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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**

13 JASON TAAD an individual, on behalf of
14 himself and on behalf of all persons similarly
15 situated,

16 Plaintiff,

17 vs.

18 BIGGE CRANE AND RIGGING CO., a
19 California Corporation; and DOES 1 through
20 50, inclusive,

21 Defendants.

CASE NO.: RG21103112

[Consolidated with Case No. RG21103123]

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: October 10, 2024

Hearing Time: 3:00 p.m.

Judge: Hon. Sarah Stanford-Smith

Dept: 17

Date Filed: June 29, 2021

Trial Date: Not set

1 The unopposed motion of Plaintiff Jason Taad (“Plaintiff”) for an order finally approving
2 the Class Action and PAGA Settlement Agreement (“Agreement”) with Defendant Bigge Crane
3 and Rigging Co. (“Defendant”), attorneys’ fees and costs, service payment, and the expenses of
4 the Administrator duly came on for hearing on October 10, 2024 before the Honorable Frank
5 Roesch.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

10 1. All terms used herein shall have the same meaning as defined in the Agreement.

11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the Superior Court for the State of California, in and for the County of Alameda, and over all
13 Parties to this litigation, including the Class.

14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of is Seven Hundred Seventy-
16 Five Thousand Dollars (\$775,000) and the terms set forth in the Agreement are fair, reasonable,
17 and adequate. The Gross Settlement Amount will be used to pay Individual Class Payments,
18 Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class
19 Counsel Litigation Expenses Payment, Class Representative Service Payment, and the
20 Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without
21 any reversion to Defendant, and excludes any employer payroll taxes, if any, due on the portion of
22 the Individual Class Payments allocated to wages which shall not be paid from the Gross
23 Settlement and shall be the separate additional obligation of Defendant.

24 4. The Court further finds that the Settlement was the result of arm’s length
25 negotiations conducted after Class Counsel had adequately investigated the claims and became
26 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
27 Settlement, and the assistance of an experienced mediator in the settlement process, among other
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1 factors, support the Court’s conclusion that the Settlement is fair, reasonable, and adequate.

2 **Preliminary Approval of the Settlement**

3 5. On May 30, 2024, the Court granted preliminary approval of the Settlement. At
4 this same time, the Court approved conditional certification of the Class for settlement purposes
5 only.

6 **Notice to the Class**

7 6. In compliance with the Preliminary Approval Order, the Court-approved Class
8 Notice was mailed by first class mail to members of the Class at their last-known addresses on or
9 about June 28, 2024. Mailing of the Class Notice to their last-known addresses was the best notice
10 practicable under the circumstances and was reasonably calculated to communicate actual notice
11 of the litigation and the proposed settlement to the Class. The Class Notice given to the Class
12 Members fully and accurately informed the Class Members of all material elements of the
13 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
14 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
15 fully with the laws of the State of California, the United States Constitution, due process and other
16 applicable law. The Class Notice fairly and adequately described the Settlement and provided
17 Class Members adequate instructions and a variety of means to obtain additional information.

18 7. The Response Deadline for opting out or submitting written objections to the
19 Settlement was August 27, 2024, which for re-mailings was extended by fourteen (14) days.
20 There was an adequate interval between notice and the deadline to permit Class Members to
21 choose what to do and to act on their decision. A full and fair opportunity has been afforded to the
22 Class Members to participate in this hearing, and all Class Members and other persons wishing to
23 be heard have had a full and fair opportunity to be heard. Class Members also have had a full and
24 fair opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
25 Court determines that all Class Members who did not timely and properly submit a request for
26 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

1 **Fairness of the Settlement**

2 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
3 48 Cal.App.4th 1794, 1801 (1996).

4 a. The settlement was reached through arm's-length bargaining between the
5 Parties during an all-day mediation before Tripper Ortman, an experienced mediator of wage and
6 hour class actions. There has been no collusion between the Parties in reaching the Settlement.

7 b. Plaintiff and Class Counsel's investigation and discovery have been
8 sufficient to allow the Court and counsel to act intelligently.

9 c. Counsel for all Parties are experienced in similar employment class action
10 litigation. Class Counsel recommended approval of the Agreement.

11 d. No objections were received. No requests for exclusion were received.

12 e. The participation rate was high. 245 Class Members will be mailed a
13 settlement payment, representing 100% of the overall Class.

14 9. The consideration to be given to the Class Members under the terms of the
15 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
16 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
17 Members' claims, given the uncertainties and significant risks of the litigation and the delays
18 which would ensue from continued prosecution of the action.

19 10. The Agreement is finally approved as fair, adequate and reasonable and in the best
20 interests of the Class Members.

