

BOKHOUR LAW GROUP, P.C.
Mehrdad Bokhour, Esq. (CA Bar No. 285256)
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

FALAKASSA LAW, P.C.
Joshua S. Falakassa, Esq. (CA Bar No. 295045)
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

Attorneys for Plaintiff and the Putative Class

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

MARIANNA TENDICK, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

PRINCIPAL LIFE INSURANCE COMPANY,
an Iowa Corporation, and DOES 1-50, inclusive.

Defendants.

CASE NO.: MSC-21-01868

Assigned to the Hon. Charles S. Treat

**[PROPOSED] ORDER GRANTING
FINAL APPROVING OF CLASS
ACTION SETTLEMENT AND FINAL
JUDGEMENT**

HEARING INFO

Date: January 25, 2024
Time: 9:00 a.m.
Dept.: 12

FILED
JAN 30 2024
K. J. BECKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By: *[Signature]*

1 This matter came for hearing on January 25, 2024, regarding the unopposed Motion for Final
2 Approval of Class Action Settlement on the terms set forth in the Class Action and PAGA Settlement
3 Agreement (the "Settlement"). In conformity with California Rules of Court, rule 3.769, with due
4 and adequate notice having been given to Class Members (as defined in the Settlement), and having
5 considered the Settlement, all of the legal authorities and documents submitted in support thereof, all
6 papers filed and proceedings had herein, all oral and written comments received regarding the
7 Settlement, and having reviewed the record in this litigation, and good cause appearing, the Court
8 **GRANTS** final approval of the Settlement and orders and makes the following findings and
9 determinations and enters final judgment as follows:

10 1. All terms used in this order shall have the same meaning as those terms are used and/or
11 defined in the parties' Settlement Agreement and Plaintiff's Motion for Order Granting Final
12 Approval of Class Action Settlement. A copy of the Settlement is attached to the Declaration of
13 Mehrdad Bokhour in Support of Plaintiff's Motion for Final Approval of Class Action and is made a
14 part of this order.

15 2. The Court has personal jurisdiction over the Parties to this litigation and subject matter
16 jurisdiction to approve this Settlement, and all exhibits thereto.

17 3. For settlement purposes only, the Court finally certifies the Class, as defined in the
18 Settlement and as follows: all persons who performed work in any non-exempt position for Defendant
19 in California at any time during the Class Period," which is the period from August 31, 2017, through
20 August 17, 2022.

21 4. The Court deems this definition sufficient for the purpose of rule 3.765(a) of the
22 California Rules of Court and solely for the purpose of effectuating the Settlement.

23 5. The Court finds that an ascertainable class of 161 class members exists and a well-
24 defined community of interest exists on the questions of law and fact involved because in the context
25 of the Settlement: **(i)** all related matters predominate over any individual questions; **(ii)** the claims of
26 the Plaintiff is typical of claims of the Class Members; and **(iii)** in negotiating, entering into and
27 implementing the Settlement, Plaintiff and Class Counsel have fairly and adequately represented and
28 protected the interest of the Class Members.

1 6. The Court is satisfied that ILYM Group, Inc., appointed as the Settlement
2 Administrator, completed the distribution of the Class Notice to the Class in a manner that complies
3 with California Rule of Court 3.766. The Class Notice informed 161 prospective Class Members of
4 the Settlement terms, their rights under the settlement and received their settlement share, their rights
5 to submit a request for exclusion, their rights to comment on or object to the Settlement, and their
6 rights to appear at the Final Approval and Fairness Hearing and be heard regarding approval of the
7 Settlement. Sufficient period of time to respond and to act was provided by each of these procedures.
8 No Class Members filed a written objection to the Settlement as part of this notice process, no Class
9 Members filed a written statement of intention to appear at the Final Approval and Fairness Hearing,
10 and no individual submitted a request for exclusion.

11 7. The Court hereby approves the terms set forth in the Settlement Agreement and finds
12 that the Settlement Agreement is, in all respects, fair, adequate, and reasonable, consistent, and
13 compliant with all applicable requirements of the California Code of Civil Procedure, the California
14 and United States Constitutions, including the Due Process clauses, the California Rules of Court,
15 and any other applicable law, and in the best interests of each of the Parties and Class Members.

16 8. The Court directs the Parties to effectuate the Settlement Agreement according to its
17 terms and declares the Settlement Agreement to be binding on all 161 Participating Class Members.

