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

RICHARD EVANS, individually, and on behalf  
of other members of the public similarly situated,  
and on behalf of other aggrieved employees  
pursuant to the California Private Attorney  
General Act;

Plaintiff,

v.

MY PAINT STOP, LLC., dba CREATIVE  
PAINT, a California Limited Liability Company;  
and DOES 1 through 25, inclusive.

Defendants.

Case No. MSC21-01812

Honorable Charles S. Treat  
Department 12

**ORDER GRANTING MOTION FOR  
FINAL APPROVAL OF CLASS ACTION  
AND PAGA SETTLEMENT**

Date: February 16, 2023  
Time: 9:00 a.m.  
Dept: 12

**FILED**  
MAR 28 2023  
K. BIEBER CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
By   
A. Bieber, Deputy Clerk

1 **ORDER**

2 On February 16, 2023, at 9:00 a.m., in Department 12 of the above-captioned Court located at  
3 the Wakefield Taylor Courthouse, 725 Court Street, Martinez, California 94553, Plaintiff RICHARD  
4 EVANS ("Plaintiff") Motion for Final Approval of Class Action and PAGA Settlement came on for  
5 hearing as noticed before the Honorable Charles S. Treat. Miriam Schimmel appeared on behalf of  
6 Plaintiff and Dustin Burton appeared on behalf of Defendant MY PAINT STOP, LLC., dba  
7 CREATIVE PAINT ("Defendant"). The Court's tentative ruling became the order of the Court.

8 **The Court's Ruling:**

9 Plaintiff Richard Evans moves for final approval of his class action and PAGA settlement with  
10 defendant My Paint Stop, LLC. Defendant sells paint, and plaintiff worked at defendant's Danville  
11 location. Plaintiff also moves for an award of attorney fees (Line 13). This motion is granted.

12 Since preliminary approval was granted, the administrator has mailed notices to 115 class  
13 members. No objections or requests to opt out have been received.

14 **A. Background and Settlement Terms**

15 The original complaint was filed on August 30, 2021, raising class action claims on behalf of  
16 non-exempt employees, alleging that defendant violated the Labor Code in various ways, including  
17 failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to provide  
18 proper wage statements, and failure to pay all wages due on separation. The complaint also raised  
19 PAGA claims, which had been raised in a notice to the LWDA.

20 The settlement will create a gross settlement fund of \$600,000. The class representative  
21 payment to the plaintiff will be \$7,500. Attorney's fees are proposed to be \$200,000 (one-third of the  
22 settlement) (see Line 13). Litigation costs will not exceed \$30,000. The settlement administrator's  
23 costs (Simpluris) are \$4,000 (less than estimated at the time of preliminary approval). PAGA penalties  
24 will be \$25,000, resulting in a payment of \$17,500 to the LWDA. The net amount paid directly to the  
25 class members would be about \$353,280. The fund is non-reversionary. Based on the class size (115),  
26 the average net payment for each class member is approximately \$2,943.

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1 One half of the settlement amount will be deposited with the settlement administrator within  
2 30 days after final approval of the settlement, and the remainder within six months of final approval.  
3 The agreement does not specify remedies in event of a breach of the duty to pay. The court interprets  
4 the document to be subject to enforcement under Code of Civil Procedure § 664.6, such that the Court  
5 would have authority to impose an appropriate remedy in the event of any breach of the agreement.  
6 (See also Settlement Agreement, Par. 62.) If the parties do not agree with the Court's interpretation,  
7 they should so advise the Court in response to the tentative ruling. In addition, the Court notes that  
8 the settlement does not appear to state when the administrator must mail the checks to the class  
9 members, although it necessarily would be more than six months after final approval.

10 The proposed settlement will certify a class of all persons employed by defendant as non-  
11 exempt employees in California from August 30, 2017 to May 11, 2022.

12 The class members will not be required to file a claim. Class members may object or opt out  
13 of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds  
14 would be apportioned to class members based on the number of workweeks worked during the class  
15 period. A separate allocation of the employee's share of the PAGA penalties will be allocated to those  
16 employees based on the same formula.

17 Various prescribed follow-up steps will be taken with respect to mail that is returned as  
18 undeliverable. Checks undelivered or uncashed 180 days after mailing will be transferred to the State  
19 Controller's office.

