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JUAN CARLOS CASTELLANOS

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

JUAN CARLOS CASTELLANOS,
individually, and on behalf of members of the
general public similarly situated;

Plaintiff,

vs.

DEVIL MOUNTAIN WHOLESALE
NURSERY, INC., a California Corporation;
and DOES 1 through 100, inclusive,

Defendants.

JOEL GALVAN MONTES, on behalf of
himself and all others similarly situated and
aggrieved,

Plaintiff,

vs.

DEVIL MOUNTAIN WHOLESALE
NURSERY, INC., a converted California
corporation; DEVIL MOUNTAIN
WHOLESALE NURSERY, LLC, a California
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

FILED

OCT 25 2022

By A. Steward CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

Case Nos.: MSC20-02078 (lead case)
MSC20-02647

*Assigned for All Purposes to: Hon. Edward
Weil, Dept. 39*

CLASS ACTION

FINAL ORDER

Hearing Date: October 6, 2022
Hearing Time: 9:00 a.m.
Dept: 39

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Attorneys for Plaintiff

JOEL GALVAN MONTES

1
2 **ORDER**

3 Plaintiffs Juan Castellanos and Joel Montes move for final approval of their class action
4 and PAGA settlement with defendants Devil Mountain Wholesale Nursery, Inc. and Devil
5 Mountain Wholesale Nursery, LLC, and for approval of attorney's fees and a representative
6 incentive payment.

7 **A. Background and Settlement Terms**

8 Castellanos filed the original complaint on October 13, 2020, raising a class action on
9 behalf of non-exempt employees alleging that defendant violated the Labor Code in various
10 ways, including unpaid overtime, unpaid minimum wage, non-compliant meal and rest periods,
11 unreimbursed business expenses, failure to maintain payroll records, waiting time, and wage
12 statement claims. On November 13, 2020, the complaint was amended to add PAGA claims. On
13 December 29, 2020, Montes filed a similar complaint, also in this county. The two cases were
14 consolidated by stipulation and order on August 2, 2021.

15 The settlement would create a gross settlement fund of \$970,000. The class representative
16 payment to each of the two plaintiffs would be \$7,500. Counsel's attorney's fees would be
17 \$339,500 (35% of the settlement). Litigation costs were capped at \$25,000, and are now
18 requested in the amount of \$14,247.36. The settlement administrator would receive \$10,500.
19 PAGA penalties would be \$20,000, resulting in a payment of \$15,000 to the LWDA. The fund is
20 non-reversionary. Based on the approximate net payment amount of \$560,000, and the estimated
21 class size (284 members) the average net payment for each class member is approximately
22 \$1,972.

23 The proposed settlement would certify a class of all hourly, non-exempt employees of
24 defendants in the State of California who worked at any time from October 13, 2016, through the
25 date of preliminary approval (estimated at 284 members), excluding employees who have signed
26 arbitration and/or separation agreements (estimated at 708 employees).

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

1 worked by the individual employee during the relevant time period. As to the PAGA Members,
2 the employee portion of the PAGA penalties will be allocated in the same manner. (Par. 44(b).)
3 Since PAGA members cannot opt out, they will receive their portion of the PAGA penalties
4 regardless of whether they opt out.

5 Various prescribed follow-up steps will be taken with respect to mail that is returned as
6 undeliverable. Checks uncashed checks after 180 days will be tendered to the State Controller's
7 unclaimed property fund.

8 The settlement contains release language, releasing all claims "arising from, or related to,
9 the same set of operative facts as those set forth in the operative complaints in the Actions and in
10 the Plaintiffs' PAGA letters." (Par. 26, 63.) It then identifies specific types of claims falling
11 within that general provision. The limitation to claims arising from facts alleged in the complaint
12 is important. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court
13 cannot release claims that are outside the scope of the allegations of the complaint." "Put another
14 way, a release of claims that' go beyond the scope of the allegations in the operative complaint'
15 is impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469
16 F.Supp.3d 942, 949.)

17 Informal discovery was undertaken prior to mediation, including analysis of a 20%
18 sample of time and payroll data. The matter settled after extensive arms-length negotiations, with
19 included a mediation session with an experienced mediator.

20 Counsel also has provided a summary of a quantitative analysis of the case, and how the
21 settlement compares to the potential value of the case, after allowing for various risks and
22 contingencies. Counsel estimates the maximum potential liability at \$11,799,803.76. This is
23 broken down by separate categories for meal and rest period violations, unpaid off-the-clock
24 work and overtime, unreimbursed business expenses, waiting time penalties, and wage statement
25 penalties. Plaintiffs also estimate PAGA penalties at a maximum of \$8,953,500. The potential
26 liability needs to be adjusted for various evidence and risk-based contingencies, including
27 problems of proof, as well as the derivative nature of wage statement and waiting time penalties.
28 Claims for PAGA penalties are difficult to evaluate for a number of reasons: they derive from

1 other violations, they include “stacking” of violations, the law may only allow application of the
2 “initial violation” penalty amount, and the total amount may be reduced in the discretion of the
3 court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where “based on the
4 facts and circumstances of the particular case, to do otherwise would result in an award that is
5 unjust arbitrary and oppressive, or confiscatory.”])

