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FILED  
FEB 15 2024  
K. BAKER CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
By: 

6 Attorneys for Plaintiff Jaime Molina Mejia

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF CONTRA COSTA

10 JAIME MOLINA MEJIA, individually, and on  
behalf of other members of the general public  
11 similarly situated,

12 Plaintiff,

13 vs.

14 BLACKHAWK COUNTRY CLUB, a  
California corporation; and DOES 1 through 10,  
15 inclusive,

16 Defendants.

Case No. MSC21-00571

Assigned to the Hon. Charles S. Treat

**ORDER GRANTING MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND MOTION FOR  
ATTORNEYS' FEES, COSTS AND  
EXPENSES, AND A CLASS  
REPRESENTATIVE ENHANCEMENT  
PAYMENT**

Date: February 8, 2024  
Time: 9:00 a.m.  
Place: Department 12

Complaint Filed: March 19, 2021  
Trial Date: None Set

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1 Plaintiff Jaime Mejia moves for final approval of his class action and PAGA settlement with  
2 defendant Blackhawk Country Club. He also moves for approval of his attorney's fees, litigation costs,  
3 administration costs, and representative payment.

4 Since preliminary approval was granted, the administrator has mailed notices to 1160 class  
5 members. 42 packets were returned by the post office. Follow up resulted in 35 new addresses, leaving 7  
6 non-deliverable. No objections have been received, and only one request for exclusion.

7 The motions are granted. The tentative ruling is attached as Exhibit A.

8 **A. Background and Settlement Terms**

9 Defendant is a country club. Plaintiff was employed there as a banquet server from July 2019 to  
10 March 2020.

11 The original complaint was filed on March 19, 2021.

12 The settlement will create a gross settlement fund of \$950,000. The class representative payment  
13 to the plaintiff will be \$10,000. Attorney's fees will be \$316,667 (one-third of the settlement). Litigation  
14 costs are \$15,457, somewhat lower than previously estimated. The settlement administrator's costs are  
15 \$15,000. PAGA penalties will be \$40,000, resulting in a payment of \$30,000 to the LWDA. The net  
16 amount paid directly to the class members will be about \$552,786. The fund is non-reversionary. There  
17 are 1,159 participating class members. Based on the class size, the average net payment for each class  
18 member is approximately \$477. The individual payments will vary considerably, however, because of  
19 the allocation formula prorating payments according to the number of weeks worked during the relevant  
20 time. The number of aggrieved employees for PAGA purposes is smaller, because the starting date of the  
21 relevant period is later.

22 The entire settlement amount will be deposited with the settlement administrator within 30 days  
23 after the effective date of the settlement.

24 The proposed settlement will certify a class of all current and former non-exempt employed at  
25 Defendants' California facilities between March 19, 2017 and February 9, 2023. For PAGA purposes,  
26 the period covered by the settlement is March 19, 2020 to February 9, 2023.

27 The class members will not be required to file a claim. Funds will be apportioned to class  
28 members based on the number of workweeks worked during the class period.

1 Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to  
2 California Rural Legal Assistance, Inc. as a cy pres beneficiary.

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

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

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

24 The potential liability needs to be adjusted for various evidence and risk-based contingencies,  
25 including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they  
26 derive from other violations, they include “stacking” of violations, the law may only allow application of  
27 the “initial violation” penalty amount, and the total amount may be reduced in the discretion of the court.  
28 (See Labor Code § 2699(e)(2) (PAGA penalties may be reduced where “based on the facts and

1 circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and  
2 oppressive, or confiscatory.”)) Moreover, recent decisions may make it difficult for PAGA plaintiffs to  
3 recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security*  
4 *Services, Inc.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90  
5 Cal.App.5th 548, 566-67.)

