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12 Attorneys for Plaintiff, the Class, and Aggrieved Employees

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF CONTRA COSTA**

16 TONY CATELLI, as an individual and on
17 behalf of all others similarly situated,

18 Plaintiffs,

19 vs.

20 INNOVATIVE CONSTRUCTION
21 SOLUTIONS, a California corporation; and
22 DOES 1 through 50, inclusive,

23 Defendants.

Case No.: MSC21-01257

(Assigned for all purposes to the Honorable
Charles S. Treat, Department 12)

24 ~~PROPOSED~~ **ORDER AFTER HEARING**
25 **GRANTING PLAINTIFF'S MOTION FOR**
26 **PRELIMINARY APPROVAL OF CLASS**
27 **ACTION SETTLEMENT**

28 Date: January 19, 2023
Time: 9:00 a.m.
Dept.: 12

Complaint Filed: June 1, 2021
Trial Date: None Set

1 Plaintiff Tony Catelli moves for preliminary approval of his class action and PAGA
2 settlement with defendant Innovative Construction Solutions. The proposed class consists of
3 approximately 129 employees who received initial pay statements during the identified class
4 period.

5 **A. Background and Settlement Terms**

6 The original complaint was filed on June 1, 2021. It remains the operative complaint. The
7 alleged violations are of a technical nature. Defendant is not alleged to have underpaid or
8 undercompensated any employees. Rather, the allegation is that the pay statements issued to the
9 employees failed to identify the dates of the relevant pay period. Further, in discovery it was
10 ascertained that in fact this was true only of each employee's initial pay statement after hiring; all
11 subsequent pay statements were in proper compliance.

12 The settlement would create a gross settlement fund of \$30,000. The class representative
13 payment to the plaintiff would be \$2,500. Attorney's fees would be \$10,000 (one-third of the
14 settlement). Litigation costs would not exceed \$5,000. The settlement administrator's costs
15 (ILYM) are estimated at \$4,250. PAGA penalties would be \$2,000, resulting in a payment of
16 \$1,500 to the LWDA. The net amount paid directly to the class members would be about \$6,250
17 plus an additional \$500 from the PAGA penalties. The fund is non-reversionary. There are an
18 estimated 129 class members. Based on the estimated class size, the average net payment for
19 each class member is approximately \$48.45.

20 The entire settlement amount will be deposited with the settlement administrator within
21 10 days after final approval of the settlement.

22 The proposed settlement would certify a class of all current and former non-exempt
23 employees employed at Defendants' California facilities who received initial pay statements
24 between June 1, 2020 through April 26, 2021.

25 The class members will not be required to file a claim. Class members may object or opt
26 out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the
27 settlement.)
28

1 Various prescribed follow-up steps will be taken with respect to mail that is returned as
2 undeliverable. Any unclaimed or uncashed funds will go to the Controller under the Unpaid
3 Property Law.

4 The settlement contains release language covering “All causes of action and factual or
5 legal theories that were alleged in the Class Action Complaint based upon Defendant’s alleged
6 failure to provide the beginning and/or ending dates on the Class Members’ Initial Physical
7 Wage Statements.” Under recent appellate authority, the limitation to those claims with the
8 “same factual predicate” as those alleged in the complaint is critical. (Amaro v. Anaheim Arena
9 Mgmt., LLC (2021) 69 Cal.App.5th 521, 537 [“A court cannot release claims that are outside the
10 scope of the allegations of the complaint.” “Put another way, a release of claims that goes
11 beyond the scope of the allegations in the operative complaint’ is impermissible.” (Id., quoting
12 Marshall v. Northrop Grumman Corp. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.) Here, the scope
13 of the release is actually narrower than the claims in the complaint, because it is limited to initial
14 wage statements (the only ones found in discovery to feature the alleged defect).

15 Formal discovery was undertaken, resulting in the production of substantial documents.
16 The matter settled after arms-length negotiations.

17 Counsel also has provided an analysis of the case, and how the settlement compares to
18 the potential value of the case, after allowing for various risks and contingencies. This included
19 an estimate of class claims at a “maximum possible liability” of about \$38,700, including
20 derivative PAGA penalties. The settlement is about 77% of that amount.

