

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

AUG 19 2022

DM **L. Howell**

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on behalf of the State of CA and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

JUAN DIAZ, on behalf of all Aggrieved
Employees and the State of California;

Plaintiff,

vs.

LEGACY TILE AND STONE, INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendant.

Case No.: CVRI2104520
*[Assigned to Hon. Craig Riemer, Dept 1 for
all purposes]*

**[PROPOSED] ORDER APPROVING
SETTLEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
AND ENTRY OF JUDGMENT
THEREON**

Hearing

Date: August 19, 2022
Time: 8:30 a.m.
Dept.: 1

Complaint filed: October 4, 2021

The Motion to Approve the Amended PAGA Representative Action Settlement Agreement and Release of PAGA Claims (the "Settlement" or "Settlement Agreement") between Plaintiff Juan Diaz and Defendant Legacy Tile and Stone, Inc. ("Defendant" or "Legacy") came before this Court on for a hearing on August 19, 2022, in accordance with Labor Code § 2699(1)(2) of the Private Attorneys General Act of 2004 ("PAGA"). A true and correct copy of the Settlement Agreement is attached as Exhibit "A" to the Supplemental Declaration of Brian Mankin, Esq., in Support of the Motion to Approve Settlement, which

CR 1 was filed on about August 4, 2022.

2 Plaintiff's Complaint and LWDA notice letters sought civil penalties against the
3 Released Parties for the "Released Claims" on behalf of the State of California and all current
4 and former non-exempt employees employed by Defendant in California at any time during
5 the period of October 4, 2020, through the February 13, 2022 (the "Aggrieved Employees").
6 The Released Claims are defined in ¶ 19 of the Settlement Agreement, as follows

7 "Released Claims" means and refers to any and all rights and
8 claims for civil penalties that Plaintiff alleged against Defendant,
9 on behalf of Aggrieved Employees and State of California, based
10 on the facts stated in the operative Complaint in the Action and in
11 the LWDA notice letter sent on July 29, 2021, including all
12 PAGA claims seeking civil penalties premised upon (a) failure to
13 pay minimum wages, (b) failure to pay for rest and recovery
14 periods and nonproductive time, (c) failure to pay overtime
15 wages, (d) failure to provide meal periods, (e) failure to provide
16 rest breaks, (f) failure to pay vested vacation, (g) failure to timely
17 pay wages each period, (h) failure to timely pay wages upon
18 separation of employment, (i) failure to provide accurate itemized
19 wage statements, and (j) all other claims for civil penalties
20 recoverable under the Private Attorneys General Act, Labor Code
21 §§ 2698 *et seq.* that were stated in the Complaint and based solely
22 upon the facts alleged in the Complaint and the notice sent by
23 Plaintiff to the LWDA.

24 The Court, having considered the Settlement, including proposed PAGA penalties,
25 embodied in the Settlement Agreement between Plaintiff and Defendant, pursuant to Labor
26 Code § 2699(1)(2), having considered the papers filed in support of the application for court
27 approval and the arguments of counsel, and good cause appearing, HEREBY ORDERS THE
28 FOLLOWING:

1 1. In a settlement of a PAGA action brought by an aggrieved employee, the Court
2 “shall review and approve any settlement of any civil action filed pursuant to this part.” Cal.
3 Lab. Code § 2699(1)(2).

4 2. The Court finds that the instant Action presented a good faith dispute of the
5 Released Claims as defined in the Settlement Agreement, and the Court finds in favor of
6 Settlement Approval and the Settlement Approval Order is hereby entered resolving all claims
7 set forth in Plaintiff’s Complaint and LWDA notice letter pursuant the terms of the Settlement
8 Agreement, and entering Judgment.

9 3. The Court approves the Settlement of the above-captioned action, as set forth
10 in the Settlement Agreement and each of the releases and other terms, as fair, just, reasonable,
11 and adequate. The Parties are directed to perform in accordance with the terms set forth in the
12 Settlement Agreement, including that Defendant is directed to make payments in accordance
13 with the Settlement Agreement, by and through the Settlement Administrator.

14 4. By this Order and Judgment, Plaintiff releases, relinquishes, and discharges all
15 Released Claims on behalf of himself and the State of California, as defined in the Settlement
16 Agreement. The Parties are to bear their own costs, except as otherwise provided in the
17 Settlement Agreement.

