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Filed

April 10, 2025

Clerk of the Court

Superior Court of CA

County of Santa Clara

23CV421595

By: tduarte

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

FERNANDO RANGEL HERNANDEZ, an
individual, on behalf of himself, the State of
California, as a private attorney general, and on
behalf of all others similarly situated,

Plaintiff,

v.

DESIGN HEATING & AIR CONDITIONING,
INC., a California Corporation; and DOES 1 TO
50,

Defendants.

Case Number: 23CV421595

**[Proposed] Order Granting Preliminary
Approval of Class Action Settlement**

Hearing Date: April 2, 2025

Hearing Time: 1:30 p.m.

Dept.: 19

Judge: Hon. Theodore C. Zayner

Complaint Filed: August 28, 2023

FAC Filed: July 31, 2024

Trial Date: None Set

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[PROPOSED] ORDER

This matter having come for hearing on April 2, 2025, at 1:30 p.m., regarding Plaintiff Fernando Rangel Hernandez’s (“Plaintiff”) unopposed *Motion for Preliminary Approval of Class and Representative Action Settlement* (the “Motion”) on the terms set forth in the parties’ *Class Action and PAGA Stipulation of Settlement and Release* (the “Settlement” or “Settlement Agreement”) attached as **Exhibit A** to the concurrently filed *Declaration of Jonathan Melmed in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement*.

Having considered the Settlement, all papers and proceedings held herein, and having reviewed the entire record in this action, the Court **GRANTED** Plaintiff’s Motion. The Parties submitted on the Court’s tentative, and filed a stipulation on April 2, 2025, changing the *cy pres* beneficiary to Bay Area Legal Aid. The tentative ruling made the following determinations, with the conclusion updated to indicate that the Parties have changed the *cy pres* beneficiary:

I. INTRODUCTION

This is a putative class and representative action arising from alleged wage and hour violations. On August 28, 2023, plaintiff Fernando Rangel Hernandez (“Plaintiff”) began this action by filing a class action complaint against defendant Design Heating & Air Conditioning, Inc. (“Defendant”).

On July 31, 2024, Plaintiff filed operative first amended class and representative action complaint against Defendant, asserting the following causes of action: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide rest periods and pay missed rest period premiums; (4) failure to provide meal periods and pay missed meal period premiums; (5) failure to maintain accurate employment records; (6) failure to pay wages timely during employment; (7) failure to pay wages earned and unpaid at separation; (8) failure to indemnify all necessary business expenditures; (9) failure to furnish accurate itemized wage statements; (10) violation of California’s Unfair Competition Law; and (11) penalties pursuant to the Private Attorneys General Act (“PAGA”).

The parties have reached a settlement. Plaintiff now moves for preliminary approval of the settlement. The motion is unopposed.

1 **II. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS**
2 **CLASS ACTION**

3 Generally, “questions whether a [class action] settlement was fair and reasonable, whether
4 notice to the class was adequate, whether certification of the class was proper, and whether the attorney
5 fee award was proper are matters addressed to the trial court’s broad discretion.” (Wershba v. Apple
6 Computer, Inc. (2001) 91 Cal.App.4th 224, 234-235 (Wershba), disapproved of on other grounds by
7 Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

8 In determining whether a class settlement is fair, adequate and reasonable, the trial court should
9 consider relevant factors, such as the strength of plaintiffs’ case, the risk, expense, complexity and
10 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
11 offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience
12 and views of counsel, the presence of a governmental participant, and the reaction of the class members
13 to the proposed settlement.

14 (Wershba, supra, 91 Cal.App.4th at pp. 244-245, internal citations and quotations omitted.)

15 In general, the most important factor is the strength of the plaintiffs’ case on the merits, balanced
16 against the amount offered in settlement. (See Kullar v. Foot Locker Retail, Inc. (2008) 168
17 Cal.App.4th 116, 130 (Kullar).) But the trial court is free to engage in a balancing and weighing of
18 factors depending on the circumstances of each case. (Wershba, supra, 91 Cal.App.4th at p. 245.) The
19 trial court must examine the “proposed settlement agreement to the extent necessary to reach a reasoned
20 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the
21 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
22 concerned.” (Ibid., citation and internal quotation marks omitted.)