21 The potential liability needs to be adjusted for various evidence and risk-based
22 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a
23 number of reasons: they derive from other violations, they include “stacking” of violations, the
24 law may only allow application of the “initial violation” penalty amount, and the total amount
25 may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties
26 may be reduced where “based on the facts and circumstances of the particular case, to do
27 otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.”])
28

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

3 **B. Legal Standards**

4 The primary determination to be made is whether the proposed settlement is “fair,
5 reasonable, and adequate”, under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,
6 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
7 further litigation, the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and the state of the proceedings, the experience
9 and views of counsel, the presence of a governmental participant, and the reaction ... to the
10 proposed settlement.” (See also *Amaro v. Anaheim Arena Mgmt., LLC*, *supra*, 69 Cal.App.5th
11 521.)

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

19 California law provides some general guidance concerning judicial approval of any
20 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*
21 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
22 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,
23 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot
24 surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a
25 mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court*
26 (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not
27 always apply, because “[w]here the rights of the public are implicated, the additional safeguard
28 of judicial review, though more cumbersome to the settlement process, serves a salutary

1 purpose.” (Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America (2006) 141
2 Cal.App.4th 48, 63.)

3 **C. Attorney fees**

4 Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common
5 fund” theory. Even a proper common fund-based fee award, however, should be reviewed
6 through a lodestar cross-check. In Lafitte v. Robert Half International (2016) 1 Cal.5th 480, 503,
7 the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the
8 percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar
9 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
10 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
11 court is not necessarily required to make such an adjustment.” (Id., at 505.) Following typical
12 practice, however, the fee award will not be considered at this time, but only as part of final
13 approval.

14 Similarly, litigation costs and the requested representative payment of \$2,500 will be
15 reviewed at time of final approval. Criteria for evaluation of representative payment requests are
16 discussed in Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-07.

17 **D. Discussion and Conclusion**

18 The Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify
19 preliminary approval.

20 Counsel will be directed to prepare an order reflecting this entire tentative ruling, the
21 other findings in the previously submitted proposed order, and to obtain a hearing date for the
22 motion for final approval from the Department clerk. Other dates in the scheduled notice process
23 should track as appropriate to the hearing date. The ultimate judgment must provide for a
24 compliance hearing after the settlement has been completely implemented. Plaintiffs’ counsel are
25 to submit a compliance statement one week before the compliance hearing date. Five percent of
26 the attorney’s fees are to be withheld by the claims administrator pending satisfactory
27 compliance as found by the Court.

28 **NOW THEREFORE, IT IS HEREBY ORDERED:**

1 1. The Court grants preliminary approval to the settlement based on the terms set
2 forth in Settlement Agreement. This Order incorporates by reference the definitions in the
3 Settlement Agreement, and all terms defined therein shall have the same meaning in this Order
4 as set forth in the Settlement Agreement.

5 2. The settlement provides for Defendant to pay the Maximum Settlement Amount
6 of \$30,000.00. The Court preliminarily finds that the settlement is fair, adequate, and reasonable
7 to the Class, and preliminarily approves the terms of the settlement. This preliminary approval is
8 subject to the objections of Class Members and final review by the Court.

9 3. A Final Approval Hearing shall be held before this Court on June 8, 2023, at 9:00
10 a.m. in Department 12 of the Superior Court of the State of California for the County of Contra
11 Costa, to determine all necessary matters concerning the settlement, including: whether the
12 proposed settlement of the Action on the terms and conditions provided for in the settlement is
13 fair, adequate, and reasonable and should be finally approved by the Court; whether the Final
14 Approval Order and Judgment should be entered; whether the Plan of Allocation contained in the
15 settlement should be approved as fair, adequate, and reasonable to the Class Members; and
16 whether to finally approve the PAGA Allocation, Attorneys' Fees and Costs, Class
17 Representative Enhancement Payment, and Settlement Administration Costs. The motion for
18 final approval and the motion for award of attorneys' fees and costs shall be filed no later than
19 sixteen (16) court days before the Final Approval Hearing.

20 4. The Court recognizes that the Plaintiff and the Defendant stipulate and agree to
21 certification of the Class for settlement purposes only. This stipulation will not be deemed
22 admissible in this or any other proceeding should this settlement not become final. Whether or
23 not the settlement is finally approved, neither the Settlement Agreement, nor any document,
24 statement, proceeding, or conduct related to the Settlement Agreement may be admitted in any
25 proceeding as an admission by Defendant or any of the Released Parties, the Plaintiff, or any
26 person within the definition of the Class.

27 5. The Class Period is from June 1, 2020, through April 26, 2021. The PAGA Period
28 is from April 13, 2020, through April 26, 2021. For settlement purposes only, the Court certifies

1 the following Class: "all current and former employees of Defendant who worked in California
2 and received an Initial Physical Wage Statement during the Class Period."

