

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE

03/22/2024

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Superior Court of California,
County of Tulare
02/09/2024
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

FRANCISCO MEDRANO, individually, and
on behalf of Eligible Aggrieved Employees
pursuant to the Private Attorneys General Act
("PAGA");

Plaintiff,

v.

G & J HEAVY HAUL, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: VCU292423
[Consolidated with Case No.: VCU292424]

Assigned for All Purposes to:
Honorable John P. Bianco
Department 2

CLASS ACTION

**~~PROPOSED~~ ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: March 11, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department 2

Complaint Filed: July 8, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Francisco Medrano's
2 ("Plaintiff") Motion for Final Approval of Class Action Settlement, and considering the papers
3 submitted in support of the motion, including the Joint Stipulation and Settlement Agreement
4 ("Settlement Agreement," "Settlement," or "Agreement"), hereby **FINDS AND ORDERS**:

5 Plaintiff and Defendant G & J Heavy Haul, Inc. ("Defendant") entered the Settlement
6 Agreement on or about June 20, 2023 to settle this lawsuit.

7 The Court entered an order dated October 5, 2023 preliminarily approving the settlement
8 of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure
9 section 382 and California Rule of Court 3.769, ordering notice to be sent to the Class Members,
10 providing the Class Members with an opportunity to object to the Settlement or exclude
11 themselves from the Class, and scheduling a Final Approval Hearing.

12 The Court held a Final Approval Hearing on March 11, 2024 to determine whether to
13 give final approval to the Settlement of this lawsuit.

14 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
15 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
16 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
17 in the Settlement Agreement.

18 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
19 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
20 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
21 including jurisdiction to approve the Settlement and grants final certification of the Class.

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1 3. Final Class Certification. The Court finds the Class satisfies all applicable
2 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
3 process. The Court certifies the Class consisting of all current and former hourly-paid or non-
4 exempt employees employed by Defendant within the State of California at any time between
5 July 8, 2018, through June 3, 2023 (“Class,” “Class Members,” and “Class Period”). There are
6 five hundred eighty (580) Class Members who did not submit valid and timely Requests for
7 Exclusion from the Settlement.¹

8 4. Adequacy of Representation. Class Counsel fully and adequately represented the
9 Class for the purposes of entering and implementing the Settlement and satisfied the
10 requirements of Code of Civil Procedure section 382.

11 5. Notice Packet. The Court finds the Notice of Class Action Settlement and
12 Request For Exclusion (“Notice Packet”) and its distribution to the Class Members were
13 implemented pursuant to the Settlement and this Court’s Preliminary Approval Order. The Court
14 also finds the Notice Packet:

- 15 a. constitutes notice reasonably calculated to apprise the Class Members of: (i)
16 pendency of this lawsuit; (ii) material terms and provisions of the Settlement
17 Agreement and their rights; (iii) their right to object to any aspect of the
18 Settlement Agreement; (iv) their right to exclude themselves from the Settlement
19 Agreement; (v) their right to receive settlement payments; (vi) their right to
20 appear at the Final Approval Hearing; and (vii) binding effect of the orders and
21 judgment in this lawsuit on all the Class Members;
- 22 b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure
23 section 382, California Rule of Court 3.769, and due process;
- 24 c. constitutes the best practicable notice to the Class Members under the
25 circumstances of this lawsuit; and
- 26 d. constitutes notice reasonable, adequate, and sufficient to the Class Members.

27 ¹ The Settlement Administrator mailed out Notice Packets to five hundred eighty-two
28 (582) Class Members and received two (2) requests for exclusion. Thus, there are five
hundred eighty (580) Class Members who will receive settlement payments.

1 6. Final Settlement Approval. The terms and provisions of the Settlement
2 Agreement have been entered into in good faith and are the product of arm's-length negotiations
3 by experienced counsel who have carried out a meaningful investigation of the claims. The
4 Settlement Agreement and all its terms and provisions are fully and finally approved as fair,
5 reasonable, adequate, and in the best interests of the Parties. The Parties are hereby directed to
6 implement the Settlement Agreement according to its terms and provisions.

7 7. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
8 any action to enforce the terms and provisions of the Settlement Agreement.