23 The burden is on the proponent of the settlement to show that it is fair and reasonable. However,
24 “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining;
25 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
26 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (Wershba,
27 supra, 91 Cal.App.4th at p. 245, citation omitted.)
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2 **PAGA**

3 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall review and
4 approve any settlement of any civil action filed pursuant to” PAGA. The court’s review “ensur[es] that
5 any negotiated resolution is fair to those affected.” (Williams v. Superior Court (2017) 3 Cal.5th 531,
6 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce
7 Development Agency (LWDA), leaving the remaining twenty- five percent for the aggrieved
8 employees. (Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal.4th 348, 380, overruled
9 on other grounds by Viking River Cruises, Inc. v. Moriana (2022) 596 U.S. 639.)

10 Like its review of class action settlements, the Court must “determine independently whether a
11 PAGA settlement is fair and reasonable,” to protect “the interests of the public and the LWDA in the
12 enforcement of state labor laws.” (Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, 76-77.) It
13 must make this assessment “in view of PAGA’s purposes to remediate present labor law violations,
14 deter future ones, and to maximize enforcement of state labor laws.” (Id. at p. 77; see also Haralson v.
15 U.S. Aviation Servs. Corp. (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 [“when a PAGA claim is settled,
16 the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the
17 underlying purpose of the statute to benefit the public”], quoting LWDA guidance discussed in
18 O’Connor v. Uber Technologies, Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110 (O’Connor).)

19 The settlement must be reasonable considering the potential verdict value. (See O’Connor,
20 supra, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].)
21 But a permissible settlement may be substantially discounted, given that courts often exercise their
22 discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at
23 trial. (See Vicerai v. Mistras Group, Inc. (N.D. Cal., Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 WL
24 5907869, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

25 **III. DISCUSSION**

26 **A. PROVISIONS OF THE SETTLEMENT**

27 This case has been settled on behalf of the following class:
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1 [A]ll individuals who are or were employed by Defendants as non-exempt employees in
2 California during the Class Period [August 28, 2019, through the date of preliminary approval of the
3 settlement]. (Declaration of Jonathan Melmed (“Melmed Decl.”), Ex. A (“Agreement”), Ex. A, ¶¶ 1.5,
4 1.12.)

5 The settlement also includes a subset PAGA class of Aggrieved Employees, defined as “all
6 individuals who are or were employed by Defendants as non-exempt employees in California during
7 the PAGA Period [August 28, 2022, through August 22, 2024]. (Id. at ¶¶ 1.4, 1.31.)

8 Defendant will pay a gross settlement amount of \$200,000, subject to an escalator clause.
9 (Agreement, ¶¶ 3.1, 9.) This amount includes attorney fees of up to one-third of the gross settlement
10 amount (currently estimated to be \$66,666.67), litigation costs not to exceed \$15,000, a PAGA
11 allocation of \$10,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be
12 paid to PAGA Employees as individual PAGA payments), a service payment of up to \$10,000, and
13 settlement administration estimated to be \$7,250. (Id. at ¶¶ 3.2.) The net settlement amounts and
14 individual PAGA payments will be distributed on a pro rata basis according to the number of
15 workweeks/pay periods they were employed by Defendant.

16 The Agreement provides that Phoenix Class Action Administrators (“Phoenix”) will serve as
17 the settlement administrator. (Id. at ¶ 8.1.) The court approves Phoenix as the settlement administrator.

