

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Ave., Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

ROBERT ENRIQUEZ, individually, and on
behalf of aggrieved employees pursuant to
the Private Attorneys General Act
("PAGA");

Plaintiff,

vs.

MCE CORPORATION, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: MSC20-01774

Assigned for All Purposes to:
Honorable Edward Weil
Department 39

**ORDER GRANTING APPROVAL OF
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE §§ 2698, ET SEQ.)
SETTLEMENT AGREEMENT AND
ATTORNEYS' FEES AWARD,
LITIGATION COSTS AWARD, AND
ENHANCEMENT PAYMENT**

Hearing Date: April 7, 2022
Hearing Time: 9:00 a.m.
Hearing Place: Department 39

Complaint Filed: September 9, 2020
Trial Date: None Set

1 This matter came before the Honorable Edward Weil in Department 39 of the Contra Costa
2 Superior Court (Wakefield Taylor Courthouse), located at 725 Court Street Martinez, California
3 94553, on Plaintiff Robert Enriquez's ("Plaintiff") Motion for Approval of Private Attorneys
4 General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement, Attorneys' Fees Award,
5 Litigation Costs Award, and Enhancement Payment on April 7, 2022 at 9:00 a.m. The Court
6 issued a tentative ruling on April 6, 2022 that granted the motion but reduced the Enhancement
7 Payment to Plaintiff from \$10,000 to \$5,000 and directed this difference to be treated as a part of
8 the Private Attorneys General Act of 2004 ("PAGA") Penalties Fund to be allocated to the
9 California Labor and Workforce Development Agency ("LWDA") and Settlement Group.
10 Attached hereto as **Exhibit 1** is a true and correct copy of the Court's tentative ruling. Plaintiff's
11 Counsel appeared at the April 7, 2022 hearing to contest the Court's reduction of the Enhancement
12 Payment to Plaintiff, but the Court ruled that it's tentative ruling stood. Plaintiff was subsequently
13 directed to prepare this Order Granting Approval of Private Attorneys General Act (Labor Code
14 §§ 2698, *et seq.*) Settlement Agreement ("Order") and corresponding judgment reflecting the
15 tentative ruling and other provisions submitted in the [Proposed] Order and Judgment Granting
16 Approval of Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement.
17 Based upon this review, and the findings below, the Court finds good cause to enter this Order.

18 **FINDINGS:**

19 1. Unless otherwise specified, defined terms in this Order have the same definition as
20 the terms in the Settlement Agreement and Release ("Settlement Agreement," "Settlement," and
21 "Agreement").

22 2. The Court has jurisdiction over the subject matter of this litigation over all current
23 and former hourly-paid employees of Defendant MCE Corporation ("Defendant") who worked for
24 Defendant at any time from June 19, 2019, through February 1, 2022 ("Settlement Group,"
25 "Settlement Group Members," and "Settlement Period"). The Court also has jurisdiction over
26 those persons or entities undertaking affirmative obligations under the Settlement Agreement.

27 ///

1 3. On June 19, 2020, Plaintiff served a notice letter to the LWDA and Defendant,
2 pursuant to Labor Code section 2699.3, to notify the LWDA of the alleged Labor Code violations
3 and the fact supporting his contentions.

4 4. On September 9, 2020, Plaintiff filed this representative PAGA action against
5 Defendant, on behalf of the State of California, to represent himself and all current and former
6 hourly-paid employees of Defendant who worked for Defendant at any time from June 19, 2019,
7 through February 1, 2022.

8 5. The Parties expressly acknowledge that the Settlement Agreement is entered solely
9 for the purpose of compromising significantly disputed claims, and that nothing contained therein
10 is an admission of liability or wrongdoing by Defendant.

11 6. The Court determines that there is sufficient evidence to suggest that the Settlement
12 was entered in good faith, that the Settlement is fair, reasonable, and adequate under the
13 circumstances, and that the Parties have satisfied the standards and applicable requirements for
14 approval of a settlement of claims brought under PAGA.

15 7. The Court finds that pursuant to Labor Code sections 2699(1)(2) and (1)(4), the
16 LWDA was given timely notice of the Agreement. On February 24, 2022, Plaintiff submitted to
17 the LWDA a Notice of Settlement, attached to which was a copy of the Agreement. Plaintiff's
18 Notice of Settlement complied with the requirements of Labor Code section 2699(1)(2).

19 **IT IS HEREBY ORDERED THAT:**

20 1. The terms of the Settlement Agreement are fair, adequate, and reasonable, and the
21 Settlement is approved under Labor Code section 2699(1)(2).

