

**FILED/ENDORSED**  
FEB - 1 2023  
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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SACRAMENTO

12 JAMES BRENNAN, *et al.*,  
13 *Plaintiffs,*  
14 vs.  
15 BASALITE BUILDING PRODUCTS, LLC, *et*  
16 *al.,*  
17 *Defendants.*

Case No.: 34-2021-00304507-CU-OE-GDS

CLASS ACTION

**[AMENDED ~~PROPOSED~~] ORDER  
GRANTING PLAINTIFFS' MOTION FOR  
AN ORDER APPROVING SETTLEMENT  
OF CLAIMS BROUGHT PURSUANT TO  
THE PRIVATE ATTORNEYS GENERAL  
ACT OF 2004**

Reservation Number: 268240

Date: January 27, 2023  
Time: 9:00 a.m.  
Courtroom: Dept. 28  
Judge: Hon. Lauri A. Damrell

Action Filed: July 20, 2021  
Trial Date: Not Set

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BY FAX

1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 Plaintiffs James Brennan and Gabriela Estrada ("Plaintiffs") and Defendant Basalite Building  
3 Products, LLC ("Defendants") (Plaintiffs and Defendant are the "Parties") have reached terms of an  
4 amended settlement of this action alleging a claim for relief pursuant to the Labor Code Private  
5 Attorneys General Act of 2004, Labor Code § 2698, *et seq.* ("PAGA").

6 Pursuant to PAGA, Plaintiffs have filed a motion for approval of the settlement of the claims  
7 asserted against Defendants in this action. Specifically, Plaintiff moves for an order:

- 8
- 9 • granting approval of the terms of the Agreement pursuant to the Labor Code Private Attorney  
10 Generals Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the settlement; the  
11 amount of distributions to the State and Aggrieved Employees; the amounts allocated to  
12 attorney's fees and costs; and, the amount allocated to the settlement administrator; and,
  - 13 • directing disbursement of the Gross Settlement Amount (also called the "Gross Settlement  
14 Amount") pursuant to the terms of the Agreement.

15 The PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND  
16 RELEASE (referred to as the "Agreement," or "Settlement," and attached to the Declaration of H. Scott  
17 Leviant as Exhibit 1) is conditioned upon the Court's approval. Capitalized terms in this Order have the  
18 same meaning as in the Settlement unless indicated otherwise. A summary of the terms of the amended  
19 Settlement is as follows:

- 20
- 21 • The Aggrieved Employees: Any person employed by BASALITE in California  
22 and classified as a non-exempt employee who worked for BASALITE during the  
23 PAGA Period. The "PAGA Period" is July 18, 2020 through October 31, 2022. It  
24 is estimated that there are about 370 aggrieved employees at the filing of this  
25 motion. (Agreement.)
  - 26 • No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 3.1.)
  - 27 • Gross Settlement Amount: Defendant agrees to pay the maximum sum of  
28 **\$190,000** (hereinafter referred to as the "Gross Settlement Amount" or "GSA") for  
settlement of the PAGA Penalties, which shall be inclusive of Plaintiffs' Counsel  
attorney's fees and costs, and the settlement administrator's fees and costs.

1 (Agreement, ¶ 3.1.)

- 2 • Net Settlement Amount: At least **\$99,150.00** will be available for distribution to  
3 the Aggrieved Employees and the LWDA. Of this amount, the LWDA will  
4 receive at least **\$74,362.50** under the Agreement, and Aggrieved Employees will  
5 receive at least **\$24,787.50**. The average payment to each Aggrieved Employee  
6 will be about \$67 (though the primary purpose of PAGA is to incentive Labor  
7 Code compliance and benefit the State). (Agreement, ¶ 3.2.)
- 8 • Attorney's Fees: Plaintiffs' Counsel will not seek an amount greater than  
9 **\$66,500.00** for attorneys' fees. (Agreement, ¶ 3.2.1.)
- 10 • Litigation Costs: Plaintiffs shall not seek costs in excess of \$17,500.00. Plaintiffs'  
11 actual litigation costs prior to the motion filing fee, telephonic appearance costs,  
12 and all additional costs of submitting this filing was \$17,818.98, which exceed  
13 \$17,500.00. Therefore, Plaintiffs request a total of **\$17,500.00** in costs.  
14 (Agreement, ¶ 3.2.1.)
- 15 • Settlement Administration: Payment to Aggrieved Employees and administration  
16 will be accomplished through third-party settlement administrator ILYM Group,  
17 Inc., which will perform Administrator duties for a flat fee of **\$6,850.00** which is  
18 reasonable, based on all of the services offered. (Agreement, ¶ 7; *see also*,  
19 Declaration of Sean Hartranft for ILYM Group, Inc.)
- 20 • Uncashed Checks: Funds represented by checks returned as undeliverable after a  
21 re-mailing, and funds represented by checks remaining un-cashed for more than  
22 180 days after issuance, will be tendered to the Unclaimed Property Fund or like  
23 fund. (Agreement, ¶ 4.4.3.)
- 24 • Release: In exchange for the above settlement consideration, Defendant shall be  
25 entitled to a *limited* release from the LWDA and each and every Aggrieved  
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1 Employee, including Plaintiffs.<sup>1</sup> (Agreement, ¶ 5.)  
2 (Leviant Decl., Exh. 1.)

