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FILED
MAY 10 2023
CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By Asst
A. Stewart, Deputy Clerk

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF CONTRA COSTA

14 ANDREW GUMMOW, individually and on
15 behalf of all others similarly situated,

16 Plaintiffs,

17 v.

18 GENERAL LOGISTICS SYSTEMS U.S.,
19 INC., and DOES 1 - 10, inclusive,

20 Defendants.

CASE NO: MSC20-02038

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

DATE: May 4, 2023

TIME: 9:00 a.m.

DEPT: 12

Complaint Filed: October 8, 2020

1 The Court has considered Plaintiff Andrew Gummow's memorandum of points and
2 authorities in support of his motion for preliminary approval of his proposed class action and
3 PAGA settlement with defendant General Logistics Systems U.S., Inc. ("Defendant"); the Class
4 Action and PAGA Settlement Agreement and Class Notice; and the other declarations and
5 documents submitted in support of the motion. The matter having been submitted and good
6 cause appearing therefore, the Court finds:

7 For the reasons discussed herein, the motion is **granted**.

8 Background and Settlement Terms

9 Defendant is in the shipping business. Plaintiff was employed as a driver. This case is
10 unusual among wage-and-hour cases, in that its sole focus is on a failure-of-reimbursement
11 claim rather than any allegations as to payment for time worked. Plaintiff alleges that defendant
12 failed to reimburse employees for the cost of obtaining personal protective gear (such as masks)
13 during the COVID crisis.

14 The original complaint was filed on October 8, 2020. After a demurrer ruling, an
15 amended complaint was filed, deleting a public nuisance claim. Plaintiff filed a class
16 certification motion, but it was taken off calendar when the case settled at mediation.

17 The settlement would create a gross settlement fund of \$380,000. The class
18 representative payment to the plaintiff would be \$5,000. Attorney's fees would be \$126,666.67
19 (one-third of the settlement). Litigation costs would not exceed \$25,000. The settlement
20 administrator's costs are estimated at \$19,750. PAGA penalties would be \$38,000, resulting in a
21 payment of \$28,500 to the LWDA. The net amount paid directly to the class members would be
22 about \$203,000, including the non-LWDA portion of the PAGA penalty. The fund is non-
23 reversionary. There are an estimated 2,300 class members. Based on the estimated class size,
24 the average net payment for each class member is approximately \$87. The individual payments
25 will vary considerably, however, because of the allocation formula prorating payments
26 according to the number of weeks worked during the relevant time (double-counting the initial
27 part of the period double on account of the greater severity of the COVID problem then). There
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1 is a minimum payment of \$25 for every class member. The set of aggrieved employees for
2 PAGA purposes is identical to the class.

3 The entire settlement amount will be deposited with the settlement administrator within
4 14 days after the effective date of the settlement.

5 The proposed settlement would certify a class of all current and former non-exempt
6 employed at Defendants' California facilities between January 30, 2020 and preliminary
7 approval.

8 The class members will not be required to file a claim. Class members may object or opt
9 out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the
10 settlement.)

11 A list of class members will be provided to the settlement administrator promptly after
12 preliminary approval. Various prescribed follow-up steps will be taken with respect to mail that
13 is returned as undeliverable. Settlement checks not cashed within 180 days will be cancelled,
14 and the funds will be directed to Worksafe as a cy pres beneficiary.

15 The settlement contains release language covering all claims and causes of action,
16 alleged or which could have reasonably been alleged based on the allegations in the operative
17 pleading, including a number of specified claims. Under recent appellate authority, the
18 limitation to those claims with the "same factual predicate" as those alleged in the complaint is
19 critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ("A court
20 cannot release claims that are outside the scope of the allegations of the complaint.") "Put
21 another way, a release of claims that goes beyond the scope of the allegations in the operative
22 complaint' is impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D.
23 Cal.2020) 469 F.Supp.3d 942, 949.)

24 Formal discovery was undertaken, resulting in the production of substantial documents.
25 The matter settled after arms-length negotiations, which included a session with an experienced
26 mediator.

