

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq., CA Bar No. 285256

mehrdad@bokhourlaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

Tel: (310) 975-1493; Fax: (310) 675-0861

Attorneys for Plaintiff TYRONE BARNES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

DINO DESANCTIS; TYRONE BARNES,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

v.

DOUGLAS PRODUCTS & PACKAGING
COMPANY, LLC, a Missouri Limited
Liability Company; and DOES 1-50, Inclusive,

Defendant.

Case No. C21-01874

**DECLARATION OF MEHRDAD
BOKHOUR, ESQ. IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: May 15, 2023

Time: 9:00 a.m.

Judge: Hon. Judge Charles S. Treat

Dept.: 39

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4
5
6
7

8
9

10

11
12
13
14

15

16

17
18
19
20
21
22
23
24
25
26

27

28

Violations; Wage Statement Violations; Waiting Time Penalties; and Unfair Competition.

7. Plaintiffs thereafter filed an amended consolidated complaint.

8. Defendant retained counsel and immediately began to defend the case. The parties met and conferred and discussed staying formal discovery and pursuing informal discovery in connection with mediation. The Parties then scheduled mediation with David Rotman on May 23, 2022.

9. In preparation for the mediation, the Parties informally exchanged documents and information that allowed both sides to calculate the potential damages and evaluate potential risk, including policies and procedures pertaining to each claim alleged, and statistics relating to the number of current and former employees, number of shifts, pay periods worked and other things. Defendant also provided its written policies and practices and a robust sampling of payroll and timekeeping records for Class Members. This information enabled both parties to take a deep dive into the claims. Additionally, during this process, Plaintiffs and their counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks

The Settlement Is Within the Range of Possible Approval

10. The Settlement amount reached in this case provides significant recovery to Participating Class Members and easily falls within the range of reasonableness.

11. Plaintiff's counsel obtained a Settlement Amount of \$372,500. Class Counsel considers this to be an excellent settlement for Class Members, when taking into account all issues and risks related to liability and class certification and considering the case law regarding fair, reasonable, and adequate settlements. *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139 ["Compromise is inherent and necessary in the settlement process ... 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."]; *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 62 (9th Cir. 1982) 8 ["It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery

1 does not ... render the settlement inadequate or unfair.”].

2 12. The proposed settlement reflects approximately 36.6% of the estimated recovery
3 the Class could reasonably expect in light of the significant litigation risks, and will provide
4 tangible, monetary compensation for hotly disputed claims. Indeed, the percentage of the liability
5 exposure recovered in this case exceeds percentages routinely approved by courts.

6 **The Allocation for Enhancement Awards Is Reasonable**

7 13. Subject to Court approval, Plaintiffs will receive a Class Representative Service
8 Payment in the amounts of \$10,000. The Service Payment will be paid in addition to Plaintiffs’
9 individual Settlement Share. Plaintiffs spent considerable time and effort to produce relevant
10 documents and past employment records and provide the facts and evidence necessary to support the
11 allegations. Plaintiffs were available whenever class counsel needed her and tried to obtain documents
12 and information that would benefit the Class.

13 **The Allocation for Attorneys’ Fees and Costs Are Reasonable**

14 14. The Settlement provides for Class Counsel to apply for attorneys’ fees in an amount
15 of \$124,166.66 which represents one third of the settlement amount. Class Counsel will apply for
16 attorneys’ fees at the time of seeking final approval of the proposed Settlement.

17 15. The Class Counsel Fees Payment provided for by the Settlement is reasonable,
18 particularly in light of the time and effort expended by Class Counsel. Class Counsel litigated this
19 case for over a year, with the possibility of an unsuccessful outcome and no fee recovery of any kind.
20 The ongoing work has been demanding and ultimately successful in achieving a substantial
21 Settlement. Given the strengths and weaknesses of the claims and the risk and expense of further
22 litigation, Plaintiffs believe that their counsel achieved an excellent result on behalf of the Class.
23 Considering the amount of the fees to be requested, the work performed, and the risks incurred, the
24 Class Counsel Award provided for by the Settlement are reasonable and should be awarded.

