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KATE BIEKER  
CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA

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

URIEL OREGEL, as an individual and on behalf  
of all employees similarly situated,

Plaintiff,

v.

DIABLO RANGE FRAMING, INC., a  
California Corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: C23-00697

[Assigned for all purposes to Hon. Edward G  
Weil, Dept. 39]

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

Date: January 9, 2025

Time: 9 a.m.

Courtroom: Dept. 39

Judge: Hon. Edward G Weil

Action Filed: March 29, 2023

Trial: Not Set

1 Plaintiff URIEL OREGEL's ("Plaintiff") motion for final approval of class and PAGA  
2 representative action settlement of the claims asserted against Defendant DIABLO RANGE FRAMING,  
3 INC. ("Defendant") in this action, memorialized in the JOINT STIPULATION OF CLASS AND PAGA  
4 REPRESENTATIVE ACTION AMENDED SETTLEMENT (see Declaration of Lilit Tunyan in  
5 Support of Plaintiff's Motion for Final Approval of Class and PAGA Representative Action Settlement  
6 ["Tunyan Decl."], at Exh. 1) was scheduled for January 9, 2025, at 9 a.m. in Department 39 before  
7 Honorable Edward G Weil of the Contra Costa County Superior Court. The JOINT STIPULATION OF  
8 CLASS AND PAGA REPRESENTATIVE ACTION AMENDED SETTLEMENT is referred to herein  
9 as the "Agreement" or "Settlement. The Court issued a Tentative Ruling on January 8, 2025, which was  
10 not contested by any of the parties. Accordingly, after full consideration of the submissions of the parties,  
11 and the entire record in this matter, it is the conclusion of this Court that Plaintiff's Motion is  
12 **GRANTED.**

13 The Court hereby adopts its Tentative Ruling as the Order of the Court, attached hereto as  
14 ~~Exhibit A, subject to the following additional findings and orders:~~

15 1. The Court hereby GRANTS final approval of the terms and conditions contained in the  
16 Agreement. The Court finds that the terms of the proposed class action Settlement are fair, reasonable,  
17 and adequate, pursuant to California Code of Civil Procedure § 382.

18 2. The Court finds that the Settlement has been reached as a result of intensive, serious and  
19 non-collusive arms-length negotiations. The Court further finds that the parties have conducted  
20 thorough investigation and research, and the attorneys for the parties are able to reasonably evaluate  
21 their respective positions. The Court also finds that settlement at this time will avoid additional  
22 substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution  
23 of the action. The Court finds that the risks of further prosecution are substantial.

24 3. The parties' Settlement is granted final approval. The Court has considered all relevant  
25 factors for determining the fairness of the Settlement and has concluded that all such factors weigh in  
26 favor of granting final approval. In particular, the Court finds that the Settlement was reached following  
27 meaningful discovery and investigation conducted by Class Counsel; that the Settlement is the result of  
28 serious, informed, adversarial, and arm's-length negotiations between the Parties; and that the terms of

1 the settlement are in all respects fair, adequate, and reasonable.

2 4. The Court hereby GRANTS conditional certification of the Class, in accordance with the  
3 Settlement, for purposes of this settlement only. The Settlement Class meets the requirements for  
4 conditional certification for settlement purposes only under Code of Civil Procedure § 382.

5 5. Because adequate notice was disseminated, and all Class Members were given the  
6 opportunity to request exclusion, the Court has personal jurisdiction over the Class Members' claims.  
7 The court has subject matter jurisdiction over this matter, including jurisdiction to approve the settlement  
8 and grant final certification. The Class Notice provided to the Class complied with the requirements of  
9 Code of Civil Procedure § 382, Civil Code § 1781, Rules of Court 3.766 and 3.769, the California and  
10 United States Constitutions, and any other applicable law, and constituted the best notice practicable  
11 under the circumstances, by providing individual notice to all Class Members who could be identified  
12 through reasonable effort, and by providing due and adequate notice of the proceedings and of the  
13 matters set forth therein to the other Settlement Class Members. The Class Notice fully satisfied the  
14 requirements of due process.

