

GRAHAMHOLLIS APC
Graham S.P. Hollis (SBN 120577)
ghollis@grahamhollis.com
Nathan Reese (SBN 283150)
nreese@grahamhollis.com
Nora Steinhagen (SBN 338969)
nsteinhagen@grahamhollis.com
3555 Fifth Avenue Suite 200
San Diego, California 92103
Telephone: 619.692.0800
Facsimile: 619.692.0822

Attorneys for Plaintiff ALAN PENA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ALAN PENA, on behalf of all aggrieved
employees of DEFENDANT in the State of
California,

Plaintiff,

v.

SUPERIOR CONTRACTING
CORPORATION DBA COAST BUILDING
PRODUCTS and DOES 1 THROUGH 50,
inclusive

Defendant.

Case No.: RG20072862

[PROPOSED] AMENDED JUDGMENT

Date: April 11, 2023
Time: 2:00 p.m.
Dept: 22
Judge: Hon. Jeffrey Brand

Complaint Filed: August 31, 2020
Trial Date: None set

In accordance with the declaration of Plaintiff's Counsel submitted in connection with the compliance hearing, final judgment is hereby entered in this Action as follows:

1. Pursuant to California Civil Code of Civil Procedure sections 877.6 and 664.6 and Labor Code section 2699, the foregoing Settlement Agreement and Order Approving Settlement are incorporated into this Amended Judgment, which shall be entered in this Action in the Amount of \$883,189.09 against Defendant.

2. The Settlement Agreement and its terms shall be incorporated herein by reference to this Judgment.

3. The Court finds that the initial data provided to the Settlement Administrator omitted 61 PAGA Settlement Members who worked 6,743 pay periods during the PAGA Period. As a result, Defendant shall fund a supplemental distribution as described further below.

4. Defendant is ordered to pay \$72,659.30 to the 61 Omitted PAGA Settlement Members. Defendant has already wired \$48,303.30 to ILYM, and is ordered to wire the remaining \$34,885.79.

5. ILYM shall distribute the sum of \$72,659.30 to the Omitted PAGA Settlement Members on a pro rata basis based on the amount of pay periods worked.

6. Defendant is ordered to pay Plaintiff's counsel \$7,500.00 in attorney's fees.

7. Defendant is ordered to pay Plaintiff's counsel \$479.79 in attorney's costs.

8. Defendant is ordered to pay ILYM \$2,550.00 for the additional work of performing a supplemental distribution to the omitted PAGA Settlement Members.

9. The PAGA Period shall remain from April 16, 2019 through February 14, 2022.

10. The LWDA was overpaid by \$2,321.31 in the initial distribution. Counsel for Plaintiff has filed with the Court and submitted to the LWDA a declaration outlining the calculations and specifically detailing why additional payment to the LWDA is not necessary. The Court finds that no additional funding is owed to the LWDA.

11. The 650 non-omitted PAGA Settlement Members were overpaid by the initial distribution. No additional notice shall be given to them, nor shall their overpayments be recouped.

12. The number of pay periods encompassed by the Settlement is 47,669.

13. The number of PAGA Settlement Members is 711.

14. The total amount of judgment is \$883,189.09. This encompasses the \$800,000 that Defendant initially paid in connection with the settlement, plus the \$83,189.09 that Defendant is now ordered to pay to compensate the Omitted PAGA Settlement Members, Plaintiff's attorney's fees and costs, and ILYM.

This Court reserves exclusive and continuing jurisdiction over this action and the Parties for the purposes of: (a) supervising the implementation, enforcement, construction, and interpretation of the

1 Settlement Agreement, and the Amended Settlement Approval Order and Judgment and (b) supervising
2 distribution of amounts paid under this Settlement.

3
4 **IT IS SO ORDERED AND JUDGMENT IS HEREBY ENTERED.**

5
6 Dated:

7 _____
8 Honorable Jeffrey Brand
9 JUDGE OF THE SUPERIOR COURT
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GRAHAM HOLLIS APC
3555 FIFTH AVENUE SUITE 200
SAN DIEGO, CALIFORNIA 92103

1 GRAHAMHOLLIS APC
Graham S.P. Hollis (SBN 120577)
2 ghollis@grahamhollis.com
Nathan Reese (SBN 283150)
3 nreese@grahamhollis.com
Nora Steinhagen (SBN 338969)
4 nsteinhagen@grahamhollis.com
3555 Fifth Avenue Suite 200
5 San Diego, California 92103
Telephone: 619.692.0800
6 Facsimile: 619.692.0822

7 Attorneys for Plaintiff ALAN PENA

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 ALAN PENA, on behalf of all aggrieved
employees of DEFENDANTS in the State of
11 California,

12 Plaintiff,

13 v.

