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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

CANDACE EVANS, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

BIG JOE HANDLING SYSTEMS INC., an unknown business entity; BIG JOE CALIFORNIA NORTH, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: RG20055273

Honorable Brad Seligman
Department 23

CLASS ACTION

~~PROPOSED~~ FINAL APPROVAL ORDER AND JUDGMENT

Reservation No.: A-20055273-001
Date: August 1, 2023
Time: 3:00 p.m.
Department: 23

Complaint Filed: February 20, 2020
FAC Filed: May 22, 2020
Trial Date: None Set

FILED
Superior Court of California
County of Alameda

08/17/2023

Clad Fluke, Executive Officer / Clerk of the Court

By: A. Hewitt Deputy

1 **RECITALS**

2 This matter has come before the Honorable Brad Seligman in Department 23 of the above-
3 entitled Court, located at 1221 Oak Street, Oakland, California 94612, on Plaintiff Candace Evans’
4 (“Plaintiff”) Motion for Final Approval of Class Action Settlement, Class Counsel Award, and
5 Enhancement Payment (“Motion for Final Approval”). Lawyers *for* Justice, PC appeared on
6 behalf of Plaintiff, and Gordon Rees Scully Mansukhani, LLP appeared on behalf of Defendant
7 Big Joe California North, Inc. d/b/a Big Joe Handling Systems (erroneously sued as Big Joe
8 Handling Systems, Inc.) (“Defendant”) (together, with Plaintiff, the “Parties”).

9 On February 20, 2020, Plaintiff filed a Class Action Complaint for Damages against
10 Defendant, asserting ten putative class causes of action for California Labor Code violations and
11 a putative class cause of action for violation of California Business and Professions Code section
12 17200, *et seq.* (*Candace Evans v. Big Joe Handling Systems Inc., et al.*, Alameda County Superior
13 Court Case No. RG20055273).

14 On May 20, 2020, Plaintiff filed a First Amended Class Action Complaint for Damages &
15 Enforcement of the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.*

16 On April 18, 2022, Plaintiff moved for preliminary approval of the Joint Stipulation of
17 Class and Representative Action Settlement and Amendment No. 1 to Joint Stipulation of Class
18 and Representative Action Settlement (together, “Settlement,” “Agreement,” or “Settlement
19 Agreement”) reached by the Parties to resolve the Action.

20 On May 31, 2022, Plaintiff filed supplemental papers in support of the Motion for
21 Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”).

22 On March 28, 2023, Plaintiff filed further supplemental papers in support of the Motion
23 for Preliminary Approval.

24 On March 30, 2023, the Court entered the Order Granting Preliminary Approval of Class
25 Action Settlement (“Preliminary Approval Order”), thereby preliminarily approving the
26 Settlement, which, together with the exhibits annexed thereto, set forth the terms and conditions
27 for settlement of the Action.

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1 On July 10, 2023, Plaintiff filed the Motion for Final Approval of the Class and PAGA
2 Settlement.

3 On or about July 26, 2023, the Court issued its Tentative Ruling on the Motion for Final
4 Approval, indicating that the Court tentatively approves the Motion for Final Approval, with the
5 request for attorneys' fees and enhancement payment to Plaintiff granted in part, and the requests
6 for litigation costs and expenses to Class Counsel and settlement administration costs to the
7 Settlement Administrator granted in full.

8 The Parties submitted on the Court's tentative ruling, which became the Court's ruling on
9 August 1, 2023.

10 Having reviewed the Settlement Agreement and duly considered the parties' papers and
11 oral argument, and good cause appearing, the Court hereby makes the following findings, orders,
12 and judgment.

13 **FINDINGS**

14 **THE COURT HEREBY FINDS AS FOLLOWS:**

15 1. The Court finds that it has jurisdiction over the claims of the Class Members
16 asserted in this proceeding and over all parties to the Action.

17 2. The Settlement provides for a payment of \$520,665.20 in exchange for a release of
18 claims. (3/28/2023 Rose Decl., Ex. 3 [Amendments to Settlement Agreement] at ¶ E; see also
19 4/18/2022 Rose Decl., Ex. 1 [Settlement Agreement].) Of the settlement amount, \$75,000 is
20 allocated to PAGA penalties, to be split between the LWDA and Aggrieved Employees.

21 3. Based upon 136 class members, the average individual payment will be
22 approximately \$1,789.98. (Mitzner Decl., ¶¶ 11, 13.)

23 4. The Settlement Administrator mailed 137 notice packets. (Mitzner Decl., ¶ 5.)
24 None were deemed undeliverable. (Mitzner Decl., ¶ 7.)

25 5. The Settlement Administrator received one (1) request for exclusion and no
26 objections. (Mitzner Decl., ¶¶ 8, 9.) This represents a 99.94% participation rate. (Mitzner Decl., ¶
27 11.)

1 6. Class action settlements must be approved by the court as “fair, adequate, and
2 reasonable.” (CRC 3.769, subd. (g); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
3 244.) In approving class action settlements, the court considers (1) the relative strength of the
4 plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation of this
5 dispute; (3) the risk of maintaining class status through trial; (4) the amount offered in settlement;
6 (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views
7 of counsel that settlement is reasonable; and (7) the presence or lack of any objections to the
8 proposed settlement. (See *id.* at pp. 244-245; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
9 1801.)