20 The settlement contains release language covering "all claims, causes of action, damages,  
21 wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorneys' fees, costs, and  
22 any other form of relief or remedy in law, equity or whatever kind of nature, arising from the claims  
23 plead in the Action and any claims based on facts alleged in the operative complaint during the class  
24 Period" including a variety of specified statutory claims. (Settlement, Par. 30.) Under recent appellate  
25 authority, the limitation to those claims with the "same factual predicate" as those alleged in the  
26 complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A  
27 court cannot release claims that are outside the scope of the allegations of the complaint." "Put another  
28 way, a release of claims that goes beyond the scope of the allegations in the operative complaint" is

impermissible.” (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Formal and informal discovery were undertaken, resulting in the production of substantial documents. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. The unpaid wages and Labor Code penalties were estimated at about \$2.7 million, with another \$283,200 in potential PAGA penalties. This, however, presumed that plaintiff prevailed on all claims. Accordingly, the potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof, and information obtained concerning the extent of violations that “appeared to reflect a much lower violation rate than anticipated[.]” PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they (often, but not in this instance) include “stacking” of violations, the law may only allow application of the “initial violation” penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where “based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.”])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA on September 9, 2022.

#### **B. Legal Standards**

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

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

7 California law provides some general guidance concerning judicial approval of any settlement.  
8 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992)  
9 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public  
10 policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106  
11 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to  
12 be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto.*  
13 *Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have  
14 specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are  
15 implicated, the additional safeguard of judicial review, though more cumbersome to the settlement  
16 process, serves a salutary purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of*  
17 *America* (2006) 141 Cal.App.4th 48, 63.)

18 The requested representative payment of \$7,500 for the named plaintiff was deferred until this  
19 final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American*  
20 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807. Plaintiff has provided declarations in  
21 support of his request. He points out that he executed a broader release than the class as a whole, but  
22 do not identify any particular claims of value that he may have. They also risk damage to their  
23 reputation and more difficulty in obtaining employment. Plaintiff estimates that he spent 25-30 hours  
24 on the matter.

25 Litigation costs of \$30,000 are reasonable and are approved.

26 The settlement administrator's costs of \$4,000 are reasonable and are approved.

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1           **C. Discussion and Conclusion**

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

5           The motion is granted.

6           The Court directed Plaintiff's counsel to prepare an order reflecting the Court's entire tentative  
7 ruling and the other findings in the previously submitted proposed order and a separate judgment.

8           Counsel was directed to submit a judgment that provided for a compliance hearing after the  
9 settlement has been completely implemented, to be determined in consultation with the Department's  
10 clerk. Plaintiff's counsel are directed to submit a compliance statement one week before the compliance  
11 hearing date, and five percent of the attorney's fees are to be withheld by the claims administrator  
12 pending satisfactory compliance as found by the Court.

13           Plaintiff moves in Line 12 for final approval of the class action and PAGA settlement in this  
14 case, which is granted. On this Line he moves for attorney fees of \$200,000, representing a one-third  
15 percentage award, relying on the "common fund" theory. Even a proper common fund-based fee award,  
16 however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International*  
17 (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to  
18 determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by  
19 means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether  
20 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range,  
21 but the court is not necessarily required to make such an adjustment." (*Id.*, at 505.)

22           Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They  
23 estimate the lodestar at \$126,178, resulting in an implied multiplier of 1.59. They based this amount  
24 on a total of 17.4 hours. No adjustment from the one-third fee is necessary. The attorney's fees are  
25 reasonable and are approved.

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1 **IT IS HEREBY ORDERED THAT:**

2 1. This Court has jurisdiction over the subject matter of the action and over the Parties,  
3 including all members of the Settlement Class.

4 2. The Court finds that the class is properly certified as a class for settlement purposes  
5 only.

6 3. The Court appoints Plaintiff Richard Evans as Class Representative for settlement  
7 purposes only.

8 4. The Court appoints Jonathan M. Genish of Blackstone Law, APC as Class Counsel for  
9 settlement purposes only.

10 5. The Notice provided to the Settlement Class conforms with the requirements of  
11 California Code of Civil Procedure section 382, California Civil Code section 1781, California Rules  
12 of Court 3.766 and 3.769, the California and United States Constitutions, and any other applicable  
13 law, and constitutes the best notice practicable under the circumstances, by providing individual notice  
14 to all class members who could be identified through reasonable effort, and by providing due and  
15 adequate notice of the proceedings and of the matters set forth therein to the other class members. The  
16 notice fully satisfied the requirements of due process.

17 6. The Court finds the settlement was entered into in good faith, that the settlement is fair,  
18 reasonable and adequate, and that the settlement satisfies the standards and applicable requirements  
19 for final approval of this class action settlement under California law, including the provisions of  
20 California Code of Civil Procedure section 382 and California Rules of Court, Rule 3.769.

21 7. The Settlement Agreement is not an admission by Defendant or by any other released  
22 party, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant  
23 or any other released party. Neither this Order, the Settlement, nor any document referred to herein,  
24 nor any action taken to carry out the Settlement, may be construed as, or may be used as, an admission  
25 of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant or any  
26 of the other released parties.

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1           8.     No Settlement Class Members have objected to the terms of the Settlement.

2           9.     Upon entry of this Order, compensation to the Participating Class Members as that term  
3 is defined in the Settlement Agreement shall be paid pursuant to the terms of the Settlement.

