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S. Lind
Court Executive Officer

MINUTE ORDER

JOSE SANTILLAN VS. NUMBER ONE CONCRETE READY MIX, INC. **C25-00726**

HEARING DATE: 11/04/2026

PROCEEDINGS: *HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS AND PAGA

DEPARTMENT 16
JUDICIAL OFFICER: BENJAMIN T REYES, II

CLERK: ANNA NUESTRO
COURT REPORTER: NOT REPORTED
BAILIFF: ANTHONY COGO

JOURNAL ENTRIES:

NO APPEARANCE, EITHER PARTY.

THE COURT ISSUED THE FOLLOWING TENTATIVE RULING ON 11/03/2026:

TENTATIVE RULING:

SUMMARY

Before the Court is the unopposed motion of Plaintiffs Jose Santillan and Jesus Navarro ("Plaintiffs") for preliminary approval of a class and representative action settlement, for provisional certification of a settlement class, for approval of notice to the class, and for appointment of class counsel and class representatives ("Motion") against Defendants Number One Concrete Ready Mix, Inc. and A Cut Above Services, Inc. ("Defendants") The Motion is **granted** as set forth herein. No appearance is required on November 4, 2026.

BACKGROUND

Plaintiffs Santillan and Navarro were employed by Defendants as non-exempt hourly workers. Santillan was employed from April 2024 to October 2024, and Navarro from June 2022 to October 2024. Defendants operated a concrete and landscaping business in Contra Costa County. Each worked under written policies promulgated in Defendants' employee handbook. Plaintiffs allege that Defendants split their hours across two affiliated corporate entities, Number One Concrete Ready Mix, Inc. and A Cut Above Services, Inc., so that time records would appear to show that no employee worked an overtime-qualifying day or week for either entity, thereby evading California's overtime requirements.

Plaintiffs further alleged that a pre-2024 rounding practice deprived workers of compensation for time actually worked; that employees queued for roughly five minutes each morning before a single shared tablet to clock in; that first and second meal periods were routinely not provided, with 3,347 shifts over six hours showing no recorded first meal break and near-total absence of recorded second meal periods on long shifts; that duty-free rest periods were not provided; that employees were required to use personal cellular telephones, including for GPS navigation to job sites, without reimbursement; that wage statements were consequently inaccurate; and that wages were not paid upon separation.

Defendants deny liability in full and assert that they complied with all applicable employment laws, that

their meal and rest period policies were facially compliant, that any rounding ceased in 2024 and produced minimal loss, and that Plaintiffs cannot establish the injury element of the wage statement claim, the willfulness element of the waiting time claim, or the predominance of common issues on the meal and rest period claims. On March 13, 2025, Plaintiffs served the Labor and Workforce Development Agency and Defendants with a notice of violations under the Labor Code Private Attorneys General Act, and filed the class complaint the same day; an amended complaint adding the representative cause of action followed on July 25, 2025.

Counsel conducted a pre-filing investigation, exchanged informal discovery, reviewed thousands of pages of documents and time and payroll data, and retained Berger Consulting Group to construct damage models estimating exposure at $870,658.42 under a conservative model and $1,821,073.67 under an aggressive model, exclusive of PAGA penalties, which Plaintiffs separately estimated at $212,500. The parties mediated before Doug Leach on January 27, 2026, and resolved the matter only upon acceptance of the mediator's proposal, thereafter, negotiating the long-form agreement now presented.

The agreement settles all class claims and the PAGA claim in exchange for a non-reversionary gross settlement amount of $315,000, funded in three installments by Defendants, with no reversion to Defendants and with Defendants separately bearing their share of employer payroll taxes. It provides for a settlement class of all persons who worked for Defendants as non-exempt employees in California between March 13, 2021 and March 28, 2026, and a PAGA period from March 13, 2024 to March 28, 2026, and it releases the class and PAGA claims within those defined periods.

ANALYSIS

A class settlement requires court approval after hearing. (Cal. Rules of Court, rule 3.769(a).) Rule 3.769 establishes a two-stage process: preliminary approval on the papers, followed by notice and a final approval hearing at which the court inquires into fairness. (*Id.*, rule 3.769(c), (g); *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) A presumption of fairness attaches where the settlement results from arm's-length bargaining, is preceded by investigation and discovery sufficient to permit counsel and the court to act intelligently, and is negotiated by counsel experienced in comparable litigation. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The Court does not try the case, but asks whether the settlement is within the ballpark of reasonableness, on a record disclosing the amount in controversy and the realistic range of outcomes. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133; *Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409.)

Those conditions are satisfied. The settlement was reached through a full-day mediation before an experienced wage and hour mediator, following an investigation supported by forensic data analysis and formal damage modeling, and was negotiated by counsel who have litigated and settled comparable actions. Each presumption therefore applies. (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482; *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 625.) Measured against exposure, the gross amount represents approximately 36.18 percent of the conservative model and 17.3 percent of the aggressive model, a ratio that must be read against the substantial certification risk attending split-entity overtime, off-the-clock, and meal and rest period theories, and against the prospect of a defense verdict or reversal on appeal. On this record the amount is within the range of

possible final approval.

The gross settlement amount is $315,000, non-reversionary, inclusive of all components described below. No portion reverts to Defendants if claims are unclaimed or if class members exclude themselves, and Defendants bear their own share of employer payroll taxes in addition to the gross amount.