18 5. In accordance with the Settlement Agreement, Defendant agreed to pay
19 \$190,000 (the “Settlement Amount”), inclusive of payments to the LWDA and Aggrieved
20 Employees, attorneys’ fees and litigation costs, and Settlement Administrator costs. As part
21 of the Settlement, Plaintiff’s Counsel sought an award of attorney’s fees of \$63,333.33, actual
22 litigation expenses of \$7,187.59, and \$4,144.45 to the Settlement Administrator, ILYM
23 Group. Defendant ^{did} ~~does~~ not oppose these requests. The Court finds that the Settlement
24 Amount is fair, reasonable and adequate, and approves each of these payments set from the
25 Settlement Amount, and directs Defendant and Settlement Administrator to make the
26 following payments from the Settlement Amount within the time periods set forth below and
27 in the Settlement Agreement:

28 ///

- 1 a. \$63,333.33 in attorneys' fees to Lauby Mankin Lauby LLP;
2 b. \$7,187.59 in litigation costs to Lauby Mankin Lauby LLP;
3 c. \$4,144.45 to ILYM Group for administration costs.

4 6. After deducting the foregoing payments, the remainder shall form the PAGA
5 Award, which will then be allocated pursuant to Labor Code § 2699(i) with 75 percent being
6 paid to the LWDA, and the remaining 25 percent paid to the Aggrieved Employees on a pro
7 rata basis, as set forth in the Settlement Agreement. The Court approves these payments and
8 directs the Settlement Administrator to issue checks to the LWDA and Aggrieved Employees,
9 as set forth ^{in the} Settlement Agreement and in the chart below. The Court approves the proposed
10 notice to Aggrieved Employees and orders that the Settlement Administrator mail the Notice
11 of PAGA Settlement and Payment to the Aggrieved Employees with the settlement check
12 (attached hereto as Exhibit "A").

13 7. The Court approves the handling of unclaimed funds set forth in the Settlement
14 Agreement, specifically that any unclaimed funds in the Settlement Administrator's account
15 as a result of a failure to timely cash a settlement check shall be deemed void, and any
16 unclaimed funds in the QSF as a result of the failure to cash Individual Settlement Payment
17 checks shall be transmitted by the Settlement Administrator to the Labor and Workforce
18 Development Agency, in accordance with the statutory objectives of PAGA, within twenty-
19 one (21) calendar days of the date those checks became void.

20 8. Plaintiff and Defendant intend that this order and the resulting judgment will
21 have preclusive effect as to the Released Claims, under the doctrine of res judicata and
22 collateral estoppel, to the extent permitted by applicable law, pursuant to *Arias v. Superior*
23 *Court*, 46 Cal.4th 969 (2009).

24 9. The Settlement is not an admission by Defendant or any of the other Released
25 Parties, nor is this Judgment a finding of the validity of any claims in the Action or of any
26 wrongdoing by Defendant or any of the other Released Parties. Neither this Settlement
27 Approval Order, the Settlement, or the Judgment nor any document referred to herein, nor any
28 action taken to carry out the Settlement are, may be construed as, or may be used as an

by either the Plaintiff
or the State of California

admission by or against Defendant or any of the other Released Parties of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Settlement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendant or any of the other Released Parties and shall not be offered in evidence by Plaintiff or the LWDA against Defendant or any of the Released Parties in any action or proceeding in any court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this Order, the Settlement, the Judgment, or any related agreement or release. Notwithstanding these restrictions, any of the Released Parties may file in the Action or in any other proceeding this Order, the Settlement, the Judgment, or any other papers and records on file in the Action as evidence of the Settlement and to support a defense of res judicata, collateral estoppel, release, waiver or other theory of claim preclusion, issue preclusion or similar defense as to any of the Released Claims.

10. The following dates shall govern for purposes of this implementing this Order:

August 19, 2022	Final Order is entered and the Effective Date occurs
The later of December 1, 2022 or 5 Days After the Effective Date	Defendant shall wire <u>Payment #1</u> to the Settlement Administrator, which pursuant to Paragraph 40 of the Settlement Agreement, represents the following: 1) One-half (50%) of the 25% portion of the PAGA Award representing the Individual PAGA Payments to the Aggrieved Employees, 2) One-half (50%) of the 75% portion of the PAGA Award representing the payment to the LWDA 3) One-half (50%) of the Court approved Attorneys' Fees and Costs, and 4) One-half (50%) of the Court approved Settlement Administrator Costs.
December 12, 2022	Settlement Administrator to disburse Payment #1.
June 10, 2023	The estimated 180 Day Deadline for Aggrieved Employees to cash their first check (assuming Payment #1 was timely mailed on December 12, 2022).

