

FILED
Clerk of the Superior Court

JUN 16 2023

By: V. Secaur

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

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11
12 DINO MINTER, BOBBY BAKER, CAESAR
13 JIMINEZ, JAMES ADOCK, and MARK
14 NOREM, on behalf of themselves and all
others similarly situated, and on behalf of the
general public,

15 Plaintiffs,

16 v.

17 BOMBARDIER MASS TRANSIT
18 CORPORATION, NORTH COUNTY
19 TRANSIT DISTRICT (NCTD); and DOES 1
through 20, inclusive,

20 Defendants.

Case No. 37-2018-00059972-CU-OE-CTL

Judge: Hon. Timothy Taylor

Dept.: C-72

CLASS ACTION

**[PROPOSED] ORDER ON PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 16, 2023

Time: 1:30 p.m.

Dept.: 9

Complaint filed: November 28, 2018

Trial date: February 9, 2024

1 the Settlement has been reached as a result of intensive, arm's-length negotiations utilizing an
2 experienced third-party neutral mediator. The Court further takes into account the effectiveness of
3 any proposed method of distributing relief to the Class as well as the terms of any proposed award of
4 attorney's fees, including timing of payment. Defendant Bombardier will pay the Gross Settlement
5 Amount of Fourteen Million Five Hundred Thousand Dollars (\$14,500,000.00) in new money on a
6 non-reversionary basis. Class Members are not required to submit claims to receive settlement
7 benefits. Bombardier's Employer's Payroll Taxes shall be paid from the Gross Settlement Amount.

8 3. The Court previously certified pursuant to stipulation, and now certifies for settlement
9 purposes, the following Class: "all non-exempt individuals employed by BOMBARDIER in
10 California who worked in execution of the 'North County Transit District (NCTD) RFP 24617 Rail
11 Operations and Maintenance' project during the period from June 16, 2016 to final approval of this
12 Settlement in at least one of the defined subclasses (Maintenance of Way (MOW), Maintenance of
13 Signal (MOS), Maintenance of Equipment (MOE)."

14 4. The Court previously appointed, and now appoints for purposes of the Settlement,
15 Plaintiffs Dino Minter, Bobby Baker, Caesar Jiminez, James Adock, and Mark Norem as
16 representatives of the Class.

17 5. The Court previously designated, and now designates for purposes of the Settlement,
18 as Class Counsel Richard E. Donahoo, Sarah L. Kokonas and William E. Donahoo of Donahoo &
19 Associates, PC. The Court preliminarily finds that, based on the work Class Counsel has done
20 identifying, investigating, and prosecuting the claims in this action; Class Counsel's experience in
21 handling class actions and claims; Class Counsel's knowledge of the applicable law; and the resources
22 Class Counsel has and will commit to representing the class, that Class Counsel has represented and
23 will represent the interests of the Class fairly and adequately.

24 6. CPT Group, Inc. is appointed as the Settlement Administrator and shall administer the
25 Settlement in accordance with the terms and conditions of this Order and the Settlement Agreement.
26 Total settlement administration costs are estimated to not exceed \$10,000.00.

1 7. The Settlement Administrator shall distribute the Class Notice attached hereto as
2 **Exhibit 2** according to the notice plan described in the Settlement Agreement and substantially in
3 the form approved herein, no later than 14 days from receipt of Class Data from Bombardier. A
4 declaration from the Settlement Administrator demonstrating distribution of the Class Notice shall
5 be filed by the parties in conjunction with the motion for final approval. Defendant is directed to
6 provide to the Settlement Administrator the Class Data as specified by the Settlement Agreement no
7 later than 20 days of entry of this order.

8 8. The Court hereby conditionally certifies the proposed Class and conditionally finds
9 that, solely for the purposes of approving this Class Settlement and for no other purpose and with no
10 other effect on this litigation, the proposed Class meets the requirement for certification under Code
11 Civil Procedure §382 and Cal. Rule of Court 3.764 on the grounds that membership in the Class and
12 each Subclass is ascertainable; that a well-defined community of interest exists within the Class and
13 Subclass; that a common nucleus of facts and common questions of law in the Class and each Subclass
14 predominate over individual questions; that substantial benefits result from class certification; and
15 that Plaintiffs and their counsel will adequately and fairly protect the interests of the Class.

