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Attorneys for Plaintiff Juan Medina

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

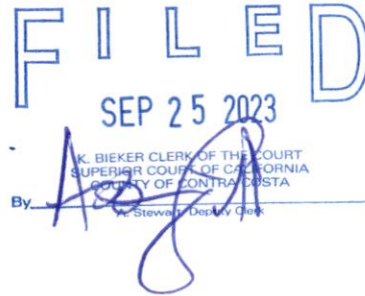
JUAN MEDINA, individually, on behalf of all
other aggrieved employees, and on behalf of
other members of the general public similarly
situated,

Plaintiff,

vs.

BIO-RAD LABORATORIES, INC., a
Delaware corporation; BIO-RAD
LABORATORIES (RISHON), INC., a
California corporation; BIO-RAD PACIFIC
LIMITED, a California corporation; and DOES
1 through 10, inclusive,

Defendants.



Case No. MSC21-00154

Assigned to the Hon. Charles S. Treat

**[PROPOSED] ORDER GRANTING MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND MOTION
FOR ATTORNEYS' FEES, COSTS AND
EXPENSES, AND A CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT**

Date: September 14, 2023
Time: 9:00 a.m.
Place: Department 12

Complaint Filed: January 27, 2021

1 Plaintiff Juan Medina moves for final approval of his class action and PAGA settlement with
2 defendant Bio-Rad. Plaintiff also moves for approval of attorney fees, litigation and administration costs,
3 and a representative fee.

4 Since preliminary approval was granted, the administrator has mailed notices to 1,215 class
5 members. 33 packets were returned by the post office. Follow up resulted in 27 new addresses, leaving 7
6 non-deliverable. No objections have been received; there have been 4 valid opt-out requests.

7 The motion is **granted**. The tentative ruling is attached as Exhibit A.

8 **A. Background and Settlement Terms**

9 Defendant is in the business of developing and selling life science research and clinical
10 diagnostic products. Plaintiff worked in its manufacturing operations.

11 The original complaint was filed on January 27, 2021 as a class action. The class claims were
12 dismissed pursuant to an unopposed motion based on an arbitration agreement and class action waiver,
13 but PAGA claims were added by amendment. Plaintiff also dismissed two related entities that were sued
14 in the original complaint, but that were not employers of plaintiff or the class. It does not appear that the
15 case ever got to arbitration. Instead, the parties mediated the entire dispute, reaching the present
16 settlement. The scope of claims being settled is embodied in an agreed second amended complaint.

17 The settlement will create a gross settlement fund of \$2,950,000. The class representative
18 payment to the plaintiff will be \$5,000. Attorney's fees will be \$983,333 (one-third of the settlement).
19 Litigation costs sought are 26,914 (about which more below). The settlement administrator's costs are
20 \$21,750, lower than preliminarily approved. PAGA penalties will be \$200,000, resulting in a payment of
21 \$150,000 to the LWDA. The net amount paid directly to the class members would be about \$1,706,667.
22 The fund is non-reversionary. There are 1,212 participating class members. Based on the estimated class
23 size, the average net payment for each class member is approximately \$1,460. The individual payments
24 will vary considerably, however, because of the allocation formula prorating payments according to the
25 number of weeks worked during the relevant time. The number of aggrieved employees for PAGA
26 purposes is smaller, about 810, because the starting date of the relevant period is later.

27 The entire settlement amount will be deposited with the settlement administrator within 30 days
28 after the effective date of the settlement.

1 The proposed settlement will certify a class of all current and former non-exempt employed at
2 Defendants' California facilities between January 27, 2017 and March 18, 2022. For PAGA purposes,
3 the period covered by the settlement is from February 9, 2020 through March 18, 2022.

4 The class members will not be required to file a claim. Class members may object or opt out of
5 the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds will
6 be apportioned to class members based on the number of workweeks worked during the class period.

7 The settlement contains release language covering all claims and causes of action, alleged or
8 which could have reasonably been alleged based on the allegations in the operative pleading, including a
9 number of specified claims. Under recent appellate authority, the limitation to those claims with the
10 "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt.,*
11 *LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the
12 allegations of the complaint."] "Put another way, a release of claims that goes beyond the scope of the
13 allegations in the operative complaint' is impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman*
14 *Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

15 Formal discovery was undertaken, resulting in the production of substantial documents. The
16 matter settled after arms-length negotiations, which included a session with an experienced mediator.

