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VENTURA SUPERIOR COURT

02/9/23

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

MAIKEL GONZALEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

ALUMINUM PRECISION PRODUCTS, INC.,
a California corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 56-2022-00571822-CU-OE-VTA

Assigned to: Hon. Jeffrey Bennett

**[SECOND AMENDED PROPOSED] ORDER
GRANTING PLAINTIFF'S MOTION FOR
AN ORDER APPROVING SETTLEMENT
OF CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

Reservation ID: 2693181

Date: January 4, 2023
Time: 8:30 a.m.
Courtroom: Dept. 21
Judge: Hon. Jeffrey Bennett

Action Filed: November 5, 2020
Trial Date: Not Set

VENTURA
SUPERIOR COURT
FILED

FEB 24 2023

BRENDA L. MCCORMICK
Executive Officer and Clerk
BY: *[Signature]*
ADRIANA VELASCO Deputy

1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 Plaintiff MAIKEL GONZALEZ ("Plaintiff") and Defendant ALUMINUM PRECISION
3 PRODUCTS, INC. ("Defendants") (Plaintiff and Defendant are the "Parties") have reached terms of an
4 amended settlement of this action alleging a claim for relief pursuant to the Labor Code Private
5 Attorneys General Act of 2004, Labor Code § 2698, *et seq.* ("PAGA").

6 Pursuant to PAGA, Plaintiff has filed a motion for approval of the settlement of the claims
7 asserted against Defendants in this action, which came on for hearing on January 4, 2023. Specifically,
8 Plaintiff moves for an order:

- 9
- 10 • granting approval of the terms of the Agreement pursuant to the Labor Code Private Attorney
11 Generals Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the settlement; the
12 amount of distributions to the State and Aggrieved Employees; the amounts allocated to
13 attorney's fees and costs; and, the amount allocated to the settlement administrator; and,
 - 14 • directing disbursement of the Gross Settlement Amount (also called the "Maximum
15 Settlement Amount") pursuant to the terms of the Agreement.

16 The PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
17 RELEASE (referred to as the "Agreement," or "Settlement," and attached to the Declaration of H. Scott
18 Leviant as Exhibit 1) is conditioned upon the Court's approval. Capitalized terms in this Order have the
19 same meaning as in the Settlement unless indicated otherwise. A summary of the terms of the amended
20 Settlement is as follows:

- 21
- 22 • The Aggrieved Employees: The Aggrieved Employees are defined as two groups.
23 As for Plaintiff's claims for failure to pay minimum and straight time wages,
24 failure to pay overtime compensation, failure to provide meal periods, failure to
25 provide rest breaks, failure to reimburse for necessary business expenses and
26 failure to timely pay final wages, the Aggrieved Employees are defined as: "All
27 individuals who are or were employed by APP within the State of California
28 between July 15, 2021 and the date the Court enters an order and judgment
approving this settlement." For the rest of Plaintiff's claims, the Aggrieved
Employees are defined as: "All individuals who are or were employed by APP

within the State of California between July 28, 2019 and the date the Court enters an order and judgment approving this settlement.” It is estimated that there are about 700 aggrieved employees at the filing of this motion. (Agreement, recitals.)

- No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 8.a.i.)
- Gross Settlement Amount: Defendant agrees to pay the maximum sum of **\$125,000** (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff’s Counsel attorney’s fees and costs, a service award to Plaintiff, and the settlement administrator’s fees and costs. (Agreement, ¶ 4.)
- Net Settlement Amount: At least **\$72,833.33** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$54,625.00** under the Agreement, and Aggrieved Employees will receive at least **\$18,208.33**. The average payment to each Aggrieved Employee will be about **\$26** (though the primary purpose of PAGA is to incentive Labor Code compliance and benefit the State). (Agreement, ¶ 4.c.)
- Attorney’s Fees: Plaintiff’s Counsel will not seek an amount greater than **\$41,666.67** for attorneys’ fees. (Agreement, ¶ 4.a.)
- Litigation Costs: Plaintiff shall not seek costs in excess of \$2,500.00. Plaintiff’s actual litigation costs prior to the motion filing fee, telephonic appearance costs, and all additional costs of submitting this filing exceed \$2,500.00. Therefore, Plaintiff requests a total of **\$2,500.00** in costs. (Agreement, ¶ 4.a.)
- Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator Phoenix Settlement Administrators, which will perform Administrator duties for a flat fee of **\$8,000** which is reasonable, based on all of the services offered. (Agreement, ¶ 4.b; *see also*, Declaration of Mike Moore for Phoenix.)
- Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than

180 days after issuance, will be tendered to the Unclaimed Property Fund or like fund. (Agreement, ¶ 8.a.i.)