16 9. It is appropriate to review a PAGA settlement to ascertain whether a settlement is fair
17 in view of PAGA's purposes and policies. (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016)
18 201 F.Supp.3d 1110, 1132–1134; *Jordan v. NCI Group, Inc.* (Jan. 5, 2018, No. EDCV 16-1701-JVS)
19 2018 U.S.Dist. Lexis 25297, pp. *3–*4; see *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises*
20 *of America* (2006) 141 Cal.App.4th 46, 59, 61–62 [where the Legislature required court approval of
21 private settlements of Prop. 65 actions brought to vindicate the public interest, court must evaluate
22 the resulting consent decree to determine if it is “just” and “serves the public interest”].) A trial court
23 should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view
24 of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize
25 enforcement of state labor laws. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 546 (Williams)
26 [PAGA “sought to remediate present violations and deter future ones”].
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1 10. “[T]here is no requirement that the Court certify a PAGA claim for representative
2 treatment like in Rule 23” *Villalobos v. Calandri Sunrise Farm LP*, No. 12-CV-2615 (PSG),
3 2015 WL 12732709, at *5 (C.D. Cal. July 22, 2015); see also *Delgado v. Marketsource, Inc.*, No. 17-
4 CV-7370 (LHK), 2019 WL 4059850, at *3 (N.D. Cal. Aug. 28, 2019) (“Because a PAGA action is
5 brought as a proxy for law enforcement agencies, there is no requirement that the Court certify a
6 PAGA claim for representative treatment like in Rule 23” (quoting *Villalobos*, 2015 WL
7 12732709, at *5)). With respect to the PAGA claims, the Court finds persuasive that the California
8 Labor & Workforce Development Agency (“LWDA”) was invited to file a response to the proposed
9 settlement agreement in this case and elected not to file any objections or opposition, and “infers
10 LWDA’s non-response [as] tantamount to its consent to the proposed settlement terms, namely the
11 proposed PAGA penalty amount.” *Echavez v. Abercrombie & Fitch Co., Inc.*, No. 11-CV-9754
12 (GAF), 2017 WL 3669607, at *9 (C.D. Cal. Mar. 23, 2017); *Jennings v. Open Door Mktg.*, No. 15-
13 CV-4080 (KAW), 2018 WL 4773057, at *9 (N.D. Cal. Oct. 3, 2018) (“Plaintiffs submitted the
14 settlement agreement to the LWDA, and the LWDA has not objected to the settlement.”); *Jordan v.*
15 *NCI Group, Inc.*, No. 16-CV-1701 (JVS), 2018 WL 1409590, at *3 (C.D. Cal. Jan. 5, 2018)
16 (“Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to the
17 proposed settlement and no comment or objection has been received.”)¹ The Court hereby grants
18 approval of the PAGA Settlement, including the settlement and release of the PAGA Claims, as
19 defined in the Settlement Agreement, and the payment of One Hundred Fifty Seven Thousand Three
20 Hundred Fifty Six Dollars (\$157,356.00) from the Gross Settlement Fund to resolve the PAGA
21 Claims (“PAGA”) which is seventy-five percent (75%) of the PAGA Payment, shall be paid to the
22 LWDA. The remaining Sixteen Thousand Six Hundred and Sixty-Seven Dollars (\$52,452.00), which
23 is twenty-five percent (25%) of the PAGA Payment, shall be distributed to the PAGA Releasees,
24 based on the number of PAGA Pay Periods worked by a PAGA Releasee, as a fraction of the total
25 PAGA Pay Periods worked by all PAGA Releasees. PAGA Releasees will not have the opportunity

26 _____
27 ¹ Class Counsel represented to the Court that the LWDA would be notified of this
28 proposed settlement after the Motion was submitted. See Declaration of Richard E.
Donahoo dated _____.