17 Counsel also has provided an analysis of the case, and how the settlement compares to the
18 potential value of the case, after allowing for various risks and contingencies. At the outset, plaintiff
19 acknowledges that the covered employees signed arbitration agreements, so that it would be a steep
20 uphill battle to address alleged violations on a class-action basis. Moreover, arbitration aside, the nature
21 of the asserted violations here, and the factual and legal defenses raised by defendant, would pose a very
22 strong risk that each employee's claim would need to be addressed on a highly individualized basis,
23 again making class treatment a challenge.

24 Substantively, the greatest part of plaintiff's claims center on allegations that defendant's staffing
25 practices had the practical effect of making it necessary for employees to work outside their assigned
26 hours; and to forgo, or work during, their rest breaks and meal breaks. Defendant asserts that its policies
27 are contrary, calling for rigorous clock-in-and-out practices and allowing employees to take their proper
28 breaks. Defendant also argues that if there were any such violations for individual employees, defendant

1 would have had no way of knowing about them, and that it could not be liable without such knowledge.
2 Plaintiff also alleges that employees were not compensated for required use of their personal cell phones
3 or vehicles. He does not explain, however, how or to what extent that would have occurred. For
4 example, it is by no means obvious how plaintiff himself, a floor manufacturing worker, would have had
5 any occasion to use his phone or vehicle for employer purposes.

6 In light of these considerations and contentions, the Court is satisfied that the settlement amount
7 – nearly 3 million dollars, and with an average in four figures per employee – is reasonable and
8 satisfactory.

9 The potential liability needs to be adjusted for various evidence and risk-based contingencies,
10 including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they
11 derive from other violations, they include “stacking” of violations, the law may only allow application of
12 the “initial violation” penalty amount, and the total amount may be reduced in the discretion of the court.
13 (Sec Labor Code § 2699(e)(2) [PAGA penalties may be reduced where “based on the facts and
14 circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and
15 oppressive, or confiscatory.”])

16 Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently
17 with the filing of the motion.

18 **B. Legal Standards**

19 The primary determination to be made is whether the proposed settlement is “fair, reasonable,
20 and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “the
21 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk
22 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
23 completed and the state of the proceedings, the experience and views of counsel, the presence of a
24 governmental participant, and the reaction ... to the proposed settlement.” (See also *Amaro v. Anaheim*
25 *Arena Mgmt., LLC*, 69 Cal.App.5th 521.)

26 Because this matter also proposes to settle PAGA claims, the Court also must consider the
27 criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco USA,*
28 *Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the “fair,

1 reasonable, and adequate” standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.)
2 The Court also held that the trial court must assess “the fairness of the settlement’s allocation of civil
3 penalties between the affected aggrieved employees[.]” (*Id.*, at 64-65.)

4 California law provides some general guidance concerning judicial approval of any settlement.
5 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3
6 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy.
7 (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th
8 1121, 1127.) Moreover, “[t]he court cannot surrender its duty to see that the judgment to be entered is a
9 just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins.*
10 *Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that
11 *Neary* does not always apply, because “[w]here the rights of the public are implicated, the additional
12 safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory
13 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th
14 48, 63.)

15 C. Attorney Fees and Other Costs

16 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund”
17 theory, or \$983,333. Even a proper common fund-based fee award, however, should be reviewed
18 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the
19 Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage
20 allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is
21 extraordinarily high or low, the trial court should consider whether the percentage used should be
22 adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily
23 required to make such an adjustment.” (*Id.*, at 505.)

24 Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They
25 estimate the lodestar at \$446,890, representing a multiplier of approximately 2.2. No adjustment from the
26 one-third fee is necessary. The attorney’s fees are reasonable and are approved.

27 The requested representative payment of \$5,000 for the named plaintiff was deferred until this
28 final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American*

1 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in
2 support of his request. He points out that he executed a broader release than the class as a whole, but does
3 not identify any particular claims of value that he may have. He also alleges risk of damage to his
4 reputation and more difficulty in obtaining employment. The representative payment is approved.

5 Litigation costs of \$26,914 are requested, which is significantly less than the estimate
6 preliminarily approved. The majority of these are mediation and filing fees. However, there is an
7 unexplained entry for \$10,960 to Desmond, Marcello & Amster, that was not otherwise identified or
8 explained. Counsel was directed to provide a supplemental declaration explaining who this is, what
9 services it provided, why those services were necessary to the litigation and settlement, and the basis for
10 the amount, in order for approval of this element of costs. Counsel submitted the supplemental
11 declaration explaining this cost. The costs sought are reasonable and are approved.

