

FEB -7 2025

Clerk of the Superior Court
By: R. Cersosimo, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

SHAYNA AMSTER, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

TOMAHAWK POWER LLC, a Delaware
limited liability company; CHICAGO
CAPITAL FUNDS LLC, a California limited
liability company; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2023-00031176-CU-OE-CTL

Assigned for All Purposes to:
Honorable Richard S. Whitney
Department C-68

CLASS ACTION

**ORDER OF FINAL APPROVAL AND
JUDGMENT**

Hearing Date: February 7, 2025
Hearing Time: 10:30 a.m.
Hearing Place: Department C-68

Complaint Filed: July 24, 2023
FAC Filed: October 31, 2023
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Shanya Amster's ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Class Action and PAGA Settlement Agreement ("Settlement
4 Agreement," "Settlement," or "Agreement"), **FINDS AND ORDERS:**

5 On or about June 11, 2024, Plaintiff and Defendants Tomahawk Power LLC and Chicago
6 Capital Funds, LLC ("Defendant") entered the Agreement to settle this lawsuit.

7 On August 27, 2024, the Court entered an order preliminarily approving the settlement of
8 this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure section
9 382 and Rule of Court 3.769, ordering notice to be sent to Class Members, providing Class
10 Members with an opportunity to object to the Settlement or exclude themselves from the Class,
11 and scheduling a Final Approval Hearing.

12 On February 7, 2025, the Court held a Final Approval Hearing to determine whether to
13 give final approval to the Settlement of this lawsuit.

14 1. Incorporation of Other Documents. This Order of Final Approval and
15 Judgment ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise
16 provided herein, all capitalized terms in this Order and Judgment shall have the same meaning as
17 set forth in the Settlement Agreement.

18 2. Jurisdiction. Because adequate notice has been disseminated and the Class
19 has been given the opportunity to request exclusion, the Court has personal jurisdiction with
20 respect to the claims of all Class Members. The Court has subject matter jurisdiction, including
21 jurisdiction to approve the Settlement and grants final certification of the Class.

22 3. Final Class Certification. The Court finds that the Class satisfies all
23 applicable requirements of Code of Civil Procedure section 382, Rule of Court 3.769, and due
24 process. The Court certifies the Class consisting of all current and former hourly-paid or non-
25 exempt employees employed by Defendant within the State of California at any time during the
26 period from July 24, 2019, through April 30, 2024 ("Class," "Class Members," and "Class
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1 Period"). There are thirty-seven (37) Class Members who did not submit valid and timely
2 Requests for Exclusion from the Settlement ("Participating Class Members").

3 4. Adequacy of Representation. Class Counsel fully and adequately
4 represented the Class for purposes of entering and implementing the Settlement and satisfied the
5 requirements of Code of Civil Procedure section 382.

6 5. Class Notice. The Court finds that the Court Approved Notice of Class
7 Action Settlement and Hearing Date for Final Court Approval ("Class Notice") and its
8 distribution to Class Members were implemented pursuant to the Settlement and this Court's
9 Preliminary Approval Order. The Court also finds that the Class Notice:

- 10 a. Constitutes notice reasonably calculated to apprise Class Members of: (i)
11 pendency of this lawsuit; (ii) material terms and provisions of the
12 Agreement and their rights; (iii) their right to object to any aspect of the
13 Agreement; (iv) their right to exclude themselves from the Agreement;
14 (v) their right to receive settlement payments; (vi) their right to appear at the
15 Final Approval Hearing; and (vii) binding effect of the orders and judgment
16 in this lawsuit on all Participating Class Members;
- 17 b. Constitutes notice that fully satisfied the requirements of Code of Civil
18 Procedure section 382, Rule of Court 3.769, and due process;
- 19 c. Constitutes the best practicable notice to Class Members under the
20 circumstances of this lawsuit; and
- 21 d. Constitutes notice reasonable, adequate, and sufficient for Class Members.

22 6. Final Settlement Approval. The terms and provisions of the Settlement
23 Agreement have been entered into good faith and are the product of arm's-length negotiations by
24 experienced counsel who have done a meaningful investigation of the claims. The Settlement
25 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
26 adequate, and in the best interests of the Parties. The Parties are directed to implement the
27 Settlement Agreement according to its terms and provisions.

1 7. Enforcement of Settlement. Nothing in this Order and Judgment shall
2 preclude any action to enforce the terms and provisions of the Settlement Agreement.

3 8. Binding Effect. The terms and provisions of the Settlement Agreement
4 and this Order and Judgment are binding on Plaintiff, Participating Class Members, Aggrieved
5 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
6 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
7 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
8 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
9 that were or could have been raised in this lawsuit and are encompassed by the Released Class
10 Claims and Released Private Attorneys General Act of 2004 ("PAGA") Claims. The Settlement
11 Agreement will have no binding effect upon, and provide no res judicata preclusion to, those
12 Class Members who have submitted timely requests for exclusion.

