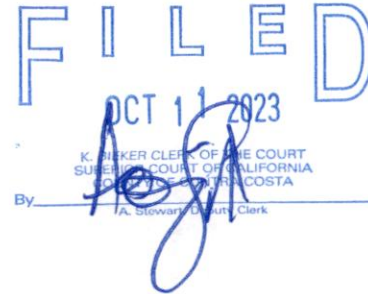


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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF CONTRA COSTA**

DINO DESANCTIS; TYRONE BARNES,  
individuals, on behalf of themselves and on  
behalf of all persons similarly situated,

Plaintiffs,

v.

DOUGLAS PRODUCTS & PACKAGING  
COMPANY, LLC, a Missouri Limited  
Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No. C21-01874

**[PROPOSED] ORDER GRANTING FINAL  
APPROVAL**

Date: October 5, 2023

Time: 9:00 a.m.

Judge: Hon. Judge Charles S. Treat

Dept.: 12

1 Plaintiffs' motion for an order finally approving the Stipulation of Settlement of Class Action  
2 and PAGA Claims and Release of Claims ("Agreement") and Motion for Class Counsel Award and  
3 Class Representative Service Awards duly came on for hearing on October 5, 2023, before the  
4 above-entitled Court. Zakay Law Group, APLC, the JCL Law Firm, APC, Bokhour Law Group,  
5 P.C., and Falakassa Law P.C. appeared on behalf of Plaintiffs DINO DESANCTIS and TYRONE  
6 BARNES ("Plaintiffs"). Husch Blackwell LLP appeared on behalf of Defendant DOUGLAS  
7 PRODUCTS AND PACKAGING COMPANY LLC (hereinafter "Defendant").

8 Plaintiffs Dino Desanctis and Tyrone Barnes move for final approval of their class action  
9 and PAGA settlement with Defendant Douglas Products & Packaging LLC. They also separately  
10 move for approval of their attorney's fees, litigation costs, administrative fees, and representative  
11 payments. Both motions are **granted**.

12 Since preliminary approval was granted, the administrator has mailed notices to 52 class  
13 members. 2 packets were returned by the post office. Follow-up was unable to find better addresses  
14 for these 2, leaving them non-deliverable. No objections or requests to opt out have been received.

15 **A. Background and Settlement Terms**

16 Douglas is in the business of manufacturing and marketing specialty products in agriculture  
17 and structural pest control. Plaintiffs were employed (Desanctis formerly, and Barnes currently) as  
18 workers in a warehouse facility in California.

19 The original complaint was filed by Desanctis on September 8, 2021 as a class action and  
20 PAGA case. Barnes filed a parallel class action complaint on February 18, 2022.

21 The settlement will create a gross settlement fund of \$372,500. The class representative  
22 payments to the named plaintiffs will be \$10,000 each. Attorney's fees will be \$124,166.66 (one-  
23 third of the settlement). Litigation costs \$12,388, substantially lower than the \$20,000 estimated at  
24 preliminary approval. The settlement administrator's costs are estimated at \$5,000. PAGA penalties  
25 will be \$16,000, resulting in a payment of \$12,000 to the LWDA. The net amount paid directly to  
26 the class members will be about \$194,945. The fund is non-reversionary. There are 52 class  
27 members. Based on the estimated class size, the average net payment for each class member is  
28 approximately \$3,749. (The moving papers actually understate both the net settlement and the

1 average per class member, because they do not account for litigation costs being lower than  
2 projected.) In addition, PAGA aggrieved employees will receive an estimated average of \$105 in  
3 PAGA penalties. The individual payments will vary considerably, however, because of the  
4 allocation formula prorating payments according to the number of weeks worked during the relevant  
5 time. The number of aggrieved employees for PAGA purposes is smaller, because the starting date  
6 of the relevant period is later.

7 The entire settlement amount will be deposited with the settlement administrator within 65  
8 days after the effective date of the settlement.

9 The proposed settlement will certify a class of all current and former non-exempt employed  
10 at Defendants' California facilities between September 8, 2017 and May 23, 2022. For PAGA  
11 purposes, the period covered by the settlement is June 29, 2020 to May 23, 2022.