27 Counsel also has provided an analysis of the case, and how the settlement compares to
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1 the potential value of the case, after allowing for various risks and contingencies. It was
2 established that defendant did provide at least some PPE for employees, and the amount and
3 adequacy of that provision is contested. Defendant would also have contended that it was
4 required to reimburse employee purchases only if reimbursement claims were made, and upon
5 proper documentation.

6 The potential liability needs to be adjusted for various evidence and risk-based
7 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a
8 number of reasons: they derive from other violations, they include “stacking” of violations, the
9 law may only allow application of the “initial violation” penalty amount, and the total amount
10 may be reduced in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties
11 may be reduced where “based on the facts and circumstances of the particular case, to do
12 otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.”))
13 Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory
14 penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services,*
15 *Inc.* (2023) 88 Cal.App.5th 937.)

16 Counsel attest that notice of the proposed settlement was transmitted to the LWDA
17 concurrently with the filing of the motion.

18 A. Legal Standards

19 The primary determination to be made is whether the proposed settlement is “fair,
20 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,
21 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
22 further litigation, the risk of maintaining class action status through trial, the amount offered in
23 settlement, the extent of discovery completed and the state of the proceedings, the experience
24 and views of counsel, the presence of a governmental participant, and the reaction ... to the
25 proposed settlement.” (See also *Amaro*, 69 Cal.App.5th 521.).

26 Because this matter also proposes to settle PAGA claims, the Court also must consider
27 the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v.*
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1 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the
2 court found that the “fair, reasonable, and adequate” standard applicable to class actions applies
3 to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the
4 fairness of the settlement’s allocation of civil penalties between the affected aggrieved
5 employees”. (*Id.*, at 64-65.)

6 California law provides some general guidance concerning judicial approval of any
7 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*
8 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
9 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,
10 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “The court cannot surrender
11 its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere
12 puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990)
13 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always
14 apply, because “Where the rights of the public are implicated, the additional safeguard of
15 judicial review, though more cumbersome to the settlement process, serves a salutatory
16 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141
17 Cal.App.4th 48, 63.)

18 B. Attorney Fees

19 Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common
20 fund” theory. Even a proper common fund-based fee award, however, should be reviewed
21 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480,
22 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine
23 whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means
24 of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether
25 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable
26 range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)
27 Following typical practice, however, the fee award will not be considered at this time, but only
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1 as part of final approval.

2 Similarly, litigation costs and the requested representative payment of \$5,000 for the
3 plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative
4 payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175
5 Cal.App.4th 785, 804-07.

6 C. Discussion and Conclusion

7 The Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify
8 preliminary approval.

9 The Court has jurisdiction over the Class Representative, all Settlement Class Members,
10 the Aggrieved Employees, and Defendant.

11 The Class Action and PAGA Settlement Agreement is preliminarily approved and the
12 Class is provisionally certified under California Rule of Court 3.769(d).

13 The Court conditionally finds that, for the purposes of approving this settlement only,
14 the proposed Class meets the requirements for certification under Section 382 of the California
15 Code of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that joinder
16 of all members of the class is impracticable; (b) there is a well-defined community of interest
17 among members of the proposed Class with respect to the subject matter of the Action,
18 including (1) common questions of law or fact that predominate over individual questions, (2)
19 the claims of the Class Representative are typical of the claims of the members of the proposed
20 Class; (3) the Class Representative has and will fairly and adequately protect the interests of the
21 Members of the Class; and (4) the counsel of record for the Class Representative are qualified to
22 represent the interests of the Class.

23 The Class Action and PAGA Settlement Agreement appears to be the product of good-
24 faith and arms-length negotiation between the parties, who were represented by informed
25 counsel who fairly represented the interests of their respective clients, and who had the
26 assistance of a well-regarded neutral mediator, the Honorable William Cahill (Ret.). The Court
27 further finds that the terms of the Settlement are within the range of reasonableness and that the
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1 Settlement meets the requirements for preliminary approval.

