

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Ingrid Alcala et al Plaintiff/Petitioner(s) VS. Ultra Clean Technology Systems and Service, Inc. et al Defendant/Respondent (s)	No. RG21094281 Date: 04/24/2024 Time: 3:00 PM Dept: 19 Judge: Joscelyn Jones ORDER re: Hearing on Motion for Final Approval of Settlement filed by Ingrid Alcala (Plaintiff) on 03/14/2024
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Matter was not contested and the tentative is affirmed.

The Motion for Final Approval of Settlement filed by Ingrid Alcala on 03/14/2024 is Granted.

The motion of plaintiffs for Final approval of class action settlement and PAGA settlement is GRANTED.

PROCEDURE

The court order of 10/4/23 approved a settlement for \$1,610,000 and refers to a class of 661 members. The court order of 10/26/23 approves a settlement for \$1,610,000 and refers to a class of 661 members. The order of 10/26/23 attaches an approved class notice that refers to a settlement for \$1,610,000. This would result in an average gross recovery of \$2,435 per class member.

The motion for final approval as filed seeks final approval of a settlement for \$2,074,002 and refers to a class of 1,133 members. The class notice referred to a settlement for \$2,074,002 and the claims administrator states that there were 1,133 members. (Burns Dec.) This would result in an average gross recovery of \$1,830 per class member, which is \$600 less than the court approved.

At the hearing on 4/10/24, the court asked how the value of the settlement changed from \$1,610,000 to \$2,074,002 and how the class size changed from 661 to 1,133.

In the filings on 4/18/24, counsel explained that the class size increased from 661 class members to 676 class members and that there were 1,133 aggrieved employees for purpose of the

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settlement of the LWDA's claims under the PAGA.

APPROVAL OF THE SETTLEMENT

The complaint alleges various Labor Code claims. On March 7, 2023, this case was consolidated with Grays v. Ultra Clean, RG21103305.

The settlement agreement now before the court is for a total of \$2,074,002.

The settlement agreement states that, subject to Court's approval, the following fees will be deducted: Attorney Fees of \$691,334, Litigation Costs of \$19,691.34, a Service Award to Named Plaintiffs as Class Representative of \$20,000 (\$10,000 to each Ingrid Alcala and Quondrel Grays), PAGA Penalty Fund Payment of \$100,000 [\$75,000.00 to LWDA and \$25,000.00 to PAGA-eligible employees], and \$15,000 Administrative Fee to Settlement Administrator. The costs total \$806,025, resulting in a net settlement of \$1,267,976.

Assuming that there are 676 Class Members, the average payment per Class Member would be approximately \$1,875.

The proposed class notice form and procedure are adequate. There were no opt outs and no objections.

The proposed class is appropriate for class certification.

The scope of the relevant releases is inconsistent with recent case law. The law was recently clarified in Adolph v. Uber Technologies (2023) 14 Cal.5th 1104. Adolph clarified that in a case such as this there are three types of claims: (1) claims that the named plaintiff asserts on their individual behalf, including "individual PAGA claims"; (2) claims that the named plaintiff asserts as agent or proxy of the LWDA, which are described as "non-individual PAGA claims"; and (3) claims that the named plaintiff asserts as a representative of the absent class members, which are the claims that the absent class members could have asserted on their own individual selves.

The court does not order that the parties revise the agreement and repeat the notice and opt out period. (Han Dec filed 9/7/23 [settlement agreement].) Rather, the court informs the parties that their agreement will be construed to be consistent with the law.

The scope of the named plaintiff release is appropriate. (Han Dec filed 9/7/23 [settlement agreement, para E1].) The agreement for the named plaintiff may include a Civil Code 1542 waiver and a release of "individual PAGA claims."

The scope of the class release is appropriate. (Han Dec filed 9/7/23 [settlement agreement, para E2].) The scope of the class release must be limited to the claims arising out of the claims in the complaint where the named plaintiffs are typical and can adequately represent the class. (Amaro

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v. Anaheim Arena Management, LLC (2021) 69 Cal.App.5th 521, 537-538.) The release of claims by the class is limited by the "factual predicate rule." (Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581, 590.) (See also Hendricks v. Starkist Co (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion for final approval of class settlement because scope of release overbroad].)

The scope of the PAGA release is not appropriate. (Han Dec filed 9/7/23 [settlement agreement, para E3].) The agreement inaccurately states that the Aggrieved Employees are releasing claims under the PAGA. (Han Dec filed 9/7/23 [settlement agreement, para E3].) Under the law, "An employee plaintiff suing ... under the [PAGA] does so as the proxy or agent of the state's labor law enforcement agencies." (Kim v. Reins International California, Inc. (2020) 9 Cal.5th 73, 81; ZB, N.A. v. Superior Court of San Diego County (2019) 8 Cal.5th 175, 185; Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 381; Adolph v. Uber Technologies (2023) 14 Cal.5th 1104, 1116.) Every PAGA action is "a dispute between an employer and the state." Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 386; LaFace v. Ralphs Grocery Co. (2022) 75 Cal.App.5th 388, 397; Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, 74.) Therefore, the named plaintiff is acting as agent and proxy of the

LWDA and is releasing the claims of the LWDA. The Agreement will be construed consistent with the law.

The agreement inaccurately states that the [LWDA] is releasing "all claims for civil penalties pursuant to PAGA that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaints and PAGA Notice that arose during the PAGA Period." (Han Dec filed 9/7/23 [settlement agreement, para E3].) As a matter of law, the scope of the LWDA's release is limited to the scope of the PAGA notice letter. (LaCour v. Marshalls of California, LLC (2023) 94 Cal.App.5th 1172, 1192-1196.) The Agreement will be construed consistent with the law.

