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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA**

ARMANDO DELAMORA, an individual, and
JESUS CARDENAS, an individual, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

THORPE DESIGN, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

FILED
OCT 02 2023

CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By

[Signature]
Clerk

Case No.: **C22-00931**

**REPRESENTATIVE AND CLASS
ACTION**

Assigned to
Hon. Charles S. Treat
Dept. 12

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

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1 This matter came before the Court on September 21, 2023, at 9:00 a.m. in Department 12 of
2 the Contra Costa Superior Court, Honorable Charles S. Treat presiding, for a hearing on Plaintiffs'
3 Motions for (1) Final Judgment and Order Approving Class Action Settlement; and for (2) Approval
4 of Attorneys' Fees and Costs and Class Representatives' Service Enhancement Payments. Due and
5 adequate notice having been given to Class Members as required by the Court's June 28, 2023 Order
6 Granting Plaintiffs' [Unopposed] Motion for Preliminary Approval of Class and Representative Action
7 Settlement, which required Notice to be given to the Class, the Court having considered all papers filed
8 and proceedings in this action, and determining that the settlement is fair, adequate, and reasonable,
9 and otherwise being fully informed and good cause appearing therefore, it is hereby **ORDERED,**
10 **ADJUDGED, AND DECREED AS FOLLOWS:**

11 1. This Order incorporates the Court's tentative ruling granting Plaintiffs' Motion for Final
12 Approval of Class and Representative Action Settlement, and Motion for Approval of Attorneys'
13 Fees and Costs and Class Representative's Service Enhancement Payments, reflected in the Minute
14 Order attached hereto as **Exhibit 1**.

15 2. This Order hereby incorporates by reference the definitions in the Settlement Agreement as
16 though fully set forth herein, and all terms used herein shall have the same meaning as set forth in the
17 Settlement Agreement.

18 3. This Court has jurisdiction over the claims of the members of the Class asserted in this
19 proceeding, personal jurisdiction over the Plaintiffs and Defendant, and the members of the Class, as
20 defined in the Settlement Agreement.

21 4. The Court certifies and approves, for settlement purposes only, the following Class as set forth
22 in the Settlement Agreement:

23 "All current and former non-exempt and exempt employees, who have worked in California for
24 Thorpe Design, Inc. or Victory Fire Protection, Inc., at any time from May 4, 2018, to June 28,
25 2023 ("Class Members").

26 5. Notice given to the class fully and accurately informed Class Members of all material elements
27 of the proposed settlement and of their opportunity to exclude themselves from, object to, or comment
28 on the settlement, and to appear at the final approval hearing. The notice was reasonable and the best

1 notice practicable under the circumstances. Accordingly, this Court finds that the notice program
2 described in the Settlement and completed by the Settlement Administrator complied fully with the
3 requirements of due process, Rule 3.766 of the California Rules of Court, and all other applicable laws.

4 6. The Settlement Agreement is not an admission by Defendant or by any other Released Parties
5 nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant or any
6 other Released Parties. Neither this Order, the Settlement Agreement, nor any document referred to
7 herein, nor any action taken to carry out the Settlement Agreement, may be construed as, or may be
8 used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or
9 against Defendant or any of the Released Parties.

10 7. There were no objections to the settlement and no Class Members opted out. All Class
11 Members who did not submit a valid Request for Exclusion are bound by this Final Approval Order
12 and by the terms of the parties' Settlement Agreement, including releases provided for in the Settlement
13 and this Final Approval Order. As of the effective date of Settlement, by operation of the entry of this
14 Final Approval Order, each Settlement Class Member, including Plaintiffs, shall be deemed to have
15 fully released, waived, relinquished and discharged, to the fullest extent permitted by law, all Released
16 Claims that he or she may have against the Released Parties. Class Members are enjoined from
17 prosecuting the Released Claims, and are enjoined from initiating or continuing other proceedings
18 regarding the Released Claims, as provided in the Settlement Agreement.

19 8. Settlement Class Members were given a full opportunity to participate in the Final Approval
20 hearing, and all Settlement Class Members and other persons wishing to be heard have been heard. All
21 Class Members, but those who submitted a valid Request for Exclusion, are bound by this Order.

22 9. The Court has considered all relevant factors for determining the fairness of the Settlement and
23 has concluded that all such factors weigh in favor of granting final approval. In particular, the Court
24 finds that the Settlement was reached following meaningful discovery and investigation conducted by
25 Plaintiffs' counsel; that the settlement is the result of serious, informed, adversarial and arm's-length
26 negotiations between the parties; and that the terms of the settlement are in all respect fair, adequate,
27 and reasonable.

1 10. In so finding, the Court has considered all evidence presented, including evidence regarding
2 the strength of the Plaintiffs' case; the risk, expense, and complexity of the claims presented; the likely
3 duration of further litigation; the amount offered in settlement; the extent of investigation and
4 discovery completed; and the experience and views of Plaintiffs' counsel.

