KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and the proposed class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

MARIO RAMIREZ LOPEZ, an individual, on behalf of himself and others similarly situated,

PLAINTIFF,

v.

ELECTRIC TECH CONSTRUCTION, INC.; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. MSC21-01298

[Case Assigned for All Purposes to Hon. Stephen Treat, in Dept. 12]

[PROPOSED] AMENDED ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: March 21, 2024
Time: 9:00 a.m.
Dept.: 12

Complaint Filed: June 29, 2021
FAC Filed: September 1, 2021
Trial Date: None Set

The Motion for Preliminary Approval of the Class Action and PAGA Settlement Agreement and Class Notice ("Agreement"), a copy of which is attached to the Declaration of Kelsey M. Szamet as Exhibit "1", came before this Court on March 21, 2024 before the Honorable Judge Charles Treat in department 12 of the above-entitled Court. The Court issued a Ruling, granting preliminary approval of the class and PAGA settlement, a true and correct of which is attached hereto as Exhibit "1".

The Court, having considered the papers submitted in support of the motion of the parties, **HEREBY ORDERS THE FOLLOWING:**

1. The Court grants preliminary approval of the Agreement and the Class based upon the terms set forth in the Agreement filed herewith. The Settlement is fair, adequate, and reasonable to the Class. The Court finds that: (a) the Agreement resulted from extensive arm's length negotiations; and (b) the Agreement is sufficient to warrant notice of the Settlement to persons in the Class and a full hearing on the final approval of the Settlement.

2. "Class" or "Class Members" means all non-exempt employees who are employed or have been employed by Electric Tech Construction, Inc., in the State of California who worked one or more pay periods during the Covered Period.

3. The "Covered Period" means the period from August 1, 2019 to March 31, 2023.

4. "Aggrieved Employee" or "PAGA Employee" means all non-exempt employees who are employed or have been employed by Electric Tech Construction, Inc., in the State of California who worked one or more pay periods during the PAGA Period.

5. The "PAGA Period" means the period from June 28, 2020 to March 31, 2023.

6. The Settlement falls within the range of reasonableness and appears to be presumptively valid, subject only to any objections that may be raised at the final fairness hearing and final approval by this Court.

7. The Court makes the following preliminary findings for settlement purposes only:

A. The Class, which consists of approximately 386 persons, is so numerous that joinder of all members is impracticable;

B. There appear to be questions of law or fact common to the Class for purposes of determining whether this Settlement should be approved;

C. Plaintiff's claims appear to be typical of the claims being resolved through the proposed settlement;

D. Plaintiff appears to be capable of fairly and adequately protecting the interests of the Class Members in connection with the proposed settlement;

E. Common questions of law and fact appear to predominate over questions affecting only individual persons in the Class. Accordingly, the Class appears to be sufficiently cohesive to warrant settlement by representation; and

F. Certification of the Class appears to be superior to other available methods for the fair and efficient resolution of the claims of the Class.

8. The Court approves, as to form and content, the Notice to Class Members in substantially the form attached to the Agreement as "Exhibit A".

9. The Court approves the procedure for Class Members to object to the Settlement as set forth in the Class Notice to Class Members.

10. The Court approves the procedure for Class Members to become Participating Class Members as set forth in the Notice to Class Members.

11. The Court directs the mailing of the Notice to Class Members by first class mail to the Class Members in accordance with the Implementation Schedule set forth below. The Court finds that the dates selected for the mailing and distribution of the Notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

12. The Court confirms Kingsley & Kingsley, APC as Class Counsel.

13. The Court confirms the named Plaintiff in the operative complaint in the Action as the Class Representative.

14. The Court approves Xpand Legal as the Administrator.

15. The Court orders that pursuant to the California Private Attorneys General Act, Labor Code §§ 2698, et seq. ("PAGA"), statutory notice of this Settlement has been and will continue to be given to the Labor & Workforce Development Agency.

16. The Court orders the following Implementation Schedule for further proceedings:

a.	Preliminary Approval	March 21, 2024
b.	Deadline for Defendant to Provide Class Data to Administrator	15 business days from Preliminary Approval
c.	Mail Notice to Class Members	14 calendar days from Administrator's receipt of Class Data
d.	Deadline for Class Members to Postmark Any Opt-Out	60 calendar days from mailing of Notice Packet (judged by postmark date)
e.	Deadline for Class Members to Postmark Any Objection	60 calendar days from mailing of Notice Packet (judged by postmark date)
f.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	July 2, 2024
g.	Deadline for Class Counsel to file Motion for Class Counsel Award	July 2, 2024
h.	Final Approval Hearing	July 25, 2024 at 9:00 a.m.

15. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the Agreement, does not occur for any reason, the Agreement and the proposed Settlement that is the subject of this Order shall become null, void, unenforceable and inadmissible in any judicial, administrative or arbitral proceeding for any purpose, and all evidence, court orders and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Agreement.

16. IT IS FURTHER ORDERED that, pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Agreement are hereby stayed.

17. The Court expressly reserves the right to adjourn or continue the Final Fairness Hearing from time to time without further notice to members of the Class.