25 16. Class Counsel have borne, and continue to bear, the entire risk and cost of
26 litigation associated with this class action on a pure contingency basis. The factual and legal
27 issues posed in this case were evolving and difficult. Based on Class Counsels’ past experience
28 in wage and hour class action litigation, it is safe to state that Class Counsel is very likely to be

1 called upon, after the Class Notice has been sent, to expend substantial amounts of additional time
2 to help Class Members understand the terms of the proposed settlement, and to assist Class
3 Members in the preparation and documentation of their claims. It is also likely that, even after
4 final approval of the settlement has been granted, Class Counsel will be called upon to expend
5 additional amounts of time in the presentation and resolution of contests and disputes relating to
6 Class Members' claims under the terms of the proposed settlement, as to the amounts of
7 individual claims and perhaps other individual issues.

8 17. The Court should preliminarily approve the requested Class Counsel Award which
9 are justified by the outstanding results achieved, the complexity of the issues, the difficulty of the
10 case, and the great risk undertaken by Class Counsel. The requested payments will not be opposed
11 by Defendant and are well within established guidelines.

12 18. I graduated with a Bachelor of Arts with a major in Political Science from the
13 University of California, Berkeley in 2007. I received my Juris Doctorate from Loyola Law
14 School—Los Angeles in 2012 and became a member of the California State Bar in December
15 2012.

16 19. I opened my law firm in 2014 with a concentration in representation of employees
17 against employers to recover unpaid wages and vindicate harassment, discrimination and
18 retaliation claims in various contexts.

19 20. I was selected as a "Super Lawyer Rising Star" in Employment Litigation during
20 the years 2017, 2018, 2019, 2020, and 2021, and in 2022, I was selected as a "Super Lawyer", a
21 distinction that is reserved for the top 2.5% of lawyers in the practice area.

22 21. I have also been recognized by TopVerdicts.com for achieving several of the top
23 wage and hour class and PAGA action settlements in California.

24 22. I am also an active member of the California Employment Lawyers' Association
25 and have attended various Continuing Legal Education courses pertaining to advocacy on behalf
26 of employees.

27 23. My firm has the experience, resources, and means necessary to allow us to provide
28 adequate representation as Class Counsel to all Class Members in this litigation. Currently, my

1 firm is acting as counsel in at least twenty wage-and-hour class actions and co-counsel in at least
2 twenty-five other wage-and-hour class actions.

3 **The Settlement Resulted From Serious, Informed Negotiations**

4 24. The Settlement that has been reached, subject to this Court's approval, is the
5 product of substantial effort by the parties and their counsel. The settlement was reached after
6 extensive factual and legal investigation and research, numerous discussions, exchanges of
7 documents and information, correspondences, a full day session of mediation, review of
8 pleadings, evidence and rulings in similar actions litigated elsewhere in the state, and review of
9 similar cases in the same industry elsewhere in the country. The Settlement amount is, of course,
10 a compromise figure. It considered the risks related to liability, damages, and all the defenses
11 asserted by Defendant.

12 25. Plaintiffs assert that the wage and hour claims and the PAGA claims for resulting
13 penalties would be certified. Plaintiff's counsel reviewed documents produced by Defendant,
14 including but not limited to employee handbooks, time and payroll records for Class Members,
15 etc., and based thereon reasonably believed that Plaintiffs would have a significant chance of
16 certifying the Class.

17 26. On the other hand, Defendant argued that Plaintiffs cannot meet the requirements
18 of class certification. Defendant believes that compliant meal and rest periods were provided,
19 and Defendant did not deter employees from taking compliant meal and rest periods, and
20 Defendant's meal and rest period policies were likewise compliant. Defendant further contended
21 that class certification would not be warranted because individual liability issues predominate
22 Plaintiffs' claims.

23
24 27. While Plaintiffs believe in their chance of success of certifying the claims,
25 Plaintiffs recognized the potential risk, expense, and complexity posed by further litigation.
26 Litigating Plaintiff's claims in this litigation—claims that involve numerous Class Members during
27 the Class Period—would require substantial additional preparation and discovery and ultimately
28 would involve the deposition and presentation of numerous witnesses (including expert

witnesses), as well as the consideration, preparation, and analysis of expert reports. Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side.

28. Plaintiffs and Defendant have very strong positions on liability in this case. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in Plaintiff's operative complaint, and further denies that, for any purpose other than that of settling this lawsuit, this action is appropriate for class treatment. Considering the sharply contested legal and factual issues, the risks of continued litigation, and substantial benefits to Class Members under the Settlement, the terms and conditions of this class settlement are fair and reasonable to all sides.