5 11. The Court hereby finds the Settlement Payments provided to Settlement Class Members under
6 the terms of the Settlement to be fair and reasonable in light of all the circumstances. The Court,
7 therefore, orders the calculations and payments to be made and administered in accordance with the
8 terms of the Settlement Agreement.

9 12. The settlement of civil penalties under PAGA in the amount of \$37,500 is hereby approved.
10 Seventy-Five Percent (75%) or \$28,125, shall be paid to the California Labor and Workforce
11 Development Agency. The remaining Twenty-Five Percent (25%), or \$9,375, will be distributed to the
12 Aggrieved Employees as PAGA Penalty Payments. By operation of this Final Approval Order, the
13 Aggrieved Employees release their PAGA claims in their entirety.

14 13. The Court finds that the services provided by the Settlement Administrator were for the benefit
15 of the Class, and the cost of \$13,000 is fair, reasonable, and appropriate for reimbursement. The Court
16 approves payment to Simpluris, Inc. for administration fees, which include all costs and fees incurred
17 to date, as well as estimated costs and fees involved in completing the administration of the Settlement.

18 14. The Court confirms David R. Markham, Maggie K. Realin, and Lisa Brevard of The Markham
19 Law Firm; Walter L. Haines of the United Employees Law Group; Julian King and Elliot Siegel of
20 King & Siegel as Settlement Class Counsel in this action.

21 15. The Court finds that Settlement Class Counsel have the sufficient experience, knowledge, and
22 skill to promote and safeguard the interests of the Class. The Court therefore finds that Plaintiffs'
23 counsel satisfies the professional and ethical obligations of Settlement Class Counsel.

24 16. The Court further approves an award of attorneys' fees of \$250,000, to be paid in two
25 installments, as provided in the Settlement Agreement. The Court finds that this amount is supported
26 by both the application of the percentage fee and the lodestar-plus-multiplier methods for awarding
27 reasonable attorneys' fees.

1 17. In the course of this litigation, Class Counsel incurred \$17,871.44 in litigation costs including
2 in the form of court filing fees, mediation fees, expert fees, and delivery charges. The Court approves
3 the reimbursement to Class Counsel for the Litigation Expenses in two installments, pursuant to the
4 terms of the Settlement Agreement.

5 18. The Court finds that Armando Delamora and Jesus Cardenas are suitable representatives for
6 the Settlement Class and are hereby appointed as Class Representatives. The Court finds that Plaintiffs'
7 investment and commitment to the litigation and its outcome ensured adequate and zealous advocacy
8 for the Settlement Class, and their interests are aligned with those of the Settlement Class.

9 19. The Court finds the Service Enhancement Payments in the amount of \$7,500 each to Plaintiffs
10 Delamora and Cardenas are fair and reasonable compensation based upon the evidence presented
11 regarding the services provided and risks incurred by Plaintiffs in assisting Settlement Class Counsel.

12 20. Without affecting the finality of this Final Approval Order, the Court reserves continuing and
13 exclusive jurisdiction over the parties to the Settlement, including Defendant, Plaintiffs, and Settlement
14 Class Members, to administer, supervise, construe and enforce the Settlement in accordance with its
15 terms.

16 21. Plaintiffs shall file a settlement administrator's declaration regarding the final accounting of the
17 settlement funds by October 24, 2024.

18 22. Five percent (5%) of the attorneys' fees are to be withheld by the Settlement Administrator
19 pending satisfactory compliance as found by the Court.

20 **IT IS SO ORDERED.**

21
22 Dated: 9/28/23



Honorable Charles S. Treat
Judge of the Superior Court

Exhibit 1

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 09/21/2023

GENERAL INSTRUCTIONS FOR CONTESTING TENTATIVE RULINGS IN DEPT. 12

NOTE PROCEDURE CAREFULLY

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of his or her decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (*Local Rule 3.43(2).*)

Note: In order to minimize the risk of miscommunication, Dept. 12 prefers and encourages fax or email notification to the department of the request to argue and specification of issues to be argued – with a **STRONG PREFERENCE FOR EMAIL NOTIFICATION**. Dept. 12's Fax Number is: (925) 608-2686. Dept. 12's email address is: dept12@contracosta.courts.ca.gov. **Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.**

Submission of Orders After Hearing in Department 12 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

1. 9:00 AM CASE NUMBER: C22-00931
CASE NAME: ARMANDO DELAMORA VS. THORPE DESIGN, INC.
*HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION
SETTLEMENT
FILED BY:
TENTATIVE RULING:

Plaintiffs Armando Delamora and Jesus Cardenas move for final approval of their class action and PAGA settlement with defendant Thorpe Design, Inc. They also move for approval of their attorney's fees, litigation costs, administration costs, and representative payments. The motions are **granted**.