15 6. The following persons are certified as Class Members solely for the purpose of entering  
16 a settlement in this matter:

17 All individuals employed by Defendant in California and classified as "non-  
18 exempt" at any time during the Class Period (the "Class Period" is March 29, 2019  
through December 8, 2023). (Settlement, ¶¶ 3-4.)

19 7. The PAGA Employee is defined as follows:

20 All Class Members that worked at any time during the PAGA Period (the "PAGA  
21 Period" is March 29, 2022 through December 8, 2023.) All PAGA Employees are  
22 "aggrieved employees" as defined pursuant to PAGA. PAGA Employees cannot opt  
out of the settlement of the PAGA claim. (Settlement, ¶¶ 10-11.)

23 8. Plaintiff URIEL OREGEL is appointed as the Class Representative.

24 9. The Court finds Plaintiff's counsel are adequate, as they are experienced in wage and  
25 hour class action litigation and have no conflicts of interest with absent Settlement Class Members, and  
26 that they adequately represented the interests of absent class members in the Litigation. TUNYAN  
27 LAW, APC is appointed Class Counsel.

1           10.     The Court appoints Simpluris, Inc. to act as the Settlement Administrator, pursuant to  
2 the terms set forth in the Agreement.

3           11.     All other Class Members are Settlement Class Members, bound by the Final Approval  
4 Order and Judgment in the Action.

5           12.     In addition to any recovery that Plaintiff may receive under the Settlement as a  
6 Settlement Class Member, and in recognition of the Plaintiff's general release of individual claims and  
7 his efforts on behalf of the Settlement Class, the Court hereby approves the payment of an enhancement  
8 award to Plaintiff URIEL OREGEL in the amount of **\$7,000.00**.

9           13.     The Court approves the payment of attorneys' fees to Class Counsel in the amount of  
10 **\$85,000.00** to Tunyan Law, APC. Litigation expenses are approved by the Court in the amount of  
11 **\$8,242.27** to Tunyan Law, APC.

12           14.     The Court approves and orders payment in the amount of **\$8,000.00** to Simpluris, Inc. for  
13 its services as the Settlement Administrator.

14 ~~15.     The Court approves and orders payment in the amount of **\$22,500.00** to the Labor and~~  
15 Workforce Development Agency in compromise of claims under the Labor Code Private Attorneys  
16 General Act of 2004 (Labor Code § 2698 et seq.).

17           16.     Upon completion of administration of the Settlement, the Parties shall file a declaration  
18 stating that all amounts payable under the Settlement have been paid and that the terms of the Settlement  
19 have been completed.

20           17.     The Court sets a non-appearance case review regarding compliance with all fund  
21 distribution requirements under the Settlement for **August 28, 2025**, at 9 a.m. in Dept. 39 of the above-  
22 entitled Court. A Final Report, including any declaration from the Settlement Administrator regarding  
23 compliance, shall be filed with the Court no later than August 21, 2025. 5% of the attorney's fees are to  
24 be withheld by the Settlement Administrator pending satisfactory compliance as found by the Court.

25           18.     Defendant will fund the settlement account and distribute the Gross Settlement Amount  
26 to the Settlement Administrator in two installments. The first installment in the amount of **\$223,009.00**  
27 will be funded by Defendant withing fifteen (15) calendar days of the Effective Date ("First  
28 Installment"). The second installment in the amount of **\$35,000.00** will be funded by Defendant no later

1 than five (5) months from the Effective Date ("Second Installment"). Defendant shall also fund the  
2 amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the  
3 Settlement Administrator with each installment payment.

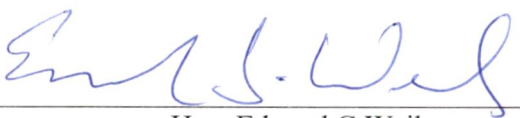
4 19. Once Defendants fully fund the Settlement by paying the amounts specified in the  
5 Settlement, including the Gross Settlement Amount, Plaintiff, the Participating Class Members, and the  
6 PAGA Employees, shall have, by operation of this Final Approval Order and the Judgment issued  
7 thereon, fully, finally and forever released, relinquished, and discharged Defendants from the Released  
8 Claims and released PAGA Claims described in the Settlement.

