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CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

STEPHEN JARAMILLO, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

USS-UI, LLC, a Delaware limited
liability company formerly known as
USS POSCO Industries; and DOES 1
through 50, inclusive,

Defendants.

Case No.: C22-00641

(Assigned to the Honorable Charles S. Treat,
Dept. 12)

**[PROPOSED] JUDGMENT FOLLOWING
ORDER GRANTING PLAINTIFF'S
MOTION TO APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT OF
2004**

Date: April 25, 2024
Time: 8:30 A.M.
Dept.: 12

Complaint Filed: April 7, 2022
Trial Date: None Set

1 **[PROPOSED] JUDGMENT**

2 Pursuant to the Order Granting Plaintiff Stephen Jaramillo's ("Plaintiff") Motion to
3 Approve Settlement Agreement Pursuant Private Attorneys General Act of 2004 ("Order"), it is
4 hereby ORDERED, AJUDGED, AND DECREED as follows:

5 1. Judgment in this matter is entered in accordance with the Court's Order and Private
6 Attorneys General Act Settlement and Agreement and Release ("Settlement
7 Agreement") entered into by the Plaintiff and Defendant USS-UPI, LLC
8 ("Defendant"). The Order is incorporated by reference herein and is attached as
9 **Exhibit 1.**

10 2. The Court finds that the settlement is fundamentally fair, reasonable, and adequate, and
11 consistent with the purpose of PAGA; that Plaintiff has fairly and adequately protected
12 the interests of the members of the aggrieved employees; and that Plaintiff's counsel
13 are qualified to serve as counsel for the Plaintiff in his individual and representative
14 capacity for the allegedly aggrieved employees, defined in the Settlement Agreement
15 as all individuals who are or previously were employed by Defendant in California who
16 were classified as non-exempt during the period of March 5, 2021 to December 31,
17 2023 ("PAGA Members").

18 3. The total amount of settlement is \$1 million, which includes:

- 19 a. \$333,333.33 to Plaintiff's counsel as attorneys' fees;
20 b. \$11,476.84 to Plaintiff's counsel as litigation costs;
21 c. \$6,250.00 to the Settlement Administrator; and
22 d. \$10,000.00 to Plaintiff as a service payment.
23 e. The remainder, or the Net Settlement Amount, after the above deductions shall
24 be distributed 75% to the Labor and Workforce Development Agency and 25%
25 to the PAGA Members based on the formula set forth in the Settlement
26 Agreement.

27 4. All of the PAGA Members are bound by this Judgment and are barred from pursuing,
28 or seeking to reopen, any of the Released Claims, as defined in the Settlement

1 Agreement.

- 2 5. Without affecting the finality of the Judgment, the Court shall retain exclusive and
3 continuing jurisdiction over the above-captioned action and the Parties, including all
4 PAGA Members, for purposes of enforcing and interpreting this Judgment and
5 Settlement.

6 IT IS SO ORDERED, ADJUDGED AND DECREED.

7 MAY 08 2024

8 DATED: _____



HONORABLE CHARLES S. TREAT
SUPERIOR COURT OF CALIFORNIA

EXHIBIT 1

Superior Court of California, Contra Costa County

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K. Bieker
Court Executive Officer

MINUTE ORDER

STEPHEN JARAMILLO VS. USS-UIP, LLC

C22-00641

HEARING DATE: 04/25/2024

PROCEEDINGS: *HEARING ON MOTION IN RE: SETTLEMENT APPROVAL

DEPARTMENT 12

JUDICIAL OFFICER: CHARLES S TREAT

CLERK: A. MONTGOMERY

COURT REPORTER: NOT REPORTED

JOURNAL ENTRIES:

The Court received a timely opposition to the below tentative ruling:

Plaintiff Stephen Jaramillo moves for approval of the settlement of his PAGA suit against defendant USS-UIP, LLC, formerly known as USS POSCO Industries. Defendant operated a large steel fabrication plant in Pittsburg. Plaintiff was employed by defendant during the relevant time period from 2006 to 2022 as an operation technician. Plaintiff also moves for approval of his attorney's fees, litigation costs, administration costs, and representative payments.

The motion is **granted**.

A. Background of the Case and Terms of Settlement

This a PAGA case (not a class action), alleging violations of the Labor Code. The allegations have been revised by amendments, but as framed in the second amended complaint they center principally on untimely payment of wages.

This case was first filed on April 7, 2022. The present operative pleading, the second amended complaint, was filed on July 18, 2023.

