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12 Attorneys for Plaintiff: KENNETH JENNINGS

13 **SUPERIOR COURT OF CALIFORNIA**

14 **COUNTY OF FRESNO**

15 * * *

16 KENNETH JENNINGS, an individual,

Case No. 21CECG00511

17 PLAINTIFF,

**NOTICE OF RULING GRANTING
PLAINTIFF'S MOTION FOR (1)
APPROVAL OF PAGA
SETTLEMENT, (2) APPOINTMENT
OF SETTLEMENT
ADMINISTRATOR, AND (3)
ATTORNEYS' FEES**

18 vs.

19 HYDRATECH, LLC, a Delaware limited
20 liability company; LIGON INDUSTRIES,
21 LLC, a Delaware limited liability company;
22 and Does 1 through 50, inclusive,

23 DEFENDANTS.

24 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

25 **PLEASE TAKE NOTICE** that, on Tuesday, January 25, 2022, at 3:30 p.m., Plaintiff
26 Kenneth Jennings' Motion for (1) Approval of PAGA Settlement, (2) Appointment of Settlement
27 Administrator, and (3) Attorneys' Fees came on for hearing in Department 503 of the Fresno
28 County Superior Court, the Honorable Kimberly Gaab, Judge, presiding.

1 No appearance was made by counsel for any Party, as no Party requested oral argument
2 following issuance of the Court's tentative ruling on January 24, 2022. The Court, having read
3 and considered the papers, evidence, and arguments, and for good cause appearing therefore,
4 ruled as follows:

5 The Court Granted the Motion in its entirety and adopted its Tentative Ruling as the
6 ruling of the Court, which is attached hereto as Exhibit A.

7
8 Dated: January 31, 2022

SUTTON HAGUE LAW CORPORATION, P.C.

9
10 By: 

11 BRADY BRIGGS
12 Attorneys for Plaintiff
13 KENNETH JENNINGS
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EXHIBIT A

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000	<i>FOR COURT USE ONLY</i>
TITLE OF CASE: Kenneth Jennings vs. Hydratech, LLC	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: 21CECG00511

I certify that I am not a party to this cause and that a true copy of the:

[Minute Order and Tentative Ruling]

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002**

On Date: **01/24/2022**

Clerk, by , Deputy
R. Smith

S. Brett Sutton
 Sutton Hague Law Corporation
 5200 N Palm Ave Suite 203
 Fresno, CA 93704

Ian B. Wieland
 Sagaser, Watkins & Wieland, PC
 5260 North Palm Avenue, Suite 400
 Fresno, CA 93704

☐ Clerk's Certificate of Mailing Additional Address Page Attached

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited		Entered by:
TITLE OF CASE: Kenneth Jennings vs. Hydratech, LLC		
LAW AND MOTION MINUTE ORDER		Case Number: 21CECG00511

Hearing Date: **January 25, 2022** Hearing Type: **General Motion**
 Department: **503** Judge/Temp. Judge: **Gaab, Kimberly**
 Court Clerk: **R. Smith** Reporter/Tape: **Not Reported**

Appearing Parties:	
Plaintiff:	Defendant:
Counsel: No Appearances	Counsel: No Appearances

☐ Off Calendar

☐ Continued to ☐ Set for ___ at ___ Dept. ___ for ___

☐ Submitted on points and authorities with/without argument. ☐ Matter is argued and submitted.

☐ Upon filing of points and authorities.

☐ Motion is granted ☐ in part and denied in part. ☐ Motion is denied ☐ with/without prejudice.

☐ Taken under advisement

☒ **No party requested oral argument pursuant to Local Rule 2.2.5 and CRC 3.1308(a)(1)**

☒ **Tentative ruling becomes the order of the court. No further order is necessary.**

☒ **Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.**

☒ **Service by the clerk will constitute notice of the order.**

☒ **See attached copy of the Tentative Ruling.**

☐ Judgment debtor ___ sworn and examined.

