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FILED  
AUG 23 2023  
K. BAKER CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
By: *AS*

7 Attorneys for Plaintiff and the Proposed Class

8  
9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
10 **COUNTY OF CONTRA COSTA**

11 ANDREW GUMMOW, on behalf of  
12 himself and all others similarly situated,

13 Plaintiffs,

14 vs.

15 GENERAL LOGISTICS SYSTEMS,  
16 U.S., INC., and DOES 1-10, inclusive,

17 Defendants.

Case No. MSC20-02038

18 **[PROPOSED] ORDER GRANTING**  
19 **PLAINTIFF'S MOTION FOR FINAL**  
20 **APPROVAL OF CLASS ACTION AND PAGA**  
21 **SETTLEMENT; REASONABLE**  
22 **ATTORNEYS' FEES AND COSTS; AND**  
23 **SERVICE AWARD**

24 **Date: August 17, 2023**  
25 **Time: 9:00 a.m.**  
26 **Dept.: 12**

27 Complaint Filed: October 8, 2020  
28

1 Before the Court is the *Motion for Final Approval of Class Action and PAGA Settlement*  
2 (the “Motion”) filed by Plaintiff Andrew Gummow in the above-captioned case seeking final  
3 Court approval of the Parties’ settlement of this action (the “Settlement”) on the terms set forth  
4 in the *Class Action and PAGA Settlement Agreement and Class Notice* (the “Settlement  
5 Agreement”). The Court has considered the Motion, including the declarations filed in support  
6 thereof, the relevant legal authority, and the record in this case. Having jurisdiction and venue to  
7 consider the Motion and the relief requested therein, with due and proper notice of the Motion  
8 having been provided to the Settlement Class, the Court after due deliberation now makes the  
9 following FINDINGS AND ORDERS:

10 1. On August 16, 2024, the Court issued a tentative ruling granting the Motion.  
11 Neither party has contested the tentative. Accordingly, the tentative ruling has become the Court’s  
12 ruling. The tentative is attached hereto as Exhibit A.

13 **Background and Settlement Terms**

14 2. Defendant General Logistics Systems U.S. Inc. (“Defendant”) is in the shipping  
15 business. Plaintiff was employed as a driver. This case is unusual among wage-and-hour cases,  
16 in that its sole focus is on a failure-of-reimbursement claim rather than any allegations as to  
17 payment for time worked. Plaintiff alleges that defendant failed to reimburse employees for the  
18 cost of obtaining personal protective gear (such as masks) during the COVID crisis.

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

22 4. The settlement will create a gross settlement fund of \$380,000. The class  
23 representative payment to the plaintiff will be \$5,000. Attorney’s fees will be \$126,666.67 (one-  
24 third of the settlement). Litigation costs are \$21,425, somewhat less than the cap as of preliminary  
25 approval. The settlement administrator’s costs are \$21,500 – a bit higher than the preliminary  
26 estimate, owing to an increase in the number of class members. PAGA penalties will be \$38,000,  
27 resulting in a payment of \$28,500 to the LWDA. The net amount paid directly to the class  
28 members will be about \$205,409, not including the \$9,500 portion of the PAGA penalty to be

1 distributed to aggrieved employees. The fund is nonreversionary. There are 2,625 class members.  
2 This is an increase from the 2,300 estimated at preliminary approval, owing to both more careful  
3 investigation and subsequent hires. Based on the estimated class size, the average net payment  
4 for each class member is approximately \$64, not including distribution of PAGA penalties. The  
5 individual payments will vary considerably, however, because of the allocation formula prorating  
6 payments according to the number of weeks worked during the relevant time (double-counting  
7 the initial part of the period double on account of the greater severity of the COVID problem  
8 then). There is a minimum payment of \$25 for every class member. The set of aggrieved  
9 employees for PAGA purposes is identical to the class.

10 5. The entire settlement amount will be deposited with the settlement administrator  
11 within 14 days after the effective date of the settlement.

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

15 7. Settlement checks not cashed within 180 days will be cancelled, and the funds will  
16 be directed to Worksafe as a cy pres beneficiary.