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

### 8 **B. Legal Standards**

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

16 Because this matter also proposes to settle PAGA claims, the Court also must consider the  
17 criteria that apply under that statute. The Court of Appeal’s decision in *Moniz v. Adecco USA, Inc.*  
18 (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the “fair,  
19 reasonable, and adequate” standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.)  
20 The court also held that the trial court must assess “the fairness of the settlement’s allocation of civil  
21 penalties between the affected aggrieved employees.” (*Id.*, at 64-65.)

22 California law provides some general guidance concerning judicial approval of any settlement.  
23 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3  
24 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy.  
25 (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th  
26 1121, 1127.) Moreover, “the court cannot surrender its duty to see that the judgment to be entered is a  
27 just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins.*  
28 *Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that

1 Neary does not always apply, because “where the rights of the public are implicated, the additional  
2 safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory  
3 purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th  
4 48, 63.)

### 5 C. Attorney Fees and Other Costs

6 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund”  
7 theory, or \$316,667. Even a proper common fund-based fee award, however, should be reviewed  
8 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the  
9 Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage  
10 allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is  
11 extraordinarily high or low, the trial court should consider whether the percentage used should be  
12 adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily  
13 required to make such an adjustment.” (*Id.*, at 505.)

14 Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They  
15 estimate the lodestar at \$183,455, representing an implied multiplier of 1.73. They based this amount on  
16 a total of 272 hours. No adjustment from the one-third fee is necessary. The attorney’s fees are  
17 reasonable and are approved.

18 The requested representative payment of \$10,000 for the named plaintiff was deferred until this  
19 final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American*  
20 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff points out that he executed a  
21 broader release than the class as a whole, but does not identify any particular claims of value that he may  
22 have. He also risks damage to her reputation and more difficulty in obtaining employment. The  
23 representative payment is approved.

24 Litigation costs of \$15,457 (mostly mediation, consulting, and filing fees) are reasonable and are  
25 approved.

26 The settlement administrator’s costs of \$15,000 are reasonable and are approved.

### 27 D. Discussion and Conclusion

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

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

3 The motions are granted.

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

6 The ultimate judgment must provide for a compliance hearing after the settlement has been  
7 completely implemented, to be determined in consultation with the Department's clerk by phone.  
8 Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date.  
9 Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory  
10 compliance as found by the Court. Pursuant to Code of Civil Procedure § 384(b), after the settlement is  
11 completely implemented, the judgment must be amended to reflect the amount paid to the cy pres  
12 recipient.

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14 **IT IS SO ORDERED.**

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16 Dated: \_\_\_\_\_

FEB 13 2024



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Hon. Charles S. Treat  
Contra Costa County Superior Court Judge

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# **EXHIBIT A**

**CASE NAME: JAIME M MEJIA VS BLACKHAWK COUNTRY CLUB**  
**\*HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS ACTION SETTLEMENT,**  
**ATTORNEY FEES, COSTS AND REPRESENTATIVE ENHANCEMENT PAYMENT**  
**FILED BY:**  
**\*TENTATIVE RULING:\***

Plaintiff Jaime Mejia moves for final approval of his class action and PAGA settlement with defendant Blackhawk Country Club. He also moves for approval of his attorney's fees, litigation costs, administration costs, and representative payment.

Since preliminary approval was granted, the administrator has mailed notices to 1160 class members. 42 packets were returned by the post office. Follow up resulted in 35 new addresses, leaving 7 non-deliverable. No objections have been received, and only one request for exclusion.

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The entire settlement amount will be deposited with the settlement administrator within 30 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 March 19, 2017 and February 9, 2023. For PAGA purposes, the period covered by the settlement is March 19, 2020 to February 9, 2023.

The class members will not be required to file a claim. Funds will be apportioned to class members based on the number of workweeks worked during the class period.

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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. As to unreimbursed employee expenses (such as cell phone use, mileage, and masks), plaintiff would have been called on to show that such expenses were in fact incurred, were reasonably necessary to job performance, and were unreimbursed. Furthermore, the fact-intensive character of such claims would have presented a serious obstacle to class certification.

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