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[additional parties continued on next page]

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

CARLETON EDWARDS, MICHAEL
ADAMS, and PETER HALL, individually and
on behalf of all other similarly situated
employees,
Plaintiffs,
vs.
SUBURBAN PROPANE, L.P., a Delaware
Limited Partnership; and DOES 1 to 100,
inclusive,
Defendants.

Case No. 34-2022-00314949-CU-OE-GDS

*Assigned for All Purposes to Hon. Jill Talley,
Department 27*

CLASS ACTION

**DECLARATION OF JAMES M. TREGLIO IN
SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: January 12, 2024

Time: 9:00 a.m.

[hearing set by Order dated August 7, 2023]

Dept.: 27

Judge: Hon. Jill Talley

Filed: February 2, 2022

Trial Date: None Set

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I, James M. Treglio, declare as follows:

1. I am an attorney licensed to practice law before this Court and the federal and state courts in California. I am over 18 years of age. I have personal knowledge of the facts set forth in this petition and could and would testify competently to them.

2. I am the lead attorney of the class action division for the law firm of Potter Handy, LLP, or “Plaintiff’s Counsel”), attorneys of record for Plaintiff Michael Adams (“Plaintiffs”) and the settlement class (the “Class”) in the above-captioned matter. I submit this declaration in support of Plaintiff’s final approval of a wage-and-hour class action settlement in the amount of \$979,854.70 which has increased to \$979,854.70 as a result of the escalator provision between Defendant Propane L.P. (“Defendants”) and the settlement class. A copy of the class and PAGA Settlement Memorandum of Understanding (the “Settlement Agreement”) was attached to my motion in support of Plaintiff’s motion for preliminary approval of the class action settlement.

3. On August 7, 2023, this Court entered an order preliminarily approving the Settlement Amount. The Court preliminarily approved the requested payment to the Class Representatives in the amount of \$10,000.00; Defendants agree to pay Plaintiff Hall \$40,000 for settlement of Plaintiff Hall's actual, constructive discharge claim alleged as the ninth cause of action in the *Hall* Complaint; Defendants' fees up to one-third of the Settlement Amount (\$326,618.23).

Adequacy of the Settlement

4. Based on my experience as a class action employment litigator, the response of the Court to this settlement and our firm's previously approved similar settlements, I believe the Settlement Agreement here is a fair and adequate compromise of the monetary relief claims raised by the Plaintiffs and the Class in this case.

5. The settlement ultimately reached by the parties was the product of Class Counsel's of an extensive body of information, documents, and damages calculations based thereon. ants' counsel provided Plaintiff's counsel with documents and data responsive to Plaintiffs' al discovery requests, the data included, *inter alia*, employee list (including dates of rment and rates of pay for all class members), payroll reports, and Plaintiff's personnel file. rties briefed their respective positions on the facts, claims, defenses, and assessments of the

1 risk of litigation. Throughout these processes, the strengths and weaknesses of the Plaintiff's and
2 Class members' claims were assessed by Class Counsel in addition to the demands and risks of
3 ongoing litigation and Defendant's defenses. As a result, we are confident that we obtained an
4 optimal settlement considering the totality of the circumstances.

5 6. The settlement is fair, adequate, and reasonable given the litigation risks and delay
6 inherent in further litigation and appeals. Both Plaintiffs and Defendants concluded that continued
7 litigation would be protracted and expensive, and that it is desirable that the Action be fully and
8 finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement
9 in order to limit further expense, inconvenience and distraction, to dispose to burdensome and
10 protracted litigation, and to permit the operation of Defendants' business without further expensive
11 litigation, and the distraction and diversion of its personnel with respect to matters in issue in the
12 Action. Both parties took into account the uncertainty and risks inherent in any litigation, especially
13 in complex cases such as the Action. The parties therefore determined that it is desirable and
14 beneficial to it that the Action be settled. Risks on both sides were considered in reaching the
15 Settlement.