The later of December 1, 2023 or 5 Days After the Effective Date	Defendant shall wire <u>Payment #2</u> to the Settlement Administrator, which pursuant to Paragraph 40 of the Settlement Agreement, represents the second-half (50%) of each of the payments set forth in Payment #1 above.
December 11, 2023	Settlement Administrator to disburse Payment #2.
June 9, 2024	The estimated 180 Day Deadline for Aggrieved Employees to cash their second check (assuming Payment #2 was timely mailed on December 11, 2023).
July 9, 2024	Deadline to file a Declaration by Settlement Administrator describing: (i) the date the checks were mailed, (ii) the total number of checks mailed to Aggrieved Employees, (iii) the number of checks that were uncashed, (iv) the total value of those uncashed checks, (v) the date payment was issued to LWDA, and (vii) the amount of the payment to the LWDA.
July 19, 2024	<i>Non-appearance hearing regarding</i> OSC re: status of funding and filing a Declaration from the Settlement Administrator as set forth herein. <i>CR</i>

JUDGMENT

11. Pursuant to California Labor Code section 2698, *et seq.*, the Court hereby enters Judgment in the Action, for the reasons set forth above, and upon the terms set forth in the Settlement Agreement. Without in any way affecting the finality of this Settlement Approval Order granting final judgment, this Court hereby retains exclusive and continuing jurisdiction over the Action as to all matters relating to: (a) the implementation, enforcement, construction and interpretation of the terms of the Settlement and this Order and Judgment; (b) Settlement administration matters; and (c) such post-judgment matters as may be appropriate under Court rules or as set forth in the Settlement.

Dated: August 19, 2022

Craig G. Riemer
Hon. Craig Riemer

EXHIBIT "A"

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment from *Diaz v. Legacy Tile and Stone, Inc.*

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed is your payment from the settlement of a lawsuit entitled *Juan Diaz, on behalf of all aggrieved employees and the State of California v. Legacy Tile and Stone, Inc., an California Corporation; and DOES 1 through 20, inclusive*, which was pending in the Superior Court of the State of California for the County of Riverside, Case No. CVRI2104520 (the “Diaz case” or “Lawsuit”).

The *Diaz* case was filed on October 4, 2021, against Legacy Tile and Stone, Inc., (“Legacy”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (“PAGA”). As such, the Lawsuit was brought on behalf of the State of California and all current and former non-exempt employees employed by Defendant in California any time from October 4, 2020, through February 13, 2022 (the “Aggrieved Employees”).

Specifically, in the Lawsuit, Mr. Diaz alleged that Legacy failed to pay regular (i.e. contractual) and/or minimum wages for all hours worked, failed to pay overtime wages, including, but not limited to, failed to pay at the correct and/or regular rate of pay for all such hours worked, failed to provide meal periods, failed to provide rest breaks, failed to pay the extra hour of pay due as a premium for non-compliant meal periods or rest breaks, failed to timely pay wages owing during employment, including, but not limited to, failed to timely pay wages at termination, failed to provide accurate itemized wage statements, and failed to maintain accurate records. Mr. Diaz sought PAGA penalties.

Legacy denies the allegations and denies that it owes any penalties. In an effort to avoid the time, expense and uncertainty of litigation, Mr. Diaz and Legacy agreed to settle the case. You have been identified as one of the alleged aggrieved employees on whose behalf Mr. Diaz filed his lawsuit, and for purposes of the Lawsuit, the Settlement, and the following paragraph, you are considered an “Aggrieved Employee.”

As such, the parties’ settlement resolves Mr. Diaz’s claims on behalf of all Aggrieved Employees, including those claims that were asserted or that could have been asserted in the Lawsuit or by any of the Aggrieved Employees pursuant to PAGA, including claims for violations of California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, and the applicable Wage Order.

The Court approved the Settlement on [REDACTED], 2022. As a result, the enclosed settlement check has been issued and shall remain valid for one hundred eighty (180) days. Checks remaining uncashed for more than 180 days after issuance will be voided and funds represented thereby will be remitted by the Settlement Administrator to the Labor and Workforce Development Agency.