Since preliminary approval was granted, the administrator has mailed notices to 816 class members. 50 packets were returned by the post office. Follow up resulted in 35 new addresses, leaving 15 non-deliverable. No objections or requests to opt out have been received.

The motion is **granted**.

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 09/21/2023

A. Background and Settlement Terms

The settlement covers two sequential employers – Victory Fire Protection, and Thorpe Design. Thorpe acquired Victory in January 2021, and continued its business with the same work force. Victory and Thorpe were in the business of designing and installing fire protection systems. Delamora was employed as a pipefitter from 2016 to 2021; Cardenas, as a carpenter from 2020 to 2022.

Delamora's original complaint was filed on May 4, 2022. It was amended to include a PAGA claim in July 2022. Cardenas's complaint was filed in July 2022.

The settlement will create a gross settlement fund of \$750,000. The class representative payments to the plaintiffs will be \$7,500 each. Attorney's fees will be \$250,000 (one-third of the settlement). Litigation costs are \$17,871, well under the \$35,000 estimated at time of preliminary approval. The settlement administrator's costs are \$13,000. PAGA penalties will be \$37,500, resulting in a payment of \$28,125 to the LWDA. The net amount paid directly to the class members will be about \$416,629, not including distribution of PAGA penalties. The fund is non-reversionary. There are an estimated 816 class members. Based on the estimated class size, the average net payment for each class member is just under \$500. The individual payments will vary considerably, however, because of the allocation formula prorating payments according to the number of weeks worked during the relevant time, and because of the allocation between exempt and non-exempt employees. The number of aggrieved employees for PAGA purposes is smaller, because the starting date of the relevant period is later.

The settlement amount will be paid in two equal installments, roughly a year apart. The first half will be deposited with the settlement administrator within 10 days after the effective date of the settlement; the second half within one year.

The proposed settlement will certify a class of all current and former exempt and non-exempt personnel employed at Defendants' California facilities between May 4, 2018 and the date of preliminary approval. For PAGA purposes, the period covered by the settlement is May 2, 2021 to preliminary approval.

Unusually, the proposed class includes exempt as well as non-exempt employees; exempt employees would be subject to some of the alleged violations, such as unreimbursed personal expenses. The settlement includes a reasonable allocation of the settlement proceeds as between exempt and non-exempt members.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds will be apportioned to class members based on the number of workweeks worked during the class period.

A list of class members will be provided to the settlement administrator within 14 days after preliminary approval. The administrator will use skip tracing as necessary. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to the Controller's unclaimed property fund.

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The settlement contains release language covering all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the operative pleading, including a number of specified claims. Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ("A court cannot release claims that are outside the scope of the allegations of the complaint.") "Put another 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 discovery was 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. Plaintiffs' claims centered on the assertion that because overtime must be approved in advance, and unexpected events such as problems with inspections might trigger unforeseen overtime, employees could end up working overtime without approval and hence without overtime pay. Defendant, however, contended that its policies specifically forbid off-the-clock work, and that it was neither able nor required to audit for violations. Plaintiffs also raised issues of later or interrupted rest breaks or meal breaks. Again, defendant contended that its written policies are lawful, and that it cannot detect or control variances. Plaintiffs also contended that they were not compensated for use of personal cell phones or vehicles. Defendant contended that a reimbursement system was in place, and that it provided cell phones, company vehicles, and gas cards to some employees. Defendant further pointed out the difficulties of class certification on some of these issues. Finally, it showed that its own business situation is challenged, partly due to a COVID slowdown in construction.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they 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.")) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, *e.g.*, *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.)

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

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

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
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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*, 69 Cal.App.5th 521.)

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

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

C. Attorney Fees and Other Costs

Plaintiffs seek one-third of the total settlement amount as fees, relying on the "common fund" theory, or \$250,000. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id.*, at 505.)

Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They estimate the lodestar at \$159,530, representing an implied multiplier of 1.56. They based this amount on a total of 325 hours. No adjustment from the one-third fee is necessary. The attorney's fees are reasonable and are approved.

The requested representative payments of \$7,500 apiece for the named plaintiffs were deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiffs have provided declarations in support of their request. They point out that they executed a broader release than the class as a

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whole, but do not identify any particular claims of value that they may have. They also risk damage to her reputation and more difficulty in obtaining employment. The representative payments are approved.

Litigation costs of \$17,871 (mostly mediation fees) are reasonable and are approved.

The settlement administrator's costs of \$13,000 are reasonable and are approved.

D. Discussion and Conclusion

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

The motions are granted.

Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

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

2. 9:00 AM CASE NUMBER: C22-01545
CASE NAME: JESUS CARDENAS VS. THORPE DESIGN, INC.
***HEARING ON MOTION IN RE: SEE RELATED CASE - C22-00931**
FILED BY:
TENTATIVE RULING:

See Line 1.