3 After reviewing the Settlement and other related documents, and the filings submitted by  
4 Plaintiffs, **IT IS HEREBY ORDERED AS FOLLOWS:**

5 1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and  
6 conditions set forth in the Settlement, as modified herein. The Court finds that the terms of the proposed  
7 settlement are reasonable. In granting approval of the settlement the Court has considered the factors  
8 identified in *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal.  
9 Aug. 18, 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48  
10 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this  
11 Settlement.

12 2. The Court hereby identifies the Aggrieved Employees as:  
13 Any person employed by BASALITE in California and classified as a non-exempt  
14 employee who worked for BASALITE during the PAGA Period. The "PAGA Period"  
15 is July 18, 2020 through October 31, 2022.  
(Agreement, ¶¶ 1.4, 1.19.)

16 3. The Court hereby finds the Settlement was the product of informed, non-collusive  
17 negotiations conducted at arms' length by the Parties. In making these findings, the Court considered  
18 Defendants' potential liability, the benefit to the State of California, allocation of settlement proceeds  
19 among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties'  
20 respective positions rather than the result of a finding of liability at trial. The Court further finds that the  
21 terms of the Settlement have no obvious deficiencies. The Court finds that the risks of further  
22 prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of  
23 the totality of the circumstances, or (2) that no penalties would be awarded for some or all of the alleged  
24 violations.

25 4. The scope of the Release is limited in scope to the claims and theories set forth in  
26

27 <sup>1</sup> This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46  
28 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty  
employees as well as the government are bound by the judgment in an action brought under the act....").

1 Plaintiff Brennan's July 18, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor  
2 Code § 2699.3(a) and Plaintiff Estrada's December 24, 2021 letter to Defendant and the LWDA  
3 providing notice pursuant to Labor Code § 2699.3(a)A.

4 5. The Court hereby approves ILYM Group, Inc. to serve as the Administrator. The  
5 Administrator will be paid pursuant to the Agreement's terms for such distribution, in the requested  
6 amount of **\$6,850.00** out of the GSA to effectuate Administration.

7 6. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be  
8 \$190,000, less administration costs (\$6,850.00), attorney's fees (\$63,333.33), and costs awarded to  
9 Plaintiff's counsel (\$17,500.00). After awards, the amount remaining to distribute as penalties is  
10 **\$102,316.67**. The LWDA shall receive 75% of the penalties allocated, which is **\$76,737.50**. Aggrieved  
11 Employees shall receive 25% of the penalties allocated, which is **\$25,579.17**.

12 7. The Court hereby awards Counsel, Moon & Yang, APC, attorneys' fees in the amount of  
13 **\$63,333.33**, which is 33 1/3% of the settlement fund. The Court finds that the attorneys' fees are  
14 reasonable compared to amounts routinely approved in similar settlements and as guided by the  
15 California Supreme Court's decision concerning the awarding of fees from monetary funds for class  
16 members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016). Counsel proceeded on a  
17 contingency basis despite the uncertainty of any fee award. Counsel were necessarily precluded from  
18 pursuing other potential sources of fees because of work in connection with this Action. The Court  
19 observed that this is not a class action. It is more akin to contingent representation with an additional  
20 requirement of Court review due to the qui tam nature of a PAGA claim. Attorneys' fees that are fifty  
21 percent of a common fund are typically considered the upper limit, with thirty to forty percent commonly  
22 awarded in cases where the settlement is relatively small. *See Van Vranken v. Atlantic Richfield*  
23 *Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases where 30-50 percent was awarded  
24 involved "smaller" settlement funds of under \$10 million). Using class action fee awards as a  
25 comparison, the custom and practice in class actions is to award approximately one-third of a fund as a  
26 fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) ("Empirical studies show  
27 that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions  
28 average around one-third of the recovery."). Counsel's current lodestar is approximately \$75,887.00,

1 and Counsel indicates that not all tasks performed in this matter were recorded, and additional work will  
2 be required in the matter. Based on these considerations, including the lodestar cross-check, a fee award  
3 of 33 1/3% of the total settlement amount is reasonable.

4 8. The Court hereby awards Counsel litigation costs in the amount of \$17,500.00, based  
5 upon the \$17,500.00 cap on costs under the Settlement.

6 9. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on  
7 the provisions and timelines set forth in the Agreement.

8 10. This action is hereby DISMISSED WITH PREJUDICE.

9 11. All pending motion dates are removed from the Court's calendar and vacated as moot.

10 12. The Court shall retain jurisdiction with respect to all matters related to the administration  
11 and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the  
12 subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the  
13 determination of all controversies relating thereto.

14  
15 **IT IS SO ORDERED.**

16  
17 Dated: 2/1/23



Hon. Lauri A. Damrell  
SACRAMENTO COUNTY SUPERIOR COURT  
JUDGE

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7<sup>th</sup> Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **[AMENDED PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Larry M. Kazanjian  
Corina Johnson  
PALMER KAZANJIAN WOHL HODSON LLP.  
2277 Fair Oaks Blvd., Suite 445  
Sacramento, CA 95825  
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*Counsel for Defendant Basalite Building Products, LLC*

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the above-named document(s) has (have) been electronically served on counsel of record by an approved electronic service provider. The transmission of these documents was reported complete and a copy of the service confirmation will be maintained, along with the original document(s) and proof of service in our office.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **January 26, 2023** at Los Angeles, California.

H. Scott Leviant  
Type or Print Name

  
Signature