☐ Judgment debtor ___ failed to appear.
 Bench warrant issued in the amount of \$ ___

JUDGMENT:

☐ Money damages ☐ Default ☐ Other ___ entered in the amount of:
 Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___
☐ Claim of exemption ☐ granted ☐ denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:

☐ Monies held by levying officer to be ☐ released to judgment creditor. ☐ returned to judgment debtor.
☐ \$___ to be released to judgment creditor and balance returned to judgment debtor.
☐ Levying Officer, County of ___, notified. ☐ Writ to issue
☐ Notice to be filed within 15 days. ☐ Restitution of Premises
☐ Other: ___

(03)

Tentative Ruling

Re: ***Jennings v. Hydratech, LLC***
Superior Case No. 21CECG00511

Hearing Date: January 25, 2022 (Dept. 503)

Motion: Plaintiff's Motion to Approve PAGA Settlement, Appointment of Settlement Administrator, and Attorney's Fees

Tentative Ruling:

To grant plaintiff's motion to approve the Private Attorneys General Act ("PAGA") settlement, appointment of settlement administrator, and attorney's fees.

Explanation:

1. Introduction

"The superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA]. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (Lab. Code, § 2699, subd. (i)(2).)

There are very few cases discussing section 2699, and none discuss the standards under which a court is to assess a settlement. Nor has the legislature provided any structure or standards for making the assessment. Published California case law has not done so either. However, the common practice when ruling on PAGA settlements seems to be to follow existing law on class action settlements.

2. Notice to Labor and Workforce Development Agency ("LWDA")

Labor Code section 2699, subdivision (i)(2), states: "The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court."

Here, plaintiff's counsel states that notice of the settlement was given to the LWDA on December 20, 2021. (Briggs Decl., ¶ 90.) Therefore, plaintiff has complied with the requirement to give notice of the settlement to the LWDA.

3. Fairness and Reasonable of Settlement

As discussed above, there is no authority regarding what constitutes a fair and reasonable settlement under PAGA. However, the same standards appear to apply to PAGA settlements as to settlements of class actions.

"[A court must be] provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration

being paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, the Court of Appeal stated that “[the] court [must] receive and consider sufficient information on a core legal issue, affecting the strength of the case for plaintiffs on the merits, to make the requisite independent assessment of the reasonableness of the terms of the settlement.” (*Id.* at p. 798.)

“The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.’ This list ‘is not exhaustive and should be tailored to each case.’ Relying on an earlier edition of Newberg on Class Actions, the court in *Dunk [v. Ford Motor Co.]* (1996) 48 Cal.App.4th 1794, 1801] asserted that ‘a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.’” (*Kullar, supra*, 168 Cal.App.4th at p. 128, internal citations omitted.)

““The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” The court ‘must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case,’ but nonetheless it ‘must eschew any rubber stamp approval in favor of an independent evaluation.’” (*Id.* at p. 130, internal citations omitted.)

Here, plaintiff is settling the PAGA claims for a gross payment of \$35,000, with \$11,666 deducted for attorney’s fees, and \$5,000 for administration costs. Seventy-five percent of the net settlement will be paid to the LWDA, as required by statute, and the aggrieved employees will receive the remaining 25 percent, apportioned among them based on how many pay periods they worked during the subject time period. There are only approximately 50 aggrieved employees, and the average payment to each employee is estimated to be \$91.67.

It does appear that the amount of the settlement is fair and reasonable under the circumstances. Plaintiff’s counsel states that the maximum amount that plaintiff could have obtained for PAGA penalties under his various causes of action would have been \$189,900. However, plaintiff’s counsel believes that settling the claims for \$35,000 is fair, adequate, and reasonable under the circumstances, given the strength of the defenses raised by defendants, the risks of litigation, and the uncertainty of the law regarding some of plaintiff’s claims.

Also, plaintiff’s counsel notes that the number of aggrieved employees here is relatively small, and they only worked about 246 pay periods during the subject time period due to defendant closing its Fresno facility and moving its operations out of the state. In addition, plaintiff’s counsel notes that courts rarely award the full amount of penalties that are potentially available under PAGA, as such penalties are often seen as

unduly punitive, and often reduce the penalties by up to 80 percent. Thus, plaintiff's counsel has adequately shown that the gross amount of the settlement is reasonable given the risks and uncertainties of litigation, even though the total amount potentially available to the aggrieved employees is considerably more than \$35,000.

The settlement was also reached after discovery and arm's length negotiations between the parties, which suggests that it is fair and reached without collusion. (*Anderson v. Nextel Retail Stores, LLC* (C.D. Cal. 2010) 2010 WL 8591002, at *15.) In addition, the settlement will not bar the aggrieved employees from bringing their own individual Labor Code claims in the future, as it simply disposes of the PAGA claim brought by the named plaintiff here. Therefore, the court finds that the the gross settlement amount is fair, adequate, and reasonable.