9 20. In accordance with California Rule of Court 3.771(b), the Parties are ordered to give  
10 notice of this final Order and Judgment to all Settlement Class Members by posting the Order and  
11 Judgment for 90 days on the Settlement Administrator's website and to the LWDA, pursuant to Labor  
12 Code § 2699(1)(3).

13 21. The Court retains jurisdiction to consider all further applications arising out of or in  
14 connection with the settlement.

15  
16 **IT IS SO ORDERED.**

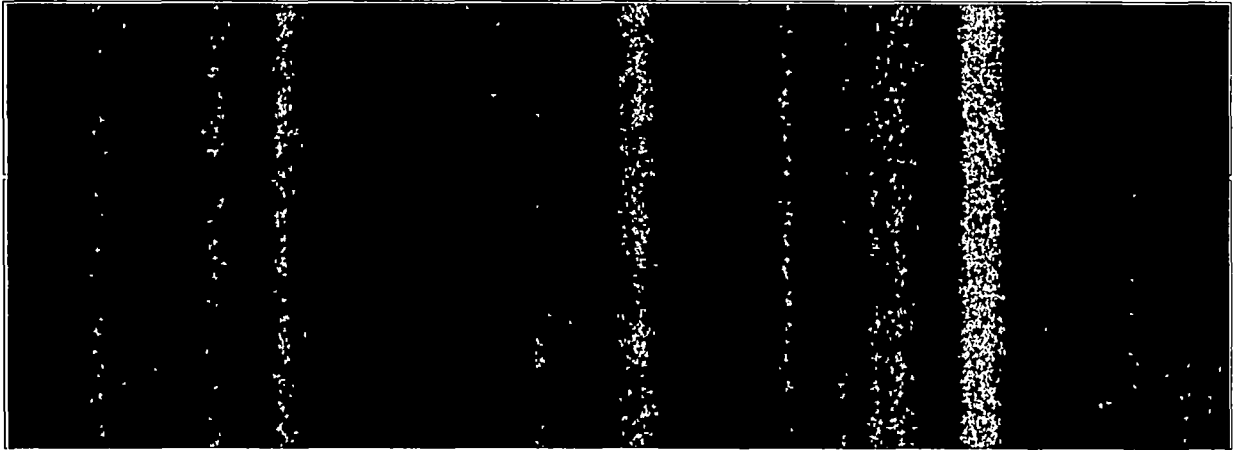
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18 Dated: JAN 17 2025

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19 Hon. Edward G Weil  
20 CONTRA COSTA COUNTY SUPERIOR COURT  
21 JUDGE  
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# **Exhibit “A”**

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY  
MARTINEZ, CA  
DEPARTMENT 39  
JUDICIAL OFFICER: EDWARD G WEIL  
HEARING DATE: 01/09/2025



4. 9:00 AM CASE NUMBER: C23-00697  
CASE NAME: URIEL OREGEL VS. DIABLO RANGE FRAMING, INC.  
HEARING IN RE: FINAL APPROVAL  
FILED BY:  
**\*TENTATIVE RULING:\***

Plaintiff Uriel Oregel moves for final approval of his class action and PAGA settlement with defendant Diablo Range Framing, Inc., including approval of an award of attorney's fees, costs, and a representative service award.

**A. Background and Settlement Terms**

Defendant is a construction firm. Plaintiff worked for defendant as a laborer from 2013 to 2022.

The original complaint was filed March 15, 2023 as a class action. PAGA claims were added by amendment on June 2.

The initial settlement would have created a gross settlement fund of \$220,000. The class representative payment to plaintiff would be \$7,000. Counsel's attorney's fees would be \$73,333 (one-third of the settlement). Litigation costs would not exceed \$15,000. The settlement administrator (Simpluris) estimates costs at \$8,000. PAGA penalties would be \$30,000, resulting in a payment of \$22,500 to the LWDA. The fund is non-reversionary. Based on the estimated class size (720 members) and net payment amount, the average payment for each class member is approximately \$131. 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. The number of aggrieved employees for PAGA purposes is substantially smaller, about 180, because the starting date of the relevant period is later.

