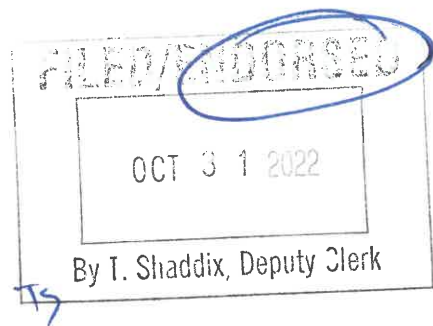


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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

ISIDRO ARROYO, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

EPIC HOME SOLAR, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00310634

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No.: 2658496

Date: August 11, 2022

Time: 9:00 a.m.

Dept.: 25

Judge: Hon. Jill H. Talley

Filed: November 3, 2021

FAC Filed: January 19, 2022

Trial Date: None Set

FILED BY FAX

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[PPSD] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on October 7, 2022, at 9:00 a.m., in Department 25
4 before the Honorable Jill H. Talley, presiding. Named Plaintiff Isidro Arroyo ("Plaintiff") filed this
5 putative class action on November 3, 2021. The operative Complaint alleges that Defendant Epic
6 Home Solar ("Defendant") is liable for failure to pay overtime wages, failure to pay minimum wages,
7 meal period violations, rest period violations, wage statement violations, waiting time penalties, failure
8 to reimburse expenses, unfair competition, failure to pay nonproductive time, failure to pay contract
9 wages, unlawful deductions, failure to maintain accurate records, failure to provide paid sick leave,
10 and untimely payment of wages. Plaintiff has also alleged Defendant is liable for a civil penalties
11 under the Private Attorneys General Act ("PAGA") based on these violations. Plaintiff sought
12 attorneys' fees and costs as part of this Action. Defendant denied all of Plaintiff's claims and denied
13 that this case was appropriate for class treatment. No class has been certified.

14 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
16 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
17 ("Agreement" or "Settlement"). Any capitalized terms herein shall have the same meaning as set forth
18 in the Agreement. The Court, having received and considered Plaintiff's Motion for Preliminary
19 Approval of Class Action and PAGA Settlement, the declarations in support, the Agreement, the
20 proposed Notice of Settlement, the proposed Claim Form, and other evidence, HEREBY ORDERS
21 AND MAKES DETERMINATIONS AS FOLLOWS:

22 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
23 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 All non-exempt employees who have worked, or continue to work, for Epic
27 Home Solar in California from November 3, 2017 up to June 25, 2022.

28 The Court recognizes that the foregoing definition is for Class Member identification purposes only and

1 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

2 The Court finds that Class Members meet the ascertainability and numerosity requirements since
3 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
4 the definition and the number of Class Members would make joinder impractical. The commonality and
5 predominance requirements are met for settlement purposes since there are questions of law and fact
6 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
7 contentions that Defendant caused the violations outlined above by 1) failing to adequately track all
8 hours worked and whether all meal periods were received; 2) failing to pay all hours worked; 3) failing
9 to pay piece rate workers overtime premiums; 4) failing to pay all piece rate compensation owed; 5)
10 failing to provide all meal periods, including a second meal period for shifts over 10 hours; 6) failing to
11 provide all rest periods, including a third rest period for shifts over 10 hours; 7) failing to compensate
12 for time spent during rest periods and other non-productive time; 8) failing to provide all paid sick leave
13 in accordance with the Healthy Workplaces Healthy Families Act of 2014; 9) failing to reimburse for
14 personal cellphone use and mileage; 10) failing to timely pay wages pursuant to Labor Code § 204; and
15 11) failing to provide accurate wage statements. The PAGA, waiting time penalty, wage statement
16 violation, and unfair competition claims also derive from these violations. Additionally, Class Members
17 seek the same remedies under state law. The typicality requirement for settlement purposes is also
18 satisfied since the claims of the Class Representative is based on the same facts and legal theories as
19 those applicable to the class members.

20 The Court also finds that preliminarily and conditionally certifying the settlement class is
21 required to avoid each Class Member from litigating similar claims individually. This settlement will
22 achieve economies of scale for Class Members with relatively small individual claims and conserve the
23 resources of the judicial system.

24 The Court finds that Plaintiff Isidro Arroyo and Plaintiff's counsel, Galen T. Shimoda,
25 Justin P. Rodriguez and Brittany V. Berzin of Shimoda & Rodriguez Law, PC, to be adequate
26 representatives of the settlement class. The Court appoints them as Class Representative and Class
27 Counsel, respectively.

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II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT

The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit

A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and adequate and falls within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to weigh the potential value of the disputed claims against the risks of continued litigation. The Court also acknowledges that Class Members may present any objections to the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms therein as if stated here in full, including the \$150,000 Gross Settlement Amount, which will be paid on a claims made basis as set forth in the Agreement. Plaintiff has provided adequate reasoning and explanation as to why a claims made settlement with a reversion of unclaimed funds to Defendant is appropriate under the circumstances of this case. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 721 (2006) ("The analysis additionally recognized that a court approved settlement could properly include a 'reversion of ... funds to the defendant'"); *Cundiff v. Verizon California, Inc.*, 167 Cal.App.4th 718, 728 (2008) (noting that *In re Microsoft I-V Cases* found that a class settlement may provide for a reversion so long as it does not render the settlement, as a whole, unfair, inadequate, or unreasonable and distinguishing the case before it on the grounds that the class settlement agreement made no provision for unclaimed funds).

