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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

NICHOLAS KALUZA, an individual, on
behalf of himself and on behalf of all
persons similarly situated, and on behalf of
the State of California, as a private attorney
general,

Plaintiff,

vs.

BOEING AEROSPACE OPERATIONS,
INC., a Delaware Corporation; and DOES
1-50, Inclusive,

Defendants.

CASE NO.: **37-2022-00004602-CU-OE-CTL**

[Consolidated with Case No.
37-2022-00004879-CU-OE-CTL]

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: July 26, 2024

Hearing Time: 9:00 a.m.

Judge: Hon. Michael T. Smyth

Dept.: 67

Date Action Filed: February 4, 2022

Trial Date: Not set

1 The motion of Plaintiff Nicholas Kaluza (“Plaintiff”) for an order finally approving the
2 Class Action and PAGA Settlement Agreement (“Agreement”) with Defendant Boeing Aerospace
3 Operations, Inc. (“Defendant”) and for an award of attorneys’ fees and costs, service payment, and
4 the fees of the Administrator duly came on for hearing on July 26, 2024 before the Honorable
5 Michael T. Smyth.

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7 **I.**
8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

- 11 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the California Superior Court for the County of San Diego, and over all Parties to this litigation,
14 including the Class.
- 15 3. Based on a review of the papers submitted by Plaintiffs and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of Five Hundred Thousand
17 Dollars (\$500,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 18 4. The Court further finds that the Settlement was the result of arm’s length
19 negotiations conducted after Class Counsel had adequately investigated the claims and became
20 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
21 Settlement, the significant risks relating to certification, liability, and damages issues, and the
22 assistance of an experienced mediator in the settlement process, among other factors, support the
23 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

- 25 5. On March 4, 2024, the Court granted preliminary approval of the Settlement. At
26 this same time, the Court approved conditional certification of the Class for settlement purposes
27 only.

1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
3 by first class mail to members of the Class at their last known addresses on or about April 2, 2024.
4 Mailing of the Class Notice to their last known addresses was the best notice option under the
5 circumstances and was reasonably calculated to communicate actual notice of the litigation and
6 the proposed settlement to the Class. The Class Notice given to the Class Members fully and
7 accurately informed the Class Members of all material elements of the proposed Settlement and of
8 their opportunity to object to or comment thereon or to seek exclusion from the Settlement;
9 constituted valid, due, and sufficient notice to all Class Members; and complied fully with the
10 laws of the State of California, the United States Constitution, due process and other applicable
11 law. The Class Notice fairly and adequately described the Settlement and provided Class
12 Members adequate instructions and a variety of means to obtain additional information.

13 7. The Response Deadline for opting out of the Class or submitting written objections
14 to the Settlement was June 1, 2024, which Response Deadline was extend by 14 days for re-
15 mailed Class Notices. There was an adequate interval between mailing of the Class Notice and the
16 response deadline to permit Class Members to choose what to do and act on their decision. A full
17 opportunity has been afforded to the Participating Class Members to participate in this hearing,
18 and all Participating Class Members and other persons wishing to be heard have been heard. Class
19 Members also have had a full and fair opportunity to exclude themselves from the proposed
20 Settlement and Class. Accordingly, the Court determines that all Class Members who did not
21 timely and properly submit a request for exclusion are bound by the Settlement and this Final
22 Approval Order and Judgment.

23 **Fairness Of Settlement**

24 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
25 48 Cal.App.4th 1794, 1801 (1996).

26 a. The settlement was reached through arm's-length bargaining between the
27 parties during an all-day mediation before Tripper Ortman, a respected and experienced mediator
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1 of wage and hour class actions. There has been no collusion between the parties in reaching the
2 proposed settlement.

3 b. Plaintiff's investigation and discovery have been sufficient to allow the
4 Court and counsel to act intelligently.

5 c. Counsel for both parties are experienced in similar employment class action
6 litigation. All counsel recommended approval of the Agreement.

7 d. The percentage of objectors and requests for exclusion is small. No
8 objections were received. No requests for exclusion were received.

9 e. The participation rate was high. 290 Participating Class Members will be
10 mailed a settlement payment, representing 100% of the overall Class.

11 9. The consideration to be given to the Class Members under the terms of the
12 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
13 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
14 Members' claims, given the uncertainties and significant risks of the litigation and the delays
15 which would ensue from continued prosecution of the action.

16 10. The Agreement is approved as fair, adequate and reasonable and in the best
17 interests of the Class Members.

18 **Attorneys' Fees and Costs**

19 11. An award of \$166,666 for attorneys' fees, representing one-third of the Gross
20 Settlement Amount, and \$26,000 for litigation costs and expenses, is reasonable, in light of the
21 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
22 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
23 and billing statement.

24 **Class Representative Service Payment**

25 12. The Agreement provides for a Class Representative Service Payment of not more
26 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that a Class
27 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
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1 the risks and burdens undertaken by the Plaintiff in the litigation, for his time and effort in
2 bringing and prosecuting this matter on behalf of the Class, and in light of similar service awards
3 approved by other courts.

