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By Superior Court of California, County of San Mateo

ON 08/19/2021

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

JACOB ORTEGA, as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA"), on behalf of the State of California
and other aggrieved employees,

Plaintiff,

vs.

CARBON, INC., WHICH WILL DO
BUSINESS IN CALIFORNIA AS
CARBON3D, INC., a Delaware corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No. 20-CIV-04803

Assigned to the Hon. Nancy L. Fineman

**[AMENDED PROPOSED] ORDER
APPROVING THE PARTIES' PAGA
SETTLEMENT AGREEMENT AND
JUDGMENT**

Date: August 10, 2021

Time: 8:30 a.m.

Place: Department 4

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

11 Other statutory schemes provide some guidance. In California False Claims Act (CFCA), the
12 court may consider “the best interests of the parties involved and the public purposes behind the act”
13 (Govt. Code § 12652(c)(1), as well as whether the settlement is “fair, adequate, and reasonable under all
14 the circumstances.” (Govt. Code §12652(e)(2)(B).) Similarly, under Proposition 65, a court may
15 consider whether a settlement is just and serves the public interest. (*Consumer Advocacy Group, Inc. v.*
16 *Kintetsu Enterprises of America* (2006) 6 Cal.App.4th 46, 61-62.)

17 The primary purpose of PAGA is “to achieve maximum compliance with state labor laws” and
18 “to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business
19 practices.” (2003 Cal. Legis. Serv. Ch. 906 §1(a).) The Legislature further found that, while self-policing
20 efforts have had some success, “in other cases the only meaningful deterrent to unlawful conduct is the
21 vigorous assessment and collection of civil penalties as provided in the Labor Code.” (*Id.*, at § 1(b).)

22 **Terms and Background of the Settlement**

23 This case alleges a single cause of action for violation of PAGA. The Complaint alleges
24 defendant Carbon Inc. dba Carbon3d, Inc. is liable for; failing to pay overtime, failing to pay minimum
25 wages, failing to provide and record meal periods, failing to authorize and permit rest periods, failing to
26 provide and maintain compliant wage statements, failing to pay wages during employment, failing to
27 pay wages upon termination, and failing to pay reporting time pay. (¶¶ 47- 111) Plaintiff seeks civil
28 penalties and attorney fees and costs.

1 Plaintiff summarizes the settlement:

2 The parties have settled for the “Maximum Settlement Amount” of \$ 295,000. (Settlement
3 Agreement, ¶ 11.)

4 10. Summary of the Settlement’s Terms: The Settlement Agreement provides
5 that Defendant will pay a total of \$295,000 to settle this Action. (Settlement
6 Agreement ¶ 11.) From this amount, payments will be made to the LWDA and
7 Aggrieved Employees, to Mr. Jacob Ortega as compensation for his service on
8 behalf of the State and for a general release of claims arising out of his employment
9 with Defendant, to Plaintiff’s Counsel for their attorneys’ fees and litigation costs,
10 and to the Settlement Administrator (CPT Group, Inc.) for settlement administration
11 costs. (Settlement Agreement ¶¶ 11-15.)

12 11. With respects to the amounts paid to the LWDA and the Aggrieved
13 Employees, the LWDA will receive approximately \$128,127.75 and the Aggrieved
14 Employees will receive approximately \$42,709.25. (Settlement Agreement ¶ 12.)
15 The Aggrieved Employees encompassed by the proposed Settlement are all of
16 Defendant’s current and former California non-exempt employees who worked at
17 any time during the period from August 24, 2019 to the earlier of September 15,
18 2021 or the date of entry of the Order and Judgment. (Id. at ¶¶ 2, 10.) There are
19 approximately 150 Aggrieved Employees. (Id. at ¶ 15.)

20 (Perez Dec., ¶¶ 10 – 11. See also Settlement Agreement, ¶¶ 11 - 15.) In support of the motion, Plaintiff
21 posits both his counsel and his own declaration.

22 **Analysis of the Settlement**

23 The Court finds that there has been proper notice given of the settlement and this hearing,
24 including to the Labor Workforce and Development Agency. The Court on its own initiative went to the
25 LWDA site and confirmed that the complaint was submitted to LWDA on December 4, 2020 pursuant
26 to Labor Code § 2699(l)(1) and can be found on the LWDA site. Therefore, the Court finds that proper
27 notice has been provided to LWDA and analyzes the unopposed motion on the merits.

28 Each of the above Labor Code violations in the Settlement Agreement were enumerated in the
August 24, 2020 letter to LWDA, which letter is attached as Exhibit 1 to the complaint.

Plaintiff provides his calculation of the maximum amount of statutory penalties, of \$100 to \$200
per pay period, for 2,520 pay periods. (Perez Decl. ¶ 13.) He analyzes the law, which makes it uncertain
as to the penalties that the employees might actually be awarded and emphasizes that the individual
employees are not giving up any individual wage and hour claims. (Perez Decl. ¶¶ 14-18.) The
Defendants dispute liability and can be expected to fully litigate the issues. Taking into account the time
and expense of litigation, the uncertainty of litigation, the policy favoring settlement, the Court, in

1 exercising its discretion after review of the pleadings and evidence, finds that the settlement amount is
2 fair and reasonable. Plaintiff states that the representative group is limited to 150 employees. Thus, the
3 Court finds a \$ 294,000 settlement is an effective deterrent. There is no evidence of fraud or collusion in
4 the settlement negotiations. The settlement was reached after investigation and informal discovery and
5 through arms-length negotiations through an experienced mediator (Perez Decl. ¶¶ 3-9.) Based upon all
6 of the circumstances and in exercising its discretion, the Court concludes that the settlement is genuine
7 and meaningful, and consistent with the underlying purpose of the statute to benefit the public.

