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Attorneys for Plaintiff
PATRICK BURNS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

PATRICK BURNS in his individual and
representative capacities,

Plaintiff,

v.

POWER PARAGON, INC. and DOES 1
through 10, inclusive,

Defendants.

Case No.: 30-2021-01197621-CU-OE-CXC

Assigned to: Hon. Lon Hurwitz, Dept. CX-103

NOTICE OF RULING

1 **TO ALL PARTIES AND THE LABOR AND WORKFORCE DEVELOPMENT**
2 **AGENCY:**

3 **PLEASE TAKE NOTICE THAT** on February 9, 2024, the court in the above-captioned
4 action issued an order continuing the hearing on Plaintiff's Motion for Preliminary Approval of
5 Class Action and PAGA Settlement to March 22, 2024. A copy of the Court's order is attached
6 hereto as **Exhibit A**.

7 Dated: February 13, 2024

Law Offices of Corbett H. Williams

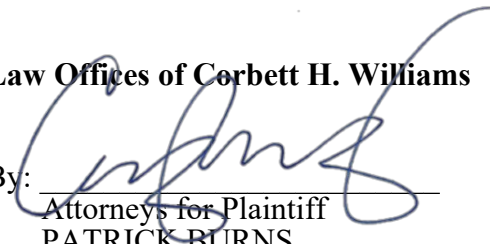
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9 By: 
10 Attorneys for Plaintiff
11 PATRICK BURNS
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EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 02/09/2024

TIME: 01:30:00 PM

DEPT: CX103

JUDICIAL OFFICER PRESIDING: Lon F. Hurwitz

CLERK: M. Diaz

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: D. Miranda

CASE NO: **30-2021-01197621-CU-OE-CXC** CASE INIT.DATE: 04/28/2021

CASE TITLE: **Burns vs. Power Paragon, Inc.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 74141826

EVENT TYPE: Motion for Approval of Class Settlement

MOVING PARTY: Patrick Burns

CAUSAL DOCUMENT/DATE FILED: Motion - Other for preliminary approval of class action and paga settlement, 08/14/2023

APPEARANCES

There are no appearances by any party.

Tentative Ruling posted on the Internet .

Plaintiff e-mailed the courtroom on behalf of all parties to submit on the Court's tentative ruling.

The Court confirms the tentative ruling as follows:

Motion for Preliminary Approval of Class Action and PAGA Settlement

FACTS/OVERVIEW: This is a putative wage-and-hour class action and PAGA matter. On April 28, 2021, Plaintiff Patrick Burns, in his individual and representative capacities ("Plaintiff"), filed the original Complaint against Defendant Power Paragon, Inc. ("Defendant"). (ROA 2). The Complaint alleged six causes of action for:

1. Violation of Labor Code §§ 510, 1194, and 1197.1 (Unpaid Overtime Wages);
2. Violation of Labor Code § 2802(a) (Failure to Indemnify Necessary Expenditures);
3. Violation of Labor Code §§ 226.7, 226.7(b), and 512 (Meal Periods);
4. Violation of Labor Code § 226.7 (Rest Breaks);
5. Violation of Bus. & Prof. Code §§ 17200 et seq.; and
6. Civil Penalties Under the Private Attorneys General Act

On May 5, 2021, as a matter of right, Plaintiff filed the operative First Amended Complaint ("FAC") wherein he dropped the PAGA claim, added a cause of action for inaccurate and non-compliant wage statement, and added Labor Code section 1194.2 to the first cause of action for unpaid overtime wages. (ROA 10). Defendant is a subsidiary of L3Harris, a publicly traded technology services and defense

contractor. Defendant provides engineering, manufacturing, and integration of power conversion and distribution systems. Plaintiff worked for Defendant as a Field Service Engineer and was classified as "exempt." [FAC, ¶¶ 3, 11.]

On September 7, 2021, Defendant filed a Notice of Removal to United States District Court. (ROA 20). On July 11, 2023, the federal district court entered an Order granting the parties' stipulation to vacate the hearing on Plaintiff's motion for class certification and remand the matter to Orange County Superior Court "for purposes of approval of the parties' settlement only." (ROA 31).

On August 14, 2023, Plaintiff filed the current Motion for Preliminary Approval of Class Action and PAGA Settlement. (ROA 42.) At the hearing on November 3, 2023, the Court continued the matter so that Plaintiff and/or counsel could provide: (1) a copy of the Second Amended Complaint filed in the federal action; (2) a copy of the PAGA notice to the LWDA; and (3) a proper, detailed valuation of each of Plaintiff's claims.

