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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF VENTURA
11

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

14 *Plaintiff,*

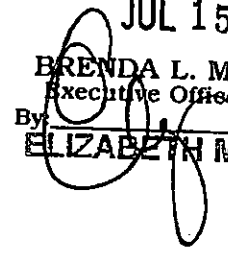
15 vs.

16 ALUMINUM PRECISION PRODUCTS, INC.,
a California corporation; and DOES 1 through
17 10, inclusive,

18 *Defendants.*

VENTURA
SUPERIOR COURT
FILED

JUL 15 2021

BRENDA L. McCORMICK
Executive Officer and Clerk
By  Deputy
ELIZABETH MULLER

Case No.: 56-2020-00546795-CU-OE-VTA

Assigned to: Hon. Jeffrey G. Bennett

**~~[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: 2566025

Date: June 16, 2021
Time: 8:30 a.m.
Courtroom: 21
Judge: Hon. Jeffrey G. Bennett

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

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 amended settlement of the
7 claims asserted against Defendant in this action. Specifically, Plaintiff moves for an order:

- 8
- 9 • granting approval of the terms of the Agreement pursuant to the Labor Code Private Attorney
10 Generals Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the settlement; the
11 amount of distributions to the State and Aggrieved Employees; the amounts allocated to
12 attorney's fees and costs; and, the amount allocated to the settlement administrator; and,
 - 13 • directing disbursement of the Gross Settlement Amount pursuant to the terms of the
14 Agreement.

15 The FIRST AMENDED PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
16 AGREEMENT AND RELEASE (referred to as the "Agreement," or "Settlement," and attached to the
17 Supplemental Declaration of H. Scott Leviant as Exhibit 5) is conditioned upon the Court's approval.
18 Capitalized terms in this Order have the same meaning as in the Settlement unless indicated otherwise.
19 A summary of the terms of the amended Settlement is as follows:

- 20
- 21 • The Aggrieved Employees: The Aggrieved Employees are: all persons currently or formerly
22 employed by Defendant in California during the designated PAGA Period (July 28, 2019
23 through the date the Court approves this Settlement Agreement [based on the hearing date,
24 the PAGA Period will be July 28, 2019, through June 16, 2021]). It is estimated that the
25 number of aggrieved employees was approximately 700 as of the filing of this motion.
(Agreement, recitals.)
 - 26 • No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 8.a.i.)
 - 27 • Gross Settlement Amount: Defendant agrees to pay the maximum sum of \$300,000
28 (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

1 service award to Plaintiff, and the settlement administrator's fees and costs. (Agreement, ¶
2 4.)

- 3 • Net Settlement Amount: At least **\$177,050.42** will be available for distribution to the
4 Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least
5 **\$132,787.82** under the Agreement, and Aggrieved Employees will receive at least
6 **\$44,262.60**. The average payment to each Aggrieved Employee will be about **\$63** (though
7 the primary purpose of PAGA is to incentive Labor Code compliance and benefit the State).
8 (Agreement, ¶ 4.d.)
- 9 • Attorney's Fees: Plaintiff's Counsel will not seek an amount greater than **\$100,000.00** for
10 attorneys' fees. (Agreement, ¶ 4.a.)
- 11 • Litigation Costs: Because Plaintiff's costs do not exceed \$12,000, Plaintiff's Counsel seek
12 reimbursement of actual litigation costs, which did not exceed **\$11,799.58** prior to including
13 the motion filing fee, telephonic appearance costs, and all additional costs of submitting this
14 filing. Plaintiff requests a total of **\$11,949.58** in costs, which includes the anticipated costs of
15 filing this Motion and previously incurred costs of **\$11,799.58**. (Agreement, ¶ 4.a.)
- 16 • Service Award: Payment of **\$5,000.00** is requested to be paid to Plaintiff for his efforts in
17 bringing and prosecuting this matter. (Agreement, ¶¶ 4.c.)
- 18 • Settlement Administration: Payment to Aggrieved Employees and administration will be
19 accomplished through third-party settlement administrator Phoenix Settlement
20 Administrators, which has agreed to perform Administrator duties for a flat fee of **\$6,000**
21 which is reasonable, based on all of the services offered. (Agreement, ¶ 4.b.)
- 22 • Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing,
23 and funds represented by checks remaining un-cashed for more than 180 days after issuance,
24 will be tendered to the Unclaimed Property Fund or like fund. (Agreement, ¶ 8.a.i.)
- 25 • Release: In exchange for the above settlement consideration, Defendant shall be entitled to a
26 *limited* release from the LWDA and each and every Aggrieved Employee, including
27
28

1 Plaintiff.¹ (Agreement, ¶ 2.)
2 (Leviant Decl., Exh. 1.)

3 After reviewing the Settlement and other related documents, and the filings submitted by
4 Plaintiff, **IT IS HEREBY ORDERED AS FOLLOWS:**

5 1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and
6 conditions set forth in the Settlement. The Court finds that the terms of the proposed settlement are
7 reasonable. In granting approval of the settlement the Court has considered the factors identified in
8 *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18,
9 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App.
10 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

11 2. The Court hereby identifies the Aggrieved Employees as:

12 All persons currently or formerly employed by Defendant in California during the
13 designated PAGA Period (July 28, 2019 through the date the Court approves this
Settlement Agreement).

