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14 Attorneys for Plaintiffs Jose Saldana and Joel Ortega

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF CONTRA COSTA

17 JOSE SALDANA and JOEL ORTEGA, as
aggrieved employees pursuant to the Private
18 Attorneys General Act ("PAGA"), and on behalf
of the State of California and other aggrieved
19 employees,

20 Plaintiffs,

21 vs.

22 HYDROCHEM LLC, a Delaware limited
liability company; PSC INDUSTRIAL, INC., a
23 Delaware corporation; PSC INDUSTRIAL
OUTSOURCING, LP, a Delaware limited
24 partnership; AQUILEX LLC, a Delaware
limited liability company; PSC, LLC, a limited
25 liability company of unknown origin; PSC
INDUSTRIAL, LLC, a limited liability
26 company of unknown origin; and DOES 1
through 10, inclusive,

27 Defendants.
28

Case No.: MSC19-02624

Assigned to the Hon. Edward G. Weil

**ORDER GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES, COSTS AND
EXPENSES, AND A CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT**

Date: April 28, 2022

Time: 9:00 a.m.

Place: Department 39

1 Plaintiffs Jose Saldana and Joel Ortega move for final approval of their class action and PAGA
2 settlement with defendant Hydrochem, LLC. Separately, they move for approval of attorney's fees,
3 costs, and representative payments. The Court will consider both motions together.

4 **A. Background and Settlement Terms**

5 The original complaint was filed by Saldana on December 16, 2019. On November 24, 2020, a
6 First Amended Complaint was filed, adding Ortega as a plaintiff. (Ortega had filed a PAGA action in
7 Los Angeles, but he dismissed it.)

8 The settlement would create a gross settlement fund of \$1,380,000. The class representative
9 payment to each plaintiff would be \$10,000. Counsel's attorney's fees would be \$460,000 (33 1/3% of
10 the settlement). Litigation costs would not exceed \$20,000. The settlement administrator (CPT Group)
11 would have costs of administration set aside of \$16,000. PAGA penalties would be \$100,000, resulting
12 in a payment of \$75,000 to the LWDA and \$25,000 to the class members. Thus, the net settlement
13 amount available to the class would be \$789,000, resulting in an average payment to each of the
14 estimated 1,300 class members of about \$605. The fund is non-reversionary. The payments will be
15 allocated 75% to "non-wages" and 25% to wages. "Employee-side" tax withholding or deductions will
16 be deducted from the settlement payment amount.

17 The parties settled after meeting with an experienced mediator.

18 The proposed settlement would certify a class of sales representatives and non-exempt
19 employees employed by defendant in California between October 10, 2018 and September 17, 2021.

20 The class members will not be required to file a claim. Class members may object or opt out of
21 the settlement. The distribution of the PAGA payment and the "Class Member" payment will be based
22 on the number of pay periods worked during the class period.

23 Various prescribed follow-up steps will be taken with respect to mail that is returned as
24 undeliverable. Uncashed checks would be cancelled and the amounts would be provided to a cy pres
25 beneficiary, Worksafe. Initially, counsel did not provided any declaration attesting to their relationship, if
26 any, with "Worksafe." At the original hearing date, the Court requested that the parties submit
27 supplemental declarations meeting the requirement of Code of Civil Procedure section 382.4. Counsel
28 have now provided three declarations (two from plaintiff's counsel, one from defense) establishing that

1 there is no disqualifying relationship.

2 Since preliminary approval, the notice process has been executed. Based on the class list, 1,217
3 notice packets were mailed. 51 packets were returned as undeliverable. A new address was obtained for
4 43 of those, and the notices were remailed. The net was that 11 packets were left undelivered. There
5 were two requests for exclusion (Madaly Alcala and Connie Kautzman), and no objections. The average
6 payment will be about \$650.

7 Plaintiffs will release all claims “arising from, or related to, the same set of operative facts as
8 those set forth in the operative complaint,” including certain specific violations. The Court notes that the
9 reference to claims “arising from the alleged facts” can be critical in ascertaining the extent of preclusive
10 effect of the judgment. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521,
11 535-536 [petition for review filed November 8, 2021].)

12 Defendant produced substantial discovery, including employee demographic data, timekeeping
13 and pay records, as well as relevant policy manuals.

