

FILED  
ENDORSED

2021 AUG 24 PM 4:35

SACRAMENTO COURTS  
DEPT. 54

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Brittany V. Berzin (Cal. State Bar No. 325121)  
Jessica L. Hart (Cal. State Bar No. 331441)  
**Shimoda Law Corp.**  
9401 East Stockton Boulevard, Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff LONI GARCIA  
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO**

LONI GARCIA, individually and on behalf of  
all other similarly situated employees,

Plaintiff,

vs.

AQUALITY WATER MANAGEMENT,  
INC., a California Corporation; JOSH  
BROWN, an individual; and DOES 1 to 100,  
inclusive,

Defendants.

Case No. 34-2021-00292794

**CLASS ACTION**

<sup>cek</sup>  
**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

Date: 8/24/21

Time: 9:00 a.m.

Dept.: 54

Judge: Christopher E. Krueger

Reservation: 2576197

Filed: January 21, 2021

Trial Date: None set



[PPSD] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the  
3 above referenced case came before this Court, on August 24, 2021 at 9:00 a.m., in Department 54  
4 before Christopher E. Krueger, presiding. Named Plaintiff Loni Garcia ("Plaintiff") filed this putative  
5 class action on January 21, 2021. The operative Complaint alleges that Defendants Aquality Water  
6 Management, Inc., and Josh Brown, ("Defendants") violated California law by 1) failing to pay  
7 overtime wages; 2) failing to pay minimum wage, 3) failing to provide meal periods; 4) failing to  
8 provide rest periods; 5) wage statement violations; 6) waiting time penalties; and 7) unfair  
9 competition. Plaintiff has also alleged Defendants are liable for a civil penalties under the Private  
10 Attorneys General Act ("PAGA") based on these violations. Plaintiff sought attorneys' fees and costs  
11 as part of this Action. Defendants denied all of Plaintiff's claims and denied that this case was  
12 appropriate for class treatment. No class has been certified.

13 The parties have agreed to settle the class and PAGA claims. Defendants will provide  
14 monetary consideration in exchange for a release of claims consistent with the terms of the proposed  
15 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and  
16 Release ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the  
17 Agreement. The Court, having received and considered Plaintiff's Motion for Preliminary Approval  
18 of Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed  
19 Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS  
20 AS FOLLOWS:

21 **1. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**  
22 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

23 The Court finds that certification of the following class for settlement purposes only is  
24 appropriate under the California Code of Civil Procedure and related case law:

25 All of Defendants non-exempt employees who have or continue to work  
26 for Defendants from January 21, 2017, up to either (1) the date a signed  
27 order preliminarily approving the settlement is filed, or (2) sixty (60) days  
28 after the *Joint Stipulation Regarding Class Action and PAGA Settlement*  
*and Release* is signed, whichever is earlier.

The Court recognizes that the foregoing definition is for Class Member identification purposes

1 only and is not intended to capture the claims at issue or limit or alter the released claims under the  
2 Agreement.

3 The Court finds that Class Members meet the ascertainability and numerosity requirements since  
4 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within  
5 the definition and the number of Class Members would make joinder impractical. The commonality and  
6 predominance requirements are met for settlement purposes since there are questions of law and fact  
7 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's  
8 contentions that Defendants caused the violations outlined above by 1) failing to pay Plaintiff and  
9 similarly situated employees for all hours worked due their failure to pay for off-the-clock "on call" time  
10 and inaccurate record keeping policy; 2) failing to provide duty free meal and rest periods by requiring  
11 Plaintiff and similarly situated employees to remain "on call" during breaks; 3) failing to accurately  
12 itemize the hours and wages earned on paystubs issued to class members; and 4) failing to properly pay  
13 overtime and premium pay due to Defendants' failure to incorporate shift differentials into the Regular  
14 Rate of Pay ("RROP"). The PAGA, waiting time penalty, wage statement violation, and unfair  
15 competition claims also derive from these violations. Additionally, Class Members seek the same  
16 remedies under state law. The typicality requirement for settlement purposes is also satisfied since the  
17 claims of the Class Representative based on the same facts and legal theories as those applicable to the  
18 class members.

19 The Court also finds that preliminarily and conditionally certifying the settlement class is  
20 required to avoid each Class Member from litigating similar claims individually. This settlement will  
21 achieve economies of scale for Class Members with relatively small individual claims and conserve the  
22 resources of the judicial system.

23 The Court finds that Plaintiff Loni Garcia and Plaintiff's counsel, Galen T. Shimoda  
24 and Jessica L. Hart to be adequate representatives of the settlement class. The Court appoints them as  
25 class representative and class counsel, respectively.