4. Attorney's Fees and Costs

Plaintiff's counsel has requested an award of \$11,666 in attorney's fees, which is 33 percent of the gross settlement. Courts have approved awards of fees in class actions that are based on a percentage of the total common fund recovery. (*Laffitte v. Robert Half Internat.* (2016) 1 Cal.5th 480, 503.) It appears that the same reasoning would apply to PAGA settlements, which bear similarities to class actions. Thus, plaintiff's counsel's request for an award equal to one-third of the total gross settlement is not necessarily unreasonable. However, the court may also perform a lodestar calculation to double check the reasonableness of the fee request. (*Laffitte, supra*, 1 Cal.5th at pp. 504-506.)

Here, the request for \$11,666 in fees appears to be reasonable, especially in light of the fact that counsel incurred over 245 hours of attorney time in working on the case, billed at \$350 to \$850 per hour, which resulted in total fees of over \$120,000. (Sutton Decl., ¶¶ 19, 23, 26-27.) The requested fees are thus far less than the total fees incurred in the case by counsel. Even if the court takes into account the fact that a portion of the fees were likely incurred in litigating the individual claims of the named plaintiff, it still appears that the amount of fees is reasonable. The court notes that counsel will also receive a separate fee payment from the settlement of the individual plaintiff's claims, in the amount of \$35,000. However, even when taking into account this additional payment, counsel will still be receiving only \$46,666 in fees, which is far less than the \$121,000 in fees that incurred in litigating the case. Therefore, the court approves the award of attorney's fees.

5. Payment to Named Plaintiff

The individual plaintiff is not receiving an enhancement award from the gross settlement. Instead, he is receiving a separate payment of \$90,000 for settling his own individual claims for wrongful termination and retaliation. He has elected to waive any enhancement award from the PAGA settlement to increase the recovery of the other aggrieved employees. Therefore, there is no need to analyze the reasonableness of the payment to plaintiff.

6. Administration Costs

Simpluris will receive a maximum of \$5,000 to administer the settlement. If Simpluris ends up incurring less than \$5,000 to administer the settlement, the remaining money will revert back to the net settlement fund and be distributed to the aggrieved employees. The amount of administration costs appears to be reasonable under the circumstances, especially since any unused funds will be returned to the settlement fund. Therefore, the court finds that the administration costs are reasonable, and it approves the appointment of Simpluris as the settlement administrator.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: LAH **on** 1/21/2022.
(Judge's initials) (Date)



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PROOF OF SERVICE

My business address is **9790 Gateway Drive, Suite 200, Reno, Nevada 89521**. I am employed in **Reno, Nevada**. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as:

NOTICE OF RULING GRANTING PLAINTIFF'S MOTION FOR (1) APPROVAL OF PAGA SETTLEMENT, (2) APPOINTMENT OF SETTLEMENT ADMINISTRATOR, AND (3) ATTORNEYS' FEES

on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Ian B. Wieland
David G. Litman
SAGASER, WATKINS & WIELAND PC
5260 N. Palm Ave., Ste. 400
Fresno, CA 93704
Telephone: (559) 421-7000
Facsimile: (559) 473-1483
Email: ian@sw2law.com
Email: david@sw2law.com

[Attorneys for Defendant HYDRATECH, LLC]

— (BY FIRST CLASS MAIL) I am readily familiar with the business' practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the United States Postal Service on the date noted below in the ordinary course of business, at Reno, Nevada.

— (BY PERSONAL SERVICE) I caused such envelopes to be delivered by hand to the office(s) of the addressee(s).

X (BY EMAIL) Based on a court order or an agreement of the parties to accept electronic service, I caused documents to be sent to the persons at the electronic service addresses listed above from my electronic services address.

— (BY OVERNIGHT MAIL) I am readily familiar with the business' practice for collection and processing of correspondence for mailing, and that correspondence will be deposited with an overnight carrier on the date noted below in the ordinary course of business, in accordance with the overnight carrier's method for billing for same, and before the last scheduled pick-up time, at Reno, Nevada.

EXECUTED on January 31, 2022, at Reno, Nevada.

X (STATE) I declare under penalty of perjury under the laws of the **State of California**, that the foregoing is true and correct.


Rachel Mullinax