

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 179684 / 335777		E-RECEIVED FOR COURT USE ONLY by Superior Court of CA, County of Santa Clara, on 6/14/2023 3:14 PM Reviewed By: R. Walker Case #21CV376678 Envelope: 12234991
NAME: David Spivak, Esq / Maya Cheaitani, Esq.		
FIRM NAME: The Spivak Law Firm		
STREET ADDRESS: 8605 Santa Monica Blvd., PMB 42554		
CITY: West Hollywood STATE: CA ZIP CODE: 90069		
TELEPHONE NO.: 213-725-9094 FAX NO.: 213-634-2485		
E-MAIL ADDRESS: david@spivaklaw.com		
ATTORNEY FOR (name): Tuan Hoang		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA		
STREET ADDRESS: 191 North First Street		
MAILING ADDRESS: 191 North First Street		
CITY AND ZIP CODE: San Jose, 95113		
BRANCH NAME: Downtown Superior Court		
PLAINTIFF/PETITIONER: TUAN HOANG, et al.		CASE NUMBER: 21CV376678
DEFENDANT/RESPONDENT: MDC VACUUM PRODUCTS, LLC, et al.		JUDICIAL OFFICER: Hon. Theodore C. Zaynor
OTHER:		
PROPOSED ORDER (COVER SHEET)		DEPT: 19

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order: Tuan Hoang
2. Title of the proposed order: Judgment Approving PAGA Settlement
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Motion for Approval of PAGA Settlement
 - b. Date and time: May 24, 2023 at 1:30 p.m.
 - c. Place: Santa Clara County Superior Court - Dept. 19
4. The proposed order was served on the other parties in the case.

David Spivak, Esq

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: TUAN HOANG, et al v. MDC VACUUM PRODUCTS, LLC, et al.

CASE NUMBER:
21CV376678**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**1. I am at least 18 years old and **not a party to this action.**a. My residence or business address is (*specify*):The Spivak Law Firm
1801 Century Park East ,25th Fl
Los Angeles, CA 90067b. My electronic service address is (*specify*):

emily@spivaklaw.com

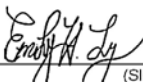
2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):

Donald P. Sullivan, Esq., Attorney for MDC Vacuum Products LLC

b. To (*electronic service address of person served*): Donald.Sullivan@jacksonlewis.comc. On (*date*): June 14, 2023☒ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 14, 2023

Emily Hoang Ly
(TYPE OR PRINT NAME OF DECLARANT)
(SIGNATURE OF DECLARANT)

SHORT TITLE: TUAN HOANG, et al v. MDC VACUUM PRODUCTS, LLC, et al.

CASE NUMBER:
21CV376678**ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (PERSONS SERVED)***(This attachment is for use with form POS-050/EFS-050.)***NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:****Name of Person Served****Electronic Service Address****Date of Electronic Service***(If the person served is an attorney,
the party or parties represented should
also be stated.)*

Janelle J. Sahouria, Esq., Attorney for MDC Vacuum Products LLC	janelle.sahouria@jacksonlewis.com	Date: June 14, 2023
		Date: _____
		Date: _____
		Date: _____
		Date: _____
		Date: _____
		Date: _____
		Date: _____
		Date: _____
		Date: _____
		Date: _____
		Date: _____

Envelope #12234891

DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
MAYA CHEAITANI (SBN 335777)
maya@spivaklaw.com
THE SPIVAK LAW FIRM
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094
Facsimile: (213) 634-2485

Attorneys for Plaintiff(s),
TUAN HOANG, and all others similarly situated
(Additional attorneys for parties on following page)

Filed
July 21, 2023
Clerk of the Court
Superior Court of CA
County of Santa Clara
21CV376678
By: rwalker

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

(UNLIMITED JURISDICTION)

TUAN HOANG, on behalf of himself, and as an
“aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff,

vs.

MDC VACUUM PRODUCTS LLC, a Delaware
limited liability company; and DOES 1–50,
inclusive,

Defendants.

