


1 CODY PAYNE, SBN 282342  
cody@paynellp.com  
2 KIM NGUYEN, SBN 293906  
kim@paynellp.com  
3 **PAYNE NGUYEN, LLP**  
100 Wilshire Boulevard, Suite 700  
4 Santa Monica, CA 90401  
Telephone: (310) 360-9882  
5 Facsimile: (310) 928-7469

6 *Attorneys for Plaintiff*  
7 JOSE BELTRAN

**FILED**  
OCT 28 2024  
K. BIEBER, CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
By: 

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF CONTRA COSTA**

11 JOSE BELTRAN individually, and on behalf  
12 of other members of the general public  
13 similarly situated,

14 Plaintiff,

15 vs.

16 MONUMENT CONSTRUCTION, INC., dba  
17 TECHCON CONSTRUCTION, a California  
Corporation; and DOES 1 through 100,  
inclusive,

18 Defendants.

Case No.: MSC21-01751

*Assigned for All Purposes to Hon. Charles S.  
Treat, Dept. 12*

**ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

Hearing Date: October 10, 2024  
Hearing Time: 8:30 a.m.  
Dept.: 12

Complaint filed: August 27, 2021  
Trial Date: None Set

1 ORDER

2 Plaintiff Jose Beltran moves for preliminary approval of his class action and PAGA  
3 settlement with defendant Monument Construction, Inc. The motion is granted.

4 **A. Background and Settlement Terms**

5 Defendant is a full-service commercial-site construction company. Plaintiff worked  
6 there as a general labor and landscaper from 2016 to 2020.

7 The original complaint was filed on August 27, 2021 as a class action. PAGA claims  
8 were added by later amendment.

9 The settlement would create a gross settlement fund of \$1,000,000. The class  
10 representative payment to the plaintiff would be \$10,000. Attorney's fees would be \$333,333  
11 (one-third of the settlement). Litigation costs would not exceed \$30,000. The settlement  
12 administrator's costs are estimated at \$9,500. PAGA penalties would be \$75,000, resulting in a  
13 payment of \$56,250 to the LWDA. The net amount paid directly to the class members would be  
14 about \$542,167, not including distribution of PAGA penalties. The fund is non-reversionary.

15 There are an estimated 540 class members. Based on the estimated class size, the average net  
16 payment for each class member is approximately just over \$1,000. The individual payments will  
17 vary considerably, however, because of the allocation formula prorating payments according to  
18 the number of weeks worked during the relevant time. The number of aggrieved employees for  
19 PAGA purposes is smaller, about 312, because the starting date of the relevant period is later.

20 The entire settlement amount will be deposited with the settlement administrator in two  
21 installments. The first installment will be paid within 14 days after the effective date of the  
22 settlement. The second will be 180 days later.

23 The proposed settlement would certify a class of all current and former non-exempt  
24 employees employed at Defendants' California facilities between August 27, 2017 and now. For  
25 PAGA purposes, the period covered by the settlement is August 27, 2020 to now.

26 The class members will not be required to file a claim. Class members may object or opt  
27 out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the  
28

1 settlement.) Funds would be apportioned to class members based on the number of workweeks  
2 worked during the class period.

3 Settlement checks not cashed within 180 days will be cancelled, and the funds will be  
4 directed to the controller's unclaimed property fund.

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

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

17 Counsel also has provided an analysis of the case, and how the settlement compares to  
18 the potential value of the case, after allowing for various risks and contingencies. For example,  
19 much of plaintiff's allegations centers on possible off-the-clock work, including missed or  
20 skipped meal breaks and rest breaks. Defendant, however, pointed out that its formal policies  
21 prohibit off-the-clock work, and asserted that it would have had no knowledge of employees  
22 beginning work before punching in or continuing after punching out. Further, it argued that it  
23 was required to make meal and rest breaks available, but not required to ensure that they be  
24 taken, so long as no employer policy prevented or discouraged taking such breaks. As to  
25 unreimbursed employee expenses (such as cell phone use, mileage, and tools), plaintiff would  
26 have been called on to show that such expenses were in fact incurred, were reasonably  
27 necessary to job performance, and were unreimbursed. Furthermore, the fact-intensive character  
28 of such claims would have presented a serious obstacle to class certification.