- Release: In exchange for the above settlement consideration, Defendant shall be entitled to a *limited* release from the LWDA and each and every Aggrieved Employee, including Plaintiff.¹ (Agreement, ¶ 2.)

(Leviant Decl., Exh. 1.)

After reviewing the Settlement and other related documents, and the filings (both timely and late) submitted by all parties or proposed parties, including the Department of Labor Standards Enforcement and proposed intervenors, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Court takes judicial notice of the January 30, 2023 denial by Hon. Peter Wilson, Orange County Superior Court, Department CX101, of the petition for coordination in Judicial Council Coordination Proceeding No. 5263, a copy of which is attached hereto as Exhibit 1.

2. The Court overrules all evidentiary objections.

3. The Court hereby GRANTS approval of the PAGA settlement upon the terms and conditions set forth in the Settlement. The Court finds that the terms of the proposed settlement are reasonable. In granting approval of the settlement the Court has considered the factors identified in *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

4. The Court hereby identifies the Aggrieved Employees as:

As for Plaintiff's claims for failure to pay minimum and straight time wages, failure to pay overtime compensation, failure to provide meal periods, failure to provide rest breaks, failure to reimburse for necessary business expenses and failure to timely pay final wages, the Aggrieved Employees are defined as: "All individuals who are or were employed by APP within the State of California between July 15, 2021 and the date the Court enters an order and judgment approving this settlement."

For the rest of Plaintiff's claims, the Aggrieved Employees are defined as: "All individuals who are or were employed by APP within the State of California between July 28, 2019 and the date the Court enters an order and judgment approving this

¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....").

settlement.”

(Agreement, recitals.)

5. The Court hereby finds the Settlement was the product of informed, non-collusive negotiations conducted at arms’ length by the Parties. In making these findings, the Court considered Defendants’ potential liability, the benefit to the State of California, allocation of settlement proceeds among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties’ respective positions rather than the result of a finding of liability at trial. The Court further finds that the terms of the Settlement have no obvious deficiencies. The Court finds that the risks of further prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of the totality of the circumstances, or (2) that no penalties would be awarded for some or all of the alleged violations.

6. The scope of the Release is limited in scope to the claims and theories set forth in the April 15, 2021, and May 5, 2021 PAGA Notice Letters provided by Plaintiff to the LWDA, which PAGA Notice Letters are attached to the Agreement as Exhibit A thereto.

7. The Court hereby approves Phoenix Settlement Administrators to serve as the Administrator. The Administrator will be paid pursuant to the Agreement’s terms for such distribution, in the requested amount of **\$8,000** out of the GSA to effectuate Administration.

8. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be \$125,000, less administration costs, attorney’s fees, and costs awarded to Plaintiff’s counsel. After awards, the amount remaining to distribute as penalties is **\$72,833.33**. The LWDA shall receive 75% of the penalties allocated, which is **\$54,625.00**. Aggrieved Employees shall receive 25% of the penalties allocated, which is **\$18,208.33**.