Defendants fund the gross amount in three equal installments of $105,000. The first installment is due July 1, 2026 or thirty days after final approval, whichever is later; the second is due six months after the first; and the third is due one year after the first, which date constitutes the Funding Date. Within fifteen days after the Funding Date, the settlement administrator distributes all individual settlement payments, the aggrieved employee payments, the PAGA payment, the administration costs, the fee award, and the service awards as fixed by the Court at final approval.

The net settlement amount of approximately $136,060 is allocated pro rata among the 92 class members by workweek: each member's workweeks are divided by the 8,527 total workweeks to yield a payment ratio, which is multiplied by the net amount and reduced by lawful employee withholdings. The average individual payment is approximately $1,478.91. Payments attributable to members who timely exclude themselves are redistributed pro rata among participating members rather than reverting to Defendants.

Class counsel seek an award of attorneys' fees of 33 % of the gross amount, or $103,950. A one-third contingency is consistent with the market for common fund recoveries, and empirical study confirms as much. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11.) Combined with costs, total compensation to counsel would be $133,950, or 42.5 percent of the gross amount. Counsel took the matter on contingency and will formally move for the award at final approval.

Class counsel also seek reimbursement of actually incurred litigation costs not to exceed $30,000, and payment of settlement administration costs not to exceed $4,990 to Apex Class Action, LLC, which has already received the class data and confirmed a class of 92 members and 8,527 workweeks. Both figures are within customary bounds for an action of this size, and the administration costs are modest relative to the gross amount.

Plaintiffs seek service awards of $10,000 each, totaling $20,000, or 6.35 percent of the gross amount. Enhancement payments are common in class actions and compensate representatives for effort, risk, and the release of their individual claims. (*Cellphone Termination Fee Cases, supra*, 186 Cal.App.4th at p. 1393; *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–959; *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.) The amounts appear reasonable, subject to final review.

The agreement allocates $20,000 to the PAGA claim, of which 65 percent ($13,000) goes to the Labor and Workforce Development Agency and 35 percent ($7,000) to aggrieved employees, tracking Labor Code section 2699, subdivision (m). The payment equals 6.3 percent of the gross amount, above the zero-to-two percent band often cited but supportable here: the PAGA period spans a single year, the

statutory penalty is halved for weekly pay periods (Lab. Code, § 2699, subd. (o)), the estimated exposure was $212,500, and the trial risk on a representative theory is acute. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) Aggrieved employees cannot exclude themselves from the PAGA portion, and the settlement shall be submitted to the Agency concurrently with this motion as section 2699, subdivision (s)(2), requires.

For settlement purposes only, the class satisfies Code of Civil Procedure section 382: it is ascertainable from payroll records and sufficiently numerous, common issues predominate, the representatives' claims are typical, the representatives and counsel are adequate, and class treatment is superior. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) The proposed notice, mailed by first class mail and electronic mail, advises each member of the case, the settlement terms, the allocation formula, the release, the final approval date, and the procedures and deadlines for objection and exclusion, and thus satisfies due process and rule 3.766(d) and (f). (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 972; *Chance v. Superior Court* (1962) 58 Cal.2d 275, 290; *Kass v. Young* (1977) 67 Cal.App.3d 100, 106.)

Pursuant to rule 3.769(e), the Court requests that class counsel set a final approval hearing no later than March 12, 2027, at 9:00 a.m. in Department 16. The administrator shall mail the notice packet no later than fourteen days after entry of this order; the response deadline is forty-five days after mailing; and all papers in support of final approval, fees, and service awards shall be filed and served no later than twenty-eight days after the response deadline.

CONCLUSION

1. The motion is **granted**.
2. The settlement is preliminarily approved as within the range of possible final approval. The settlement class is provisionally certified for settlement purposes only, with Jose Santillan and Jesus Navarro provisionally appointed as class representatives and Jean-Claude Lapuyade, Sydney Castillo-Johnson, Shani O. Zakay, and Jackland K. Hom provisionally appointed as class counsel.
3. The notice packet is approved as to form and content, and Apex Class Action, LLC is appointed settlement administrator. Members who do not timely exclude themselves shall be bound by all determinations of the Court, the agreement, and the judgment, and shall be bound by the PAGA settlement whether or not they exclude themselves from the class claims.
4. The Court orders the administrator to withhold five percent of any attorneys' fees awarded: $5,197.50 of the $103,950 requested, pending a compliance hearing, at which Plaintiffs shall establish that the settlement has been funded, that distributions have been made, and that the release and reporting obligations have been discharged.
5. The Motion for Final Approval hearing shall be held no later than one year following November 4, 2027, on a date to be fixed by the clerk, and the withheld sum shall be released upon a finding of satisfactory compliance.
6. The Court retains jurisdiction over all further applications arising from the settlement, may continue the final approval hearing and any related date without further notice to the class, and directs that if the settlement does not become effective, the parties shall

be restored to their respective positions and this order shall not be used for any purpose in subsequent litigation.

7. Plaintiffs shall serve the notice packet and a proposed order in conformity with the agreement and shall serve a proposed order conforming to the Court's ruling within five days. (Cal. Rules of Court, rule 3.1312(a).) A copy of this ruling shall be attached to the order.
8. No appearance is required at the hearing on November 4, 2026.

THERE BEING NO OPPOSITION TO THE COURT'S TENTATIVE RULING, SAME IS ADOPTED AS FOLLOWS: MOTION IN RE: PRELIMINARY APPROVAL OF CLASS AND PAGA **GRANTED**.

PREVAILING PARTY TO PREPARE ORDER.

DATE: 11/4/2026

BY: /s/A. Nuestro
A. NUESTRO, DEPUTY CLERK