13 9. Release by Participating Class Members. Effective on the date when
14 Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes
15 owed on the Wage Portions of the Individual Class Payments, all Participating Class Members,
16 on behalf of themselves and their former and present representatives, agents, attorneys, heirs,
17 administrators, successors, and assigns, release the Released Parties from Released Class Claims.

18 a. Release by Aggrieved Employees. Effective on the date when Defendant
19 fully funds the entire Gross Settlement Amount and funds all employer
20 payroll taxes owed on the Wage Portions of the Individual Class Payments,
21 all Participating and Non-Participating Class Members, who are Aggrieved
22 Employees, are deemed to release, on behalf of themselves and their former
23 and present representatives, agents, attorneys, heirs, administrators,
24 successors, and assigns, the Released Parties from the Released PAGA
25 Claims.

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2 b. Plaintiff's Release. Effective on the date when Defendant fully funds the
3 entire Gross Settlement Amount and funds all employer payroll taxes owed
4 on the Wage Portions of the Individual Class Payments, Plaintiff and her
5 former and present spouses, representatives, agents, attorneys, heirs,
6 administrators, successors, and assigns generally, release and discharge
7 Released Parties from the Plaintiff's Release. Plaintiff also expressly waives
8 and relinquishes the provisions, rights, and benefits, if any, of section 1542
9 of the Civil Code.

10 c. Released Parties. The Released Parties include Defendant and its parent
11 companies, shareholders, members, predecessors, successors, all affiliates
12 and related entities, subsidiaries, officers, directors, agents (including any
13 investment bankers, accountants, insurers, reinsurers, attorneys and any past,
14 present, or future officers, directors, and employees), employees, and
15 stockholders.

16 10. Class Counsel Fees Payment and Class Counsel Litigation Expenses

17 Payment. The Court finds that the Class Counsel Fees Payment of \$70,000, to be paid by
18 Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and
19 appropriate. The Court finds that the Class Counsel Litigation Expenses Payment as
20 reimbursement for actual litigation costs incurred of \$15,070.47, to be paid by Defendant to
21 Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Defendant
22 shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
23 incurred by Class Counsel or any other counsel representing Plaintiff or Class Members.
24 Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or
25 disbursements incurred by Plaintiff or Class Members in connection with or related in any
26 manner to this lawsuit, Agreement, settlement administration, Released Class Claims, and
27 Released PAGA Claims.

- 1 a. The Court has an independent right and responsibility to review the Class
2 Counsel Fees Payment and only award so much as it determines reasonable.
3 (*Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th
4 123, 127-128.) The Class Counsel Fees Payment of \$70,000 is thirty-five
5 percent (35%) of the common fund created for the benefit of the Class and is
6 supported by use of the percentage-fee method. (*Laffitte v. Robert Half*
7 *International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results
8 achieved, financial risk undertaken, difficult nature of this litigation, skills
9 required, percentage fees award in previous and other cases, and contingent
10 fees charged in the marketplace, the Court finds that the Class Counsel Fees
11 Payment is consistent with the marketplace, is reasonable, and is approved.
- 12 b. The Court has reviewed the Declaration of Douglas Han regarding the costs
13 expended. Under the terms of the Settlement, Class Counsel may seek
14 reimbursement of up to \$20,000 in litigation costs. The Court finds that
15 Class Counsel expended \$15,070.47 in litigation costs, and such costs were
16 reasonable. The Court approves the payment of the Class Counsel Litigation
17 Expenses Payment of \$15,070.47 from the common fund for the
18 reimbursement of Class Counsel's litigation costs.

19 11. Class Representative Service Payment. The Court finds that the Class
20 Representative Service Payment of \$10,000, to be paid by Defendant to Plaintiff, out of the
21 Gross Settlement Amount, to be reasonable and appropriate. The Class Representative Service
22 Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

- 23 a. The rationale for making enhancement payments is class representatives
24 should be compensated for the expense and risk they incurred in conferring
25 a benefit on the Class. Criteria courts consider include: (i) risk to the class
26 representatives in commencing suit; (ii) notoriety and personal difficulties;
27 (iii) amount of time and effort spent by the class representatives; (iv)
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1 duration of the litigation; and (v) personal benefit (or lack thereof) enjoyed
2 by class representatives.

- 3 b. The Court has reviewed Plaintiff's declaration. Given the risks inherent in
4 the services as the class representative, duration of the case and time
5 involved, and benefits created for the Class, the Court approves the payment
6 of the Class Representative Service Payment of \$10,000 to Plaintiff.

