

AUG 27 2024

Clerk of the Superior Court
By: R. Cersosimo, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CESAR FLORES, individually and on behalf
of all others similarly situated and the State of
California under the Private Attorneys General
Act,

Plaintiffs,

v.

NEXTERA ENERGY OPERATING
SERVICES, LLC; NEXTERA ENERGY
RESOURCES, LLC; NEXTERA ENERGY
PROJECT MANAGEMENT, LLC; AND
TRANS BAY CABLE, LLC, and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: 37-2023-00034497-CU-OE-CTL

**~~PROPOSED~~ PRELIMINARY
APPROVAL ORDER**

Motion for Prelim. App. Hearing

Date: August 23, 2024

Time: 10:30 a.m.

Judge: Hon. Richard S. Whitney

Dept.: 68

Action Filed: August 11, 2023

Trial Date: Not set

1 This matter came on for a noticed motion hearing before the Honorable Richard S.
2 Whitney of the Superior Court of the State of California, in and for the County San Diego, on
3 August 23, 2024 at 10:30 a.m., for the motion by Plaintiff Cesar Flores (“Plaintiff”) for
4 preliminary approval of the Class and PAGA Settlement with Defendants NextEra Operating
5 Services, LLC; NextEra Energy Resources, LLC; NextEra Project Management, LLC; and Trans
6 Bay Cable, LLC (collectively, “Defendants”). The Court, having considered the briefs, argument
7 of counsel and all matters presented to the Court and good cause appearing, hereby GRANTS
8 Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement.

9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Class Action and PAGA Settlement
11 Agreement (“Agreement”) submitted as Exhibit #1 to Declaration of Nicholas Ferraro in Support
12 of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement filed on
13 May 6, 2024. This is based on the Court’s determination that the Settlement set forth in the
14 Agreement is within the range of possible final approval, pursuant to the provisions of Section 382
15 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

16 2. This Order incorporates by reference the definitions in the Agreement, and all
17 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. The Gross Settlement Amount is Nine Hundred Thousand Dollars (\$900,000.00).
19 It appears to the Court on a preliminary basis that the settlement amount and terms are fair,
20 adequate and reasonable as to all potential Class Members, when balanced against the probable
21 outcome of further litigation and the significant risks relating to certification, liability and damages
22 issues. It further appears that investigation and research have been conducted such that counsel
23 for the Parties are able to reasonably evaluate their respective positions and that settlement at this
24 time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that
25 would be presented by the further prosecution of the Action. The Settlement appears to have been
26 reached as the result of serious and non-collusive, arms-length negotiations. The Court therefore
27 preliminarily finds that the Settlement is fair, adequate, and reasonable when balanced against the
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1 probable outcome of further litigation and the significant risks relating to certification, liability,
2 and damages issues.

3 4. The Court preliminarily finds that the Settlement appears to be within the range of
4 reasonableness of a settlement that could ultimately be given final approval by this Court. The
5 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
6 preliminarily finds that the monetary settlement awards made available to the Class is fair,
7 adequate, and reasonable when balanced against the probable outcome of further litigation and the
8 significant risks relating to certification, liability, and damages issues.

9 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
10 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$15,000, and
11 proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
12 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
13 any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence
14 supporting these requests, including lodestar, prior to final approval.

15 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to
16 certification of a class for settlement purposes only. This stipulation will not be deemed
17 admissible in this or any other proceeding should this Settlement not become final. For settlement
18 purposes only, the Court conditionally certifies the following Class: "all individuals who were
19 employed by Defendants in California and classified as a non-exempt employee at any time during
20 the Class Period, excluding those employees who signed severance agreements." The Class
21 Period is December 20, 2018 through March 11, 2024.

22 7. The Court concludes that, for settlement purposes only, the Class meets the
23 requirements for certification under section 382 of the California Code of Civil Procedure in that:
24 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
25 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
26 community of interest amongst the members of the Class with respect to the subject matter of the
27 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)

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1 the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class
2 action is superior to other available methods for the efficient resolution of this controversy; and (f)
3 counsel for the Class is qualified to act as counsel for the Class and the Plaintiff are adequate
4 representatives of the Class.

5 8. The Court provisionally appoints Plaintiff as the representatives of the Class. The
6 Court provisionally appoints Nicholas Ferraro and Lauren Vega of Ferraro Vega Employment
7 Lawyers as Class Counsel.

8 9. The Agreement provides for a PAGA Penalties out of the Gross Settlement
9 Amount of \$20,000, which shall be allocated \$15,000 to the Labor & Workforce Development
10 Agency (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
11 Agreement pursuant to the PAGA and \$5,000 to the Aggrieved Employees. “Aggrieved
12 Employees” are all individuals who were employed by Defendants in California and classified as a
13 nonexempt employee at any time during the PAGA Period (June 6, 022 through March 14, 2024).
14 Pursuant to Labor Code section 2699, subdivision (1)(2), the LWDA will be provided notice of the
15 Agreement and these settlement terms. The Court finds the PAGA Penalties to be reasonable.

16 10. The Court hereby approves, as to form and content, the Court Approved Notice of
17 Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) along with
18 the Objection Form and Request for Exclusion Form, submitted as Exhibit A to the Agreement,
19 and attached to this Order as Exhibit #1. The Court finds that the Class Notice appears to fully
20 and accurately inform the Class Members of all material elements of the proposed Settlement, of
21 the Class Members’ right to be excluded from the Class by submitting a written opt-out request,
22 and of each member’s right and opportunity to object to the Settlement. The Court further finds
23 that the distribution of the Class Notice substantially in the manner and form set forth in the
24 Agreement and this Order meets the requirements of due process, is the best notice practicable
25 under the circumstances, and shall constitute due and sufficient notice to all persons entitled
26 thereto. The Court orders the mailing of the Class Notice Packet by first class mail pursuant to the
27 terms set forth in the Agreement. If a Class Notice Packet is returned because of an incorrect
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1 address, the Administrator will promptly search for a more current address and re-mail the Notice
2 Packet no later than fourteen days after the receipt of the undelivered Class Notice Packet. The
3 Administrator shall provide a declaration detailing the notice process and authenticating a copy of
4 every exclusion form received by the Administrator. Class Counsel shall file this declaration of
5 the Administrator concurrently with the filing of any motion for final approval.