22 2. The Court affirms approval of the Settlement as to the following group of
23 individuals, collectively referred to as the Settlement Group Members: "All current and former
24 hourly-paid employees of Defendant who worked for Defendant at any time from June 19, 2019,
25 through February 1, 2022."

26 ///

27 ///

1 3. Upon the Effective Date, this settlement forever bars Plaintiff, the LWDA, and any
2 other representative, proxy, or agent thereof, including, but not limited to, any and all allegedly
3 aggrieved employees, from pursuing any action against Defendant; each and all of Defendant's
4 past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors,
5 managing members, divisions, affiliates, affiliated entities, related entities, and assigns; the past,
6 present, and future shareholders, owners, officers, directors, board members, employees, agents,
7 trustees, attorneys or legal representatives, insurers, representatives, administrators, fiduciaries,
8 beneficiaries, subrogees, partners, and members of the foregoing; and/or any other entity or
9 individual which could be liable for the acts or omissions of Defendant (collectively, the
10 "Released Parties") under PAGA based on or arising out of alleged violations of Labor Code
11 sections alleged in this case through the end of the Settlement Period ("Released Claims").

12 4. The Gross Settlement Amount of \$500,000, the PAGA Penalties Fund of
13 approximately \$299,372.79, and the methodology used to calculate and pay each Individual
14 Settlement Award, in accordance with the Settlement Agreement, is approved under Labor Code
15 section 2699(1)(2).

16 5. The Court approves the Attorneys' Fees Award to Plaintiff's Counsel in the amount
17 of \$175,000, which represents thirty-five percent (35%) of the Gross Settlement Amount, the
18 Litigation Costs Award to Plaintiff's Counsel as reimbursement of documented actual litigation
19 costs and expenses in the sum of \$15,627.21, an Enhancement Payment to Plaintiff in the amount
20 of \$5,000, and the Administration Costs in a sum not to exceed \$5,000 to Simpluris, Inc., the
21 Settlement Administrator, all payable from the Gross Settlement Amount. The Court finds that the
22 amounts requested are fair and reasonable.

23 6. After deducting the approved payments described above, the balance of the
24 settlement amount will be approximately \$299,372.79 ("PAGA Penalties Fund"). Under the terms
25 of the Settlement, seventy-five (75%) of the PAGA Penalties Fund (\$244,529.59) will be paid to
26 the LWDA ("LWDA Payment"), and the remaining twenty-five percent (25%) of the PAGA
27 Penalties Fund (\$74,843.20) will be paid to the Settlement Group on a pro rata basis ("Net
28

1 Settlement Amount” and “Individual Settlement Awards”).

2 7. The Court authorizes the Settlement Administrator to calculate and pay the
3 Individual Settlement Awards in accordance with the terms of the Settlement.

4 8. Within twenty (20) business days after the Effective Date of the Agreement,
5 Defendant shall deposit with the Settlement Administrator the entire \$500,000 of the Gross
6 Settlement Amount. Within fourteen (14) calendar days of the funding of the Settlement, the
7 Settlement Administrator will issue the payments required by section 7 of the Agreement to the
8 appropriate entities or persons. Individual Settlement Awards will be paid in the form of a check
9 delivered to each Settlement Group Member at the last known address on file with Defendant or as
10 updated by the Settlement Administrator. Each Individual Settlement Award will be accompanied
11 by an explanatory letter (attached as **Exhibit A** to the Agreement).

12 9. Individual Settlement Award checks will remain negotiable for one hundred twenty
13 (120) days after the date of their issuance (the “Check Stale Date”). Any Individual Settlement
14 Award checks that are not cashed, deposited, or negotiated after the Check Stale Date will be void
15 and the amount of those checks will be directed to the California State Controller for the deposit in
16 the Unclaimed Property Fund in the name of the employee.

17 10. Plaintiff’s Counsel will not seek or be entitled to any attorneys’ fees and/or
18 expenses related to the claims encompassed by the Agreement, other than those set forth above.

19 11. Plaintiff’s compliance with the notice procedures described in the Settlement
20 Agreement shall constitute due and sufficient notice to the LWDA and shall be deemed to satisfy
21 any requirement of due process. Nothing else shall be required of, or done by, the Parties,
22 Plaintiff’s Counsel, or Defendant’s Counsel to provide notice of the Settlement.

23 12. Pursuant to Code of Civil Procedure section 664.6, the Court shall retain continuing
24 jurisdiction over this representative PAGA action and the Parties to the fullest extent necessary to
25 enforce and effectuate the terms and intent of the Agreement.

26 ///

27 ///

1 13. Nothing in this Order or the Settlement Agreement shall be construed as evidence
2 of an admission or concession by any Party. The Settlement and this resulting Order simply
3 represents a compromise of significantly disputed allegations.

