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SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE

03/03/2025

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NATIONAL DIVERSIFIED SALES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

LETICIA CRUZ, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

NATIONAL DIVERSIFIED SALES, INC.;
and DOES 1 through 20, inclusive,

Defendants.

Case No. VCU292892

*Assigned for All Purposes to:
Judge David C. Mathias; Dept. 1*

**[PROPOSED] ORDER APPROVING PAGA
ONLY SETTLEMENT**

1 ~~[PROPOSED]~~ ORDER

2 Having read and considered the Parties' Joint Stipulation to Revise Order Approving
3 PAGA Settlement (the "Stipulation"), the facts upon which the Stipulation is based, and good
4 cause appearing, it is hereby ORDERED as follows:

5 **1. Sufficiency of Amount of Settlement (Proposed Net Distribution to Aggrieved Employees:**
6 **\$107,443.79)**

7 The gross settlement amount is \$700,000.

8 Plaintiff estimates approximately 667 aggrieved employees, consisting of any person
9 employed by Defendant as anon-exempt employee in California from August 11, 2021 through
10 August 26, 2024.

11 Plaintiff's operative complaint brings claims under the PAGA statute only following the
12 Court's granting of a motion to compel arbitration and dismissal of class claims.

13 In deciding whether to grant approval of the proposed PAGA settlement, the primary
14 issues to be decided is whether the settlement is fair, adequate, and reasonable. (Moniz v.
15 Adecco USA, Inc. (2021) 72 Cal.App.5th 56, 77.) "Because many of the factors used to evaluate
16 class action settlements bear on a settlement's fairness—including the strength of the plaintiff's
17 case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation,
18 and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA
19 settlement." (Id.) "Given PAGA's purpose to protect the public interest, we also agree with the
20 LWDA and federal district courts that have found it appropriate to review a PAGA settlement to
21 ascertain whether a settlement is fair in view of PAGA's purposes and policies." (Id. citing
22 O'Connor v. Uber Technologies, Inc. (N.D. Cal. 2016) 201 F.Supp.3d1110, 1133.)

23 Plaintiff's counsel provides estimates of the maximum PAGA liability totaling
24 \$3,174,400.00, consisting of 31,744 pay periods x \$100.00 per pay period. (Declaration of
25 Campbell ¶12)

26 Counsel further discusses the appropriate discount rates developed based upon the risk
27 of non-recovery as to each alleged violation as well as the discretion of the Court to reduce the
28

per pay period PAGA penalty. (Declaration of Campbell ¶¶13-15.) Plaintiff's strongest claims were the overtime and meal period claims, but those claims only affected 5% and 25% of pay periods, respectively, resulting in a total of \$952,320.00 in potential PAGA penalties before discretionary reductions by the Court. (Declaration of Campbell ¶15.)

The motion adequately sets forth the relative strength and value of the PAGA claim as well as the risks, expense, complexity and likely duration of further litigation.

The parties reached gross settlement figure of \$700,000 after mediation.

Plaintiffs' deductions from the gross settlement of \$700,000 are proposed as follows:

Proposed Attorney Fees (33.3%) - <u>\$15,000.00</u> :	<u>\$ 218,333.33</u>
Proposed Attorney Costs (incurred):	\$ 24,941.50
Proposed Enhancement Award to Plaintiff:	\$ 5,000.00
Proposed Administrative Costs	\$ 6,950.00
<u>Individual Settlement to Plaintiff:</u>	<u>\$ 15,000.00</u>
Proposed Net Settlement Fund	\$ 429,775.17
Proposed LWDA Share (75% of Net Settlement Fund)	\$ 322,331.38
Proposed Aggrieved Employee Share (25% of Net Settlement Fund):	\$ 107,443.79

The Court finds the gross settlement amount fair, adequate, and reasonable pursuant to Moniz.

2. Notice

There is no notice period. The proposed notice adequately informs the aggrieved employees of adequate details regarding the case and PAGA settlement.

3. Enhancement Awards to Class Representatives

An enhancement payment of \$5,000 is proposed to as to Plaintiff. The Court has, in past

1 cases, approved enhancement awards of \$5,000 routinely. The enhancement payment is
2 approved.

