

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Rene C. Davidson Courthouse

<p>Evelio Hernandez Plaintiff/Petitioner(s) VS. Alco Iron &amp; Metal, CO Defendant/Respondent (s)</p>	<p>No.       RG20085065  Date:     09/26/2024 Time:     3:30 PM Dept:     17 Judge:    Sarah Sandford-Smith  ORDER re: Hearing on Motion for             Final Approval of             Settlement filed by Evelio             Hernandez (Plaintiff) on             08/29/2024</p>
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The Motion for Final Approval of Settlement filed by Evelio Hernandez on 08/29/2024 is Granted.

Plaintiff Evelio Hernandez (“Plaintiff”)’s unopposed motion for final approval of class action and PAGA settlement is GRANTED. The \$30,000 payment to the LWDA and \$10,000 payment to PAGA Members appears appropriate. The court has also reviewed the billing entries from Plaintiff’s counsel and approves the attorney’s fees (\$250,000) and associated costs (\$23,616.15) requested. Finally, the court has reviewed the supporting declaration of the named class representative seeking a service award or class enhancement payment as named in this case and approves a total service award of \$10,000 to Plaintiff. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.)

Additionally, all payments by Defendant shall be to the Settlement Administrator who shall, if the Settlement is given approval, distribute the funds per the Settlement Agreement.

Further, any award of attorney’s fees will include a retention by the Settlement Administrator of ten percent (10%) of the fees until after the Settlement Administrator’s report and account after distribution and the court’s order of approval of that final report and account.

The Court sets a compliance hearing for Friday June 20, 2025 at 9:00 a.m. in Department 17. By June 6, 2025, Class Counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the status of any unresolved issues; and any other matters appropriate to bring to the court’s attention.

**BACKGROUND**

Plaintiff filed his initial Complaint on December 28, 2020 as a Private Attorneys General Act

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(“PAGA”) enforcement action. (Perez Decl. ¶ 2; Register of Actions (“ROA”).) On August 25, 2022, the court ordered Plaintiff to arbitrate his individual PAGA claims, but allowed the representative PAGA action to proceed. (Perez Decl. ¶ 4; ROA.)

On September 26, 2023, the parties participated in a full-day mediation with Mr. Mark Rudy that resulted in settlement of Plaintiff’s claims. (Perez Decl. ¶¶ 6-7.)

The settlement reached includes the settlement of Plaintiff’s individual claims that were compelled to arbitration: *Hernandez v. Alco Iron & Metal, Co.* (AAA Case No. 01-22-0004-0042.)

## OVERVIEW

The Court has a “fiduciary responsibility as [guardian] of the rights of the absentee class members when deciding whether to approve a settlement agreement.” (*Duran v. Obesity Research Institute, LLC* (2016) 1 Cal.App.5th 635, 646.) Although “there is a strong public policy favoring the settlement of litigation, this policy does not excuse a contractual clause that is otherwise illegal or unjust.” (*Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) must ensure the settlement is not “contrary to law or to public policy.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 61.)

Further, the Court is obligated to ensure that the “agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The Court “must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

### Reasonableness

The trial court has broad discretion to determine whether the settlement is fair. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) Relevant factors to be considered include:

- 1) the strength of plaintiffs' case,
- 2) the risk, expense, complexity,
- 3) the likely duration of further litigation,
- 4) the risk of maintaining class action status through trial,
- 5) the amount offered in settlement,
- 6) the extent of discovery completed and the stage of the proceedings,

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- 7) the experience and views of counsel,
- 8) the presence of a governmental participant, and
- 9) the reaction of the class members to the proposed settlement.

(Dunk, supra, 48 Cal.App.4th at p. 1801.)

The parties' Settlement Agreement generally satisfies these requirements.

## Proposed Settlement Agreement

Pursuant to the Settlement, Defendant has agreed to pay the Gross Settlement Amount ("GSA") of \$750,000.00 to be distributed as follows:

- o Class Counsel Attorney's Fees of up to \$250,000
- o Class Counsel Litigation Costs of up to \$25,000
- o Service Award for Class Action Representative: \$10,000
- o PAGA Penalty Fund Payment of \$40,000.00 split as follows:
  - \$30,000.00 to Labor Workforce Development Agency ("LWDA")
  - \$10,000.00 to PAGA-eligible aggrieved employees
- o Settlement Administrator Fees of up to \$15,000.00

All remaining GSA funds will be available to split between participating class members.

