

FILED / ENDORSED

FEB 14 2023

By T. Shaddix, Deputy Clerk

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10
11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

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

15 Plaintiff,

16 vs.

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

19 Defendants.

Case No. 34-2021-00310634

CLASS ACTION

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

Date: February 10, 2023

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

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[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

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1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on February 10, 2023, at 9:00 a.m., in Department 25 before
4 the Honorable Jill H. Talley, presiding. Named Plaintiff Isidro Arroyo ("Plaintiff") filed this putative
5 class action on November 3, 2021. The operative Complaint alleges that Defendant Epic Home Solar
6 ("Defendant") is liable for failure to pay overtime wages, failure to pay minimum wages, meal period
7 violations, rest period violations, wage statement violations, waiting time penalties, failure to
8 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. The class settlement
14 was preliminarily approved by this Court on October 31, 2022.

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

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

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

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

1 The Court recognizes that the foregoing definition is for Class Member identification purposes only and
2 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

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

21 The Court also finds that certifying the settlement class is required to avoid each Class Member
22 from litigating similar claims individually. This settlement will achieve economies of scale for Class
23 Members with relatively small individual claims and conserve the 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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1 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

2 The Court has again reviewed the preliminarily approved Agreement, which was submitted with
3 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls
4 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court finds
5 the Settlement was agreed upon only after extensive investigation, litigation, and arms-length
6 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to
7 weigh the potential value of the disputed claims against the risks of continued litigation. Class Members
8 were able to object to the Agreement and its terms through the administration process and at a fairness
9 or opt-out of being bound by the preliminarily approved Agreement. No objections were made by Class
10 Members and no Class Members opted out of the settlement. The Court gives final approval to the
11 Agreement and all terms therein as if stated here in full, including the \$150,000 Gross Settlement
12 Amount, which will be paid on a claims made basis as set forth in the Agreement. Plaintiff has provided
13 adequate reasoning and explanation as to why a claims made settlement with a reversion of unclaimed
14 funds to Defendant is appropriate under the circumstances of this case. *See In re Microsoft I-V Cases*,
15 135 Cal.App.4th 706, 721 (2006) ("The analysis additionally recognized that a court approved
16 settlement could properly include a 'reversion of ... funds to the defendant'"); *Cundiff v. Verizon*
17 *California, Inc.*, 167 Cal.App.4th 718, 728 (2008) (noting that *In re Microsoft I-V Cases* found that a
18 class settlement may provide for a reversion so long as it does not render the settlement, as a whole,
19 unfair, inadequate, or unreasonable and distinguishing the case before it on the grounds that the class
20 settlement agreement made no provision for unclaimed funds).

21 The Court approves of the \$5,000 PAGA Payment, which shall be paid from the Gross
22 Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA
23 claims. Seventy-five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce
24 Development Agency ("LWDA") and twenty-five percent (25%) will be paid to Aggrieved Employees
25 on a pro rata basis as described in the Agreement. The Court also finds that based on the facts of this
26 case and Defendant's financial condition, the Agreement provides a recovery that creates an effective
27 substantial deterrent to any potential future non-compliance, furthering the purpose of the Labor Code
28 and LWDA.

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

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

7 Class Counsel sought an award of attorneys' fees of \$52,500, attorney's costs of \$9,995.91, an
8 Enhancement Payment to the Class Representative in the amount of \$10,000, and for Claims
9 Administrator Costs in the amount of \$8,150. Defendant does not oppose these requests. The Notice of
10 Settlement sent to Class Members included information regarding these amounts and that they would be
11 requested in connection with final approval of the Agreement. No Class Members submitted any
12 objection to these amounts. The Court has reviewed the evidence submitted by Class Counsel regarding
13 their hourly rates, including the prior fee award in Sacramento County Superior Court at the requested
14 rates, and the amount of time expended in the litigation for the benefit of Class Members. The Court
15 finds that the rates requested, and hours expended are reasonable. The Court has also reviewed the
16 updated itemized costs submitted by Class Counsel, the information provided by the Class
17 Representative regarding the efforts and burdens undertaken for the benefit of the class, and the cost
18 information provided by the Claims Administrator. The Court finds that these amounts requested for
19 attorneys' fees and costs, the Enhancement Payment, and the Claims Administrator Costs are fair and
20 reasonable, and awarded as requested and deducted from the Gross Settlement Amount. This finding is
21 further supported by the lack of objection by Class Members to these amounts. The difference between
22 the actual attorneys' costs awarded and the originally allocated \$15,000 will be added to the Net
23 Settlement Amount pursuant to the terms of the Agreement. The difference between the actual Claims
24 Administrator Costs awarded and the originally allocated \$10,000 will be added to the Net Settlement
25 Amount pursuant to the terms of the Agreement.

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

3 The Court finds that the Notice of Settlement and Claim Form, which were submitted with
4 Plaintiff's Motion as Exhibit A to the Declaration of Lluvia Islas, fairly and adequately advised Class
5 Members of the terms of the proposed settlement, the rights being waived, their right to opt out, the
6 ability to dispute the number of workweeks worked during the Class Period, their pro rata share of the
7 Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to
8 the proposed settlement, and when to appear at the fairness hearing. The Court further finds that the
9 Notice of Settlement and Claim Form and distribution of them by first class mail to each identified Class
10 Member at his or her most recent address based on a National Change of Address database search from
11 the Class Members' last known address and a skip trace on any Class Members who have the Notice of
12 Settlement or Claim Form returned as "undeliverable" or "not at this address" comported with all
13 constitutional requirements, including those of due process.

14 **IMPLEMENTATION SCHEDULE**

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

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18 Last day for Claims Administrator to calculate the 19 final Net Settlement Amount, the final Claim 20 Amounts for Qualified Claimants and/or 21 Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
22 Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date but in no event prior to February 15, 2023

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1 2 3 4	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
5 6 7	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
8 9	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
10 11 12	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

13 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
14 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to
15 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
16 Agreement.

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19 **IT IS SO ORDERED.**

20 Date: 2/14/23

21 By  Jill Talley
22 Judge of the Superior Court

23 JILL H. TALLEY