29. Class Counsel conducted a thorough investigation into the facts of the case, including, *inter alia*, interviews with Plaintiffs and multiple Class Members, and diligently investigated the allegations in this lawsuit. Class Counsel reviewed a large volume of pages of documents and data produced by Defendant and obtained through other sources, including and not limited to, Plaintiffs and other Class Members, employment records (including, *inter alia*, time and payroll data, timecards, earning statements, and personnel records), as well as excerpts of Defendant's employee handbook (such as excerpts pertaining to Defendant's meal and rest break policies), class-wide data, various documents regarding Defendant's wage-and-hour policies, various internal memoranda, various agreements, various training and on-boarding material, and various forms, among other information and documents.

30. The parties exchanged information and documents formally and informally. The parties also met and conferred on numerous occasions over issues relating to the pleadings, jurisdiction, vigorous motion practice, and discovery. The parties reached the Settlement after reviewing all available evidence, arm's-length bargaining, and participating in mediation conducted by David Rotman, Esq., a well-respected mediator experienced in handling complex wage-and-hour matters. During the mediation, the parties exchanged information and discussed various aspects of the case, including, and not limited to, Plaintiffs' claims, the risks and delays of further litigation and of proceeding with certification and/or representative adjudication, the law relating to rounding

theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, the evidence produced and analyzed, and the possibility of appeals, among other things.

31. The parties reached the Settlement after reviewing all available evidence, arm's-length bargaining, and participating in mediation conducted by a well-respected mediator experienced in handling complex wage-and-hour matters. During the mediation, the parties exchanged information and discussed various aspects of the case, including, and not limited to, Plaintiff's claims, the risks and delays of further litigation and of proceeding with certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, the evidence produced and analyzed, and the possibility of appeals, among other things.

32. During all settlement discussions, the parties conducted their negotiations at arm's-length from an adversarial position. Arriving at a settlement that was acceptable to both parties was not easy. The data and documents produced and obtained in this case enabled Class Counsel to prepare damages/valuation models in preparation for the mediation, to determine the value and strength of the claims.

33. With the aid of the mediator's evaluations, the parties agreed that the Action was well-suited for settlement given the legal issues relating to the claims, as well as the costs and risks to both sides that would attend further litigation. The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals.

34. The Settlement is based on this large volume of facts, evidence, and investigation, and the parties' negotiations during the mediation. While the parties disagree over the merits and certifiability of Plaintiff's claims, Plaintiffs and Class Counsel agree that the Settlement is fair, reasonable, adequate, and in the best interest of the Class, in light of all known facts and circumstances.

35. I am not aware of any class representative or other collective action in any other court in this or any other jurisdiction that asserts claims like those asserted in this action on behalf of a class or group of individuals who would also be members of the class defined in this action.

1 Before making this determination, I made a reasonable inquiry of other members of my firm and
2 any associated law firm to determine whether those individuals are aware of any such similar
3 actions. They were likewise unaware of any other action.

4 36. The proposed Class Notice provides the best notice practicable and is adequate
5 because Defendant is in possession of the contact information for Class Members. While Class
6 Counsel considered alternative methods such as publication or notice via the web or social media, it
7 ultimately determined that first class mail was the best choice given that the identities of the Class
8 Members are known and readily identifiable from Defendant's records.

9 37. Plaintiffs have concurrently submitted the settlement to the LWDA in accordance
10 with Labor Code Section 2699(1)(2).

11 38. In compliance with California Rules of Professional Conduct, Plaintiffs signed a
12 fee split agreement that provides that fees will be allocated between Class Counsel as follows:
13 Forty percent (40%) to the JCL Law Firm, APC; forty percent (40%) to the Zakay Law Group,
14 APLC; and twenty percent (20%) to Bokhour Law Group, PC and Falakassa Law P.C.

15 39. Pursuant to California Rules of Court Rule 3.769(b), Plaintiffs can provide the
16 Court a copy of the fee split agreement that has been entered into with respect to the payment of
17 attorney's fees for this matter.

18 I declare under penalty of perjury under the laws of the state of California that the
19 foregoing is true and correct this 20th day of April 2023, at Los Angeles, California.

20
21 /s/ Mehrdad Bokhour
22 Mehrdad Bokhour
23
24
25
26
27
28