9. The Court hereby awards Counsel, Moon & Yang, APC, attorneys’ fees in the amount of **\$41,666.67**, which is one-third of the settlement fund. The Court finds that the attorneys’ fees are reasonable compared to amounts routinely approved in similar settlements and as guided by the California Supreme Court’s decision concerning the awarding of fees from monetary funds for class members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016). Counsel proceeded on a contingency basis despite the uncertainty of any fee award. Counsel were necessarily precluded from

1 pursuing other potential sources of fees because of work in connection with this Action. The Court
2 observed that this is not a class action. It is more akin to contingent representation with an additional
3 requirement of Court review due to the qui tam nature of a PAGA claim. Attorneys' fees that are fifty
4 percent of a common fund are typically considered the upper limit, with thirty to forty percent commonly
5 awarded in cases where the settlement is relatively small. *See Van Vranken v. Atlantic Richfield*
6 *Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases where 30-50 percent was awarded
7 involved "smaller" settlement funds of under \$10 million). Using class action fee awards as a
8 comparison, the custom and practice in class actions is to award approximately one-third of a fund as a
9 fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) ("Empirical studies show
10 that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions
11 average around one-third of the recovery."). Counsel's current lodestar is approximately \$30,619.50,
12 and Counsel indicates that not all tasks performed in this matter were recorded, and additional work will
13 be required in the matter. Based on these considerations, including the lodestar cross-check, a fee award
14 of one-third of the total settlement amount is reasonable.

15 10. The Court hereby awards Counsel litigation costs in the amount of **\$2,500.00**, based upon
16 the cap on costs under the Settlement.

17 11. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on
18 the provisions and timelines set forth in the Agreement.

19 12. All currently pending dates are removed from the Court's calendar and vacated. The
20 matter shall remain on the Court's active case calendar.

21 13. This action is hereby DISMISSED WITH PREJUDICE. Judgment shall be entered on
22 this Amended Order.

23 14. The Court shall retain jurisdiction with respect to all matters related to the administration
24 and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the
25 subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the
26 determination of all controversies relating thereto.

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15. Plaintiff shall give notice of this ruling within ten days of entry.

IT IS SO ORDERED.

Dated 2-21-23 
Hon. Jeffrey Bennett
VENTURA COUNTY SUPERIOR COURT JUDGE

Exhibit “1”

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JAN 30 2023

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

Coordination Proceeding
Special Title (Rule 3.550)

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 5263

**ALUMINUM PRECISION PRODUCTS
WAGE AND HOUR CASES**

Included actions:

Maldonado vs. Aluminum Precision Products,
Inc.

Superior Court of California
County of Orange
No. 30-2020-01164707

Gonzalez vs. Aluminum Precision Products,
Inc.

Superior Court of California
County of Ventura
No. 56-2022-00571822

ORDER DENYING PETITION FOR COORDINATION

The Court has considered the Petition for Coordination by John Maldonado, Jr., Gregory Maratas and Bernardo Sandoval (Petitioners) under California Code of Civil Procedure section 404 with respect to the following actions:

1. John Maldonado, Jr., et al. v. Aluminum Precision Products. Inc., Case No. 30-2020- 30-2020-01164707, filed in Orange County Superior Court on October 13, 2020 ("The Maldonado Action") and

ORDER DENYING PETITION FOR COORDINATION

1 2. Maikel Gonzalez v. Aluminum Precision Products, Inc., Case No. 56-2022-
2 00571822, filed in Ventura County Superior Court on November 3, 2022, ("The
3 Gonzalez Action").

4 For the reasons which follow, the Petition for Coordination is DENIED.

5
6 The Court has read and considered all papers filed in support of the Petition,
7 and all papers filed in Opposition thereto, as well as the Joinder to the Petition filed
8 by the Labor and Workforce Development Agency (LWDA).

9 After consideration of the papers filed, the arguments of counsel at the
10 hearing on January 27, 2023, and the applicable law, the Court now Orders as
11 follows.

12
13 California Code of Civil Procedure § 404.1 provides that:

14 "Coordination of civil actions sharing a common question of fact or law is
15 appropriate if one judge hearing all of the actions for all purposes in a
16 selected site or sites will promote the ends of justice taking into account
17 whether the common question of fact or law is predominating and
18 significant to the litigation; the convenience of parties, witnesses, and
19 counsel; the relative development of the actions and the work product of
20 counsel; the efficient utilization of judicial facilities and manpower; the
21 calendar of the courts; the disadvantages of duplicative and inconsistent
22 rulings, orders, or judgments; and, the likelihood of settlement of the actions
23 without further litigation should coordination be denied."

