

01/18/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Arraiga Deputy

**FINAL RULINGS/ORDERS RE: MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Gutierrez vs Del West Engineering, Inc., Case No.: 21STCV45477

The Parties' Motion for Final Approval of class action settlement is **GRANTED** as the settlement is fair, adequate, and reasonable, on the **condition** that counsel, Allen Attorney Group P.C, provide a supporting costs ledger.

The Parties' supplemental paperwork must be filed by **January 26, 2024.**

Non-Appearance Case Review is set for February 2, 2024, 8:30 AM, Department 9.

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$515,000.
- B. The Net Settlement Amount is the GSA minus the following:

\$171,666.67 (1/3) for attorney fees to Class Counsel, Orihuela Law Firm, P.C and Allen Attorney Group P.C (to be split as follows: 1/3 to each firm and the remaining 1/3 being distributed according to each firm's relative lodestar);

\$7,993.66 for litigation costs to Class Counsel;

\$5,000 for a Service Payment to the Named Plaintiff, Marco Gutierrez;

\$9,500 for settlement administration costs to Phoenix Settlement Administrators;

\$22,500 (75% of \$30,000 PAGA penalty) to the LWDA.

C. Employer share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant.

D. Plaintiffs release of Defendants from claims described herein.

By **February 16, 2024,** Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1) (3).

By **January 16, 2025**, Class Counsel must file a Final Report re: Distribution of the settlement funds.

Court sets a **Non-Appearence Case Review for January 23, 2025, 8:30 AM, Department 9.**

I.
INTRODUCTION

A. Background

This is a wage and hour class action. Defendant is "a multi-national manufacturing corporation specializing in the production of high-end components for racing, aerospace, watches and other industries."

On December 14 2021, Plaintiff Marco Gutierrez filed his class action complaint alleging the following causes of action: (1) Failure to Pay All Wages Owed (Violation of California Wage Orders and Labor Code §§ 510, 1194, 1197); (2) Failure to Provide Meal Periods and Rest Breaks or Pay Meal and Rest Break Premiums (California Labor Code §§ 226.7 and 512); (3) Failure to Pay Wages on Separation of Employment (California Labor Code §§ 203, 2926, 2927); (4) Failure to Provide Accurate Itemized Wage Statements (California Labor Code § 226); and (5) Unfair Business Practices (California Business & Professions Code §§ 17200-17208).

On August 18, 2022 Plaintiff filed a First Amended Complaint to officially add the PAGA claim to the pleading.

Counsel represents that as part of the pre-mediation data exchange Plaintiff and his counsel received class metrics and employment records including Plaintiff's personnel file, punch data and payroll data; Documents relating to the adoption of Defendant's Alternate Workweek Schedule including copies of the notices and documents filed with the DLSE; Punch detail report for a sampling of one-third of the putative class for the period of December 14, 2017 through March 5, 2022; and, a Payroll summary report for a sampling of one-third of the putative class for the period of December 14, 2017 through March 5, 2022.

The Parties attended an unsuccessful full day mediation session with Dennis Moss on April 21, 2022. Mr. Moss continued to work with the Parties' counsel after the session and they were ultimately able, with the help of a mediator's proposal and

several weeks of additional discussions, to finalize a settlement, a fully executed copy of the Settlement Agreement was filed with the Court on October 4, 2022 attached to the Declaration Of Kevin R. Allen ("Allen Decl."), as Exhibit 1.

Counsel filed a fully executed Amended Settlement Agreement with the Court on December 20, 2022 attached to the Supplemental Declaration Of Kevin R. Allen ("Allen Supp. Decl.") ISO Preliminary Approval, as Exhibit S1.

On January 20, 2023, the court issued a checklist of items for counsel to address and continued preliminary approval. In response, on May 17, 2023, counsel filed a fully executed Amended Settlement Agreement attached to the Second Supplemental Declaration Of Kevin R. Allen ("Allen 2nd Supp. Decl.") ISO Preliminary Approval, as Exhibit 1.

The settlement was preliminarily approved on June 7, 2023.

Now before the Court is the motion for final approval of the settlement agreement.