6 The LWDA was notified of the settlement.

7 After preliminary approval, the Settlement Administrator mailed notice packages to 294
8 identified class members. 28 were returned as undeliverable, but further investigation found 18
9 new addresses, and packages were remailed, leaving ten undeliverable notices. No objections,
10 requests for exclusion, or workweek disputes were received. (Because the last day to respond did
11 not fall until after the moving papers were filed, this was confirmed by a supplemental
12 declaration of the Settlement Administrator, filed October 2, 2022.)

13 **B. Legal Standards**

14 The primary determination to be made is whether the proposed settlement is “fair,
15 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,
16 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
17 further litigation, the risk of maintaining class action status through trial, the amount offered in
18 settlement, the extent of discovery completed and the state of the proceedings, the experience
19 and views of counsel, the presence of a governmental participant, and the reaction ... to the
20 proposed settlement.” (See also *Amaro v. Anaheim Arena Mgmt., LLC*, *supra*, 69 Cal.App.5th
21 521.)

22 Because this matter also proposes to settle PAGA claims, the Court also must consider
23 the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v.*
24 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court
25 found that the “fair, reasonable, and adequate” standard applicable to class actions applies to
26 PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness
27 of the settlement’s allocation of civil penalties between the affected aggrieved employees[.]”
28 (*Id.*, at 64-65.)

1 California law provides some general guidance concerning judicial approval of any
2 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*
3 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
4 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,
5 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender
6 its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere
7 puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990)
8 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply,
9 because “[w]here the rights of the public are implicated, the additional safeguard of judicial
10 review, though more cumbersome to the settlement process, serves a salutatory purpose.”
11 (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48,
12 63.)

13 C. Attorney fees

14 Plaintiffs seek 35% of the total settlement amount as fees, relying on the “common fund”
15 theory. Even a proper common fund-based fee award, however, should be reviewed through a
16 lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the
17 Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the
18 percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar
19 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
20 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
21 court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)

22 Accordingly, plaintiffs have provided information concerning the lodestar fee amount.
23 They estimate that 428.4 hours of attorney time were expended between plaintiffs’ two firms.
24 Bibiyan Law Group spent 213 hours, with hourly rates ranging from \$750 to \$350, with a
25 blended rate of \$537.50, computing to a lodestar of \$114,487.50. Payne & Nguyen spent 215.4
26 hours at a blended rate of \$525 per hour, computing to a lodestar of \$113,085. The total is
27 \$227,572.50. Award of the requested \$339,500 results in an implied multiplier of 1.49. Based on
28 all of the considerations in this case, there is no need to adjust the fees requested, and the full

1 amount is approved.

2 Litigation costs of \$14,247.36 are reasonable and are approved.

3 The settlement administrator's costs of \$10,500 are reasonable and are approved.

4 The requested representative payments of \$7,500 for each plaintiff were deferred until
5 this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v.*
6 *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

7 Plaintiffs have provided declarations in support of their request. Mr. Castellanos attests
8 that he spent about 15 hours on the case. His employment was terminated before he filed suit.
9 which he asserts was in retaliation for asking questions about wage issues. He is releasing these
10 claims, which is broader release than is given by the remaining class members. Mr. Montes
11 attests that he has spent (through the preliminary approval motion) at least 16 hours on the case.
12 He also has provided a general release, but does not identify any claim (e.g., wrongful
13 termination) of actual value that he is releasing. Mr. Castellanos' payment is approved in the
14 amount of \$7,500. Mr. Montes' payment is approved in the amount of \$5,000.

15 **D. Discussion and Conclusion**

16 The moving papers sufficiently establish that the proposed settlement is fair, reasonable,
17 and adequate.

18 The motion is granted as requested, subject to the modification of Montes' incentive
19 payment to \$5,000, with the difference to go to the net settlement amount. Counsel are directed
20 to prepare an order reflecting this tentative ruling, the other findings in the previously submitted
21 proposed order, and a judgment.

22 The ultimate judgment must provide for a compliance hearing after the settlement has
23 been completely implemented. Plaintiffs' counsel are to submit a compliance statement one
24 week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the
25 claims administrator pending satisfactory compliance as found by the Court.

