July 19,
6 2022.

7 The class members will not be required to file a claim. Funds will be apportioned
8 to class members based on the number of work weeks worked during the class period.

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

12 The settlement contains release language covering all claims and causes of action, alleged
13 or which could have reasonably been alleged based on the allegations in the operative pleading,
14 including a number of specified claims. Under recent appellate authority, the limitation to those
15 claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v.*
16 *Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that
17 are outside the scope of the allegations of the complaint." "Put another way, a release of claims
18 that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id.*,
19 quoting *Marshall v. Northrop Grumman Corp.* (C.D.Cal. 2020) 469 F.Supp.3d 942, 949.)
20 Formal discovery was undertaken, resulting in the production of substantial documents. The
21 matter settled after arms-length negotiations, which included a session with an experienced
22 mediator in April 2022.

23 Counsel also has provided an analysis of the case, and how the settlement compares to
24 the potential value of the case, after allowing for various risks and contingencies. This included
25 an estimate of class claims at a maximum damages liability of a little under \$4 million. The
26 settlement is about a quarter of that amount. Counsel explained that the claims in the case center
27 on allegations of violations with respect to meal, rest, and other breaks. Defendant contends that
28 it has facially valid policies and timekeeping systems, and that there is no evidence that actual

1 practice diverges materially from the policies. Moreover, these factors cast doubt on whether the
2 claims would prove suitable for class treatment.

3 The potential liability needs to be adjusted for various evidence and risk-based
4 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a
5 number of reasons: they derive from other violations, they include “stacking” of violations, the
6 law may only allow application of the “initial violation” penalty amount, and the total amount
7 may be reduced in the discretion of the court. (See Labor Code § 2699(e)(2) [PAGA penalties
8 may be reduced where “based on the facts and circumstances of the particular case, to do
9 otherwise would result in an award that is unjust
10 arbitrary and oppressive, or confiscatory.”])

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

13 **B. Legal Standards**

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

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

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

C. Discussion and Conclusion

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees (based on pay periods) is reasonable.

The motion is granted.

ATTORNEYS' FEES AND COSTS

Plaintiffs, in conjunction with final settlement approval, move for an award of their attorney fees and costs. The motion is **granted**.

Plaintiffs seek one-third of the total original settlement amount (before escalation) as fees, relying on the “common fund” theory, or \$333,333. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court 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.)

1 Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They
2 estimate the lodestar at \$320,796, very slightly less than the actual award sought. They based this
3 amount on a total of 470 hours, at hourly rates ranging from \$733 to \$997. No adjustment from the
4 one-third fee is necessary. The attorney's fees are reasonable and are approved.

5 The requested representative payments of \$10,000 each for the named plaintiffs were
6 deferred until this final approval motion. Criteria for evaluation of such requests are discussed in
7 *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiffs have
8 provided a declaration in support of their request. They point out that they executed a broader release
9 than the class as a whole, but do not identify any particular claims of value that they may have. They
10 also risk damage to their reputation and more difficulty in obtaining employment. The representative
11 payment is approved.

12 Litigation costs of \$20,334 (mostly mediation and filing fees) are reasonable and are
13 approved.

14 The settlement administrator's costs of \$10,520 are reasonable and are approved.

15 **I.**

16 **FINDINGS**

17 Based on the oral and written argument and evidence presented in connection with the
18 motion, the Court makes the following findings:

- 19 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 20 2. This Court has jurisdiction over the subject matter of this litigation pending before the
21 California Superior Court for the County of Contra Costa, and over all Parties to this litigation,
22 including the Class.
- 23 3. Based on a review of the papers submitted by Plaintiffs and a review of the applicable
24 law, the Court finds that the increased GSA of \$1,009,480.28 and the terms set forth in the
25 Agreement are fair, reasonable, and adequate.
- 26 4. The Court further finds that the Settlement was the result of arm's length negotiations
27 conducted after Class Counsel had adequately investigated the claims and became familiar with the
28 strengths and weaknesses of those claims. In particular, the amount of the Settlement, the significant

1 risks relating to certification, liability, and damages issues, and the assistance of an experienced
2 mediator in the settlement process, among other factors, support the Court's conclusion that the
3 Settlement is fair, reasonable, and adequate.

