

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 13 2023

BY Amber M. Gear
AMBER M. GEAR, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

EDUARDO RIVERA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

PATRIOT PAVING, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2210619

[Assigned to the Hon. Jessica Morgan, Dept.
S26, for all purposes]

**~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF JUDGMENT**

~~PROPOSED~~ ORDER GRANTING FINAL APPROVAL OF SETTLEMENT; ENTRY OF JUDGMENT

1 Plaintiff Eduardo Rivera's Motion for Final Approval of the Settlement (the "Final
2 Approval Motion"), as set forth in the Class Action and PAGA Settlement Agreement and
3 Release of Claims ("Settlement Agreement"), came for a hearing in Department S26 of the
4 above-entitled court. The Final Approval Motion was unopposed by Defendant Patriot Paving,
5 Inc. ("Defendant").

6 Having considered the Final Approval Motion, the Settlement Agreement, the
7 Declarations, and all other materials properly before the Court and having conducted an inquiry
8 pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement
9 Agreement was entered by all parties in good faith, and the Settlement Agreement is approved.
10 Due and adequate notice having been given to the Class, and the Court having considered the
11 Settlement Agreement, all papers filed and proceedings had herein and all oral and written
12 comments received regarding the proposed settlement, and having reviewed the record in this
13 Action, and good cause appearing,

14 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

15 1. The Court, for purposes of this Judgment and Order ("Judgment"), refers to all
16 defined terms (i.e., terms with initial capitalization) as set forth in the Settlement Agreement.

17 2. The Court has jurisdiction over the subject matter over this Action, the
18 Plaintiff/Class Representative Eduardo Rivera, the Class Members, and Defendant.

19 3. The Court finds that the distribution of the Class Notice, as provided for in the
20 Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable
21 under the circumstances to all Class Members and fully met the requirements of California law
22 and due process under the California and United States Constitution. Based on evidence and
23 other material submitted, the actual notice to the class was adequate.

24 4. The Court finds that the instant Action presented a good faith dispute of the
25 claims alleged, and the Court finds in favor of settlement approval.

26 5. The Released Class Claims on behalf of the Participating Class Members
27 included:
28

1 All claims alleged in the Complaint or which could have been
2 alleged based solely upon the facts in the Complaint, including: (a)
3 failure to pay minimum wages, (b) failure to pay overtime wages,
4 (c) failure to provide meal periods and failure to pay premiums at
5 the regular rate, (d) failure to provide rest breaks and failure to pay
6 premiums at the regular rate, (e) failure to reimburse business
7 expenses, (f) failure to timely pay wages upon separation of
8 employment, (g) failure to provide accurate itemized wage
9 statements, (h) unfair and unlawful competition, and (i) all other
10 claims for statutory penalties based on the facts or claims alleged
11 in the Complaint.

12 6. The Released PAGA Claims on behalf of the PAGA Members included:

13 All PAGA claims that Plaintiff alleged against the Released
14 Parties, on behalf of the Aggrieved Employees and the State of
15 California, based on the facts stated in the Complaint or which
16 could have been stated based solely upon the facts in the
17 Complaint and in the relevant LWDA notice letters, including all
18 PAGA claims seeking civil penalties premised upon: (a) failure to
19 pay minimum wages, (b) failure to pay overtime wages, (c) failure
20 to provide meal periods and failure to pay premiums at the regular
21 rate, (d) failure to provide rest breaks and failure to pay premiums
22 at the regular rate, (e) failure to reimburse business expenses, (f)
23 failure to timely pay wages each period and upon separation of
24 employment, (g) failure to provide accurate itemized wage
25 statements, and (h) all other claims for civil penalties recoverable
26 under the Private Attorneys General Act, Labor Code §§ 2698 *et*
27 *seq.* based on the facts or claims alleged in the Complaint. The
28 time period governing the Released PAGA Claims shall be any
time during the PAGA Period.

7. There were no Objections to the Settlement, and one Request for Exclusion. All
Class Members (except for the one opt-out) are Participating Class Members, who are entitled to
an Individual Class Payment pursuant to the Settlement and this Judgment. Likewise, all PAGA
Members are entitled to an Individual PAGA Payment, constituting a pro rata share of PAGA
Penalties.

8. The Court approves the Settlement, as set forth in the Settlement Agreement and
each of the releases and other terms, as fair, just, reasonable, and adequate as to the Settling
Parties. The Parties are directed to perform in accordance with the terms set forth in the
Settlement Agreement.

1 9. The Parties are to bear their own costs, except as otherwise provided in the
2 Settlement Agreement.

3 10. For purposes of effectuating this Order and Judgment, this Court has certified the
4 following class: "All current and former nonexempt employees employed by Defendant Patriot
5 Paving, Inc., in California at any time during the Class Period of May 27, 2018, through April
6 10, 2023." The Court deems this definition sufficient for purposes of California Rules of Court,
7 rule 3.765(a).

8 11. With respect to the Class and for purposes of approving this Settlement, this Court
9 finds and concludes as follows: (a) the Class Members are ascertainable and so numerous that
10 joinder of all members is impracticable; (b) there are questions of law or fact common to the
11 Class Members, and there is a well-defined community of interest among the Class Members
12 with respect to the subject matter of the Action; (c) the claims of the Class Representative are
13 typical of the claims of the Class Members; (d) the Class Representative has fairly and
14 adequately protected the interests of the Class Members; (e) a class action is superior to other
15 available methods for an efficient adjudication of this controversy; and (f) Class Counsel are
16 qualified to serve as counsel for the Plaintiff in his individual and representative capacity and for
17 the Class.