18 The Agreement provides that any funds from settlement checks remaining uncashed after the
19 void date (180 days after mailing) will be transmitted to California State Controller for deposit in the
20 Unclaimed Property Fund in the name of the individual whose check was uncashed. (Agreement, ¶
21 4.4.3.) The parties’ proposal to send funds from uncashed checks issued to class member to the State
22 of California Unclaimed Property Fund does not comply with Code of Civil Procedure section 384,
23 which mandates that unclaimed or abandoned class members’ funds be given to “nonprofit
24 organizations or foundations to support projects that will benefit the class or similarly situated persons,
25 or that promote the law consistent with the objectives and purposes of the underlying cause of action,
26 to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.”
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1 The court is disinclined to grant preliminary approval of a settlement that does not comply with
2 Code of Civil Procedure section 384. Therefore – prior to the upcoming hearing, if possible – the parties
3 are encouraged to designate a cy pres recipient by agreement in writing (for example, by stipulation).
4 Otherwise, the motion may be CONTINUED.

5 In exchange for the settlement, the class members agree to release Defendant, and related
6 entities and persons, “from all claims arising during the Class Period that were alleged, or reasonably
7 could have been alleged, based on the facts stated in the Operative Complaint.” (Agreement, ¶¶ 1.39,
8 1.41, 6.1.) In accordance with the provisions of PAGA, Aggrieved Employees will be deemed to release
9 Defendant, and related entities and persons, “from all claims for statutory penalties based on PAGA
10 (Lab. Code, §§ 2698-2699.6) that were alleged, or reasonably could have been alleged, based on the
11 PAGA Period facts stated in the Operative Complaint and the PAGA Notice.” (Id. at ¶¶ 1.40, 1.41,
12 6.2.) The forgoing releases are appropriately tailored to the factual allegations of the operative pleading
13 and PAGA notice. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

14 **B. FAIRNESS OF THE SETTLEMENT**

15 Plaintiff asserts that the settlement is fair, reasonable, and adequate and the result of extensive
16 discovery, investigation, and mediation. (Motion, pp. 25:21-6:24.) The parties agreed to participate in
17 mediation with Eve Wagner. (Id. at p. 4:9-21.) Prior to mediation, Plaintiff’s counsel conducted
18 informal discovery, which included Defendant’s relevant policies and employee handbook and work-
19 related pay and time data from a sample of Class Members and Aggrieved Employees. (Id. at pp. 4:12-
20 5:2.)

21 Plaintiff’s counsel provides an analysis of Defendant’s estimated exposure, broken down by
22 claim. (Melmed Decl., ¶¶ 23-60.) According to this analysis, Defendant’s estimated total maximum
23 exposure is \$4,175,346, while its estimated total realistic exposure is \$1,770,851. The gross settlement
24 amount of \$200,000 represents roughly 4.8 of the estimated maximum exposure and therefore is
25 slightly low when assessed on this basis. (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022,
26 No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 [citing cases approving
27 settlements in the range of 5 to 35 percent of the maximum potential exposure].) Nevertheless,
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1 Plaintiff's counsel has provided a thorough explanation of the valuation of the claims, and the
2 settlement amount represents approximately 11.3 percent of Defendant's estimated realistic exposure.
3 Plaintiff's counsel also explains that he conducted relevant discovery and a thorough analysis of
4 Plaintiff's claims, and engaged in negotiations with a mediator, before arriving at the settlement
5 amount.

6 The court has reviewed Plaintiff's written submissions in support of the proposed settlement.
7 Based on the circumstances of the case, including the strength of Plaintiffs' case and potential defenses,
8 the court finds the terms of the settlement to be fair. The settlement provides for some recovery for
9 each class member and eliminates the risk and expense of further litigation.

10 **SERVICE AWARD, FEES AND COSTS**

11 Plaintiff requests a service award of \$10,000. (Motion, pp. 30:8-31:13.) Plaintiff Hernandez has
12 provided a declaration describing his participation in this litigation and risks associated with his
13 involvement, but it does not include a time estimate. Prior to the final approval hearing, Plaintiff
14 Hernandez shall provide a supplemental declaration including an estimate of the number of hours he
15 has spent working on this case. The court will revisit the service award amount at that time.