21 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

22 11. From the Gross Settlement Amount, an award of \$258,333 for attorneys' fees,
23 representing one-third of the Gross Settlement Amount, and \$_____ for litigation costs
24 and expenses, is reasonable, in light of the contingent nature of Class Counsel's fee, the hours
25 worked by Class Counsel, and the results achieved by Class Counsel. The requested award has
26 been supported by Class Counsel's lodestar and billing statement.

1 **Class Representative Service Payment**

2 12. The Agreement provides for a Class Representative Service Payment of not more
3 than \$15,000 to the Plaintiff, subject to the Court’s approval. The Court finds that Class
4 Representative Service Payment in the amount of \$15,000 from the Gross Settlement Amount to
5 the Plaintiff is reasonable in light of the risks and burdens undertaken by the Plaintiff in this
6 litigation and for his time and effort in bringing and prosecuting this matter on behalf of the Class.

7 **Administration Expenses Payment**

8 13. The Administrator shall calculate and administer the payment to be made to the
9 Class Members, transmit payment for attorneys’ fees and costs to Class Counsel, transmit the
10 Class Representative Service Payment to the Plaintiff, issue all required tax reporting forms,
11 calculate withholdings and perform the other remaining duties set forth in the Agreement. The
12 Administrator has documented \$6,890.00 in fees and expenses, and this amount is reasonable in
13 light of the work performed by the Administrator.

14 **PAGA Penalties**

15 14. The Agreement provides for a PAGA Penalties out of the Gross Settlement
16 Amount of \$80,000, which shall be allocated \$60,000 to the Labor & Workforce Development
17 Agency (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
18 Agreement pursuant to the PAGA and \$20,000 to be distributed to the Aggrieved Employees and
19 allocated by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties
20 (\$20,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during
21 the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Pay
22 Periods. “Aggrieved Employees” are all individuals who are or previously were employed by
23 Defendant who were classified as a non-exempt employee and worked for Defendant as a
24 Teamsters member or a non-union employee in the State of California at any time during the
25 PAGA Period (February 19, 2020 through April 25, 2024). Pursuant to Labor Code section 2699,
26 subdivision (l)(2), the LWDA was provided notice of the Agreement and these settlement terms
27 and has not indicated any objection thereto. The Court finds the PAGA Penalties to be reasonable.

1 II.

2 **ORDERS**

3 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

4 15. The Class is certified for the purposes of settlement only. The Class is defined as
5 follows:

6 All individuals who are or previously were employed by Defendant who were
7 classified as a non-exempt employee and worked for Defendant as a Teamsters
8 member or a non-union employee in the State of California at any time during the
Class Period (June 29, 2017 through April 25, 2024).

9 16. All persons who meet the foregoing definition are members of the Class, except for
10 those individuals who filed a valid request for exclusion ("opt out") from the Class. There were
11 no individuals who requested exclusion.

12 17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
13 best interest of the Class. Defendant shall fully fund the Gross Settlement Amount, and also fund
14 the amounts necessary to fully pay Defendant's share of payroll taxes in accordance with the
15 Agreement, by transmitting the funds to the Administrator no later than 15 days after the Effective
16 Date.

17 18. Class Counsel are awarded attorneys' fees in the amount of \$258,333 and costs in
18 the amount of \$30,000, payable from the Gross Settlement Amount. The Court orders that 10% of
19 any fee award be kept in the Administrator's trust fund until the completion of the distribution
20 process and Court approval of a final accounting. Class Counsel shall not seek or obtain any other
21 compensation or reimbursement from Defendant, Plaintiff or members of the Class.

22 19. The payment of Class Representative Service Payment from the Gross Settlement
23 Amount in the amount of \$15,000 to the Plaintiff is approved.

24 20. The payment of \$6,890.00 to the Administrator for its fees and expenses from the
25 Gross Settlement Amount is approved.

26 21. The PAGA Penalties amount of \$80,000 is approved and is to be distributed from
27 the Gross Settlement Amount in accordance with the Agreement.

1 22. Pursuant to Labor Code section 2699, subdivision (l)(2), Class Counsel shall
2 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its
3 entry.

4 23. Neither the Agreement nor this Settlement is an admission by Defendant, nor is this
5 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
6 wrongdoing by Defendant or that this Action is appropriate for class or representative treatment
7 (other than for settlement purposes). Neither this Final Approval Order and Judgment, the
8 Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement
9 is, may be construed as, or may be used as an admission by or against Defendant of any fault,
10 wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any
11 negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be
12 evidence of, an admission or concession with regard to the denials or defenses by Defendant.
13 Notwithstanding these restrictions, Defendant may file in the Action or in any other proceeding
14 this Final Approval Order and Judgment, the Agreement, or any other papers and records on file in
15 the Action as evidence of the Settlement to support a defense of *res judicata*, collateral estoppel,
16 release, or other theory of claim or issue preclusion or similar defense as to the Released Class
17 Claims and/or Released PAGA Claims.