The settlement amount will be deposited with the settlement administrator within 15 days after the effective date of the settlement.

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MARTINEZ, CA  
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The proposed settlement would certify a class of all current and former non-exempt employees employed at Defendant's facilities between March 29, 2019, and to the date of the initial settlement. For PAGA purposes, the period covered by the settlement is from March 29, 2022 to the date of the initial settlement.

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 would be apportioned to class members based on the number of individual workweeks worked by the individual employee during the relevant time period.

A list of class members will be provided to the settlement administrator within 15 days after preliminary approval. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Uncashed checks would be cancelled and the amounts would be provided to the State Controller's Unclaimed Property Fund.

The settlement contains release language covering any claims and causes of action 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. (*Amara v. Anaheim Area 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 extensive arms-length negotiations, with included a mediation 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.

For example, much of plaintiff's allegations center on possible off-the-clock work, including missed or skipped meal breaks and rest breaks. Defendant, however, pointed out that its formal policies prohibit off-the-clock work, and asserted that it would have had no knowledge of the employees beginning work before punching in or continuing after punching out. Further, it argued that it was required to make meal and rest breaks available, but not required to ensure that they be taken, so long as no employer policy prevented or discouraged taking such breaks. As to unreimbursed employee expenses (such as cell phone use, mileage, and masks), plaintiff would have been called on to show that such expenses were in fact incurred, were reasonably necessary to job performance, and were unreimbursed. Furthermore, the fact-intensive character of such claims would have presented a serious obstacle to class certification.

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: the 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.

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(See Labor Code § 2699(d)(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, 566-567.)

The LWDA was notified of the settlement.

After the Court preliminarily approved the settlement, the parties moved for preliminary approval of an amended version of the settlement, which the court granted. As the court explained in its ruling, the settlement contained an “escalator” clause, which was triggered when it appeared that the number of class members and workweeks was not accurately estimated. Counsel then renegotiated some provisions, increasing the settlement amount and reducing the class period, while allowing a portion of the payment (\$35,000) to be made in a subsequent installment.

Under the revised settlement, the new settlement amount is \$255,000, the settlement administrator’s fee is \$8,000. The class is now estimated at 790 members. The class period is terminated as of December 8, 2023, rather than the date of preliminary approval (March 14, 2024). The net estimated average payment per class member is now \$136, rather than \$131.

Since preliminary approval, the settlement administrator has begun to implement its terms. (See Declaration of Gillian McCreedy, a project manager for Simpluris.) Notices were mailed to 1,028 individuals identified as class members. 189 were returned by the postal service as undeliverable. A skip trace found 77 addresses, leaving 112 notices undeliverable. No requests for exclusion have been received, no objections were received, and no workweek challenges were received.

**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 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.”

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. The Court of Appeal’s decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provides 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.

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(*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 salutatory purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

**C. Attorney fees, costs, and plaintiff incentive award**

Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund” theory. 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.) Following typical practice, however, consideration of the fee award was deferred to the motion for final approval. Counsel now provides an estimated lodestar fee of \$106,285. This is based on a total of 189.5 hours, with hourly rates ranging from \$450-\$550. This results in an implied multiplier of approximately .80. No adjustment of the fee is necessary.

Litigation costs of \$8,242.27 are reasonable and are approved.

Administrative costs of \$8,000 are reasonable and are approved.

Plaintiff requests a representative payment of \$7,000. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807. He submits a declaration attesting to his time and effort spent on the matter (about 35 hours), as well as the risk he took by becoming a plaintiff. He released other individual claims, but does not suggest that he had any other claim of value that is released in the settlement. All things considered, the amount is approved.

