

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney S. Castillo-Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3500
San Diego, CA 92121
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

FILED
DEC 23 2022
A. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By A. Bieker
Steno. Deputy Clerk

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3500
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for Plaintiff SUKHRAJ KAUR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

SUKHRAJ KAUR, an individual, on behalf
of herself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

ACES 2020 I, LLC; a Delaware limited
liability company (fka Comprehensive
Educational Services, Inc.); ACES 2020,
LLC, a California limited liability company
(fka Comprehensive Educational Services,
Inc.); and DOES 1 through 50, inclusive,

Defendants.

Case No. MSC20-02482

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: December 8, 2022
Time: 9:00 a.m.

Judge: Hon. Edward G. Weil
Dept.: 39

1 Plaintiff's motion for an order finally approving the Stipulation of Settlement of Class
2 Action Claims and Release of Claims ("Agreement") and Motion for Class Counsel Award and
3 Class Representative Service Award duly came on for hearing on December 8, 2022, before the
4 above-entitled Court. Zakay Law Group, APLC and the JCL Law Firm, APC appeared on behalf
5 of Plaintiff SUKHRAJ KAUR ("Plaintiff"). Paul, Plevin, Sullivan, and Connaughton LLP
6 appeared on behalf of ACES 2020, LLC, a California limited liability company (formerly known
7 as Comprehensive Educational Services, Inc., a California Corporation), known in California as
8 ACES 2020 I, LLC, doing business as ACES (hereinafter "Defendant").

9 **A. Background and Settlement Terms**

10 The original complaint was filed November 19, 2020, raising claims under PAGA and a
11 class action on behalf of non-exempt employees, alleging that defendant violated the Labor Code
12 in various ways, including unpaid overtime, unpaid minimum wage, non-compliant meal and rest
13 periods, failure to provide reporting time, failure to reimburse employee expenses, waiting time,
14 and wage statement claims.

15 The settlement would create a gross settlement fund of \$1,715,000. The class
16 representative payment to the plaintiff would be \$5,000. Counsel's attorney's fees would be
17 \$571,666.66 (one-third of the settlement). Litigation costs would not exceed \$25,000. The
18 settlement administrator (ILYM Group) would receive an estimated \$60,000. PAGA penalties
19 would be \$80,000, resulting in a payment of \$60,000 to the LWDA. The fund is non-reversionary.
20 There are an estimated 10,491 class members, and 6,010 "aggrieved employees" under PAGA.
21 Based on the estimated class size, the average net payment for each class member is
22 approximately \$92.

23 The proposed settlement would certify a class of all non-exempt employees who worked
24 for Defendants in California from April 16, 2016 to December 31, 2021. In addition, it established
25 aggrieved employees for PAGA purposes for the time period April 6, 2019 to December 31, 2021.
26 The class members will not be required to file a claim. Class members may object or opt out of the
27 settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds
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1 would be apportioned to class members based on the number of workweeks worked by the
2 individual employee during the relevant time period.

3 Various prescribed follow-up steps will be taken with respect to mail that is returned as
4 undeliverable. Undelivered or uncashed checks will be voided and the funds provided to U.C. San
5 Diego Autism Center of Excellence, pursuant to Code of Civil Procedure section 384(b). The
6 parties represent that neither they nor counsel have any interest in the U.C. San Diego Autism
7 Center of Excellence. The parties represent that the Center provides “a comprehensive suite of
8 services dedicated to enhancing the quality of life for individuals and families impacts with
9 Autism or other special needs.”

