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ENDORSED

2021 MAR 16 AM 8:31

LAW AND MOTION DEPT. 53/54
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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Attorneys for Plaintiffs RICARDO GOMEZ and RICARDO GOMEZ, SR.
on behalf of themselves and similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

RICARDO GOMEZ and RICARDO GOMEZ,
SR., individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

KLEARY MASONRY, INC., a California
Corporation;
MICHAEL G. KLEARY, an individual;
NICK KLEARY, an individual;
DIANA KLEARY, an individual; and **DOES 1**
to 100, inclusive,

Defendants.

Case No. 34-2020-00278067

CLASS ACTION

~~AMENDED [PROPOSED]~~ ORDER
GRANTING PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT

Reservation No. 2549435

Date: March 2, 2021

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Shama Mesiwala

Filed: 5/6/2020

FAC Filed: 6/30/2020

SAC Filed: 1/5/2021

Trial Date: None Set

AMENDED [PPSD] ORDER GRANTING PRELIM APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT



1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 On March 2, 2021, the Court granted Plaintiffs' Motion for Preliminary Approval of Class
3 Action and PAGA Settlement. A copy of the Court's Minute Order is attached hereto as Exhibit A.

4 Plaintiff's Motion for Preliminary Approval of Class Action and Private Attorneys General Act
5 (PAGA) settlement is unopposed and is granted as follows:

6 In this motion plaintiff seeks the following relief:

- 7 1. Preliminarily certifying the proposed class for purposes of settlement;
- 8 2. Preliminarily appointing Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr. as class
9 representatives for purposes of settlement;
- 10 3. Preliminarily appointing the Shimoda Law Corp. as Class Counsel for purposes of settlement;
- 11 4. Preliminarily approving the proposed class action settlement, in the amount of \$1,100,000;
- 12 5. Preliminarily approving the application for payment to Class Counsel of attorneys' fees in the
13 amount of \$385,000 (35% of the Gross Settlement Amount);
- 14 6. Preliminarily approving the application for payment to class counsel of reasonable costs not to
15 exceed \$10,000;
- 16 7. Preliminarily and conditionally approving the Class Representative Enhancement Payments of
17 \$15,000 each to Plaintiff Ricardo Gomez and Plaintiff Ricardo Gomez, Sr.;
- 18 8. Preliminarily approving the appointment of Simpluris, Inc. as the Claims Administrator and for
19 payment to Simpluris, Inc. for administering said class action settlement in an amount not to
20 exceed \$12,500;
- 21 9. Preliminarily approving the settlement of claims under the Private Attorneys General Act for the
22 total amount of \$20,000, 75% of which will be paid to the Labor and Workforce Development
23 Agency and 25% of which will be paid to Aggrieved Employees;
- 24 10. Approving as to form and content the Notice of Proposed Class Action Settlement, and Hearing
25 Date for Final Court Approval of Settlement ("Notice of Settlement"), which provide Class
26 Members information regarding the settlement, their ability to opt out of, or object to, the class
27 action settlement and which provides instruction on how to dispute an individual's settlement
28 allocation under the proposed settlement agreement;

1 11. Approving the proposed procedures to notify the class and determining that the proposed
2 notification procedures and process complies with class members' due process rights and
3 directing the Notice of Settlement to be sent by first class mail to Class Members;

4 12. Directing the Defendants to report employment information, including social security numbers,
5 to the Claims Administrator to administer the settlement proceeds;

6 13. Scheduling a fairness hearing on the question of whether the proposed settlement should be
7 finally approved as fair, reasonable, and adequate;

8 14. Directing that any residue from settlement checks that were not cashed by the check cashing
9 deadline be donated 50/50 to Capital Pro Bono Inc. and the Center For Workers' Rights under
10 the doctrine of cy pres;

11 15. Preliminarily and conditionally approving and adopting the Proposed Order and its
12 implementation schedule, which is filed herewith and incorporated by reference.