The Court notes and approves of the plan to distribute the settlement funds with no claims process.

The unclaimed funds will be distributed to Legal Aid at Work. This is consistent with CCP 384. Counsel has provided a declaration in support of the motion that provides the information required by CCP 382.4. (Han Dec filed 9/7/23, para 29.)

APPROVAL OF FEES, COSTS, AND SERVICE AWARD

"Because absent class members are not directly involved in the proceedings, oversight to ensure settlements are fair and untainted by conflict is the responsibility of both the class representative and the court." (Mark v. Spencer (2008) 166 Cal.App.4th 219, 227.)

"[T]horough judicial review of fee applications is required in all class action settlements and the fairness of the fees must be assessed independently of determining the fairness of the substantive settlement terms. (Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 555-556.)

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The court starts with its benchmark, then cross-checks with the lodestar, and makes adjustments if the benchmark is significantly different from the lodestar. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 505 [“If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted”].)

The Ninth Circuit’s benchmark is 25%. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495.)

When using the percentage of recovery approach, this court’s benchmark for fees is 30% of a total fund. Courts have benchmarks ranging from 25% to 33%. *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495; *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 fn 13; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn 11; *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175.)

The court recently reviewed and reaffirmed its use of a benchmark of 30%. (*Hurtubise v. Sutter East Bay Hosp.* (2021) 2021 WL 11134912.)

The benchmark of 30% of \$2,074,002 suggests fees of \$622,200.

When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.

Counsel assert they spent 954.3 hours on the case. The court finds that this is reasonable.

The court finds that a blended rate of \$600 is appropriate for the case. (*Meridian Financial Services, Inc. v. Phan* (2021) 67 Cal.App.5th 657, 708-709 [blended rate of \$550]; *Espejo v. Copley Press, Inc.* (2017) 13 Cal.App.5th 329, 337 [blended rate of \$500/hour]; *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 438-440 fn 14, fn 16 [blended rate of \$275].) Regarding the amount of the blended rate, the court considers the evidence and its own knowledge and familiarity with the legal market. (*Meridian Financial Services, Inc. v. Phan* (2021) 67 Cal.App.5th 657, 709.) The court takes judicial notice of the rates for counsel in the USAO Fitzpatrick Matrix on “Hourly Rates (\$) for Legal Fees for Complex Federal Litigation in the District of Columbia.” The court takes judicial notice of the Laffey matrix. (<http://www.laffeymatrix.com/>) The court gives little weight to the anecdotal fee awards of other trial judges. Counsel can selectively present fee awards that indicate the highest hourly billing rates.

The court recently reviewed and reaffirmed its use of a blended rate of \$550. (*Harris v. Southern New Hampshire University* (2023) 2023 WL 3605289.)

The court will use a blended rate of \$600 per hour.

This results in a lodestar of \$572,580.

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The court applies a 1.2 multiplier for risk. When considering risk, the court considers there is less risk in a case with fee shifting statutes because counsel's potential fees are not limited by and coupled to the monetary recovery. With a fee shifting statute, counsel has the risk of proving liability but if counsel proves liability, then the fees shift to the defendant with little to no consideration of the amount of the client's monetary recovery. (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1174.) For example, a nominal damage recovery will result in counsel recovering "reasonable attorneys' fees" that could far exceed the award of damages. (*Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 419 [jury awarded plaintiff \$30,300, counsel recovered \$1,113,905.40 in fee-shifted fees]; *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1006-1007 [client recovered \$1, counsel recovered \$87,525 in fee-shifted fees].) There was a fee shifting provision. This results in a multiplier adjusted lodestar of \$687,096.

Considering the percentage analysis fees of \$622,200 and the multiplier adjusted lodestar fees of \$687,096, the court will award fees of \$622,200. This is the court's benchmark. The award of fees is appropriate to compensate counsel in this case, to incentivize the prosecution of meritorious cases, and does not result in an unreasonable windfall to counsel at the expense of their clients.

The court approves costs of \$19,691.34.

The court approves actual settlement administration costs of up to \$15,000.

The court approves a service award of \$7,500 to each plaintiff. Plaintiffs were not deposed. Plaintiffs provided evidence regarding the nature of participation in the action, including a description of specific actions and the amount of time committed to the prosecution of the case. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.)

The Court ORDERS that 10% of any fee award to be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

The Court will set a compliance hearing after the completion of the distribution process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to comply with CCP 384(b) and to submit a summary accounting how the funds have been distributed to the class members and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.

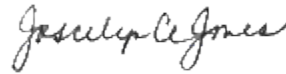
The court ORDERS that at the time of the final accounting that counsel for plaintiff transmit a copy of this order and the final judgment and the final accounting to the Judicial Council. (CCP 384.5; Govt Code 68520.)

Plaintiff may submit a proposed order if necessary. The court will sign any proposed order, which is modified by this order.

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Dated : 04/24/2024

A handwritten signature in cursive script, appearing to read "Joscelyn Jones".

Joscelyn Jones / Judge

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is manderson@justicelawcorp.com

On May 10, 2024, I served the foregoing document described as

ORDER RE: HEARING ON MOTION FOR FINAL APPROVAL OF SETTLEMENT

for the following case: **Alcala, et al. v. Ultra Clean Technology Systems and Service, Inc. dba Ultra Clean Technology**
LWDA/Court Case No.: **LWDA Case No.: CM-817994-21**
Court Case No.: RG21094281 (Consolidated with Case No. RG21103305)
Alameda County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on May 10, 2024, at Pasadena, California.



Mariah Anderson