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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

ISMAEL VIERA and ERIC DAVILA,
individually and on behalf of aggrieved
employees and the State of California,

Plaintiffs,

v.

CRANE ACQUISITION, INC., dba CRANE
PEST CONTROL, ROLLINS, INC., ORKIN,
LLC, and DOES 1-20, inclusive,

Defendants.

Case No. CGC-22-597870

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR APPROVAL
OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

Date: January 21, 2025
Time: 1:30 P.M.
Dept.: 305

Hon. Mary E. Wiss

1 WHEREAS, on November 22, 2024, Plaintiffs Ismael Viera and Eric Davila (“Plaintiffs”),
2 on behalf of the State and aggrieved employees, and Defendants Crane Acquisition, Inc., Rollins,
3 Inc., and Orkin, LLC (“Defendants”) entered into a PAGA Settlement Agreement (“Settlement
4 Agreement”) intended to resolve this litigation.

5 WHEREAS, the Court now has before it Plaintiffs’ Motion for Approval of PAGA
6 Settlement, which Defendants do not oppose, filed on December 6, 2024, and Plaintiffs’
7 Supplemental Brief in Support of the Motion, filed on January 14, 2025, together with exhibits and
8 supporting materials;

9 WHEREAS, having reviewed Plaintiffs’ Motion for Approval of PAGA Settlement, the
10 memorandum in support of the Motion, the Declarations of Rachel Bien and Melody Rissell
11 Leonard, the Plaintiffs’ declarations, and Plaintiffs’ Supplemental Brief and filings, and based on
12 the Court’s knowledge of the record in this case, the Court is satisfied that the Settlement
13 Agreement was the result of good faith, arm’s-length negotiations among competent and
14 experienced counsel for both Plaintiffs and Defendants; and

15 WHEREAS, having considered the submissions of the Parties, and good cause appearing
16 therefore, the Court now enters the following Findings of Fact, Conclusions, Order, and Judgment.

17 **PROCEDURAL HISTORY**

18 1. On January 27, 2022, Plaintiff Viera filed an action pursuant to PAGA against
19 Defendants alleging that they had required him and other aggrieved employees to agree to unlawful
20 non-compete and non-solicitation terms in their employment agreements in violation of Labor Code
21 § 432.5, and that Defendants had paid them their final wages via a payroll debit card to which they
22 had not agreed in violation of Labor Code §§ 201-202, 212-213, and 221. Plaintiff filed an amended
23 complaint on September 12, 2024, adding Plaintiff Davila.

24 2. Plaintiffs gave timely notice of their claims to the Labor Workforce Development
25 Agency (“LWDA”) and to Defendants on July 30, 2021 and April 10, 2024, respectively.

26 3. The parties engaged in substantial discovery before resolving this lawsuit. Plaintiffs
27 took the depositions of five corporate representatives and an employee of Defendants, and

1 Defendants took Plaintiff Viera's deposition.

2 4. The parties exchanged thousands of pages of document discovery, served several
3 sets of document requests and interrogatories, and Defendants produced data reflecting the relevant
4 pay periods of aggrieved employees and data regarding employees' receipt of wages via pay cards,
5 which they supplemented during the litigation and prior to trial.

6 5. Plaintiffs engaged an expert, David Breshears of Hemming Morse, LLC, who
7 analyzed Defendants' employee data and produced a report setting forth Defendants' PAGA
8 penalty exposure.

9 6. Plaintiffs moved for summary adjudication on November 21, 2023, which the Court
10 granted in part on February 21, 2024, concluding that the non-compete and non-solicitation terms
11 in Defendants' employment agreement violated Labor Code § 432.5, and holding Defendant Crane
12 liable for the violation as Plaintiff Viera's employer. After the summary adjudication ruling,
13 Plaintiff Viera moved to amend the complaint to add Plaintiff Davila. Defendants opposed, and the
14 Court denied the motion on the basis that the amendment came too close to trial. When Defendants
15 later moved the Court to continue the trial, the Court permitted Plaintiff Davila to be added.

16 7. The parties fully prepared for trial, which was to begin on October 21, 2024,
17 including drafting witness examinations, interviewing and preparing trial witnesses, and preparing
18 and submitting all trial submissions, including trial briefs and motions *in limine*.

19 8. The parties made several efforts to resolve this case through private mediation, with
20 a neutral at a settlement conference, and through direct negotiations.

21 9. On the first day of the trial, prior to any witnesses taking the stand, the parties entered
22 into a memorandum of understanding that memorialized the material settlement terms. The parties
23 then negotiated the long-form Settlement Agreement, which they executed on November 22, 2024.
24 (Decl. of Rachel Bien, Ex. B.)

25 10. The Settlement Agreement was submitted to the LWDA on December 3, 2024
26 pursuant to Lab. Code § 2699(l), to which the LWDA did not object.

27 11. Plaintiffs filed their Motion for Approval of PAGA Settlement Agreement on
28

December 5, 2024.