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

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



1 *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*,  
2 the court found that the “fair, reasonable, and adequate” standard applicable to class actions  
3 applies 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 15. California law provides some general guidance concerning judicial approval of  
7 any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University*  
8 *of 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, “[t]he 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 puppet  
12 in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d  
13 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because  
14 “[w]here the rights of the public are implicated, the additional safeguard of judicial review, though  
15 more cumbersome to the settlement process, serves a salutatory purpose.” (*Consumer Advocacy*  
16 *Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

17 **Final Certification of the Settlement Class**

18 16. The Court finds, for the purposes of Settlement, that the proposed Settlement Class  
19 meets the criteria for certification under California Code of Civil Procedure Section 382. The  
20 Court hereby orders confirmed class certification pursuant to California Code of Civil Procedure  
21 Section 382 of the following class: all current and former nonexempt employees of Defendant,  
22 paid by Defendant as W2 employees, who worked out of one or more of Defendant’s California  
23 Facilities at any time between January 30, 2020 and May 10, 2023.

24 17. For purposes of the Settlement, the Court orders confirmed the appointment of  
25 Schneider Wallace Cottrell Konecky LLP as Class Counsel and further orders confirmed the  
26 appointment of the Named Plaintiff as Class Representative.

27 **Final Approval of the Class Action Settlement**

28 18. The Court grants and orders final approval of the terms set forth in the Settlement.

1 The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and  
2 adequate to justify final approval.

3 19. The allocation of PAGA penalties among the aggrieved employees (based on pay  
4 periods) is reasonable.

5 20. The Court finds that the terms of the Settlement are fair, adequate, and reasonable,  
6 and to have been the product of serious, informed, and extensive arm's-length negotiations among  
7 the Parties. In making this finding, the Court considers the nature of the claims, the relative  
8 strength of Plaintiff's claims, the amounts and kinds of benefits paid in settlement, the allocation  
9 of settlement proceeds, and the fact that a settlement represents a compromise of the Parties'  
10 respective positions rather than the result of a finding of liability at trial.

11 21. The Court finds that the \$38,000 Total PAGA Payment is reasonable and is hereby  
12 approved.

13 22. The Parties are ordered to comply with and implement the Settlement Agreement  
14 according to its terms, including those provisions not expressly stated in this Order.

15 23. By this final approval order and judgment, the Class Representative shall release,  
16 relinquish and discharge, and each of the Settlement Class Members shall be deemed to have, and  
17 by operation of the judgment shall have, fully released, relinquished and discharged all Released  
18 Class Claims. The Class Representative shall release, relinquish and discharge, and each of the  
19 Aggrieved Employees shall be deemed to have, and by operation of the judgment shall have fully  
20 relinquished and discharged the Released PAGA Claims.

21 **Attorneys' Fees and Costs, and Representative Payment**

22 24. Plaintiffs seek one-third of the total settlement amount as fees, relying on the  
23 "common fund" theory, or \$126,666.67. Even a proper common fund-based fee award, however,  
24 should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016)  
25 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to  
26 determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated  
27 by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider  
28 whether the percentage used should be adjusted so as to bring the imputed multiplier within a

1 justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.* at  
2 505.)

3 25. Accordingly, plaintiffs have provided information concerning the lodestar fee  
4 amount. They estimate the lodestar at \$812,212, representing a “negative” (actually “less than 1”)  
5 multiplier. They based this amount on a total of 1,080 hours. No adjustment from the one-third  
6 fee is necessary. The attorney’s fees are reasonable and are approved.

7 26. The Court also finds that the requested attorney cost reimbursements in the amount  
8 of \$21,425 (mostly filing and mediation fees and deposition costs) are reasonable and hereby are  
9 approved.

10 27. The requested representative payment of \$5,000 for the named plaintiff was  
11 deferred until this final approval motion. Criteria for evaluation of such requests are discussed in  
12 *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has  
13 provided a declaration in support of his request. He points out that she executed a broader release  
14 than the class as a whole, but does not identify any particular claims of value that he may have.  
15 He also risks damage to his reputation and more difficulty in obtaining employment. The  
16 representative payment is approved.

17 28. The Court approves payment to the Settlement Administrator, CPT Group Inc., in  
18 an amount not to exceed \$21,500 out of the Gross Settlement Amount.

19 **Class Notice**

20 29. The Court finds that the Class Notice was given to the Settlement Class as required  
21 by the Preliminary Approval Order, and that the Notice fairly and adequately described the  
22 litigation, the Settlement, how Settlement Class Members could object or exclude themselves  
23 from the Settlement, and how they could dispute information used to calculate individual  
24 settlement payments. The Court further finds that the Class Notice was the best notice practicable  
25 under the circumstances, and complied with due process, the California Rules of Court, and all  
26 other applicable laws. The Court also finds and concludes that the Settlement Class was given a  
27 full and fair opportunity to participate in the Final Approval Hearing.