DATED: ______________________ ______________________________

JUDGE OF THE SUPERIOR COURT

EXHIBIT "1"

14. 9:00 AM CASE NUMBER: MSC21-01298
CASE NAME: MARIO R LOPEZ VS ELECTRIC TECH CONST
***HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
FILED BY: LOPEZ, MARIO RAMIREZ
****TENTATIVE RULING:****

Plaintiff Mario Ramirez Lopez moves for preliminary approval of his class action and PAGA settlement with defendant Electric Tech Construction, Inc. The motion is **granted**.

Background and Settlement Terms

Defendant is in the business of electrical contracting services. Plaintiff worked there providing such services up until April 2021.

The original complaint was filed on June 28, 2021 as a class action. It was subsequently amended to include a PAGA claim. The Court granted defendant’s motion to compel arbitration, but then granted plaintiff’s motion to vacate arbitration because defendant did not timely pay arbitration fees.

The settlement would create a gross settlement fund of $400,000. The class representative payment to the plaintiffs would be $5,000. Attorney’s fees would be $133,333 (one-third of the settlement). Litigation costs would not exceed $20,000. The settlement administrator’s costs are estimated at $25,000. PAGA penalties would be $20,000, resulting in a payment of $15,000 to the LWDA. The net amount paid directly to the class members would be about $201,667, not including PAGA penalties. The fund is non-reversionary. There are an estimated 386 class members. Based on the estimated class size, the average net payment for each class member is approximately $522. The individual payments will vary considerably, however, because of the allocation formula prorating payments according to the number of weeks worked during the relevant time. The number of aggrieved employees for PAGA purposes is smaller, because the starting date of the relevant period is later.

The entire settlement amount will be paid out in monthly installments, which have in fact already begun being paid.

The proposed settlement would certify a class of all current and former non-exempt employed at Defendants’ California facilities between August 1, 2019 and March 31, 2023. The class period was constrained by the effect of a release in a prior case. For PAGA purposes, the period covered by the settlement is June 28, 2020 to March 31, 2023.

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.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

A list of class members will be provided to the settlement administrator within 15 days after preliminary approval. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to the state’s unclaimed property fund.

The settlement contains release language covering all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the operative pleading, including a number of specified claims. 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.)

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. For example, much of plaintiff's allegations centers on underpayment of overtime hours and possible off-the-clock work, including missed or skipped meal breaks and rest breaks. Defendant, however, pointed out that its formal policies prohibit off-the-clock work, and asserted that it would have had no knowledge of employees beginning work before punching in or continuing after punching out. Further, it argued that it was required to make meal and rest breaks available, but not required to ensure that they be taken, so long as no employer policy prevented or discouraged taking such breaks. As to unreimbursed employee expenses (such as cell phone use, mileage, and masks), plaintiff would have been called on to show that such expenses were in fact incurred, were reasonably necessary to job performance, and were unreimbursed. Furthermore, the fact-intensive character of such claims would have presented a serious obstacle to class certification. Finally, defendant's troubled financial situation was considered in the settlement negotiations.

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.")) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.)

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

A. 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*, 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, "The 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 "Where 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.)

The settlement agreement includes an escalator provision, to be triggered in the event that the number of covered employees or work weeks turns out to be materially higher than now estimated. If the clause is triggered and the defendant elects to increase the total payment, no further approval will be needed.

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 and administration costs and the requested representative payment of $5,000 for the plaintiff 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.

B. Discussion and Conclusion

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

Counsel will be directed to prepare an order reflecting this 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.

15. 9:00 AM CASE NUMBER: MSL17-01949

CASE NAME: BH FINANCIAL SERVICES, INC. A CALIFORNIA CORPORATION VS. DANIEL DORSETT

***HEARING ON MOTION IN RE: QUASH JUDGMENT/SERVICE OF SUMMONS/REVOKE ORDER FILED BY:**

****TENTATIVE RULING:****

Defendant's motion to vacate the judgment and quash service is **denied**. In the first place, there is no indication that defendant has served this motion on plaintiff or otherwise given notice of it, so the motion could not be entertained in any event. Moreover, although defendant says he was unaware of this suit because he was distracted by his family-law case, he does not deny the proof that he was personally served with the complaint in 2017. That also makes his present motion fatally untimely. And finally, defendant does not deny responsibility for the loan at issue and thus does not present any defense he could litigate in the case. He also does not provide a proposed answer as required by the statute.

The Court points out, however, that the existence of a judgment does not necessarily prevent defendant from contacting counsel for the plaintiff to see if some payment schedule or similar compromise could be worked out.

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On March 26, 2024, I served all interested parties in this action the following documents described as: **[PROPOSED] AMENDED ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

NORTON ROSE FULBRIGHT
Ryan T McCoy
Phillip Di Tullio
555 South flower ST, 41st Floor
Los Angeles, CA 90071
ryan.mccoy@nortonrosefulbright.com
phillip.ditullio@nortonrosefulbright.com

[XX] **BY ELECTRONIC SERVICE:** I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (https://dir.tfaforms.net/315) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[ ] **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the 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.

[XX] **(BY ELECTRONIC MAIL TRANSMISSION)**: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[XX] **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 26, 2024, at Los Angeles, California.

____
Kimberly Madrid