

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and *(check one)*:

- a. deposited the sealed envelope with the United States Postal Service.
- b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:

- a. on *(date)*:
- b. from *(city and state)*:

4. The envelope was addressed and mailed as follows:

a. Name of person served:

Street address:
City:
State and zip code:

c. Name of person served:

Street address:
City:
State and zip code:

b. Name of person served:

Street address:
City:
State and zip code:

d. Name of person served:

Street address:
City:
State and zip code:

Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

5. Number of pages attached _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME OF DECLARANT)

▶

(SIGNATURE OF DECLARANT)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form

Save this form

Clear this form

1 **PROOF OF SERVICE**

2 I declare that I am over the age of 18, not a party to the matter of *Socorro Mata Cruz v. RTSF Petro*
3 *Ventures, Inc. et al.*, Contra Costa County Superior Court Case Number C22-00538, and my
4 business address is: Law Office of G. Martin Velez, 3558 Round Barn Boulevard, Suite 200, Santa
5 Rosa, CA 95403, martinvelez@comcast.net.

6 On the date shown below, I served the following documents:

- 7 1. Notice of Entry of Judgment or Order

8 by transmitting said documents via electronic mail, pursuant to Code of Civil Procedure section
9 1010.6, subdivision (e), addressed as follows:

10 Jonathan McNeil Wong
11 jmwong@donahue.com
12 Melanie Youngseo Kim
13 mkim@donahue.com
14 1999 Harrison Street, 26th Floor
15 Oakland, CA 94612-3520
16 [Counsel for Defendants]

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
18 and correct. Executed this 11th day of September 2023 in Santa Rosa, California.

19 
20 _____
21 G. Martin Velez
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1 Patrick R. Co (SBN 200160)
 THE CO LAW FIRM
 2 201 Spear Street, Suite 1100
 San Francisco, CA 94105
 3 t: 415.426.3553 f: 415.477.4032
 pco@colawfirmsf.com
 4
 5 G. Martin Velez (SBN 168315)
 LAW OFFICE OF G. MARTIN VELEZ
 3558 Round Barn Boulevard, Suite 200
 6 Santa Rosa, CA 95403
 t: 415.342.4125 f: 415.532.2492
 7 martinvelez@comcast.net

FILED
 SEP - 5 2023
 K. BIEKER CLERK OF THE COURT
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF CONTRA COSTA
 By _____
 K. Adams, Deputy Clerk

8 Attorneys for Plaintiff Socorro Mata Cruz on behalf of herself
 and on behalf of all persons similarly situated, and on behalf of herself, the
 9 Labor Workforce Development Agency, and similarly situated aggrieved
 current and former employees
 10
 11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 COUNTY OF CONTRA COSTA – UNLIMITED JURISDICTION
 14

15	SOCORRO MATA CRUZ on behalf of)	Case Number: C22-00538
	herself and on behalf of all persons)	
16	similarly situated, and on behalf of herself,)	PROPOSED ORDER REGARDING
	the Labor Workforce Development Agency,)	PLAINTIFF’S MOTION FOR
17	and similarly situated aggrieved current and)	PRELIMINARY APPROVAL OF CLASS
	former employees)	ACTION SETTLEMENT
18)	
19)	
	Plaintiff)	
20	vs.)	
21)	
	RTSF PETRO VENTURES, INC., doing)	
22	business as SUPERSTATION CAR)	
	WASH; RAYMOND YU, an individual;)	
23	and TIM YU, an individual; and DOES 1-)	
	20 inclusive)	
24)	
	Defendants)	
25)	
26)	
27)	
28)	

1 Plaintiff Socorro Mata Cruz' Motion for Preliminary Approval of Class Action Settlement
2 came on for hearing on August 3, 2023 at 9:00 a.m. in Department 12 of this court. The court has
3 read all the papers submitted by counsel, including Plaintiff's proof of notification of the LWDA of
4 the settlement. Counsel for the parties have not contested the court's tentative ruling granting
5 Plaintiff's Motion for Preliminary Approval of Class Action Settlement subject to Plaintiff filing
6 proof of notification of the LWDA of the settlement. Except as otherwise recited in this order, the
7 court hereby adopts its tentative ruling and GRANTS Plaintiff's Motion for Preliminary Approval of
8 Class Action Settlement. A true and correct copy of the court's tentative ruling is attached as
9 Exhibit A.