The Court approves of ILYM Group, Inc., acting as the Claims Administrator in this case and hereby appoints them to fulfill those duties in this case as outlined in the Agreement.

On a preliminary and conditional basis, the Court approves of the amounts allocated under the Agreement for attorney's fees and costs (35% of the Gross Settlement Amount), for an Enhancement Payment to the Enhancement Payment (\$10,000), and for Claims Administrator Costs (\$10,000). The Court finds that an award of fees under the common fund doctrine is appropriate in this case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits that Plaintiff and Class Counsel were able to negotiate on behalf of Class Members can be accurately traced as set

1 forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the fee request is
2 a specific, lump-sum percentage of the Gross Settlement Amount. *See Boeing Co. v. Van Gemert*, 444
3 U.S. 472, 477-481 (1980); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989);
4 *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506
5 (2016). The attorneys' fee request as a percentage of the Gross Settlement Amount is within the range
6 of percentages that have been approved by other Courts in similar cases. The Court will again review
7 these amounts and allocations in connection with the final approval hearing. Plaintiff and Class Counsel
8 are directed to provide additional information in connection with the motion for final approval that will
9 enable the Court to perform a lodestar cross check of the requested attorney's fees, quantify the amount
10 of time spent by Plaintiff on this case and any further risks and/or burdens incurred as a result of acting
11 as Class Representative, and an updated declaration in support of actual litigation costs.

12 The amounts allocated under the Agreement for attorney's fees and costs, for an Enhancement
13 Payment to the Class Representative, and for Claims Administrator Costs shall be included in the Notice
14 of Settlement to enable Class Members to review and comment thereon. The Court will consider the
15 reaction of Class Members when evaluating the reasonableness of the requested amounts at final
16 approval. *See In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005) ("the
17 absence of objections or disapproval by class members to class counsel's fee request further supports
18 finding the fee request reasonable"). To the extent the Court ultimately awards less than the amounts
19 allocated under the Agreement for attorney's fees and costs, for an Enhancement Payment to the Class
20 Representative, and Claims Administrator Costs, the difference between the amounts awarded and the
21 amounts requested shall be added to the Net Settlement Amount for distribution to Qualified Claimants
22 pro rata as set forth in the Agreement.

23 The Court approves of the five thousand dollars (\$5,000) PAGA Payment, which shall be paid
24 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
25 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
26 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
27 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
28

1 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
2 furthering the purpose of the Labor Code and LWDA.

3 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
4 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
5 donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights.

6 The releases and waivers for Class Members who do not opt out of being bound by the
7 Agreement (*i.e.*, Qualified Claimants), Aggrieved Employees, and the Class Representative are also
8 approved by the Court as set forth in the Agreement.

9 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
10 **INCLUDING THE NOTICE OF SETTLEMENT AND CLAIM FORM**

11 The Court finds that the proposed Notice of Settlement and Claim Form, which were submitted
12 with Plaintiff's Motion as Exhibit F and G respectively, fairly and adequately advises Class Members of
13 the terms of the proposed settlement, the rights being waived, their right to opt out, the ability to dispute
14 the number of workweeks worked during the Class Period, their pro rata share of the Net Settlement
15 Amount, how to participate in the settlement, how to file documentation in opposition to the proposed
16 settlement, and when to appear at the fairness hearing to be conducted on the date set forth below. The
17 Court further finds that the Notice of Settlement and Claim Form and proposed distribution of them by
18 first class mail to each identified Class Member at his or her most recent address based on a National
19 Change of Address database search from the Class Members' last known address and a skip trace on any
20 Class Members who have the Notice of Settlement or Claim Form returned as "undeliverable" or "not at
21 this address" comports with all constitutional requirements, including those of due process.

22 The Court also finds that because there is a strong interest in providing Class Members the
23 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
24 privacy rights, the sharing of employment information, including social security numbers, is not a
25 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last
26 name, last known mailing address, social security number, and hire and termination dates, total number
27 of workweeks during which the Class Member performed any actual work to the Claims Administrator
28 only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the

Agreement and approved by this Order. The Claims Administrator shall only use this information for settlement purposes identified herein, and this information shall be kept confidential, not be shared with any third-party, and used only to administer the settlement.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendants to provide Claims Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Claims Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement and Claim Form	Within 14 calendar days after the Claims Administrators' receipt of Class Members' and Aggrieved Employees' information from Defendants
Last day for Claims Administrator to mail reminder post card to Class Members who have not opted out and have not submitted Claim Forms	35 calendar days after mailing of Notice of Settlement and Claim Form
Last day for Class Members to opt-out, submit disputes, submit objections, submit data requests, and submit Claim Form	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 calendar days after the Effective Date

Last day for Defendants to fund settlement	Within 21 calendar days after the Effective Date but in no event prior to February 15, 2023
Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after funds are deposited with the Claims Administrator
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and directs the parties to contact the Clerk for Department 25 to schedule a final approval hearing to take place in this Department on a Friday at 9:00 a.m. consistent with the administration timelines set forth in the Agreement. Briefs and supporting documentation relating to the final approval hearing are to be submitted according to the California Code of Civil Procedure. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any

1 purpose other than approving a settlement class. The parties will revert to their respective positions as if
2 no settlement had been reached at all.

3 **IT IS SO ORDERED.**

4
5 Date:

10/31/22

By:

JILL H. TALLEY

Judge of the Superior Court