4 **Administration Expenses Payment**

5 13. The Administrator shall calculate and administer the payment to be made to the
6 Participating Class Members in the manner set forth in the Agreement, transmit payment for
7 attorneys' fees and costs to Class Counsel, transmit the Class Representative Service Payment to
8 the Plaintiff, distribute the PAGA Penalties, issue any required tax reporting forms, calculate
9 withholdings and perform the other remaining duties set forth in the Agreement. The
10 Administrator has documented \$9,000 in fees and expenses, and this amount is reasonable in light
11 of the work performed by the Administrator.

12 **PAGA Penalties**

13 14. The Agreement provides for PAGA Penalties out of the Gross Settlement Amount
14 of \$10,000, which shall be allocated with 75% (\$7,500) allocated to the LWDA PAGA Payment
15 and 25% (\$2,500) allocated to the Individual PAGA Payments to be distributed to the Aggrieved
16 Employees. The Administrator will calculate each Individual PAGA Payment by (a) dividing the
17 amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$2,500) by the total number
18 of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
19 multiplying the result by each Aggrieved Employee's PAGA Pay Periods. The Aggrieved
20 Employees are all individuals who were employed by Defendant Boeing Aerospace Operations,
21 Inc. in California and classified as a non-exempt employee at any time during the PAGA Period,
22 which is February 7, 2021 through March 30, 2023. The Court finds the PAGA Penalties to be
23 reasonable. All Aggrieved Employees will be sent their share of the PAGA Penalties and will be
24 subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out
25 of the Settlement.

1 II.
2 ORDERS

3 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

4 1. The certification of the Class for the purposes of settlement is confirmed. The
5 Class is defined as follows:

6 All individuals who are, or previously were, employed by Defendant Boeing
7 Aerospace Operations, Inc. in California and classified as a non-exempt employee
8 at any time during the Class Period.

9 The "Class Period" is February 4, 2018 through March 30, 2023.

10 2. All persons who meet the foregoing definition are members of the Class, except for
11 those individuals who filed a valid request for exclusion ("opt out") from the Class. There were
12 no individuals who requested exclusion. Any opt-out who is also an Aggrieved Employee is still
13 bound by the release of the Released PAGA Claims.

14 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
15 best interest of the Class. Defendant shall fully fund the Gross Settlement Amount, and also fund
16 the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to
17 the Administrator no later than 30 days after the Effective Date.

18 4. Class Counsel are awarded attorneys' fees in the amount of \$166,666 and costs in
19 the amount of \$26,000. Class Counsel shall not seek or obtain any other compensation or
20 reimbursement from Defendant, Plaintiff, or members of the Class.

21 5. The payment of the Class Representative Service Payment in the amount of
22 \$10,000 to the Plaintiff is approved.

23 6. The payment of \$9,000 to the Administrator for their fees and expenses is
24 approved.

25 7. The PAGA Penalties in the amount of \$10,000 are approved and shall be allocated
26 in accordance with the Agreement.

1 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
2 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
3 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
4 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
5 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
6 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
7 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
8 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
9 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
10 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
11 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
12 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
13 theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or the
14 Released PAGA Claims.

15 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
16 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
17 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
18 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
19 to individual Class Members.

20 10. If the Agreement does not become final and effective in accordance with the terms
21 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
22 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
23 revert to their respective positions as of before entering into the Agreement, and expressly reserve
24 their respective rights regarding the prosecution and defense of this Action, including all available
25 defenses and affirmative defenses, and arguments that any claim in the Action could not be
26 certified as a class action and/or managed as a representative action.

1 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

2 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
3 Plaintiff, and all members of the Class, shall take nothing in the Action.

4 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
5 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
6 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
7 arising from or in connection with the distribution of settlement benefits.

8 3. The Parties are authorized to agree to and to adopt such amendments, modifications
9 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
10 Final Approval Order and Judgment and as approved by the Court.

11 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
12 provided in the Agreement and in this Final Approval Order and Judgment.

13 5. Participating Class Members, on behalf of themselves and their respective former
14 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
15 release Released Parties from the Released Class Claims. The "Released Class Claims" are claims
16 that were alleged, or reasonably could have been alleged, based facts stated in the Operative
17 Complaint which occurred during the Class Period. Except as expressly set forth in this
18 Agreement, Participating Class Members do not release any other claims, including claims for
19 vested benefits, Plaintiff's individual claims for wrongful termination alleged in the Operative
20 Complaint, violation of the Fair Employment and Housing Act, unemployment insurance,
21 disability, social security, workers' compensation, or claims based on facts occurring outside the
22 Class Period.

23 6. As of the Effective Date and upon full funding of the Gross Settlement Amount by
24 Defendant, Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves
25 and their respective former and present representatives, agents, attorneys, heirs, administrators,
26 successors, and assigns, the Released Parties from the Released PAGA Claims. The "Released
27 PAGA Claims" are claims for PAGA penalties that were alleged, or reasonably could have been
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1 alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which
2 occurred during the PAGA Period. The Released PAGA Claims do not include other PAGA
3 claims, underlying wage and hour claims, claims for wrongful termination, discrimination,
4 unemployment insurance, disability and worker's compensation, and claims outside of the PAGA
5 Period.

6 7. As of the Effective Date, Plaintiffs generally release and discharge the Defendant
7 and the Released Parties from the Plaintiff's Released Claims as set forth fully in the Agreement.

8 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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10 Dated: _____

11 _____
12 HON. MICHAEL T. SMYTH
13 JUDGE, SUPERIOR COURT OF CALIFORNIA
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