12 The settlement administrator's costs of \$21,750 are reasonable and are approved.

13 **D. Discussion and Conclusion**

14 The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and
15 adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees
16 (based on pay periods) is reasonable. The motion is granted.

17 Due and adequate notice having been given to Class Members, and the Court having considered
18 the Settlement Agreement, all of the legal authorities and documents submitted in support thereof, all
19 papers filed and proceedings had herein, all oral and written comments received regarding the proposed
20 settlement, and having reviewed the record in this litigation, and good cause appearing, the Court
21 GRANTS final approval of the Settlement and ORDERS AND MAKES THE FOLLOWING
22 FINDINGS AND DETERMINATIONS:

- 23 1. The Court's tentative ruling, attached, is incorporated herein by reference.
- 24 2. This Order incorporates by reference the Settlement Agreement, and unless indicated
25 otherwise, all capitalized terms used herein will have the same meaning as set forth in the Settlement
26 Agreement.
- 27 3. This Order similarly incorporates by reference the Order Granting Approval of the
28 PAGA Settlement and Preliminary Approval of the Class Settlement.

1 4. The Court approves the Parties' PAGA settlement, and finds that the settlement is fair,
2 adequate, and reasonable in view of PAGA's, "purposes and policies." *Moniz v. Adecco USA, Inc.*, 72
3 Cal. App. 5th 56 (2021).

4 5. The Settlement Class shall be certified for settlement purposes only and shall consist of
5 all persons who are or were employed by Defendant as non-exempt, hourly employees in the State of
6 California at any time from January 27, 2017 through March 18, 2022. The Court deems this definition
7 sufficient for the purpose of California Rule of Court 3.765(a) and for the purpose of effectuating the
8 Settlement.

9 6. The Court finds for settlement purposes only that an ascertainable class exists and a
10 well-defined community of interests exists in the questions of law and fact involved in the context of the
11 Settlement.

12 7. The class action settlement set forth in the Settlement Agreement, entered into among
13 the Parties and their counsel, is finally approved as it is found to be proper, to fall within the range of
14 reasonableness, to be the product of arm's-length and informed negotiations, to treat all Class Members
15 fairly, and to be valid.

16 8. The Court further finds that Plaintiff conducted extensive investigation and research, and
17 that he was able to reasonably evaluate his position and the strengths and weaknesses of his claims and
18 his ability to certify them. Plaintiff has provided the Court with enough information about the nature and
19 magnitude of the claims being settled, as well as the impediments to recovery, to make an independent
20 assessment of the reasonableness of the terms to which the Parties have agreed.

21 9. The Court also finds that settlement now will avoid additional and potentially substantial
22 litigation costs, as well as delay and risks if the Parties were to continue to litigate the Action.

23 10. The Court grants final approval of the Settlement Agreement, including all the terms and
24 conditions set forth therein and the Gross Settlement Amount and allocation of payments, and finds that
25 the Settlement Agreement is, in all respects, fair, adequate, and reasonable, consistent and compliant with
26 all applicable requirements of the California Code of Civil Procedure, the California and United States
27 Constitutions, including the Due Process clauses, the California Rules of Court, and any other applicable
28 law, and in the best interests of each of the Parties and Class Members. The Court finds that the

1 Settlement Agreement has been reached as a result of informed and non-collusive arm's-length
2 negotiations. The Court further finds that the Parties have conducted extensive investigation and
3 research, and their attorneys were able to reasonably evaluate their respective positions. The Court
4 further finds that the allocation of PAGA penalties is fair and reasonable under the circumstances. The
5 Court finds that the Settlement falls within the range of reasonableness, and therefore meets the
6 requirements for approval of a PAGA action settlement and final approval of a Class action settlement.

7 11. The Court directs the Parties to effectuate the Settlement Agreement according to its
8 terms and declares the Settlement Agreement to be binding on all Participating Class Members and all
9 PAGA Members.

10 12. The rights of any potential dissenters to the proposed Settlement were adequately
11 protected. The Notice provided was the best notice practicable and satisfied due process. There were no
12 objections to the Settlement and only four valid requests for exclusion, who are not subject to the class
13 release of claims and will not receive individual settlement awards but will receive their *pro rata* portion
14 of the PAGA penalties.

15 13. The Court confirms Plaintiff Juan Medina as the representative for the Settlement Class
16 conditionally certified by this Order.

