

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE**

Kosonoy, Hector
Plaintiff/Petitioner,

vs.

Weldcraft Industries, Inc.
Defendant/Respondent.

Jud. Officer: **Bret Hillman**
Clerk: **Nicole Renteria**
Bailiff: **R Nash**
CSR: **Tamara Sumpter**
Interpreter:
Language:

Minutes: **Motion for Final Approval of Class Action
and PAGA Settlement**

Case No. **VCU291864**

Date: **February 6, 2024**

Department 07
Related Cases:

Appearances: ☐ No Appearances

☐ Party: _____

☐ Remote Appearance

☐ Party:

☐ Remote Appearance

☒ Attorney: Nicole Barvie for Plaintiff present via Zoom

☒ Remote Appearance

☒ Attorney: Clare Demera for Defendant present via Zoom

☒ Remote Appearance

☐ Court makes interpreter findings on the record pursuant to GC 68561(g)/GC 68561(f)

☐ The Court noted that no court reporter was available for today's proceedings.

Motion for Final Approval of Class Action and PAGA Settlement

☒ No requests for oral argument presented.

☒ Plaintiff's Counsel request to continue out the Final Compliance Hearing for reasons stated on the record.

ORDER: The Court adopts the Tentative Ruling as the Order of the Court as follows:

To grant the motion; to set the Final Compliance Hearing for September 24, 2024, Dept. 2. 8:30 am.

Plaintiff's motion for final approval of class action and PAGA settlement, attorneys' fees, costs, enhancement award, LWDA payment and class certification for settlement purposes came on for hearing on February 6, 2024. The court finds and rules as follows:

On July 27, 2023, the settlement administrator, Apex Class Action, LLC, received a mailing list of 91 potential class members from Defendant's counsel with names, contact information, social security numbers and relevant employment information.

On August 9, 2023, after the administrator processed the names through the National Change of Address Database and updated the list with any updated addresses located, the class notice was mailed to all 91 members. Some 12 notices were returned undeliverable and four notices were returned with a forwarding address. Skip trace searches were performed for those notices without forwarding addresses and the administrator found 3 updated addresses and mailed notices to those updated addresses. All but 5 notice packets were therefore considered undeliverable.

Class members had 60 days, until October 9, 2023, to submit objections, disputes and/or requests for exclusions. Zero (0) requests for exclusion and zero (0) valid objections have been received from class members. There are no outstanding disputes according to the administrator. A total of 91 or 100% of the class members will participate in the settlement, with zero objections or zero requests for exclusion.

The Court presumes the settlement is fair and reasonable given (a) that it was reached through arms-length bargaining at mediation, (b) that there was sufficient time for investigation and discovery since commencement of litigation on May 26, 2022 (c) class counsel have particularized experience with the claims at issue in the case, and (d) there appear to be no objections by any party or class members. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)

A net settlement amount of \$149,909.02 is available to pay to the class members in accordance with the terms of settlement. The highest settlement amount is currently estimated to be approximately \$6,128.05, the average amount is currently estimated to be approximately \$1,647.35, and the lowest amount is currently estimated to be approximately \$46.78. At the time of the motion for preliminary approval, there were 95 estimated class members, and the Court observes the class members have decreased slightly since then.

The Court believes basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise under the circumstances, in accordance with *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. This case involved extensive informal discovery and investigation of disputed claims, including review and analysis by Plaintiff's expert. The settlement avoids significant risks and delay that would result from further litigation of the case, which would include, amongst other matters, certification proceedings, trial, and the possibility of further delay and cost resulting from appeals, as detailed in the preliminary approval ruling.

Adequate information has been provided for a lodestar analysis of the attorneys' fees request. Counsel has provided a total number of hours in support of the fee request and explained why the fee request is reasonable given the time spent and value of the legal work performed.