8 The Court finds the Release narrowly tailored to the claims in the case and reasonable. There is
9 no general release on behalf of the non-party representative group members and a limited PAGA release
10 and no release of individual claims.

11 **Attorney Fees, Costs and Individual Service Payment**

12 Plaintiff counsel requests attorney fees “of \$98,333 representing a third of the Gross Settlement.
13 (See MPA, p. 16:6-7.) While a common fund fee is appropriate here, even a proper common fund-based
14 fee award should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International*
15 (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to
16 determine whether the percentage allocated is reasonable. The Supreme Court stated: “If the multiplier
17 calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should
18 consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a
19 justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)
20 Plaintiff provides a summary of its lodestar, which is 204.6 hours for a total of \$103,812.00. (Perez
21 Decl. ¶ 19.)

22 In this case, the Court believes that a fee of one-third is the proper award of attorneys’ fees.
23 (See, e.g., *Lafitte*, 1 Cal.5th at 506 (“33 1/3 percent of the common fund is consistent with, and in the
24 range of, awards in other class action lawsuits”); *Chavez v. Netflix, Inc.*, 162 Cal. (2008) 17 App.4th 43,
25 66 n.11.) This Court may use its own experience to determine the value of attorneys’ fees. (*Spencer v.*
26 *Collins* (1909) 156 Cal. 298, 306 (“The value of attorney’s services is a matter with which a judge must
27 necessarily be familiar. When the court is informed of the extent and nature of such services, its own
28 experience furnishes it with every element necessary to fix their value.”); *Reynolds v. Ford Motor*

1 *Company* (2020) 47 Cal.App.5th 1105, 1113-14 (“The trial court acted well within its discretion in using
2 ‘the prevailing market value in the community for similar legal services’ relying on its personal
3 knowledge and familiarity with the area legal services, as the ‘touchstone’ for determination” of the
4 reasonable hourly rates.” (citations omitted).) This Court had extensive experience in class action and
5 other common fund cases while an attorney and has made decisions about attorneys’ fees and costs
6 frequently during her time as a judicial officer.

7 A cross-check with the lodestar confirms the reasonableness of the fees. Plaintiff’s counsel, Raul
8 Perez, submits a declaration setting forth the firm’s experience in these type of actions, the hourly rates
9 approved in other cases. (Perez Decl. ¶¶ 20-32.) Although Plaintiff does not attach his counsel’s billing
10 statements, counsel is not required to provide them. Based upon a review of counsel’s declaration of
11 work performed and a review of the court file and weighing all the factors, the Court concludes that the
12 hourly rate of the attorneys and work performed were reasonable and thus the lodestar cross-check
13 confirms the appropriateness of the Court awarding a third in fees.

14 The Court finds the costs already expended, rounded up to \$ 10,300 as well as the estimated
15 settlement administrator fees are reasonable and should be awarded. If the settlement administer fees are
16 less than estimated, they should be distributed per the settlement agreement between LWDA and the
17 employees.

18 The Court finds a service payment for Plaintiff appropriate. See *Bell v. Farmers Ins. Exch.*
19 (2004) 115 Cal.App.4th 715, 726 (“service payments” compensate named plaintiff “for [her] efforts in
20 bringing the action”; see Settlement Agreement, at § 7.) Even though there is no direct California
21 authority allowing this payment in PAGA cases, federal courts have allowed incentive payments and this
22 Court believes that the Plaintiff should receive some compensation for his filing suit to vindicate the
23 rights of the other employees and time and risks attendant to pursuing litigation. Plaintiff’s declaration
24 states he has spent between 25-35 hours helping his counsel with the case and reviewing the settlement.
25 (Ortega Decl. ¶ 6.) However, he did not have to sit for a deposition or respond to any discovery.
26 Moreover, while he is giving an individual release, there has been no showing that he has the potential for
27 any individual claims. Therefore, the Court in exercising its discretion after reviewing the entire record
28 believes that a \$5,000 service award should be awarded rather than the \$10,000 requested by Plaintiff.

1 This Judgment shall be binding on all Aggrieved Employees and the State of California, who are
2 hereby barred by the doctrine of res judicata from re-litigating the Settled Claims, as that term is defined
3 by the PAGA Settlement Agreement. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (holding
4 that a judgment in a representative action brought by an aggrieved employee under PAGA is binding not
5 only on the named employee plaintiff but also on state labor law enforcement agencies and any
6 aggrieved employee not a party to the proceeding).

7 Without affecting the finality of the Judgment, the Court shall retain exclusive and continuing
8 jurisdiction over the above-captioned action and the Parties for purposes of enforcing the terms of the
9 Judgment and the PAGA Settlement Agreement pursuant to Code of Civil Procedure section 664.6.

10
11 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

Electronically

SIGNED

By /s/ Fineman, Nancy

08/18/2021

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13 Date _____

14 Hon. Nancy L. Fineman
15 San Mateo County Superior Court Judge
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

On **August 13, 2021** I served the documents described as:
[AMENDED PROPOSED] ORDER APPROVING THE PARTIES' PAGA SETTLEMENT AGREEMENT AND JUDGMENT
on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows ☐ ☐ as stated on the attached service list:

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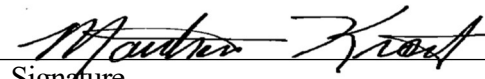
Attorneys for Defendant CARBON, INC., which will do business in California as
CARBON3D, INC
Served via Electronic File & Serve

☒ **ELECTRONIC FILE & SERVE:** A true and correct copy of the above-referenced document(s) was electronically served on counsel of record by means of transmitting the document to One Legal Court Services website in accordance with the Court's Order.

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

Executed this **August 13, 2021** at Los Angeles, California.

Matthew Krout
Type or Print Name


Signature