

Electronically Filed by
Superior Court of California,
Contra Costa County
9/16/2026
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Elsa Bautista, on behalf of herself and all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

ELSA BAUTISTA, on behalf of herself and
all others similarly situated, and on behalf of
the general public,

Plaintiff,

vs.

DIANNE ADAIR DAY CARE CENTERS, a
California Corporation, and DOES 1 through
10, inclusive.

Defendants.

CASE NO.: C24-02288

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT

**~~[PROPOSED]~~ ORDER GRANTING PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

IT IS HEREBY ORDERED:

1. The Court adopts its tentative ruling attached hereto as Exhibit "A";
2. The Court grants preliminary approval and conditional certification of the Class;
3. The Court grants preliminary approval of Plaintiff Elsa Bautista as Class Representative;
4. The Court grants preliminary approval of Otkupman Law Firm, A Law Corporation, as Class Counsel;
5. The Court grants preliminary approval of Settlement of claims as set forth in the Settlement Agreement;
6. The Court approves the proposed Class Notice and Exclusion Form;
7. The Court grants preliminary approval of the Gross Settlement Amount of \$400,250.00;
8. The Court grants preliminary approval of Apex Class Action, LLC ("Apex") as Settlement Administrator and payment of service in an amount up to \$15,000.00 (currently estimated to be \$8,500.00);
9. The Court grants preliminary approval of a Class Representative Service Payment to Plaintiff Elsa Bautista in an amount up to \$10,000.00;
10. The Court grants preliminary approval of the payment to Class Counsel of reasonable attorney's fees of \$133,403.33, and reimbursement of reasonable costs, subject to proof.
11. The Court grants preliminary approval of the PAGA Payment in the amount of \$30,000.00. 65% of this amount (\$19,500.00) will be paid to the LWDA and 35% of this amount (\$10,500.00) will be paid to the Aggrieved Employees on a pro rata basis.
12. The Court grants the schedule for implementation of the terms of the Settlement Agreement and the Court sets a hearing on final approval on February 24, 2027 at 9:00 a.m. in Department 16.

DATED: 9/16/2026 _____


Hon. Benjamin T. Reyes II

HON. JUDGE OF THE SUPERIOR COURT

EXHIBIT A

13. 9:00 AM CASE NUMBER: C24-02288
CASE NAME: ELSA BAUTISTA VS. DIANNE ADAIR DAY CARE CENTERS
PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
FILED BY: BAUTISTA, ELSA
TENTATIVE RULING:

Summary

Plaintiff Elsa Bautista ("Plaintiff") seeks preliminary approval of a proposed wage and hour class action and PAGA settlement with Defendant Dianne Adair Day Care Centers ("Defendant"). Plaintiff

further seeks conditional certification of the proposed class for purposes of settlement. This motion is **granted** as set forth in this order. No appearance is required at the hearing on September 9, 2026.

Background

This wage and hour class action and Private Attorneys General Act ("PAGA") settlement arises from claims that Defendant violated California Labor Code provisions governing meal and rest periods, overtime compensation, wage statements, timely payment of wages, and business expense reimbursement. The parties engaged in extensive discovery, including the exchange of statistical data and employment records, and participated in a full-day mediation with Lynn S. Frank before reaching this settlement.

The parties propose a gross settlement amount of **\$400,250.00** on an all-inclusive basis. Notably, Defendant has already distributed **\$88,250.00** to Class Members, leaving a remaining funding obligation of **\$312,000.00**. The settlement class consists of approximately 310 current and former non-exempt California employees who worked for Defendant during the period from August 27, 2020, through February 15, 2026, encompassing approximately 22,188 workweeks.

The settlement allocates the gross amount as follows: (1) up to **\$15,000.00** for settlement administration costs (currently estimated at \$8,500.00) to Apex Class Action, LLC; (2) a **\$10,000.00** service payment to Plaintiff Elsa Bautista; (3) **\$133,403.33** in attorney's fees (33.33% of the gross settlement) to Otkupman Law Firm, plus reimbursement of reasonable costs subject to proof; (4) **\$30,000.00** in PAGA penalties, with 65% (**\$19,500.00**) payable to the Labor and Workforce Development Agency and 35% (**\$10,500.00**) distributed to aggrieved employees; and (5) the remaining net amount distributed *pro rata* to Participating Class Members based on workweeks worked during the class period.

Individual class payments will be structured with 10% allocated to wage claims (reported on Form W-2 with tax withholding) and 90% allocated to interest and penalties. A distinctive feature of this settlement is that all class members will receive automatic distributions without the requirement of submitting claim forms, significantly enhancing the recovery rate.

The settlement provides for a broad release of all claims alleged in the complaint, including wage and hour claims and PAGA penalties, while Defendant expressly denies any liability or wrongdoing. The parties calculate that the maximum realistic recovery at trial would be approximately \$648,139.13, making this settlement represent roughly 62% of the estimated full recovery, a favorable result given the risks and costs of continued litigation.