## The Class

The proposed Settlement Class consists of "all persons who were employed by Defendant as hourly non-exempt employees in the State of California from the period of October 22, 2019 through December 31, 2023." (Settlement Agreement ¶ 5; Motion for Preliminary Approval p. 10: 8-10.) There are approximately 280 Class Members. (MPA p.10:10.) The number of participating class members will be finalized after the class notice has been sent out and all opt-out notices and objections have been received.

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The class as defined appears to be an “ascertainable and sufficiently numerous class” with a “well-defined community of interest.” (Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1021; Code Civ. Proc., § 382.) The court certifies this class for purposes of settlement.

## Scope of Release

The scope of the Release is limited to the parties and claims in this litigation and is therefore reasonable.

## Uncashed Settlement Checks

The proposed Settlement Agreement indicates all settlement checks that remain uncashed for more than 180 days after issuance will be tendered to the cy pres beneficiary Worksafe. Worksafe is an appropriate cy pres recipient and is approved. (Code Civ. Proc., § 384.)

## Class Counsel, Attorney Fees & Costs

Raul Perez, Orlando Villalba, Helga Hakimi, Joey Parsons and their law firm Capstone Law APC are approved as class counsel for purposes of this Settlement Agreement.

Attorney Raul Perez submitted a declaration in support of the Motion for Final Approval, setting forth the fees and costs incurred by the law firm.

This Court’s benchmark for fees is 30% of the total fund. (Laffitte v. Robert Half International, Inc. (2016) 1 Cal.5th 480, 495.)

Here, 30% of GSA of \$750,000 is \$225,000. However, this Court has also engaged in a lodestar cross-check, based on the information provided in Attorney Perez’s declaration, and finds that the claimed attorneys’ fees in the amount of \$250,000 are fair and reasonable.

Attorney Perez’s declaration set forth a list of the costs incurred to date, totaling \$23,616.15. The Court finds that such costs are reasonable.

The Court awards \$250,000 in attorneys’ fees and \$23,616.15 in costs to Capstone Law APC. The Court further orders that 10% of the fee award be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

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Class Representative Service Award

Plaintiff Evelio Hernandez submitted a declaration as required setting forth the specific nature of his participation in the action, including an estimate of the number of hours he committed to the prosecution of this case. (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 804-807.) Based on Plaintiff's Declaration, and the record of the proceedings in this case, the Court finds the Class Representative Service Award of \$10,000 to be reasonable.

Claims Administrator & Fee

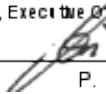
CPT Group, Inc. is approved as the Settlement Administrator for this class action and PAGA settlement. Based on the Declaration of Kaylie O'Connor, including the exhibits attached thereto, the Court finds that the claimed Settlement Administrator fees of \$10,000.00 are reasonable.

The Court shall sign the Proposed Order Granting Motion for Final Approval of Class Action Settlement and Judgment.

Dated : 09/26/2024



Sarah Sandford-Smith / Judge

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	<b>FILED</b> Superior Court of California County of Alameda 09/26/2024 Chad Finke, Executive Officer / Clerk of the Court
PLAINTIFF/PETITIONER: Evelio Hernandez	By:  Deputy
DEFENDANT/RESPONDENT: Alco Iron & Metal, CO	P. Bir
<b>CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6</b>	CASE NUMBER: RG20085065

I, the below named Executive Officer/Clerk of Court 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 one copy of the Order re: Hearing on Motion for Final Approval of Settlement filed by Evelio Hernandez (Plaintiff) on 08/29/2024 entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Brett Clare Greving  
Cozen O'Connor  
bgreving@cozen.com

Raul Allen Perez  
Capstone Law APC  
Raul.perez@capstonelawyers.com

Dated: 09/26/2024

Chad Finke, Executive Officer / Clerk of the Court

By:



P. Bir, Deputy Clerk