

Larry W. Lee (State Bar No. 228175)
Kwanporn "Mai" Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
ktulyathan@diversitylaw.com

William L. Marder (State Bar No. 170131)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile
bill@polarislawgroup.com

Attorneys for Plaintiff, the Class, and Aggrieved Employees

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

TONY CATELLI, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

INNOVATIVE CONSTRUCTION
SOLUTIONS, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: MSC21-01257

(Assigned for all purposes to the Honorable
Charles S. Treat, Department 12)

**[PROPOSED] ORDER AFTER HEARING
GRANTING FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: June 8, 2023

Time: 9:00 a.m.

Dept.: 12

Complaint Filed: June 1, 2021

Trial Date: None Set

1 Plaintiff Tony Catelli (“Plaintiff”) and Defendant Innovative Construction Solutions
2 (“Defendant”) (collectively, the “Parties” or “Settling Parties”) have entered into the Joint
3 Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) to
4 settle the above-captioned class action and Private Attorneys’ General Act (“PAGA”) action,
5 subject to the Court’s approval. The Court granted preliminary approval of the Settlement on
6 January 24, 2023.

7 Plaintiff moves for final approval of his class action and PAGA settlement with
8 Defendant, including approval of attorney fees and costs, representative payment, and
9 administration costs. The motion is **GRANTED**.

10 **A. Background and Settlement Terms**

11 The original complaint was filed on June 1, 2021. It remains the operative complaint.
12 The alleged violations are of a technical nature. Defendant is not alleged to have underpaid or
13 undercompensated any employees. Rather, the allegation is that the pay statements issued to the
14 employees failed to identify the dates of the relevant pay period. Further, in discovery it was
15 ascertained that in fact this was true only of each employee’s initial pay statement after hiring; all
16 subsequent pay statements were in proper compliance.

17 The settlement will create a gross settlement fund of \$30,000. The class representative
18 payment to Plaintiff will be \$2,500. Attorney’s fees will be \$10,000 (one-third of the
19 settlement). Litigation costs are \$3,812.74, lower than the \$5,000 allocated for this item in the
20 preliminary settlement. The settlement administrator’s costs (ILYM) are \$4,250. PAGA
21 penalties will be \$2,000, resulting in a payment of \$1,500 to the LWDA. The net amount paid
22 directly to the class members would be about \$9,437. The fund is non-reversionary. There are
23 an estimated 193 class members. Based on the class size, the average net payment for each class
24 member is approximately \$83.56, nearly double the average assumed at preliminary approval.

25 The entire settlement amount will be deposited with the settlement administrator within
26 10 days after final approval of the settlement.

27 The proposed settlement would certify a class of all current and former non-exempt
28 employees employed at Defendants’ California facilities who received initial pay statements

1 between June 1, 2020 through April 26, 2021. There are 90 class members, a much lower figure
2 than was assumed at the time of preliminary approval (though there is no explanation offered for
3 the change in figures). Unusually, it also includes a somewhat higher number of aggrieved
4 employees for PAGA purposes, 128.

5 The class members will not be required to file a claim.

6 Various prescribed follow-up steps will be taken with respect to mail that is returned as
7 undeliverable. Any unclaimed or uncashed funds will go to the Controller under the Unpaid
8 Property Law.

9 The settlement contains release language covering “All causes of action and factual or
10 legal theories that were alleged in the Class Action Complaint based upon Defendant’s alleged
11 failure to provide the beginning and/or ending dates on the Class Members’ Initial Physical
12 Wage Statements.” Under recent appellate authority, the limitation to those claims with the
13 “same factual predicate” as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena*
14 *Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 [“A court cannot release claims that are outside the
15 scope of the allegations of the complaint.” “Put another way, a release of claims that goes
16 beyond the scope of the allegations in the operative complaint’ is impermissible.” (*Id.*, quoting
17 *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.) Here, the
18 scope of the release is actually narrower than the claims in the complaint, because it is limited to
19 initial wage statements (the only ones found in discovery to feature the alleged defect).

20 Formal discovery was undertaken, resulting in the production of substantial documents.
21 The matter settled after arms-length negotiations.

22 Counsel also has provided an analysis of the case, and how the settlement compares to
23 the potential value of the case, after allowing for various risks and contingencies. This included
24 an estimate of class claims at a “maximum possible liability” of about \$38,700, including
25 derivative PAGA penalties. The settlement is about 77% of that amount.

