

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ

ANGEL LUNA individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

DAVEY TREE SURGERY COMPANY,
a Delaware Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 23CV00040

**~~[PROPOSED]~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR APPROVAL
OF PAGA SETTLEMENT; JUDGMENT**

Date: June 25, 2024

Time: 8:30 a.m.

Department: 5

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ORDER AND JUDGMENT

The unopposed Motion for Approval of PAGA Settlement of Plaintiffs Angel Luna and Ernesto Daniel Contreras (in the related case entitled *Ernesto Daniel Contreras, individually and on behalf of all others similarly situated v. Davey Tree Surgery Company, et al.*, pending in the Superior Court of the State of California for the County of Alameda, Case No. 23CV027491) (the “*Contreras Lawsuit*”) (jointly, “Plaintiffs”), including attorneys’ fees and costs, and administration costs, came on for hearing before this Court on June 25, 2024 at 8:30 a.m. in Department 5 of the above-entitled Court. The Court, having reviewed and considered Plaintiffs’ Motion for Approval of PAGA Settlement, documents and evidence presented in support thereof, the Settlement Agreement and Release of PAGA Claims (“Settlement Agreement”) entered into between Plaintiffs and Davey Tree Surgery Company (“Defendant” or “Davey”) (attached as Exhibit 2 to the Declaration of Ian Silvers filed with Plaintiffs’ Motion), and recognizing the disputed factual and legal issues involved in this case, the risks of further prosecution, the substantial benefits received by the State of California and aggrieved employees pursuant to the Settlement and GOOD CAUSE appearing, the Court hereby GRANTS Plaintiffs’ Motion for Approval of the PAGA Settlement (as shown in the Court’s tentative ruling attached hereto as Exhibit 1 and incorporated by reference, which became final as it was uncontested) and **HEREBY ORDERS** as follows:

1. All terms used herein shall have the same meaning as defined in the Settlement Agreement, and those terms are incorporated herein.

2. The Court hereby approves the Settlement, as set forth in the Settlement Agreement, under California Labor Code section 2699(1)(2) and makes a final ruling that the Settlement is in all respects fair, reasonable, and adequate. The Court further finds that the parties reached the Settlement as a result of arms’-length negotiations.

3. The Court finds that pursuant to the California Private Attorneys General Act (“PAGA”), Labor Code section 2699(1)(2), the Labor Workforce and Development Agency (“LWDA”) has been given notice of the Settlement. In particular, Plaintiffs each submitted

1 a copy of the Settlement to the LWDA when filing the PAGA Approval Motion, in
2 compliance with the requirements of PAGA

3 4. The Court confirms approval of the Settlement as to the following group of
4 individuals, collectively referred to as the “PAGA Group Members”: all non-exempt
5 employees who were employed by Davey in the State of California at any time during the
6 PAGA Period. “PAGA Period” is defined as the time period from October 31, 2021 through
7 the Approval Date, unless, if the escalator clause is triggered, pursuant to Section 3.4 of the
8 Settlement Agreement, Defendant chooses to end the PAGA Period as of the date the
9 Qualifying Threshold is reached.

10 5. The Court approves the following release of claims:

11 As of the Effective Date and full funding of the Gross Settlement Amount, the
12 Releasing Parties release the Released Parties from all Released Claims to the maximum
13 extent permitted by applicable law. Plaintiffs individually and as a proxy and agent for the
14 LWDA on behalf of the PAGA Group Members and the PAGA Group Members, shall be
15 deemed to have, by operation of the Approval Order and Judgment approved by the Court,
16 fully, finally, and forever settled and released all of the Released Claims.

17 “Released Claims” is defined as PAGA penalties for any and all causes of action,
18 claims, rights, demands, debts, obligations, guarantees, liabilities, costs, expenses, attorneys’
19 fees and costs, expert fees and costs, damages and actions of every nature and description,
20 whether known or unknown, actual or potential, that were alleged in or could have been
21 alleged based on the factual allegations contained in the *Luna* and *Contreras* Operative
22 Complaints (as defined in the Settlement Agreement) and/or the *Luna* and *Contreras* PAGA
23 Notices (as defined in the Settlement Agreement), arising during the PAGA Period, for civil
24 penalties pursuant to PAGA, including claims for unpaid, miscalculated or untimely payment
25 of wages due (including, without limitation, minimum, regular, overtime and double time
26 wages), off-the-clock work, rounding, failure to provide legally-compliant meal periods
27 and/or to properly pay associated premium pay, failure to authorize and permit legally
28 complaint rest periods and/or to properly pay associated premium pay, failure to pay all

1 wages timely at the time of termination, failure to pay all wages timely during employment,
2 failure to provide compliant wage statements, failure to keep requisite payroll and other
3 records, failure to indemnify/reimburse for necessary business expenses, failure to provide
4 clean drinking water and restrooms to employees, in violation of California Labor Code
5 sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 551, 558, 1174, 1194, 1194.2,
6 1197, 1197.1, 1198, 2441, 2802, California Code of Regulations sections 1524, 3363, 3395
7 and 8397.4 and any applicable Industrial Welfare Commission Orders. The Released Claims
8 do not include the underlying wage and hour claims or any other claims other than penalties
9 under PAGA.

10 **“Released Parties”** means Defendant and its past, present and future parent
11 companies, subsidiaries, predecessors, successors, affiliates, divisions, joint employers, co-
12 employers and related companies and joint venturers, and all of their respective present or
13 former officers, directors, employees, agents, registered representatives, attorneys, insurers,
14 successors and assigns.

15 6. The Gross Settlement Amount of \$1,732,500.00 and any increased caused by
16 the escalator clause in the Settlement Agreement, the Net Settlement Amount, and the
17 methodology used to calculate each Individual PAGA Payment in accordance with the
18 Settlement is approved under California Labor Code section 2699(1)(2).