10 IT IS ORDERED THAT:

11 1. The Joint Stipulation of Settlement and Release of Claims ("Settlement Agreement")
12 is preliminarily approved;

13 2. The proposed class, defined as current and former non-exempt car washers and car
14 detailers employed by Defendant RTSF Petro Ventures during the period of March 23, 2018 to the
15 date the court grants preliminary approval of the Settlement Agreement, is certified for settlement
16 purposes;

17 3. Socorro Mata Cruz is appointed as the Class Representative for settlement purposes;

18 4. Patrick R. Co, Esq., of the Co Law Firm and G. Martin Velez, Esq., of the Law Office
19 of G. Martin Velez are appointed as Class Counsel for settlement purposes;

20 5. The Notice of Class Action Settlement and Opt-Out Form are approved for mailing to
21 the Class Members;

22 6. The opt out and objections procedures provided in the Settlement Agreement and set
23 forth in the Notice are approved;

24 7. Class Action Claims Administrator, Inc. is appointed as the Settlement Administrator;

25 8. Defendant RTSF Petro Ventures, Inc. is directed to provide the Settlement
26 Administrator within thirty (30) days after the court grants preliminary approval of the Settlement
27 Agreement the following information for each Class Member: (1) name, (2) last known address, (3)
28

1 e-mail address (if any known to RTSF), (4) Social Security number, (5) dates of employment, and
2 (6) total Qualifying Work Weeks for Class Members (“Class Data”);

3 9. The Settlement Administrator is directed to mail the Notice and Opt-Out Form to the
4 Settlement Class;

5 10. Plaintiff’s request for preliminary approval of the attorneys’ fees award, litigation
6 costs, and the representative payment of \$10,000 for the Plaintiff will be reviewed at the time of
7 final approval; and

8 11. A hearing date for the Motion for Final Approval of Class Action Settlement is
9 scheduled for November 16, 2023 at 9:00 a.m. in Department 12 of this court.


10

11 IT IS SO ORDERED.

12

13 Dated: AUG 28 2023

14



The Honorable Charles S. Treat
Judge of the Superior Court

15

16
17 Approved as to Form:

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19 Dated: _____, 2023

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DONAHUE FITZGERALD LLP

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Jonathan McNeil Wong
Melanie Youngseo Kim
Attorneys for RTSF Petro Ventures, Inc.,
Raymond Yu, and Tim Yu

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PROOF OF SERVICE

I declare that I am over the age of 18, not a party to the matter of *Socorro Mata Cruz v. RTSF Petro Ventures, Inc. et al.*, Contra Costa County Superior Court Case Number C22-00538, and my business address is: Law Office of G. Martin Velez, 3558 Round Barn Boulevard, Suite 200, Santa Rosa, CA 95403.

On the date shown below, I served the following documents:

- 1. (Proposed) Order Regarding Plaintiff’s Motion for Preliminary Approval of Class Action Settlement

by transmitting said documents via electronic mail, pursuant to Code of Civil Procedure section 1010.6, subdivision (e), addressed as follows:

Jonathan McNeil Wong
jmwong@donahue.com
Melanie Youngseo Kim
mkim@donahue.com
1999 Harrison Street, 26th Floor
Oakland, CA 94612-3520
[Counsel for Defendants]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21 day of August 2023 in Santa Rosa, California.

