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Attorneys for Plaintiff Amador Ivan Ramirez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

AMADOR RAMIREZ, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the State of
California and other non-party Aggrieved
Employees,

Plaintiff,

vs.

M. O. DION & SONS, INC., a California
corporation; AMBER RESOURCES, LLC, a
California limited liability company; AMBER
PETROLEUM PRODUCTS, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. C23-02723

Assigned to the Hon. Benjamin Reyes II

**~~PROPOSED~~ ORDER GRANTING MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND MOTION
FOR ATTORNEYS' FEES AND JUDGMENT**

Complaint Filed: October 26, 2023

Trial Date: None Set

1 **Summary**

2 Plaintiff Amador Ramirez moves for final approval of his class action and PAGA settlement
3 with defendant M.O. Dion & Sons, Inc. He also moves for approval of his attorney's fees, litigation
4 costs, administration costs, and representative payment.

5 Since preliminary approval was granted, the administrator has mailed notices to 354 class
6 members. Seven packets were returned by the post office. Follow up resulted in new addresses, leaving
7 three non-deliverable. No objections have been received, and no class members have opted out.

8 The motion is granted. The tentative ruling is attached as Exhibit A.

9 **Background and Terms**

10 Defendant is a petroleum distributor with several distribution facilities in California. Plaintiff
11 worked there as a delivery driver. The original complaint was filed on October 26, 2023.

12 The settlement will create a gross settlement fund of \$500,000. The class representative payment
13 to the plaintiff will be \$10,000. Attorney's fees will be \$166,667 (one-third of the settlement). Litigation
14 costs will not exceed \$15,000. The settlement administrator's costs are estimated at \$10,000. PAGA
15 penalties will be \$50,000, resulting in a payment of \$37,500 to the LWDA. The net amount paid directly
16 to the class members will be about \$248,333. The fund is non-reversionary. There are an estimated 500
17 class members. Based on the estimated class size, the average net payment for each class member is
18 approximately \$500. The individual payments will vary considerably, however, because of the allocation
19 formula prorating payments according to the number of weeks worked during the relevant time.

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

22 The proposed settlement will certify a class of all current and former non-exempt employed at
23 Defendants' California facilities between August 22, 2022 and November 27, 2024. The class members
24 will not be required to file a claim. Funds will be apportioned to class members based on the number of
25 workweeks worked during the class period.

26 The settlement contains release language covering all claims and causes of action, alleged or
27 which could have reasonably been alleged based on the allegations in the operative pleading, including a
28 number of specified claims. Under recent appellate authority, the limitation to those claims with the

1 “same factual predicate” as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt.,*
2 *LLC* (2021) 69 Cal.App.5th 521, 537 (“A court cannot release claims that are outside the scope of the
3 allegations of the complaint.”) “Put another way, a release of claims that goes beyond the scope of the
4 allegations in the operative complaint’ is impermissible.” (*Id.*, quoting *Marshall v. Northrop Grumman*
5 *Corp.* (C.D. Cal. 2020) 469 F.Supp.3d 942, 949.)

6 Formal discovery was undertaken, resulting in the production of substantial documents. The
7 matter settled after arms-length negotiations, which included a session with an experienced mediator.
8 Counsel also has provided an analysis of the case, and how the settlement compares to the potential
9 value of the case, after allowing for various risks and contingencies. For example, much of plaintiff’s
10 allegations centers on possible off-the-clock work, including missed or skipped meal breaks and rest
11 breaks. Defendant, however, pointed out that its formal policies prohibit off-the-clock work, and asserted
12 that it would have had no knowledge of employees beginning work before punching in or continuing
13 after punching out. Further, it argued that it was required to make meal and rest breaks available, but not
14 required to ensure that they be taken, so long as no employer policy prevented or discouraged taking
15 such breaks. As to unreimbursed employee expenses (such as cell phone use, mileage, and masks),
16 plaintiff would have been called on to show that such expenses were in fact incurred, were reasonably
17 necessary to job performance, and were unreimbursed. Furthermore, the fact-intensive character of such
18 claims would have presented a serious obstacle to class certification.

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

Analysis

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.” (*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. 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, “the 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 “where 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.)

Attorney Fees and Other Costs

Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund” theory, or \$166,667. 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 \$158,975 (237.1 hours multiplier by reasonable rates ranging from \$550 for associates to \$675-\$1050 for senior counsel/partners), representing an implied multiplier of about 1.05. No adjustment from the one-third fee is necessary. The attorney’s fees are reasonable and are approved.

The requested representative payment of \$10,000 for the named plaintiff was 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. Plaintiff has provided a declaration in support of the request. Plaintiff points out that he executed a broader release than the class as a whole, but does not identify any particular claims of value that he may have. He also risks damage to his reputation and more difficulty in obtaining employment. The representative payment is approved.

Litigation costs of \$10,983.11 (mostly mediation, filing, and consultant fees) are reasonable and are approved. They are less than was estimated at the time of preliminary approval.

The settlement administrator’s costs of \$10,000 are reasonable and are approved.