12 The class members will not be required to file a claim. Class members may object or opt out  
13 of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.)  
14 Funds will be apportioned to class members based on the number of workweeks worked during the  
15 class period.

16 Settlement checks not cashed within 180 days will be cancelled, and the funds will be  
17 directed to the Controller's unclaimed property fund.

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

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

1 Counsel also has provided an analysis of the case, and how the settlement compares to the  
2 potential value of the case, after allowing for various risks and contingencies. Plaintiffs' claims  
3 center on defendant's adoption of an alternative workweek schedule, providing for fewer and longer  
4 shifts per week than is typical. Plaintiffs contend that this results in unpaid overtime. They also  
5 contend that defendant's timekeeping uses an unlawful rounding policy. Plaintiffs also assert typical  
6 claims as to meal and rest breaks and early-reporting off-clock work. Defendant contends that its  
7 policies on breaks are legally compliant and any spot deviations would be both untrackable and  
8 unknown to defendant, and that employees were instructed not to work off-clock; it also contends  
9 that these allegations would be unsuitable for class treatment. It contends that its rounding system  
10 is neutral as between rounding up and rounding down.

11 The potential liability needs to be adjusted for various evidence and risk-based  
12 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number  
13 of reasons: they derive from other violations, they include "stacking" of violations, the law may  
14 only allow application of the "initial violation" penalty amount, and the total amount may be reduced  
15 in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties may be reduced where  
16 "based on the facts and circumstances of the particular case, to do otherwise would result in an  
17 award that is unjust arbitrary and oppressive, or confiscatory.")) Moreover, recent decisions may  
18 make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed  
19 wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937; but see  
20 *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.)

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

### 23 **B. Legal Standards**

24 The primary determination to be made is whether the proposed settlement is "fair,  
25 reasonable, and adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,  
26 including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further  
27 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,  
28 the extent of discovery completed and the state of the proceedings, the experience and views of

1 counsel, the presence of a governmental participant, and the reaction ... to the proposed settlement.”  
2 (See also *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521.)

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

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

### 20 C. Attorney Fees and Other Costs

21 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common  
22 fund” theory, of \$124,167. Even a proper common fund-based fee award, however, should be  
23 reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th  
24 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine  
25 whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a  
26 lodestar cross-check is extraordinarily high or low, the trial court should consider whether the  
27 percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range,  
28 but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)

1 Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They  
2 estimate the lodestar at \$132,655, based on 274 hours. This represents an implied multiplier of  
3 slightly below one. No adjustment from the one-third fee is necessary. The attorney's fees are  
4 reasonable and are approved.

5 The requested representative payments of \$10,000 each for the named plaintiffs were  
6 deferred until this final approval motion. Criteria for evaluation of such requests are discussed in  
7 *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiffs have  
8 provided declarations in support of their request. They point out that they executed a broader release  
9 than the class as a whole, but do not identify any particular claims of value that they may have. They  
10 also risks damage to their reputation and more difficulty in obtaining employment. The  
11 representative payments are approved.

12 Litigation costs of \$12,388 (mostly mediation and filing fees) are reasonable and are  
13 approved.

14 The settlement administrator's costs of \$5,000 are reasonable and are approved.

15 **D. Discussion and Conclusion**

16 The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and  
17 adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees  
18 (based on pay periods) is reasonable.

19 The motions are granted.

20 Counsel are directed to prepare an order reflecting this entire tentative ruling and the other  
21 findings in the previously submitted proposed order and a separate judgment.

22 The ultimate judgment must provide for a compliance hearing after the settlement has been  
23 completely implemented, to be determined in consultation with the Department's clerk by phone.  
24 Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing  
25 date. Five percent of the attorney's fees are to be withheld by the claims administrator pending  
26 satisfactory compliance as found by the Court.

27 ///

28 ///

1 I.

2 **FINDINGS**

3 Based on the oral and written argument and evidence presented in connection with the  
4 motion, the Court makes the following findings:

5 1. All capitalized terms used herein shall have the same meaning as defined in  
6 the Agreement.