B. Definitions.

"Class" or "Class Members": all current and former individuals who have been employed by Del West Engineering, Inc. as a non-exempt employee in one or more of the job titles listed in Exhibit A to the settlement within the State of California at any time during the Class Period; however, former employees who Defendant laid off in September 2019 as part of Defendant's reduction in force and who received separation pay in exchange for a general release of claims are excluded from the Class and are not entitled to any additional payments provided in this Settlement. (Settlement Agreement, ¶1.3)

Job Titles are: 1. Final Inspector; 2. Forge Operator; 3. Inspector; 4. Machine Operator; 5. Machinist; 6. Maintenance Mechanic; 7. Maintenance Technician; 8. Polisher; 9. Preventive Maintenance Technician; 10. Prototype Machinist; 11. PVD Operator; 12. Quality Assurance Technician; 13. Receiving Clerk; 14. Robotic Polish Operator; 15. Sodium Fill Operator; 16. Janitor - AWS; 17. Shipping Clerk - AWS ; 18. Team Leader - AWS. (Exhibit A)

"Class Period": December 14, 2017 through and including June 26, 2022 (i.e., 60 days from the date the Parties accepted the mediator's proposal). (¶1.9)

"PAGA Members": all current and former individuals who have been employed by Del West Engineering, Inc. as a non-exempt employee in one or more of the job titles listed in Exhibit A to the Settlement within the State of California at any time during the PAGA Period. (§1.25)

Job Titles are: 1. Final Inspector; 2. Forge Operator; 3. Inspector; 4. Machine Operator; 5. Machinist; 6. Maintenance Mechanic; 7. Maintenance Technician; 8. Polisher; 9. Preventive Maintenance Technician; 10. Prototype Machinist; 11. PVD Operator; 12. Quality Assurance Technician; 13. Receiving Clerk; 14. Robotic Polish Operator; 15. Sodium Fill Operator; 16. Janitor - AWS; 17. Shipping Clerk - AWS ; 18. Team Leader - AWS. (Exhibit A)

"PAGA Period": December 14, 2020 through and including June 26, 2022 (i.e., 60 days from the date the Parties accepted the mediator's proposal). (§1.27)

Defendant represented that there were 18,515 Compensable Weeks during the Class Period through March 22, 2022. If the total number of Compensable Weeks during the entirety of the Class Period exceeds this figure by fifteen (15%) (i.e., 21,292 Compensable Weeks), then the Parties will meet and confer in good faith regarding a potential proportional increase in the Maximum Settlement Amount based on the Compensable Weeks in excess of 18,515. (§3.16)

There are 196 Settlement Class Members who have worked a collective total of 20,403 Compensable Pay Periods during the Class Period. (Burns Decl., §13.) There are 137 Aggrieved Employees who worked a total of 3,612 pay periods during the PAGA Period. (Id. at §16.)

The Parties stipulate and agree to the certification of this Action for purposes of this Settlement only. (§2.2)

C. Terms of Settlement Agreement

The essential terms are:

- The Maximum Settlement Amount ("MSA") is \$515,000, non-reversionary. (§1.22)
- The Net Settlement Amount ("Net") (\$286,750) is the MSA minus the following:
 - o Up to \$180,250 (35%) for attorney fees (§3.14);