10 The settlement contains release language covering all claims “alleged in the operative
11 complaint or that could have been alleged based on the facts in the operative complaint which
12 occurred during the Class Period[.]” (Article I, section BB.) It also releases PAGA claims
13 ““Alleged in the operative complaint and Plaintiff’s PAGA notice to the LWDA or that could have
14 been alleged based on the facts in the operative complaint and/or PAGA notice”. (Article I, section
15 CC.) Under recent appellate authority, the limitation to those claims with the “same factual
16 predicate” as those alleged in the complaint is critical. (Amaro v. Anaheim Arena Mgmt., LLC
17 (2021) 69 Cal.App.5th 521, 537 [“A court cannot release claims that are outside the scope of the
18 allegations of the complaint.” “Put another way, a release of claims that’ go beyond the scope of
19 the allegations in the operative complaint’ is impermissible.” (Id., quoting Marshall v. Northrop
20 Grumman Corp. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

21 Informal discovery was undertaken, resulting in the production of substantial documents,
22 including payroll records and written work policies, which were analyzed by counsel and an
23 outside consultant. The matter settled after arms-length negotiations, which included an all-day
24 session with an experienced mediator.

25 Counsel also has provided an analysis of the case, and how the settlement compares to the
26 potential value of the case, after allowing for various risks and contingencies. This included an
27 estimate of class claims at \$7.5 million based on “realistic damages” and \$24 million based on
28 “maximum damages.”

1 Counsel analyze the minimum wage claims, off-the-clock claims, meal period claims, rest
2 period claims, business expense claims, reporting time claims, wage statement claims, and waiting
3 time penalty claims. The potential liability needs to be adjusted for various evidence and risk
4 based contingencies, including problems of proof. Counsel also analyzed claims for PAGA
5 penalties, but such penalties are difficult to evaluate for a number of reasons: they derive from
6 other violations, they include “stacking” of violations, the law may only allow application of the
7 “initial violation” penalty amount, and the total amount may be reduced in the discretion of the
8 court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where “based on the facts
9 and circumstances of the particular case, to do otherwise would result in an award that is unjust
10 arbitrary and oppressive, or confiscatory.”])

11 The LWDA was notified of the settlement.

12 Since preliminary approval, notice has been given to the class. ILYM mailed notice
13 packages to 10,458 class members. 826 notices were returned. 21 had forwarding addresses and
14 were remailed. As to the other 805, new addresses were found for 541, which were remailed.
15 Thus, there are 285 packets deemed undeliverable. Two notices were returned, new addresses
16 were found, and they were remailed. No objections were received, but nine requests for exclusion
17 were received.

18 **B. Legal Standards**

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

26 Because this matter also proposes to settle PAGA claims, the Court also must consider the
27 criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco*
28 *USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found

1 that the “fair, reasonable, and adequate” standard applicable to class actions applies to PAGA
2 settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness of the
3 settlement’s allocation of civil penalties between the affected aggrieved employees[.]” (*Id.*, at 64-
4 65.)

5 California law provides some general guidance concerning judicial approval of any
6 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*
7 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
8 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412;
9 *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender its
10 duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in
11 the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d
12 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because
13 “[w]here the rights of the public are implicated, the additional safeguard of judicial review, though
14 more cumbersome to the settlement process, serves a salutatory purpose.” (*Consumer Advocacy*
15 *Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

16 **C. Attorney fees, costs, administrative costs, and representative award**

17 Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common
18 fund” theory. Even a proper common fund-based fee award, however, should be reviewed through
19 a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the
20 Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the
21 percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar
22 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
23 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
24 court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Following typical
25 practice, however, consideration of the fee award was deferred to the motion for final approval.
26 Counsel now provides an estimate lodestar fee of \$284,545.83. This is based on a total of 548.1
27 hours, with 256.6 hours at the Zakay firm, with hourly rates ranging from \$350-\$550 at the Zakay
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1 firm, and 291.5 hours at the JCL firm, at hourly rates ranging from \$375 to \$550. This results in an
2 implied multiplier of 2.0. No adjustment of the fee is necessary.