3 Additionally, in exchange for a general release of her individual claims, \$15,000.00 is
4 allocated to Plaintiff. Settlement Agreement at § 1.13

5 **4. Attorneys' Fees and Costs**

6 Attorneys' fees of 33.3% of the gross settlement fund of \$700,000 or \$233,333.33 and
7 costs incurred of \$24,941.50 are sought by Plaintiff's counsel

8 Counsel has utilized the percentage of common fund methodology as well as provided
9 adequate lodestar information to evaluate the reasonableness of the fee request.

10 Counsel indicates 313.7 hours incurred at rates from \$950 to \$450, creating a base
11 lodestar of \$213,980. (Declaration of Campbell ¶31.) Therefore, the Court approves the
12 requested fees, finding that almost no multiplier is required.

13 Additionally, Counsel's declaration indicates costs of \$24,941.50 are presently incurred.
14 (Declaration of Campbell ¶30.) The Court, therefore approves the requested costs.

15 The Court further finds that Plaintiff's counsel are experienced PAGA and Class Action
16 attorneys through the declarations of counsel.

17 However, given the Court's tentative ruling did not account for the \$15,000.00
18 individual settlement payment to Plaintiff, the attorneys' fees shall be reduced by \$15,000.00 to
19 \$218,333.33. Plaintiff's counsel may be reimbursed up to \$15,000.00 from the unclaimed funds
20 for the deficit in attorneys' fees. Any remaining unclaimed funds in excess of \$15,000.00 will be
21 sent to the Unclaimed Property Fund. If the unclaimed funds are insufficient to fully reimburse
22 Plaintiff's counsel, they will have no further recourse for the reduction in their attorneys' fees.

23 **5. Claims Administrator**

24 The claims administrator is designated as Phoenix who has submitted a bid for \$6,950 to
25 administer the settlement. The Court, based on its prior experience with Phoenix and the
26 Declaration of Lawrence attached, approves it as the claims administrator.

27 **6. Unclaimed Settlement Proceeds**

The Court approves the distribution of unclaimed settlement proceeds to the California Secretary of State's Unclaimed Property Division, in accordance with Code of Civil Procedure section 384.

However, given the Court's tentative ruling did not account for the \$15,000.00 individual settlement payment to Plaintiff, Plaintiff's counsel may first be reimbursed up to \$15,000.00 from the unclaimed funds for the deficit in attorneys' fees. Any remaining unclaimed funds in excess of \$15,000.00 will be sent to the Unclaimed Property Fund. If the unclaimed funds are insufficient to fully reimburse Plaintiff's counsel, they will have no further recourse for the reduction in their attorneys' fees.

7. Release

The Court finds the proposed limited release of PAGA claims reasonable and within the law under a PAGA only settlement as to the aggrieved employees. (Arias v. Sup. Ct., (2009) 46 CA4th 969, 986-987.) Further, the Court notes that the Plaintiff's General Release term is supported by adequate consideration in the form of the enhancement and release payment, which the Court has approved above as \$5,000.

8. LWDA Notice

Counsel's declaration indicates confirmation from the LWDA of receipt of proof of submission of the proposed settlement agreement. (Lab. Code, § 2699, subd. (l)(2).) (Declaration of Campbell ¶9)

The Court, therefore, grants the motion and approves the deductions from the gross settlement fund of \$318,500 as follows:

Proposed Attorney Fees (33.3%) - <u>\$15,000.00</u> :	<u>\$ 218,333.33</u>
Proposed Attorney Costs (incurred):	\$ 24,941.50
Proposed Enhancement Award to Plaintiff:	\$ 5,000.00
Proposed Administrative Costs	\$ 6,950.00

<u>Individual Settlement to Plaintiff:</u>	<u>\$ 15,000.00</u>
Proposed Net Settlement Fund	\$ 429,775.17
Proposed LWDA Share (75% of Net Settlement Fund)	\$ 322,331.38
Proposed Aggrieved Employee Share (25% of Net Settlement Fund):	\$ 107,443.79

The Court sets a final compliance hearing as to distribution of the net settlement fund to the LWDA and Aggrieved Employees for June 26, 2025; D1; 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.

IT IS SO ORDERED.

Ordered per terms of 12/5/24 adopted tentative ruling.

Dated: 03/03/2025

By: _____



Honorable David C. Mathias
Judge of the Superior Court