17 14. The Court confirms Capstone Law APC as Class Counsel.

18 15. The Court confirms CPT Group, Inc. as the Settlement Administrator.

19 16. Neither this Order, the Settlement Agreement, nor any exhibit, document or instrument
20 delivered thereunder shall be offered, construed or interpreted as or deemed to be evidence of an
21 admission or concession by Released Parties (a) of any liability or wrongdoing by Released Parties, (b)
22 of the appropriateness of certifying a class for purposes of litigation, (c) that Plaintiff's claims may
23 properly be prosecuted on a class or representative basis, (d) that the Released Parties waived any rights
24 under any arbitration agreement, (e) that any arbitration agreement is unenforceable, or (f) of the truth of
25 any allegations asserted by Plaintiff, members of the Class, PAGA Members, or any other person. The
26 Settlement and this Final Approval Order and Order Approving PAGA Settlement shall have no impact
27 on the validity or enforceability of the Arbitration Agreements entered by PAGA Members and Class
28 Members, and the settlement shall not prejudice Defendant or the Released Parties from seeking to

1 enforce such Arbitration Agreements.

2 17. Plaintiff and all Participating Class Members and all persons purporting to act on the
3 Plaintiff or Class Members' behalf, or purporting to assert a claim under or through them, hereby do and
4 shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and
5 discharged Defendant and all other Released Parties¹ of and from any and all Released Class Claims
6 during the Class Period: Any and all claims, causes of action, obligations, demands, disputes, rights,
7 and/or liabilities against the Released Parties during the Class Period, that have been alleged or that could
8 reasonably have been alleged, arising in whole or in part, from the facts or allegations contained in the
9 LWDA Notice, amended Notice, Complaint, First Amended Complaint, and/or Second Amended
10 Complaint, including but not limited to: Any and all claims for off-the-clock-work, alleged unpaid wages
11 (including minimum, regular, overtime, incentive wages, nondiscretionary bonuses, shift differential pay
12 and/or other forms of remuneration), improper payment of and/or failure to pay sick leave, improper
13 calculation of the regular rate of pay for purposes of calculating overtime, untimely wage payments
14 during and/or at the termination of employment, failure to provide meal periods, failure to authorize and
15 permit rest breaks, non-compliant wage statements, noncompliant timekeeping practices, payroll records,
16 or other recordkeeping or maintenance thereof, failure to pay premiums for noncompliant meal periods
17 and/or rest breaks, failure to pay for costs of mandatory physical examinations and/or drug testing, failure
18 to reimburse business expenses, failure to provide notice of material terms of employment, claims under
19 the California Labor Code, including but not limited to Labor Code sections 201, 202, 203, 204, 222.5,
20 226(a), 226.7, 245.5, 246, 246.5, 247, 247.5, 248.5, 249, 510, 511, 512(a), 516, 558, 1174(d), 1182.12,
21 1194, 1197, 1197.1, 1198, 2802, 2810.5(a)(1)(A)-(C), and the Private Attorneys General Act, Section
22 2699, *et seq.*, claims based on or under the California Industrial Welfare Commission Wage Orders and
23 corresponding California Code of Regulations based on any of the preceding allegations and/or claims,
24 claims under the California Business and Professions Code based on any of the preceding allegations
25

26 ¹ "Released Parties" means Defendant and any of Defendant's current, former, and future parent
27 corporations, subsidiaries, divisions, affiliates, partners, shareholders, members, principals, employees,
28 agents, accountants, auditors, consultants, directors, officers, attorneys, landlords, licensees, lessors,
insurers, reinsurers, employee benefit plans and plan fiduciaries, representatives, predecessors,
successors, assigns, transferees, heirs, executors, administrators, and related entities.

1 and/or claims, claims under the Fair Labor Standards Act based on any of the preceding allegations
2 and/or claims; any and all other statutory, local, state, federal, constitutional, contractual or common law
3 claims based on any of the preceding allegations and/or claims; any claims for injunctive relief,
4 declaratory relief, equitable relief, restitution, fraudulent or unfair business practices based on any of the
5 preceding allegations and/or claim; and any and all potential claims and forms of recovery, including but
6 not limited to, damages, liquidated damages, punitive damages, interest, premiums, penalties (including
7 but not limited to waiting time penalties), expenses, attorney's fees, costs, other expenses, and any other
8 forms of remuneration based on any of the preceding allegations and/or claims (collectively, the
9 "Released Class Claims"). The Participating Class Members are bound by the release of the Released
10 Class Claims in their entirety regardless of whether they cash their Individual Settlement Payment.