1 The potential liability needs to be adjusted for various evidence and risk-based  
2 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a  
3 number of reasons: they derive from other violations, they include “stacking” of violations, the  
4 law may only allow application of the “initial violation” penalty amount, and the total amount  
5 may be reduced in the discretion of the court. (See Labor Code § 2699(c)(2) (PAGA penalties  
6 may be reduced where “based on the facts and circumstances of the particular case, to do  
7 otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.”))  
8 Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory  
9 penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services,*  
10 *Inc.* (2024) 15 Cal.5th 1056.)

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

13 **B. Legal Standards**

14 The primary determination to be made is whether the proposed settlement is “fair,  
15 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,  
16 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of  
17 further litigation, the risk of maintaining class action status through trial, the amount offered in  
18 settlement, the extent of discovery completed and the state of the proceedings, the experience  
19 and views of counsel, the presence of a governmental participant, and the reaction ... to the  
20 proposed settlement.” (See also *Amaro*, 69 Cal.App.5th 521.)

21 Because this matter also proposes to settle PAGA claims, the Court also must consider  
22 the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v.*  
23 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the  
24 court found that the “fair, reasonable, and adequate” standard applicable to class actions applies  
25 to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the  
26 fairness of the settlement’s allocation of civil penalties between the affected aggrieved  
27 employces”. (*Id.*, at 64-65.)

1 California law provides some general guidance concerning judicial approval of any  
2 settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of*  
3 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement  
4 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,  
5 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “The court cannot  
6 surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a  
7 mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court*  
8 (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not  
9 always apply, because “Where the rights of the public are implicated, the additional safeguard  
10 of judicial review, though more cumbersome to the settlement process, serves a salutatory  
11 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141  
12 Cal.App.4th 48, 63.)

13 The settlement agreement includes an escalator provision, to be triggered in the event  
14 that the number of covered employees or work weeks turns out to be materially higher than now  
15 estimated. If the clause is triggered and the defendant elects to increase the total payment, no  
16 further approval will be needed. The parties are cautioned, however, that in the event the clause  
17 would result in a significant modification of the settlement (such as cutting back the covered  
18 period), it would be prudent to seek further approval from the Court.

### 19 C. Attorney Fees

20 Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common  
21 fund” theory. Even a proper common fund-based fee award, however, should be reviewed  
22 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480,  
23 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine  
24 whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means  
25 of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether  
26 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable  
27 range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)  
28

1 Following typical practice, however, the fee award will not be considered at this time, but only  
2 as part of final approval.

3 Similarly, litigation and administration costs and the requested representative payment  
4 of \$10,000 for the plaintiff will be reviewed at time of final approval. Criteria for evaluation of  
5 representative payment requests are discussed in *Clark v. American Residential Services LLC*  
6 (2009) 175 Cal.App.4th 785, 804-07.

7 **D. Discussion**

8 The Court finds that the settlement is sufficiently fair, reasonable, and adequate to  
9 justify preliminary approval. The ultimate judgment must provide for a compliance hearing  
10 after the settlement has been completely implemented. Plaintiffs' counsel are to submit a  
11 compliance statement one week before the compliance hearing date. Five percent of attorney's  
12 fees are to be withheld by the claims administrator pending satisfactory compliance as found by  
13 the Court.

14 **E. Terms**

15 1. The Court GRANTS preliminary approval of the class action settlement as set  
16 forth in the Agreement and finds its terms to be within the range of reasonableness of a  
17 settlement that ultimately could be granted approval by the Court at a Final Fairness hearing.  
18 All terms used herein shall have the same meaning as defined in the Agreement. For purposes  
19 of the Settlement only, the Court finds that the proposed Class is ascertainable and that there is a  
20 sufficiently well-defined community of interest among the members of the Class in questions of  
21 law and fact. Therefore, for settlement purposes only, the Court grants conditional certification  
22 of the following settlement Class:

23 All current and former non-exempt employees of Defendant Monument  
24 Construction, Inc. dba Techcon Construction ("Defendant") who were employed  
25 by Defendant in the state of California at any time from August 27, 2017 to the  
date of Preliminary Approval.

26 2. For purposes of the Settlement only, the Court designates Plaintiff Jose Beltran  
27 as the Class Representative and designates Cody Payne and Kim Nguyen of Payne Nguyen,  
28 LLP as Class Counsel.