7 12. Administration Expenses Payment. The Court finds that Administration
8 Expenses Payment of \$6,995, to be paid by Defendant to the Administrator out of the Gross
9 Settlement Amount, to be reasonable and appropriate. The Administration Expenses Payment is
10 to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

- 11 a. The Court has reviewed the Declaration of Yami Burns from Phoenix Class
12 Action Administration Solutions, the Administrator. The Court finds that
13 notice was provided to the Class pursuant to the Preliminary Approval
14 Order, constitutes the best practicable notice to the Class, and satisfied due
15 process. Thus, the Court approves the payment of the Administration
16 Expenses Payment of \$6,995 for the Administrator's services in
17 administering the Settlement.

18 13. PAGA Penalties. The Court finds that the PAGA Penalties of \$20,000,
19 seventy-five percent (75%) of which (\$15,000) will be paid to the California Labor and
20 Workforce Development Agency out of the Gross Settlement Amount and twenty-five percent
21 (25%) of which (\$5,000) will be distributed to Aggrieved Employees, on a pro rata basis, to be
22 reasonable and appropriate. The PAGA Penalties is to be paid pursuant to the terms and
23 provisions set forth in the Settlement Agreement.

24 14. Funding the Gross Settlement Amount. Defendant shall fund the Gross
25 Settlement Amount by transmitting the funds to the Administrator no later than the Effective
26 Date. Defendant Chicago Capital Funds will fund one-third (1/3) of the Gross Settlement
27 Amount and Defendant Tomahawk Power will fund two-third (2/3) of the Gross Settlement
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1 Amount. Within fourteen (14) calendar days after Defendant fully funds the Gross Settlement
2 Amount, the Administrator will mail checks to the appropriate entities and persons.

3 15. Fairness of the Settlement. As noted in the Preliminary Approval Order,
4 the Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends
5 that the Settlement was the product of arm's-length negotiations following extensive litigation,
6 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
7 Christopher Barnes, an experienced and well-respected mediator.

8 a. The fairness of the Settlement is demonstrated by there being no objections
9 to and no requests for exclusion from the Settlement.

10 b. The fairness of the Settlement is further illustrated by the gross *average*
11 Individual Class Payment being approximately \$2,106.34, and the gross
12 *highest* Individual Class Payment being about \$8,040.86.

13 16. Uncashed Checks. Participating Class Members and Aggrieved
14 Employees must cash or deposit their settlement checks within one hundred eighty (180)
15 calendar days after the checks are mailed to them by the Administrator. Uncashed settlement
16 checks will be canceled and transmitted to the California Controller's Unclaimed Property Fund.

17 17. Modification of Settlement Agreement. The Participating Class Members
18 are authorized to agree to and adopt amendments to or modifications of the Settlement
19 Agreement by an express written instrument signed by all Parties or their representatives and
20 approved by the Court. Such amendments or modifications shall be consistent with this Order
21 and Judgment and cannot limit the rights of Participating Class Members under the Settlement.

22 18. Final Accounting and Compliance. The Court sets a compliance hearing
23 for October 17, 2025, in Department C-68. At least five (5) court days before this hearing,
24 Plaintiff shall file a compliance status report. Pursuant to Code of Civil Procedure section 384,
25 the compliance status report shall specify the total amount paid to Participating Class Members
26 and the residual of the unclaimed settlement funds that will be paid to the entity identified as the
27 recipient of such funds in the Settlement Agreement.

19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and Judgment. This Court expressly retains jurisdiction for the administration, interpretation, effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment, and for any other necessary purpose, including, without limitation:

- a. Enforcing the terms and provisions of the Settlement Agreement and resolving any disputes, claims, or causes of action in this lawsuit that, in whole or in part, are related to or arise out of the Settlement Agreement or this Order and Judgment;
- b. Entering such additional orders as may be necessary or appropriate to protect or effectuate this Order and Judgment approving the Settlement Agreement, and permanently enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of the Settlement Agreement; and
- c. Entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction.

The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment is GRANTED. The Administrator is directed to carry out the terms of the Agreement forthwith.

THE PARTIES ARE ORDERED TO COMPLY WITH THE TERMS OF THE SETTLEMENT AGREEMENT. PURSUANT TO RULES OF COURT 3.769, THE COURT ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

IT IS SO ORDERED.

DATED: FEB - 7 2025

HONORABLE RICHARD S. WHITNEY
SUPERIOR COURT JUDGE

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is shanneyan@justicelawcorp.com

On February 13, 2025, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Amster v. Tomahawk Power LLC, et al.**
LWDA/Court Case No.: **LWDA- CM-955720-23**
Case No. 37-2023-00031176-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 13, 2025, at Pasadena, California.



Sophia Hanneyan