## 26 **2. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

27 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit  
28 A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of

1 a settlement, which could ultimately be given final approval by this Court. The Court also  
2 acknowledges that Class Members may object to the settlement at a fairness hearing approved by this  
3 Court or opt-out of being bound by the preliminarily approved Agreement.

4 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive  
5 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court  
6 preliminarily approves the Agreement and all terms therein as if stated here in full, including the  
7 \$105,000 Gross Settlement Amount.

8 The Court orders that Plaintiff Loni Garcia will receive \$7,500 as a Class Representative  
9 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro  
10 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

11 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.  
12 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed  
13 \$5,000. Any difference between the actual cost of the Claims Administrator and the approved payment  
14 will be redistributed to Qualified Claimants on a pro-rata basis.

15 The Court finds that an award of fees under the common fund doctrine is appropriate in this case  
16 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be  
17 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on  
18 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request  
19 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*  
20 *v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*  
21 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of  
22 Thirty-Five Percent (35%) of the Gross Settlement Amount, *i.e.* \$36,750, to be appropriate  
23 compensation for Class Counsel. The attorneys' fees request is within the range that has been approved  
24 by other Courts in similar cases and is reasonable in light of the circumstances of this case, the  
25 substantial and beneficial results obtained on behalf of Class Members, and the contingent nature of the  
26 recovery over the course of this case, which included potential loss at summary judgment, certification,  
27 and/or trial proceedings. Additionally, the Court orders that up to \$10,000 of the settlement proceeds  
28

1 will be paid to Class Counsel for reasonable costs incurred in this case. Any difference between the  
2 actual costs incurred and the \$10,000 shall be paid to the Qualified Claimants on a pro-rata basis.

3 The Court approves of the Ten Thousand Dollars (\$10,000) PAGA Payment, which shall be paid  
4 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the  
5 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and  
6 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved  
7 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement  
8 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,  
9 furthering the purpose of the Labor Code and LWDA.

10 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to  
11 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be  
12 paid out to the Center for Workers Rights.

13 The releases and waivers for Class Members who do not opt out of being bound by the  
14 Agreement (*i.e.* Qualified Claimants), Aggrieved Employees, and the Class Representative are also  
15 approved by the Court as set forth in the Agreement.

16 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**  
17 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

18 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's  
19 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the  
20 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during  
21 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,  
22 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness  
23 hearing to be conducted on the date set forth below. The Court further finds that the Notice of  
24 Settlement and proposed distribution of such notice by first class mail to each identified Class Member  
25 at his or her most recent address based on a National Change of Address database search from the Class  
26 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement  
27 returned as "undeliverable" or "not at this address" comports with all constitutional requirements,  
28 including those of due process.

The Court also finds that because there is a strong interest in providing Class Members the opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to privacy rights, the sharing of employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide first and last name, last known mailing address, social security number, hire and termination dates, total number of workweeks during which the Class Member performed any actual work to the Claims Administrator only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Claims Administrator shall only use this information for settlement purposes identified herein, and this information shall be kept confidential, not be shared with any third-party, and used only to administer the settlement.

#### **4. IMPLEMENTATION SCHEDULE**

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

|                                                                                                                                                                                                                                                                              |                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| Last day for Defendants to provide Claims Administrator with Class Member information                                                                                                                                                                                        | Within 14 calendar days after the Preliminary Approval Date                                                                          |
| Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement                                                                                                                                            | Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants                       |
| Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests                                                                                                                                                                          | 45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later |
| Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics                                                                                                                                               | Within 21 calendar days after end of the Notice Period                                                                               |
| Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel | Within 7 calendar days after the Final Approval Date                                                                                 |

|                                                                                                                                                                                                                                       |                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Last day for Defendants to fund settlement                                                                                                                                                                                            | Within 21 calendar days after the Final Approval Date                          |
| Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees | Within 14 days after Defendant's last day to fund the settlement               |
| Last day for Qualified Members and Aggrieved Employees to cash settlement checks                                                                                                                                                      | 120 days after issuance of checks to Qualified Members and Aggrieved Employees |
| Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiary                                                                                                                        | Within 14 days after settlement check cashing deadline                         |
| Last day for Claims Administrator to provide Parties with compliance declaration                                                                                                                                                      | Within 21 days after settlement check cashing deadline                         |

#### **FINAL APPROVAL AND HEARING**

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of January 5, 2022, at 1:30 p.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

Date: 8-29-2021

**CHRISTOPHER E. KRUEGER**