4 14. Within ten (10) calendar days of entry of this Order, Plaintiff shall provide a copy
5 of this Order to the LWDA, pursuant to Labor Code section 2699, subdivisions (1)(3) and (1)(4).

6 15. Plaintiff shall file a request for dismissal of the PAGA Action in its entirety as to
7 Defendant with prejudice, within ten (10) court days of the Court entering this Order and serving it
8 on the Parties.

9 16. The Court sets a final accounting and compliance date for January 26, 2023 at 9:00
10 a.m. in Department 39. At least seven (7) days before final accounting and compliance date,
11 Plaintiff's Counsel shall file a declaration regarding compliance (i.e., compliance statement). The
12 Settlement Administrator will withhold five percent (5%) of the Attorneys' Fees Award (\$8,750)
13 pending satisfactory compliance as found by the Court.

14
15 **IT IS SO ORDERED.**

16
17 DATED: APR 14 2022

18 
19 _____
20 HONORABLE EDWARD WEIL
21 JUDGE OF THE SUPERIOR COURT
22
23
24
25
26
27
28

EXHIBIT 1

CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA

DEPARTMENT: 39

HEARING DATE: 04/07/22

Litigation costs and the requested representative payment of \$5,000 for each plaintiff were deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

Each plaintiff, Angeles and Becerra, has provided a declaration, attesting to the hours they spent attending to the matter, the risk that the suit would make it more difficult to find employment, and that they released all claims (although there is no indication that they had any other claims of value). Considering the relatively small payments, they are approved.

D. Discussion

At the time of preliminary approval, the Court initially was concerned about whether the claims added in the Second Amended Complaint were sufficiently investigated, because they were added after the settlement was reached at mediation. The record shows, however, that the Second Amended Complaint did not add new substantive claims, but only added class action allegations. While this expanded the scope of relief available, the moving papers adequately address the full value of the wage and damage claims available in a class action that would not be available in a PAGA-only class.

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate and final approval is granted.

E. Conclusion

The motion is granted. Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined by counsel in consultation with the Department 39 clerk. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

4. TIME: 9:00 CASE#: MSC20-01774

CASE NAME: ENRIQUEZ VS MCE CORPORATION

HEARING ON MOTION TO/FOR PAGA STLMNT, ATTY FEES, LIT COSTS FILED

BY ROBERT ENRIQUEZ

*** TENTATIVE RULING: ***

Robert Enriquez moves for approval of the settlement of his PAGA suit against defendant MCE Corporation.

A. Background of the Case and Terms of Settlement

CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA

DEPARTMENT: 39

HEARING DATE: 04/07/22

This a PAGA case (not a class action), alleging a variety of violations of the Labor Code concerning failure to provide rest and meal breaks, failure to pay minimum wages and overtime, and cascading derivative violations.

The total settlement payment is \$500,000. This is composed in part of attorney's fees of \$175,000 (35% of the recovery), \$15,627.21 in litigation costs, and \$5,000 in costs to the settlement administrator, Simpluris. A plaintiff's service award of \$10,000 would be provided. The remainder of the payment, currently estimated at \$294,372.79, would be PAGA penalties, which would be apportioned 75% to the LWDA (\$220,779.59) and 25% to the aggrieved employees (\$73,593.20).

Counsel's motion indicates that there are an estimated 341 covered employees. The payments will be distributed among the employees based on the number of pay periods each individual worked during the covered period, June 19, 2019 to February 1, 2022. Plaintiff's counsel attests that informal discovery was undertaken, and the settlement was reached after a session with an experienced mediator.

Plaintiff provided required notices to the LWDA of the initial claims and of the proposed settlement.

The settlement provides a process for mailing the notices to the aggrieved employees, who will not have to submit a claim, along with a process for following up on returned mail. Checks would be sent with the first notice. As revised in conjunction with the supplemental briefing, the notice to the employees states the calculated amount, and advises how to contest the amount, if desired. The proposed letter notice provides that checks not cashed within 90 days will be voided, and the funds forwarded to the State Controller in the employee's name. Payments would be made to the employees, the LWDA, the administrator, and counsel at the same time, without further review by the Court.

PAGA claims based on the facts alleged in the complaint will be released.

B. Standards for Review of a PAGA Settlement

Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*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

CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA

DEPARTMENT: 39

HEARING DATE: 04/07/22

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 46, 63.)