14 SUPERIOR CONTRACTING
CORPORATION DBA COAST BUILDING
15 PRODUCTS and DOES 1 THROUGH 50,
inclusive

16 Defendants.
17
18
19

Case No.: RG20072862

**DECLARATION OF NORA J. STEINHAGEN
RE COMPLIANCE HEARING**

Date: April 11, 2023
Time: 2:00 p.m.
Dept: 22
Judge: Hon. Jeffrey Brand

Complaint Filed: August 31, 2020
Trial Date: None set

20 I, Nora J. Steinhagen, declare as follows:

21 1. I am an attorney at law licensed to practice before all courts of the State of California.
22 GrahamHollis, APC, is the attorney of record for Plaintiff Alan Pena. Graham S.P. Hollis, Nathan J. Reese,
23 and I are the attorneys from my firm primarily handling this case. I am thoroughly familiar with, and have
24 personal knowledge of, all of the facts set forth herein. If called as a witness, I could and would
25 competently testify to the information set forth below.

26 2. I submit this declaration in connection with the upcoming compliance hearing in
27 accordance with the Court's order to submit a declaration outlining the calculations regarding the
28 supplemental distribution and specifically detailing why additional payment to the LWDA is not

1 necessary.

2 3. Defendant Superior Contracting Corporation and Plaintiff Alan Pena reached an agreement
3 to resolve representative PAGA claims brought by Plaintiff on behalf of himself, the state of California,
4 and other aggrieved employees.

5 4. The Settlement Agreement provides for a distribution that is covered by both Labor Code
6 Sec. 2699 and Labor Code Sec. 2699.6.

7 a. Labor Code Sec. 2699(i) provides that civil penalties recovered by aggrieved
8 employees shall be distributed 75 percent to the LWDA and 25 percent to the aggrieved
9 employees.

10 b. Labor Code Sec. 2699.6 exempts workers in the construction industry from the ability
11 to pursue a civil action for an alleged violation of the Labor Law protections if the
12 worker is covered by a CBA meeting certain criteria. One of the listed requirements is
13 that the CBA must “Authorize[s] the arbitrator to award any and all remedies available
14 under this code, provided that nothing in this section authorizes the award of penalties
15 under this part that would be payable to the Labor and Workforce Development
16 Agency.” Labor Code § 2699.6(a)(3). In other words, where all statutory requirements
17 are met, Labor Code section 2699.6(a)(3) expressly prohibits the award of any penalties
18 to the LWDA, including the 75/25 split set forth in section 2699(i).

19 c. Because the PAGA settlement members consisted of a mix of workers, some of whose
20 employment was covered by a CBA meeting the requirements of section 2699.6, the
21 Settlement Agreement was drafted to distinguish between pay periods worked by those
22 whose employment was covered by a CBA (“CBA Pay Periods”) and those whose
23 employment was not (“Non CBA Pay Periods”).

24 5. On approximately July 15, 2022, ILYM issued payments to the PAGA Settlement
25 Members and the LWDA in connection with the Settlement (the “Initial Distribution”). 61 PAGA
26 Settlement Members who worked a total of 6,743 pay periods were inadvertently omitted from the Initial
27 Distribution.

28 6. The amounts paid in connection with the Initial Distribution were calculated using the

formulas described in further detail below, based on a total of 40,926 pay periods, with 37,037 pay period worked by PAGA Settlement Members whose employment was covered by a collective bargaining agreement meeting the requirements of section 2699.6, and the remaining 3,853 worked by PAGA Settlement Members whose employment was not covered by such a CBA.

7. I have met and conferred with counsel for Defendant regarding the correct number of pay periods during the PAGA Period of April 16, 2019 through February 14, 2022.

8. Based on Defendant's representations, there were a total of 47,669 pay periods worked during the PAGA Period.

9. Of the 47,669 pay periods worked during the PAGA Period, 43,816 pay periods were worked by PAGA Settlement Members whose employment was covered by a collective bargaining agreement meeting the requirements of section 2699.6, and the remaining 3,853 were worked by PAGA Settlement Members whose employment was not covered by such a CBA.