26 The potential liability needs to be adjusted for various evidence and risk-based
27 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a
28 number of reasons: they derive from other violations, they include “stacking” of violations, the

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

5 Counsel attest that notice of the proposed settlement was transmitted to the LWDA
6 concurrently with the filing of the motion.

7 **B. Legal Standards**

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

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

22 California law provides some general guidance concerning judicial approval of any
23 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*
24 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
25 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,
26 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot
27 surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a
28 mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court*

1 (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not
2 always apply, because “[w]here the rights of the public are implicated, the additional safeguard
3 of judicial review, though more cumbersome to the settlement process, serves a salutatory
4 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141
5 Cal.App.4th 48, 63.)

6 **C. Attorney Fees and Other Costs**

7 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common
8 fund” theory, or \$10,000. Even a proper common fund-based fee award, however, should be
9 reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th
10 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine
11 whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means
12 of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether
13 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable
14 range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)

15 Accordingly, plaintiffs have provided information concerning the lodestar fee amount.
16 They estimate the lodestar at \$108,115, resulting in an implied multiplier of slightly below one.
17 They based this amount on a total of 160 hours (including expected administration time), at
18 hourly rates ranging from \$600 to \$800. No adjustment from the one-third fee is necessary. The
19 attorney’s fees are reasonable and are approved.

20 The requested representative payment of \$2,500 for the named Plaintiff was deferred
21 until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v.*
22 *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided
23 a declaration in support of his request. He points out that he executed a broader release than the
24 class as a whole, but does not identify any particular claims of value that he may have. He also
25 risks damage to his reputation and more difficulty in obtaining employment. The representative
26 payment is approved.

27 Litigation costs of \$3,812.74 are reasonable and are approved.

28 The settlement administrator’s costs of \$4,250 are reasonable and are approved.

1 **D. Discussion and Conclusion**

2 The moving papers sufficiently establish that the proposed settlement is fair, reasonable,
3 and adequate to justify final approval. The allocation of PAGA penalties among the aggrieved
4 employees (based on pay periods) is reasonable.

5 The motion is granted.

6 This Court finds that the settlement appears to be the product of serious, informed, non-
7 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential
8 treatment to any individuals. The Court finds that the settlement was entered into in good faith
9 pursuant to California Code of Civil Procedure § 877.6. The Court further finds that the
10 Settlement is fair, reasonable, and adequate and that Plaintiff has satisfied the standards for final
11 approval of a class action settlement under California law. Under the provisions of California
12 Code of Civil Procedure § 382 and Federal Rule of Civil Procedure 23, as approved for use by
13 the California state courts in *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821, the trial court
14 has discretion to certify a class where:

15 [Q]uestions of law or fact common to the members of the class
16 predominate over any questions affecting only individual members,
17 and that a class action is superior to the available methods for the
18 fair and efficient adjudication of the controversy...Fed. R. Civ.
 Proc. 23.

19 Certification of a settlement class is the appropriate judicial device under these circumstances.

20 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
21 FOLLOWS:

22 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
23 Settlement Agreement filed in this case.

24 2. The Court has jurisdiction over the subject matter of the litigation, the Class
25 Representative, the other Settlement Class Members, and Defendant.

26 3. The Court finds that the Class Notice disseminated to the Class Members,
27 constituted the best notice practicable under the circumstances to all Persons within the
28 definition of the Class, and fully met the requirements of California law and due process under

1 the United States Constitution. No objections were received by the Parties or the Court through
2 the date of this Order. The Court finds that one Class Member submitted a valid and timely
3 request for exclusion from the Settlement as determined by the Settlement Administrator.

4 4. The Court approves the settlement of the above-captioned action, as set forth in
5 the Settlement Agreement, as fair, just, reasonable, and adequate as to the Settling Parties. The
6 Settling Parties are directed to perform in accordance with the terms set forth in the Settlement
7 Agreement.

8 5. The Court hereby certifies the following Settlement Class for settlement purposes
9 only: All current and former employees of Defendant who worked in California and received an
10 Initial Physical Wage Statement at any time from June 1, 2020, through April 26, 2021.

11 6. With respect to the Settlement Class and for purposes of approving the Settlement
12 only and for no other purpose, this Court finds and concludes that: (a) the members of the
13 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
14 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
15 community of interest among Members of the Settlement Class with respect to the subject matter
16 of the claims in the Litigation; (c) the claims of Class Representative are typical of the claims of
17 the members of the Settlement Class; (d) the Class Representative has fairly and adequately
18 protected the interests of the members of the Settlement Class; (e) a class action is superior to
19 other available methods for an efficient adjudication of this controversy; and (f) the counsel of
20 record for the Class Representative, *i.e.*, Class Counsel, are qualified to serve as counsel for the
21 Plaintiff in his individual and representative capacity and for the Settlement Class.

