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

JAMIE KENNEDY, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

UNIVAR SOLUTIONS USA INC., a
Washington corporation; and DOES 1
through 50, inclusive,

Defendants.

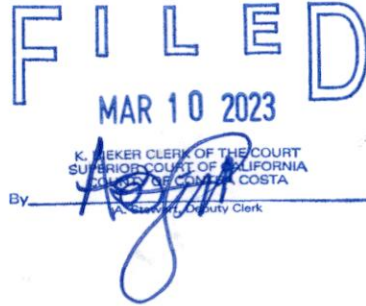
Case No.: MSC21-00272

[Assigned for all purposes to the Hon. Charles S.
Treat, Department 12]

**[PROPOSED] ORDER AFTER HEARING
GRANTING PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: January 26, 2023
Time: 9:00 a.m.
Dept: 12

Complaint Filed: February 16, 2021
Trial Date: Not Set



1 Plaintiff Jamie Kennedy moves for final approval of her class action and PAGA
2 settlement with defendant Univar Solutions USA Inc. The motion is **granted**.

3 **A. Background and Settlement Terms**

4 The original complaint was filed on February 16, 2021, raising claims under PAGA and a
5 class action on behalf of non-exempt employees, alleging that defendant violated the Labor Code
6 in various ways, all of which arose from underpayment of sick pay.

7 The settlement will create a gross settlement fund of \$95,000. The class representative
8 payment to the plaintiff will be \$10,000. Counsel's attorney's fees will be \$31,666.67 (one-third
9 of the settlement). Litigation costs are estimated at \$8,182.70. The settlement administrator
10 (Phoenix) would receive an estimated \$4,500. PAGA penalties would be \$5,000, resulting in a
11 payment of \$3,750 to the LWDA. The net amount paid directly to the class members will be
12 about \$36,900.63. The fund is non-reversionary. There 22 class members. Based on the
13 estimated class size, the average net payment for each class member is approximately \$1,677.30.

14 Defendant will place the maximum settlement amount into an escrow account within 14
15 days after final approval of the settlement.

16 The proposed settlement will certify a class of all "non-union former non-exempt
17 California employees of Defendant who were paid sick pay wages and non-discretionary
18 incentive wages, including, but not limited to, job premium and/or shift differential wages, in the
19 same workweek during their employment and whose employment ended at any time between
20 August 22, 2017, and the date of preliminary approval of the Settlement".

21 Since preliminary approval was granted, the administrator has mailed notices to 22 class
22 members. One packet were returned by the post office, but a corrected address was obtained for
23 that class member, leaving none non-deliverable. No objections or requests to opt out have been
24 received.

25 The class members are not required to file a claim. Funds will be apportioned to class
26 members based on the hourly pay rate during the time period in question.

27 Various prescribed follow-up steps will be taken with respect to mail that is returned as
28 undeliverable. Undelivered or uncashed checks will be voided, and will be paid to a cy pres

1 beneficiary, Legal Aid at Work.

2 The settlement contains release language covering all “class claims,” which are all claims
3 “that were or could have been alleged based on the facts alleged in the Complaint.” Under recent
4 appellate authority, the limitation to those claims with the “same factual predicate” as those
5 alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69
6 Cal.App.5th 521, 537 [“A court cannot release claims that are outside the scope of the allegations
7 of the complaint.” “Put another way, a release of claims that ‘go beyond the scope of the
8 allegations in the operative complaint’ is impermissible.” (Id., quoting *Marshall v. Northrop*
9 *Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

10 Informal discovery was undertaken, resulting in the production of substantial documents,
11 including sick pay policies. The matter settled after arms-length negotiations, which included an
12 all-day session with an experienced mediator on October 20, 2021.

13 Counsel also has provided an analysis of the case, and how the settlement compares to
14 the potential value of the case, after allowing for various risks and contingencies. This included
15 an estimate of class claims at a maximum of about \$150,000, plus another \$7,500 in waiting time
16 penalties. Maximum PAGA penalties are estimated at about \$6,700.

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

24 Counsel attests that his office has provided notice to the Labor and Workforce
25 Development Agency.

26 **B. Legal Standards**

27 The primary determination to be made is whether the proposed settlement is “fair,
28 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,

1 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
2 further litigation, the risk of maintaining class action status through trial, the amount offered in
3 settlement, the extent of discovery completed and the state of the proceedings, the experience
4 and views of counsel, the presence of a governmental participant, and the reaction ... to the
5 proposed settlement.” (See also Amaro, 69 Cal.App.5th 521.)

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

13 California law provides some general guidance concerning judicial approval of any
14 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*
15 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
16 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,
17 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot
18 surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a
19 mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court*
20 (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not
21 always apply, because “[w]here the rights of the public are implicated, the additional safeguard
22 of judicial review, though more cumbersome to the settlement process, serves a salutatory
23 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141
24 Cal.App.4th 48, 63.)

25 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common
26 fund” theory. Even a proper common fund-based fee award, however, should be reviewed
27 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503,
28 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 \$46,680, which would result in a "negative" (actually "below 1") implied multiplier of 0.68. No adjustment from the one-third fee is necessary. The attorney's fees are reasonable and are approved.

The requested representative payment of \$10,000 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 their reputation and more difficulty in obtaining employment. Plaintiff estimates that she spent 15-20 hours on the matter.

Litigation costs of \$8,182.70 are reasonable and are approved.

The settlement administrator's costs of \$4,500 are reasonable and are approved.