6 11. The Court hereby appoints CPT Group as Administrator. No later than twenty-one
7 (21) calendar days after preliminary approval of the Settlement by the Court, Defendants shall
8 provide to the Administrator an electronic spreadsheet with the Class Data and the information for
9 any Allegedly Aggrieved Employee. The Administrator will perform address updates and
10 verifications as necessary prior to the mailing of the Class Notice. Using best efforts to mail it as
11 soon as possible, and in no event later than 14 days after receiving the Class information
12 spreadsheet, the Administrator will mail the Class Notice to all Class Members via first-class U.S.
13 Mail.

14 12. The Court hereby preliminarily approves the proposed procedure for exclusion
15 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
16 from the Class as provided in the Class Notice by following the instructions for requesting
17 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
18 sent to the Administrator and postmarked by no later than the Response Deadline, which is forty-
19 five (45) calendar days after the date of the mailing of the Class Notice Packet. If the Notice
20 Packet is re-mailed, the Response Deadline will be extended an additional 14 days. The
21 Administrator will then authenticate and provide any requests for exclusion to the Court. Any
22 such person who chooses to opt out of and be excluded from the Class will not be entitled to any
23 recovery under the Settlement and will not be bound by the Settlement or have any right to object,
24 appeal or comment thereon. Class Members who have not requested exclusion shall be bound by
25 all determinations of the Court, the Agreement and the Judgment. A request for exclusion may
26 only opt out that particular individual, and any attempt to effect an opt out of a group, class, or
27 subclass of individuals is not permitted and will be deemed invalid.

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PRELIMINARY APPROVAL ORDER

1 13. Any Class Member who has not opted out may appear at the final approval hearing
2 and may object or express the Member's views regarding the Settlement and may present evidence
3 and file briefs or other papers that may be proper and relevant to the issues to be heard and
4 determined by the Court as provided in the Notice. Class Members will have until the Response
5 Deadline to submit their written objections to the Administrator in accordance with the
6 instructions in the Class Notice. If the Class Notice Packet is re-mailed, the Response Deadline
7 for written objections will be extended an additional 14 days. The Administrator will then
8 authenticate and provide any written objections to the Court. Alternatively, Class Members may
9 appear at the Final Approval Hearing to make an oral objection.

10 14. A Final Approval Hearing shall be held before this Court on February 7, 2025
11 at 10:30 a.m. in Department 68 of the Superior Court of California, County of San Diego, located at
12 330 W. Broadway, San Diego, California 92101, to determine all necessary matters concerning the
13 Settlement, including: whether the proposed settlement of the Action on the terms and
14 conditions provided for in the Agreement is fair, adequate and reasonable and should be finally
15 approved by the Court; whether the Final Approval Order and Judgment should be entered herein;
16 whether the plan of allocation contained in the Agreement should be approved as fair, adequate
17 and reasonable to the Class Members; and to finally approve attorneys' fees and costs, the service
18 award, and the expenses of the Administrator. All papers in support of the motion for final
19 approval and the motion for attorneys' fees, costs and service awards shall be filed with the Court
20 and served on all counsel no later than sixteen (16) court days before the Final Approval Hearing
21 and both motions shall be heard at the Final Approval Hearing. Class Counsel shall provide
22 service of these motions on any objecting party and notice to any objecting party of any
23 continuance of the hearing on the motion for final approval.

24 15. Neither the Settlement nor any exhibit, document, or instrument delivered
25 thereunder shall be construed as a concession or admission by Defendants in any way that the
26 claims asserted have any merit or that this Action was properly brought as a class or representative
27 action, and shall not be used as evidence of, or used against Defendants as, an admission or
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1 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
2 omission by Defendants or with respect to the truth of any allegation asserted by any person.
3 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
4 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
5 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
6 deemed to be evidence for any purpose adverse to the Defendants, including, but not limited to,
7 evidence of a presumption, concession, indication or admission by Defendants of any liability,
8 fault, wrongdoing, omission, concession or damage.

9 16. In the event the Settlement does not become effective in accordance with the terms
10 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
11 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
12 and the Parties shall revert to their respective positions as of before entering into the Agreement,
13 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
14 including all available defenses and affirmative defenses, and arguments that any claim in the
15 Action could not be certified as a class action and/or managed as a representative action. In such
16 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
17 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
18 the Agreement with respect to the effect of the Agreement if it is not approved.

19 17. The Court reserves the right to adjourn or continue the date of the final approval
20 hearing and all dates provided for in the Agreement without further notice to Class Members and
21 retains jurisdiction to consider all further applications arising out of or connected with the
22 proposed Settlement.

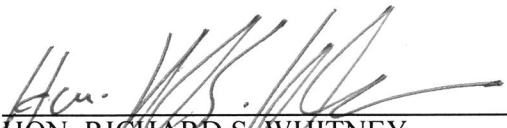
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18. The Action is stayed and all trial and related pre-trial dates are vacated, subject to further orders of the Court at the Final Approval Hearing.

IT IS SO ORDERED.

Dated: 8-27-24



HON. RICHARD S. WHITNEY
JUDGE, SUPERIOR COURT OF CALIFORNIA