3 Litigation costs in the amount of \$13,394.02 are reasonable and are approved.

4 Settlement administration costs of \$60,000 are reasonable and are approved.

5 Plaintiff requests a representative payment of \$5,000. Criteria for evaluation of such
6 requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th
7 785, 804-807. She submits a declaration attesting to her time and effort spent on the matter (about
8 15 hours), as well as the risk she took by becoming a plaintiff. He released other individual claims,
9 including claims filed with the Department of Fair Employment and Housing. The amount is
10 approved.

11 **D. Discussion and conclusion**

12 The moving papers sufficiently establish that the proposed settlement is fair, reasonable,
13 and adequate to justify final approval.

14 The Court notes that an issue arises with respect to the designation of U.C. San Diego
15 Autism Center for Excellence as a cy pres recipient. Pursuant to Code of Civil Procedure section
16 384(b), the funds must be provided “to nonprofit organizations or foundations to support projects
17 that will benefit the class or similarly situated persons, or that promote the law consistent with the
18 objectives and purposes of the underlying cause of action, to child advocacy programs, or to
19 nonprofit organizations providing civil legal services to the indigent.” (§ 384(b).) Given plaintiff’s
20 representation that defendants are in the business of providing services to persons with autism, if
21 one views one of the purposes of the litigation as assuring that persons providing such services are
22 accorded their rights under the Labor Code, which may help assure that their clients are well-
23 served, then the statute is satisfied.

24 Both motions are granted.

25 Counsel are directed to prepare an order reflecting this entire tentative ruling, the other
26 findings in the previously submitted proposed order, and a separate final judgment. The order
27 must provide that pursuant to Code of Civil Procedure section 384(b), the ultimate judgment must
28 provide for a compliance hearing after the settlement has been completely implemented, and

1 amendment of the judgment to reflect the amount paid to the cy pres recipient. 5% of the
2 attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as
3 found by the Court. The judgment should specifically identify the nine individuals who requested
4 exclusion.

5 **I.**

6 **FINDINGS**

7 Based on the oral and written argument and evidence presented in connection with the
8 motion, the Court makes the following findings:

9 1. All capitalized terms used herein shall have the same meaning as defined in
10 the Agreement.

11 2. This Court has jurisdiction over the subject matter of this litigation pending
12 in the California Superior Court for the County of Contra Costa ("Court"), Case No. MSC20-
13 02482, entitled *Kaur v. ACES 2020 I, LLC*, and over all Parties to this litigation, including the
14 Class.

15 **Preliminary Approval of the Settlement**

16 3. On August 8, 2022, the Court granted preliminary approval of a class-wide
17 settlement. At this same time the court approved certification of a provisional settlement class for
18 settlement purposes only. The Court confirms this Order and finally approves the settlement and
19 the certification of the Class.

20 **Notice to the Class**

21 4. In compliance with the Preliminary Approval Order, the Notice Packet was
22 mailed by first class mail to the Class Members at their last known addresses on September 12,
23 2022. Mailing of the Notice Packet to their last known addresses was the best notice practicable
24 under the circumstances and was reasonably calculated to communicate actual notice of the
25 litigation and the proposed settlement to the members of the Class Members. The Court finds that
26 the Notice Packet provided fully satisfies the requirements of California Rules of Court, rule
27 3.769.
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1 5. The Response Deadline for opting out or objecting was October 27, 2022.
2 There was an adequate interval between notice and deadline to permit Class Members to choose
3 what to do and act on their decision. No Class Members objected. Nine Class Members requested
4 exclusion. The Class Members who requested exclusion are Annalise Corona, Davis Kuhlman,
5 Denise Lopez, Haley Mariz Borromeo Centeno, Jessica Foyil, Kaleigh Walker, Maria Cabrera,
6 Sarah Marie Hooker, Vanessa Marie Allen.

7 **Fairness Of The Settlement**

8 6. The Agreement provides for a Gross Settlement Amount of \$1,715,000.
9 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
10 Cal.App.4th 1794, 1801.)

11 a. The settlement was reached through arms-length bargaining between
12 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
13 settlement.