- Fee Split: 1/3 to each firm and the remaining 1/3 being distributed according to each firm's relative lodestar. (Allen 2nd Supp. Decl. ISO Preliminary Approval, ¶27.)
 - Up to \$8,500 for litigation costs (¶3.14);
 - Up to \$7,500 for a Service Payment to the Named Plaintiff (¶3.13);
 - Up to \$9,500 for settlement administration costs (¶3.18); and
 - Payment of \$22,500 (75% of \$30,000 PAGA penalty) to the LWDA. (¶3.15)
- Defendants will pay their share of taxes separate from the MSA. (¶1.22)
- Funding of Settlement: Defendant is required to fully fund and pay Five Hundred Fifteen Thousand Dollars (\$515,000.00) of the Maximum Settlement Amount on the earlier of July 1, 2023 or seven (7) days after the Effective Date of the Settlement. (¶3.10)
- There is no claim form requirement. (¶1.39)
- Individual Settlement Payment Calculation: Each Settlement Class Member's share of the Net Settlement Amount shall be determined as follows:
 - Total Workweeks = (1 x all Covered Employee Weeks)
 - Workweek Value = Net Settlement Amount ÷ Total Workweeks
 - Individual Class Settlement Payment = [(1 x individual Covered Employee Weeks) x Workweek Value. (¶3.12.2)
 - Tax Allocation: 33.3% as wages and 66.7% as interest and penalties. (¶3.12.3)
- PAGA Payments: The PAGA Settlement Payments payable to each PAGA Member shall be determined as follows:
 - Pay Period Value = PAGA Settlement Amount ÷ total Compensable Pay Periods
 - Individual PAGA Settlement Payment = individual Compensable Pay Periods x Pay Period Value. (¶3.12.4)
 - Tax Allocation: 100% penalties. (Ibid.)
- "Response Deadline" means the date that is sixty (60) calendar days after the Settlement Administrator mails the Class Notice to Class Members and the last date on which Class Members eligible for Class Settlement Payments only may: (a) postmark or fax a Request for Exclusion to the Administrator; (b) postmark or fax a Notice of Objection to the Settlement to the Administrator; or (c) postmark or fax a Dispute to the Settlement to the Administrator. (¶1.36) If an updated mailing address is identified, the Administrator shall re-send the Class Notice to the Class Member and/or PAGA Member. Class Members to whom a Class Notice is re-sent after having been returned undeliverable to the Administrator shall have fourteen (14)

calendar days thereafter or until the Response Deadline has expired, whichever is later, to mail or fax the Request for Exclusion, Notice of Objection, or Dispute. (§3.3.5)

- o If ten percent (10%) or more of the Class Members, or a number of Class Members whose Class Settlement Payments represent ten percent (10%) or more of the total of all Class Settlement Payments, validly elect not to participate in the Settlement, Defendant will have the right to rescind the Settlement. (§3.17)

- **Uncashed Settlement Checks:** If a Settlement check is not cashed or deposited within one hundred eighty (180) calendar days after the date it is mailed to a Settlement Class Member, it will be voided. The funds associated with such voided checks will be transmitted to the Unclaimed Property Fund maintained by the State Controller's Office in the names of the Settlement Class Members. (§3.9)

- The settlement administrator will be Phoenix Settlement Administrators. (§1.2)

- The proposed settlement was submitted to the LWDA on May 3, 2023. (Allen 2nd Supp. Decl. ISO Preliminary Approval, §§30-31.)

- **Scope of the release:** As of the date Defendant funds the Settlement all Settlement Class Members, including Plaintiff, release the Released Parties from the Released Class Claims, and all PAGA Members, including Plaintiff, release the Released PAGA Claims. (§3.1.1)

- o "Released Class Claims" means any and all wage-and-hour individual and class claims, rights, demands, liabilities, and/or causes of action of every nature and description, arising from or related to any and all claims during the Class Period that were asserted or could have been asserted based on the facts alleged in the Complaint, including, without limitation, statutory, constitutional, contractual, and/or common law claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. (§1.32)

- o "Released PAGA Claims" means any and all individual and representative PAGA claims for civil penalties, attorneys' fees, and costs during the PAGA Period under California Labor Code section 2698, et seq. and any applicable IWC Wage Order that were or could have been asserted based on the facts alleged in the Complaint and Plaintiff's notice to the LWDA. (§1.33)

- o "Released Parties" means Del West Engineering, Inc., and all of its current and former parents, subsidiaries, predecessors and successors, and affiliated entities, and each of their respective officers, directors, owners, employees, partners, shareholders, agents, attorneys, insurers, and assigns, and each of them. (§1.34)

- o Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶3.1.2)

II. DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. The Parties attended an unsuccessful full day mediation session with Dennis Moss on April 21, 2022. (Allen Decl. ISO Preliminary Approval, ¶11.) Mr. Moss continued to work with the Parties' counsel after the session and they were ultimately able, with the help of a mediator's proposal and several weeks of additional discussions, to finalize a settlement. (Ibid.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that as part of the pre-mediation data exchange Plaintiff and his counsel received class metrics and employment records including Plaintiff's personnel file, punch data and payroll data; Documents relating to the adoption of Defendant's Alternate Workweek Schedule including copies of the notices and documents filed with the DLSE; Punch detail report for a sampling of one-third of the putative class for the period of December 14, 2017 through March 5, 2022; and, a Payroll summary report for a sampling of one-third of the putative class for the period of December 14, 2017 through March 5, 2022. (Id. at ¶10).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class action cases. (Id. at ¶¶42-44; Declaration of Nicolas Orihuela ISO Preliminary Approval, ¶¶2-6.)

4. What percentage of the class has objected? None. (Burns Decl., ¶11.)

The Court concludes that the settlement is presumptively fair.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits,

balanced against the amount offered in settlement.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Counsel has provided the following exposure analysis:

CLAIM	EXPOSURE	DISCOUNTED EXPOSURE
Overtime	\$1,401,215	\$70,060
Meal Breaks	\$1,401,215	\$280,243
Rest Breaks	\$ 700,607	\$35,030
Waiting Time Penalties	\$283,800	\$35,475
Wage Statement Penalties	\$256,250	\$32,031
PAGA	\$256,250	\$30,000
Interest	\$420,364	\$40,284
TOTAL	\$4,719,701	\$523,123

(Allen 2nd Supp. Decl ISO Preliminary Approval., ¶¶8-17.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).)

4. Amount offered in settlement. Plaintiff’s counsel obtained a \$515,000 non-reversionary settlement. The \$515,000 settlement amount constitutes approximately 11% of Defendant’s maximum exposure. Given the uncertain outcomes, the settlement appears to be within the “ballpark of reasonableness.”

The highest Individual Settlement Share to be paid is approximately \$3,230.06, the lowest Individual Settlement Share to be paid is approximately \$13.69, while the average Individual Settlement Share to be paid is approximately \$1,424.74. (Burns Decl., ¶15.)

The highest Individual PAGA Payment to be paid is approximately \$87.21, and the average Individual PAGA Payment to be paid is approximately \$54.74. (Id. at ¶16.)

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement.

Number of Class Members: 197 (Burns Decl., ¶6.)
Number of notice packets mailed: 197 (Id. at ¶¶5, 7.)
Number of undeliverable notices: 3 (Id. at ¶9.)
Number of opt-outs: 1 (Id. at ¶10.)
Number of objections: 0 (Id. at ¶11.)
Number of Participating Class Members: 196 (Id. at ¶13.)
Average individual payment: \$1,424.74 (Id. at ¶15.)
Highest individual payment: \$3,230.06 (Ibid.)
Lowest individual payment: \$13.69 (Ibid.)
Number of Aggrieved Employees: 137 (Id. at ¶16.)
Average PAGA payment: \$54.74 (Ibid.)
Highest PAGA payment: \$87.21 (Ibid.)

The Court concludes that the settlement is fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel, Orihuela Law Firm, P.C and Allen Attorney Group P.C, requests an award of \$180,250 (35%) in fees and \$7,993.66 in costs. (MFA, 16:12-15.) The Settlement Agreement provides for fees up to \$180,250 (35%) and costs up to \$8,500 (Settlement Agreement ¶3.14); class members were provided notice of the requested awards and none objected. (Burns Decl., ¶11 and Exhibit A thereto.)

Counsel will split fees as follows: one third will go to each firm and the remaining third will be distributed according

to each firm's relative lodestar. (Allend 2nd Supp. Decl. ISO Preliminary Approval, ¶4.)

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (Wershba at 254.) Here, class counsel request attorney fees using the percentage method, with a lodestar crosscheck. (MFA, pgs. 12-16.) In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503.) The court reduced the fee request (35%) to 33%. The reduced fees represents one-third of the gross settlement amount, which is approximately the average generally awarded in class actions. (In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, fn. 13 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].)