2 Plaintiff also has presented to the Court for review a plan to provide Notice to the
3 proposed Settlement Class and Aggrieved Employees of the terms of the Settlement and the
4 options facing them including, *inter alia*: to be represented by class counsel or counsel of their
5 choosing, to object to the Settlement, to opt-out of the Settlement, and to dispute Defendant's
6 records pertaining to their employment. The Notice plan set forth in the Settlement is the best
7 practical under the circumstances and satisfies the requirements for adequate notice and for due
8 process.

9 The Court appoints CPT Group, Inc. as the Settlement Administrator.

10 Within fourteen (14) days of the effective date of this Order, Defendant will provide the
11 Class Data to the Settlement Administrator pursuant to Section 4.2 of the Class Action and
12 PAGA Settlement Agreement.

13 Within three (3) business days of receiving the Class Data, the Settlement Administrator
14 shall notify Class Counsel that the list has been received and state the number of Class
15 Members, Workweeks, and PAGA Pay Periods in the Class Data, pursuant to Section 8.4.1 of
16 the Settlement Agreement.

17 Within fourteen (14) days after receiving the Class Data from Defendant, the Settlement
18 Administrator will send the Class Notice to all Class Members via regular First-Class U.S. Mail
19 using the most current known mailing addresses identified on the Class List (as updated by a
20 National Change of Address Database search). The Settlement Administrator will re-send any
21 returned Class Notices to any forwarding address affixed thereto and, if no forwarding address
22 is provided, the Settlement Administrator will promptly attempt to determine the correct address
23 using a skip-trace or other search, and thereafter perform a re-mailing pursuant to Sections 8.4.2-
24 8.4.3 of the Settlement Agreement.

25 Any Class Members wishing to exclude themselves (opt out) of the class action portion
26 of the Settlement may do so by mailing a written Request for Exclusion to the Settlement
27 Administrator, pursuant to the procedures set forth in Section 8.5 of the Settlement Agreement,
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1 no later than 45 calendar days from the initial mailing of the Class Notice by the Settlement
2 Administrator. Class Members may not opt out of the PAGA portion of the Settlement.

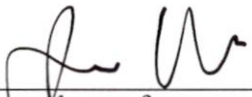
3 Any Settlement Class Members wishing object to the Settlement may do so by mailing,
4 faxing, or e-mailing a written objection to the Settlement Administrator, or alternatively by
5 appearing at the Final Fairness Hearing, pursuant to the procedures set forth in Section 8.7 of
6 the Settlement Agreement, no later than 45 calendar days from the initial mailing of the Class
7 Notice by the Settlement Administrator. Only those Settlement Class Members who do not
8 submit a Request for Exclusion may object to the Settlement.

9 The Court will hold a Final Approval Hearing in Department 12 of the Contra Costa
10 County Superior Court, located at 725 Court Street, Martinez, California 94553, on August 17,
11 2023, at 9:00 a.m., to determine whether the Settlement should be finally approved as fair,
12 reasonable, and adequate. The Court also will consider Plaintiff's motion for reasonable
13 attorneys' fees and costs, Plaintiff's motion for a service award, and the Settlement
14 Administration Expenses to the Settlement Administrator. If the hearing date or location is
15 changed, Class Counsel shall notify the Settlement Administrator as soon as possible, and the
16 Settlement Administrator shall update the Settlement website to reflect the change(s).

17 IT IS SO ORDERED.

18 Dated: MAY 09 2023

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20 _____
21 Honorable Charles S. Treat
22 Judge of the Superior Court

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24 _____
25 Approved as to form
26 Jason Y. Wu
27 Counsel for Defendant
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PROOF OF SERVICE

I, Lourdes Castro, declare the following:

I am over the age of eighteen years and not a party to the within entitled action. I am employed at Schneider Wallace Cottrell Konecky LLP located at 2000 Powell Street, Suite 1400, Emeryville, California 94608.

On May 5, 2023, I served the following document(s) described as:

- **Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement**

on the following interested party(s):

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BY ELECTRONIC SERVICE by electronically mailing a true and correct copy in PDF format through SWCKW's electronic mail system to the email address(s) set forth above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 5, 2023, at Pacifica, California.

/s/ Lourdes Castro
Lourdes Castro