

Monique Olivier (Cal. Bar No. 190385)
monique@os-legal.com
Christian Schreiber (Cal. Bar No. 245597)
christian@os-legal.com
OLIVIER & SCHREIBER PC
475 14th Street, Suite 250
Oakland, CA 94612
Telephone: (415) 484-0980
Facsimile: (415) 658-7758

Rachel Bien (Cal. Bar No. 315886)
rachel@os-legal.com
Owen Monkemeier (Cal. Bar No. 336476)
owen@os-legal.com
OLIVIER & SCHREIBER PC
595 East Colorado Blvd., Suite 418
Pasadena, CA 91101
Telephone: (213) 325-3430
Facsimile: (415) 658-7758

Melody Rissell Leonard (Cal. Bar No. 330025)
melody@risselllawfirm.com
RISSELL LAW, APC
201 Spear St, Suite 1100
San Francisco, CA 94105
Telephone: (415) 874-7288
Facsimile: (415) 874-7292

*Attorneys for Plaintiffs and
Aggrieved Employees*

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 10, 2025
Time: 9:30 A.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, together with exhibits
7 and supporting materials;

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

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

15 **PROCEDURAL HISTORY**

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

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

24 3. The parties engaged in substantial discovery before resolving this lawsuit. Plaintiffs
25 took the depositions of five corporate representatives and an employee of Defendants, and
26 Defendants took Plaintiff Viera’s deposition.

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

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

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

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

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

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

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

25 11. Plaintiffs filed their Motion for Approval of PAGA Settlement Agreement on
26 December 5, 2024. On January 10, 2024, the Court held a hearing on the Motion.

1 **FINDINGS OF FACT**

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

4 2. The PAGA Settlement Members consist of current and former employees of
5 Defendants who worked in California during the PAGA Period and whose names were included in
6 the data produced by Defendants in the Action. Based on that data, there are 3,332 PAGA
7 Settlement Members.

8 3. The Court finds that the Settlement Agreement confers substantial benefits on the
9 State and PAGA Settlement Members. Pursuant to its terms, Defendants will pay a Gross
10 Settlement Amount of \$2,900,000, which is non-reversionary. The Gross Settlement Amount will
11 be used to pay the following amounts associated with the Settlement: (1) civil penalties paid to the
12 State of California in settlement of the Released PAGA Claims in the amount of \$1,319,077.54 and
13 to PAGA Settlement Members in the amount of \$439,692.52; (2) Service Payments to Plaintiffs in
14 the amount of \$20,000 to Plaintiff Viera and \$10,000 to Plaintiff Davila, which were subject to
15 Court approval; (3) Attorneys' Fees of \$1,015,000 and Costs of \$81,229.94, which were subject to
16 Court approval; and (4) all costs necessary to administer the Settlement, including payment for the
17 services of the Settlement Administrator, which was anticipated not to exceed \$15,000.

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

21 5. Defendants will cause the Gross Settlement Amount to be paid into a Qualified
22 Settlement Fund administered by the Settlement Administrator within 30 days of this Order. The
23 Settlement Administrator will cause all payments to be issued within 30 days of Defendants'
24 deposit.

25 **CONCLUSIONS OF LAW**

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

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

20 7. In addition, the applicable fairness factors support a finding of fairness, and
21 therefore, approval of the Settlement Agreement is warranted. Because liability remains highly
22 contested, the Parties will face significant additional time, expenses, and risk if this Action
23 continues. Defendants contend that any liability is limited to the period after January 1, 2024 for
24 the Labor Code violations under section 432.5, and deny all liability as to the pay card claims under
25 Labor Code sections 201-202, 212-213, and 221. The Parties also disagree over the proper
26 calculation of penalties for the Labor Code section 432.5 violation, with the outcome of that issue
27 having a major impact on the penalties that Plaintiff could recover. Plaintiffs and their Counsel

1 recognize that Defendants have raised factual and legal defenses in the action that present a risk
2 that Plaintiffs may not prevail at trial, that one or more of the claims may be defeated, or that
3 Plaintiffs may recover only a fraction of the penalties that they claim they are due.

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

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

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

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

23 ***Attorneys' Fees and Costs.*** The Court approves as fair and reasonable the amounts
24 requested by Plaintiffs' Counsel for the services they have rendered, and expenses they have
25 incurred, in prosecuting the Action in the amount of \$1,015,000 and plus litigation costs and
26 expenses in the amount of Costs of \$81,229.94, which will be paid from the Gross Settlement
27 Amount. The Court finds that the fee requested of 35% of the Gross Settlement Amount is a

1 reasonable percentage given substantial efforts made by Counsel, and the expenses requested were
2 reasonably incurred. The percentage is also reasonable given that it reflects a negative multiplier of
3 Counsel's actual lodestar which itself does not include fees that Counsel incurred in preparing their
4 approval motion and fees that Counsel will continue to incur in overseeing the administration of
5 the settlement. (*See, e.g., In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558
6 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is
7 used, fee awards in class actions average around one-third of the recovery"] [internal quotation
8 marks omitted]; *Cicero v. DirecTV, Inc.* (C.D. Cal. July 27, 2010) No. 07 Civ. 1182, 2010 WL
9 2991486, at *6 [California district courts "usually award attorneys' fees in the 30-40% range in
10 wage and hour class actions that result in recovery of a common fund under \$10 million"]; *Bennett*
11 *v. SimplexGrinnell LP* (N.D. Cal. Sept. 3, 2015) No. 11 Civ. 01854, 2015 WL 12932332, at *6
12 [38.8%; \$4.9 million fund].)

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

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

26 14. ***Settlement Administration Costs.*** The Court authorizes payment of up to \$15,000
27 as reimbursement for the Settlement Administrator's costs, to be paid from the Gross Settlement
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1 Amount. In the event that the administration costs are under \$15,000, any unused funds will become
2 part of the Net Settlement Amount.

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

10 **ORDER AND JUDGMENT**

11 IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion for
12 PAGA Settlement Approval is GRANTED. The terms of the Settlement Agreement are adjudged
13 to be fair, reasonable, and adequate. The Parties are ordered to implement the terms of the
14 Settlement Agreement in accordance with this Order. Judgment is hereby entered on the Released
15 PAGA Claims. The Court hereby retains jurisdiction over the Parties to enforce the terms of the
16 Judgment pursuant to California Rules of Court, rule 3.769(h).

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18 **IT IS SO ORDERED.**

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20 Date: _____

21 Hon. Mary E. Wiss
22 JUDGE OF THE SUPERIOR COURT
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