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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  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

1 **ORDER**

2 On December 16, 2021, this Court conducted a hearing on Plaintiffs' Motion for Preliminary  
3 Approval of the Class Action Settlement (the "Motion"). Having considered the Motion and the points  
4 and authorities submitted in support of the Motion, including the Joint Stipulation of Class Action  
5 Settlement and Release ("Settlement Agreement" or "Settlement"), and **GOOD CAUSE** appearing, **IT**  
6 **IS HEREBY ORDERED** that the Motion is **GRANTED**, subject to the following findings and orders:

7 **BACKGROUND AND SETTLEMENT TERMS**

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

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

20 The parties settled after meeting with an experienced mediator.

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

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

26 Various prescribed follow-up steps will be taken with respect to mail that is returned as  
27 undeliverable. Uncashed checks would be cancelled and the amounts would be provided to a cy pres  
28 beneficiary, Worksafe.

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

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

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

20 The documentation submitted with the motion attests that LWDA was notified of the settlement,  
21 or that initial pre-suit notices were filed.

## 22 LEGAL STANDARDS

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

1 *Arena Management, LLC, supra*, 69 Cal.App.5th at 534-535.)

2 Because this matter also proposes to settle PAGA claims, the Court also must consider the  
3 criteria that apply under that statute. The Legislature’s express command that PAGA settlements be  
4 approved by the court necessarily implies that there is some substantive dimension to the review. (Labor  
5 Code § 2699(1).) The Court’s review, however, is somewhat hampered by the lack of guidance in the  
6 statute or case law concerning the basis upon which a settlement may be approved. The Court has found  
7 no binding authority, but one federal District Court has addressed the issue. In *O’Connor v. Uber Techs,*  
8 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133, the court denied approval of class action settlements  
9 that included PAGA claims in part because the plaintiffs’ claims added up to as much as \$1 billion in  
10 PAGA penalties but parties settled those claims for \$1 million, or 0.1% of their alleged maximum value.  
11 As the court stated, “where plaintiffs bring a PAGA representative claim, they take on a special  
12 responsibility to their fellow aggrieved workers who are effectively bound by any judgment. [citation  
13 omitted] Such a plaintiff also owes responsibility to the public at large; they act, as the statute’s name  
14 suggests, as a private attorney general, and 75% of the penalties go to the LWDA ‘for enforcement of  
15 labor laws . . . and for education of employers and employees about their rights and responsibilities under  
16 this code.’” (*Id.*, at 1134.) In that case, the LWDA itself filed a brief stating that “[i]t is thus important  
17 that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful,  
18 consistent with the underlying purpose of the statute to benefit the public and, in the context of a class  
19 action, the court evaluate whether the settlement meets the standards of being ‘fundamentally fair,  
20 reasonable, and adequate’ with reference to the public policies underlying the PAGA.” (*Id.*, at 1133.)  
21 The *Uber Techs* court noted that “a court may reduce the penalty when ‘to do otherwise would result in  
22 an award that is unjust, arbitrary and oppressive, or confiscatory.’” (*Id.*, at 1134, citing Labor Code §  
23 2699(e)(2).) Nonetheless, the court noted that the plaintiff had provided no “coherent analysis” to justify  
24 the “relatively meager value” assigned to the PAGA claim.

25 California law provides some general guidance concerning judicial approval of any settlement.  
26 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3  
27 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy.  
28 (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th

1 1121, 1127.) Moreover, “[t]he court cannot surrender its duty to see that the judgment to be entered is a  
2 just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins.*  
3 *Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that  
4 *Neary* does not always apply, because “[w]here the rights of the public are implicated, the additional  
5 safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory  
6 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th  
7 48, 63.)

### 8 ATTORNEY FEES

9 Plaintiffs seek 33 1/3% of the total settlement amount as fees, relying on the “common fund”  
10 theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar  
11 cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court  
12 endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is  
13 reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily  
14 high or low, the trial court should consider whether the percentage used should be adjusted so as to bring  
15 the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an  
16 adjustment.” (*Id.*, at 505.) Following typical practice, however, the fee award will not be considered at  
17 this time, but only as part of final approval.

18 Similarly, litigation costs and the requested representative payment of \$10,000 for each plaintiff  
19 will be reviewed at time of final approval. Criteria for evaluation of such requests are discussed in *Clark*  
20 *v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

### 21 DISCUSSION

22 The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and  
23 adequate to justify preliminary approval. The Court also views the limitation of the release language to  
24 those “arising from, or related to, the same set of operative facts as those set forth in the operative  
25 complaint,” as material to the approval.

26 Code of Civil Procedure section 382.4 provides that where a class action settlement is approved,  
27 and will distribute funds to a cy pres recipient, “in connection with the hearing for preliminary approval”  
28 counsel shall “notify the court if the attorney has a connection to or a relationship with a nonparty

1 recipient of the distribution that could reasonably create the appearance of impropriety as between the  
2 selection of the recipient of the money or thing of value and the interests of the class.” Initially, counsel  
3 did not provided any declaration attesting to their relationship, if any, with “Worksafe.”

4 At the original hearing date, the Court requested that the parties submit supplemental  
5 declarations meeting this requirement. Counsel have now provided three declarations (two from  
6 plaintiffs counsel, one from defense) establishing that there is no disqualifying relationship.

7 **CONCLUSION**

8 The class action settlement set forth in the Joint Stipulation of Class Action Settlement and  
9 Release, entered into among the Parties and their counsel, is preliminarily approved as it appears to be  
10 proper, to fall within the range of reasonableness, to be the product of arm’s-length and informed  
11 negotiations, and to treat all Class Members fairly.

12 The Settlement Class shall be conditionally certified for settlement purposes only and shall  
13 consist of all persons who worked for Defendant as non-exempt, hourly employees in California at any  
14 time from October 10, 2018 through September 17, 2021.

15 The Court appoints Plaintiffs Jose Saldana and Joel Ortega as the representatives for the  
16 Settlement Class conditionally certified by this Order.

17 The Court appoints Capstone Law APC and Matern Law Group, PC as Class Counsel.

18 The Court approves and appoints CPT Group, Inc. as the Settlement Administrator.

19 The following dates shall govern for purposes of this Settlement:

20

<b>Date</b>	<b>Event</b>
February 3, 2022 (or not later than 20 calendar days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for Defendant to produce the Class List to the Settlement Administrator.
February 14, 2022 (or not later than 10 calendar days after Defendant produces the Class List, if later)	Last day for the Settlement Administrator to mail Notice Packets to all Class Members.
March 16, 2022 (or not later than 30 calendar days after the Settlement Administrator mails the Notice Packets, if later)	Last day for Class Members to submit Requests for Exclusion or Objections to the Settlement.
April 1, 2022	Last day for Plaintiffs to file the Motion for Final Approval of Class Action Settlement and Motion for Attorneys’ Fees, Costs, and and Class Representative Enhancement Payments.

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Date	Event
April 28, 2022 at 9:00 a.m.	Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Enhancement Payments.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Five percent (5%) of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

The Court expressly reserves the right to continue or adjourn the final approval hearing without further notice to the Class Members.

**IT IS SO ORDERED.**

Dated: January 14, 2022

  
\_\_\_\_\_  
Hon. Edward G. Weil  
Contra Costa Superior Court Judge