7 2. This Court has jurisdiction over the subject matter of this litigation pending  
8 in the California Superior Court for the County of Contra Costa ("Court"), Case No. C21-01874,  
9 entitled *Desanctis v. Douglas Products and Packaging Company LLC*, and over all Parties to this  
10 litigation, including the Class.

11 **Preliminary Approval of the Settlement**

12 3. On May 30, 2023, the Court granted preliminary approval of a class-wide  
13 settlement. At this same time, the court approved certification of a provisional settlement class for  
14 settlement purposes only. The Court confirms this Order and finally approves the settlement and  
15 the certification of the Class.

16 **Notice to the Class**

17 4. In compliance with the Preliminary Approval Order, the Notice Packet was  
18 mailed by first class mail to the Class Members at their last known addresses on July 13, 2023.  
19 Mailing of the Notice Packet to their last known addresses was the best notice practicable under the  
20 circumstances and was reasonably calculated to communicate actual notice of the litigation and the  
21 proposed settlement to the members of the Class Members. The Court finds that the Notice Packet  
22 provided fully satisfies the requirements of California Rules of Court, rule 3.769.

23 5. The Response Deadline for opting out or objecting was August 28, 2023.  
24 There was an adequate interval between notice and deadline to permit Class Members to choose  
25 what to do and act on their decision. No Class Members objected. No Class Members requested  
26 exclusion. 100% of the Class Members will be participating in the Settlement and will be sent  
27 Individual Settlement Payments.

28 ///

1 **Fairness Of the Settlement**

2           6.     The Agreement provides for a Gross Settlement Amount of \$372,500.00.  
3 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48  
4 Cal.App.4th 1794, 1801.)

5           a.     The settlement was reached through arms-length bargaining between  
6 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed  
7 settlement.

8           b.     The Parties' investigation and discovery have been sufficient to allow  
9 the Court and counsel to act intelligently.

10          c.     Counsel for all parties are experienced in similar employment class  
11 action litigation and have previously settled similar class claims on behalf of employees claiming  
12 compensation. All counsel recommended approval of the Settlement.

13          d.     The percentage of objectors and requests for exclusion is zero. No  
14 objections were received. No requests for exclusion were received.

15          e.     The participation rate is high. 100% of Class Members will be  
16 participating in the Settlement and will be sent settlement payments.

17          7.     The consideration to be given to the Class Members under the terms of the  
18 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims  
19 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the  
20 Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the  
21 litigation and the delays which would ensue from continued prosecution of the Action.

22          8.     The Agreement is finally approved as fair, adequate, and reasonable and in  
23 the best interests of the Settlement Class Members.

24 **Attorneys' Fees and Litigation Expenses**

25          9.     The Agreement provides for a Class Counsel Award in the amount of up to  
26 One Hundred Forty-Four Thousand One Hundred Sixty-Six Dollars and Sixty-Six Cents  
27 (\$144,666.66). Subject to Court approval, the Class Counsel Award consists of attorneys' fees equal  
28 to one-third (1/3) of the Gross Settlement Amount, or One Hundred Twenty-Four Thousand One



1 Hundred Sixty-Six Dollars and Sixty-Six Cents (\$124,166.66) and reimbursement of costs and  
2 expenses in the amount of Twelve Thousand Three Hundred Eighty-Eight Dollars and Fifteen Cents  
3 (\$12,388.15).

4           10. A Class Counsel Award of One Hundred Thirty-Six Thousand Five Hundred  
5 Fifty-Four Dollars and Eighty-One Cents (\$136,554.81) comprised of attorneys' fees in the amount  
6 of One Hundred Twenty-Four Thousand One Hundred Sixty-Six Dollars and Sixty-Six Cents  
7 (\$124,166.66) and reimbursement of actually incurred costs and expenses in the amount of Twelve  
8 Thousand Three Hundred Eighty-Eight Dollars and Fifteen Cents (\$12,388.15) is reasonable in light  
9 of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results  
10 achieved by Class Counsel. The requested attorneys' fee award represents 1/3 of the common fund,  
11 which is reasonable and at the low end of the range for fee awards in common fund cases and is  
12 supported by Class Counsel's lodestar.

