

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court, Department 22

JUDICIAL OFFICER: HONORABLE LAURI A. DAMRELL

Courtroom Clerk: V. Aleman
Court Attendant: J. Flores

CSR: NONE

34-2022-00320564-CU-OE-GDS

March 8, 2024
9:00 AM

**Joe Hart vs. Aluminum Coating Technologies Inc a
California Corporation**

MINUTES

APPEARANCES:

Defendant Aluminum Coating Technologies Inc a California Corporation represented by Michael G Blankinship via virtual conference.
Defendant Bruce Cenicerros represented by Michael G Blankinship via virtual conference.
Defendant Andrea Cenicerros represented by Michael G Blankinship via virtual conference.

Other Appearance Notes: Counsel Justin Rodriguez for Plaintiffs (via virtual conference)

NATURE OF PROCEEDINGS: Hearing on Motion for Preliminary Approval of Settlement Class and PAGA Settlement; Case Management Conference

The above referenced Counsel appeared on behalf of the Parties to address the Court's concerns.

Counsel argued that the PAGA release "based on the facts alleged in the Complaint" is permissible. Counsel cited *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56. Counsel is correct that the PAGA release at issue there included "all known and unknown claims under the PAGA against the Released Parties that were or could have been pled based on the factual allegations of the Complaint." (*Id.*, at p. 68.) However, the specific issue addressed by the court was whether the release could extend to claims not specifically listed in the LWDA Notice. (*Id.*, at p. 80.) That issue is distinguishable from the appropriate factual predicate for the release, which was not clearly addressed. The Court of Appeal has since provided additional guidance that demonstrates that the appropriate factual predicate is the LWDA Notice. In *LaCour v. Marshalls of California, LLC* (2020) 94 Cal. App.5th 1172, the court reversed a judgment because claim preclusion did not bar a representative PAGA action where the prior settlement exceeded the agency authorization to sue. There, the court concluded that "where a PAGA claimant agreed to entry of judgment resolving a variety of claims for which she provided no factual basis to the LWDA – and thus failed to give LWDA an opportunity to investigate – we hold that the prior judgment does not extinguish unlisted PAGA claims in litigation brought by other authorized PAGA plaintiffs because such claims do not arise from violations of the same primary rights [the PAGA claimant] was authorized to pursue." (*LaCour v. Marshalls of California, LLC* (2023) 94 Cal.App.5th 1172, 1195.) The *LaCour* court specifically noted that the PAGA claimant's Notice listed various Labor Code statutes in a footnote but "made no

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factual showing” to support any of those statutes and thus the court could not say that the doctrine of claim preclusion applies. (*Id.*, at p. 1194.) The Court remains persuaded that the appropriate predicate for a separate PAGA release is the factual allegations in the LWDA Notice. Nonetheless, given Counsel’s representation that the factual allegations in the operative complaint and the LWDA Notice are the same in this case, the Court will not require a modification of the PAGA release.

Counsel shall provide the remaining requested information and supplemental briefing per the Court’s Tentative Ruling.

TENTATIVE RULING:

On the Court's own motion, the Hearing on Motion for Preliminary Approval of Settlement Class and PAGA Settlement scheduled for 03/08/2024 is continued to 05/24/2024 at 09:00 AM in Department 22 at Gordon D. Schaber Superior Court.

Plaintiffs Clint Davidson and Patrick Wirth (“Plaintiffs”) are expected to address the issues below by filing supplemental briefs and/or declarations no later than May 2, 2024. Defendants Aluminum Coating Technologies, Inc., Bruce Cenicerros, and Andrea Cenicerros, (“Defendants”) may file a response no later than May 13, 2024.

If either party is unavailable on **May 24, 2024 at 9:00 AM**, the parties shall meet and confer to identify three other Fridays at 9:00 AM that work for the parties to schedule the Preliminary Approval hearing. They shall submit those dates to the Court via email at Dept22@saccourt.ca.gov, and the Court will reschedule the hearing accordingly. If the Court reschedules the hearing, the deadlines for the supplemental briefs stated above will not change.

