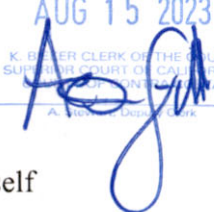


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**FILED**  
AUG 15 2023  
K. BAKER CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
By: 

6 Attorneys for Plaintiff Christopher Murrell, on behalf of himself  
and all others similarly situated  
7

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF CONTRA COSTA**

10 CHRISTOPHER MURRELL, on behalf of  
himself and all others similarly situated,  
11  
12 Plaintiff

13 v.

14 SAN RAMON VALLEY UNIFIED SCHOOL  
DISTRICT, a California Public Entity; and  
15 DOES 1 through 10, inclusive,  
16 Defendants.

Case No. MSC19-00784  
ASSIGNED FOR ALL PURPOSES TO:  
The Honorable Charles S. Treat  
Department 12

**CLASS ACTION**

**ORDER GRANTING  
FINAL APPROVAL OF CLASS ACTION  
AND REPRESENTATIVE ACTION  
SETTLEMENT**

Complaint filed: April 24, 2019  
Trial date: Not set

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1 Plaintiff's Motion for Order Granting Final Approval of Class and Representative  
2 Action Settlement and Entering Judgment ("Motion") filed June 30, 2023 is Granted as follows:

3 JOURNAL ENTRIES:

4 No appearance either party.

5 There being no opposition to the tentative ruling, the tentative ruling becomes the order  
6 of the court as follows:

7 Plaintiff Christopher Murrell moves for final approval of his class action and PAGA  
8 settlement with defendant San Ramon Unified School District.

9 Since preliminary approval was granted, the administrator has mailed notices to 76 class  
10 members. One packet was returned by the post office, but that member was located by skip  
11 tracing. No objections or requests to opt out have been received.

12 The motion is **granted**.

13 **A. Background and Settlement Terms**

14 Defendant is a public-school district. Plaintiff has worked for defendant as a school bus  
15 driver since 2013.

16 The original complaint was filed on April 24, 2019 as a class action. PAGA claims were  
17 added by amendment shortly thereafter. The first amended complaint is the operative pleading.

18 The settlement, as preliminarily approved, was for \$150,000. Later investigation  
19 revealed a higher number of covered work weeks, triggering an escalator clause in the  
20 settlement. As now approved, the settlement will create a gross settlement fund of \$193,470.  
21 The class representative payment to the plaintiff will be \$5,000. Attorney's fees will be \$64,490  
22 (one-third of the settlement as escalated). Litigation costs were preliminarily approved not to  
23 exceed \$12,000, and are now \$10,654. The settlement administrator's costs are \$4,500 (slightly  
24 below the preliminary approval estimate). PAGA penalties will be \$3,000, resulting in a  
25 payment of \$2,250 to the LWDA. The net amount paid directly to the class members will be  
26 about \$105,826, significantly higher than at preliminary approval. The fund is non-reversionary.  
27 There are an estimated 76 class members, fewer than previously estimated. Based on the  
28 estimated class size, the average net payment for each class member is approximately \$1,392,

1 nearly double the preliminary estimate. The individual payments will vary considerably,  
2 however, because of the allocation formula prorating payments according to the number of  
3 weeks worked during the relevant time. The number of aggrieved employees for PAGA  
4 purposes is smaller, 69, because the starting date of the relevant period is later.

5 The entire settlement amount will be deposited with the settlement administrator within  
6 5 days after the effective date of the settlement. The proposed settlement will certify a class of  
7 all current and former non-exempt employees employed at defendants' facilities as bus drivers  
8 or transportation vehicle drivers between April 24, 2016 and May 10, 2022. For PAGA  
9 purposes, the period covered by the settlement is April 24, 2018 through May 10, 2022.

10 The class members are not required to file a claim. Funds will be apportioned to class  
11 members based on the number of workweeks worked during the class period.

12 Settlement checks not cashed within 180 days will be cancelled, and the funds will be  
13 directed to Legal Aid At Work as a *cy pres* beneficiary. (While some members of plaintiff's  
14 counsel's law firm have some involvement with that organization, the Court is convinced that  
15 their involvement is a matter of assisting in its work and poses no conflict of interest.)