The declaration of counsel submitted with this final approval motion indicates that Barvié Law, APC incurred a total lodestar of \$58,866.50 for 107.03 hours at a rate of \$550 per hour. (Declaration of Barvié ¶45.) The declaration then states "Collectively, Class Counsel spent a total of 129.03 hours successfully litigating this matter for a total combined lodestar of \$64,866.50" (Declaration of Barvié ¶46.) This total would appear to include the previous \$6,000 incurred by Zakay Law Group, APCL.

Here, counsel seeks \$80,767.50 in fees, which the Court preliminarily approved. The Court believes the requested attorney fees and costs appear reasonable under the circumstances. Additionally, counsel has provided declarations sufficient to demonstrate sufficient previous experience with class actions to further support the reasonableness of the award. The Court will approve fees in the same amount.

Counsel has also provided the current costs expended in amount \$14,123.48. (Declaration of Barvié ¶74.) These costs are approved.

The settlement administrator has provided, along with a declaration describing the work it has performed on the case, an invoice listing services performed, time spent on tasks and the cost amount estimated for the tasks performed. The invoice reflects a total value of services of \$5,200, which is the amount that was estimated in the motion for preliminary approval. The court believes the amount requested as compensation for the administrator appears reasonable.

Unclaimed settlement proceeds shall be sent to the Controller of the State of California, to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., in the name of the Settlement Class Member or PAGA-Only Member to whom the check was issued, until such time that the property is claimed, which the court believes fulfills the purposes of the lawsuit and is otherwise appropriate. (Code Civ. Proc. § 384.)

The Court previously approved a representative payment of \$5,000 and believes that the requested class representative payment of \$5,000 is appropriate under the circumstances.

Finally, the Court confirms its conditional certification of the settlement class. The Court finds no significant events have occurred that would cause it to change its prior determination that the settlement class met all requirements under Code of Civil Procedure section 382 for certification for settlement purposes at the time it granted Plaintiff's motion for preliminary approval.

On review of the declarations and pleadings submitted, the Court finds, given the established presumption that the settlement is fair and reasonable under the circumstances of this case, and, particularly, given the absence of any objection or opposition following the class notice, that the settlement is fair and reasonable and that the motion for final approval should be, and is hereby, granted.

Plaintiff's approved deductions from the increased and updated gross settlement of \$265,000 are as follows:

Court Approved Attorney Fees:	\$80,767.50
Court Approved Attorney Costs:	\$14,123.48
Court Approved Enhancement Payment to Plaintiff:	\$5,000.00
Court Approved Settlement Administrator Costs:	\$5,200.00
Total PAGA Payment:	\$10,000.00

Approved Net Settlement Amount	\$149,909.02
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The Court shall enter its order of final approval and judgment in this case on the proposed form submitted by plaintiff on January 8, 2024, and orders that notice of entry of judgment be given as provided in the judgment following entry thereof. **Final Compliance Hearing is set for September 24, 2024, Dept. 2, 8:30 am.**

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.

☒ Clerk to provide notice to parties by mail.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE**

Visalia Division
221 S Mooney Blvd, Room 201
Visalia, CA 93291
559.730.5000

Kosonoy, Hector
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CLERK'S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause.

I certify that I caused the Minute Order dated February 6, 2024 to be served on the persons listed below in the following manner:

☒ BY MAIL: I placed the documents for collection and mailing on the date shown, so as to cause it to be mailed in a sealed envelope with postage fully prepaid on that date following standard court practices to the persons and addresses shown. The mailing and this certification occurred at Visalia, California on February 6, 2024.

STEPHANIE CAMERON,
CLERK OF THE SUPERIOR COURT
COUNTY OF TULARE

By 
Nicole Renteria, Deputy Clerk

Names and Mailing/E-Mail Address of Person(s) Served:

NICOLE BARVIE
BARVIE LAW
550 W B ST 4TH FL
SAN DIEGO, CA 92101

SETH MEHRTEN
BARSAMIAN & MOODY
1141 WEST SHAW AVE STE 104
FRESNO, CA 93711