13 Plaintiffs have alleged that Defendants failed to pay minimum wages, failed to pay overtime,
14 failed to provide meal periods, failed to provide rest periods, failed to provide accurate wage statements,
15 failed to timely pay final wages, engaged in unfair competition, failed to reimburse expenses, violated
16 the PAGA, failed to pay prevailing wages, and failed to pay reporting time. See generally Exhibit B.
17 Plaintiffs have also alleged Defendants are liable for a civil penalties under the Private Attorneys
18 General Act ("PAGA") based on these violations Plaintiffs' allege that Defendants violated California
19 law by 1) failing to pay putative class members for all time spent at the shop and all time spent driving
20 from the shop to the first jobsite or from the last jobsite back to the shop; 2) failing to pay putative class
21 members reporting time or wages owed for time spent where Defendants required them to report to the
22 shop or jobsite, but ultimately sent them home without any work; 3) failing to authorize and permit
23 putative class members to take all meal and rest periods; 4) failing to pay putative class members all
24 prevailing wages owed for work on public works jobs; 5) failing to pay putative class members all
25 overtime wages owed on public works jobs; 6) failing to incorporate the value of prevailing wage rates
26 into putative class members' regular rates of pay for the purpose of calculating overtime wages on non-
27 public works jobs where putative class members worked on public works and non-public works jobs in
28 the same workweek; and 7) failing to reimburse putative class members for the use of their personal

1 cellphones, vehicles, and tools for work. Defendants have denied all of Plaintiffs' allegations in their
2 entirety and any liability or wrongdoing of any kind. See Declaration of Justin P. Rodriguez ("Deel.
3 Rodriguez"), ¶ 5. Defendants have denied that this case is appropriate for class certification other than
4 for purposes of settlement and that Plaintiffs would have difficulty obtaining class certification.

5 Under the settlement agreement. Defendants have agreed to the following:

6 1. The following groups of individuals are covered by the Settlement {See Exhibit A, ¶¶ 1.2,
7 1.8, 1.9, 1.25):

8 Class Members: all individuals who have, or continue to, perform work
9 for Defendants in California as non-exempt, hourly employees from May
10 6, 2016 up to either (1) the date a signed order preliminarily approving the
11 class settlement is filed, or (2) February 2, 2021, whichever is earlier
12 ("Class Members").

13 Aggrieved Employees: all individuals who have, or continue to, perform
14 work for Defendants in California as non-exempt, hourly employees from
15 April 17, 2019 up to either (1) the date a signed order preliminarily
16 approving the class settlement is filed, or (2) February 2, 2021, whichever
17 is earlier ("Aggrieved Employees").

18 The Gross Settlement Amount is \$ 1,100,000, exclusive of the employer's share of payroll taxes,
19 to resolve and release the claims alleged in the Complaint. See id. at 5.1. No portion of the Gross
20 Settlement Amount will revert to Defendants. See id. at 5.6. Aggrieved Employees will still be paid
21 their share of the PAGA Payment regardless of whether they opt out of being Class Members. See id. ¶
22 5.1.

23 The parties agree to attorneys fees in the amount of \$385,000, costs in the amount of \$10,000
24 and administration costs of \$12,500. The parties agree that up to \$ 15,000, each, for Plaintiffs Ricardo
25 Gomez and Ricardo Gomez, Sr. will be paid as a Class Representative Enhancement Payment. This
26 amount will be in addition to any amount Plaintiffs may be entitled to under the terms of the Agreement.
27 The PAGA claims will be settled for the amount of \$20,000, 75% of which will be paid to the Labor and
28 Workforce Development Agency and 25% of which will be paid to Aggrieved Employee.

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; Fed. R. Civ. Proc, Rule 23(e); *Wershba v. Apple Computer, Inc.*
(2001) 91 Cal.App.4th 224, 234-35. However, courts should give "proper deference to the private

1 consensual decision of the parties,” since “the court’s intrusion upon what is otherwise a private
2 consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary
3 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
4 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
5 and adequate to all concerned.” *Hanlon v. Chrysler Corp.* (9th Cir 1998) 150 F.3d 1011,1027. In cases
6 where settlement is reached on terms agreeable to all parties, a court should disapprove of the settlement
7 “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa.
8 1975). The law favors the settlement of lawsuits, particularly in class actions and other complex cases
9 where substantial resources can be conserved by avoiding the time, expense, and rigors of formal
10 litigation. See *Neary v. Regents of Univ. of Cal* (1992) 3 Cal.4th 273, 277-81; *Lealao v. Beneficial*
11 *California, Inc.* (2000) 82 Cal.App.4th 19, 53.