1           3.     The Court designates Apex Class Action Administration as the third-party  
2 Administrator.

3           4.     The Parties are ordered to implement the Settlement according to the terms of the  
4 Settlement Agreement.

5           5.     The Court approves, as to form and content, the Court Approved Notice of Class  
6 Action Settlement and Hearing Date for Final Court Approval ("Class Notice") attached as  
7 Exhibit A to the Agreement.

8           6.     The Court finds that the form of notice to the Class regarding the pendency of  
9 the action and of the Settlement, the dates selected for mailing and distribution, and the methods  
10 of giving notice to members of the Class, satisfy the requirements of due process, constitute the  
11 best notice practicable under the circumstances, and constitute valid, due, and sufficient notice  
12 to all members of the Class. The form and method of giving notice complies fully with the  
13 requirements of California Code of Civil Procedure § 382, California Civil Code § 1781,  
14 California Rules of Court §§ 3.766 and 3.769, the California and United States Constitutions,  
15 and other applicable law.

16           7.     The Court further approves the procedures for Class Members to opt-out of or  
17 object to the Settlement, as set forth in the Class Notice and the Agreement. The procedures and  
18 requirements for filing objections in connection with the final fairness hearing are intended to  
19 ensure the efficient administration of justice and the orderly presentation of any Class  
20 Member's objection to the Settlement, in accordance with the due process rights of all Class  
21 Members.

22           8.     The Court directs the Administrator to mail the Class Notice to the members of  
23 the Class in accordance with the terms of the Settlement.

24           9.     The Class Notice shall provide 60 calendar days' notice for Class Members to  
25 submit disputes, opt-out of, or object to the Settlement.

26           10.    The hearing on Plaintiff's Motion for Final Approval of Settlement on the  
27 question of whether the Settlement should be finally approved as fair, reasonable, and adequate  
28

1 is scheduled in Department 12 of this Court, located at 725 Court Street, Martinez, California  
2 94553, on February 13, 2025 at 9:00 a.m.

3 11. At the Final Fairness hearing, the Court will consider: (a) whether the Settlement  
4 should be approved as fair, reasonable, and adequate for the Class; (b) whether a judgment  
5 granting final approval of the Settlement should be entered; and (c) whether Plaintiff's  
6 application for a service payment, settlement administration expenses, and Class Counsel's  
7 attorney's fees and costs, should be granted.

8 12. Counsel for the Parties shall file memoranda, declarations, or other statements  
9 and materials in support of their request for final approval of Plaintiff's application for a service  
10 payment, settlement administration expenses, Class Counsel's attorneys' fees and costs, prior to  
11 the hearing on Plaintiff's Motion for Final Approval of Settlement according to the time limits  
12 set by the Code of Civil Procedure and the California Rules of Court.

13 13. An implementation schedule is below:

Event	Date
Defendant to provide class contact information to Administrator no later than:	October 17, 2024 [7 days following preliminary approval]
Administrator to mail the Class Notice to the Class Members no later than:	October 28, 2024 [10 days following provision of contact information]
Deadline for Class Members to submit disputes, request exclusion from, or object to the Settlement:	December 30, 2024 [60 days after mailing of the Class Notice]
Deadline for Plaintiff to file Motion for Final Approval of Class Action and PAGA Settlement:	January 22, 2025
Hearing on Motion for Final Approval of Settlement	February 13, 2025

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 14. Pending the Final Fairness hearing, all proceedings in this Action, other than




1 proceedings necessary to carry out or enforce the terms and conditions of the Settlement and  
2 this Order, are stayed. To facilitate administration of the Settlement pending final approval, the  
3 Court hereby enjoins Plaintiff and all members of the Class from filing or prosecuting any  
4 claims, or suits regarding claims released by the Settlement, unless and until such Class  
5 Members have filed valid Requests for Exclusion with the Administrator.

6 15. Counsel for the Parties are hereby authorized to utilize all reasonable procedures  
7 in connection with the administration of the Settlement which are not materially inconsistent  
8 with either this Order or the terms of the Settlement.

9  
10 **IT IS SO ORDERED.**

11  
12 DATED: **OCT 23 2024**

13 By: \_\_\_\_\_

  
14 Hon. Charles S. Treat  
JUDGE OF THE SUPERIOR COURT