16 7. Moreover, the parties engaged in extensive exchanges of informal discovery prior to
17 reaching a fair settlement in this matter. Accordingly, sufficient information existed to allow Class
18 Counsel to act intelligently in valuing this case and, given the parties' arms' length bargaining at
19 mediation, the extensive exchange of informal discovery, the experience of Class Counsel, the
20 confidential review of Defendants' financial documents, and the presumption of fairness clearly
21 applies. Based on comparison with other settlements of similar cases and claims, Class Counsel
22 maintains the settlement as fair, reasonable, and adequate, and in best interest of the Class.

23 *Reasonableness of Attorneys' Fees Sought*

24 8. As noted, Class Counsel is seeking final approval of attorneys' fees in the amount of
25 one-third of the Gross Settlement Fund (\$326,618.23), which is a reasonable fee and within the
26 normal range of fee awards for wage and hour class actions where fees are awarded as a percentage
27 of the common fund. The inclusion of the escalator clause itself shows the high quality of Class
28 Counsel's work and prevented Class Members settlement awards from being diluted. Class Counsel
29 diligently, efficiently, and creatively pursued this case and promptly reached a successful settlement

1 for the benefit of the entire Class. Under California law, the percentage method, i.e., a percentage
2 of the settlement value or common fund, is a permissible method to calculate attorney's fees. See
3 *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal. 5th 480, 489. "[T]rial courts have discretion to conduct
4 a lodestar cross-check on a percentage fee" or they may "use other means to evaluate the
5 reasonableness of a requested percentage fee." *Id.* at 506.

6 9. An additional factor militating in favor of the granting of the requested fee award is
7 the fact that this case was both legally and financially risky for Plaintiffs' Counsel. See *Vizcaino v.*
8 *Microsoft Corp*, 290 F.3d 1043, 1048-49 (9th Cir. 2002). While the parties dispute whether a class
9 would be appropriate if the litigation were to continue, they agree, for the purposes of this settlement
10 only, that the Class is subject to common compensation policies. Specifically, there was the prospect
11 of enormous cost inherent in class action litigation, as well as a battle with a corporation represented
12 by a well-respected law firm; in addition, in coming to a determination that this settlement is fair
13 and reasonable and in the best interests of the Class, Plaintiffs took into consideration the risk that
14 Defendants could prevail on its argument that the class should not be certified; the risk that
15 Plaintiffs' rest period claims lacked merit because Defendants maintained compliant rest period
16 policies throughout the Class Period. Plaintiffs, further took into account the rest of retroactive
17 preemption passing and also took into account Defendants' financial condition. If Plaintiff had lost
18 this case, Class Counsel would have recovered nothing, and would have lost their out-of-pocket
19 costs.

20 10. Potter Handy, LLP's aggregate lodestar includes time billed for researching, drafting
21 pleadings (including time spent researching and drafting Plaintiffs' amended complaint, the motion
22 for preliminary approval of the settlement, and the motion for final approval of the settlement),
23 researching and drafting discovery, gathering and reviewing documents and researching legal
24 authorities, preparation for and participation at the mediation session (including time spent
25 researching and drafting the mediation brief, and attending mediation session), researching and
26 drafting the settlement agreement, class notice, and claim form, and communications (telephone
27 conference, correspondence, meetings, e-mails, etc.) with Plaintiff, Defendant's counsel, Settlement
28 Class members and the Claim Administrator. The hourly rates shown below are the actual and
29 customary rates charged for each individual in all of our cases, including class action cases, and for

hourly paying clients. Through December 28, 2023, I and others at my firm, Potter Handy, LLP, spent a total of 153.9 hours litigating this case engaged in the litigation activities discussed above, equating to a total lodestar amount of \$93,022.50 based on my firm's hourly billing rates.

11. The following chart summarizes the hours expended at Potter Handy, LLP in connection with this litigation through December 28, 2023:

Name	Position	Bar Admin	Rate	Hours	Billings
James M. Treglio	Lead Attorney	2003	\$795	91.5	\$72,742.50
Waiza Ayesha	Paralegal	N/A	\$325	44.8	\$14,560
Trina Mercado	Paralegal	N/A	\$325	17.6	\$5,720
TOTAL	N/A	N/A	N/A	153.9	\$93,022.50

12. The breakdown of tasks that comprise the billing for this action are as follows: presuit investigation, including personnel file review (35.9 hours), drafting and filing of PAGA notification and complaint (22.3 hours), propounding discovery (23.8 hours), mediation (34.4 hours), settlement discussions/approval motions (13.7 hours), court appearances (4 hours), and email correspondence (19.8 hours).