On January 25, 2024, counsel filed a supplemental declaration and attached a copy of the Second Amended Complaint from the federal action. (ROA 51, Supplemental Declaration of Corbett H. Williams ("Counsel Supp. Decl."), ¶ 2.) The SAC alleges eight causes of action for:

1. Violation of Labor Code §§ 510, 1194, 1194.2, 1197, and 1197.1;
2. Violation of Labor Code § 2802(a);
3. Violation of Labor Code §§ 226.7, 226.7(b), and 512 (Meal Periods);
4. Violation of Labor Code § 226.7 (Rest Breaks);
5. Violation of Labor Code § 226;
6. Violation of Bus. & Prof. Code §§ 17200, et seq.;
7. PAGA Penalties; and
8. Violation of the Fair Labor Standards Act.

SUMMARY OF THE SETTLEMENT:

A copy of the fully executed Class and Representative Action Settlement Agreement is attached to counsel's prior declaration as Exhibit 1. (ROA 39.)

Class Definition: "All current and former Field Service Engineers (which includes individuals who held the following positions: Principal Field Service Engineer II/Senior Specialist Field Engineering; Specialist, Field Engineering/Principal Field Engineer; Senior Associate Field Engineering/Field Engineer) Employed by Power Paragon, Inc. from April 28, 2017 through the date of preliminary approval." [Settlement, § I.B.]

Class Period: April 28, 2017 through the date of preliminary approval.

Estimated Class Size: 46 individuals [Counsel Decl., ¶ 4; Counsel Supp. Decl., ¶ 5.]

Gross Settlement Amount ("GSA"): \$600,000.00 GSA excludes any employer-side payroll taxes, and Defendant will separately remit the employer's share of payroll taxes to the settlement administrator. [Settlement, § III.A.]

\$ 180,000.00 Attorneys' fees (30% of GSA)
\$ 20,000.00 Litigation costs (not to exceed)
\$ 5,250.00 Administration costs
\$ 15,000.00 Enhancement
\$ 30,000.00 PAGA Penalties (\$22,500 to
LWDA, \$7,500 to employees)

\$ 357,250.00 Net Settlement Amount

Escalator Clause: None provided.

ISSUE: The lack of an escalator clause is problematic since the individual settlement payments are calculated by dividing the number of workweeks worked by the Class Member by the total workweeks worked by the Class. Counsel attests there are approximately 46 Class Members, but does not provide information about the estimated total workweeks—only that the estimated payment will be \$7,875.00. If the actual total number of workweeks exceeds the estimated number of workweeks supporting this calculation, then the individual payments will be reduced by an undetermined amount. This increases the probability that the Court will not approve the settlement.

Payments to Class:

How Calculated? Pro rata based on number of Workweeks. [Settlement, § III.C.]

PAGA Payments – not provided

Reversion? No

Claims Made? No.

Taxation? Not provided

Uncashed Checks uncashed after 180 days will Checks? be disbursed to cy pres, Public Law Center. [Id., § III.F.10.]

Average Pymt? Class payments - \$7,875.00 approx.

ISSUE: Settlement does not provide any information on PAGA payments to the employees, or how the individual settlement payments are allocated with regards to taxes. Counsel also has not provided information about the average, high, and low individual settlement payments. Sections III.F.10 and III.F.11.a are inconsistent regarding the identity of the cy pres recipient. One says “Public Law Center” and the other says “Legal Aid at Work”.

CERTIFICATION OF CLASS:

The party seeking class certification must establish three things: “(1) the existence of an ascertainable and sufficiently numerous class, (2) a well-defined community of interest, and (3) substantial benefits from certification that render proceeding as a class superior to the alternatives.” (Brinker Restaurant Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1021.)

It appears that these elements are met, and the proposed class can be conditionally certified for settlement purposes. The parties agree to conditional certification of the class for settlement purposes. The class appears to be ascertainable, sufficiently numerous, and well-defined.

SETTLEMENT ISSUES:

1. Released Class Claims: All claims alleged in the operative complaint, or that could have been alleged arising out of or reasonably related to the facts, which accrued during Class Period, including all claims arising out of or relating to the alleged misclassification of Class Members, and any claims for unpaid wages, minimum wages, regular wages, overtime wages, expense reimbursement, wage statements, payroll recordkeeping, reporting time, improper deduction of wages, meal period and rest break

premiums, sick leave, final pay, timely payment of wages, waiting time penalties, and unfair business practices. Excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, workers' compensation, and claims outside of Release Period. [Settlement, § III.G.1.]

