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9 Attorneys for Plaintiff,
VANESSA TICAS, on behalf of herself
and all aggrieved employees

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF CONTRA COSTA

13 VANESSA TICAS, an individual, on behalf
14 of herself and all aggrieved employees,

15 Plaintiff,

16 vs.

17 NUTIVA, a California corporation, and
18 DOES 1-50, inclusive,

19 Defendant.

Case No. MSC20-02500

²³
~~[PROPOSED]~~ JUDGMENT

22 **[PROPOSED] JUDGMENT**

23 The Court has received and considered the Motion and Agreement for PAGA Representative
24 Action Settlement ("Settlement Agreement") entered into between Plaintiff VANESSA TICAS, an
25 individual, on behalf of the State of California as a private attorney general under the California
26 Labor Code Private Attorneys General Act ("PAGA"), and the Defendant NUTIVA, a California
27 corporation.
28

FILED
JUN 08 2022

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By: A. Stewart, Deputy Clerk

1 Having received and considered the Motion and Agreement and the supporting papers filed
2 and holding a hearing on the matter, having entered an Order granting approval of the PAGA
3 Settlement consistent with the terms and reasoning detailed in the Court's Ruling attached hereto as
4 Exhibit 1 and expressly incorporated herein ("Order"), and having received a subsequent
5 Declaration from the Settlement Administrator detailing compliance with the Order, IT IS HEREBY
6 ORDERED, ADJUDGED, AND DECREED:

7 1. The California Labor Workforce and Development Agency ("LWDA") has been
8 provided notice of the Settlement in accordance with PAGA, California Labor Code § 2699(1)(2),
9 (1)(4).

10 2. The Court has jurisdiction over the subject matter of this litigation, over all
11 Aggrieved Employees, and over those persons undertaking affirmative obligations under the
12 Settlement.

13 3. The Settlement is approved under Labor Code § 2699(1)(2).

14 4. The Settlement and this resulting Judgement simply represent a compromise of
15 disputed allegations. Accordingly, nothing in this Judgment or the Settlement shall be construed as
16 an admission or concession by any party.

17 5. Each Aggrieved Employee, in accordance with the Settlement, releases all Released
18 Claims against the Released Parties.

19 6. The Court awards the Settlement Administrator Phoenix Settlement Administrators
20 its actual fees and costs in accordance with the terms of the Settlement Agreement, not to exceed
21 \$3,500.

22 7. The Settlement Administrator shall pay PAGA Class Counsel attorneys' fees in the
23 amount of \$41,662.50.00 and actual litigation costs of \$11,803.04, and shall release the 10% of
24 attorneys' fees withheld pending the Compliance Hearing.

25 8. As set forth in the Settlement Administrator's declaration submitted in advance of
26 the Compliance Hearing, the Settlement Administrator has calculated and paid the Individual
27 Penalty Payments in accordance with the terms of the Settlement Agreement.

28 9. The Settlement Administrator has issued payment to the LWDA in the amount of

1 \$49,150.85, in accordance with the terms of the Settlement Agreement and this Court's Order
2 Approving the Settlement.

3 10. Checks for Individual Penalty Payments sent to Aggrieved Employees shall be valid
4 for 180 days after issuance. Funds remaining from any checks for Individual Penalty Payments
5 uncashed after 180 days will be dispersed to the state controller unpaid payment fund in the name
6 of the Aggrieved Employee.

7 11. Without affecting the finality of this judgment, the Court retains exclusive and
8 continuing jurisdiction over this Action for purposes of supervising, administering, implementing,
9 and enforcement of this Judgment.

10 12. The Court enters final judgment in accordance with the terms of the Settlement
11 Agreement and the Order.

12 13. Plaintiff is directed to submit a copy of this Judgment to the LWDA within 10 days
13 of the date of entry of this Judgment.

14 **IT IS SO ORDERED, ADJUDICATED, AND DECREED:**

15 The Clerk of the Court is hereby ordered to enter this Judgment,

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JUN 02 2022

Edward G. Weil

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DATED: _____

Judge of the Superior Court

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EXHIBIT 1

Exhibit 1

CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA

DEPARTMENT: 39

HEARING DATE: 03/10/22

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

CASE NAME: VANESSA TICAS VS. NUTIVA

HEARING ON MOTION 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.

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. 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.)

Counsel's motion indicates that there are an estimated 54 covered employees. The payments will be distributed among the employees based on the number of pay periods each individual worked during the covered period, August 28, 2019 to September 15, 2021. 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. No settlement administrator is identified. Checks would be sent with the first notice. Paragraph III.F of the agreement provides that employees may raise these disputes, but does not indicate how. The draft letter to the employees does not state how many pay periods have been calculated, so the employee would have no basis for raising a dispute. 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,

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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.)

Until recently, there had been no binding authority concerning the proper standard of review of a PAGA settlement, one federal District Court has addressed the issue. In *O'Connor v. Uber Techs, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133, the court denied approval of class action settlements that included PAGA claims in part because the plaintiffs' claims added up to as much as \$1 billion in PAGA penalties but parties settled those claims for \$1 million, or 0.1% of their alleged maximum value. As the court stated, "where plaintiffs bring a PAGA representative claim, they take on a special responsibility to their fellow aggrieved workers who are effectively bound by any judgment. [citation omitted] Such a plaintiff also owes responsibility to the public at large; they act, as the statute's name suggests, as a private-attorney general, and 75% of the penalties go to the LWDA 'for enforcement of labor laws . . . and for education of employers and employees about their rights and responsibilities under this code.'" (*Id.*, at 1134.) In that case, the LWDA itself filed a brief stating that "[i]t is thus important that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public[.]" The *Uber Techs* court noted that "a court may reduce the penalty when 'to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.'" (*Id.*, at 1134, citing Labor Code § 2699(e)(2).) Nonetheless, the court noted that the plaintiff had provided no "coherent analysis" to justify the "relatively meager value" assigned to the PAGA claim.

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 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. Counsel estimate that the maximum theoretical value for their claims was \$1,811,800. About \$466,200 of this, however, was based on wage statement claims, which are derivative, and assumed a violation on every paycheck for every employee. Counsel also states that "much of the penalties are based on violations resulting from technical non-compliance" and that defendant "appears to have adopted a number of policies and practices covering the wage and hour issues being litigated." As counsel also note, PAGA gives the court discretion to reduce penalties for a variety of reasons, making the result hard to predict.

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Plaintiff has attested to incurring \$11,803.04 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 33.3% 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 have provided only a general description of the work undertaken, with no estimated lodestar based on hours worked and a reasonable hourly rate. This is not sufficient to enable the Court to evaluate the reasonableness of the fees.

In support of her request for a \$7,500 service payment, Ms. Ticas has submitted a declaration in which she summarizes her work on the case, but does not estimate her hours. She also notes that she has released any individual claims she may have, but nothing indicates whether she 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, considering the factors discussed by the court in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807, plaintiffs have provided little specific information to justify the requested payments.

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 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. This amount does not pose that concern, but it is reduced to \$2,500. It should, however, be treated as a PAGA penalty amount.

D. Conclusion

Hearing required.

The Court requires further information on three issues: (1) the analysis of the overall value of the case; (2) a lodestar fee estimate; (3) identification of the settlement administrator; and (4) clarification of the process for allowing employees to contest the number of pay periods.

If the settlement ultimately is approved, counsel will be 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 would include a compliance hearing for a suitable date

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chosen in consultation with the Department's clerk. One week before the compliance hearing, counsel shall file a compliance statement. 10% of the attorney's fees shall be withheld by the Administrator pending the compliance hearing.