4 **Preliminary Approval of the Settlement**

5 5. On February 28, 2023 the Court granted preliminary approval of the Settlement. At
6 this same time, the Court approved conditional certification of the Class for settlement purposes
7 only.

8 **Notice to the Class**

9 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed by
10 first class mail to members of the Class at their last known addresses on or about April 14, 2023.
11 Mailing of the Class Notice to their last known addresses was the best notice option under the
12 circumstances and was reasonably calculated to communicate actual notice of the litigation and the
13 proposed settlement to the Class. The Class Notice given to the Class Members fully and accurately
14 informed the Class Members of all material elements of the proposed Settlement and of their
15 opportunity to object to or comment thereon or to seek exclusion from the Settlement; was valid,
16 due, and sufficient notice to all Class Members; and complied fully with the laws of the State of
17 California, the United States Constitution, due process and other applicable law. The Class Notice
18 fairly and adequately described the Settlement and provided Class Members adequate instructions
19 and a variety of means to obtain additional information.

20 7. The deadline for opting out of the Class or submitting written objections to the
21 Settlement was May 30, 2023, or June 14, 2023 if the Class Notice was remailed. There was an
22 adequate interval between notice and the deadline to permit Class Members to choose what to do and
23 act on their decision. A full opportunity has been afforded to the Class Members to participate in this
24 hearing, and all Class Members and other persons wishing to be heard have been heard. Class
25 Members also have had a full and fair opportunity to exclude themselves from the proposed
26 Settlement and Class. Accordingly, the Court determines that all Class Members who did not timely
27 and properly submit a request for exclusion are bound by the Settlement and this Final Approval
28 Order and Judgment.

Fairness Of Settlement

8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1801 (1996).

- a. The settlement was reached through arm's-length bargaining between the parties during an all-day mediation before Mark Rudy, a respected and experienced mediator of wage and hour class actions. There has been no collusion between the parties in reaching the proposed settlement.
- b. Plaintiffs' investigation and discovery have been sufficient to allow the Court and counsel to act intelligently.
- c. Counsel for both parties are experienced in similar employment class action litigation. All counsel recommended approval of the Agreement.
- d. The percentage of objectors and requests for exclusion is small. Zero objections were received and zero requests for exclusion were received.
- e. The participation rate was high. 777 Class Members will be issued a settlement payment, representing 100% of the overall Class.

9. The consideration to be given to the Class Members under the terms of the Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims asserted in this action and is fair, reasonable and adequate compensation for the release of Class Members' claims, given the uncertainties and significant risks of the litigation and the delays which would ensue from continued prosecution of the action.

10. The Agreement is approved as fair, adequate and reasonable and in the best interests of the Class Members.

Attorneys' Fees and Costs

11. An award of \$ 333,333.33 for attorneys' fees, representing one-third (1/3) of the original Gross Settlement Amount, and \$20,333.76 for litigation costs and expenses, is reasonable, in light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class Counsel. The requested awards have been supported by Class Counsel's lodestar and billing statement.

Class Representative Service Payments

12. The Agreement provides for a Class Representative Service Payments of not more than \$10,000 to each of the Plaintiffs, subject to the Court's approval. The Court finds that a Class Representative Service Payments in the amount of \$10,000 to each Plaintiff is reasonable in light of the risks and burdens undertaken by the Plaintiffs in the litigation, for their time and effort in bringing and prosecuting this matter on behalf of the Class, and for their execution of a general release.

Settlement Administration Expenses

13. The Settlement Administrator shall calculate and administer the payment to be made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the Class Representative Service Payments to the Plaintiffs, distribute the PAGA Payment, issue any required tax reporting forms, calculate withholdings and perform the other remaining duties set forth in the Agreement. The Settlement Administrator has documented \$10,520 in fees and expenses, and this amount is reasonable in light of the work performed by the Settlement Administrator.