2. Released Plaintiff's Claims: All claims, whether known or unknown by the releasing party. Even if Plaintiff later discovers facts and/or claims different from those she now knows, those claims will remain released and forever barred. Includes section 1542 waiver. Excludes claims for workers' compensation or any other claim that cannot be released as a matter of law. [Id., § III.G.2.]

ISSUE: The underlined language should be deleted because it is a prohibited injunction.

3. Valuation of Claims:

ISSUE: Counsel does not provide any specific information regarding the valuation of claims. Counsel only generally attests to the risks of litigation, and that that it is estimated the Class is owed \$1,662,000 for unpaid overtime, premiums for meal and rest periods, and unreimbursed expenses. [Counsel Decl., ¶ 14.] Counsel must provide details of valuation so that the Court can determine if the settlement is fair and reasonable.

4. Requests for Exclusion: Class Members have 45 days from mailing of Class Notice to opt out of Settlement. Opt out request must be mailed to settlement administrator. Administrator can demand additional proof of identity if questions about authenticity of request, and will notify if request is deficient. Class member will have until end of 45-day period plus 3 days to cure. [Settlement, § III.F.4.c.]

ISSUE: Must provide for 45-day period for Class Members to submit opt out request after remailing. Must provide that Court retains final authority as to validity and authenticity of opt out requests.

5. Objections: Class Member must submit objection with 45 days after mailing of Class Notice. Class Member may object orally at Final Approval hearing. [Id., § III.F.4.a]

ISSUE: Must provide for 45-day period to object after remailing of Class Notice. Must also explain how objections may be "submitted" to the settlement administration (i.e., fax, mail, email).

6. Disputes: Class Member must submit dispute to workweeks within 45 days after mailing of Class Notice. Any dispute shall be resolved by settlement administrator. Dispute must be submitted in writing. [Ibid.]

ISSUE: Must provide for 45-day period to dispute after remailing of Class Notice. Must also explain how dispute must be submitted (i.e., fax, mail, email).

7. Attorneys' Fees and Costs: Class Counsel will request attorneys' fees of 30% of GSA, or not more than \$180,000.00. Also will seek award of litigation costs not to exceed \$20,000.00. [Id., § III.B.b.]

ISSUE: At Final Approval, counsel must provide billing records or summary in support of fees, and documentation in support of costs. Must also disclose whether there is a fee-splitting arrangement with any other counsel, or confirm none exists.

8. Enhancements: Named Plaintiff to receive enhancement of not more than \$15,000.00.

ISSUE: Enhancement of \$15,000 is considerably more than the \$5,000 enhancement usually approved by the Court. Counsel and Named Plaintiff must provide declarations to support request for such a high enhancement award.

9. Settlement Administrator: Parties have selected Phoenix Class Action Administration Solutions as the settlement administrator. Administrator will be paid an amount not to exceed \$5,250.00 for administration costs.

ISSUE: Settlement does not state whether administrator will post Complaint, Settlement Agreement, Class Notice, and Orders for Preliminary Approval on its website. Amount of administration costs seems low compared to amount of GSA and number of Class Members. At Final Approval, administrator must provide invoice of administration fees and expenses.

10. Notice to LWDA:

ISSUE: Counsel has not provided proof of notice to the LWDA.

11. Concurrent Pending Cases:

ISSUE: Counsel must attest as to whether there are any concurrent pending cases or confirm there are none.

12. Concurrent Jurisdiction: Settlement generally states that Court will have continuing jurisdiction over the Action and Settlement for purposes of enforcement, addressing settlement administration matters, and other post-Judgment matter.

ISSUE: The provision should state that the Court's continuing jurisdiction is pursuant to CCP § 664.6 and CRC 3.769(h).

ISSUES RE CLASS NOTICE:

The proposed Class Notice is attached as Exhibit A to the Settlement Agreement. The following issues need to be addressed:

1. The Notice is to be revised consistent with the issues identified above.
2. Section 3 of Notice states that Class Members will be issued IRS W-2 forms for the full amount of their individual settlement payment. This is not stated in the Settlement Agreement, and this is an unusual provision. Usually settlement payments are allocated partially to wages and partially to penalties and non-wage damages. Also does not take into account portion of settlement payment that are PAGA penalties.