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

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

28 Counsel also has provided an analysis of the case, and how the settlement compares to

1 the potential value of the case, after allowing for various risks and contingencies. Plaintiff's  
2 claims center on allegations that the class member drivers, who previously worked non-fixed  
3 hours, were not being paid for such time as split-shift periods, meal breaks, time spent bidding  
4 for routes, and DMV renewals. The District responded that these potential problems were both  
5 overestimated and very difficult to establish on a class basis. Moreover, in 2020 (after this case  
6 was filed) the District switched to paying all drivers for a straight eight-hour shift, eliminating  
7 virtually all of the potential for such violations. Plaintiff's counsel provides a reasonable and  
8 detailed analysis, showing that the settlement represents approximately 100% compensation for  
9 a reasonable estimate of the value of the claims.

10 The potential liability needs to be adjusted for various evidence and risk-based  
11 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a  
12 number of reasons: they derive from other violations, they include "stacking" of violations, the  
13 law may only allow application of the "initial violation" penalty amount, and the total amount  
14 may be reduced in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties  
15 may be reduced where "based on the facts and circumstances of the particular case, to do  
16 otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."))  
17 Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently  
18 with the filing of the motion.

19 **B. Legal Standards**

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

27 Because this matter also proposes to settle PAGA claims, the Court also must consider  
28 the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v.*

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, “[t]he court cannot  
11 surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a  
12 mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court*  
13 (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not  
14 always apply, because “[w]here the rights of the public are implicated, the additional safeguard  
15 of 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 C. Attorney Fees and Other Costs

19 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common  
20 fund” theory, or \$64,490. Even a proper common fund-based fee award, however, should be  
21 reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th  
22 480, 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 Accordingly, plaintiffs have provided information concerning the lodestar fee amount.  
28 They estimate the lodestar at \$114,820, representing a below-one implied multiplier of .56.

1 They base this amount on a total of 164.1 hours, at hourly rates ranging from \$790 to \$925. No  
2 adjustment from the one-third fee is necessary. The attorney's fees are reasonable and are  
3 approved.

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

11 Litigation costs of \$10,654 (largely mediation fees and filing fees) are reasonable and  
12 are approved.

13 The settlement administrator's costs of \$4,500 are reasonable and are approved.

14 **D. Discussion and Conclusion**

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

18 The motion is granted.

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

21 The ultimate judgment must provide for a compliance hearing after the settlement has  
22 been completely implemented, to be determined in consultation with the Department's clerk by  
23 phone. Plaintiffs' counsel are to submit a compliance statement one week before the compliance  
24 hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator  
25 pending satisfactory compliance as found by the Court. Pursuant to Code of Civil Procedure §  
26 384(b), after the settlement is completely implemented, the judgment must be amended to  
27 reflect the amount paid to the *cy pres* recipient.

28

1 PURSUANT TO THE COURT'S JULY 17, 2023 MINUTE ORDER ATTACHED AS  
2 EXHIBIT 1, THE COURT MAKES THE FOLLOWING DETERMINATIONS AND  
3 ORDERS:

4 Having fully reviewed Plaintiff's Motion for Order Granting Final Approval of Class  
5 and Representative Action Settlement and Entering Judgment ("Motion") brought pursuant to  
6 California Rule of Court 3.769, the Order Granting Preliminary Approval of Class and  
7 Representative Action Settlement filed March 23, 2023 ("Preliminary Approval Order"), and  
8 the Stipulation of Class and Representative Action Settlement and Release filed with this Court  
9 on February 14, 2023 ("Settlement Agreement"), came on for hearing, the Court grants final  
10 approval of the Settlement and ORDERS AND MAKES THE FOLLOWING  
11 DETERMINATIONS:

12 1. Pursuant to the Court's Preliminary Approval Order, Notice of Class Action  
13 Settlement was sent to each Class Member by first-class United States mail, informing the Class  
14 of the Settlement terms, right to receive a Settlement Payment without taking any action,  
15 comment on or object to the Settlement, and appear in person or by counsel and be heard at the  
16 final approval hearing. Adequate periods of time were provided for each of these procedures.

17 2. No Settlement Class Member submitted a Request for Exclusion, written  
18 objection to the proposed Settlement, nor an intention to appear at the final approval hearing.

19 3. The Court finds and determines this notice procedure afforded adequate  
20 protections to the Class and provides the basis for the Court to make an informed decision  
21 regarding approval of the Settlement based on the responses of the Class. The Court finds and  
22 determines the notice provided in this case was the best notice practicable, which satisfies the  
23 requirements of law and due process.