PAGA Payment

14. The Agreement provides for a PAGA Payment out of the Gross Settlement Amount of \$50,000, which shall be allocated \$37,500 to the LWDA as the LWDA's 75% share of the settlement of civil penalties paid pursuant to the PAGA and \$12,500 to be distributed to the Aggrieved Employees as Individual PAGA Payments based on their respective pay periods employed during the PAGA Period (June 25, 2019 through July 19, 2022). The Aggrieved Employees are all individuals who were employed by Defendant in California as hourly, non-exempt employees during the PAGA Period, regardless of whether they submit an Election Not to Participate in Settlement. The Court finds this PAGA Payment to be reasonable. All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of the Settlement.

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II.

ORDERS

Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

1. The certification of the Class for the purposes of settlement is confirmed. The Class is defined as follows:

All individuals who were employed by Defendant in California as hourly, nonexempt employees during the Class Period (June 25, 2019 through July 19, 2022).

2. All persons who meet the foregoing definition are members of the Class, except for those individuals who filed a valid request for exclusion ("opt out") from the Class.

3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the best interest of the Class.

4. Class Counsel are awarded attorneys' fees in the amount of \$333,333.33 and costs in the amount of \$20,333.76. Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendants, Plaintiffs or members of the Class.

5. The payment of the Class Representative Service Payments in the amount of \$10,000 to each of the Plaintiffs is approved.

6. The payment of \$10,520 to the Settlement Administrator for their fees and expenses is approved.

7. The PAGA Payment of \$50,000 is approved and shall be allocated in accordance with the Agreement.

8. The Agreement and this Settlement are not an admission by Defendant, nor is this Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement is, may be construed as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or

concession with regard to the denials or defenses by Defendant. Notwithstanding these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the Released Claims and/or the Released PAGA Claims.

9. Notice of entry of this Final Approval Order and Judgment shall be given to all Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order shall be posted on a website as set forth in the Class Notice to the Class. It shall not be necessary to send notice of entry of this Final Approval Order or any separate Judgment to individual Class Members.

10. If the Agreement does not become final and effective in accordance with the terms of the Agreement, then this Final Approval Order, and all orders entered in connection therewith (including the Judgment), shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Agreement, and expressly reserve their respective rights regarding the prosecution and defense of this Action, including all available defenses and affirmative defenses, and arguments that any claim in the Action could not be certified as a class action and/or managed as a representative action.

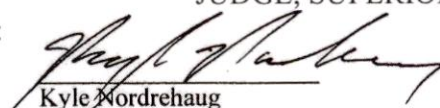
IT IS SO ORDERED.

Dated: AUG 17 2023

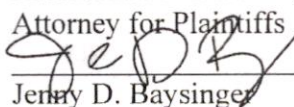

HON. CHARLES S. TREAT
JUDGE, SUPERIOR COURT OF CALIFORNIA

APPROVED AS TO FORM:

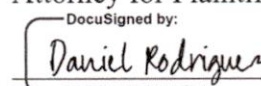
Dated: 8/4/23


Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: August 3, 2023


Jenny D. Baysinger
Mayall Hurley P.C.
Attorney for Plaintiffs

Dated: August 4, 2023

DocuSigned by:

Daniel R. Rodriguez
Morgan, Lewis & Bockius LLP
Attorney for Defendant

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 112 S. Church Street, Lodi, CA 95240, that is located in the county where the mailing and/or delivery below took place.

On August 22, 2023, I served the following document:

NOTICE OF ENTRY OF ORDER

addressed to:

Max Fischer (max.fischer@morganlewis.com)
Jennifer Zargarof
(jennifer.zargarof@morganlewis.com)
Aimee MacKay
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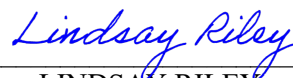
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☐ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

☒ **BY EMAIL:** In accordance with Code of Civil Procedure, Section 1010.6, on the date specified below, I caused a copy of the document(s) described above to be sent to the person(s) at the e-mail address(es) listed above. My business e-mail address is lriley@mayallaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 22, 2023, at Lodi, California.


LINDSAY RILEY