28 30. The Court finds that no class member has objected to the settlement or disputed



# EXHIBIT A

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added.) Punitive damages may not be granted in action based on breach of contract even though defendant's breach may have been willful or fraudulent. (See, e.g., *Crogan v. Metz* (1956) 47 Cal.2d 398; *Contractor's Safety Asso. v. California Compensation Ins. Co.* (1957) 48 Cal.2d 71; *Roam v. Koop* (1974) 41 Cal.App.3d 1035.)

The Graveses' allegations center on breach of the terms of the lease. Their first cause of action is a straight breach-of-contract claim for non-payment of rent. Their second, for breach of the covenant of good faith and fair dealing, also arises solely from contractual obligations. Thus, even if the conduct forming the basis of this claim could be characterized as willful or fraudulent, punitive damages are not available on the second cause of action.

The burden of demonstrating a reasonable possibility that the defect can be cured by amendment "is squarely on the plaintiff." (*Velez v. Smith* (2006) 142 Cal.App.4th 1154, 1174.) Graves has not shown a reasonable possibility that the defects in the punitive damages claim can be cured by amendment. Leave to amend is not granted.

4. 9:00 AM CASE NUMBER: MSC20-02038  
CASE NAME: ANDREW GUMMOW VS. GENERAL LOGISTICS SYSTEMS U.S., INC.  
\*HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS ACTION & PAGA SETTLEMENT  
FILED BY:  
\*TENTATIVE RULING:\*

Plaintiff Andrew Gummow moves for final approval of his class action and PAGA settlement with defendant General Logistics Systems U.S., Inc.

Since preliminary approval was granted, the administrator has mailed notices to 2,625 class members. Four packets were returned by the post office. Follow up resulted in three new addresses, leaving only one non-deliverable. No objections have been received, and only one class member has opted out.

The motion is **granted**.

**Background and Settlement Terms**

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

The original complaint was filed on October 8, 2020. After a demurrer ruling, an amended complaint was filed, deleting a public nuisance claim. Plaintiff filed a class certification motion, but it was taken

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off calendar when the case settled at mediation.

The settlement will create a gross settlement fund of \$380,000. The class representative payment to the plaintiff will be \$5,000. Attorney's fees will be \$126,666.67 (one-third of the settlement). Litigation costs are \$21,425, somewhat less than the cap as of preliminary approval. The settlement administrator's costs are \$21,500 – a bit higher than the preliminary estimate, owing to an increase in the number of class members. PAGA penalties will be \$38,000, resulting in a payment of \$28,500 to the LWDA. The net amount paid directly to the class members will be about \$205,409, not including the \$9,500 portion of the PAGA penalty to be distributed to aggrieved employees. The fund is non-reversionary. There are 2,625 class members. This is an increase from the 2,300 estimated at preliminary approval, owing to both more careful investigation and subsequent hires. Based on the estimated class size, the average net payment for each class member is approximately \$64, not including distribution of PAGA penalties. The individual payments will vary considerably, however, because of the allocation formula prorating payments according to the number of weeks worked during the relevant time (double-counting the initial part of the period double on account of the greater severity of the COVID problem then). There is a minimum payment of \$25 for every class member. The set of aggrieved employees for PAGA purposes is identical to the class.

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

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

Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to Worksafe as a *cy pres* beneficiary.

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

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

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

The potential liability needs to be adjusted for various evidence and risk-based contingencies,

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

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

**B. Legal Standards**

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

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

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

**C. Attorney Fees and Other Costs**

Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund” theory, or \$126,666.67. Even a proper common fund-based fee award, however, should be reviewed

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

Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They estimate the lodestar at \$812,212, representing a "negative" (actually "less than 1") multiplier. They based this amount on a total of 1,080 hours. No adjustment from the one-third fee is necessary. The attorney's fees are reasonable and are approved.

The requested representative payment of \$5,000 for the named plaintiff was deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in support of his request. He points out that she executed a broader release than the class as a whole, but does not identify any particular claims of value that he may have. He also risks damage to her reputation and more difficulty in obtaining employment. The representative payment is approved.

Litigation costs of \$21,425 (mostly filing and mediation fees and deposition costs) are reasonable and are approved.

The settlement administrator's costs of \$21,500 are reasonable and are approved.

**D. Discussion and Conclusion**

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees (based on pay periods) is reasonable.

The motion is granted.

Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined in consultation with the Department's clerk by phone. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court. Pursuant to Code of Civil Procedure § 384(b), after the settlement is completely implemented, the judgment must be amended to reflect the amount paid to the *cy pres* recipient.