C. Application to this settlement

Plaintiff indicates that the settlement is fair, and was evaluated by counsel based on adequate information and arms-length negotiation. It was reached with the assistance of an experienced mediator. In his declaration, counsel calculated a theoretical maximum penalty of \$13,503,000 assuming that each pleaded violation existed for each employee, each pay period, for one year. Much of that value would include derivative and "stacked" claims for which there may be no award. As counsel also note, PAGA gives the court discretion to reduce penalties for a variety of reasons, making the result hard to predict. Without stacking and using the "initial" violation amount of \$100, counsel calculated a \$204,600 recovery. The Court finds that the amount is fair and reasonable.

Plaintiff has attested to incurring \$15,627.21 in litigation costs.

Labor Code section 2699(g)(1) provides that a prevailing employee in a PAGA action may recover attorney's fees. Plaintiff seeks 35% of the total settlement amount as fees, relying on the "common fund" theory. 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.) Although *Lafitte* concerns a class action, not a PAGA-only case, this Court views the use of a lodestar cross-check as appropriate here. Counsel has provided an estimated lodestar based on hours worked and a reasonable hourly rate. Counsel reports 316 hours spent, at hourly rates ranging from \$500 to \$775, resulting in a lodestar of \$199,335. This results in a multiplier of 0.878. Accordingly, no adjustment to the fee is necessary.

In support of his request for a \$10,000 service payment, Mr. Enriquez has submitted a declaration in which he summarizes his work on the case. He also notes that she has released any individual claims he may have, but nothing indicates whether he had any particular claims other than those shared with the other aggrieved employees. While such awards are common in class actions, the Court is not aware of any authority authorizing them in a PAGA case, however. Moreover, the Court must consider the factors discussed by the court in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807

The statute does not expressly address how the 25% plaintiff's share of the penalties is to be allocated among all of the aggrieved employees. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) One court has held, however, that the entire 25% share of penalties could not be awarded to the plaintiff. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-743.) In *Moorer*, the plaintiff had claim worth about \$9,500, yet was

CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA

DEPARTMENT: 39

HEARING DATE: 04/07/22

collecting penalties of \$148,000, and keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of the fact that the purpose of the action is to benefit the public, not private parties. Moreover, in *Moniz, supra* 72 Cal.App.5th at 64-65, the court held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" The representative payment allocates the penalty amount too much toward the named plaintiff.

This amount is reduced to \$5,000. The difference should be treated as a PAGA penalty amount, and allocated to the LWDA and the employees accordingly.

D. Conclusion

The motion is granted, with the change in the representative payment. Counsel are directed to prepare an order including the Court's ultimate order, the other provisions submitted in the proposed order, and a corresponding judgment. The order should include a compliance hearing for a suitable date chosen in consultation with the Department's clerk. One week before the compliance hearing, counsel shall file a compliance statement. 5% of the attorney's fees shall be withheld by the Administrator pending the compliance hearing.

5. TIME: 9:00 CASE#: MSC20-02500

CASE NAME: VANESSA TICAS

**HEARING ON MOTION TO/FOR APPROVAL OF REPRESENTATIVE ACTION
SETTLEMENT FILED BY VANESSA TICAS**

*** TENTATIVE RULING: ***

Vanessa Ticas moves for approval of the settlement of her PAGA suit against defendant Nutiva. After a hearing on March 10, 2022, the Court directed counsel to file a supplemental brief addressing specified issues and continued the hearing. The Court has now reviewed the supplemental briefing.

A. Background of the Case and Terms of Settlement

This a PAGA case (not a class action), alleging a variety of violations of the Labor Code concerning failure to provide rest and meal breaks, failure to pay minimum wages and overtime, failure to provide a safe working environment, and cascading derivative violations. Defendant operates a manufacturing facility at which Ticas worked until May of 2020.

The total settlement payment is \$125,000. This is composed in part of attorney's fees of \$41,662.50 (one-third of the recovery), \$11,803.04 in litigation costs, and \$3,500 in costs to the settlement administrator. The settlement administrator has now been identified as CPT Group. A plaintiff's service award of \$7,500 would be provided. PAGA penalties of \$59,837.50 would be apportioned 75% to the LWDA and 25% to the aggrieved employees. (The brief says \$60,534.45, but the agreement says \$59,837.50. The latter figure governs in the absence of correction by counsel.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On April 18, 2022, I served the foregoing document described as

ORDER GRANTING APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698, ET SEQ.) SETTLEMENT AGREEMENT AND ATTORNEYS' FEES AWARD, LITIGATION COSTS AWARD, AND ENHANCEMENT PAYMENT

for the following case: **Enriquez v. MCE Corporation**
LWDA/Court Case No.: **LWDA Case No.: CM-794059-20**
Court Case No.: MSC20-01774
Contra Costa County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on April 18, 2022, at Pasadena, California.


Mariah Anderson