13 **Class Representative Service Awards**

14           11. The Agreement provides for a Class Representative Service Award of Ten  
15 Thousand Dollars and Zero Cents (\$10,000.00) to each Plaintiff, subject to the Court's approval.  
16 The Court finds that the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) to each  
17 Plaintiff is reasonable in light of the risks and burdens undertaken by the Plaintiffs in this class  
18 action litigation.

19 **Settlement Administration Costs**

20           12. The Agreement provides for Settlement Administration Costs to be paid in  
21 an amount not to exceed \$5,000.00. The Declaration of the Settlement Administrator provides that  
22 the actual claims administration expenses were \$5,000.00. The amount of this payment is  
23 reasonable in light of the work performed by the Settlement Administrator.

24 **II.**

25 **ORDERS**

26 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

27           1. The October 5, 2023, tentative ruling is adopted as the final ruling of the  
28 Court and attached hereto as **Exhibit 1**.

1                   2.     The Class is certified for the purposes of settlement only. The Settlement  
2 Class is hereby defined to include all non-exempt employees who are or previously were employed  
3 by Defendant and performed work in California ("Class") from September 8, 2017 to May 23, 2022  
4 ("Class Period").

5                   3.     Every person in the Class who did not submit and timely and validly Request  
6 for Exclusion is a Settlement Class Member. The Court finds, based on the declaration of the  
7 Settlement Administrator, that no Class Members opted-out of the Settlement.

8                   4.     The Agreement is hereby approved as fair, reasonable, adequate, and in the  
9 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with  
10 this Order and the terms of the Agreement.

11                  5.     Class Counsel are awarded One Hundred Thirty-Six Thousand Five Hundred  
12 Fifty-Four Dollars and Eighty-One Cents (\$136,554.81) for the Class Counsel Award comprised  
13 of one-third of the Gross Settlement Amount, or One Hundred Twenty-Four Thousand One  
14 Hundred Sixty-Six Dollars and Sixty-Six Cents (\$124,166.66) and litigation expenses in the  
15 amount of Twelve Thousand Three Hundred Eighty-Eight Dollars and Fifteen Cents (\$12,388.15).  
16 Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendant,  
17 Plaintiffs, or members of the Class.

18                  6.     The payment of the Class Representative Service Award to each Plaintiff in  
19 the amount of \$10,000.00 is approved.

20                  7.     The payment of \$5,000.00 to the Settlement Administrator for Settlement  
21 Administration Costs is approved.

22                  8.     The PAGA Settlement of \$16,000.00 is hereby approved as fair, reasonable,  
23 adequate and adequately protects the interests of the public and the LWDA. Further, the Court  
24 finds that Plaintiffs and Class Counsel negotiated the PAGA Settlement at arms-length, absent of  
25 any fraud or collusion.

26                  9.     Final Judgment is hereby entered in this action. The Final Judgment shall  
27 bind each Settlement Class Member. The Final Judgment shall operate as a full release and  
28 discharge of Defendant from all class claims alleged in the operative complaint, or that reasonably

1 could have been alleged based on the facts alleged in the operative complaint, which occurred  
2 during the Class Period, and expressly excluding all other claims, including claims for vested  
3 benefits, wrongful termination, unemployment insurance, disability, social security, workers'  
4 compensation, and class claims outside of the Class Period.

5           10. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of  
6 California and all Aggrieved Employees, pursuant to the California Labor Code Private Attorneys'  
7 General Act ("PAGA") and shall release Defendant from all PAGA claims alleged in the operative  
8 complaint and Plaintiffs' PAGA notice(s) submitted to the LWDA which occurred during the  
9 PAGA Period, and expressly excluding all other claims, including claims for vested benefits,  
10 wrongful termination, unemployment insurance, disability, social security, workers' compensation,  
11 and PAGA claims outside the PAGA Period.

12           11. The term "Aggrieved Employees" is hereby defined as all non-exempt  
13 employees who are or previously were employed by Defendant and performed work in California  
14 during the PAGA Period. The PAGA Period means the period between June 29, 2020 to May 23,  
15 2022.

