

FILED
MAR 26 2024
CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By [Signature]

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

CHRISTOPHER JOURDAN STEPHEN,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

STAKE CENTER LOCATING, LLC;
and DOES 1 through 20, inclusive,

Defendants.

Case No. C22-01390

Assigned for all purposes to
Hon. Charles S. Treat
Dept. 12

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

Date: February 22, 2024
Time: 9:00 a.m.
Dept: 12

1 This matter came on for hearing on February 22, 2024, at 9:00 a.m., in Department 12 of
2 the above-captioned Court on the unopposed Motion for Final Approval of Class Action
3 Settlement pursuant to California Rule of Court 3.769, this Court's Order Granting Preliminary
4 Approval filed October 5, 2023 and the Joint Stipulation of Settlement ("Settlement
5 Agreement"), a copy of which was filed in conjunction with the Plaintiff's Motion for
6 Preliminary Approval of Class Action Settlement.

7 Having received and considered the Settlement Agreement, the supporting papers filed by
8 the Parties, and the evidence and argument received by the Court in conjunction with the
9 unopposed Motion for Preliminary Approval of Class Action Settlement heard September 28,
10 2023 and the instant Motion for Final Approval, the Court grants final approval of the Settlement
11 and HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

12 The Court's Tentative Ruling:

13 Plaintiff Christopher Stephen moves for final approval of his class action and PAGA
14 settlement with defendant Stake Center Locating, LLC. He also moves for approval of his
15 attorney's fees, litigation costs, administration costs, and representative payment.

16 Since preliminary approval was granted, the administrator has mailed notices to 97 class
17 members. None of the packets were returned as undeliverable. No objections or requests to opt
18 out have been received.

19 The motion is **granted**.

20 **A. Background and Settlement Terms**

21 The pleadings do not identify what business defendant is in, but from its website it is
22 apparently in the business of locating buried utility lines for construction. The complaint alleges
23 that plaintiff was employed at defendant during the relevant period, though it does not give his
24 employment dates or identify what job he held.

25 The original complaint was filed on July 6, 2022. It was amended on November 28, 2022
26 to add PAGA claims.

27 The settlement will create a gross settlement fund of \$285,000. The class representative
28 payment to the plaintiff will be \$10,000. Attorney's fees will be \$95,000 (one-third of the

1 settlement). Litigation costs are \$16,650, significantly lower than the previous estimate. The
2 settlement administrator's costs are \$5,950. PAGA penalties will be \$20,000, resulting in a
3 payment of \$15,000 to the LWDA. The net amount paid directly to the class members will be
4 about \$142,400, not including distribution of PAGA penalties. The fund is non-reversionary.
5 There are 97 class members. Based on the class size, the average net payment for each class
6 member is approximately \$1,416. The individual payments will vary considerably, however,
7 because of the allocation formula prorating payments according to the number of weeks worked
8 during the relevant time. The number of aggrieved employees for PAGA purposes is smaller,
9 because the starting date of the relevant period is later.

10 The entire settlement amount will be deposited with the settlement administrator within
11 10 days after the effective date of the settlement.

12 The proposed settlement will certify a class of all current and former non-exempt
13 employed at Defendants' California facilities between July 6, 2018 and May 9, 2023. For PAGA
14 purposes, the period covered by the settlement is July 6, 2021 to May 9, 2023.

15 The class members will not be required to file a claim. Funds will be apportioned to class
16 members based on the number of workweeks worked during the class period. Settlement checks
17 not cashed within 180 days will be cancelled, and the funds will be directed to the Controller's
18 unclaimed property fund.

19 The settlement contains release language covering all claims and causes of action, alleged
20 or which could have reasonably been alleged based on the allegations in the operative pleading,
21 including a number of specified claims. Under recent appellate authority, the limitation to those
22 claims with the "same factual predicate" as those alleged in the complaint is critical. (Amaro v.
23 Anaheim Arena Mgmt., LLC (2021) 69 Cal.App.5th 521, 537 ("A court cannot release claims that
24 are outside the scope of the allegations of the complaint.") "Put another way, a release of claims
25 that goes beyond the scope of the allegations in the operative complaint" is impermissible." (Id.,
26 quoting Marshall v. Northrop Grumman Corp. (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)
27
28

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

4 Counsel also has provided an analysis of the case, and how the settlement compares to the
5 potential value of the case, after allowing for various risks and contingencies.