12 Courts review class action settlements in a two-step process: (1) an earlier conditional review by
13 the court; and (2) a later detailed review after the period during which notice is distributed to class
14 members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th
15 Ed. 2002). This procedure, which is commonly utilized by both federal and state courts, assures class
16 members of the protection of procedural due process safeguards and enables a court to fulfill its role as
17 the guardian of the interest of the settlement class.

18 The purpose of the preliminary evaluation of a proposed class action settlement by the Court is to
19 determine only whether the proposed settlement is within the range of possible approval and whether
20 notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is
21 warranted. See *Wershba*, 91 Cal.App.4th at 234-35. If the Court finds that a proposed settlement falls
22 within “the range of reasonableness,” it should grant preliminary approval of this class action settlement.
23 See, e.g. *North County Contr ‘s Assn., Inc. v. Touchstone Ins. Svcs.* (1994) 21 Cal.App.4th 1085,
24 1089-90; *In re Traffic Exec. Ass ‘n* (1980) 627 F.2d 631, 633-34. However, this Court should begin its
25 analysis with a presumption that the proposed settlement is fair. “[A] presumption of fairness exists
26 where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are
27 sufficient to allow counsel and the court to act intelligently; [and] (3) counsel is experienced in similar
28 litigation” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 -1802); *Wershba*, 91

1 Cal.App.4th at 245. "The strength of the Plaintiffs case, the risk, expense, complexity and likely
2 duration of further litigation, the risk of maintaining class action status through trial, the amount offered
3 in settlement, the extent of discovery completed and the stage of the proceedings, the experience and
4 views of counsel, [and] the presence of a governmental participant" should also be considered. See id.

5 The trial court has broad powers to determine whether a proposed settlement is fair under the
6 circumstances of the case. *Dunk v. Ford. Motor Co.* (1996) 48 Cal.App.4th 1794. To make this
7 fairness determination, courts must consider several relevant factors, including "the strength of the
8 plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of
9 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
10 completed and the stage of the proceedings, the experience and view of counsel, the presence of a
11 governmental participant, and the reaction of the class members to the proposed settlement." *Dunk*,
12 supra, 48 Cal.App.4th at 1801. "The list of factors is not exclusive and the court is free to engage in a
13 balancing and weighing of the factors depending on the circumstances of each case." *Wershba*, supra, 91
14 Cal.App.4th at 245. Furthermore, courts give "proper deference to the private consensual decision of
15 the parties." *Hanlon*, supra, 150 F.3d at 1027 (citation omitted).

16 The court preliminarily finds that the Gross Settlement Amount of \$1,100,000.00 represents a
17 fair, adequate, and reasonable resolution of the Action. The net amount of each Settlement Class
18 Member's Settlement Share will be calculated on a pro rata basis, based on his or her Covered
19 Workweeks.

20 The Court preliminarily approves of attorneys' fees in an amount not to exceed thirty-eight
21 percent (35%) of the Gross Settlement Amount (i.e., 385,000) and reimbursement of litigation costs and
22 expenses in an amount not to exceed \$10,000. Trial courts have "wide latitude" in assessing the value of
23 attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of
24 discretion." *Lealao v. Beneficial Cal, Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that
25 the "experienced trial judge is the best judge of the value of professional services rendered in h[er]
26 court" *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. The propriety of calculating and awarding
27 attorneys' fees as a percentage of a settlement that has, by litigation been preserved or recovered for the
28

benefit of others, has been confirmed by the California Supreme Court. *Laffitte v. Robert Half Int, Inc* (2016) 1 Cal.5th 480, 503.