The proposed notice program includes direct mailing to all identifiable class members using Defendant's payroll records, with address searches for undeliverable notices. Class members will have 60 days (plus an additional 14 days for re-mailed notices) to opt out or object. The settlement administrator will file a declaration of compliance prior to the final approval hearing, and all disbursements must occur within 14 days after Defendant funds the settlement amount.

Analysis

The primary determination is whether the proposed settlement is "fair, reasonable, and adequate" under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The factors include "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*, *supra*, 69 Cal.App.5th 521.)

California law provides guidance concerning judicial approval of class action settlements. First, public policy favors settlement (*Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 273), but the court must 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, "[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." (*Cal. State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) Consequently, courts have noted that *Neary* does not apply where public rights are implicated, 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 salutary purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

Attorneys' Fees

Plaintiff seeks attorney fees of **\$133,403.33** representing one-third of the total settlement amount, relying on the common fund doctrine. Even under the common fund theory, however, the fee award 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 lodestar cross-check as a method to determine whether the percentage allocated is reasonable. The Court 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 p. 505.) Following typical practice, however, the Court will not consider the fee award at this preliminary approval stage, but reserves review for final approval.

Similarly, litigation costs of and the requested representative payment of \$10,000.00 for Plaintiff will be reviewed at the time of final approval. Criteria for evaluating representative payment requests are discussed in *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804-807.

Ruling

1. **Preliminary Approval**. This motion is **granted**. The Court preliminarily approves the Class Action and PAGA Settlement Agreement ("Settlement Agreement") entered into between Plaintiff Elsa Bautista and Defendant Dianne Adair Day Care Centers. The Court finds that the settlement amount of **\$400,250.00** and the allocation set forth therein fall within the range of reasonableness warranting notice to the settlement class. Counsel are directed to prepare an order reflecting this ruling, the other findings in the previously submitted proposed order, attaching a copy of this ruling.
2. **Conditional Class Certification**. For settlement purposes only, the Court conditionally certifies the following class: All current and former non-exempt California employees of Defendant who worked for Defendant in California at any time during the period from August 27, 2020, through February 15, 2026.
3. **Class Representative and Class Counsel**. The Court preliminarily approves Elsa Bautista as Class Representative and Otkupman Law Firm, A Law Corporation, as Class Counsel, finding that they have satisfied the requirements of adequate representation under California law.
4. **Settlement Administrator**. The Court approves Apex Class Action, LLC as Settlement Administrator and authorizes settlement administration costs in an amount up to **\$15,000.00**

5. **Notice Program.** The Court approves the form and content of the Class Notice and Request for Exclusion attached as Exhibits "C" and "D" to the Otkupman Declaration. The Settlement Administrator shall mail the Class Notice to all Class Members for whom addresses are reasonably ascertainable from Defendant's records no later than 14 days after receiving the class data from Defendant. For notices returned as undeliverable, the Administrator shall conduct address searches and re-mail within three business days.
6. **Opt-Out and Objection Period.** Class Members who wish to exclude themselves from the settlement must submit a written Request for Exclusion postmarked no later than 60 days after the initial mailing of the Class Notice (plus an additional 14 days for re-mailed notices). Objections to the settlement must be submitted no later than the same deadline. No PAGA employee may opt out of the PAGA portion of the settlement.
7. **Service Payment and Attorneys' Fees.** The Court preliminarily approves: (a) a service payment of **\$10,000.00** to Plaintiff Elsa Bautista; (b) PAGA penalties of **\$30,000.00** (allocated 65% to the Labor and Workforce Development Agency and 35% to Aggrieved Employees); and (c) attorneys' fees of **\$133,403.33** (33.33% of the gross settlement amount), plus reasonable costs subject to proof, to be paid to Class Counsel, with a 5% retention pending final approval. Final approval of these amounts is reserved pending the final approval hearing.
8. **Reservation of Rights.** This Order constitutes preliminary approval only and does not constitute a final determination of the fairness, reasonableness, or adequacy of the settlement, nor an endorsement of the merits of the underlying claims or defenses. The Court reserves the right to modify the settlement terms or deny final approval if the settlement fails to prove fair, reasonable, and adequate.
9. **Final Approval Motion.** Counsel are ordered 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, which shall include the matters necessary to comply with Code of Civil Procedure section 384(b).
10. Notwithstanding any contrary provision in the settlement agreement, 5% of the attorney's fees are to be withheld by the administrator until released by the Court after review of the compliance statement.
11. Plaintiff's Counsel shall prepare a proposed order consistent with this ruling, attaching a copy of this tentative ruling no later than ten (10) days from the date of this hearing.
12. No appearance is required at the hearing on September 9, 2026.