Case No. 21CV376678

**[PROPOSED] ORDER AND
JUDGMENT APPROVING PAGA
SETTLEMENT**

Hearing Date: May 24, 2023
Hearing Time: 1:30 p.m.
Hearing Dept.: 19, The Honorable
Theodore C. Zayner

Action filed: March 01, 2021



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles CA 90067

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
 walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
TUAN HOANG, and all others similarly situated



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles CA 90067

1 On May 24, 2023, the Court issued a Minute Order granting Plaintiff's Motion for
2 Approval of PAGA Settlement. A true and correct of the Minute Order dated May 24, 2023 is
3 attached as **Exhibit A**. Having considered the Parties' PAGA Settlement Agreement
4 ("Agreement" or "PAGA Settlement"), IT IS HEREBY ORDERED THAT:

5
6 1. To the extent required by Labor Code § 2699(l), the Settlement and its terms
7 represent a reasonable and adequate settlement of highly disputed claims to Plaintiff, the "PAGA
8 Employees" (as the term is defined in the PAGA Settlement), the State of California, Plaintiff's
9 counsel, and Defendant, and is approved with the following revisions: The requested litigation
10 costs are approved in the amount of \$10,499.08 instead of \$10,589.48. The requested settlement
11 administration costs are approved in the amount of \$7,750.00 instead of up to \$10,000.00. The
12 incentive award, scope of the release, and administrative costs are approved as set forth in the
13 Parties' Settlement Agreement.

14 2. Accordingly, Defendant shall pay the "Gross Settlement Amount" (as the term
15 defined in the Settlement) in the amount of \$480,000.00. The Gross Settlement Amount includes:
16 (a) Attorney fees in the amount of \$160,000.00 and litigation costs in the amount of \$10,499.08;
17 (b) "PAGA Penalty Fund" (as the term defined in the PAGA Settlement) payable to the PAGA
18 Settlement Employees and the Labor and Workforce Development Agency ("LWDA"); (c)
19 Plaintiff's enhancement award in the amount of \$15,000.00; and (d) Administration Costs of
20 \$7,750.00 to administer the settlement, in accordance with the procedure as mentioned in the
21 Settlement.

22 3. The allocation of the Settlement payment among the Plaintiff, the PAGA
23 Settlement Employees, the State of California, the Settlement Administrator and Plaintiff's
24 counsel is fair, just, reasonable, adequate, and equitable to all concerned, and is approved to the
25 extent required under Labor Code§ 2699(l).

26 4. The settlement is approved on the terms stated in the Settlement.

27 5. Judgment in this matter is entered in accordance with, and incorporates by
28 reference, the terms and conditions of the Settlement. Instead of filing a request for dismissal to



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles CA 90067

1 terminate this action, this judgment will terminate the action.

2 6. The Settlement is not an admission by Defendant, or any of the "Released Parties"
3 (as the term is defined in the Settlement), nor is this judgment a finding of the validity of any
4 allegations or of any wrongdoing by Defendant or the Released Parties. Neither this judgment,
5 the Settlement, nor any document referred to therein, nor any action taken to carry out the
6 Settlement, may be construed as, or may be used as, an admission of any fault, wrongdoing,
7 omission, concession, or liability whatsoever by or against Defendant or the Released Parties.

8 7. The PAGA Settlement shall be binding on Plaintiff, all PAGA Employees, and the
9 State of California, who are hereby barred from re-litigating any of the claims released by the
10 Settlement.

11 8. Pursuant to Code of Civil Procedure section 664.6 the Court shall retain exclusive
12 and continuing jurisdiction over the above-captioned action and the parties for purposes of
13 enforcing the terms of the PAGA Settlement.

14 9. A Compliance Review Hearing shall be held before this Court at 2:30 p.m. on
15 April 17, 2024 in Department 19.

16 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

17 July 21, 2023

18 **DATE**

19 
20 **THE HONORABLE THEODORE C. ZAYNOR,**
21 **JUDGE OF THE SUPERIOR COURT**



22 **SPIVAK LAW**
23 **EMPLOYEE RIGHTS**

24 Mail:
25 8605 Santa Monica Bl
26 PMB 42554
27 West Hollywood, CA 90069
28 (213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles CA 90067

EXHIBIT A



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

MINUTE ORDER

Hoang v. MDC Vacuum Products, LLC, et al. (PAGA)
21CV376678
Date of Hearing: 05/24/2023

Hearing Start Time: 1:30 PM
Hearing Type: Motion: Order
Comments:

Heard By: Zayner, Theodore C
Courtroom Reporter: - No Court Reporter

Location: Department 19
Courtroom Clerk: Maggie Castellon
Court Interpreter:
Court Investigator:

Parties Present:

Sahouria, Janelle J. Attorney
Spivak, David Glenn Attorney

Future Hearings:

Exhibits:

- Tentative ruling is contested. Court hears argument from both counsel.

Court finds as follows;

Tentative ruling is adopted with some changes (As listed at the end of document)

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on May 24, 2023, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

VI. INTRODUCTION

This is a PAGA action arising out of various alleged wage and hour violations. The operative First Amended Complaint (FAC), filed against defendant MDC Vacuum Products, LLC (Defendant) on June 23, 2021, sets forth a single cause of action for Civil Penalties (Lab. Code 2698, et seq.).