The total settlement payment is \$1 million. Out of this is to come attorney's fees of \$333,333 (one-third of the recovery); \$11,477 in litigation costs, and \$6,250 in costs to the settlement Administrator. The plaintiff will be paid a service payment of \$10,000 for his efforts in this litigation.

The remaining amount, about \$638,940, is allocated as PAGA penalties. Those penalties are apportioned 75% to the LWDA and 25% to the aggrieved employees.

The settlement covers all non-exempt employees between . There are an estimated 609 covered employees. The payments from the employee share of the penalty (about \$159,736, after adjusting to actual litigation costs) will be distributed among the employees based on the number of pay periods each individual worked during the released period. The average employee share will be about \$262, though this will vary from employee to employee based on the pay-period allocation formula.

Plaintiff's counsel attests that informal discovery was undertaken, and the settlement was reached after a session with an experienced mediator.

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Plaintiff provided required notices to the LWDA of the initial claims and of the proposed settlement.

The settlement provides a process for mailing the notices to the aggrieved employees, who will not have to submit a claim, along with a process for following up on returned mail. Information for mailing will be provided to the administrator. The settlement amount will be paid to the administrator within 28 days. The administrator will seek to obtain current mailing addresses, and will remit all settlement funds to the appropriate recipients, including the LWDA and the aggrieved employees.

The settlement provides that the value of checks uncashed after 180 days shall be remitted to the State Controller's Office, Unpaid Property Division.

Specified PAGA claims, and any claims which could have been pleaded under the PAGA based on the factual allegations in PAGA Complaint and the LWDA Letter, would be released. It also provides that the parties intend to fully resolve all PAGA claims for the full PAGA Period.

A. Standards for Review of a PAGA Settlement

Recently, 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 46, 63.)

B. Application to This Settlement

Plaintiff indicates that the settlement is fair, and was evaluated by counsel based on adequate information and arms-length negotiation. In response to plaintiff's allegations, defendant asserted that it paid employees for all recorded time; that off-the-clock time was undocumented and unknown to defendant; and that employees were paid meal time premiums or signed waivers. Plaintiffs' counsel has provided a detailed declaration analyzing the potential strengths and weaknesses of plaintiffs' claims and defendants' potential defenses. The Court is satisfied with the analysis.

Of course, some reduction must be made for the strength of the case, and the time and expense of obtaining recovery. Even assuming success on the merits of each claim, PAGA gives the court discretion to reduce penalties for a variety of reasons, including where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or

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confiscatory." (Labor Code § 2699(e)(2).) 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.) These factors make the result hard to predict.

Labor Code § 2699(g)(1) provides that a prevailing employee in a PAGA action may recover attorney's fees. Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. 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.) Although *Lafitte* concerns a class action, not a PAGA-only case, this Court views the use of a lodestar cross-check as appropriate here. Plaintiffs' counsel have provided a breakdown and documentation of their lodestar figure of \$186,858, representing a lodestar multiplier of approximately 1.78. This appears appropriate in light of the risks of the case and the results achieved.

The requested representative payment of \$10,000 for the named plaintiff is approved. 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 his request. He points out that he executed a broader release than the class as a whole, but does not identify any particular claims of value that he may have. He also risks damage to his reputation and more difficulty in obtaining employment.

The settlement agreement allows for up to \$25,000 in litigation costs, but plaintiff seeks allowance of \$11,477 (mostly mediation fees). The costs sought are reasonable and are approved.

The settlement administrator's costs of \$6,250 are reasonable and are approved.

The statute does not expressly address how the 25% plaintiff's share of the penalties is to be allocated among all of the aggrieved employees. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) One court has held, however, that the entire 25% share of penalties could not be awarded to the named plaintiff. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-43.) In *Moorer*, the plaintiff had claim worth about \$9,500, yet was collecting penalties of \$148,000, and keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of the fact that the purpose of the action is to benefit the public, not private parties. Allocation based on pay periods is reasonable here.

C. Conclusion

The proposed settlement is approved. Counsel are directed to prepare an order including the Court's ultimate order, the other provisions submitted in the proposed order, and a corresponding judgment. The order would include a compliance hearing for a suitable date chosen in consultation with the Department's clerk. One week before the compliance hearing, counsel shall file a compliance statement. Ten percent of the attorney's fees shall be withheld by the Administrator pending the compliance

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hearing. Counsel will also be expected to update and document the actual litigation costs to be reimbursed.

Counsel Max Gavron appears
Counsel Benn Schonayerson appears

The Court having considered the pleadings and oral arguments of counsel, modifies the tentative ruling to read: "Disbursement will be in accordance to the settlement agreement."

DATED: 4/25/2024

BY: _____

A. MONTGOMERY, DEPUTY CLERK