ISSUES RE PROPOSED ORDER: (ROA 40)

1. The Proposed Order is to be revised consistent with the issues identified above.
2. Caption should state it is for preliminary approval of Class Action and PAGA Settlement.
3. The Settlement Agreement must be identified by the ROA number of the declaration to which it is attached.
4. Paragraph 3 should provide an actual proposed date for the Final Approval hearing.
5. Paragraph 7 should provide the monetary amount of attorneys' fees to be awarded.
6. Paragraph 13 should provide for a 45-day period after remaining of the Class Notice for opt out requests, objections, and disputes.
7. Proposed Order should include provision regarding procedure to dispute workweeks.
8. Must include paragraph regarding Court's continuing jurisdiction pursuant to CCP s 664.6 and CRC 3.769(h).
9. Should include paragraph advising how Class Members will be notified of final judgment.

RULING:

The hearing on the Motion for Preliminary Approval of Class Action Settlement is **CONTINUED** to March 22, 2024, at 1:30 p.m. in Department CX103 so that counsel may address the issues identified above.

Counsel must file supplemental papers addressing the Court's concerns no later than fourteen (14) calendar days prior to the continued hearing date. Counsel must also provide red-lined versions of all revised papers. Counsel must also provide an explanation of how the pending issues were resolved, with precise citation to any corrections or revisions. A supplemental declaration or brief that simply asserts the issues have been resolved is insufficient and will result in a continuance.

Clerk to give notice to counsel.

Plaintiff to give notice of this Court's ruling, including to the LWDA, within five (5) calendar days, and file proof of service.

CERTIFICATE OF SERVICE

I, Corbett H. Williams, declare as follows:

I am employed in the County of Orange, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 24422 Avenida de la Carlota, Suite 370, Laguna Hills, California, 92653, in said County and State. On **February 13, 2024**, I served the following document(s):

NOTICE OF RULING

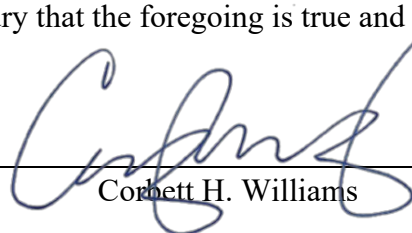
on the following parties:

Rafael G Nendel-Flores
Clark Hill LLP
1055 West 7th Street Suite 2400
Los Angeles, CA 90017
213-891-9100
Fax: 213-488-1178
Email: rnendelflores@clarkhill.com

by the following means of service:

- ☐ **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY OVERNIGHT SERVICE:** On the above-mentioned date, I placed a true copy of the above mentioned document(s), together with an unsigned copy of this declaration, in a sealed envelope or package designated by Federal Express with delivery fees paid or provided for, addressed to the person(s) as indicated above and deposited same in a box or other facility regularly maintained by Federal Express or delivered same to an authorized courier or driver authorized by Federal Express to receive documents.
- ☒ **BY ELECTRONIC SERVICE:** I caused a true copy of the above-mentioned document(s) to be served electronically through the electronic service platform of Janney & Janney Legal Support Service, to the email address(es) listed above, which is/are the email address listed in the Janney & Janney web portal for this case.
- ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☐ **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct.

Executed on **February 13, 2024**.


Corbett H. Williams

CERTIFICATE OF SERVICE

I, Corbett H. Williams, declare as follows:

I am employed in the County of Orange, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 24422 Avenida de la Carlota, Suite 370, Laguna Hills, California, 92653, in said County and State. On **February 13, 2024**, I served the following document(s):

NOTICE OF RULING

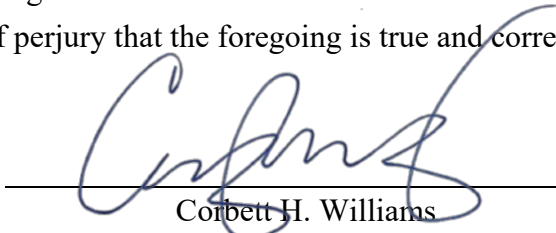
on the following parties:

Labor and Workforce Development Agency

by the following means of service:

- ☐ **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY OVERNIGHT SERVICE:** On the above-mentioned date, I placed a true copy of the above mentioned document(s), together with an unsigned copy of this declaration, in a sealed envelope or package designated by Federal Express with delivery fees paid or provided for, addressed to the person(s) as indicated above and deposited same in a box or other facility regularly maintained by Federal Express or delivered same to an authorized courier or driver authorized by Federal Express to receive documents.
- ☒ **BY ELECTRONIC SERVICE:** I caused a true copy of the above-mentioned document(s) to be uploaded through the Labor and Workforce Development Agency's internet PAGA portal at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.
- ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☐ **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct.

Executed on **February 13, 2024**.


Corbett H. Williams