16           12. The Agreement is not an admission by Defendant, nor is this Final Approval  
17 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by  
18 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,  
19 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an  
20 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering  
21 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall  
22 not in any event be construed as, or deemed to be evidence of, an admission or concession with  
23 regard to the denials or defenses by Defendant and shall not be offered in evidence in any action or  
24 proceeding against Defendant in any court, administrative agency or other tribunal for any purpose  
25 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and  
26 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,  
27 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and  
28 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the

1 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim  
2 or issue preclusion or similar defense as to the claims being released by the Settlement.

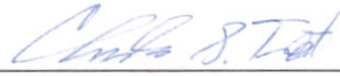
3 13. Notice of entry of this Final Approval Order and Judgment shall be given to  
4 Class Counsel on behalf of Plaintiffs and all Class Members. It shall not be necessary to send  
5 notice of entry of this Final Approval Order and Judgment to individual Class Members and the  
6 Final Approval Order and Judgment shall be posted on Settlement Administrator's website as  
7 indicated in the Notice Packet.

8 14. After entry of Final Judgment, the Court shall retain jurisdiction to construe,  
9 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a  
10 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in  
11 connection with the distribution of settlement benefits.

12 15. If the Settlement does not become final and effective in accordance with the  
13 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to  
14 Defendant consistent with the terms of the Settlement, then this Final Approval Order and  
15 Judgment, and all orders entered in connection herewith shall be rendered null and void and shall  
16 be vacated.

17  
18 **IT IS SO ORDERED.**

19 DATED: OCT 10 2023  
20

21  
22   
23 Hon. Charles S. Treat  
24 Judge, Superior Court for the State of California,  
25 County of Contra Costa  
26  
27  
28

# **EXHIBIT 1**

JUDICIAL OFFICER: CHARLES S TREAT  
HEARING DATE: 10/05/2023

Similarly, litigation and administration costs and the requested representative payments of \$7,500 each for the plaintiff 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

As noted above, the Court requires a supplemental declaration on two points— submission of the settlement agreement to the LWDA, and absence of any affiliation between plaintiffs’ counsel and the *cy pres* beneficiary.

Subject to receipt of the supplemental declaration, 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 entire 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 by phone. 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.

14. A-00000 CASE NUMBER: A-00000

CASE NAME: DINO DESANTIS, AN INDIVIDUAL, ON BEHALF OF HIMSELF AND ON BEHALF OF ALL PERSONS SIMILARLY SITUATED VS. DOUGLAS PRODUCTS AND PACKAGING COMPANY, LLC A MISSOURI LIMITED LIABILITY COMPANY

**\*HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS ACTION & PAGA SETTLEMENT**

**FILED BY:**

**\*TENTATIVE RULING:\***

Plaintiffs Dino Desanctis and Tyrone Barnes move for final approval of their class action and PAGA settlement with defendant Douglas Products & Packaging LLC. They also separately move for approval of their attorney's fees, litigation costs, administrative fees, and representative payments. Both motions are **granted**.

Since preliminary approval was granted, the administrator has mailed notices to 52 class members. 2

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY  
MARTINEZ, CA  
DEPARTMENT 12  
JUDICIAL OFFICER: CHARLES S TREAT  
HEARING DATE: 10/05/2023

packets were returned by the post office. Follow-up was unable to find better addresses for these 2, leaving them non-deliverable. No objections or requests to opt out have been received.

**E. Background and Settlement Terms**

Douglas is in the business of manufacturing and marketing specialty products in agriculture and structural pest control. Plaintiffs were employed (Desantis formerly, and Barnes currently) as workers in a warehouse facility in California.

The original complaint was filed by Desantis on September 8, 2021 as a class action and PAGA case. Barnes filed a parallel class action complaint on February 18, 2022.