Martin Velez
G. Martin Velez

Exhibit A

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 08/03/2023

17. 9:00 AM CASE NUMBER: MSC21-01970
CASE NAME: CREEKSIDE WALK VS. O.C. JONES & SONS, INC.
*HEARING ON MOTION IN RE: SUMMARY JUDGMENT (FILED BY O.C. JONES, R&B, ETC.)
FILED BY:
TENTATIVE RULING:

Hearing of this motion has been stayed by the Court of Appeal.

18. 9:00 AM CASE NUMBER: MSC22-00538
CASE NAME: CRUZ VS. RTSF PETRO VENTURES, INC.
*HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
FILED BY: SOCORRO MATA CRUZ ON BEHALF OF HERSELF AND ON BEHALF OF ALL PERSONS
SIMILARLY SITUATED AND ON BEHALF OF HERSELF, THE LABOR
TENTATIVE RULING:

Plaintiff Socorro Mata Cruz moves for preliminary approval of her class action and PAGA settlement with defendant RTSF Petro Ventures, Inc. The motion is **granted**, conditioned on plaintiff filing proof of notification of LWDA of the settlement.

A. Background and Settlement Terms

Defendant operates two car washes located in Concord and Fremont. Plaintiff has been employed there as a car washer since the mid-2000s.

The original complaint was filed on March 23, 2022.

The settlement would create a gross settlement fund of \$437,800. The class representative payment to the plaintiffs would be \$10,000. Attorney's fees would be \$145,933 (one-third of the settlement). Litigation costs to date are \$9,812. The settlement administrator's costs are estimated at \$8,414. PAGA penalties would be \$20,000, resulting in a payment of \$15,000 to the LWDA. The net amount paid directly to the class members would be about \$24,364, not counting distribution of the PAGA penalty. The fund is non-reversionary. There are an estimated 98 class members. Based on the estimated class size, the average net payment for each class member is approximately \$2,486 (not including PAGA). 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 employees for PAGA purposes is presumably smaller because the starting date of the relevant period is later, though no specific number is given.

The entire settlement amount will be paid in two installments. Half will be deposited with the settlement administrator within two months after the effective date of the settlement. The second half will be paid no later than March 31, 2024.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 08/03/2023

The proposed settlement would certify a class of all current and former non-exempt employed at Defendants' California facilities between March 23, 2018 and now. For PAGA purposes, the period covered by the settlement is December 29, 2020 to now.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

A list of class members will be provided to the settlement administrator within 30 days after preliminary approval. The administrator will use skip tracing as necessary. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to the DIR unclaimed wage fund.

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. The strongest part of the claim relates to missed meal breaks, which were shown to occur with some frequency. Defendant, however, contends that many of them were *de minimis* (a minute or two), or that they were skipped by agreement between the employee and employer. Plaintiff also contends there is evidence of missed rest breaks, though that is less concretely documented. Defendant contends that its written policies require both meal breaks and rest breaks, and that it cannot keep track of when they are taken. Other violations are alleged but are less well established in the discovery. Defendant also points out that there may be difficulties with class certification as to these alleged violations.

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 "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

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
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HEARING DATE: 08/03/2023

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; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.)

The settlement agreement calls for notice of the proposed settlement to be sent to LWDA ten days after preliminary approval. This ought to have occurred prior to filing of the preliminary approval motion. Preliminary approval is conditioned on prompt proof to the Court that such LWDA notice has been made.

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*, 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, “The 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 “Where 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

Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common fund” theory. 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

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 08/03/2023

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.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation costs and the requested representative payment of \$10,000 for the plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07.

D. Discussion and Conclusion

Plaintiff should submit a declaration by August 11 showing that notice of this settlement has been provided to LWDA. Subject to the submission of that declaration, the Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify preliminary approval.

Counsel are directed to prepare an order reflecting this entire tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk by phone. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel is 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.

19. 10:00 AM CASE NUMBER: MSC10-02872
CASE NAME: GROTH V. GILAD ET AL
HEARING IN RE: IN PERSON - POST TRIAL ORAL ARGUMENT

FILED BY:

TENTATIVE RULING:

Counsel to appear.