1 to opt out of, or object to the PAGA Payment and settlement and release of the PAGA Claims. The
2 payment to the LWDA and the PAGA Releasees shall be made in accordance with the Settlement
3 Agreement.

4 11. The Court hereby approves, as to form and content, the Court Approved Notice Of
5 Class Action Settlement and Hearing Date for Final Court Approval (“the Class Notice”) in
6 substantially the form attached as Exhibit 2 to this Order. The Class Notice is sufficient to inform
7 Class Members of the terms of the Settlement Agreement, their rights under the Settlement
8 Agreement, their rights to object to or comment on the Settlement Agreement, their right to receive
9 a payment or opt out of the Settlement Agreement, the process for doing so, and the date and location
10 of the Fairness and Final Approval hearing. The Court finds that the distribution of the Class Notice
11 in accordance with the Settlement Agreement meets the requirements of due process; is the best notice
12 practicable under the circumstances; is reasonable and constitutes due, adequate, and sufficient notice
13 to all persons entitled thereto; and is reasonably calculated, under the circumstances, to apprise the
14 Class Members of the proposed settlement and of their right to object or to exclude themselves as
15 provided in the Settlement Agreement. The Parties have agreed to send the Class Notice to Class
16 Members by regular United States Mail. The notice plan is therefore APPROVED.

17 12. The Court approves the procedures set forth in the Settlement Agreement and the Class
18 Notice for exclusions from and objections to the Class Settlement. Any Class Members shall have
19 the right to be excluded from the Class by mailing a request for exclusion to the Settlement
20 Administrator postmarked or sent no later than 45 days after the Settlement Administrator mails
21 Notice to Class Members and Aggrieved Employees. Requests for exclusion must be in writing from
22 Class Member or his/her representative that reasonably communicates the Class Member’s election
23 to be excluded from the Settlement and includes the Class Member’s name, address and email address
24 or telephone number. Any Class Member who does not request exclusion from the settlement class
25 as provided above shall be bound by the terms and provisions of the Settlement Agreement upon its
26 final approval, including but not limited to the releases, waivers, and covenants described in the
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1 Settlement Agreement, whether or not such person objected to the Settlement Agreement and whether
2 or not such person makes a claim upon the settlement funds.

3 13. Participating Class Members may appear in Court (or hire an attorney to appear in
4 Court) to present verbal objections at the Final Approval Hearing. Non-Participating Class Members
5 have no right to object to any of the class action components of the Settlement.

6 14. Each Class Member shall have 45 days after the Administrator mails the Class Notice
7 (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the
8 number of Class Workweeks and Pay Periods (if any) allocated to the Class Member in the Class
9 Notice. The Class Member may challenge the allocation by communicating with the Administrator
10 via fax, email or mail. The Administrator must encourage the challenging Class Member to submit
11 supporting documentation. In the absence of any contrary documentation, the Administrator is
12 entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are
13 consistent with the Class Data.

14 15. The Court hereby preliminarily approves the Class Settlement, including the plan of
15 allocation of the Class portion of the Gross Settlement Amount as described in the Settlement.
16 Specifically, after all required deductions are made from the Gross Settlement Amount, the Net
17 Settlement Fund will be distributed to Class Members. Each Class Member who does not opt-out of
18 the Settlement will receive his/her pro rata share of the Net Settlement Fund for their Subclass based
19 on the number of workweeks worked by the Class Members in the Subclass for Defendant during the
20 Class Period.

21 16. Neither the Settlement, nor any exhibit, document or instrument delivered thereunder
22 shall be construed or interpreted as or deemed to be evidence of an admission or concession by
23 Released Parties (a) of any liability or wrongdoing by Released Parties, (b) of the appropriateness of
24 certifying a class for purposes of litigation, (c) that Plaintiffs' claims may properly be prosecuted on
25 a class or representative basis, (d) that any arbitration agreement maintained by Released Parties is
26 unenforceable, or (e) of the truth of any allegations asserted by Plaintiff, members of the Class, PAGA
27 Releasees, or any other person.