19 7. Plaintiffs and Defendant are directed to effectuate the Settlement in accordance
20 with the terms set forth therein, including that Defendant shall pay the Gross Settlement
21 Amount to the Settlement Administrator.

22 8. The Court hereby appoints Plaintiffs’ Counsel BISNAR|CHASE LLP, Alpers
23 Law Group and Aegis Law Firm, P.C. as PAGA Counsel and approves attorneys’ fees in the
24 amount of \$577,500.00 and any increase under the escalator clause (one-third of the
25 Settlement Amount) to Plaintiffs’ Counsel to be paid from the Gross Settlement Amount.

26 9. The Court approves reasonable litigation costs in the amount of \$25,272.04 as
27 fair, reasonable, and adequate, and orders that the Settlement Administrator distribute these
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1 payments to Plaintiffs' Counsel as provided in the Settlement Agreement from the Gross
2 Settlement Amount.

3 10. The Court approves the appointment of CPT Group, Inc. as Settlement
4 Administrator in this matter and approves settlement administration costs of \$10,500.00. The
5 Court authorizes CPT Group to calculate and Net Settlement Amount and the Individual
6 PAGA Payments in accordance with the terms of the Settlement and authorizes the
7 disbursement procedures and the procedures for uncashed and undeliverable checks as laid
8 out in the Settlement Agreement.

9 11. The Court approves the allocations and payment of the Net Settlement Amount
10 as set forth in the Settlement. In particular, under the terms of the Settlement, 75% of the
11 Net Settlement Amount (\$1,119,227.96, prior to any escalator) will be paid to the LWDA,
12 and the remaining 25% of the Net Settlement Amount (\$836,420.97, prior to any escalator)
13 shall be distributed to the PAGA Group Members in accordance with the terms of the
14 Settlement.

15 12. The Court hereby approves as to form and content the proposed Notice of
16 PAGA Settlement, attached as Exhibit A to the Settlement Agreement, as it fully and
17 accurately informs all persons of all material elements of the proposed Settlement,
18 constitutes the best notice practicable under the circumstances, and constitutes valid, due,
19 and sufficient notice to all PAGA Group Members.

20 13. Checks for Individual PAGA Payments sent to PAGA Group Members shall be
21 valid for 180 days after issuance. Funds remaining from any checks for any Individual
22 PAGA Payments after 180 days will be disbursed to the California State Controllers' Office
23 Unclaimed Property Fund as set forth in the Settlement Agreement.

24 14. Within 21 days of Court approval of the Settlement, Defendant will provide the
25 Settlement Administrator with a the PAGA Group Member List, which shall include each
26 PAGA Group Member's name, last known address, pay periods during the PAGA Period,
27 and social security number. Additionally, within 14 days of the Effective Date, Defendant
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1 shall deposit the Gross Settlement Amount in a Qualified Settlement Fund established by the
2 Settlement Administrator.

3 15. The Settlement Administrator is directed to distribute the funds in accordance
4 with the terms of the Settlement within fourteen (14) days of receiving the Gross Settlement
5 Amount.

6 16. Following entry of this Order and Judgment, all PAGA Group Members shall
7 be bound by the release in the Settlement.

8 17. The Court orders that all Released Claims of the State of California, the LWDA
9 and the PAGA Group Members during the PAGA Period are and shall be deemed to be
10 conclusively released as against Defendant and the Released Parties. As a result, such claims
11 are barred and Plaintiffs and PAGA Group Members are enjoined from commencing,
12 prosecuting, or continuing any actions or claims, either directly or indirectly, against
13 Defendant and the Released Parties, in this or any other jurisdiction or forum, with respect
14 to any and all Released Claims.

15 18. Nothing in this Order and Judgment or in the Settlement shall be construed as
16 an admission or concession by any party of any fault, wrongdoing, omission, or liability
17 whatsoever. The Settlement and this resulting Judgment represent a compromise of
18 vigorously disputed allegations and claims.

19 19. Plaintiff is directed to submit a copy of this Judgment to the LWDA within 10
20 days of the date of this Order.

21 20. This document shall constitute a judgment under California Code of Civil
22 Procedure § 664.6. and if it becomes necessary for Plaintiffs to enforce the judgment for
23 failure to pay, the prevailing party is entitled to reasonable attorney's fees and costs.

24 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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26 DATED: 6/25/2024 1:18:30 PM



Judge of the Superior Court

EXHIBIT 1

LAW AND MOTION TENTATIVE RULINGS

DATE: JUNE 25, 2024 TIME: 8:30 A.M.

TENTATIVE RULINGS ARE NOT POSTED IN UNLAWFUL DETAINER CASES

No. 23CV00040

LUNA v. DAVEY TREE SURGERY COMPANY

MOTION FOR APPROVAL OF PAGA SETTLEMENT

The motion is granted.

The court finds that the settlement falls within a range of reasonableness and is presumptively valid; appears to be a product of serious, informed and non-collusive negotiations; and has no obvious deficiencies. The court grants approval of the Settlement Agreement.

Notice to prevailing parties: Local Rule 2.10.01 requires you to submit a proposed formal order incorporating, verbatim, the language of any tentative ruling – or attaching and incorporating the tentative by reference - or an order consistent with the announced ruling of the Court, in accordance with California Rule of Court 3.1312. **Such proposed order is required even if the prevailing party submitted a proposed order prior to the hearing** (unless the tentative is simply to “grant”). Failure to comply with Local Rule 2.10.01 may result in the imposition of sanctions following an order to show cause hearing, if a proposed order is not timely filed.