24 4. For purposes of Settlement approval only, the Court finds: (a) the proposed Class  
25 is ascertainable and so numerous joinder of all Class Members is impracticable; (b) there are  
26 questions of law or fact common to the proposed Class, and a well-defined community of  
27 interest among Class Members with respect to the subject matter of the class action; (c) the  
28 claims of the Class Representative, Christopher Murrell, are typical of the claims of proposed

1 Class members; (d) the Class Representative, Christopher Murrell, has and will fairly and  
2 adequately protect the interests of Class Members; (e) a class action is superior to other  
3 available methods for efficient adjudication of this controversy for settlement; and (f) counsel of  
4 record for the Plaintiff and Class Representative are qualified to serve as Counsel for Plaintiff in  
5 his capacity as a representative of the Class, and as counsel for the Class.

6 5. The Court confirms certification, for settlement only, a Class defined as: All  
7 persons employed by Defendants in California as non-exempt Bus Drivers and Transportation  
8 Vehicle Drivers that worked at any time from April 24, 2016 through May 10, 2022.

9 6. For settlement purposes, PAGA Members are defined as: All persons employed  
10 by Defendants in California as non-exempt Bus Drivers and Transportation Vehicle Drivers that  
11 worked at any time from April 24, 2018 through May 10, 2022.

12 7. The Court finds and determines the terms set forth in the Settlement Agreement  
13 are fair, reasonable, and adequate and, having found the Settlement was reached as a result of  
14 informed and non-collusive arms'-length negotiations facilitated by a neutral and experienced  
15 mediator, directs the Parties to effectuate the Settlement according to the Settlement  
16 Agreement's terms. The Court finds the Parties conducted extensive investigation, research, and  
17 informal discovery, and that their attorneys were able to reasonably evaluate their respective  
18 positions. The Court also finds that settlement will enable the Parties to avoid additional and  
19 potentially substantial litigation costs, as well as delay and risks if litigation continued.

20 8. The Court finds and determines the terms of the Settlement are fair, reasonable  
21 and adequate to the Class and each Class Member, the Settlement is ordered finally approved,  
22 and all terms of the Settlement Agreement should be and are ordered to be consummated.

23 9. The Court finds and determines the Settlement Payments to Participating Class  
24 Members and PAGA Members provided for in the Settlement are fair and reasonable. The  
25 Court grants final approval to and orders payment of those amounts be made to Participating  
26 Class Members and PAGA Members in accordance with the Settlement Agreement.

27 10. The Court finds and determines settlement administration expenses of \$4,500,  
28 incurred by Phoenix Settlement Administrators are fair and reasonable. The Court grants final



1 approval of and orders payment of that amount in accordance with the Settlement Agreement.

2 11. The Court finds and determines the Class Representative Service Payment of  
3 \$5,000 to Plaintiff Christopher Murrell is fair and reasonable, and orders the Administrator to  
4 make this payment in accordance with the terms of the Settlement Agreement.

5 12. The Court finds and determines payment to the California Labor and Workforce  
6 Development Agency of \$2,250 as its share of the Settlement of civil penalties under the Private  
7 Attorneys General Act is fair, reasonable, and appropriate. The Court grants final approval to  
8 and orders that amount be paid in accordance with the Settlement Agreement.

9 13. The Court awards Class Counsel attorneys' fees of \$64,490 and litigation costs  
10 of \$10,654. The Court finds such amounts to be fair and reasonable. The Court orders the  
11 Administrator to make these payments in accordance with the Settlement Agreement.

12 14. Without affecting the finality of this Order or the entry of judgment in any way,  
13 the Court retains jurisdiction of all matters relating to the interpretation, administration,  
14 implementation, effectuation, and enforcement of this Order and the Settlement Agreement.

15 15. The Settlement is not an admission of liability by Defendant San Ramon Valley  
16 Unified School District, a California Public Entity or any Released Party, nor is this Order or  
17 the entry of judgment a finding any claim in the Actions against Defendant is valid. Neither this  
18 Order or the entry of judgment, nor the Settlement, may be construed as, or used as an  
19 admission of any fault, wrongdoing or liability by Defendant or any Released Party. Entering or  
20 carrying out the Settlement, and related negotiations, shall not be offered in evidence against  
21 Defendant or any Released Party in any action or proceeding in any court, administrative  
22 agency or other tribunal for any purpose other than to enforce this Order or Judgment of  
23 Settlement. Notwithstanding these restrictions, any Released Party may file in the Action or any  
24 proceeding, this Order or Judgment, the Settlement, or any papers on file in the Action, to  
25 support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue  
26 preclusion or similar defense.