14 b. The Parties' investigation and discovery have been sufficient to
15 allow the Court and counsel to act intelligently.

16 c. Counsel for all parties are experienced in similar employment class
17 action litigation and have previously settled similar class claims on behalf of employees claiming
18 compensation. All counsel recommended approval of the Settlement.

19 d. No objections were received. Only nine requests for exclusion were
20 received. The Class Members who requested exclusion are Annalise Corona, Davis Kuhlman,
21 Denise Lopez, Haley Mariz Borromeo Centeno, Jessica Foyil, Kaleigh Walker, Maria Cabrera,
22 Sarah Marie Hooker, Vanessa Marie Allen.

23 e. The participation rate is high. Approximately 99.91% of Class
24 Members will be participating in the Settlement and will be sent settlement payments.

25 7. The consideration to be given to the Class Members under the terms of the
26 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the
27 claims asserted in this Action and is fair, reasonable, and adequate compensation for the release of
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1 the Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
2 litigation and the delays which would ensue from continued prosecution of the Action.

3 8. The Agreement is finally approved as fair, adequate, and reasonable and in
4 the best interests of the Settlement Class Members.

5 **Attorneys' Fees and Litigation Expenses**

6 9. The Agreement provides for a Class Counsel Award in the amount of Five
7 Hundred Eighty-Five Thousand, Sixty Dollars and Sixty-Eight Cents (\$585,060.68). Subject to
8 Court approval, the Class Counsel Award consists of attorneys' fees equal to one-third (1/3) of the
9 Gross Settlement Amount, or Five Hundred Seventy-One Thousand, Six Hundred Sixty-Six
10 Dollars and Sixty-Six Cents (\$571,666.66) and reimbursement of costs and expenses in the
11 amount of Thirteen Thousand, Three Hundred Ninety-Four Dollars and Two Cents (\$13,394.02).

12 10. A Class Counsel Award of Five Hundred Eighty-Five Thousand, Sixty
13 Dollars and Sixty-Eight Cents (\$585,060.68) comprised of attorneys' fees in the amount of Five
14 Hundred Seventy-One Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents
15 (\$571,666.66) and reimbursement of costs and expenses in the amount of Thirteen Thousand,
16 Three Hundred Ninety-Four Dollars and Two Cents (\$13,394.02) is reasonable in light of the
17 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
18 achieved by Class Counsel. The requested attorneys' fee award represents 1/3 of the common
19 fund, which is reasonable and at the low end of the range for fee awards in common fund cases
20 and is supported by Class Counsel's lodestar.

21 **Class Representative Service Award**

22 11. The Agreement provides for a Class Representative Service Award of up to
23 Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff, Sukhraj Kaur, subject to the
24 Court's approval. The Court finds that the amount of Five Thousand Dollars and Zero Cents
25 (\$5,000.00) is reasonable in light of the risks and burdens undertaken by the Plaintiff in this class
26 action litigation.

27 **Settlement Administration Costs**

12. The Agreement provides for Settlement Administration Costs to be paid in an amount not to exceed \$60,000.00. The Declaration of the Settlement Administrator provides that the actual claims administration expenses were \$60,000.00. The amount of this payment is reasonable in light of the work performed by the Settlement Administrator.

II.

ORDERS

Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

1. The Class is certified for the purposes of settlement only. The Settlement Class is hereby defined to include:

All persons who are or previously were employed by Defendant in California and who were classified as non-exempt employees during the period between April 6, 2016 to December 31, 2021.

2. Every person in the Class who did not opt out is a Settlement Class Member. The Court finds, based on the declaration of the Settlement Administrator, that nine Class Members opted-out of the Settlement. The Class Members who opted-out of the Settlement are Annalise Corona, Davis Kuhlman, Denise Lopez, Haley Mariz Borromeo Centeno, Jessica Foyil, Kaleigh Walker, Maria Cabrera, Sarah Marie Hooker, Vanessa Marie Allen.