11 18. Plaintiff and the PAGA Members and all persons purporting to act on the PAGA
12 Members' behalf or purporting to assert a claim under or through them, hereby do and shall be deemed
13 to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all
14 of the Released Parties of and from any and all Released PAGA Claims during the PAGA Period²: Any
15 and all PAGA claims, causes of action, obligations, demands, disputes, rights, and/or liabilities for
16 PAGA penalties against the Released Parties during the PAGA Period that have been alleged or that
17 could reasonably have been alleged, arising in whole or in part, from the facts or allegations contained in
18 the LWDA Notice, amended Notice, Complaint, First Amended Complaint, and/or Second Amended
19 Complaint, including any and all potential claims and forms of recovery, including but not limited to,
20 interest, premiums, penalties (including but not limited to waiting time penalties), expenses, attorney's
21 fees, costs, other expenses, and any other forms of remuneration recoverable under PAGA, predicated on
22 any claims for off-the-clock work, alleged unpaid wages (including minimum, regular, overtime,
23 incentive wages, nondiscretionary bonuses, shift differential pay and/or other forms of remuneration),
24 improper payment of and/or failure to pay sick leave, improper calculation of the regular rate of pay for
25 purposes of calculating overtime, untimely wage payments during and/or at the termination of
26 employment, failure to provide meal periods, failure to authorize and permit rest breaks, non-compliant

27
28 ² "PAGA Period" means the period from February 9, 2020 through March 18, 2022.

wage statements, non-compliant timekeeping practices, payroll records, or other recordkeeping or maintenance thereof, failure to pay premiums for noncompliant meal periods and/or rest breaks, failure to pay for costs of mandatory physical examinations and/or drug testing, failure to reimburse business expenses, failure to provide notice of material terms of employment, and alleged violations of Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 245.5, 246, 246.5, 247, 247.5, 248.5, 249, 510, 511, 512(a), 516, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5(a)(1)(A)-(C), and the Private Attorneys General Act, Section 2699, *et seq.* (collectively, the "Released PAGA Claims"). The PAGA Members are bound by the release of the Released PAGA claims regardless of whether they cash their PAGA Settlement Payment.

19. All Participating Class Members are bound by the Agreement and the Released Class Claims which shall be released as against all of the Released Parties to the greatest extent permitted by law and are bound by the Court's Order enjoining all Participating Class Members from pursuing or seeking to reopen the Released Class Claims against the Released Parties to the greatest extent permitted by law.

20. All PAGA Members shall be bound by the release of the Released PAGA Claims which shall be released as against all of the Released Parties to the greatest extent permitted by law.

21. Class Counsel is bound by the Settlement, the Order Granting Approval of the PAGA Settlement and Preliminary Approval of the Class Settlement, Final Approval Order, and this Judgment. The Parties shall bear their own respective attorneys' fees and costs except as otherwise provided in the Settlement Agreement and the Final Approval Order. In consideration of their awarded Attorney's Fees and Costs, Class Counsel waives all claims to any further attorney's fees and expenses in connection with the Action. The awarded amount shall constitute full and final satisfaction of the obligation to pay any amounts to any person, attorney and/or law firm for attorney's fees, costs or expenses in the Action incurred by any attorney on behalf of the Plaintiff, Class Members, and PAGA Members and shall relieve the Released Parties and the Settlement Administrator of any other claims or liability to any other attorney or law firm for any attorney's fees, costs and expenses to which any of them may claim to be entitled on behalf of the Plaintiff, Class Members or PAGA Members.

22. Plaintiff is bound to the release of claims against Defendant and the other Released

1 Parties and is permanently barred from prosecuting against Defendant and the other Released Parties any
2 and all of Plaintiff's Released Claims as defined in the Agreement and separate general release
3 agreement.

4 23. All PAGA Members, the State of California, LWDA are bound by the Settlement and
5 this Order, including the Released PAGA Claims in favor of Defendant and the other Released Parties as
6 set forth in the Agreement, the Released PAGA Claims are fully, finally, and forever released,
7 relinquished and discharged pursuant to the terms of the Settlement Agreement, and the PAGA
8 Members, the State of California, LWDA are permanently barred and enjoined from prosecuting against
9 Defendants and the other Released Parties any and all of the Released PAGA Claims as defined in the
10 Agreement.

11 24. The Parties shall bear their own respective attorneys' fees and costs except as otherwise
12 provided in the Settlement Agreement and this Order.