The Court has provided specific direction on the information and argument the Court requires to grant a motion for preliminary approval of a class action settlement. The Parties are urged to carefully review the [Checklist for Approval of Class Action Settlements](#) and fully comply with each applicable item to ensure a prompt ruling from the Court.

Background

Joe Hart, the prior class representative, filed the action on or about May 23, 2022. Joe Hart exhausted administrative remedies by filing a notice on May 17, 2022, through the Labor and Workforce Development Agency (“LWDA”) prior to amending the Complaint to add a PAGA claim. In around October 2022, Joe Hart settled his individual claims and no longer wished to fulfill the fiduciary role of a class representative. A Second Amended Complaint substituting Plaintiffs as the class representatives was filed on June 12, 2023. Plaintiffs exhausted administrative remedies by filing a notice with the LWDA on June 9, 2023. (Berzin Decl., ¶ ; Exhibit List, Exh. C.) A Third Amended Complaint was filed on August 25, 2023, after Plaintiffs exhausted administrative remedies.

Plaintiffs allege that Defendants 1) failed to pay overtime wages; 2) failed to pay split shift premiums; 3) failed to provide meal periods or pay premiums in lieu thereof; 4) failed to provide

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rest periods or pay premiums in lieu thereof; 5) failed to provide accurate wage statements; 6) failed to timely pay final wages; 7) failed to reimburse expenses; and 8) engaged in unfair competition. (Berzin Decl., ¶¶ 3, 9-10.) Plaintiff has also alleged Defendants are liable for civil penalties under the PAGA based on these violations. (*Ibid.*)

Plaintiffs now move for preliminary approval of the Parties' Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Settlement Agreement" or "Agreement"). (Exhibit List, Exh. A ("SA").) Concurrently with the filing of the instant motion, Plaintiffs provided a copy of the Agreement to the LWDA. (*Id.*, Exh. G.)

Legal Standard

The law favors the settlement of lawsuits, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. (See *Neary v. Regents of Univ. of Cal* (1992) 3 Cal.4th 273, 277-281; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 52.) However, a class action may not be dismissed, compromised, or settled without approval of the court, and the decision to approve or reject a proposed settlement is committed to the court's sound discretion. (See Cal. Rules of Court, Rule 3.769; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (*Wershba*).

In determining whether to approve a class settlement, the court's responsibility is to "prevent fraud, collusion or unfairness to the class" through settlement because the rights of the class members, including the named plaintiffs, "may not have been given due regard by the negotiating parties." (*Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.* (2006) 141 Cal.App.4th 46, 60.) The court must independently determine "whether the settlement is in the best interests of those whose claims will be extinguished" and "make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133.) The burden of establishing the fairness and reasonableness of the settlement is on the proponent. (*Wershba, supra*, 91 Cal.App.4th at p. 245; see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135 1165-66.)

The Court does not rubber stamp these motions, but rather serves as a guardian of absent class members' rights to ensure the settlement is fair. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.) "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.'" (*7-Eleven, supra*, 85 Cal.App.4th at p. 1145.) "A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" (*Wershba, supra*, 91 Cal.App.4th at pg. 250, citations omitted.) The court's primary objective for preliminary approval is to establish whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a final fairness hearing. (Rubenstein et al., *Newberg and Rubinstein on Class Actions* (6th ed. 2023) § 13:10.)

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Summary of the Agreement

Under the terms of the Agreement, Defendants deny liability, but agree to pay a Gross Settlement Amount (“GSA”) of \$225,000. (SA, ¶¶ 1.15, 5.1.) No portion of the GSA will revert to Defendants and Defendants are separately responsible for the payment of any applicable employer-side payroll taxes. (*Id.*, ¶¶ 5.1, 5.6.) The Class is defined as “all individuals who have, or continue to, work for Defendants as non-exempt employees in California during the Class Period.” (*Id.*, ¶ 1.5.) The Class Period means from May 23, 2018 up to the Preliminary Approval Date. (*Id.*, ¶ 1.6.)