The settlement will create a gross settlement fund of \$372,500. The class representative payments to the named plaintiffs will be \$10,000 each. Attorney's fees will be \$124,166.66 (one-third of the settlement). Litigation costs \$12,388, substantially lower than the \$20,000 estimated at preliminary approval. The settlement administrator's costs are estimated at \$5,000. PAGA penalties will be \$16,000, resulting in a payment of \$12,000 to the LWDA. The net amount paid directly to the class members will be about \$194,945. The fund is non-reversionary. There are 52 class members. Based on the estimated class size, the average net payment for each class member is approximately \$3,749. (The moving papers actually understate both the net settlement and the average per class member, because they do not account for litigation costs being lower than projected.) In addition, PAGA aggrieved employees will receive an estimated average of \$105 in PAGA penalties. 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. The number of aggrieved employees for PAGA purposes is smaller, because the starting date of the relevant period is later.

The entire settlement amount will be deposited with the settlement administrator within 65 days after the effective date of the settlement.

The proposed settlement will certify a class of all current and former non-exempt employed at Defendants' California facilities between September 8, 2017 and May 23, 2022. For PAGA purposes, the period covered by the settlement is June 29, 2020 to May 23, 2022.

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 will be apportioned to class members based on the number of workweeks worked during the class period.

Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to the Comptroller's 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.*



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*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. Plaintiffs' claims center on defendant's adoption of an alternative workweek schedule, providing for fewer and longer shifts per week than is typical. Plaintiffs contend that this results in unpaid overtime. They also contend that defendant's timekeeping uses an unlawful rounding policy. Plaintiffs also assert typical claims as to meal and rest breaks and early-reporting off-clock work. Defendant contends that its policies on breaks are legally compliant and any spot deviations would be both untrackable and unknown to defendant, and that employees were instructed not to work off-clock; it also contends that these allegations would be unsuitable for class treatment. It contends that its rounding system is neutral as between rounding up and rounding down.

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 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 v. Anaheim Arena Mgmt., LLC*, 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



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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 salutary purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

**C. Attorney Fees and Other Costs**

Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund” theory, or \$124,167. 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 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.)

Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They estimate the lodestar at \$132,655, based on 274 hours. This represents an implied multiplier of slightly below one. No adjustment from the one-third fee is necessary. The attorney’s fees are reasonable and are approved.

The requested representative payments of \$10,000 each for the named plaintiffs were deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiffs have provided declarations in support of their request. They point out that they executed a broader release than the class as a whole, but do not identify any particular claims of value that they may have. They also risks damage to their reputation and more difficulty in obtaining employment. The representative payments are approved.

Litigation costs of \$12,388 (mostly mediation and filing fees) are reasonable and are approved.

The settlement administrator’s costs of \$5,000 are reasonable and are approved.

**D. Discussion and Conclusion**

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and

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adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees (based on pay periods) is reasonable.

The motions are granted.

Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined in consultation with the Department's clerk by phone. 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.

15. 9:00 AM CASE NUMBER: MSC21-01874  
CASE NAME: DINO DESANCTIS VS. DOUGLAS PRODUCTS AND PACKAGINGCOMPANY, LLC A  
MISSOURI LIMITED LIABILITY COMPANY  
\*HEARING ON MOTION IN RE: FOR CLASS COUNSEL AWARD  
FILED BY: DINO DESANCTIS, AN INDIVIDUAL, ON BEHALF OF HIMSELF AND ON BEHALF OF ALL  
PERSONS SIMILARLY SITUATED  
\*TENTATIVE RULING:\*

See Line 14.

16. 9:00 AM CASE NUMBER: MSC21-02680  
CASE NAME: SANDERS VS. CONTRA LOMA HEALTHCARE  
\*HEARING ON MOTION IN RE: APPROVAL OF PAGA SETTLEMENT  
FILED BY:  
\*TENTATIVE RULING:\*

Plaintiff Kimberly Sanders moves for approval of the settlement of her PAGA suit against defendants Contra Loma Health Care, LLC and Rehab Specialists California, LLC. The moving papers don't identify defendants' business, but it appears from their web pages that Contra Loma is a nursing home in Antioch, while Rehab is a related outpatient provider. Plaintiff was employed as a non-exempt employee during the relevant time period, though the pleadings and moving papers do not identify her job capacity or employment dates.

The motion is **granted**.