13 25. The Court approves the 120-day period for cashing of checks. Any funds associated
14 with stale checks that have not been cashed within 120 days will be sent to the non-profit organization
15 Working Wardrobes.

16
17
18 **IT IS SO ORDERED.**

19 Dated: SEP 21 2023



20 Hon. Charles S. Treat
21 Contra Costa County Superior Court Judge

EXHIBIT A

9:00 AM
CASE NUMBER: MSC21-00154
CASE NAME: MEDINA VS. BIO-RAD
HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS ACTION & PAGA
SETTLEMENT, ATTORNEY FEES & COSTS

TENTATIVE RULING

Plaintiff Juan Medina moves for final approval of his class action and PAGA settlement with defendant Bio-Rad. Plaintiff also moves for approval of attorney fees, litigation and administration costs, and a representative fee.

Since preliminary approval was granted, the administrator has mailed notices to 1,215 class members. 34 packets were returned by the post office. Follow up resulted in 27 new addresses, leaving 7 non-deliverable. No objections have been received; there have been 4 valid opt-out requests.

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A. Background and Settlement Terms

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The entire settlement amount will be deposited with the settlement administrator within 30 days after the effective date of the settlement.

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Formal discovery was undertaken, resulting in the production of substantial documents. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. At the outset, plaintiff acknowledges that the covered employees signed arbitration agreements, so that it would be a steep uphill battle to address alleged violations on a class-action basis. Moreover, arbitration aside, the nature of the asserted violations here, and the factual and legal defenses raised by defendant, would pose a very strong risk that each employee’s claim would need to be addressed on a highly individualized basis, again making class treatment a challenge.

Substantively, the greatest part of plaintiff’s claims center on allegations that defendant’s staffing practices had the practical effect of making it necessary for employees to work outside their assigned hours; and to forgo, or work during, their rest breaks and meal breaks. Defendant asserts that its policies are contrary, calling for rigorous clock-in-and-out practices and allowing employees to take their proper breaks. Defendant also argues that if there were any such violations for individual employees, defendant would have had no way of knowing about them, and that it could not be liable without such knowledge. Plaintiff also alleges that employees were not compensated for required use of their personal cell phones or vehicles. He does not explain, however, how or to what extent that would have occurred. For example, it is by no means obvious how plaintiff himself, a floor manufacturing worker, would have had any occasion to use his phone or vehicle for employer purposes.

In light of these considerations and contentions, the Court is satisfied that the settlement amount – nearly 3 million dollars, and with an average in four figures per employee – is reasonable and satisfactory.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include “stacking” of violations, the law may only allow application of the “initial violation” penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code § 2699(e)(2) [PAGA penalties may be reduced where “based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.”])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is “fair, reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “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 the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction . . . to the proposed settlement.” (See also *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the “fair, reasonable, and adequate” standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness of the settlement’s allocation of civil penalties between the affected aggrieved employees[.]” (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because “[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

C. Attorney Fees and Other Costs

Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund” theory, or \$983,333. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “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 so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)

Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They estimate the lodestar at \$446,890, representing a multiplier of approximately 2.2. No adjustment from the one-third fee is necessary. The attorney’s fees are reasonable and are approved.

The requested representative payment of \$5,000 for the named plaintiff was deferred until this final

approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in support of her request. She points out that she executed a broader release than the class as a whole, but does not identify any particular claims of value that she may have. She also risks damage to her reputation and more difficulty in obtaining employment. The representative payment is approved.

Litigation costs of \$26,914 are requested, which is significantly less than the estimate preliminarily approved. The majority of these are mediation and filing fees. However, there is an unexplained entry for \$10,960 to Desmond, Marcello & Amster, not otherwise identified or explained. Counsel should provide a supplemental declaration explaining who this is, what services it provided, why those services were necessary to the litigation and settlement, and why the amount is so large. Approval of this element of costs is conditional on such satisfactory declaration. Otherwise, the costs sought are reasonable and are approved.

The settlement administrator's costs of \$21,750 are reasonable and are approved.

D. Discussion and Conclusion

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees (based on pay periods) is reasonable.

The motion is granted, subject to filing of a supplemental declaration concerning Desmond, Marcello & Amster as discussed above.

Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined in consultation with the Department's clerk by phone. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court. Pursuant to Code of Civil Procedure § 384(b), after the settlement is completely implemented, the judgment must be amended to reflect the amount paid to the cy pres recipient.