6 For example, much of plaintiff's allegations centers on possible off-the-clock work,
7 including missed or skipped meal breaks and rest breaks. However, allegations as to unpaid
8 overtime and unreimbursed protective gear were discounted at mediation upon a contrary showing
9 by defendant. Defendant further pointed out that its formal policies prohibit off-the-clock work,
10 and asserted that it would have had no knowledge of employees beginning work before punching
11 in or continuing after punching out. Further, it argued that it was required to make meal and rest
12 breaks available, but not required to ensure that they be taken, so long as no employer policy
13 prevented or discouraged taking such breaks. As to unreimbursed employee expenses (such as
14 cell phone use, mileage, and masks), plaintiff would have been called on to show that such
15 expenses were in fact incurred, were reasonably necessary to job performance, and were
16 unreimbursed. Furthermore, the fact-intensive character of such claims would have presented a
17 serious obstacle to class certification.

18 The potential liability needs to be adjusted for various evidence and risk-based
19 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number
20 of reasons: they derive from other violations, they include "stacking" of violations, the law may
21 only allow application of the "initial violation" penalty amount, and the total amount may be
22 reduced in the discretion of the court. (See Labor Code§ 2699(e)(2) (PAGA penalties may be
23 reduced where "based on the facts and circumstances of the particular case, to do otherwise would
24 result in an award that is unjust arbitrary and oppressive, or confiscatory.")) Moreover, recent
25 decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to
26 actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2023) 88
27 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-
28 67.)

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

3 **B. Legal Standards**

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

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

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

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1 **C. Attorney Fees and Other Costs**

2 Plaintiffs seek one-third of the total settlement amount as fees, relying on the "common
3 fund" theory, or \$95,000. Even a proper common fund-based fee award, however, should be
4 reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th
5 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine
6 whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of
7 a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the
8 percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range,
9 but the court is not necessarily required to make such an adjustment." (*Id.*, at 505.)

10 Accordingly, plaintiffs have provided information concerning the lodestar fee amount.
11 They estimate the lodestar at \$105,470, representing an implied multiplier of 0.90. They based
12 this amount on a total of 155 hours. No adjustment from the one-third fee is necessary. The
13 attorney's fees are reasonable and are approved.

14 The requested representative payment of \$10,000 for the named plaintiff was deferred
15 until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v.*
16 *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff points out that
17 he executed a broader release than the class as a whole, but does not identify any particular claims
18 of value that he may have. He also risks damage to his reputation and more difficulty in obtaining
19 employment. The representative payment is approved.

20 Litigation costs of \$16,650 (mostly mediation, filing, and consulting fees) are reasonable
21 and are approved.

22 The settlement administrator's costs of \$5,950 are reasonable and are approved.

23 **D. Discussion and Conclusion**

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

27 The motion is granted.

1 The compliance hearing is set for January 16, 2025 at 9:00 a.m. in Department 12.
2 Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing
3 date. Five percent of the attorney's fees are to be withheld by the claims administrator pending
4 satisfactory compliance as found by the Court.

5 Previously Submitted Proposed Order:

6 1. Pursuant to the Order Granting Preliminary Approval, a Notice Packet was sent to
7 each Settlement Class Member by first-class mail. These papers informed the Settlement Class
8 of the terms of the Settlement, their right to receive an Individual Settlement Payment, their right
9 (a) to comment on or object to the Settlement, (b) to request exclusion from the Settlement and
10 pursue their own remedies, and (c) of their right to appear in person or by counsel at the final
11 approval hearing and to be heard regarding approval of the Settlement. Adequate periods of time
12 were provided by each of these procedures. No member of the Class filed written objection to
13 the proposed Settlement as part of this notice process or stated an intention to appear at the final
14 approval hearing.