26 //

27 //

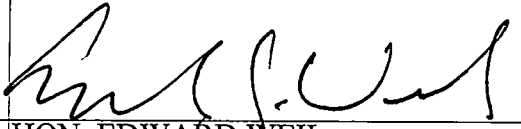
28 //

1 **E. Compliance Hearing**

2 The Court sets a compliance hearing for July 27, 2023, at 9:00 a.m. in Department 39 to
3 confirm the full administration of the settlement. Class Counsel shall submit a compliance report
4 no later than five (5) court days before the date of the hearing.

5 **IT IS SO ORDERED.**

6
7
8 DATED: October 24, 2022

By: 

HON. EDWARD WEIL
JUDGE OF THE SUPERIOR COURT

EXHIBIT B

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FOR THE COUNTY OF CONTRA COSTA**

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individually, and on behalf of members of the
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vs.

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and DOES 1 through 100, inclusive,

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himself and all others similarly situated and
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FILED
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By ASG CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
A. Stewart, Deputy Clerk

Case Nos.: MSC20-02078 (lead case)
MSC20-02647

*Assigned for All Purposes to: Hon. Edward
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CLASS ACTION

FINAL JUDGMENT

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Attorneys for Plaintiff

JOEL GALVAN MONTES

1 In accordance with, and for the reasons stated in the Order Granting Motion for Final
2 Approval of Class Action and PAGA Settlement, **IT IS, THEREFORE, ORDERED,**
3 **ADJUDGED AND DECREED AS FOLLOWS:**

4
5 1. Judgment in this matter is entered in accordance with, and incorporates by reference the
6 findings of, the Court's Order Granting Motion for Final Approval of Class Action and PAGA
7 Settlement and the parties' Joint Stipulation of Class Action Settlement (the "Settlement" or
8 "Settlement Agreement"). Unless otherwise provided herein, all capitalized terms used herein
9 shall have the same meaning as defined in the Settlement Agreement.

10 2. The Court hereby certifies for settlement purposes only the following settlement Class:

11 All hourly, non-exempt employees of Defendants Devil Mountain Wholesale
12 Nursery, Inc. and Devil Mountain Wholesale Nursery, LLC ("Defendants") in the
13 State of California at any time from October 13, 2016, through July 1, 2022,
14 excluding those employees who have signed arbitration and/or separation
15 agreements with Defendants.

16 3. This Court has jurisdiction over the subject matter of the Actions and over all Parties to
17 the Actions, including all Class Members.

18 4. The Court hereby finds that the Settlement is fair, reasonable and adequate, and directs
19 the Parties to effectuate the Settlement according to its terms. The Court finds that the Settlement
20 has been reached as a result of intensive, serious and non-collusive arms-length negotiations. The
21 Court further finds that the Parties have conducted extensive investigation and research, and
22 counsel for the Parties were able to reasonably evaluate their respective positions. The Court also
23 finds that Settlement at this time will avoid additional substantial costs, as well as avoid the
24 delay and risks that would be presented by the further prosecution of the Actions. The Court has
25 reviewed the benefits that are being granted as part of the Settlement and recognizes the
26 significant value to the Class Members. The Court also finds and orders that the Settlement
27 constitutes a fair, adequate, and reasonable compromise of the Released Claims against
28 Defendants and the Released Parties.

1 5. The Court hereby finds that there were no requests to be excluded from the Settlement. The
2 deadline for Class Members to submit a request for exclusion was September 15, 2022.
3 Accordingly, all Class Members shall be bound by this Judgment.

4 6. According to the terms of the Settlement Agreement, upon the funding of the Total
5 Settlement Amount, all Participating Class Members hereby do and shall be deemed to have
6 fully, finally, and forever released and discharged Defendants Devil Mountain Wholesale
7 Nursery, Inc. and Devil Mountain Wholesale Nursery, LLC, as named by the Plaintiffs in the
8 operative complaints in the Actions, and their past, present and/or future, direct and/or indirect,
9 officers, directors, members, managers, employees, agents, representatives, attorneys, insurers,
10 partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates,
11 divisions, predecessors, successors, assigns, and joint venturers ("Released Parties") from any
12 and all claims, rights, demands, liabilities and causes of action, arising from, or related to, the
13 same set of operative facts as those set forth in the operative complaints in the Actions and in the
14 Plaintiffs' PAGA letters that occurred during the Class Period, including, without limitation,
15 claims for unpaid overtime, failure to pay earned minimum wages, failure to provide compliant
16 meal and rest periods, failure to pay premium pay for meal and rest period violations, failure to
17 provide sick leave in accordance with the law, failure to pay final wages, failure to timely pay
18 wages and final wages, improper rounding of employee time records, failure to pay split shift
19 premiums, failure to pay reporting time pay, inaccurate wage statements, failure to maintain
20 employment records and/or allow inspection of employment records, failure to provide the notice
21 requirements of the California Labor Code, failure to indemnify employees for expenses and/or
22 reimburse employees for deposits made, unfair business practices pursuant to California
23 Business and Professions Code section 17200 *et seq.*, violation of California Labor Code
24 sections 96, 98.6, 201, 227.3, 232, 232.5, 246, 404, 432, 1174.5, 1197.5, and 2698 *et seq.*, and
25 liability for penalties pursuant to California Labor Code sections 201, 202, 203, 210, 226, 226.3,
26 558, 1197.1, 1198.5, 2699, and 2699.5 (collectively, the "Released Claims"). The release of the
27 Released Claims shall be applicable for the Class Period (October 13, 2016, through July 1,
28 2022). All PAGA members, the LWDA, and the State of California shall release claims under

