

GRAHAM HOLLIS APC 3555
AVENUE SUITE 200 SAN DIEGO,
CALIFORNIA 92103

FILED

2024 MAY 20 A 8:58

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

BY: C. JARATA, DEPUTY CLERK

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

FLORENCIO CHAVEZ QUIROZ and
LEONARDO BASURTO, on behalf of
themselves and other similarly situated
employees in the State of California,

Plaintiffs,

v.

PRESTIGE GUNITE, LP; WEST COAST
GUNITE MANAGEMENT, LLC; and DOES 1
through 50, inclusive,

Defendants.

Case No.: C22-00724

CLASS & REPRESENTATIVE ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS AND
PAGA ACTION SETTLEMENT**

Dept: 12
Judge: Hon. Charles S. Treat

Complaint Filed: March 14, 2022
Trial Date: None set

1 Plaintiffs' Unopposed Motion for Preliminary Approval of Class and PAGA Action Settlement
2 came before this Court on May 2, 2024 at 9:00 a.m. The Court, having considered the proposed Class
3 Action and PAGA Settlement Agreement and Class Notice (the "Settlement Agreement"), Plaintiffs'
4 Motion for Preliminary Approval, and all papers filed in support, HEREBY ORDERS THE
5 FOLLOWING:

6 1. A copy of the Court's tentative ruling granting Plaintiffs' Unopposed Motion for
7 Preliminary Approval of Class and PAGA Action Settlement is attached hereto as **Exhibit 1**.

8 2. This Order incorporates by reference the definitions in the Settlement Agreement, and all
9 terms defined therein shall have the same meaning in this Order as set forth in the Settlement Agreement,
10 which is attached to the Declaration of Graham S.P. Hollis as Exhibit 1.

11 3. It appears to the Court that the terms of the Settlement Agreement are sufficiently fair,
12 reasonable, and adequate to justify preliminary approval. It appears to the Court that formal discovery,
13 investigation, and research have been conducted such that counsel for the Parties are at this time able to
14 reasonably evaluate their respective positions. It further appears to the Court that settlement, at this time,
15 will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be
16 presented by the further prosecution of the action. It further appears that the Settlement Agreement has
17 been reached as the result of intensive, serious, and non-collusive, arms-length negotiations with an
18 experienced mediator.

19 4. The Court preliminarily finds that the terms of the Settlement Agreement appear to be
20 within the range of reasonableness of a settlement that could ultimately be given final approval by this
21 Court. The Court has reviewed the monetary recovery that is being granted as part of the Settlement and
22 preliminarily finds that the monetary settlement awards made available to all Class Members are fair,
23 adequate, and reasonable when balanced against the probable outcome of further litigation relating to
24 liability and damages issues.

25 5. The Court hereby conditionally certifies the Settlement Class for settlement purposes only.

26 6. The Court grants conditional certification of the following Settlement Class:

27 **Settlement Class:** All current and former non-exempt employees of Defendants who were
28 employed by Defendants in the State of California at any time during the Class Period. The
Class Period is defined as September 17, 2017 to March 23, 2023.

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1 11. The Court approves the form and content of the Court-Approved Notice of Class Action
2 Settlement and Hearing Date for Final Court Approval ("Class Notice"), in substantially the form attached
3 to the Settlement Agreement as Exhibit A and finds that the proposed method of disseminating the Class
4 Notice to the Class meets all the due process requirements, provides the best notice practicable under the
5 circumstances, and constitutes due and sufficient notice to all Class Members.

6 12. The Court approves the retention of Apex Class Action Settlement Administration
7 ("Apex") as the Settlement Administrator and hereby directs Apex to provide the approved Class Notice
8 to Class Members and administer the Settlement in accordance with the procedures described in the
9 Settlement Agreement and the implementation schedule set forth below.

10 13. In the event the Settlement does not become effective in accordance with the terms of the
11 Settlement Agreement, or the Settlement is not finally approved, is terminated, cancelled, or fails to
12 become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the
13 Parties shall revert to their respective positions as of the commencement of the litigation.

14 14. The Judgment on Final Approval must provide for a compliance hearing after the
15 settlement has been completely implemented. Class Counsel shall submit a compliance hearing statement
16 one week before the compliance hearing date. Five percent (5%) of Class Counsel's attorneys' fees shall
17 be withheld by the Settlement Administrator pending satisfactory compliance as found by this Court.

18 15. The Court orders the following implementation schedule for further proceedings:

EVENT	DEADLINE
Preliminary Approval Date	_____
Deadline for Defendants to provide the Settlement Administrator with the Class List and the information necessary to calculate the compensable workweeks and pay periods	No later than 30 calendar days after the Court grants Preliminary Approval
Deadline for the Settlement Administrator to mail the Class Notice to Class Members	No later than 14 calendar days after receiving Class List from Defendant
Deadline for Class Members to submit any objection to the Settlement Agreement or request	45 calendar days from the initial mailing of Notice to the Class Members

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exclusion from the Settlement Class. (“Response Deadline”)	The deadline will be extended by 14 calendar days for any Class Member who is re-mailed the Notice
Deadline for the Settlement Administrator to provide a declaration attesting the completion of the Notice process and number of valid requests for exclusions	No later than 14 calendar days before Plaintiffs’ deadline to file the motion for final approval, or August 30, 2024
Deadline for Plaintiffs to file the Motion for Final Approval	September 13, 2024
Final Approval Hearing	October 10, 2024 at 9:00 a.m.

16. The Court hereby sets a hearing date for Plaintiffs’ Motion for Final Approval of Class Action and PAGA Settlement and Award of Attorneys’ Fees, Costs, and Class Representative Service Awards on October 10, 2024, at 9:00 a.m. in Department 12 of this Court.