3 6. The Court hereby appoints Tony Catelli as the representative of the Class. The
4 Court further appoints Diversity Law Group, P.C. and Polaris Law Group as counsel for the
5 Class ("Class Counsel").

6 7. The Court hereby approves, as to form and content, the Notice of Settlement
7 attached as Exhibit A to the Settlement Agreement. The Court finds that the distribution of the
8 Notice of Settlement substantially in the manner and form set forth in the Settlement Agreement
9 and this Order meets the requirements of due process, is the best notice practicable under the
10 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
11 Court hereby approves on a preliminary basis the Maximum Settlement Amount as provided for
12 in the Settlement Agreement. It appears to the Court on a preliminary basis that the settlement
13 amount and terms are fair, adequate, and reasonable as to all potential Class Members when
14 balanced against the probable outcome of further litigation relating to liability and damages
15 issues. It further appears that: investigation and research have been conducted such that counsel
16 for the Parties at this time are able to reasonably evaluate their respective positions; that
17 settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the
18 delay and risks that would be presented by the further prosecution of the Action; and that the
19 settlement has been reached as the result of intensive, serious, and non-collusive, arm's-length
20 negotiations.

21 8. The Court hereby appoints Phoenix Settlement Administrators as Settlement
22 Administrator. Within 21 days of this Order, Defendant will provide to the Settlement
23 Administrator an electronic database containing the Class List. Within 10 days of receipt of the
24 Class List from Defendant, the Settlement Administrator will mail the Notice of Settlement to all
25 Class Members via first-class regular U.S. Mail to their most current, known mailing address.

26 9. Any Class Member may choose to opt out of and be excluded from the Class as
27 provided in the Notice of Settlement by following the instructions for requesting exclusion from
28 the Class that are set forth in the Notice of Settlement. PAGA Employees may not opt out of the

1 PAGA portion of the settlement. All Requests for Exclusion must be submitted within forty-five
2 (45) days from the date the Notice of Settlement is first mailed. Any such person who chooses to
3 opt out of and be excluded from the Class will not be entitled to any recovery under the non-
4 PAGA portion of the settlement and will not be bound by the non-PAGA portion of the
5 settlement or have any right to object, appeal, or comment thereon. Any written request to opt
6 out must comply with the instructions in the Notice of Settlement and be signed by each such
7 person opting out. Class Members who have not validly requested exclusion shall be bound by
8 all determinations of the Court, the Agreement, and the Judgment.

9 10. Any Class Member who has not opted out may appear at the final approval
10 hearing and may object or express their views regarding the settlement and may present evidence
11 and file briefs or other papers that may be proper and relevant to the issues to be heard and
12 determined by the Court as provided in the Notice of Settlement. Class Members will have 45
13 days from the date the Notice of Settlement is mailed to postmark their written objections to the
14 Settlement Administrator. Class Members who fail to timely submit objections in the manner
15 specified above shall be deemed to have waived any objections and shall be foreclosed from
16 making any objection (whether by appeal or otherwise) to the settlement.

17 11. The settlement is not a concession or admission and shall not be used against
18 Defendant as an admission or indication with respect to any claim of any fault or omission by
19 Defendant. Whether or not the settlement is finally approved, neither the settlement, nor any
20 document, statement, proceeding, or conduct related to the settlement, nor any reports or
21 accounts thereof, shall in any event be construed as, offered, or admitted in evidence as, received
22 as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited
23 to, evidence of a presumption, concession, indication, or admission by Defendant of any liability,
24 fault, wrongdoing, omission, concession, or damage.

25 12. In the event the settlement does not become effective in accordance with the
26 terms of the Settlement Agreement, or the settlement is not finally approved, or is terminated or
27 fails to become effective for any reason, this Order shall be rendered null and void and shall be
28 vacated, and the Parties shall revert to their respective positions as of before entering into the

1 Settlement Agreement.

2 13. The Court reserves the right to adjourn or continue the date of the final approval
3 hearing and all dates provided for in the Settlement Agreement without further notice to Class
4 Members and retains jurisdiction to consider all further applications arising out of or connected
5 with the proposed settlement.

6 14. The February 27, 2023 Case Management Conference is hereby vacated.