18 9. The Court finds that the Settlement Agreement has been reached as a result of
19 informed and non-collusive arm's-length negotiations. The Court further finds that the Parties have
20 conducted extensive investigation and research, and their attorneys were able to evaluate their
21 respective positions reasonably.

22 10. The Court also finds that the Settlement now will avoid additional and potentially
23 substantial litigation costs, as well as delay and risks to the Parties, if they were to continue to litigate
24 the case. Additionally, after considering the monetary recovery provided as part of the Settlement in
25 light of the challenges posed by continued litigation, the Court concludes that Class Counsel secured
26 significant relief for Class Members.

27 11. The Settlement Agreement is not an admission by Defendant, nor is this order a
28 finding of the validity of any allegations or of any wrongdoing by Defendant.

1 12. The Court appoints Plaintiff Marianna Tendick as Class Representative and finds her
2 to be adequate.

3 13. The Court appoints Joshua Falakassa of Falakassa Law, P.C. and Mehrdad Bokhour
4 of Bokhour Law Group, P.C. as Class Counsel and finds each of them to be adequate, experienced,
5 and well-versed in class action litigation.

6 14. The terms of the Settlement Agreement, including the Gross Settlement Amount of
7 \$891,805.01 and the individual settlement shares, are fair, adequate, and reasonable to the Class and
8 each Class Member, and the Courts grants final approval of the Settlement set forth in the Settlement
9 Agreement, subject to this order.

10 15. The Court approves the following allocations, which fall within the ranges stipulated
11 by and through the Settlement Agreement:

12 A. The Court awards \$6,000.00 to ILYM Group, Inc., the Settlement
13 Administrator, and finds this amount to be fair and reasonable. The Court
14 grants final approval of it and orders the Parties to make the payment to the
15 Settlement Administrator in accordance with the Agreement.

16 B. The Court awards \$297,238.61 to Class Counsel as attorneys' fees and finds
17 this amount fair and reasonable in light of the benefit obtained for the Class.
18 The Court grants final approval of awards and orders the Class Counsel fees
19 payment to be made in accordance with the Settlement Agreement.

20 C. The Court awards \$13,032.75 to the Bokhour Law Group, P.C. in litigation
21 costs, an amount which the Court finds to be reflective of the reasonable costs
22 incurred. The Court grants final approval of and orders the Class Counsel
23 litigation expenses payment in this amount to be made in accordance with the
24 Settlement Agreement.

25 D. The Court awards \$10,000 to the class representative as payment requested
26 by Plaintiff and finds this amount to be fair and reasonable. The Court grants
27 final approval of and orders the class representative payment to be made in
28 accordance with the Settlement Agreement.

1 E. The Court approves the \$10,000 allocation for penalties under the Labor Code
2 Private Attorneys General Act of 2004 and orders 75% thereof (i.e., \$7,500)
3 to be paid to the California Labor and Workforce Development Agency in
4 accordance with the terms of the Settlement Agreement and the remainder to
5 the Aggrieved Employees.

6 16. The Court orders that 5% of the awarded Attorneys' Fees be kept in the Settlement
7 Administrator's trust fund until the completion of the distribution process and Court approval of a
8 final accounting.

9 17. The Court orders the Parties to comply with and carry out all terms and provisions of
10 the Settlement, to the extent that the terms thereunder do not contradict this Order, in which case the
11 provisions of this order shall take precedence and supersede the Settlement.

12 18. Nothing in the Settlement or this order purports to extinguish or waive Defendant's
13 rights to continue to oppose the merits of the claims in this Action or class treatment of these claims
14 in this case if the Settlement fails to become final or effective, or in any other case without limitation.

15 19. All 161 Participating Class Members shall be bound by the Settlement and this order,
16 including the release of claims as set forth in the Settlement Agreement.

17 20. The Parties shall bear their own respective attorneys' fees and costs except as
18 otherwise provided in this order and the Settlement Agreement.

19 21. All checks mailed to the Class Members must be cashed within one hundred and eighty
20 (180) days after mailing. If a Class Member fails to cash his/her check by the deadline, then the
21 Settlement Administrator shall submit such funds to the State of California's Unclaimed Property
22 Fund in the name of the Class Member.

23 22. Within ten days of this order, the Settlement Administrator shall give notice of
24 judgment to Settlement Class Members pursuant to California Rules of Court, rule 3.771(b) by
25 posting a copy of this order and final judgment on its website.