Counsel provided the following lodestar information:

Biller	Rate	Hours	Total
Orihuela Law Firm, P.C	\$700	62.5	\$43,750.00
Allen Attorney Group P.C	\$800	92.7	\$74,160.00
TOTAL		155.2	\$117,910.00

(Orihuela Decl. ISO Final, ¶9, and Ex. 1; Allen Decl. ISO Final, ¶30, and Exh. 3.)

Counsel represent they have incurred a lodestar of \$117,910, which will requires a multiplier of 1.52 to yield the requested fee award. (Ibid.)

As for costs, Class Counsel is requesting \$7,993.66 in costs. (Orihuela Decl. ISO Final, ¶9; Allen Decl. ISO Final, ¶33, and Exh. 5.) This is less than the \$8,500 cap provided for in the Settlement Agreement (¶3.18); for which Class Members were given notice and deemed unobjectionable. (Burns Decl., ¶11 and Exhibit A thereto.)

To date, Class Counsel incurred a total of \$7,993.66 in this Action. (Orihuela Decl. ISO Final, ¶9; Allen Decl. ISO Final, ¶33, and Exh. 5.) The costs include, but are not limited to, mediation fees (\$6,000), and filing fees (\$1,435). (Ibid.) The costs appear to be reasonable in amount and reasonably necessary to this litigation. [However, the court needs the costs ledger from Allen Attorney Group P.C.]

Based on the above, the court awards \$171,666.67 (1/3), in attorney's fees and \$7,993.66 in costs.

D. Claims Administration Costs

The claims administrator, Phoenix Settlement Administrators is requesting \$9,500 for the costs of settlement administration. (Burns Decl., ¶19.) This is equal to the estimated cost of \$20,920 provided for in the Settlement Agreement (¶3.18) and disclosed to class members in the Notice, to which there were no objections. (Burns Decl., ¶11 and Exhibit A thereto.)

The court awards administration costs in the requested amount.

E. Incentive Award to Class Representative

The Settlement provides for up to \$7,500 to Plaintiff Guttierrez for an enhancement award. (Settlement Agreement, ¶3.13.)

In connection with the final fairness hearing, named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit'" (Id. at 806-807, italics and ellipsis in original.)

Plaintiff Guttierrez represents that his contributions to this litigation, include, but are not limited to spending at 15 to 20 hours on the following: having numerous conversations with counsel, gathering documents, reviewing documents, and reviewing the settlement. (Guttierrez Decl., ¶¶6-11.)

The court notes that such efforts are commendable, but not exceptional.

Based on the above, the court grants the enhancement award in the reduced amount of \$5,000 to Plaintiff Marco Gutierrez.

IV.
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Final Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable, on the condition that counsel, Allen Attorney Group P.C, provide a supporting costs ledger.

2) The Parties' supplemental paperwork must be filed by January 26, 2024.

3) Non-Appearance Case Review is set for February 2, 2024, 8:30 AM, Department 9.

4) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$515,000.

B. The Net Settlement Amount is the GSA minus the following:

\$171,666.67 (1/3) for attorney fees to Class Counsel, Orihuela Law Firm, P.C and Allen Attorney Group P.C (to be split as follows: 1/3 to each firm and the remaining 1/3 being distributed according to each firm's relative lodestar);

\$7,993.66 for litigation costs to Class Counsel;

\$5,000 for a Service Payment to the Named Plaintiff, Marco Gutierrez;

\$9,500 for settlement administration costs to Phoenix Settlement Administrators;

\$22,500 (75% of \$30,000 PAGA penalty) to the LWDA.

C. Employer share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant.

D. Plaintiffs release of Defendants from claims described herein.

5) By February 16, 2024, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule

3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

6) By January 16, 2025, Class Counsel must file a Final Report re: Distribution of the settlement funds.

7) Court sets a Non-Appearance Case Review for January 23, 2025, 8:30 AM, Department 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: January 18, 2024



A handwritten signature in black ink, reading "Yvette M. Palazuelos", written over a horizontal line.

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT
Yvette M. Palazuelos / Judge