4           10.    In addition to any recovery that Plaintiff may receive under the Settlement, and in  
5 recognition of the Plaintiff's efforts on behalf of the settlement class, the Court hereby approves the  
6 payment from the Gross Settlement Payment of an enhancement award to Plaintiff, in the amount of  
7 \$7,500.00.

8           11.    The Court approves the payment from the Gross Settlement Payment of attorneys' fees  
9 to Class Counsel in the sum of \$200,000.00 (one-third of the Gross Settlement Payment), and the  
10 reimbursement of actual litigation expenses in the sum of \$10,220.00. Both are reasonable amounts.  
11 The reasonableness of the fee award is determined based on a reasonable percentage of the common  
12 fund obtained for the class. Awarding fees on a percentage basis encourages efficient litigation  
13 practices and reflects the actual benefit obtained for the class.

14           12.    The Court approves and orders payment from the Gross Settlement Payment in the  
15 amount of \$4,000.00 to Simpluris for performance of settlement administration services.

16           13.    The Court approves and orders payment in the amount of \$18,750.00 to the Labor  
17 Workforce and Development Agency as 75% of the payment allocated toward PAGA penalties.

18           14.    The Parties are ordered to give notice of the judgment to all Class Members in  
19 accordance with California Rules of Court, rule 3.771(b).

20           15.    Funds for any settlement checks remaining uncashed after one hundred and eighty  
21 (180) will be distributed pursuant to the Code of Civil Procedure section 384, to the Controller of the  
22 State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500  
23 et seq., for the benefit of those Participating Class Members and PAGA Members who did not cash  
24 their checks until such time that they claim their property.

25           16.    Upon funding of the Settlement by Defendant, the Plaintiff and all members of the class  
26 who were not excluded from the class, shall have, by operation of this Order and Judgment, fully,  
27 finally and forever released, relinquished, and discharged Defendant and the Released Parties from all  
28 Settled Claims as defined by the terms of the approved settlement. This final judgment bars members

1 of the class who did not timely exclude themselves from the settlement from asserting the released  
2 Settled Claims in the future. The Settled Claims are defined as:

3 Any and all claims that were alleged in this Lawsuit, or that could have been raised that  
4 arise out of or are related to the allegations, claims, and theories alleged in the Lawsuit  
5 or any of the PAGA notices filed with the LWDA during the pendency of this Lawsuit  
6 by Class Counsel on behalf of any Settlement Class Member, and that occurred at any  
7 time between August 30, 2017 to May 11, 2022, including, all claims for unpaid  
8 overtime wages, unpaid minimum wages, meal period violations, rest period violations,  
9 failure to provide accurate wage statements, final wages not timely paid, and unlawful  
10 business practices under the California Labor Code and/or the California Business and  
11 Professions Code, including all claims for restitution or equitable relief, liquidated  
12 damages, penalties, attorneys' fees and costs.

13 17. This Court shall retain jurisdiction with respect to all matters related to the  
14 administration and consummation of the settlement, and any and all claims, asserted in, arising out of,  
15 or related to the subject matter of the lawsuit, including but not limited to all matters related to the  
16 settlement and the determination of all controversies relating thereto.

17 18. The settlement administrator shall file a final report by April 10, 2024 indicating the  
18 disbursements were made pursuant to the settlement.

19 19. A non-appearance case review re Compliance with the Distribution is set for April 18,  
20 2024 at 9:00 a.m. in Department 12 of this Courthouse located at the Wakefield Taylor Courthouse,  
21 725 Court Street, Martinez, California 94553.

22 20. Plaintiffs' counsel are to submit a compliance statement by April 11, 2024.

23 21. The ultimate judgment must provide for a compliance hearing after the settlement has  
24 been completely implemented, to be determined in consultation with the Department's clerk.  
25 Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date.  
26 Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory  
27 compliance as found by the Court.

28 **IT IS SO ORDERED.**

Dated: MAR 27 2023

  
Hon. Charles S. Treat  
Judge of the Superior Court

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**PROOF OF SERVICE**

I, Stephany Sinaguinan, certify and declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On March 21, 2023, I served a copy of the following document(s):

**ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION  
AND PAGA SETTLEMENT**

on the interested parties as follows:

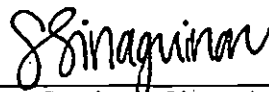
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*Attorneys for Defendant My Paint Stop LLC dba Creative Paint*

☒ **BY ELECTRONIC MAIL (E-MAIL):** I caused said document(s) to be delivered electronically to be delivered to the above referenced addressee(s) via email from email address [ssina@blackstonepc.com](mailto:ssina@blackstonepc.com) pursuant to California Code of Civil Procedure section 1010.6(e)(1). I did not receive any electronic message or other indication that the transmission was unsuccessful.

☒ **STATE** – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 21, 2023 at Beverly Hills, California.



Stephany Sinaguinan