C. 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.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Court, for purposes of this Order, adopts all defined terms as set forth in the Settlement Agreement filed in this case.

2. The Court has jurisdiction over the subject matter of the litigation, the Class Representative, the Participating Class Members, and Defendant.

1 3. The Court finds that the dissemination of the Class Notice disseminated to the
2 Class Members, constituted the best notice practicable under the circumstances to all Persons
3 within the definition of the Class, and fully met the requirements of California law and due
4 process under the United States Constitution. No objections were received by the Parties or the
5 Court through the date of this Order. The Court finds that no Class Member submitted a request
6 for exclusion from the Settlement as determined by the Settlement Administrator.

7 4. The Court approves the Settlement of the above-captioned action, as set forth in
8 the Settlement Agreement, as fair, just, reasonable, and adequate as to the Settling Parties. The
9 Settling Parties are directed to perform in accordance with the terms set forth in the Settlement
10 Agreement.

11 5. Except as otherwise provided in the Settlement Agreement, the Settling Parties
12 are to bear their own costs and attorneys' fees.

13 6. The Court hereby certifies the following Settlement Class for settlement purposes
14 only: all non-union former non-exempt California employees of Defendant who were paid sick
15 pay wages and non-discretionary incentive wages, including, but not limited to, job premium
16 and/or shift differential wages, in the same workweek during their employment and whose
17 employment ended at any time between August 22, 2017, and the date of preliminary approval of
18 the Settlement.

19 7. With respect to the Settlement Class and for purposes of approving the Settlement
20 only and for no other purpose, this Court finds and concludes that: (a) the members of the
21 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
22 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
23 community of interest among Members of the Settlement Class with respect to the subject matter
24 of the claims in the Litigation; (c) the claims of Class Representative is typical of the claims of
25 the members of the Settlement Class; (d) the Class Representative has fairly and adequately
26 protected the interests of the members of the Settlement Class; (e) a class action is superior to
27 other available methods for an efficient adjudication of this controversy; and (f) the counsel of
28

1 record for the Class Representative, *i.e.*, Class Counsel, are qualified to serve as counsel for the
2 Plaintiff in his individual and representative capacity and for the Settlement Class.

3 8. Defendant shall fund \$95,000.00 of the total Maximum Settlement Amount
4 pursuant to the terms of the Settlement Agreement.

5 9. The Court approves the individual settlement payment amounts, which shall be
6 distributed pursuant to the terms of the Settlement Agreement.

7 10. The \$95,000.00 Maximum Settlement Amount shall be used to pay (a) Class
8 Counsel attorneys' fees in the amount of \$31,666.67 and reimbursement of costs in the amount
9 of \$8,182.70; (b) an enhancement payment to the Class Representative Jamie Kennedy to
10 reimburse her for her unique services in the following amount: \$10,000.00; (c) the sum of
11 \$3,750.00 to be paid to the State of California Labor & Workforce Development Agency for
12 PAGA penalties; and (d) \$4,500.00 to the administrator Phoenix Settlement Administrators (the
13 "Settlement Administrator") for its fees and costs relating to the settlement administration
14 process. The Court finds that these amounts are fair and reasonable. Defendant is directed to
15 make such payments in accordance with the terms of the Settlement Agreement. The allocation
16 and distribution of these amounts shall be performed by Settlement Administrator.

17 11. As of the date of this Order, all Participating Class Members are hereby deemed
18 to have waived and released all Released Claims and are forever barred and enjoined from
19 prosecuting the Released Claims against the Released Parties as these terms are defined and fully
20 set forth in the Settlement Agreement. The Settlement is not an admission of liability or
21 wrongdoing by Defendant, nor is this Order a finding of the validity of any claims in the Action,
22 as defined in the Settlement Agreement, or of any fault, omission, or wrongdoing by Defendant.
23 Neither the Settlement Agreement, nor any document referenced therein, nor action taken to
24 carry out the Settlement, will be (a) construed or used as an admission, concession, or indication
25 by or against Defendant of any fault, wrongdoing, or liability, including any concession that
26 certification of a class other than for purposes of settlement would be appropriate in the Action
27 or in any other case or an admission that any of Defendant's defenses in the Action are without
28 merit, or (b) disclosed, referred to, or offered in evidence against Defendant in any further

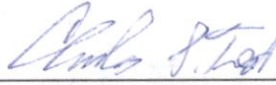
1 proceeding except for purposes of effectuating the Settlement. However, the Settlement
2 Agreement may be used in any proceeding to enforce its terms, or in defense of any claims
3 released or barred by the Settlement.

4 12. Without affecting the finality of the Settlement or Judgment entered, this Court
5 shall retain exclusive and continuing jurisdiction over the action and the Parties, including all
6 Settlement Class Members, for purposes of enforcing and interpreting this Order and the
7 Settlement.

8 13. A compliance hearing is set for December 7, 2023 at 9am in this Department.
9 Plaintiff's counsel shall submit a compliance statement one week prior to the compliance
10 hearing. Five percent of the attorney's fees are to be withheld by the claims administrator
11 pending satisfactory compliance as found by the Court. Pursuant to Code of Civil Procedure §
12 384(b), after the settlement is completely implemented, the judgment must be amended to reflect
13 the amount paid to the cy pres recipient.

14 IT IS SO ORDERED AND ADJUDGED.

15
16 DATED: 5/8/23


HON. CHARLES S. TREAT
SUPERIOR COURT OF CALIFORNIA