The following amounts will be paid from the GSA:

- Attorneys’ fees not to exceed 35% of the GSA or \$78,750 and the reimbursement of Counsel’s costs not to exceed \$15,000 (SA, ¶ 5.2);
- Settlement administration costs not to exceed \$10,000 (*id.*, ¶ 5.3);
- A class representative enhancement payment not to exceed \$10,000 (*id.*, ¶ 5.4);
- A PAGA Payment in the amount of \$10,000, 75% of which (\$7,500) will be distributed to the LWDA and 25% of which (\$2,500) will be paid to the Aggrieved Employees (*id.*, ¶ 5.5.)

The remaining amount – the Net Settlement Amount (“NSA”) is approximately \$101,250. (SA, ¶ 1.18; Berzin Decl., ¶ 10.) The average net award is approximately \$636.79. (Berzin Decl., ¶ 10.) The NSA will be distributed to the Participating Class Members on a pro-rata basis. Individual settlement shares will be determined by dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all Class Members. That fraction will then be multiplied by the NSA to arrive at the Class Member’s individual share. (SA, ¶ 5.8.) Similarly, each Aggrieved Employee’s share of the 25% of the PAGA Payment will be determined by dividing their total Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. (*Ibid.*)

The Individual Settlement and PAGA Payments will be allocated as follows: one-third of the settlement payment will be allocated to settlement of wage claims and will be reported on an IRS W-2 Form; two-thirds of the settlement payment will be allocated to settlement of claims for interest and penalties and will be reported on IRS 1099 Forms; 100% of the PAGA penalties will be allocated as penalties and will be reported on IRS 1099 Forms. (SA, ¶¶ 5.9.1, 5.9.2, 5.9.3.) Settlement checks will remain valid for no less than 180 days after the date of mailing. (*Id.*, ¶ 7.9.) For any checks not cashed by the void date, the Administrator will void the checks and transmit the funds represented by such checks to the California Controller’s Unclaimed Property Fund in the name of the Class Member and/or Aggrieved Employee. (*Id.*, ¶¶ 5.6, 7.9.)

No later than 14 calendar days after Preliminary Approval, Defendant will provide the Class Data to the Administrator. (SA, ¶ 7.3.) No later than 14 days after receipt of the Class Data, the Administrator will perform a national change of address search, update the addresses accordingly, and send to all Class Members identified therein the Class Notice via first-class

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United States Postal Service mail. (*Ibid.*) Not later than 5 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. (*Id.*, ¶ 7.4.) If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. (*Ibid.*) The deadlines for Class Members' written objections, challenges to workweeks and/or pay periods, and requests for exclusion will be extended an additional 10 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. (*Id.*, ¶¶ 1.20, 7.4, 7.5.1, 7.5.2, 7.5.3.)

Upon the Effective Date, which is defined, essentially, as the date Plaintiffs serve Defendants with the signed order granting final approval of the settlement, all Participating Class Members will be deemed to release the "Released Class Claims," which means "any and all class claims that are alleged in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Released Class Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out." (SA, ¶¶ 1.13, 1.29, 6.1.) Similarly, upon the effective date, all Aggrieved Employees will be deemed to release the "Released PAGA Claims," meaning "any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 et seq., contained in the Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims. (*Id.*, ¶¶ 1.13, 1.30, 6.2.)

Issues to Address:

1. **Exposure Analysis:** In moving for preliminary approval, a plaintiff must provide specific information sufficient for the Court to evaluate whether the consideration being received for the release of class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.) This discussion should specify the maximum realistic recovery of each claim asserted in the operative complaint, defenses asserted by defendant(s), a summary of the risks, expenses, and duration of further litigation if the settlement is not approved, and any other relevant factors justifying the amount offered in settlement.