18 12. By this Judgment, the Class Representative shall release, relinquish, and
19 discharge, and each of the Participating Class Members shall be deemed to have, and by
20 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
21 discharged all Released Class Claims, as defined in the Settlement Agreement.

22 13. Neither the Settlement Agreement nor the Settlement contained therein, nor any
23 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
24 or the Settlement (i) is or may be deemed to be or may be used by the Class Representative or
25 Participating Class Members as an admission of, or evidence of, the validity of any of the
26 Released Class Claims, or of any wrongdoing or liability of Defendant or any of the other
27 Released Parties; or (ii) is or may be deemed to be or may be used by any of the Class
28 Representative or Participating Class Members as an admission of, or evidence of, any fault or

omission of Defendant or any of the other Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendant or any of the other Released Parties may file the Settlement Agreement and/or the Judgment from this Action in any other action that may be brought against it or them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14. The Gross Settlement Amount to be paid under the Settlement Agreement is \$299,000. From this amount, Class Counsel sought a Class Counsel Fee Payment of \$99,666.66, Class Counsel's litigation expenses of \$10,401.28, a Service Payment to Class Representative Plaintiff Eduardo Rivera of \$7,500, an Administrator Expenses Payment of \$6,000.00 to Phoenix Settlement Administrators, and \$7,500 to the LWDA for PAGA penalties and \$2,500 to the PAGA Members for PAGA Penalties. Defendant does not oppose these requests. In addition, and concurrently with paying the Settlement Amount, Defendant shall separately pay all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, which shall be reported through the Settlement Administrator. The Court finds that the Settlement Amount is fair, reasonable and adequate, and awards the payments set forth below from the Settlement Amount:

A) \$99,666.66 to Class Counsel for Class Counsel Fee Payment in light of the benefit obtained on behalf of the Class, which shall be divided 40% to Lauby Mankin Lauby LLP, 40% to Law Offices of Kirk Hanson, and 20% to Law Offices of Amador L. Corona as a referral fee;

B) \$10,401.28 to Class Counsel's litigation costs, which shall be allocated as \$7,738.78 to Lauby Mankin Lauby LLP and \$2,662.50 to Law Offices of Kirk Hanson;

C) \$7,500 to Class Representative Eduardo Rivera as a Service Award;

D) \$6,000.00 to the Settlement Administrator, Phoenix Settlement Administrators;

E) \$7,500 to the LWDA;

1 F) \$2,500 to the PAGA Members on a pro rata basis;

2 G) After deducting the foregoing payments from the Gross Settlement
3 Amount, the remainder shall form the Net Settlement Amount payable to the
4 Participating Class Members as set forth in the Settlement Agreement and as calculated
5 by the Settlement Administrator.

6 15. The Settlement Administrator is directed to calculate the Participating Class
7 Member's Individual Class Payments and the PAGA Members' Individual PAGA Payments and
8 issue all payments within in accordance with the Settlement Agreement and this
9 Order/Judgment.

10 16. Concurrently with mailing the settlement checks to the Participating Class
11 Members and PAGA Members, the Settlement Administrator shall include a Notice of Entry of
12 Judgment to all Class Members either on a postcard or as a detachable portion of the check for
13 the Participating Class Members, noting the following: "Please be advised that on [insert date],
14 2023, the Superior Court of California for the County of San Bernardino entered Judgment in the
15 case entitled *Rivera v. Patriot Paving, Inc., et al.*, pending in Superior Court of the State of
16 California, County of San Bernardino, Case No. CIVSB2210619, on behalf of all current and
17 former nonexempt employees employed by Patriot Paving, Inc., in California at any time during
18 the Class Period of May 27, 2018, through April 10, 2023."

19 17. The Class Members shall have 180 days to negotiate the settlement check from
20 the date of issuance by the Settlement Administrator. In the event that a Participating Class
21 Member or PAGA Member does not negotiate his/her check within this time period, the check
22 will be canceled. The value of the unclaimed funds in the Settlement Administrator's account as
23 a result of a failure to timely cash a settlement check shall be issued to the State Controller's
24 Office for the State of California in the name of the person.

25 18. The following dates shall govern for purposes of this implementing this
26 Order/Judgment:
27
28

1	November 13, 2023	The Final Order is entered and the Effective Date occurs.
2		
3	November 28, 2023 JLM	Defendant shall wire the Gross Settlement Amount, plus its share of payroll taxes, to the Settlement Administrator.
4	December 4, 2023	
5	December 8, 2023	Settlement Administrator to issue all Individual Class Payments to the Participating Class Members, Individual PAGA Payments to the PAGA Members, payment to Class Counsel for the Class Counsel Fee Payment and Litigation Expenses, the Service Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, and pay itself the Administrator Costs.
6		
7		
8		
9		
10		
11		
12	180 days after payment is issued (approximately June 5, 2024)	Deadline for Participating Class Members and PAGA Members to cash checks.
13		
14	July 8, 2024	Counsel to file a declaration from the Settlement Administrator setting forth the disbursements that were actually made, including any uncashed checks and status of process of forwarding unclaimed funds to the State Controller.
15		
16		
17		
18		
19	Date: _____, 2024	OSC hearing re: status of disbursements.
20	Time: _____	
21		

19. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the Class Representative, the Class Members, and Defendant for the purposes of supervising the implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement and this Judgment.

IT IS SO ORDERED.

Dated: 11/13/23

HON. JESSICA MORGAN Jessica L. Morgan

~~PROPOSED~~ ORDER GRANTING FINAL APPROVAL OF SETTLEMENT; ENTRY OF JUDGMENT