The Court approves the Class Notice, as modified below, approved deadlines, as well as the other items set forth in the motion. The Court will set the final hearing as requested on a date to be determined by the parties after meeting and conferring. **Counsel shall meet and confer and inform the Court Clerk by 4:00 p.m. on March 1, 2021 the desired date for the Final Approval hearing that will allow sufficient time for the notice procedure.**

NOTICE TO CLASS

The Court requires modification to the Class Notice.

The Court will require the creation, by class counsel, of a website for this settlement in which all documents filed with the Court will be accessible by the class members at the listed and stated website address. The proposed notice to class currently states that class members may access the case information only at the main courthouse at 720 Ninth Street. While it is true that the only way to access the case information at no fee is to come to the main court house and use the kiosks, it is also possible to utilize the online Public Case Access System to access the court docket. However, because there is a download fee to obtain the case information, the court is also requiring a website for easy access to the information by the proposed class members.

COURT RULING

There being no request for oral argument, the Court affirmed the tentative ruling.

A final approval hearing is set for July 20, 2021, at 1:30 p.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

IT IS SO ORDERED.

Date: MAR 16 2021

By: 

Judge of the Superior Court

SHAMA H. MESIWALA

Exhibit A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 03/02/2021

TIME: 01:30:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: Shama Mesiwala

CLERK: D. Johnson-Mellado

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: Alvi, N., P. Lopez

CASE NO: **34-2020-00278067-CU-OE-GDS** CASE INIT.DATE: 05/06/2020

CASE TITLE: **Gomez vs. Kleary Masonry Inc**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion - Other - Civil Law and Motion

APPEARANCES

Nature of Proceeding: Motion for Preliminary Approval of Class Action and PAGA Settlement

TENTATIVE RULING

Plaintiff's Motion for Preliminary Approval of Class Action and Private Attorneys General Act (PAGA) settlement is unopposed and is granted as follows:

In this motion plaintiff seeks the following relief:

1. Preliminarily certifying the proposed class for purposes of settlement;
2. Preliminarily appointing Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr. as class representatives for purposes of settlement;
3. Preliminarily appointing the Shimoda Law Corp. as Class Counsel for purposes of settlement;
4. Preliminarily approving the proposed class action settlement, in the amount of \$1,100,000;
5. Preliminarily approving the application for payment to Class Counsel of attorneys' fees in the amount of \$385,000 (35% of the Gross Settlement Amount);
6. Preliminarily approving the application for payment to class counsel of reasonable costs not to exceed \$10,000;
7. Preliminarily and conditionally approving the Class Representative Enhancement Payments of \$15,000 each to Plaintiff Ricardo Gomez and Plaintiff Ricardo Gomez, Sr.;
8. Preliminarily approving the appointment of Simpluris, Inc. as the Claims Administrator and for payment to Simpluris, Inc. for administering said class action settlement in an amount not to exceed \$12,500;
9. Preliminarily approving the settlement of claims under the Private Attorneys General Act for the total amount of \$20,000, 75% of which will be paid to the Labor and Workforce Development Agency and 25% of which will be paid to Aggrieved Employees;
10. Approving as to form and content the Notice of Proposed Class Action Settlement, and Hearing Date for Final Court Approval of Settlement ("Notice of Settlement"), which provide Class Members information regarding the settlement, their ability to opt out of, or object to, the class action settlement and which provides instruction on how to dispute an individual's settlement allocation under the

proposed settlement agreement;

11. Approving the proposed procedures to notify the class and determining that the proposed notification procedures and process complies with class members' due process rights and directing the Notice of Settlement to be sent by first class mail to Class Members;

12. Directing the Defendants to report employment information, including social security numbers, to the Claims Administrator to administer the settlement proceeds;

13. Scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable, and adequate;

14. Directing that any residue from settlement checks that were not cashed by the check cashing deadline be donated 50/50 to Capital Pro Bono Inc. and the Center For Workers' Rights under the doctrine of cy pres;

15. Preliminarily and conditionally approving and adopting the Proposed Order and its implementation schedule, which is filed herewith and incorporated by reference.