1 the Private Attorney General Act (“PAGA”), California Labor Code section 2698 *et seq.* for the
2 PAGA Period (July 24, 2019, through July 1, 2022).

3 7. Upon the funding of the Total Settlement Amount, and in consideration for their
4 Enhancement Payments, Plaintiffs Juan Carlos Castellanos and Joel Galvan Montes—for
5 themselves only—hereby release the Released Parties from all claims, demands, rights, liabilities
6 and causes of action of every nature and description whatsoever, known or unknown, asserted or
7 that might have been asserted, whether in tort, contract, or for violation of any state or federal
8 statute, rule or regulation arising out of, relating to, or in connection with any act or omission by
9 or on the part of any of the Released Parties committed or omitted prior to the execution thereof.
10 Specifically, Plaintiffs have expressly waived and relinquished any and all claims, rights or
11 benefits that they may have under California Civil Code section 1542.

12 8. The Court finds the settlement payments provided for under the Settlement to be fair and
13 reasonable in light of all of the circumstances. The Court orders the calculations and the
14 payments to be made and administered in accordance with the terms of the Settlement.

15 9. Defendants shall pay \$970,000.00 (“Total Settlement Amount”) to provide for class
16 members individual settlement payments, the class representative enhancement payments for
17 Plaintiffs, Class Counsel’s attorneys’ fees and costs, the Settlement Administrator’s fees and
18 expenses, and penalties to the California Labor and Workforce Development Agency and PAGA
19 Members pursuant to Labor Code Section 2698 *et seq.* Defendants shall fund and the Settlement
20 Administrator shall distribute the Total Settlement Amount in accordance with the terms of the
21 Agreement.

22 10. The Court hereby:

- 23 a. Awards \$339,500.00 in attorneys fees to Class Counsel;
- 24 b. Awards \$14,247.36 in litigations costs to Class Counsel;
- 25 c. Awards \$7,500.00 to Plaintiff Juan Carlos Castellanos as a Class Representative
26 Incentive Payment and General Release Payment;
- 27 d. Awards \$5,000.00 to Plaintiff Joel Galvan Montes as a Class Representative
28 Incentive Payment and General Release Payment; and

1 e. Awards \$10,500.00 in settlement administration costs to the Settlement
2 Administrator, Phoenix Settlement Administrators.

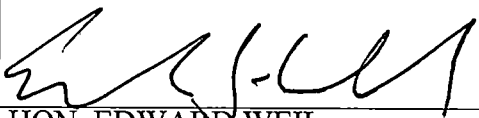
3 11. The Court hereby approves and orders payment in the amount of \$15,000.00 (75% of
4 \$20,000.00) from the Total Settlement Amount for PAGA penalties, which shall be made
5 payable to the California Labor Workforce Development Agency; the remaining \$5,000.00 (25%
6 of \$20,000.00) shall be distributed to the PAGA Members as set forth in the Settlement
7 Agreement.

8 12. The Court also hereby approves and orders that any checks distributed from the Total
9 Settlement Amount yet remaining un-cashed one hundred and eighty (180) calendar days after
10 being issued shall be void. Following expiration of the check cashing period, the Settlement
11 Administrator will remit these funds to the California State Controller's Office Unclaimed
12 Property Fund in the name of the Class Member who did not negotiate his or her check.

13 13. Without affecting the finality of this Judgment, the Court shall retain continuing
14 jurisdiction over the Actions and the parties, including all Class Members, and over all matters
15 pertaining to the implementation and enforcement of the terms of the Settlement Agreement
16 pursuant to California Rule of Court 3.769(h) and California Code of Civil Procedure section
17 664.6. Except as provided to the contrary herein, any disputes or controversies arising with or
18 with respect to the interpretation, enforcement, or implementation of the Settlement Agreement
19 shall be presented to the Court for resolution.

20 **IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.**

21
22 DATED: October 24, 2022

By: 

HON. EDWARD WEIL
JUDGE OF THE SUPERIOR COURT