22 7. Defendant shall fund \$30,000.00 of the total gross settlement amount pursuant to
23 the terms of the Settlement Agreement.

24 8. The Court approves the Individual Settlement Payments and Individual PAGA
25 Payments to be paid to Class Members and PAGA Employees as provided for by the Settlement
26 Agreement, which shall be distributed pursuant to the terms of the Settlement Agreement.

27 9. The \$30,000.00 gross settlement amount shall be used to pay (a) Class Counsel
28 attorneys' fees in the amount of \$10,000.00 and reimbursement of costs in the amount of

1 \$3,812.74; (b) a service award to the Class Representative Tony Catelli for prosecuting this
2 action on behalf of the Settlement Class in the following amount: \$2,500.00; (c) the sum of
3 \$1,500.00 to be paid to the LWDA pursuant to the PAGA; and (d) \$4,250.00 to the settlement
4 administrator – Phoenix Settlement Administrators for its fees and costs relating to the settlement
5 administration process. The Court finds that these amounts are fair and reasonable. The
6 allocation and distribution of these amounts from the \$30,000.00 Gross Settlement Amount shall
7 be performed by Settlement Administrator pursuant to the terms of the Settlement Agreement.
8 The Court also finds that Plaintiff's Counsel complied with the notice procedures to the LWDA
9 as required by PAGA to settle the PAGA claims.

10 10. By means of this Final Approval Order and Judgment and upon Defendant's
11 payment of sums due pursuant to the Settlement, all Settlement Class Members are hereby
12 deemed to have waived and released all Released Class Claims and are forever barred and
13 enjoined from prosecuting the Released Class Claims against the Released Parties as fully set
14 forth in the Settlement Agreement. By means of this Final Approval Order and Judgment and
15 upon Defendant's payment of sums due pursuant to the Settlement, all PAGA Employees and the
16 State of California are hereby deemed to have waived and released all Released PAGA Claims
17 and are forever barred and enjoined from prosecuting the Released PAGA Claims against the
18 Released Parties as fully set forth in the Settlement Agreement. The Settlement is not an
19 admission of liability or wrongdoing by Defendant, nor is this Order a finding of the validity of
20 any claims in the Action or of any fault, omission, or wrongdoing by Defendant. Except as
21 expressly provided herein, each Party shall bear its own costs and attorneys' fees.

22 11. By means of this Final Approval Order and Judgment and upon Defendant's
23 payment of sums due pursuant to the Settlement, Plaintiff, on behalf of himself, his heirs, and
24 assigns is hereby deemed to have waived and released all Plaintiff's Released Claims and is
25 forever barred and enjoined from prosecuting the Plaintiff's Released Claims against the
26 Released Parties as fully set forth in the Settlement. The Settlement is not an admission of
27 liability or wrongdoing by Defendant, nor is this Order a finding of the validity of any claims in
28 the Action or of any fault, omission, or wrongdoing by Defendant.

12. A compliance hearing is set for January 18, 2024, at 9:00 a.m. in Department 12 of the above-referenced Court. At least one week prior to the compliance hearing, the Settlement Administrator will provide a written declaration under oath to certify the total amount that was paid to all Class Members and the amount of uncashed checks to be tendered to the California State Controller to be held in the unclaimed property fund in the name of Class Members. Five percent (5%) of the attorney's fees are to be withheld by the Settlement Administrator pending satisfactory compliance as found by the Court.

13. The Court hereby enters final judgment in this case in accordance with the terms of the Settlement Agreement, Preliminary Approval Order, and this Order. Without affecting the finality of the Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction over the action and the Parties, including all Settlement Class Members, for purposes of enforcing and interpreting this Order and the Settlement.

The motion is granted.

IT IS SO ORDERED AND ADJUDGED.

DATED: JUN 14 2023


HON. CHARLES S. TREAT
SUPERIOR COURT OF CALIFORNIA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On June 13, 2023, I served the following document(s) described as: **[PROPOSED] ORDER AFTER HEARING GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties in this action as follows:

Michael J. Studenka
Michael.Studenka@ndlf.com
Newmeyer & Dillion LLP
895 Dove Street, 5th Floor
Newport Beach, California 92660
Attorneys for Defendant Innovative Construction Solutions

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 13, 2023, at Los Angeles, California.



Erika Mejia