Calculations

10. Below is an outline of the calculations performed to determine how much money is owed to PAGA Settlement Members and the LWDA based on the correct number of pay periods:

a. The following variables were used in the formulas set out by the Settlement Agreement:

i. the total number of pay periods worked by all PAGA Settlement Members during the PAGA Period ("Total Pay Periods").

1. Total Pay Periods = 47,669.

ii. the total number of pay periods worked by PAGA Settlement Members whose employment was governed by a collective bargaining agreement meeting the criteria set forth in Labor Code Sec. 2699.6, subd. (a) ("CBA Pay Periods").

1. Total CBA pay periods = 43,816.

iii. the total number of pay periods worked by PAGA Settlement Members whose employment is not governed by a CBA meeting the criteria set forth in Labor Code Sec. 2699.6, subd. (a) ("Non-CBA Pay Periods").

1. Total Non-Cba Pay Periods = 3,853.

iv. Net Settlement Amount: The Gross Settlement fund minus attorneys' fees and costs, Plaintiff's enhancement award, and ILYM fees ("NSA").

1. NSA = **\$546,806.06**

b. The following formulas were used to calculate the amounts owed to PAGA Settlement Members and the LWDA:

i. **CBA Pay Period Allocation.** The percentage of pay periods allocable to CBA Pay Periods was determined by dividing the number of CBA Pay Periods by the Total Pay Periods. The resulting percentage was multiplied by the NSA to determine the "CBA Pay Period Allocation." [CBA Pay Period Allocation = (CBA Pay Periods / Total Pay Periods) x NSA]. The total amount of the CBA Pay Period Allocation remained as part of the NSA for distribution to PAGA Employees, consistent with Labor Code Sec. 2699.6, subd. (a)(3).

ii. **Non-CBA Pay Period Allocation.** The percentage of pay periods allocable to Non-CBA Pay Periods was determined by dividing the number of Non-CBA Pay Periods by the Total Pay Periods. The resulting percentage was multiplied by the NSA to determine the "Non-CBA Pay Period Allocation." [Non-CBA Pay Period Allocation = (Non-CBA Pay Periods / Total Pay Periods) x NSA].

1. Seventy-Five Percent (75%) of the Non-CBA Pay Period Allocation was allocated to be paid as a Labor Code Section 2699 penalty payment to the LWDA.

2. The remaining Twenty-Five Percent (25%) of the Non-CBA Pay Period Allocation was allocated to remain as part of the NSA.

c. Amount Allocated to PAGA Settlement Members

i. (43,816 CBA Pay Periods / 47,669 Total Pay Periods) x \$546,806.06 NSA
= \$502,608.70

ii. $(3,853 \text{ Non-CBA Pay Periods} / 47,669 \text{ Total Pay Periods}) \times \$546,806.06$
NSA = \$44,197.36*

1. Of this sum*, 75% shall be paid as a Labor Code Section 2699
penalty payment to the LWDA

iii. $\$502,608.70 + (\$44,197.36 \times 25\%) = \underline{\$513,658.04}$ to PAGA Settlement
Members

d. Amount Allocated to the LWDA

i. $\$44,197.36 \times 75\% = \underline{\$33,148.02}$ to the LWDA

11. The LWDA received a payment of \$35,469.33 in the initial distribution. Based on the calculations in paragraph 10(c) above, it was owed \$33,148.02 and thus was overpaid in the initial distribution. Therefore, it is not owed any additional funds despite the increase in pay periods, because the increased pay periods were worked by those whose employment was covered by a CBA meeting the requirements of section 2699.6. As discussed above, Labor Code section 2699.6(a)(3) expressly prohibits the award of any penalties to the LWDA, including the 75/25 split set forth in section 2699(i).

12. The amount per pay period that should have been paid to the PAGA Settlement Members was \$10.78 per pay period ($\$513,658.04$ PAGA Settlement Member Allocation / 47,669 pay periods = \$10.78 per pay period.) Therefore, the 61 omitted PAGA Settlement Members who worked a total of 6,743 omitted pay periods shall receive **\$72,659.30**. This amount will be distributed to the PAGA Settlement Members on a pro-rata basis based on the number of pay periods worked during the PAGA Settlement Period.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22th day of March 2023 in San Diego, California.

GRAHAMHOLLIS APC

By: Nora Steinhagen
NORA J. STEINHAGEN