14 (Agreement, recitals.)

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

24 4. Pursuant to the Agreement, the scope of the Release is limited in scope to the claims and
25 theories set forth in the November 2, 2020 PAGA Notice Letter provided by Plaintiff to the LWDA,

26
27 ¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46
28 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....").

1 which PAGA Notice Letter is attached to the Agreement as Exhibit B thereto.

2 5. The Court hereby approves Phoenix Settlement Administrators to serve as the
3 Administrator. The Administrator will be paid pursuant to the Agreement's terms for such distribution,
4 in the requested amount of **\$6,000** out of the GSA to effectuate Administration.

5 6. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be
6 \$300,000, less administration costs, attorney's fees, costs awarded to Plaintiff's counsel, and the service
7 award allocation to Plaintiff. After awards, the amount remaining to distribute as penalties is
8 **\$177,050.42**. The LWDA shall receive 75% of the penalties allocated, which is **\$132,787.82**.
9 Aggrieved Employees shall receive 25% of the penalties allocated, which is **\$44,262.60**.

10 7. The Court hereby awards Counsel, Moon & Yang, APC, attorneys' fees in the amount of
11 **\$100,000.00**, which is one-third of the settlement fund. The Court finds that the attorneys' fees are
12 reasonable compared to amounts routinely approved in similar settlements and as guided by the
13 California Supreme Court's decision concerning the awarding of fees from monetary funds for class
14 members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016). Counsel proceeded on a
15 contingency basis despite the uncertainty of any fee award. Counsel were necessarily precluded from
16 pursuing other potential sources of fees because of work in connection with this Action. The Court
17 observed that this is not a class action. It is more akin to contingent representation with an additional
18 requirement of Court review due to the qui tam nature of a PAGA claim. Attorneys' fees that are fifty
19 percent of a common fund are typically considered the upper limit, with thirty to forty percent commonly
20 awarded in cases where the settlement is relatively small. *See Van Vranken v. Atlantic Richfield*
21 *Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases where 30-50 percent was awarded
22 involved "smaller" settlement funds of under \$10 million). Using class action fee awards as a
23 comparison, the custom and practice in class actions is to award approximately one-third of a fund as a
24 fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) ("Empirical studies show
25 that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions
26 average around one-third of the recovery."). Counsel's current lodestar is at least \$83,191.50, and
27 Counsel indicates that not all tasks performed in this matter were recorded, including significant amounts
28 of recent work, and additional work will be required in the matter. Based on these considerations,

1 including the lodestar cross-check, a fee award of one-third of the total settlement amount is reasonable.

2 8. The Court hereby awards Counsel litigation costs in the amount of \$11,949.58.

3 9. The Court approves payment of \$5,000.00 to Plaintiff in exchange for Plaintiff's service
4 to the State of California and aggrieved employees.

5 10. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on
6 the provisions and timelines set forth in the Agreement.

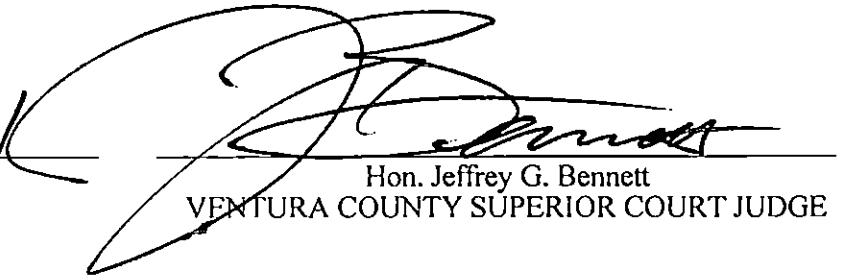
7 11. This action is hereby DISMISSED WITH PREJUDICE.

8 12. All pending motion dates are removed from the Court's calendar and vacated as moot.

9 13. The Court shall retain jurisdiction with respect to all matters related to the administration
10 and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the
11 subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the
12 determination of all controversies relating thereto.

13
14 IT IS SO ORDERED.

15
16 Dated: 7-14-21


Hon. Jeffrey G. Bennett
VENTURA COUNTY SUPERIOR COURT JUDGE