Here, Counsel attests that Plaintiffs calculated the maximum potential exposure for each of Plaintiffs' claims based on Counsel's analysis of the data produced by Defendants. (Berzin Decl., ¶ 9.) Plaintiffs estimated Defendants' maximum possible exposure is \$2,936,548.77, including \$286,335 for Plaintiffs' unpaid hours overtime wages claim, \$4,427.38 for Plaintiffs' regular rate of pay overtime wages claim, \$128,850.75 for Plaintiffs' meal periods claim, \$128,850.75 for Plaintiffs' rest periods claim, \$3,531.89 for Plaintiffs' sick time claim, \$0 for the split shift claim, \$184,300 for Plaintiffs' wage statement claim, \$583,200 for Plaintiffs' waiting time penalties claim, \$74,235 for Plaintiffs' reimbursement claim, and \$1,542,818 for Plaintiffs' PAGA claim. (*Id.*, ¶ 9(a)-(j).) Plaintiffs provide an extensive discussion regarding the *Kullar* analysis, including their claims, Defendants' defenses, and the risks. (*Ibid.*) However, Plaintiffs fail to

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provide all necessary information for the Court to evaluate whether the consideration being received is reasonable.

Counsel attests that from the data Defendants provided, they were able to determine “the average hourly rate, average daily hours worked, average number of workweeks and pay periods that had potential violations based on the asserted claims, the frequency with which violations occurred in a given week and/or pay period, and the number of former employees.” (Berzin Decl., ¶ 7.) Plaintiffs assert that, at the time of mediation, there were 10,605 workweeks in the Class Period and 3,686 PAGA pay periods. (*Ibid.*) However, Plaintiffs fail to provide other information, such as the average hourly rate or overtime rate or the number of terminated employees. (*Id.*, ¶¶ 9(a), (b), (c), (d), (h).) Regarding Plaintiffs regular rate of pay overtime wages, sick time, wage statement, waiting time claims and PAGA Penalties, Plaintiffs fail to provide any discussion regarding the underlying assumptions or methodology for their estimates or whether Plaintiffs discounted these claims for settlement purposes. (*Id.*, ¶¶ 9(b), (e), (g), (h), and (j).) Plaintiffs must provide this information and explain how they estimated Defendants’ maximum exposure and specifically how they reduced those estimates to arrive at a realistic settlement value.

2. **PAGA Release**: The Agreement defines the PAGA Released Claims as “any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 et seq., contained in the Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.” (SA, ¶¶ 1.13, 1.30, 6.2.) Generally, the PAGA release must be tethered to the PAGA claims that were or reasonably could have been alleged ***based on the facts alleged in the LWDA Notices***. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 541, fn. 5; *Uribe v. Crown Building Maintenance Co.* (2021) 70 Cal.App.5th 986, 1005.) Otherwise, the PAGA Release is appropriately constructed.

3. **Objections**: The Agreement provides that “[a]ny Class Member who does not opt-out but who wishes to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and Defendants’ Counsel.” (SA, ¶ 7.5.2.) The Agreement specifies specific information that must be included in the written objection and that Class Members “should also file a notice of intent to appear with the Court and serve the notice on Class Counsel and Defendants’ Counsel, if they intend to appear at the final approval hearing.” (*Ibid.*) Similarly, the Notice states that Class Members “must” submit written objections to the Settlement Administrator and “[i]n addition to sending your written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection.” (SA, Exh. 1 (“Notice”).)

Generally, the Court will hear from any class members who attend the final approval hearing and ask to speak regarding their objections, regardless of whether they have submitted written objections in advance or if they have filed a notice of intent to appear. The Agreement and Notice should not suggest that the Class Members may only object if they comply with these procedures.