3. The Agreement is hereby approved as fair, reasonable, adequate, and in the best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with this Order and the terms of the Agreement.

4. Class Counsel are awarded a Class Counsel Award in the amount of \$585,060.68 for the Class Counsel Award comprised of one-third of the Gross Settlement Amount, or Five Hundred Seventy-One Thousand, Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$571,666.66) and actually incurred expenses in the amount of Thirteen Thousand, Three Hundred Ninety-Four Dollars and Two Cents (\$13,394.02). Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendant, Plaintiff, or members of the Class.

5. The payment of the Class Representative Service Award to the Plaintiff in the amount of \$5,000.00 is approved.

1 6. The payment of \$60,000.00 to the Settlement Administrator for Settlement
2 Administration Costs is approved.

3 7. The PAGA Settlement of \$80,000.00 is hereby approved as fair, reasonable,
4 adequate and adequately protects the interests of the public and the LWDA. Further, the Court
5 finds that Plaintiff and Class Counsel negotiated the PAGA Settlement at arms-length, absent of
6 any fraud or collusion.

7 8. Final Judgment is hereby entered in this action. The Final Judgment shall
8 bind each Settlement Class Member.

9 9. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
10 California and all Aggrieved Employees, pursuant to the California Labor Code Private Attorneys'
11 General Act ("PAGA").

12 10. The term "Aggrieved Employees" is hereby defined to include all persons
13 who were employed by Defendant in California and who were classified as non-exempt
14 employees at any time during the PAGA Period. The PAGA Period means the period between
15 April 6, 2019 to December 31, 2021.

16 11. In addition to the release given by each Settlement Class Member, Plaintiff
17 also generally releases Defendant and the Released Parties from any and all claims as set forth in
18 the General Release by Plaintiff in the Agreement.

19 12. The Agreement is not an admission by Defendant, nor is this Final
20 Approval Order and Judgment, a finding of the validity of any claims in the Action or of any
21 wrongdoing by Defendant. Neither this Final Approval Order, the Settlement, nor any document
22 referred to herein, nor any action taken to carry out the Settlement is, may be construed as, or may
23 be used as an admission by or against Defendant of any fault, wrongdoing, or liability whatsoever.
24 The entering into or carrying out of the Agreement, and any negotiations or proceedings related
25 thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or
26 concession with regard to the denials or defenses by Defendant and shall not be offered in
27 evidence in any action or proceeding against Defendant in any court, administrative agency or
28 other tribunal for any purpose as an admission whatsoever other than to enforce the provisions of

1 this Final Approval Order and Judgment, the Settlement, or any related agreement or release.
2 Notwithstanding these restrictions, any of the Parties may file in the Action or in any other
3 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and
4 records on file in the Action as evidence of the Settlement to support a defense of res judicata,
5 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
6 claims being released by the Settlement.

7 13. Notice of entry of this Final Approval Order and Judgment shall be given to
8 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send
9 notice of entry of this Final Approval Order and Judgment to individual Class Members and the
10 Final Approval Order and Judgment shall be posted on Settlement Administrator's website as
11 indicated in the Notice Packet.

12 14. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
13 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
14 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
15 connection with the distribution of settlement benefits.

16 15. If the Settlement does not become final and effective in accordance with the
17 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
18 Defendant consistent with the terms of the Settlement, then this Final Approval Order and
19 Judgment, and all orders entered in connection herewith shall be rendered null and void and shall
20 be vacated.

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16. Upon completion of administration of the Settlement, the Settlement Administrator will provide written certification of such completion to the Court and counsel for the Parties which will reflect the amount paid to the cy pres recipient and shall be filed with the Court one (1) week before the compliance hearing set for October 5, 2023, at 9:00 a.m., in Dept. 39.

IT IS SO ORDERED.

DATED: 12/22, 2022

Hon. Edward G. Weil
Judge, Superior Court for the State of California,
County of Contra Costa