9 8. Binding Effect. The terms and provisions of the Settlement Agreement and this
10 Order and Judgment are binding on Plaintiff, Class Members, Eligible Aggrieved Employees,
11 and their spouses, heirs, registered domestic partners, executors, administrators, successors, and
12 assigns. In addition, those terms shall have res judicata and other preclusive effect in all pending
13 and future claims, lawsuits, or other proceedings maintained by or on behalf of any such persons
14 to the extent those claims, lawsuits, or other proceedings involve matters that were or could have
15 been raised in this lawsuit and are encompassed by the Class Released Claims and Private
16 Attorneys General Act of 2004 ("PAGA") Released Claims. The Settlement Agreement will
17 have no binding effect upon, and provide no res judicata preclusion to, those Class Members
18 who have submitted timely requests for exclusion.

19 9. Release by All the Class Members. In exchange for the consideration set forth in
20 the Agreement, Plaintiff and all Class Members who do not submit a valid and timely Request
21 for Exclusion, on behalf of himself or herself, his or her heirs, descendants, dependents,
22 executors, administrators, assigns, and successors, fully and finally release and discharge the
23 Released Parties from any and all of the Class Released Claims within the Class Period. This
24 waiver and release will be final and binding on the Effective Date and will have every preclusive
25 effect permitted by law.

26 a. Release by Plaintiff and State of California. Plaintiff, State of California, and
27 California Labor and Workforce Development Agency ("LWDA") will release
28 the Released Parties of the claims set forth in the PAGA Released Claims.

1 b. General Release by Plaintiff. In consideration for the consideration set forth in the
2 Agreement, Plaintiff, for himself and his heirs, successors, and assigns, waives,
3 releases, acquits, and forever discharges the Released Parties from any and all
4 claims, actions, charges, complaints, grievances, and causes of action, of whatever
5 nature, whether known or unknown, which exist or may exist on Plaintiff's behalf
6 as of the date of the Agreement. Plaintiff also expressly waives and relinquishes
7 any and all claims, rights or benefits he may have under Civil Code section 1542.

8 c. Released Parties. The Released Parties include Defendant together with its
9 parents, shareholders, members, predecessors, successors, all affiliates,
10 subsidiaries, officers, directors, members, agents (including any investment
11 bankers, accountants, insurers, reinsurers, attorneys, and any past, present or
12 future officers, directors, and employees), employees, and stockholders.

13 10. Class Representative Enhancement Payment. The Court finds the Class
14 Representative Enhancement Payment of \$5,000, to be paid by Defendant to Plaintiff out of the
15 Maximum Settlement Amount, to be reasonable and appropriate. The Class Representative
16 Enhancement Payment is to be paid pursuant to the terms and provisions set forth in the
17 Settlement Agreement.

18 a. The rationale for making enhancement payments is class representatives should
19 be compensated for the expense and risk they incurred in conferring a benefit on
20 the Class. Criteria courts consider include: (1) risk to the class representatives in
21 commencing suit; (2) notoriety and personal difficulties; (3) amount of time and
22 effort spent by the class representatives; (4) duration of the litigation; and (5)
23 personal benefit (or lack thereof) enjoyed by class representatives.

24 b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the
25 risks inherent in the services as the class representative, duration of the case and
26 time involved, and benefits created for the Class, the Court approves the payment
27 of the Class Representative Enhancement Payment of \$5,000 to Plaintiff.

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11. Attorneys' Fees and Costs. The Court finds the attorneys' fees of \$367,500, to be paid by Defendant to Class Counsel out of the Maximum Settlement Amount, to be reasonable and appropriate. In addition, the Court finds the attorneys' costs as reimbursement for actual litigation costs incurred of \$18,723.93, to be paid by Defendant to Class Counsel out of the Maximum Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Class Members. Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiff or Class Members in connection with or related in any manner to this lawsuit, Settlement Agreement, settlement administration, and/or Class Released Claims and PAGA Released Claims.

a. The Court has an independent right and responsibility to review the attorneys' fees and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The attorneys' fees of \$367,500 is thirty-five percent (35%) of the common fund created for the benefit of the Class and is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk undertaken, difficult nature of this litigation, skills required, percentage fees award in previous and other cases, and contingent fees charged in the marketplace, the Court finds the attorneys' fees is consistent with the marketplace, is reasonable, and is approved.

b. The Court reviewed the declaration of Douglas Han regarding the costs expended in prosecuting this case. Under the terms of the Settlement, Class Counsel may seek reimbursement of up to \$25,000 in litigation costs. The Court finds Class Counsel expended \$18,723.93 in litigation costs, and such costs were reasonable. Thus, the Court approves the payment of the attorneys' costs of \$18,723.93 from the common fund for the reimbursement of Class Counsel's litigation costs.