13. My current hourly rate of \$795, as well as my paralegals hourly rates of \$325 used in calculating the lodestar are the current hourly rates my firm charges currently and has charged within the last two years to non-contingent hourly clients and thus necessarily reflect the current market value of our legal services. These rates are commensurate with the hourly rates charged to by other firms in San Diego County.

14. A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095. When determining a reasonable hourly rate, courts may consider factors such as skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632. Class Counsels' skill and experience support their hourly rates. Their practices are limited exclusively to litigation, focusing on the representation of employees in wage and hour matters.

Costs Incurred

15. The actual litigation costs incurred in this case by Plaintiffs' Counsel to date amounts to no less than **\$7,785.71** expended by Potter Handy LLP., which includes anticipated costs in association with the filing and serving of the present motion, and in connection with shepherding this settlement through funding and disbursement.

16. The Costs are itemized as follows:

PAGA Initiation Fee:	\$75
Complaint Filing Fee:	\$435
Complex Filing Fee:	\$1,000
Postage (Complex Fee):	\$1.26
Mediator's Fee:	\$3,000
Expert Fees:	\$3266.25
Service Cost:	<u>\$83.20</u>
Total:	\$7,785.71

Class Representative Payments

17. Plaintiffs request that the Court grant final approval to the reasonable and fair Class Representative Payment to Plaintiffs in the amount of \$10,000.00 based on the reasons specified in his declaration in support of preliminary approval which are outlined in Plaintiff's Declaration in Support of Preliminary Approval and are itemized as follows: the time and effort that the named Plaintiff devoted to this case; the valuable assistance they provided to Class Counsel; and the fact that they entered into general releases of claims that is broader than the release of the Class. Plaintiff also assumed significant risk in bringing this litigation—namely, had they lost, they would have been responsible for paying Defendants' costs. Plaintiff provided invaluable assistance to Class Counsel and the Class in this case, including providing factual background for the mediation and the Class Complaint; speaking with other potential class members about their experiences working for Defendants; reviewing the Complaint and FAC, and the Answer; providing documents about Defendants' compensation plan; participating in phone calls as well as in-person meetings to discuss litigation and settlement strategy; actively participating in an all-day mediation, and reviewing the settlement documents. Plaintiffs agreed to participate in this case with no guarantee of personal

benefit. Further, Plaintiffs agreed to undertake the financial risk as Class Representatives and exposed themselves to the risk of negative publicity by anyone who opposed this case. Plaintiffs also entered into a general release, which is broader than the release by the Class Members.

Attorney Experience

18. I was admitted to the California Bar in 2003. I received my Bachelor of Arts degree in Government from College of William & Mary in 1998 and my Juris Doctor degree from the University of San Diego in 2003. From 2003 through 2006, I was the staff attorney for the Fair Housing Council of San Diego, where I specialized in housing discrimination enforcement. In 2007, I joined the law firm of Clark & Markham, LLP, where I specialized in consumer and wage and hour class actions, which has comprised my practice of law ever since. In 2012, the law firm of Clark & Markham, LLP into the Clark Law Firm and the Markham Law Firm. I stayed with the Clark Law Firm, and in 2015, the firm became Clark & Treglio after I was made partner. By 2013, my work with the Clark Law Firm, Clark & Markham, LLP, and Clark & Treglio resulted in nearly 5% of all recoveries made by the LWDA up to that point.

19. In 2017, I joined Keegan & Baker, LLP, which was also a class action firm. Whereas my work at Clark & Markham, LLP and the Clark Law Firm was primarily focused on wage and hour class actions, my work at Keegan & Baker, LLP involved more consumer actions, including data breach class actions, and actions brought under the Fair Credit Reporting Act.