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8 **IT IS SO ORDERED.**

9 DATED: JAN 24 2023

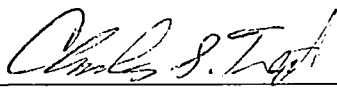

HON. CHARLES S. TREAT
SUPERIOR COURT OF CALIFORNIA

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 01/19/2023

6. 9:00 AM CASE NUMBER: MSC20-01810
CASE NAME: ALAMILLO VS ALAMILLO REBAR, INC. ET AL
HEARING ON DEMURRER TO: BY DEF PACIFIC STEEL GROUP TO PLTFS 3RD AMENDED COMPLAINT
FILED BY: PACIFIC STEEL GROUP
TENTATIVE RULING:

Department 12 was disqualified in this case in 2020. The case has been reassigned to Department 9.

7. 9:00 AM CASE NUMBER: MSC21-01257
CASE NAME: CATELLI VS. INNOVATIVE CONSTRUCTION
*HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
FILED BY: CATELLI, TONY
TENTATIVE RULING:

Plaintiff Tony Catelli moves for preliminary approval of his class action and PAGA settlement with defendant Innovative Construction Solutions. The proposed class consists of approximately 93 employees who received initial pay statements during the identified class period.

A. Background and Settlement Terms

The original complaint was filed on June 1, 2021. It remains the operative complaint. The alleged violations are of a technical nature. Defendant is not alleged to have underpaid or undercompensated any employees. Rather, the allegation is that the pay statements issued to the employees failed to identify the dates of the relevant pay period. Further, in discovery it was ascertained that in fact this was true only of each employee's initial pay statement after hiring; all subsequent pay statements were in proper compliance.

The settlement would create a gross settlement fund of \$30,000. The class representative payment to the plaintiff would be \$2,500. Attorney's fees would be \$10,000 (one-third of the settlement). Litigation costs would not exceed \$5,000. The settlement administrator's costs (ILYM) are estimated at \$4,250. PAGA penalties would be \$2,000, resulting in a payment of \$1,500 to the LWDA. The net amount paid directly to the class members would be about \$10,250. The fund is non-reversionary. There are an estimated 193 class members. Based on the estimated class size, the average net payment for each class member is approximately \$48.45.

The entire settlement amount will be deposited with the settlement administrator within 10 days after final approval of the settlement.

The proposed settlement would certify a class of all current and former non-exempt employees employed at Defendants' California facilities who received initial pay statements between

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 01/19/2023

June 1, 2020 through April 26, 2021.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.)

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Any unclaimed or uncashed funds will go to the Controller under the Unpaid Property Law.

The settlement contains release language covering "All causes of action and factual or legal theories that were alleged in the Class Action Complaint based upon Defendant's alleged failure to provide the beginning and/or ending dates on the Class Members' Initial Physical Wage Statements." Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.) Here, the scope of the release is actually narrower than the claims in the complaint, because it is limited to initial wage statements (the only ones found in discovery to feature the alleged defect).

Formal discovery was undertaken, resulting in the production of substantial documents. The matter settled after arms-length negotiations.

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. This included an estimate of class claims at a "maximum possible liability" of about \$38,700, including derivative PAGA penalties. The settlement is about 77% of that amount.

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,

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
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HEARING DATE: 01/19/2023

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*, *supra*, 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

Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common fund” theory. 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.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative payment of \$2,500 will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07.

D. Discussion and Conclusion

The Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify preliminary approval.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 01/19/2023

Counsel will be directed to prepare an order reflecting this entire tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. 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.

8. 9:00 AM CASE NUMBER: MSC21-02153
CASE NAME: TORRES VS. KIPER DEVELOPMENT
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
FILED BY: TORRES, GILBERTO
TENTATIVE RULING:

Counsel to appear, by zoom if preferred.

The motion for preliminary approval appears proper in most respects, and may well be appropriate to grant with a little better explanation of some points.

However, the Court is a little concerned by the relatively modest level of recovery provided. The gross settlement amount is recited to be less than 24% of the claims' "likely value" – not, the Court notes, of the maximum possible recovery – and the net settlement amount is only 6%. The Court understands that there may be valid reasons for such a strong settlement discount, and the present papers hint at what the reasons might be; but the explanation is fairly conclusory and generic. The Court invites some more detailed candor as to why the case is settling so cheaply. Little information is provided, for example, as to the actual content of the allegations, and whether or not they proved to have substance after discovery.

The Court is also concerned about the proposed 40% contingency fee for plaintiff's counsel, which is distinctly on the higher end of the typical contingency percentages allowed. Again, there may be reasons for this, but the supporting arguments presented on this point are quite generic (beyond the speculation, still undocumented, that this may represent a lodestar ratio below 1). The results obtained are certainly less than exceptional, and the Court is not of the view that a reduced settlement principal automatically calls for an elevated contingency percentage. The Court is not disapproving this now, but would like a better explanation for it.

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