12. On January 6, 2025, the Court issued a Tentative Ruling, in which it raised several issues relating to the Motion that Plaintiffs addressed in their Supplemental Brief and filings on January 14, 2025.

13. On January 21, 2025, the Court held a hearing on the Motion.

FINDINGS OF FACT

1. All terms used in this Order have the same meanings as set forth in the Settlement Agreement.

2. The PAGA Settlement Members consist of current and former employees of Defendants who worked in California during the PAGA Period and whose names were included in the data produced by Defendants in the Action. Based on that data, there are 3,521 PAGA Settlement Members.

3. The Court finds that the Settlement Agreement confers substantial benefits on the State and PAGA Settlement Members. Pursuant to its terms, Defendants will pay a Gross Settlement Amount of \$2,900,000, which is non-reversionary. The Gross Settlement Amount will be used to pay the following amounts associated with the Settlement: (1) civil penalties paid to the State of California in settlement of the Released PAGA Claims in the amount of \$1,319,452.55 and to PAGA Settlement Members in the amount of \$439,817.52; (2) Service Payments to Plaintiffs in the amount of \$20,000 to Plaintiff Viera and \$10,000 to Plaintiff Davila, which were subject to Court approval; (3) Attorneys' Fees of \$1,015,000 and Costs of \$81,229.94, which were subject to Court approval; and (4) all costs necessary to administer the Settlement, including payment for the services of the Settlement Administrator, which are capped at \$14,500.

4. The amount paid to each PAGA Settlement Member will be based on their Eligible Pay Periods and whether Defendants paid them their final wages on a pay card as reflected in the PAGA Member Data.

5. Defendants will cause the Gross Settlement Amount to be paid into a Qualified Settlement Fund administered by the Settlement Administrator within 30 days of this Order. The

1 Settlement Administrator will cause all payments to be issued within 30 days of Defendants’
2 deposit.

3 CONCLUSIONS OF LAW

4 **Approval.** PAGA settlements are subject to court review, “ensuring that any negotiated
5 resolution is fair to those affected.” (*Williams v. Super. Ct of Los Angeles County* (2017) 3 Cal.5th
6 531, 549 [quoting Cal. Lab. Code 2699(1)(2)] [internal quotation marks omitted].) Although PAGA
7 does not set forth the particular standards against which a PAGA settlement should be evaluated,
8 some of the factors for review of a class action settlement under Fed. R. Civ. P. 23, Cal. Code Proc.
9 § 382, and Cal. Rules of Court, Rule 3.769 may be “useful in evaluating the fairness of a PAGA
10 settlement” by the reviewing court. (*See Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56,
11 77.) In particular, “while PAGA does not require the trial court to act as a fiduciary for aggrieved
12 employees, adoption of a standard of review for settlements that prevents ‘fraud, collusion or
13 unfairness,’ and protects the interests of the public and the LWDA in the enforcement of state labor
14 laws is warranted.” (*Id.*) Furthermore, “[b]ecause many of the factors used to evaluate class action
15 settlements bear on a settlement’s fairness—including the strength of the plaintiff’s case, the risk,
16 the stage of the proceeding, the complexity and likely duration of further litigation, and the
17 settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.”
18 (*Id.*)

19 6. Having considered these factors and the evidence submitted by Plaintiffs, the Court
20 concludes that the Settlement Agreement meets the requirements for approval. The Settlement
21 Agreement is the product of arm’s-length bargaining between the Parties, including the use of
22 experienced neutrals. Plaintiffs engaged in extensive investigation, discovery, and motion practice
23 to test their claims. Counsel has significant experience in similar PAGA and wage and hour
24 litigation and thus the ability to assess the reasonableness of the settlement terms.

25 7. In addition, the applicable fairness factors support a finding of fairness, and
26 therefore, approval of the Settlement Agreement is warranted. Because liability remains highly
27 contested, the Parties will face significant additional time, expenses, and risk if this Action

continues. Defendants contend that any liability is limited to the period after January 1, 2024 for the Labor Code violations under section 432.5, and deny all liability as to the pay card claims under Labor Code sections 201-202, 212-213, and 221. The Parties also disagree over the proper calculation of penalties for the Labor Code section 432.5 violation, with the outcome of that issue having a major impact on the penalties that Plaintiff could recover. Plaintiffs and their Counsel recognize that Defendants have raised factual and legal defenses in the action that present a risk that Plaintiffs may not prevail at trial, that one or more of the claims may be defeated, or that Plaintiffs may recover only a fraction of the penalties that they claim they are due.

8. Moreover, even if the Court entered judgment in Plaintiffs' favor, it could be overturned on appeal. Plaintiffs and their Counsel have taken into account the uncertainty and risks inherent in any litigation, especially in complex actions like this one. The substantial information the Parties received through discovery and motion practice, as well as the additional information and data exchanged during settlement negotiations, has been more than sufficient to create "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.) In considering settlement, Plaintiffs and their Counsel thus carefully balanced the risks of continuing to engage in protracted and contentious litigation and an appeal.