20. In 2018, I left Keegan & Baker, LLP and joined the Melmed Law Group, P.C. The Melmed Law Group, P.C., is an employment law firm with a focus on class and PAGA representative actions. I began my representation of the Plaintiff in this action when I was employed by the Melmed Law Group, P.C. In 2019, I joined my current firm, Potter Handy, LLP, to become head of its new class action division. In that capacity, I litigate both consumer and employment class actions throughout the State of California.

21. Since 2007, I have specialized in complex wage and hour and consumer class action litigation. I have been involved in every stage of class action litigation as both a lead counsel, the lead and primary associate, and as co-counsel. A copy of my firm's resume was attached to my declaration in support of Preliminary Approval.

1 Public Policy Considerations Further Support the Fee Requested

2 22. My firm undertook the litigation on a wholly contingent basis. From the outset, my
3 firm understood that we were embarking on a complex, expensive and lengthy litigation with no
4 guarantee of ever being compensated for the enormous investment of time and money that the case
5 would require. In undertaking that responsibility, my firm was obligated to assure that sufficient
6 resources of attorneys were dedicated to the prosecution of the litigation and that funds were
7 available to compensate staff and for the considerable out-of-pocket costs that a case such as this
8 entails. Moreover, in committing to fully prosecute this case, my firm did not work on other
9 potentially profitable matters.

10 23. Because of the nature of a contingent practice where cases are predominantly “big
11 cases” lasting several years, not only do contingent litigation firms have to pay regular overhead,
12 they also have to advance the expenses of the litigation. With an average lag time of several years
13 for these cases to conclude, the financial burden on contingent counsel is far greater than on a firm
14 that is paid on an ongoing basis.

15 24. The above does not even take into consideration the possibility of no recovery. It is
16 wrong to assume that a law firm handling complex contingent litigation always wins. Tens of
17 thousands of hours have been expended in losing efforts. The factor labeled by the courts as “the
18 risks of litigation” is not an empty phrase.

19 25. There are numerous cases where plaintiff’s counsel in contingent cases such as this,
20 after the expenditure of many hours, have received no compensation. It is unfortunate, but true, that
21 plaintiff’s counsel who litigate cases in good faith and receive no fees are often the most diligent
22 members of the plaintiff’s bar. It is only the knowledge by defendants and their counsel that the
23 leading members of the plaintiff’s bar are actually prepared to, and will, force a resolution on the
24 merits and go to trial that permits meaningful settlements in actions such as this.

25 26. I am aware of many hard-fought lawsuits where, because of the discovery of facts
26 unknown when the case was commenced, changes in the law during the pendency of the case or a
27 decision of a judge or jury following a trial on the merits, excellent professional efforts of members
28 of the plaintiff’s bar produced no fee for plaintiff’s counsel.

29 27. The foregoing refutes the oft-heard rhetoric that merely filing a class action

1 guarantees a settlement and a large fee. The truth is that the mere filing of an action does not ensure
2 that there will be any settlement or fee. It takes hard and diligent work by skilled counsel to develop
3 facts and theories which will persuade defendants to enter into serious settlement negotiations. If
4 defendants believe they will prevail, experience shows that they will litigate to the end. The risk
5 factor is real.

6 28. Losses such as those described above are exceedingly expensive and can often
7 threaten the survival of a law firm. Onlookers often focus on the aggregate fees awarded but fail to
8 take into consideration that those fees are used to cover enormous overhead expenses incurred
9 during the course of the litigation, are taxed by federal, state and local authorities and, when reduced
10 to a bottom line, are far less imposing to each individual involved than the aggregate fee awarded
11 appears. Lawyers who specialize in contingent matters live in a world of uncertainty. Unlike the
12 defense bar, contingent plaintiff's counsel normally has no steady flow of income. Changes in the
13 law through legislation or judicial decree can be catastrophic, frequently affecting contingent
14 counsel's entire caseload. These are real threats.