The parties have reached a settlement of the PAGA claim. Plaintiff Tuan Hoang (Plaintiff) now moves for approval of the settlement. The motion is unopposed.

VII. LEGAL STANDARD

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 380.) 75 percent of any penalties recovered go to the Labor and Workforce Development Agency (LWDA), leaving the remaining 25 percent for the employees. (Ibid.) PAGA is intended to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency. (Id. at p. 383.) A judgment in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. (Id. at p. 381.)

A superior court must review and approve any PAGA settlement. (Lab. Code, 2699, subd. (l)(2).) The court s review ensur[es] that any negotiated resolution is fair to those affected. (Williams v. Superior Court (2017) 3 Cal.5th 531, 549.) The proposed settlement must be submitted to the LWDA at the same time it is submitted to the court. (Ibid.)

As discussed by one court:

PAGA does not establish a clear standard for evaluating PAGA settlements.



SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA

MINUTE ORDER

Accordingly, certain courts have been willing to approve PAGA settlements only if (1) the statutory requirements set forth by PAGA have been satisfied, and (2) the settlement agreement is fair, reasonable, and adequate in view of PAGA's public policy goals.

(Patel v. Nike Retail Services, Inc. (N.D. Cal. 2019) 2019 WL 2029061 at *2.)

As part of this analysis, these courts have evaluated proposed PAGA settlements under the relevant factors from Hanlon v. Chrysler Corp. (9th Cir. 1998) 150 F.3d 1011, 1026. (Patel v. Nike Retail Services, Inc., supra, 2019 WL 2029061 at *2.) Of the Hanlon factors, the following are relevant to evaluating [a] PAGA settlement: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the presence of government participation; and (6) the expertise and views of counsel. (Ibid.)

[W]hen a PAGA claim is settled, the relief provided [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public. (Villalobos v. Calandri Sunrise Farm LP (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at *13.) The settlement must be reasonable in light of the potential verdict value. (See O'Connor v. Uber Technologies, Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See Viceroy v. Mistras Group, Inc. (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8-9.)

VIII. DISCUSSION

The proposed settlement has been made with regard to the following aggrieved employees:

[A]ll current and former hourly or non-exempt employees of Defendant who worked in California at any time during the PAGA Period.

(Declaration of David Spivak in Support of Plaintiff Tuan Hoang's Motion for Approval of PAGA Settlement (Spivak Dec.), Ex. 1 (Settlement Agreement), 1.) The PAGA Period is defined as the time period from December 26, 2019, to the date the court approves the settlement. (Settlement Agreement, 2.)

Pursuant to the terms of the settlement, Defendant will pay a non-reversionary, gross settlement amount of \$480,000. (Settlement Agreement, 4, 9.) This amount includes attorney fees not to exceed \$160,000 (1/3 of the gross settlement fund), litigation costs (estimated to be no greater than \$15,000), settlement administration costs up to \$10,000, and an enhancement award for Plaintiff in the amount of \$15,000. (Settlement Agreement, 4, 6.) Of the remaining amount, 75 percent will be paid to the LWDA and 25 percent of which will be paid to the aggrieved employees. (Settlement Agreement, 4-5.) Funds from settlement checks that are not cashed within 180 days from the date of mailing will be sent to the California State Controller's Unclaimed Property Fund. (Settlement Agreement, 10.)

In exchange for the settlement, aggrieved employees agree to release:

any and all claims under the Private Attorneys General Act, inclusive of all civil penalties, attorneys' fees, interest, liquidated damages, injunctive relief, and costs, for alleged violations of California Labor Code 201-204, 221, 226, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 and 2698 et seq. and the applicable Wage Order(s) during the PAGA Period arising from (1) any allegation in the Action and (2) any allegation that could have been pleaded in the Action, whether known or unknown, that relates to the (a) failure to pay all wages earned for all hours worked or amounts otherwise due under the Labor Code at the



SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA

MINUTE ORDER

correct regular rate of pay, (b) failure to provide compliant rest breaks and meal periods, (c) failure to reimburse necessary business expenses, (d) failure to provide timely and accurate wage statements, (e) failure to timely pay wages during employment and upon separation, and (f) failure to maintain accurate employment records (PAGA Released Claims) against the Released Parties.

(Settlement Agreement, 13.) Released Parties are defined as MDC Vacuum Products, LLC; MDC Precision, LLC; MDC Precision, Inc; and their present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any other individual or entity that could be liable for any of the PAGA Released Claims. (Settlement Agreement, 13.) Plaintiff also agrees to a general release. (Settlement Agreement, 11.)