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4. **Class Notice**: As discussed above, the PAGA Release should be tied to the factual allegations in the LWDA Notices. If the Parties revise the release, the Notice must be amended to accurately describe the release. (Notice, p. 3.) The Notice should also be amended to remove any suggestion that Class Members may only object if they comply with certain procedures. (*Id.*, p. 4.) As discussed above, the Court will hear from any class members who attend the final approval hearing and ask to speak regarding their objections, regardless of whether they have submitted written objections in advance or if they have filed a notice of intent to appear. The Court recommends that the Parties frame objecting at the hearing as an additional and alternative method for objecting. Finally, regarding the final approval hearing, the Notice incorrectly states that the hearing will be held in Department 28 and provides the Zoom information for Department 28. Plaintiffs shall revise the Notice to provide the correct information for Department 22, as provided below.

5. **Class Representative Enhancement Award**: While Plaintiffs provide declarations attesting to the nature of their individual participation in this case (Wirth Decl., ¶¶ 4-8; Davidson Decl., ¶¶ 4-8), Plaintiffs' declarations fail to provide an estimate of time they each committed to prosecution of the case. (See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.) Merely stating that they each spent a "substantial amount of time" is insufficient.

Moreover, both Plaintiffs attest that they are providing a "general release of all [their] individual claims and waiving the protections of California Civil Code section 1542 for unknown claims" and that "[n]o other Class Member is subject to such a broad release." (Wirth Decl., ¶ 9; Davidson Decl., ¶ 9.) However, no such release appears in the Agreement. Plaintiffs shall clarify whether they are subject to a general release and, if not, why the \$10,000 payments to each Plaintiff are appropriate.

This minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

To request oral argument on this matter, you must call Department 22 at (916) 874- 5762 by 4:00 p.m., the court day before this hearing and notification of oral argument must be made to the opposing party/counsel. If no call is made, the tentative ruling becomes the order of the court. (Local Rule 1.06.)

Parties requesting services of a court reporter may arrange for private court reporter services at their own expense, pursuant to Government code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. The list of Court Approved Official Reporters Pro Tempore is available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf>.

Please check your tentative ruling prior to the next Court date at www.saccourt.ca.gov prior to the above referenced hearing date.

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If oral argument is requested, the Parties are encouraged to appear via Zoom with the links below:

To join by Zoom Link - <https://saccourt-ca-gov.zoomgov.com/my/sscdept22>

To join by phone dial (833) 568-8864 ID 16184738886

Counsel for Plaintiffs is directed to notice all parties of this order.

Please note that the Complex Civil Case Department now provides information to assist you in managing your complex case on the Court website at

<https://www.saccourt.ca.gov/civil/complex-civil-cases.aspx>. The Court strongly encourages parties to review this website regularly to stay abreast of the most recent complex civil case procedures. Please refer to the website before directly contacting the Court Clerk for information.

On the Court's own motion, the Hearing on Motion for Preliminary Approval of Settlement Class and PAGA Settlement scheduled for 03/08/2024 is continued to 05/24/2024 at 09:00 AM in Department 22 at Gordon D. Schaber Superior Court.

Certificate of Mailing is attached.

/s/ V. Aleman

By:

V. Aleman, Deputy Clerk

Minutes of: 03/08/2024
Entered on: 03/12/2024

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Gordon D. Schaber Superior Court 720 Ninth Street, Sacramento, CA 95814	FILED Superior Court of California County of Sacramento 03/08/2024 V. Aleman, Deputy
PLAINTIFF/PETITIONER: on behalf of all other similarly situated employees et al	
DEFENDANT/RESPONDENT: Aluminum Coating Technologies Inc a California Corporation et al	
CERTIFICATE OF MAILING	CASE NUMBER: 34-2022-00320564-CU-OE- GDS

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Hearing on Motion for Preliminary Approval of Settlement Clas...) upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Sacramento, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Dated: 03/13/2024

By:

/s/ V. Aleman

V. Aleman, Deputy Clerk

CERTIFICATE OF MAILING