27 16. Plaintiff and Participating Class Members fully release Defendant, and its past,  
28 present, and future, officers, directors, principals, board members, employees, agents,

1 representatives, accountants, auditors, attorneys, consultants, insurers, reinsurers, predecessors,  
2 successors, and assigns from all claims, debts, liabilities, demands, obligations, damages, liens  
3 or actions or causes of action that were alleged in the Complaint, or could have been alleged  
4 based on the operative facts alleged in the Complaint, and including, but not limited to, claims  
5 under California Labor Code sections 1194, 1194.2, 2699(a), 2699.3, 2699(f)(2), 2699.5, and  
6 the applicable Wage Orders promulgated thereunder.

7 17. Plaintiff, on behalf of himself, the State of California, and all PAGA Members,  
8 relinquishes all rights to PAGA claims with respect to any alleged failure during the PAGA  
9 Period to comply with the Labor Code, and covenants not to participate in any actions, lawsuits,  
10 proceedings, complaints, or charges in any court or before any administrative body against any  
11 Released Party related to any claims that Plaintiff brought or could have brought under the facts  
12 he has alleged in this Action.

13 18. Nothing in this Order shall preclude any action to enforce the Parties' obligations  
14 under the Settlement Agreement or this Order, including Defendant's obligation to make  
15 payments to Participating Class Members and PAGA Members in the Settlement Agreement.

16 19. The Judgment, once entered, shall constitute a judgment for purposes of  
17 California Rules of Court, Rule 3.769(h). In accordance with, and for the reasons stated in, this  
18 Order, judgment shall be entered within the meaning and for purposes of Code of Civil  
19 Procedure sections 577 and 904.1(a), and the Plaintiff/Class Representative, Participating Class  
20 Members and PAGA Members shall take nothing from Released Parties except as expressly set  
21 forth in the Settlement Agreement.

22 20. The Parties will comply with Cal. Rules of Court Rule 3.771(b), by giving notice  
23 to Class Members by posting the Final Approval Order and Judgment on the Settlement  
24 Administrator's website, [www.phoenixclassaction.com/san-ramon-valley-school-district/](http://www.phoenixclassaction.com/san-ramon-valley-school-district/).

25 21. Pursuant to Labor Code section 2699(l)(3), Plaintiff shall submit a copy of this  
26 Order and Judgment to the California Labor and Workforce Development Agency within 10  
27 days after entry of this Order and Judgment.

28 ///

1 22. The Parties will bear their own costs and attorneys' fees except as otherwise  
2 provided by this Court's Order awarding Class Counsels' attorneys' fees and litigation costs.

3 23. The Court ORDERS that \$3,224.50, five percent (5%) of the fee award, shall be  
4 withheld and be kept in the Settlement Administrator's trust fund until the completion of the  
5 distribution process and the Court approval of a final accounting. If the distribution is  
6 completed, the Court will at that time release any hold-back of attorney fees.

7 24. The Court sets a compliance hearing for February 8, 2024 at 9:00 a.m. in  
8 Department 12. An Administrator's Declaration regarding its work and final settlement  
9 disbursement is to be filed with the Court no later than seven (7) days before the hearing.

10 IT IS SO ORDERED.

11 AUG 11 2023

12 Date: \_\_\_\_\_



13 The Honorable Charles S. Treat  
14 Judge of the Superior Court

15 **ORDER APPROVED AS TO FORM AND CONTENT:**

16 COHELAN KHOURY & SINGER

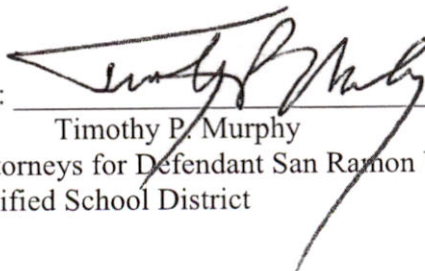
17  
18 Date: August 3, 2023

19 By:   
20 Jeff Geraci

21 Attorneys for Plaintiff Christopher Murrell, on  
22 behalf of himself and all others similarly situated

23 EDRINGTON, SCHIRMER & MURPHY LLP

24 Date: August 3, 2023

25 By:   
26 Timothy P. Murphy  
27 Attorneys for Defendant San Ramon Valley  
28 Unified School District

**EXHIBIT 1**

Superior Court of California, Contra Costa County

Department 12  
925-608-1000  
[www.cc.courts.org](http://www.cc.courts.org)