Plaintiff contends the PAGA settlement is fair, reasonable, and adequate. Plaintiff states he obtained informal discovery regarding Defendant s alleged Labor Code violations. Plaintiff s counsel interviewed other employees and reviewed Plaintiff s personnel file, time and payroll records for over 329 aggrieved employees, and relevant policies. The parties participated in mediation with mediator Louis Marlin. The settlement is the result of arm s-length negotiations and resolves the PAGA claim for approximately 329 aggrieved employees, who worked 9,580 pay periods. Plaintiff estimates that Defendant s maximum potential exposure for the PAGA claim is \$8,143,000. Plaintiff discounted the value of the claim given Defendant s defenses, manageability concerns, the possibility that the court may not award stacking penalties, and the possibility that the court could substantially reduce any penalty award. The settlement represents approximately 5.8 percent of the maximum potential value of the claim. The average individual settlement payment is approximately \$224.16.

As a preliminary matter, the court concludes that the aggrieved employees release, as currently drafted, is unclear as to who is being released. The term Released Parties is vaguely defined to include any unspecified individual or entity that could be liable for any of the released claims. (Settlement Agreement, 13 [any other individual or entity that could be liable].) The parties are directed to meet and confer as to whether the settlement agreement can be modified to omit the language regarding other unidentified entities or individuals from the release. Prior to the continued hearing, Plaintiff s counsel shall file a supplemental declaration addressing the parties meet and confer efforts and, if appropriate, attaching a modified settlement agreement.

Setting aside the issue with the release, the court finds that the settlement is fair. It provides for a good recovery and eliminates the risk and expense of continued litigation.

Plaintiff requests an enhancement award in the amount of \$15,000. Incentive awards are commonly awarded in the context of class action settlements, which bear many similarities to settlements in PAGA cases. The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class. (Cellphone Termination Fee Cases (2010) 186 Cal.App.4th 1380, 1394, quoting Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 791.)

Criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

(Cellphone Termination Fee Cases, supra, 186 Cal. App. 4th at pp. 1394-1395, quotation marks, brackets,



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

MINUTE ORDER

ellipses, and citations omitted.)

Here, Plaintiff has submitted a declaration detailing his participation in the case. He states he spent over 49 hours on the case, including discussing the case with counsel, locating documents, reviewing documents, participating in mediation, and reviewing the settlement agreement. (Declaration of Tuan Hoang in Support of Motion for Approval of PAGA Settlement, 4-7.) Plaintiff's efforts in the case resulted in a benefit to the state and the aggrieved employees. Moreover, Plaintiff undertook risk by putting his name on the case because he may have been responsible for costs if he lost the case and because it might impact his future employment. (See *Covillo v. Specialtys Cafe* (N.D. Cal. 2014) 2014 WL 954516, at *8 [incentive awards are particularly appropriate where a plaintiff undertakes a significant reputational risk in bringing an action against an employer].)

However, the requested incentive award is higher than what is approved in most wage and hour settlements. While Plaintiff has established that an incentive award is justified, \$15,000 is too high. Accordingly, the court will approve an incentive award of \$10,000.

Plaintiff's counsel requests attorney fees in the amount of \$160,000 (1/3 of the gross settlement fund). Plaintiff's counsel provides evidence of a lodestar of \$68,769. (Spivak Dec., 31.) This results in a multiplier of 2.33. The attorney fees requested are reasonable as a percentage of the total recovery and are approved.

Plaintiff's counsel also requests litigation costs in the amount of \$10,589.48. (Spivak Dec., 32.) However, only actual incurred costs are recoverable and the evidence submitted by Plaintiff's counsel establishes incurred costs in the amount of \$10,499.08. (Ibid.) Consequently, the litigation costs are approved in the lesser amount of \$10,499.08.

Plaintiff also requests payment of settlement administration costs up to \$10,000. But the evidence shows that the settlement administrator's costs are \$7,750. (Spivak, 37-38.) Consequently, the settlement administration costs are approved in the amount of \$7,750.

Accordingly, the motion for approval of PAGA settlement is CONTINUED to August 2, 2023, at 1:30 p.m. in Department 19. Plaintiff shall file a supplemental declaration no later than July 17, 2023, addressing the scope of the aggrieved employees' release. No additional filings are permitted.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

Changes:

Tentative ruling is modified to approve the scope of release as court finds it is satisfactory. Paga Settlement is approved. Plaintiff shall recover \$15,000

The 7/19/23 case management conference is vacated.

The 8/2/23 reserved hearing date is vacated.

Final payment of settlement is due on 4/1/2024

Court sets a compliance review hearing on 4/17/2024 at 2:30 p.m. in Department 19

- ooOoo -



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

MINUTE ORDER