Plaintiffs have alleged that Defendants failed to pay minimum wages, failed to pay overtime, failed to provide meal periods, failed to provide rest periods, failed to provide accurate wage statements, failed to timely pay final wages, engaged in unfair competition, failed to reimburse expenses, violated the PAGA, failed to pay prevailing wages, and failed to pay reporting time. See generally Exhibit B. Plaintiffs have also alleged Defendants are liable for a civil penalties under the Private Attorneys General Act ("PAGA") based on these violations Plaintiffs' allege that Defendants violated California law by 1) failing to pay putative class members for all time spent at the shop and all time spent driving from the shop to the first jobsite or from the last jobsite back to the shop; 2) failing to pay putative class members reporting time or wages owed for time spent where Defendants required them to report to the shop or jobsite, but ultimately sent them home without any work; 3) failing to authorize and permit putative class members to take all meal and rest periods; 4) failing to pay putative class members all prevailing wages owed for work on public works jobs; 5) failing to pay putative class members all overtime wages owed on public works jobs; 6) failing to incorporate the value of prevailing wage rates into putative class members' regular rates of pay for the purpose of calculating overtime wages on non-public works jobs where putative class members worked on public works and non-public works jobs in the same workweek; and 7) failing to reimburse putative class members for the use of their personal cellphones, vehicles, and tools for work. Defendants have denied all of Plaintiffs' allegations in their entirety and any liability or wrongdoing of any kind. See Declaration of Justin P. Rodriguez ("Decl. Rodriguez"), ¶ 5. Defendants have denied that this case is appropriate for class certification other than for purposes of settlement and that Plaintiffs would have difficulty obtaining class certification.

Under the settlement agreement. Defendants have agreed to the following:

1. The following groups of individuals are covered by the Settlement {See Exhibit A, ¶¶ 1.2, 1.8, 1.9, 1.25):

Class Members: all individuals who have, or continue to, perform work for Defendants in California as non-exempt, hourly employees from May 6, 2016 up to either (1) the date a signed order preliminarily approving the class settlement is filed, or (2) February 2, 2021, whichever is earlier ("Class Members").

Aggrieved Employees: all individuals who have, or continue to, perform work for Defendants in California as non-exempt, hourly employees from April 17, 2019 up to either (1) the date a signed order preliminarily approving the class settlement is filed, or (2) February 2, 2021, whichever is earlier ("Aggrieved Employees").

The Gross Settlement Amount is \$ 1,100,000, exclusive of the employer's share of payroll taxes, to

resolve and release the claims alleged in the Complaint. See *id.* at 5.1. No portion of the Gross Settlement Amount will revert to Defendants. See *id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA Payment regardless of whether they opt out of being Class Members. See *id.* ¶ 5.1.

The parties agree to attorneys fees in the amount of \$385,000, costs in the amount of \$10,000 and administration costs of \$12,500. The parties agree that up to \$ 15,000, each, for Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr. will be paid as a Class Representative Enhancement Payment. This amount will be in addition to any amount Plaintiffs may be entitled to under the terms of the Agreement. The PAGA claims will be settled for the amount of \$20,000, 75% of which will be paid to the Labor and Workforce Development Agency and 25% of which will be paid to Aggrieved Employee.

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; Fed. R. Civ. Proc, Rule 23(e); *Wershba v. Apple Computer, Inc.* (2001)91 Cal.App.4th 224, 234-35. However, courts should give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment 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." *Hanlon v. Chrysler Corp.*(9th Cir 1998) 150 F.3d 1011, 1027. In cases where settlement is reached on terms agreeable to all parties, a court should disapprove of the settlement "only with considerable circumspection." *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). 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, 277-81; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 53.

Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both federal and state courts, assures class members of the protection of procedural due process safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement class.