Conclusion

The Court finds that the settlement is fair, reasonable, and adequate, and grants the motion for approval. Five percent of Class Counsel’s fee award, or \$8,333.35, is to be kept in an interest-bearing account established by the Settlement Administrator until the completion of the distribution process and Court approval of a final accounting. Plaintiff shall file and serve a report/declaration summarizing all distributions made pursuant to the approved Settlement on or before

1 May 25, 2027. The Court sets an OSC re Compliance with the terms of the Settlement for June 16, 2027
2 at 9:00 a.m.

3 Without affecting the finality of the Judgment, the Court shall retain exclusive and continuing
4 jurisdiction over the above-captioned action and the parties, including all Participating Class Members
5 and PAGA Members, for purposes of enforcing the terms of the Judgment entered herein. This
6 document shall constitute a judgment (and separate document constituting said judgment) for purposes
7 of California Rules of Court, Rule 3.769(h).

8
9 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

10 Dated: 8/31/2026


11 Hon. Benjamin Reyes II
12 Contra Costa County Superior Court Judge
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1 **PROOF OF SERVICE**

2 I am employed in the State of California, County of Los Angeles. I am over the age of 18
3 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1860 Los
4 Angeles, California 90067.

5 On August 28, 2026, I served the document described as: **[PROPOSED] ORDER**
6 **GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND**
7 **MOTION FOR ATTORNEYS' FEES AND JUDGMENT** on the interested parties in this action by
8 sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as
9 stated on the attached service list:

10 Kendall Cole
11 kcole@fisherphillips.com
12 Christine Baran
13 cbaran@fisherphillips.com
14 FISHER & PHILLIPS, LLP
15 2050 Main Street, Suite 1000
16 Irvine, CA 92614
17 Telephone: 949-851-2424
18 Facsimile: 949-851-0152

Attorneys for Defendants
M.O. Dion & Sons, Inc., Amber Resources,
LLC, and Amber Petroleum Products, Inc.

19 ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
20 for mailing in the ordinary course of business at Los Angeles, California. I am "readily
21 familiar" with this firm's practice of collection and processing correspondence for
22 mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal
23 Service that same day in the ordinary course of business with postage thereon fully
24 prepaid at Los Angeles, California.

25 ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
26 California, by e-mail delivery on the parties listed herein at their most recent known e-
27 mail address or e-mail of record in this action.

28 ☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope,
by hand to the counsel for Defendant.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted
electronically via One Legal eService to the individuals listed above, as they exist on
that database. This will constitute service of the document(s)

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on **August 28, 2026**, at Los Angeles, California.

Julia Urquizo

Type/Print Name

Julia Urquizo

Signature

Exhibit A

**SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 16**

JUDICIAL OFFICER: BENJAMIN T. REYES II

HEARING DATE: 08/26/2026

Line 12 — 1:30 PM

CASE NUMBER: C23-02723

CASE NAME: AMADOR RAMIREZ VS. M.O. DION AND SONS, INC.

**(1) MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND (2)
MOTION FOR ATTORNEYS' FEES, COSTS, AND A CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT — SET BY THE DEPT.**

TENTATIVE RULING:

I. Summary

Plaintiff Amador Ramirez moves for final approval of his class action and PAGA settlement with defendant M.O. Dion & Sons, Inc. He also moves for approval of his attorney's fees, litigation costs, administration costs, and representative payment.

Since preliminary approval was granted, the administrator has mailed notices to 354 class members. Seven packets were returned by the post office. Follow up resulted in new addresses, leaving three non-deliverable. No objections have been received, and no class members have opted out.

The motion is granted.

II. Background and Terms

Defendant is a petroleum distributor with several distribution facilities in California. Plaintiff worked there as a delivery driver. The original complaint was filed on October 26, 2023.

The settlement will create a gross settlement fund of \$500,000. The class representative payment to the plaintiff will be \$10,000. Attorney's fees will be \$166,667 (one-third of the settlement). Litigation costs will not exceed \$15,000. The settlement administrator's costs are estimated at \$10,000. PAGA penalties will be \$50,000, resulting in a payment of \$37,500 to the LWDA. The net amount paid directly to the class members will be about \$248,333. The fund is non-reversionary. There are an estimated 500 class members. Based on the estimated class size, the average net payment for each class member is approximately \$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.

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

The proposed settlement will certify a class of all current and former non-exempt employed at Defendants' California facilities between August 22, 2022 and November 27, 2024. The class members will not be required to file a claim. Funds will be apportioned to class members based on the number of workweeks worked during the class period.

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. For example, much of plaintiff's allegations centers 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 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.

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

III. Analysis

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." (See also *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521.)

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not always apply, because “where 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.)

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Litigation costs of \$10,983.11 (mostly mediation, filing, and consultant fees) are reasonable and are approved. They are less than was estimated at the time of preliminary approval.

The settlement administrator’s costs of \$10,000 are reasonable and are approved.

V. 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 and must attach a copy of this ruling to the proposed order.

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 ordered to submit a compliance statement, preferably a declaration of the distributions by the administrator, at least ten court days 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.