

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

**[PROPOSED] FINAL APPROVAL ORDER
AND JUDGMENT**

Date: July 27, 2023

Time: 9:00 a.m.

Dept.: 12

Judge: Charles S. Treat

1 The motion of Plaintiffs Angelo Kalaveras and Emad Missreezadah (“Plaintiffs”) for an order
2 finally approving the Class Action Settlement Agreement (“Agreement”) with Defendant NCR
3 Corporation (“Defendant”), and the motion for attorneys’ fees and costs, service payments, and the
4 fees and expenses of the Settlement Administrator, duly came on for hearing on July 27, 2023 before
5 the Honorable Charles S. Treat.

6 **I.**

7 **FINDINGS**

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

10 1. All terms used herein shall have the same meaning as defined in the Agreement.

11 2. This Court has jurisdiction over the subject matter of this litigation pending before the
12 California Superior Court for the County of Contra Costa, and over all Parties to this litigation,
13 including the Class.

14 3. Based on a review of the papers submitted by Plaintiffs and a review of the applicable
15 law, the Court finds that the increased GSA of \$1,009,480.28 and the terms set forth in the
16 Agreement are fair, reasonable, and adequate.

17 4. The Court further finds that the Settlement was the result of arm's length negotiations
18 conducted after Class Counsel had adequately investigated the claims and became familiar with the
19 strengths and weaknesses of those claims. In particular, the amount of the Settlement, the significant
20 risks relating to certification, liability, and damages issues, and the assistance of an experienced
21 mediator in the settlement process, among other factors, support the Court's conclusion that the
22 Settlement is fair, reasonable, and adequate.

23 **Preliminary Approval of the Settlement**

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

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1 **Notice to the Class**

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

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

22 **Fairness Of Settlement**

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

- 25 a. The settlement was reached through arm's-length bargaining between the parties
26 during an all-day mediation before Mark Rudy, a respected and experienced mediator
27 of wage and hour class actions. There has been no collusion between the parties in
28 reaching the proposed settlement.

- 1 b. Plaintiffs' investigation and discovery have been sufficient to allow the Court and
2 counsel to act intelligently.
- 3 c. Counsel for both parties are experienced in similar employment class action litigation.
4 All counsel recommended approval of the Agreement.
- 5 d. The percentage of objectors and requests for exclusion is small. Zero objections were
6 received and zero requests for exclusion were received.
- 7 e. The participation rate was high. 777 Class Members will be mailed a settlement
8 payment, representing 100% of the overall Class.

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

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

16 **Attorneys' Fees and Costs**

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

22 **Class Representative Service Payments**

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

1 **Settlement Administration Expenses**

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

8 **PAGA Payment**

9 14. The Agreement provides for a PAGA Payment out of the Gross Settlement Amount of
10 \$50,000, which shall be allocated \$37,500 to the LWDA as the LWDA's 75% share of the settlement
11 of civil penalties paid pursuant to the PAGA and \$12,500 to be distributed to the Aggrieved
12 Employees as Individual PAGA Payments based on their respective pay periods employed during the
13 PAGA Period (June 25, 2019 through July 19, 2022). The Aggrieved Employees are all individuals
14 who were employed by Defendant in California as hourly, non-exempt employees during the PAGA
15 Period, regardless of whether they submit an Election Not to Participate in Settlement. The Court
16 finds this PAGA Payment to be reasonable. All Aggrieved Employees will be sent their share of the
17 PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth below,
18 whether or not they opt out of the Settlement.

19 **II.**

20 **ORDERS**

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

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

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

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

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

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

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

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

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

12 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
13 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
14 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
15 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
16 document referred to herein, nor any action taken to carry out the Agreement is, may be construed as,
17 or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
18 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or proceedings
19 related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or
20 concession with regard to the denials or defenses by Defendant. Notwithstanding these restrictions,
21 Defendant may file in the Action or in any other proceeding this Final Approval Order and
22 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
23 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim or
24 issue preclusion or similar defense at to the Released Claims and/or the Released PAGA Claims.

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

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

8 **IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED THAT:**

9 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
10 Plaintiffs, and all members of the Class, shall take nothing in the Action.

11 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
12 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
13 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
14 arising from or in connection with distribution of settlement benefits.

15 3. The Parties are authorized to agree to and to adopt such amendments, modifications
16 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
17 Final Approval Order and Judgment and as approved by the Court.

18 4. Each party shall bear its own attorney's fees and costs, except as otherwise provided
19 in the Agreement and in this Final Approval Order and Judgment.

20 5. As of the date the Defendant fully funds the increased Gross Settlement Amount,
21 Defendant and the Released Parties shall receive a release from the Participating Class Members of
22 all Released Class Claims. The "Released Class Claims" are all class claims or causes of action by
23 Class Members against the Released Parties that were pled or which could have been pled based on
24 the factual allegations contained in the operative complaints and PAGA letters previously submitted
25 by Plaintiffs to the LWDA which occurred during the Class Period, including claims under Labor
26 Code sections 201-204, 210, 226, 226.3, 226.7, 233, 245, 246, 248.5, 256, 510, 512, 558, 1194,
27 1197, 1197.1, 1198, and 2802, and including claims under Business and Professions Code section
28 17200, et seq., and expressly excluding all other claims, including claims for vested health insurance

1 benefits, wrongful termination, unemployment insurance, disability insurance, social security,
2 workers' compensation, and claims outside the Class Period.

3 6. Upon full funding of the increased Gross Settlement Amount, Defendant shall receive
4 a release from the State of California and the Aggrieved Employees of all Released PAGA Claims.
5 The "Released PAGA Claims" are all claims and/or causes of action by Aggrieved Employees
6 against the Released Parties that were seeking to assess and collect civil penalties that were pled or
7 which could have been pled were pled based on the factual allegations contained in the operative
8 complaints and PAGA letters previously submitted by Plaintiffs to the LWDA which occurred during
9 the PAGA Period as to the Aggrieved Employees, including claims under Labor Code sections 201-
10 204, 210, 226, 226.3, 226.7, 233, 245, 246, 248.5, 256, 351, 510, 512, 558, 1194, 1197, 1197.1,
11 1198, and 2802. The Released PAGA Claims do not include other PAGA Claims, underlying wage
12 and hour claims seeking relief other than civil penalties, claims for vested health insurance benefits,
13 wrongful termination, unemployment insurance, disability insurance, social security, worker's
14 compensation, and claims outside of the PAGA Period. Regardless of whether any Class Member
15 submits an Election Not to Participate in the Settlement, they will still be bound by the Released
16 PAGA Claims.

17 7. Upon the Effective Date and full funding of the increased Gross Settlement Amount,
18 Plaintiffs generally release and discharge the Released Parties from all of Plaintiffs' Released Claims
19 as set forth fully in the Agreement.

20 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

21
22 Dated: _____

23
24 _____
25 HON. CHARLES S. TREAT
26 JUDGE, SUPERIOR COURT OF CALIFORNIA
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