14 Counsel also has provided quantitative analysis of the case, based on the information obtained
15 during the litigation, e.g., workweeks, rates of pay, and random sample of time records and wage
16 statements. The estimates of the highest theoretical value are broken down by the type of claim: meal
17 periods (\$2,193,000), rest periods (\$4,386,000), minimum wages during drug tests (\$33,540), business
18 expense reimbursement for time spent traveling to drug tests (\$36,400, wage statements (\$4,800,000),
19 and waiting time (\$4,489,200). Of course, all of these theoretical maxima provide a point of departure,
20 but do not reflect an actual analysis based on various risks associated with the merit of the claim,
21 evidence issues, class certification issues, and the burden of litigation. Thus, actual value is far lower.
22 Claims for PAGA penalties, are difficult to evaluate for a number of reasons: they derive from other
23 violations, they include “stacking” of violations, the law may only allow application of the “initial
24 violation” penalty amount, and the total amount may be reduced in the discretion of the court. Thus, the
25 parties negotiated the \$100,000 figure.

26 The documentation submitted with the motion attests that LWDA was notified of the settlement,
27 and that initial pre-suit notices were filed.

28

1 **B. Legal Standards**

2 The primary determination to be made is whether the proposed settlement is “fair, reasonable,
3 and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “the
4 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk
5 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
6 completed and the state of the proceedings, the experience and views of counsel, the presence of a
7 governmental participant, and the reaction ... to the proposed settlement.” (See also *Amaro v. Anaheim*
8 *Arena Management, LLC, supra*, 69 Cal.App.5th at 534-535.)

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

15 California law provides some general guidance concerning judicial approval of any settlement.
16 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3
17 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy.
18 (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th
19 1121, 1127.) Moreover, “[t]he court cannot surrender its duty to see that the judgment to be entered is a
20 just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins.*
21 *Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that
22 *Neary* does not always apply, because “[w]here the rights of the public are implicated, the additional
23 safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory
24 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th
25 48, 63.)

26 **C. Attorney fees**

27 Plaintiffs seek 33 1/3% of the total settlement amount as fees, relying on the “common fund”
28 theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar

1 cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court
2 endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is
3 reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily
4 high or low, the trial court should consider whether the percentage used should be adjusted so as to bring
5 the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an
6 adjustment.” (*Id.*, at 505.)

7 Accordingly, plaintiffs have now provided the Court with documentation concerning their
8 lodestar fee. They estimate 370 hours of attorney time were spent on the matter, and applying hourly
9 rates of \$825 (senior associate), \$875 (senior associate), \$950 (senior associate), and \$995 (partner), they
10 calculate a lodestar of \$216,165. This results in an implied multiplier of 2.12. The hourly rates are
11 somewhat high, especially for associates. Moreover, none of the work was done by junior associates
12 who would have billed at lower rates. Thus, the Court would reduce the lodestar by 10%, to
13 \$194,548.50. This would change the implied multiplier to 2.36. This multiplier, while not extraordinarily
14 high, is still somewhat high. In this instance, however, the result in the case is quite good, which justifies
15 a somewhat higher than usual fee. No adjustment to the proposed 33 1/3% fee is necessary.

16 The litigation costs of \$20,000, and administrator’s costs of \$16,000 are reasonable and are
17 approved.

18 The requested representative payments of \$10,000 for each plaintiff were deferred until this final
19 approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential*
20 *Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

21 Each plaintiff, Jose Saldana and Joel Ortega, has provided a declaration, attesting to the hours
22 they spent attending to the matter (30 to 40 hours for Saldana, 25 for Ortega), the risk that the suit would
23 make it more difficult to find employment, and that they released all claims (although there is no
24 indication that they had any other claims of value). The number of hours spent is on the low side for this
25 type of case. The Court also considers the requested payment amount relative to the average class
26 member’s share, and finds it is about average. Based on these factors, payments of \$7,500 each are
27 approved.

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D. Discussion

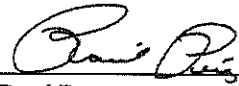
The Court finds that the proposed settlement is fair, reasonable, and adequate. The Court also views the limitation of the release language to those "arising from, or related to, the same set of operative facts as those set forth in the operative complaint," as material to the approval.

E. Conclusion

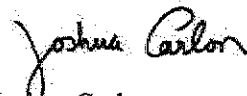
The motions are granted, subject to the reduction of the plaintiff's representative payments to \$7,500. The settlement is not an admission by Defendant or by any other released party, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant or any other released party. Neither this Order, the settlement agreement, nor any document referred to herein, nor any action taken to carry out the settlement agreement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant or any of the other released parties.

APPROVED AS TO FORM

Dated: April 28, 2022

By: 
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CAPSTONE LAW APC
Launa Adolph
MATERN LAW GROUP, P.C.
Attorneys for Plaintiffs Jose Saldana and Joel Ortega

Dated: April 28, 2022

By: 
Joshua Carlon
LEWIS BRISBOIS BISGAARD & SMITH LLP
Attorneys for Defendant Hydrochem LLC

IT IS SO ORDERED.

Dated: APR 29 2022


Hon. Edward G. Weil
Contra Costa County Superior Court Judge