1 12. Settlement Administration Costs. The Court finds Settlement Administration
2 Costs of \$11,500, to be paid by Defendant to the Settlement Administrator out of the Maximum
3 Settlement Amount, to be reasonable and appropriate. The Settlement Administration Costs are
4 to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

5 a. The Court reviewed the declaration of Kevin Lee from Phoenix Class Action
6 Administration Solutions, the Settlement Administrator. The Court finds notice
7 was provided to the Class pursuant to the Preliminary Approval Order, constitutes
8 the best practicable notice to the Class, and satisfied due process. The Court
9 approves the payment of the Settlement Administration Costs of \$11,500 for the
10 Settlement Administrator's services in administering the Settlement.

11 13. PAGA Payment. The Court finds the PAGA Payment of \$100,000, seventy-five
12 percent (75%) of which (\$75,000) will be paid to the LWDA out of the Maximum Settlement
13 Amount and twenty-five percent (25%) of which (\$25,000) shall be distributed to the Eligible
14 Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment
15 is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

16 14. Funding the Maximum Settlement Amount. Within fourteen (14) calendar days
17 following the Effective Date, Defendant will make a single payment of \$1,050,000 into the
18 Qualified Settlement Fund ("QSF"), which the Settlement Administrator will manage and
19 establish. Within twenty-one (21) calendar days of the Effective Date and seven (7) calendar
20 days of Defendant fully funding the QSF with the Maximum Settlement Amount, the Settlement
21 Administrator will issue settlement payments to the appropriate entities and persons.

22 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
23 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the
24 Settlement was the product of arm's-length negotiations following extensive litigation,
25 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
26 Hon. Carl J. West, an experienced and well-respected mediator.

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1 a. The fairness of the Settlement is demonstrated by there being no objections to and
2 only two (2) requests for exclusion from the Settlement. The Class Members who
3 requested exclusion are Robert Garcia and Christine Straub.

4 b. The fairness of the Settlement is further illustrated by the *gross average*
5 Individual Settlement Payment being approximately \$943.58, and the *gross*
6 *highest* Individual Settlement Payment being about \$6,134.80.

7 16. Uncashed Checks. Class Members will receive checks for their Individual
8 Settlement Payments and Individual PAGA Payments. Checks will remain negotiable for one
9 hundred eighty (180) calendar days. Any check not cashed within one hundred eighty (180)
10 calendar days will be void. The funds from the uncashed checks shall be distributed by the
11 Settlement Administrator to the State Controller's Unclaimed Property Fund.

12 17. Modification of Settlement Agreement. The Class Members are hereby
13 authorized to agree to and adopt amendments to or modifications of the Settlement Agreement
14 by a written instrument signed by the Parties' counsel or their successors-in-interest. Such
15 amendments or modifications shall be consistent with this Order and Judgment and cannot limit
16 the rights of the Class Members under the Settlement Agreement.

17 18. Final Accounting and Compliance. The Court sets a compliance hearing on
18 November 8, 2024 in Department 2. Within five (5) court days before this hearing, Plaintiff shall
19 file a compliance status report. Pursuant to Code of Civil Procedure section 384, the compliance
20 status report shall specify the total amount paid to the Class Members and the residual of the
21 unclaimed settlement funds that will be paid to the entity identified as the recipient of such funds
22 in the Settlement Agreement.

23 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
24 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
25 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
26 and for any other necessary purpose, including, without limitation:

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- 1 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
2 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
3 arise out of the Settlement or this Order and Judgment;
- 4 b. entering such additional orders as may be necessary or appropriate to protect or
5 effectuate this Order and Judgment approving the Settlement, and permanently
6 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the
7 fair and orderly administration of the Settlement; and
- 8 c. entering any other necessary or appropriate orders to protect and effectuate this
9 Court's retention of continuing jurisdiction.

10 The Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs,
11 and Class Representative Enhancement Payment is GRANTED. The Settlement Administrator is
12 directed to carry out the terms of the Settlement forthwith.

13 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
14 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
15 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
16 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
17 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
18 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
19 THE JUDGMENT THEREON.

20 IT IS SO ORDERED.

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22 DATED: 03/22/2024



23 HONORABLE ~~JOHN P. BIANCO~~ Gary M Johnson
24 SUPERIOR COURT JUDGE
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On April 15, 2024, I served the foregoing document described as

Bitty Minnis Lemley
Bitty Minnis-Lemley