16 The court also has an independent right and responsibility to review the requested attorney fees
17 and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular*
18 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will seek attorney fees of up
19 to one-third of the gross settlement amount (currently estimated to be \$66,666.67). Prior to the final
20 approval hearing, Plaintiff's counsel shall submit lodestar information (including hourly rate and hours
21 worked) as well as evidence of actual litigation costs incurred and settlement administration costs.

22 **CONDITIONAL CERTIFICATION OF CLASS**

23 Plaintiff requests that the class be conditionally certified for purposes of the settlement. Rule
24 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or
25 denying certification of a provisional settlement class after [a] preliminary settlement hearing."
26 California Code of Civil Procedure Section 382 authorizes certification of a class "when the question
27 is one of a common or general interest, of many persons, or when the parties are numerous, and it is
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1 impracticable to bring them all before the court” As interpreted by the California Supreme Court,
2 section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest among
3 the class members. (Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 326 (Sav-On).)

4 The “community-of-interest” requirement encompasses three factors: (1) predominant
5 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and, (3)
6 class representatives who can adequately represent the class. (Sav-On, supra, 34 Cal.4th at p. 326.)
7 “Other relevant considerations include the probability that each class member will come forward
8 ultimately to prove his or her separate claim to a portion of the total recovery and whether the class
9 approach would actually serve to deter and redress alleged wrongdoing.” (Linder v. Thrifty Oil Co.
10 (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield
11 “substantial benefits” to both “the litigants and to the court.” (Blue Chip Stamps v. Superior Court
12 (1976) 18 Cal.3d 381, 385.) As explained by the California Supreme Court,

13 The certification question is essentially a procedural one that does not ask whether an action is
14 legally or factually meritorious. A trial court ruling on a certification motion determines whether the
15 issues which may be jointly tried, when compared with those requiring separate adjudication, are so
16 numerous or substantial that the maintenance of a class action would be advantageous to the judicial
17 process and to the litigants. (Sav-On, supra, 34 Cal.4th at p. 326, internal punctuation and citations
18 omitted.)

19 Plaintiff states there are approximately 115 class members, who can be identified from a review
20 of Defendant’s records. (Motion, p. 1:3-8.) There are common questions regarding whether class
21 members were subjected to common practices that violated wage and hour laws. No issue has been
22 raised regarding the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds
23 that the proposed class should be conditionally certified for settlement purposes.

24 **CLASS NOTICE**

25 The content of a class notice is subject to court approval. “If the court has certified the action
26 as a class action, notice of the final approval hearing must be given to the class members in the manner
27 specified by the court.” (Cal. Rules of Court, rule 3.769(f).) “The notice must contain an explanation
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1 of the proposed settlement and procedures for class members to follow in filing written objections to it
2 and in arranging to appear at the settlement hearing and state any objections to the proposed
3 settlement.” (Ibid.) In determining the manner of the notice, the court must consider: “(1) The interests
4 of the class; (2) The type of relief requested; (3) The stake of the individual class members; (4) The
5 cost of notifying class members; (5) The resources of the parties; (6) The possible prejudice to class
6 members who do not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of
7 Court, rule 3.766(e).)

8 Here, the form of the notice is generally adequate. It describes the lawsuit, explains the
9 settlement, and instructs class members that they may opt out of the settlement or object. (Agreement,
10 Ex. A.) The settlement amounts, including attorney fees and payment to the named plaintiff, are stated.
11 The notice informs class members that they may appear at the final fairness hearing to make an oral
12 objection without filing a written objection.

13 However, the second page of the notice is misleading because it states that recipients have two
14 basic options under the settlement: (1) to do nothing; or (2) to opt-out of the class settlement. This
15 portion of the notice must be modified to clarify that Class Members also have the option to object to
16 the settlement. Also, as discussed above, the court has instructed the parties to meet and confer
17 regarding the designation of a cy pres recipient, and the notice must be amended to reflect any changes
18 made in this respect.