15 29. Courts have repeatedly held that it is in the public interest to have experienced and
16 able counsel enforce consumer protection and privacy laws. Vigorous private enforcement of the
17 consumer protection laws can only occur if private plaintiffs can obtain parity in representation with
18 that available to large, institutional interests. If this important public policy is to be carried out, the
19 courts must award fees that will adequately compensate private plaintiff's counsel, taking into
20 account the enormous risks undertaken with a clear view of the economics of a class action.

21 30. In many complex actions such as this one, able counsel for plaintiffs can be retained
22 only on a contingent basis. A large segment of the public would be denied a remedy in actions such
23 as this one if fees awarded by the courts in successful cases did not fairly and adequately compensate
24 counsel for the services provided, the serious risks undertaken, and the delay before any
25 compensation is received.

26 31. Fair fee awards in successful cases ensure that competent legal services will be
27 available. Professor Hornstein once noted the adverse effect that traditionally low compensation in
28 bankruptcy cases once had upon the quality of the bankruptcy bar. *Hornstein, The Counsel Fee in*
29 *Stockholder Derivative Suits*, 30 Colum. L. Rev. 784, 815 (1939). The complexity and societal

1 importance of this type of litigation calls for the most able counsel obtainable for plaintiffs. In order
2 to encourage first rate attorneys to represent plaintiffs on a contingent basis in this type of important
3 litigation, attorneys' fees awarded should reflect this goal.

4 32. In its landmark decision, *Vasquez v. Superior Court* (1991) 4 Cal.3d 800, a
5 unanimous Supreme Court noted:

6 [¶] Thirty years ago commentators, in urging the utility of the class suit to vindicate
7 the rights of stockholders, made this incisive observation: "Modern society seems
8 increasingly to expose men to . . . group injuries for which individually they are in
9 a poor position to seek legal redress, either because they do not know enough or
10 because such redress is disproportionately expensive. If each is left to assert his
11 rights alone if and when he can, there will at best be a random and fragmentary
12 enforcement, if there is any at all. This result is not only unfortunate in the particular
case, but it will operate seriously to impair the deterrent effect of the sanctions
which underlie much contemporary law. The problem of fashioning an effective
and inclusive group remedy is thus a major one." (Kalven and Rosenfield, *Function*
of Class Suit (1941) 8 U.Chi.L.Rev. 684, 686.)

13 *Id.* at 807. The same rationale applies to this litigation. The express judicial policy of California is
14 to favor the maintenance of these types of representative actions. See, e.g., *Sav-On Drug Stores, Inc.*
15 *v. Superior Court*, (2004) 34 Cal.4th 319, 340; *Pearce v. Superior Court* (1983) 149 Cal.App.3d
16 1058, 1065; *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 126; and
17 *Massachusetts Mutual Life Insurance Company v. Superior Court* (2002) 97 Cal.App.4th 1282,
18 1290 fn. 3. As recognized by the California Supreme Court in *Sav-On Drug Stores, Inc.*,

19 And, as we have recognized, "this state has a public policy which encourages the
20 use of the class action device." *Richmond v. Dart Industries, Inc.*, (1981) 29 Cal.3d
21 462, 473. " 'By establishing a technique whereby the claims of many individuals
22 can be resolved at the same time, the class suit both eliminates the possibility of
23 repetitious litigation and provides small claimants with a method of obtaining
redress for claims which would otherwise be too small to warrant individual
litigation.'" *Id.* at p. 469.

24 *Sav-On Drug Stores, Inc.*, 34 Cal.4th at 340. One of the purposes for awarding fees in such a
25 situation is:

26 [E]ncouragement of the attorney for the successful litigant, who will be more
27 willing to undertake and diligently prosecute proper litigation for the protection of
recovery of the fund if he is assured that he will be promptly and directly
compensated should his efforts be successful.

28 *Estate of Stauffer*, (1959) 53 Cal. 2d 124, 132.

29 33. Class Counsel respectfully urges that these important public policy considerations

1 support the Court's approval of the fee requested.

2 34. I declare under penalty of perjury under the laws of the United States and the State
3 of California that the foregoing is true and correct.

4 Executed on December 15, 2023, in San Diego, California.

5
6 
James M. Treglio, Esq.