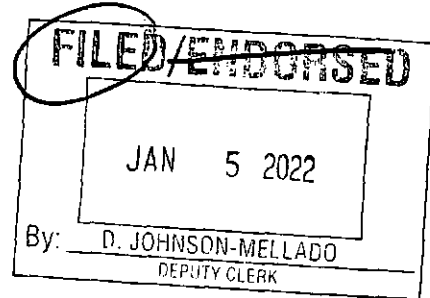


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10 individually and on behalf of similarly situated employees



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

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

15 Plaintiff,

16 vs.

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

21 Defendants.

Case No. 34-2021-00292794

CLASS ACTION

CEV
[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT

Date: January 5, 2022

Time: 9:00 a.m.

Dept.: 54

Judge: Christopher E. Krueger

Filed: January 21, 2021

Trial Date: None set



1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on January 5, 2022 at 9:00 a.m., in Department 54 before
4 Christopher E. Krueger, presiding. Named Plaintiff Loni Garcia ("Plaintiff") filed this putative class
5 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 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. The class settlement was preliminarily
13 approved by this Court on August 24, 2021.

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

21 **1. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
22 **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 to August 24, 2021.

27 The Court recognizes that the foregoing definition is for Class Member identification purposes
28 only and is not intended to capture the claims at issue or limit or alter the released claims under the

1 Agreement.

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

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

21 The Court finds that Plaintiff Loni Garcia and Plaintiff's counsel, Galen T. Shimoda
22 and Jessica L. Hart to be adequate representatives of the settlement class. The Court confirms their
23 appointments as class representative and class counsel, respectively.

24 **2. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

25 The Court has reviewed the preliminarily approved Agreement, which was submitted with
26 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls
27 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also
28 acknowledges that class members were able to object to the settlement through the administration

1 process and at a fairness hearing. No such objections were made by the class members and no class
2 members opted out. Because the Court finds the Parties' settlement to have been agreed upon only after
3 an extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and
4 costs, the Court gives final approval to the Agreement and all terms therein as if stated here in full,
5 including the \$107,426 Gross Settlement Amount.

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

9 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
10 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
11 \$3,500. Any difference between the actual cost of the Claims Administrator and the approved payment
12 of \$5,000 will be redistributed to Qualified Claimants on a pro-rata basis.

13 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
14 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
15 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
16 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
17 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
18 *v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
19 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
20 Thirty-Five Percent (35%) of the Gross Settlement Amount, *i.e.* \$36,750, to be appropriate
21 compensation for Class Counsel. The attorneys' fees request is within the range that has been approved
22 by other Courts in similar cases and is reasonable in light of the circumstances of this case, the
23 substantial and beneficial results obtained on behalf of Class Members, and the contingent nature of the
24 recovery over the course of this case, which included potential loss at summary judgment, certification,
25 and/or trial proceedings. Additionally, the Court orders that \$5,494.05 of the settlement proceeds will
26 be paid to class counsel for reasonable costs incurred in this case. The difference between the actual
27 costs incurred and the originally allocated amount of \$10,000.00 shall be paid to the class on a pro-rata
28 basis.

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

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

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

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

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

27 **IMPLEMENTATION SCHEDULE**

28 Accordingly, with good cause shown, the Court hereby approves and orders that the following

implementation schedule be adhered to:

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> beneficiaries	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

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement.

IT IS SO ORDERED.

Date: 1-5-2022

By: Christy E. King
Judge of the Superior Court