18 24. Notice of entry of this Final Approval Order and Judgment shall be given to all
19 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
20 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
21 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
22 to individual Class Members.

23 25. If the Agreement does not become final and effective in accordance with the terms
24 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
25 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
26 revert to their respective positions as of before entering into the Agreement, and expressly reserve
27 their respective rights regarding the prosecution and defense of this Action, including all available
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1 defenses and affirmative defenses, and arguments that any claim in the Action could not be
2 certified as a class action and/or managed as a representative action.

3 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

4 26. Except as set forth in the Agreement and this Final Approval Order and Judgment,
5 Plaintiff, and all members of the Class, shall take nothing in the Action.

6 27. The Court shall retain jurisdiction to construe, interpret, implement and enforce the
7 Agreement, to hear and resolve any contested challenge to a claim for settlement benefits, and to
8 supervise and adjudicate any dispute arising from or in connection with the distribution of
9 settlement benefits.

10 28. All Parties shall bear their own attorneys' fees and costs, except as otherwise
11 provided in the Agreement and in this Final Approval Order and Judgment.

12 29. Effective on the date when Defendant fully funds the entire Gross Settlement
13 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
14 Payments, Plaintiff, Participating Class Members, and the LWDA will release claims against all
15 Released Parties as follows:

16 (a) All Participating Class Members, on behalf of themselves and their
17 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
18 and assigns, release Released Parties from the Released Class Claims. The "Released Class
19 Claims" are all claims that were alleged, or reasonably could have been alleged, based facts stated
20 in the Operative Complaint which occurred during the Class Period during employment as a non-
21 exempt employee who worked for Defendant as a Teamsters member or a non-union employee in
22 the State of California. Except as expressly set forth in this Agreement, Participating Class
23 Members do not release any other claims, including claims for vested benefits, wrongful
24 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
25 disability, social security, workers' compensation, claims based on facts occurring outside the
26 Class Period, and Plaintiff's individual retaliation claim alleged as the eighth cause of action in the
27 Class Action. The "Released Parties," as used herein, are Defendant and each of its former and
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1 present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors,
2 assigns and subsidiaries.

3 (b) Plaintiff, in his capacity as private attorney general, and the LWDA are
4 deemed to release, on behalf of themselves and their respective former and present representatives,
5 agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the
6 Released PAGA Claims. The “Released PAGA Claims” are all claims for PAGA penalties that
7 were alleged, or reasonably could have been alleged, based on the facts stated in the Operative
8 Complaint and the PAGA Notice, which occurred during the PAGA Period during employment as
9 a non-exempt employee who worked for Defendant as a Teamsters member or a non-union
10 employee in the State of California. The Released PAGA Claims do not include other PAGA
11 claims, underlying wage and hour claims, claims for wrongful termination, discrimination,
12 unemployment insurance, disability and worker’s compensation, and claims outside of the PAGA
13 Period.

14 (c) Plaintiff and his or her respective former and present spouses,
15 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
16 and discharge Released Parties from any and all claims and potential claims that may legally be
17 waived by private agreement, whether known or unknown, which Plaintiff has asserted or could
18 assert against Defendant arising out of or relating in any way to any acts, circumstances, facts,
19 transactions, or omissions, occurring up to and including the date Plaintiff signs this Agreement,
20 as fully set forth in the Agreement. Plaintiff’s Release does not extend to Plaintiff’s individual
21 claim for retaliation (under Labor Code section 1102.5) alleged as the eighth cause of action of the
22 Class Action Complaint, which will be dismissed without prejudice, any claims or actions to
23 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
24 benefits, social security benefits, or workers’ compensation benefits that arose at any time, or
25 based on occurrences outside the Class Period.

26 30. For any Class Member or Aggrieved Employee whose Individual Class Payment
27 check or Individual PAGA Payment check is uncashed and cancelled after the void date, the
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1 Administrator shall transmit the funds represented by such checks to the following two *cy pres*
2 recipients in 50% allocations each: (1) The Operating Engineers Local #3 Scholarship Fund and
3 (2) The Cypress Mandela Training Center in Oakland, California, which the Court approves as the
4 *cy pres* beneficiaries pursuant to California Code of Civil Procedure Section 384, subd. (b).

5 31. The Court hereby enters judgment in the entire Action as of the filing date of this
6 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the
7 finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction
8 over the interpretation, implementation, and enforcement of the Settlement and all orders entered
9 in connection therewith pursuant to California Code of Civil Procedure section 664.6.

10 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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12 Dated: _____

13 _____
14 HON. FRANK ROESCH
15 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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