1 17. If the Class Settlement is not finally approved, or the Effective Date does not occur,
 2 or the Settlement is terminated under its terms, then: (a) the Settlement shall be without force and
 3 effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable; (b)
 4 the Parties shall be deemed to have reverted *nunc pro tunc* to their respective status as of the day
 5 immediately before the Parties entered into the Settlement Agreement, with the Parties to meet and
 6 confer regarding any discovery or case management deadlines that were pending at the time the
 7 Parties stayed litigation to; (c) Defendant and/or Released Parties shall not be obligated to pay any
 8 amount of the Gross Settlement Amount and shall be refunded any amounts paid pursuant to the
 9 Agreement but not yet spent or disbursed; (d) all Orders entered in connection with the Settlement,
 10 including the certification of the Class, shall be vacated without prejudice to any Party's position on
 11 the issue of class certification, or any other issue, in this Action or any other action, and the Parties
 12 shall be restored to their litigation positions existing on the date of execution of Settlement
 13 Agreement; and (e) the Parties shall proceed in all respects as if the Settlement Agreement and related
 14 documentation and orders had not been executed, and without prejudice in any way from the
 15 negotiation or fact of the Settlement or the terms of the Settlement Agreement. In such an event, this
 16 Court's orders regarding the Settlement, including this Preliminary Approval Order and Order
 17 Approving PAGA Settlement, shall not be used or referred to in litigation, or any arbitration or other
 18 civil or administrative proceeding, for any purpose. Nothing in the foregoing paragraph is intended
 19 to alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement
 20 if it is not approved.

21 18. The Court orders the following Implementation Schedule for further proceedings:

a.	Deadline for Defendant Bombardier, Inc. to provide the Class Member List to the Settlement Administrator	Twenty (20) Calendar Days from Entry of Order on Preliminary Approval 7/14/23 H
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1	b.	Deadline for Settlement Administrator to Mail Notice to Class Members	Within Fourteen (14) Calendar Days of Receipt of the Class Member List
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4	c.	Deadline for Postmark of Any Objection	Forty-five (45) Calendar Days from the Mailing of the Notice plus an additional 14 days for Class Members whose Class Notice is re-mailed)
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10	d.	Deadline for the Parties' Counsel to Respond to Any Objections	Before the Date of the Final Approval Hearing
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13	e.	Deadline for Class Counsel to file Motion for Fees and Costs	<u>Oct. 16</u> , 2023
14			
15	f.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	<u>Oct. 16</u> , 2023
16			
17	g.	Final Approval Hearing	<u>Nov. 9</u> , 2023

1:30 p.m.

21. Pending further order of this Court, all proceedings in this matter other than those contemplated herein and in the Settlement Agreement are stayed.

22. The Court retains jurisdiction to consider all further applications arising out of or in connection with the Settlement.

IT IS SO ORDERED.

Dated: 6/16/23

Timothy B. Taylor
 JUDGE OF THE SUPERIOR COURT
 Timothy B. Taylor

PROOF OF SERVICE
Code Civ. Proc. § 1013a(3)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 440 West First Street, Suite 101, Tustin, California 92780.

On June 22, 2023, I served the foregoing document described as **NOTICE OF ENTRY OF ORDER ON MOTION FOR PRELIMINARY APPROVAL** on the interested parties in this action by placing a true copy thereof in a sealed envelope addressed to the parties listed on the attached service list.

BY MAIL: I am “readily familiar” with the firm’s practice of collection and processing mail. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Tustin, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY FACSIMILE: I transmitted a true copy from facsimile number (714) 953-1777 to the facsimile numbers listed on the attached service listed. Upon completion of transmission there were no errors reported.

BY ELECTRONIC TRANSMISSION: I transmitted a true copy via electronic mail to the addresses listed on the attached service list.

BY NEXT-DAY DELIVERY: Causing overnight delivery of the document(s) listed herein via **ONTRAC OVERNIGHT**, to the address (es) set forth on the attached service list.

Executed on June 22, 2023, at Tustin, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Sarah L. Kokonas

Sarah L. Kokonas

SERVICE LIST

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