26 23. The Court retains continuing jurisdiction over the Action and the Settlement, including
27 jurisdiction pursuant to rule 3.769(h) of the California Rules of Court, solely for purposes of
28 (a) enforcing the Settlement Agreement, (b) addressing settlement administration matters, and

1 (c) addressing such post-judgment matters as may be appropriate under court rules or applicable law.

2 24. Plaintiff shall file a report regarding the distribution status with the Court within one
3 hundred and twenty (120) days after all funds have been distributed.

4 25. The Court hereby sets a hearing date of January 9, 2025, at 9:00 a.m. for a hearing on
5 the final accounting and distribution of the settlement.

6 26. This final judgment is intended to be a final disposition of the above-captioned action
7 and is intended to be immediately appealable. This final judgment resolves and extinguishes all
8 claims released by the Settlement Agreement against Defendant and the Released Parties as set forth
9 in the Agreement.

10

11 **IT IS SO ORDERED.**

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JAN 29 2024

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DATED: _____



HONORABLE CHARLES S. TREAT

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EXHIBIT "A"

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 01/25/2024

5. 9:00 AM CASE NUMBER: MSC10-02872

CASE NAME: GROTH V. GILAD ET AL

*HEARING ON MOTION IN RE: ATTORNEY FEES

FILED BY: GROTH, WILLIAM

TENTATIVE RULING:

By stipulation this motion is **continued** to February 29, 2024.

6. 9:00 AM CASE NUMBER: MSC21-01868

CASE NAME: [REDACTED]

*HEARING ON MOTION IN RE: FINAL APPROVAL OF SETTLEMENT

FILED BY:

TENTATIVE RULING:

Plaintiff Mariana Tendick moves for final approval of her class action and PAGA settlement with defendant Principal Life Insurance Company. She also moves for approval of her attorney's fees, litigation costs, administration costs, and representative payment.

Since preliminary approval was granted, the administrator has mailed notices to 161 class members. 17 packets were returned by the post office. Follow up resulted in 14 new addresses, leaving 3 non-deliverable. No objections or requests to opt out have been received.

The motion is **granted**.

A. Background and Settlement Terms

Defendant is a financial services company offering a variety of services. Plaintiff was employed there in a non-exempt office position.

The original complaint was filed on August 31, 2021 as a class action. PAGA claims were added by amendment in December 2022, and additional claims added in March 2023.

The settlement as preliminarily approved called for a gross settlement fund of \$750,000, based on an estimated class size of 113. Upon further investigation, however, it turned out that the class size is 161. Under an escalator clause in the settlement agreement (§ 48(b)), defendant has agreed to increase the settlement amount proportionately. It is now \$891,805.

The class representative payment to the plaintiff will be \$10,000. Attorney's fees will be \$207,239 (one-third of the settlement). Litigation costs are 13,033, a bit lower than previously estimated. The settlement administrator's costs are \$6,000. PAGA penalties will be \$10,000, resulting in a payment of \$7,500 to the LWDA. The net amount paid directly to the class members will be about \$555,534,

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including distribution of PAGA penalties. The fund is non-reversionary. Based on the class size, the average net payment for each class member is approximately \$3,451. 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 deposited with the settlement administrator within 21 days after the effective date of the settlement.

The proposed settlement will certify a class of all current and former non-exempt employed at Defendants' California facilities between August 31, 2017 and August 17, 2022. For PAGA purposes, the period covered by the settlement is August 30, 2020 to August 17, 2022.

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 will be apportioned to class members based on the number of workweeks worked during the class period.

Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to the Comptroller'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. Defendant contends that its policies concerning such subjects as reporting times, rest breaks, and meal breaks are proper and conforming, making any individual violations infrequent, difficult to prove, and unsuitable for class adjudication. It was established that any non-discretionary bonus payments were minimal, thus largely eliminating any violations based on failures to consider such payments in setting wage and overtime rates. Defendant contends that any other violations would be non-willful.

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

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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.

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. 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 salutary 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 \$297,239 (increased from the prior estimate because of the escalated gross settlement amount). The settlement agreement is not entirely clear that the attorney’s fees award is supposed to rise with the escalation, but ¶ 48(g) does call expressly for a one-third fee award, so this appears to be within the intent of the agreement.

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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 \$217,438, representing an implied multiplier of 1.36. They based this amount on a total of 341 hours. 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 her reputation and more difficulty in obtaining employment. The representative payment is approved.

Litigation costs of \$13,033 (mostly mediation and filing fees) are reasonable and are approved.

The settlement administrator's costs of \$6,000 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.

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.