**D. Discussion**

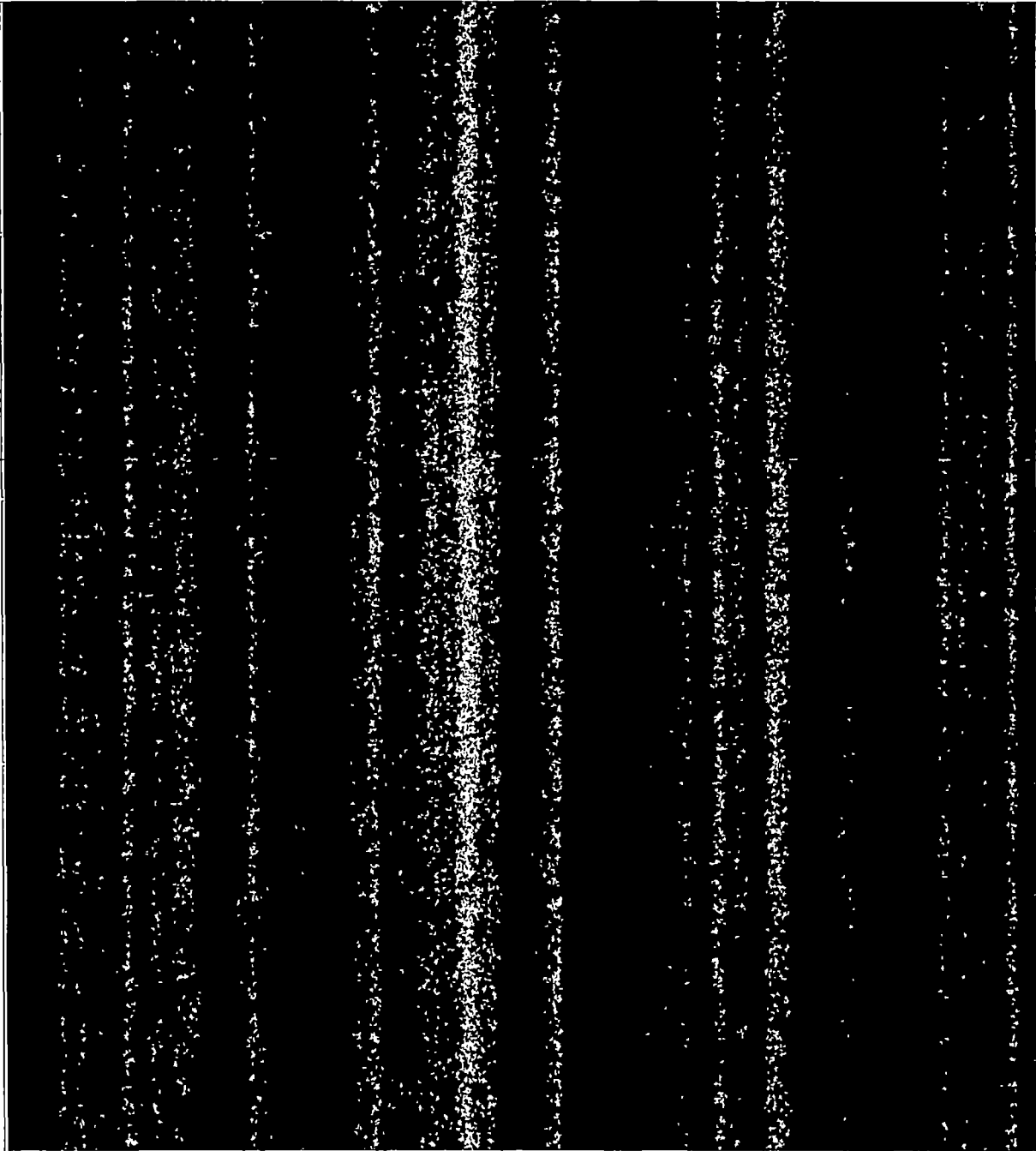
The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify final approval. Notice to the class was adequately provided.

**E. Conclusion**

The motion is granted. Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and a final judgment. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be arranged by counsel in consultation with the Department Clerk. Plaintiffs’ counsel are to submit a

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compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.



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