17. The Court reserves the right to adjourn or continue the date of the final approval hearing and all dates provided for in the Settlement Agreement without further notice to Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

IT IS SO ORDERED.

Dated: **MAY 17 2024**



Hon. 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: 05/02/2024

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 email or 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 their 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, parties are to provide an **EMAIL NOTIFICATION TO THE DEPARTMENT OF THE REQUEST TO ARGUE AND SPECIFICATION OF ISSUES TO BE ARGUED**. 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. 8:31 AM CASE NUMBER: N22-1738
CASE NAME: DISCOVERY BUILDERS, INC., A CALIFORNIA CORPORATION VS. CITY OF BRENTWOOD, A CALIFORNIA GENERAL-LAW CITY
*FURTHER CASE MANAGEMENT CONFERENCE
FILED BY:
TENTATIVE RULING:

Counsel to appear (Zoom okay). The Court inquires as to the status and timing of the administrative proceedings pending in the city council. It appears likely that if those don't resolve the dispute entirely, they will likely change the complexion of the matter sufficiently to require new pleadings. The Court also inquires whether West Coast intends to continue participating on the petitioner side.

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MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 05/02/2024

9. 9:00 AM CASE NUMBER: C22-00724
CASE NAME: FLORENCIO QUIROZ VS. PRESTIGE GUNITE, LP
*HEARING ON MOTION IN RE: PRELIMINARY APPROVAL
FILED BY: QUIROZ, FLORENCIO CHAVEZ
TENTATIVE RULING:

Plaintiffs Florencio Quiroz and Leonardo Basurto move for preliminary approval of their class action and PAGA settlement with defendants Prestige Gunite, LP and West Coast Gunite Management, LLC. The motion is **granted**.

A. Background and Settlement Terms

Defendant's business is not identified in the papers, but based on its website it is apparently in the business of constructing foundations for swimming pools and similar features. Plaintiff Quiroz worked for defendant as a laborer from 1989 to 2020. Plaintiff Basurto worked as a lead from 2009 to 2022.

The original complaint was filed by plaintiff Quiroz as a PAGA and class-action case on March 14, 2022. It was amended later to include claims for piece rate employees. (The majority of defendants' non-exempt employees are paid on a piece basis, per pool completed.) Basurto was later added as a PAGA representative.

The settlement would create a gross settlement fund of \$480,637.19. The class representative payment to the plaintiffs would be \$7,500 each. Attorney's fees would be \$160,212 (one-third of the settlement), plus \$7,667 as one-third of payments made on prior releases (sought on a catalyst theory). Litigation costs are capped in the settlement at \$18,000, but plaintiffs seek to recover only actual costs to date of \$13,115. The settlement administrator's costs are estimated at \$5,890. PAGA penalties would be \$5,000, resulting in a payment of \$3,750 to the LWDA. The net amount paid directly to the class members would be about \$268,759, not including PAGA distribution. The fund is non-reversionary. There are an estimated 86 class members. Based on the estimated class size, the average net payment for each class member is approximately \$3,125. 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. Unusually, the number of aggrieved employees for PAGA purposes is larger, about 106, even though the PAGA period is considerably shorter; this appears to be due to exclusion from the class of a number of employees who entered into prior releases under a so-called *Pick-Up Stix* campaign.

The entire settlement amount will be deposited with the settlement administrator within 45 days after the effective date of the settlement.

The proposed settlement would certify a class of all current and former non-exempt employees employed at Defendants' California facilities between September 17, 2017 to March 23, 2023. For PAGA purposes, the period covered by the settlement is July 14, 2020 to March 23, 2023.

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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 workweeks worked during the class period.

A list of class members will be provided to the settlement administrator within 30 days after preliminary approval. 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. The uncashed funds will be redistributed to class members if the cost of redistribution will be half or less of the available funds; otherwise the funds will be directed to the unclaimed property fund.

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. Plaintiffs also contend that piece-rate employees were not compensated for on-the-job time not spent on productive work, and that employees were not given rest breaks for working outdoors in conditions of high heat. Defendants argue that the fact-intensive character of all 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: 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*

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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 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*, 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, “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.)

The settlement agreement includes an escalator provision, to be triggered in the event that the number of covered employees or work weeks turns out to be materially higher than now estimated. If the clause is triggered and the defendant elects to increase the total payment, no further approval will be needed.

C. Attorney Fees

Plaintiff seeks 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

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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, the fee award will not be considered at this time, but only as part of final approval.

Similarly, litigation and administration costs and the requested representative payments of \$7,500 each for the plaintiffs will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07.

D. Discussion and Conclusion

The Court finds that the settlement is sufficiently fair, reasonable, and adequate to justify preliminary approval.

Counsel will be directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. 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.

10. 9:00 AM CASE NUMBER: C22-00733
CASE NAME: LONE TREE ESTATES VS. SANTOMAURO
*HEARING ON MOTION IN RE: MOTION TO VOID JUDGMENT FILED BY SANTO-JOSEPH
FILED BY:
TENTATIVE RULING:

Defendant's motion to vacate or void the judgment in this case is **denied**.

First, the motion purports to be made under a Federal Rule of Civil Procedure, which does not apply in this Court. As the motion asserts no grounds that could invoke Code of Civil Procedure § 473(b), it must be taken as having been filed under Code of Civil Procedure § 663. But defendant has long since missed the mandatory deadlines for any such motion under § 663a.

In any event, insofar as the motion can be understood (and it is largely incoherent), it does not come anywhere close to stating any ground for vacating the judgment.