19 Finally, the court requests that the following language regarding the final approval hearing be
20 added to the notice:

21 Class members may appear at the final approval hearing in person or remotely using the
22 Microsoft Teams link for Department 19 (Afternoon Session), and should review the remote
23 appearance instructions beforehand:
24 https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

25 Class members who wish to appear remotely are encouraged to contact class counsel at least
26 three days before the hearing, if possible, so that potential technology or audibility issues can be
27 avoided or minimized.
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1 On the condition that the parties make the above changes to the notice prior to its mailing, the
2 notice is approved.

3 **IV. CONCLUSION**

4 Having found that the Parties have met and conferred to address the court's concern regarding
5 the designation of a *cy pres* recipient prior to today's hearing by stipulation, the court grants the motion
6 for preliminary approval.

7 The court (1) sets a final approval hearing for October 1, 2025, at 1:30 p.m. in Department 19;
8 and (2) preliminarily certifies the following class for settlement purposes:

9 [A]ll individuals who are or were employed by Defendants as non-exempt employees in
10 California during the Class Period [August 28, 2019, through the date of preliminary approval of the
11 settlement].

12 Plaintiff has prepared this order in accordance with California Rules of Court, rule 3.1312.

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14 The Court also **HEREBY ORDERS AND MAKES THE FOLLOWING**
15 **DETERMINATIONS:**

16 1. The Court directs the mailing of the Class Notice by first class mail to the Class
17 Members in accordance with the implementation schedule set forth below. The Court finds the dates
18 selected for the mailing and distribution of the Class Notice, as set forth in the implementation schedule,
19 meet the requirements of due process and constitute the best notice practicable under the circumstances
20 and due and sufficient notice to all persons entitled thereto.

21 2. The Court confirms Plaintiff Fernando Rangel Hernandez ("Plaintiff") as class
22 representative.

23 3. The court confirms Jonathan Melmed, Laura Supanich, and Hannah Becker of Melmed
24 Law Group P.C. as class counsel.

25 4. To facilitate administration of the Settlement Agreement pending final approval, the
26 court hereby enjoins Plaintiff and all Class Members from filing or prosecuting any claims, suits, or
27 administrative proceedings (including filing claims with the Division of Labor Standards Enforcement
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of the California Department of Industrial Relations) regarding the claims to be released by the Settlement Agreement, unless and until such Class Members have filed valid requests for exclusion with the Settlement Administrator and the time for filing claims with the Settlement Administrator has elapsed.

5. The Court orders the following implementation schedule for further proceedings:

a.	Deadline for Defendants to Submit Class List to the Settlement Administrator	[Within fifteen (15) calendar days of this order.]
b.	Deadline for Settlement Administrator to Mail Notice Packets to all Class Members	[Within fourteen (14) calendar days of receipt of the Class Data from Defendants.]
c.	Deadline for Class Members to Postmark Workweeks Challenges	[Within forty-five (45) days after mailing of the Class Notice.]
d.	Deadline for Class Members to Postmark Requests for Exclusion	[Within forty-five (45) days after mailing of the Class Notice.]
e.	Deadline for Class Members to Submit Any Objections to Settlement	[Within forty-five (45) days after mailing of the Class Notice.]
f.	Deadline for Settlement Administrator to Provide Class Counsel with Declaration of Due Diligence	[At least fourteen (14) calendar days prior to the deadline for Plaintiff's motion for final approval to be filed.]
f	Final Approval and Fairness Hearing	October 1, 2025 at 1:30 p.m.

6. If any of the dates in this implementation schedule fall on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

IT IS SO ORDERED.

Dated: April 9, 2025


HON. THEODORE C. ZAYNER

Judge of the Superior Court, County of Santa Clara

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1801 Century Park East, Suite 850, Los Angeles, California 90067.

• **[Proposed] Order Granting Preliminary Approval of Class Action Settlement**

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I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Samuel S. Jones

Jennifer Gonzalez