K. Bieker  
Court Executive Officer

<b>MINUTE ORDER</b>	
<b>MURREL VS SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT</b>	<b>MSC19-00784</b>
<b>HEARING DATE: 07/27/2023</b>	
<b>PROCEEDINGS: *HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS ACTION AND REPRESENTATIVE ACTION SETTLEMENT</b>	
DEPARTMENT 12 JUDICIAL OFFICER: CHARLES S TREAT	CLERK: DENESE JOHNSON COURT REPORTER: NOT REPORTED
<u>JOURNAL ENTRIES:</u>	
<p>No appearance either party.</p> <p>There being no opposition to the tentative ruling, the tentative ruling becomes the order of the court as follows:</p> <p>Plaintiff Christopher Murrell moves for final approval of his class action and PAGA settlement with defendant San Ramon Unified School District.</p> <p>Since preliminary approval was granted, the administrator has mailed notices to 76 class members. One packet was returned by the post office, but that member was located by skip tracing. No objections or requests to opt out have been received.</p> <p>The motion is <b>granted</b>.</p> <p style="text-align: center;"><b>Background and Settlement Terms</b></p> <p>Defendant is a public-school district. Plaintiff has worked for defendant as a school bus driver since 2013.</p> <p>The original complaint was filed on April 24, 2019 as a class action. PAGA claims were added by amendment shortly thereafter. The first amended complaint is the operative pleading.</p> <p>The settlement, as preliminarily approved, was for \$150,000. Later investigation revealed a higher number of covered work weeks, triggering an escalator clause in the settlement. As now approved, the settlement will create a gross settlement fund of \$193,470. The class representative payment to the plaintiff will be \$5,000. Attorney's fees will be \$64,490 (one-third of the settlement as escalated). Litigation costs were preliminarily approved not to exceed \$12,000, and are now \$10,654. The settlement administrator's costs are \$4,500 (slightly below the preliminary approval estimate). PAGA penalties will be \$3,000, resulting in a payment of \$2,250 to the LWDA. The net amount paid directly to the class members will be about \$105,826, significantly higher than at preliminary approval. The fund is non-reversionary. There are an estimated 76 class members, fewer than previously estimated. Based on the estimated class size, the average net payment for each class member is approximately \$1,392, nearly double the preliminary estimate. 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. The number of aggrieved</p>	

Superior Court of California, Contra Costa County

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K. Bieker  
Court Executive Officer

employees for PAGA purposes is smaller, 69, because the starting date of the relevant period is later.

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

The proposed settlement will certify a class of all current and former non-exempt employees employed at defendants' facilities as bus drivers or transportation vehicle drivers between April 24, 2016 and May 10, 2022. For PAGA purposes, the period covered by the settlement is April 24, 2018 through May 10, 2022.

The class members are not required to file a claim. Funds will be apportioned to class members based on the number of workweeks worked during the class period.

Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to Legal Aid At Work as a *cy pres* beneficiary. (While some members of plaintiff's counsel's law firm have some involvement with that organization, the Court is convinced that their involvement is a matter of assisting in its work and poses no conflict of interest.)

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.)

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

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"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.")

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 \$64,490. Even a proper common fund-based fee award, however, should be reviewed 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

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K. Bieker  
Court Executive Officer

estimate the lodestar at \$114,820, representing a below-one implied multiplier of .56. They base this amount on a total of 164.1 hours, at hourly rates ranging from \$790 to \$925. 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 he executed a broader release than the class as a whole, but does not identify any particular claims of value that he may have. She also risks damage to her reputation and more difficulty in obtaining employment. She has expended hundreds of hours of work in support of the action. The representative payment is approved.

Litigation costs of \$10,654 (largely mediation fees and filing fees) are reasonable and are approved.

The settlement administrator's costs of \$4,500 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.

DATED: 7/27/2023

BY: \_\_\_\_\_

D. JOHNSON, DEPUTY CLERK