15 2. The Court finds and determines that this notice procedure afforded adequate
16 protections to Settlement Class Members and provides the basis for the Court to make an informed
17 decision regarding approval of the Settlement based on the responses of the Settlement Class.
18 The Court finds and determines that the notice provided in this case was the best notice
19 practicable, which satisfied the requirements of law and due process.

20 3. With respect to the Settlement Class and for purposes of approving this Settlement
21 only, this Court finds and concludes that: (a) the members of the Settlement Class are
22 ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions
23 of law or fact common to the Settlement Class, and there is a well-defined community of interest
24 among members of the Settlement Class with respect to the subject matter of the Action; (c) the
25 claims of Class Representative Alberto Villagomez are typical of the claims of the members of
26 the Settlement Class; (d) the Class Representative has fairly and adequately protected the interests
27 of the members of the Settlement Class; (e) a class action is superior to other available methods
28 for an efficient adjudication of this controversy; and (f) the counsel of record for the Class

1 Representative, i.e., Class Counsel, are qualified to serve as counsel for Plaintiff in their
2 individual and representative capacities for the Class.

3 4. The Court hereby confirms Aegis Law Firm, PC as Class Counsel.

4 5. The Court hereby confirms Plaintiff Christopher Jourdan Stephen as the Class
5 Representative in this Action.

6 6. The Court finds and determines that the terms set forth in the Settlement
7 Agreement are fair, reasonable, and adequate and directs the Parties to effectuate the Settlement
8 according to its terms, having found that the Settlement was reached as a result of informed and
9 non-collusive arm's-length negotiations facilitated by a neutral mediator. The Court further finds
10 that the Parties conducted extensive investigation, research, and discovery and that their attorneys
11 were able to reasonably evaluate their respective positions. The Court also finds that the
12 Settlement will enable the Parties to avoid additional and potentially substantial litigation costs,
13 as well as delay and risks if the Parties were to continue to litigate the case. The Court has
14 reviewed the monetary recovery provided as part of the Settlement and recognizes the significant
15 value accorded to the Class.

16 7. The Court hereby approves the Gross Settlement Amount of \$285,000.00.

17 8. The Court finds and determines that the Individual Settlement Payments to be paid
18 to participating Settlement Class Members as provided for by the Settlement are fair and
19 reasonable. The Court hereby gives final approval to and orders the payment of those amounts
20 be made to the participating Settlement Class Members in accordance with the Settlement
21 Agreement.

22 9. Without affecting the finality of this order or the entry of judgment in any way,
23 the Court retains jurisdiction of all matters relating to the interpretation, administration,
24 implementation, effectuation, and enforcement of this order and the Settlement.

25 10. Neither Defendant nor any related persons or entities shall have any further
26 liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability,
27 except as provided for by the Settlement Agreement.

1 11. Neither the making of the Settlement Agreement nor the entry into the Settlement
2 Agreement constitutes an admission by Defendant, nor is this order a finding of the validity of
3 any claims in this case or of any other wrongdoing. Further, the Settlement Agreement is not a
4 concession, and shall not be used as an admission of any wrongdoing, fault, or omission of any
5 entity or persons; nor may any action taken to carry out the terms of the Settlement Agreement
6 be construed as an admission or concession by or against Defendant or any related person or
7 entity.

8 12. Nothing in this order shall preclude any action to enforce the Parties' obligations
9 under the Settlement or under this order, including the requirement that Defendants make payment
10 to the participating Settlement Class Members in accordance with the Settlement.

11 13. The Parties will bear their own costs and attorneys' fees except as otherwise
12 provided by this Court's Order awarding Class Counsels' Award for attorneys' fees and litigation
13 costs.

14 **IT IS SO ORDERED.**

15 DATED: **MAR 25 2024**, 2024


Honorable Charles S. Treat
JUDGE OF THE SUPERIOR COURT

17 **APPROVED AS TO FORM**

18
19 Dated: March 21, 2024

AEGIS LAW FIRM, PC

20 By:


Lisa B. Iturriaga
Attorneys for Plaintiff

21
22 Dated: March 21, 2024

DAUGHERTY LORDAN LLP

23
24 By:


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