The purpose of the preliminary evaluation of a proposed class action settlement by the Court is to determine only whether the proposed settlement is within the range of possible approval and whether notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is warranted. See *Wershba*, 91 Cal.App.4th at 234-35. If the Court finds that a proposed settlement falls within "the range of reasonableness," it should grant preliminary approval of this class action settlement. See, e.g., *North County Contr 's Assn., Inc. v. Touchstone Ins. Svcs.*(1994) 21 Cal.App.4th 1085, 1089-90; *In re Traffic Exec. Ass'n* (1980) 627 F.2d 631, 633-34. However, this Court should begin its analysis with a presumption that the proposed settlement is fair. "[A] presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; [and] (3) counsel is experienced in similar litigation " *Dunk v. Ford Motor Co.*(1996) 48 Cal.App.4th 1794, 1801 -1802); *Wershba*, 91 Cal.App.4th at 245. "The strength of the 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 stage of the proceedings, the experience and views of counsel, [and] the presence of a governmental participant" should also be considered. See *id.*

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness

determination, courts must consider several relevant factors, including "the strength of the plaintiff's 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 stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Dunk*, supra, 48 Cal.App.4th at 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba*, supra, 91 Cal.App.4th at 245. Furthermore, courts give "proper deference to the private consensual decision of the parties." *Hanlon*, supra, 150 F.3d at 1027 (citation omitted).

The court preliminarily finds that the Gross Settlement Amount of \$1,100,000.00 represents a fair, adequate, and reasonable resolution of the Action. The net amount of each Settlement Class Member's Settlement Share will be calculated on a pro rata basis, based on his or her Covered Workweeks.

The Court preliminarily approves of attorneys' fees in an amount not to exceed thirty-eight percent (35%) of the Gross Settlement Amount (i.e., 385,000) and reimbursement of litigation costs and expenses in an amount not to exceed \$10,000. Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in h[er] court" *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. The propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte v. Robert Half Int, Inc* (2016) 1 Cal.5th 480, 503.

The Court approves the Class Notice, as modified below, approved deadlines, as well as the other items set forth in the motion. The Court will set the final hearing as requested on a date to be determined by the parties after meeting and conferring. **Counsel shall meet and confer and inform the Court Clerk by 4:00 p.m. on March 1, 2021 the desired date for the Final Approval hearing that will allow sufficient time for the notice procedure.**

Notice to Class

The Court requires modification to the Class Notice.

The Court will require the creation, by class counsel, of a website for this settlement in which all documents filed with the Court will be accessible by the class members at the listed and stated website address. The proposed notice to class currently states that class members may access the case information only at the main courthouse at 720 Ninth Street. While it is true that the only way to access the case information at no fee is to come to the main court house and use the kiosks, it is also possible to utilize the online Public Case Access System to access the court docket. However, because there is a download fee to obtain the case information, the court is also requiring a website for easy access to the information by the proposed class members.

The prevailing party shall prepare a formal order with the modified notice to class language and date for the final approval hearing, for the Court's signature pursuant to C.R.C. 3.1312.

COURT RULING

There being no request for oral argument, the Court affirmed the tentative ruling.

1 *Gomez, et al v. Kleary Masonry, Inc., et al.*
2 *Sacramento County Superior Court of California 34-2020-00278067*

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On March 9, 2021, I served the following documents on the party below:

- 9 • Amended [Proposed] Order Granting Plaintiffs' Motion for Preliminary Approval of Class
10 Action and PAGA Settlement

11 Lisa V. Ryan (SBN: 217802)
12 Cook Brown, LLP
13 2407 J Street, 2nd Floor
14 Sacramento, CA 95816
15 Telephone: (916) 442-3100
16 Facsimile: (916) 442-4227
17 Email: lryan@cookbrown.com

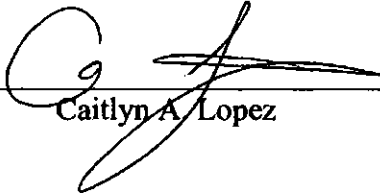
18 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
19 processing of correspondence for mailing with the United States Postal
20 Service and that each day's mail is deposited with the United States Postal
21 Service that same day in the ordinary course of business. On the date set
22 forth above, I served the aforementioned document(s) on the parties in
23 said action by placing a true copy thereof enclosed in a sealed envelope
24 with postage thereon fully prepaid, for collection and mailing on this date,
25 following ordinary business practices, at Elk Grove, California, addressed
26 as set forth above.

27 [] [By Personal Service] By personally delivering a true copy thereof to the
28 office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: UPS.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct, and that this declaration was executed on March 9, 2021, at Elk Grove,
26 California

27 
28 Caitlyn A. Lopez