24 There is no dispute that the two actions sought to be consolidated share
25 common questions of fact and law.

26 Significantly for present purposes Petitioners stress that:

27 "Only by coordinating these two actions will Plaintiff be protected from the
28 possibility of conflicting or duplicative rulings or to have his PAGA claims
completely eviscerated."

Petition, 9:25-10:3

1 And in their Reply, Petitioners state:

2 "Maldonado shares with Gonzalez all PAGA claims not previously settled by
3 plaintiff Gonzalez."

4 Reply, 8:1-2.

5 Respondent Aluminum Precision Products, Inc. agrees that the proposed
6 settlement in the Gonzalez Action "encompasses the Maldonado Plaintiffs'
7 remaining claims." Opp., 9:20.

8 In summary, therefore, there is a settled action, the Gonzalez Action, which
9 effectively ends both cases if the Gonzalez settlement becomes final and a judgment
10 is entered thereon, and there is an unsettled action, the Maldonado Action, which is
11 proceeding to trial with all issues still unresolved.

12 Examining these two cases, including the procedural posture of these two
13 cases, against the factors specified in section 404.1 (above), the Court cannot here
14 conclude that coordination is proper.

15 Coordination would not be an efficient use of judicial resources, since what is
16 being sought is to "unsettle" a settled case and instead proceed to a full-blown trial.

17 Coordination would promote rather than prevent potentially inconsistent
18 rulings or orders on identical issues, because the central purpose for seeking
19 coordination here is to persuade this Court to depart from the rulings in the
20 Gonzalez Action.

21 Coordination would not promote the likelihood of settlement, except in the
22 speculative scenario that this Court sets aside the rulings in the Gonzalez Action
23 and that motivates restarting settlement discussion with Petitioners at the table.

24 With regard to "the relative development of the actions and the work
25 product of counsel," coordination also does not appear to be appropriate. In the
26 Gonzalez Action the court has worked its way through two settlements in two
27 actions. Settlement of the first action was affirmed by the Court of Appeal.
28 Settlement of the second action has made its way to a final approval order, as
discussed above. By contrast, the Maldonado Action has proceeded through
extensive discovery, but there have been no dispositive motions and the matter is

1 set for trial on March 13, 2023. It is overwhelmingly likely that coordination would
2 result in a continuation of the trial date which is not in the interest of any of the
3 parties, or the court.

4 Accordingly, the Court cannot conclude that the request for coordination here
5 promotes the reasons for, and benefits of, coordination. Instead, the request to
6 coordinate is designed to provide a different way to challenge the rulings in another
7 court, with which Petitioners continue to disagree. All parties in the Gonzalez Action
8 have remedies in that action if they disagree with the orders of the court there. The
9 Court also notes that Petitioners sought to intervene, and they along with the
10 LWDA, presented their arguments to the court, in the Gonzalez Action.

11 Given the settlement in the Gonzalez Action, even if the court had not there
12 reached the stage of entering an Order thereon, this Court's conclusion that
13 coordination is not appropriate would be the same. It is somewhat self-evident that
14 it is a far more efficient use of judicial resources, and of the resources of the parties
15 and their counsel, to determine whether a settlement should be approved, as
16 opposed to preparing the case for a trial on all issues. This Court's determination
17 here would be the same if the court in the Gonzalez Action had taken the motion for
18 settlement approval under submission pending this Court's ruling on the motion for
19 consideration.

20 This Court concludes that coordination of the included actions is not
21 appropriate under the standards specified in Code of Civil Procedure section 404.1,
22 and it is accordingly ordered that the petition for coordination of the included actions
23 is denied.

24 Petitioners' Request for Judicial Notice is denied, as none of the referenced
25 documents are relevant to the Court's decision.

26 The Clerk is Ordered to give notice to Petitioners, and Petitioners are Ordered to give
27 notice to all parties in the included actions, to the LWDA, and to the Judicial Council.

28 DATED: 1/30/2023



Peter J. Wilson
Coordination Motion Judge

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **[SECOND AMENDED PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☐ to interested parties as follows [or] ☒ as stated on the attached service list:

SEE ATTACHED SERVICE LIST

- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.
- ☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **February 9, 2023** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature

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