9. In light of these risks, the Court concludes that the Settlement Agreement, which secures substantial monetary relief, is a fair result that satisfies the requirements for PAGA approval.

10. The Court further concludes that the Settlement Agreement's Release is acceptable because it is appropriately limited to claims within the PAGA Period arising from the allegations of the Complaint.

11. The Court also recognizes and takes into consideration the opinion of all counsel of record that the Settlement Agreement is fair, reasonable, and adequate. As such, the Court finds that the Settlement Agreement and all of its terms which are incorporated herein by reference, are fair, reasonable, and adequate.

1 **Attorneys' Fees and Costs.** The Court approves as fair and reasonable the amounts
2 requested by Plaintiffs' Counsel for the services they have rendered, and expenses they have
3 incurred, in prosecuting the Action in the amount of \$1,015,000 and plus litigation costs and
4 expenses in the amount of \$81,229.94, which will be paid from the Gross Settlement Amount. The
5 Court finds that the fee requested of 35% of the Gross Settlement Amount is a reasonable
6 percentage given the substantial efforts made by Counsel and the positive results they achieved,
7 and the expenses requested were reasonably incurred. The percentage is also reasonable given that
8 it reflects a negative multiplier of Counsel's actual lodestar which itself does not include fees that
9 Counsel incurred in preparing their approval motion and supplemental filings and for the approval
10 hearing, and fees that Counsel will continue to incur in overseeing the administration of the
11 settlement. (*See, e.g., In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 ["Empirical
12 studies show that, regardless whether the percentage method or the lodestar method is used, fee
13 awards in class actions average around one-third of the recovery"] [internal quotation marks
14 omitted]; *Cicero v. DirecTV, Inc.* (C.D. Cal. July 27, 2010) No. 07 Civ. 1182, 2010 WL 2991486,
15 at *6 [California district courts "usually award attorneys' fees in the 30-40% range in wage and
16 hour class actions that result in recovery of a common fund under \$10 million"]; *Bennett v.*
17 *SimplexGrinnell LP* (N.D. Cal. Sept. 3, 2015) No. 11 Civ. 01854, 2015 WL 12932332, at *6
18 [38.8%; \$4.9 million fund].)

19 12. The Court has also reviewed the evidence Counsel has submitted in support of their
20 lodestar, including the hours spent on the litigation, and Counsel's hourly rates. The Court finds
21 that the hours spent, and Counsel's hourly rates are reasonable. As noted above, Counsel's fee
22 request is less than their lodestar. Although the Court would not typically find a negative multiplier
23 appropriate here considering the high quality of Counsel's representation, the novelty and
24 complexity of the issues involved, the excellent results obtained, and the contingent risk presented,
25 the Court finds the fee request is reasonable and appropriate.

26 13. **Service Payments.** The Court awards service payments to Plaintiff Ismael Viera in
27 the amount of \$20,000, and to Plaintiff Eric Davila in the amount of \$10,000, to be paid from Gross
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1 Settlement Amount. The amounts are fair and reasonable for the services performed by these
2 Plaintiffs, including their participation in discovery and preparation for trial, their willingness to
3 take on these burdens for the benefit of their co-workers, and the risks they assumed by having
4 their names associated with a lawsuit against their former employers.

5 14. ***Settlement Administration Costs.*** The Court authorizes payment of up to \$14,500
6 as reimbursement for the Settlement Administrator's costs, to be paid from the Gross Settlement
7 Amount. In the event that the administration costs are under \$14,500, any unused funds will become
8 part of the Net Settlement Amount.

9 15. ***Cy Pres Beneficiary.*** The Court approves Legal Aid At Work ("LAAW") as the Cy
10 Pres Beneficiary because it meets the requirements of Code of Civil Procedure section 384(b) and
11 will use the funds for purposes consistent with that section. Plaintiffs and their counsel do not have
12 any relationship with LAAW that would disqualify the organization from serving as the Cy Pres
13 Beneficiary.

14 16. Without affecting the finality of this order in any way, pursuant to California Rules
15 of Court, rule 3.769(h), the Court shall retain exclusive jurisdiction with respect to the
16 interpretation, implementation and enforcement of the terms of the Settlement Agreement, all
17 orders and judgments entered in connection therewith, and other matters ancillary to the Settlement,
18 and the Parties and their Counsel submit to the jurisdiction of the Court for purposes of interpreting,
19 implementing and enforcing the Settlement Agreement and all orders and judgments entered in
20 connection therewith.

21 17. Accordingly, the Court hereby GRANTS Plaintiffs' Motion for PAGA Settlement
22 Approval. The terms of the Settlement Agreement are adjudged to be fair, reasonable, and adequate.
23 The Parties are ordered to implement the terms of the Settlement Agreement in accordance with
24 this Order.

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IT IS SO ORDERED.

Date: _____

Hon. Mary E. Wiss
JUDGE OF THE SUPERIOR COURT