10 7. Representative litigants must submit any settlement of PAGA representative
11 actions for court approval. (See Lab. Code, § 2699, subd. (1)(2).) Because the Labor & Workforce
12 Development Agency (“LWDA”) is not present at the negotiating table, the court’s review of a
13 PAGA settlement must make sure that the interests of the LWDA in civil enforcement are defended
14 and that the settlement is fair, adequate, and reasonable under all the circumstances. (See
15 *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1133; see also Gov.
16 Code, § 12652, subd. (e)(2)(B) [requiring False Claims Act qui tam settlements be “fair, adequate,
17 and reasonable under all the circumstances”].)

18 8. The court therefore takes guidance from the context of class action settlements,
19 which must also be found to be “fair, adequate, and reasonable.” (See, e.g., *Wershba v. Apple*
20 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 244.) However, at least two factors are not analogous
21 in the PAGA settlement context: risk of maintaining class action status and reaction of other
22 aggrieved employees. (*Cf. Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.) Class
23 action status is irrelevant because PAGA actions are not certified. The lack of objections is largely
24 irrelevant because PAGA procedures provide no opportunity for absent aggrieved employees to
25 offer their objections to the settlement. The parties must serve the LWDA with settlement papers,
26 but the law provides no procedure or timeline for the LWDA to object. (Lab. Code, § 2699, subd.
27 (1).)
28

1 9. Thus, courts consider (1) the apparent strength of plaintiff’s case; (2) the high risk,
2 high complexity, and long likely duration of the PAGA dispute; (3) the amount offered in
3 settlement; (4) the extent of discovery and investigation; and (5) the favorable views of
4 experienced counsel, reached after mediation before an experienced neutral.

5 10. The Court approves the settlement as fair, reasonable, and adequate. The settlement
6 is entitled to a presumption of fairness. (*Dunk*, supra, 48 Cal.App.4th at p. 1802.) The settlement
7 was reached through an arm’s-length negotiation before an experienced mediator. (Aiwazian
8 Decl., ¶ 8.) The investigation and discovery are sufficient to allow counsel and the Court to act
9 intelligently. (3/28/23 Further Supplemental Rose Decl.) Counsel is experienced in similar
10 litigation, and there are no objectors. (Aiwazian Decl., ¶¶ 15-18; Mitzner Decl., ¶ 9.)

11 11. The Court finds that the applicable requirements of California Code of Civil
12 Procedure section 382 and California Rule of Court 3.769, *et seq.* have been satisfied with respect
13 to the Class and the Settlement.

14 12. The Court also approves of the PAGA settlement—\$75,000 to be split between the
15 LWDA and Aggrieved Employees—as fair, reasonable, and adequate.

16 13. Class Counsel requests an award of \$182,232.82 in attorneys’ fees, which
17 represents 35% of the Maximum Settlement Amount. (Aiwazian Decl., ¶ 9.) The Court declines
18 to award 35% of the Maximum Settlement Amount in attorneys’ fees. The Court approves a
19 reduced attorneys’ fee award of 30% of the Maximum Settlement Amount, or \$156,199.56.
20

21 14. Class Counsel seeks reimbursement of \$10,754.05 in costs, which is less than the
22 \$25,000 max stated in the notice. (Mitzner Decl., Ex. A at § III, subd. (A).) The Court approves
23 \$10,754.05 in costs as reasonable and necessary.

24 15. Plaintiff seeks a service award of \$7,500. (Aiwazian Decl., ¶ 20.) Plaintiff estimates
25 spending over 15 hours working on this action. (Evans Decl., ¶ 3.) The Court approves a reduced
26 Enhancement Payment of \$5,000 to Plaintiff.

27 16. The Court finds that payment of Settlement Administration Costs in the amount of
28 \$6,250.00 for costs incurred and anticipated for completion of the notice and settlement

1 administration process are appropriate. (Mitzner Decl., ¶ 16 & Ex. B.) The Court approves of the
2 Settlement Administration Costs in the amount of \$6,250.00 to the Settlement Administrator.

3 **ORDER**

4 **THE COURT HEREBY ORDERS AS FOLLOWS:**

5
6 17. All terms used herein shall have the same meaning as defined in the Settlement
7 Agreement and the Preliminary Approval Order.

8 18. The Court hereby makes final its earlier provisional certification of the Class for
9 settlement purposes, as set forth in the Preliminary Approval Order and as follows:

10 All current and former hourly-paid or non-exempt employees who worked for Defendant
11 within the State of California at any time during the Class Period (“Class” or “Class
Members”).

12 19. There was one (1) Request for Exclusion submitted by a Class Member, Karen
13 Butler, who will not be bound by this Final Approval Order and Judgment. All Class Members
14 who do not submit valid and timely Requests for Exclusion (“Settlement Class Members”) are
15 bound by this Final Approval Order and Judgment.

16 20. Pursuant to California law, the Court hereby grants final approval of the Settlement
17 and finds that it is reasonable and adequate, and in the best interests of the Class as a whole.
18 Accordingly, the Court hereby directs that the Settlement be implemented in accordance with the
19 Settlement Agreement and the terms and conditions set forth herein.

20 21. It is hereby ordered that Defendant shall deposit the Maximum Settlement Amount
21 into an account established by the Settlement Administrator within thirty (30) calendar days after
22 the Effective Date, in accordance with the terms and methodology set forth in the Settlement
23 Agreement.

24 22. It is hereby ordered that the Settlement Administrator shall distribute the PAGA
25 Payment as follows: the amount of \$56,250.00 to the California Labor and Workforce
26 Development Agency, and the amount of \$18,750.00 to be included in the Net Settlement Amount
27 for distribution to Settlement Class Members, according to the terms and methodology set forth in
28 the Settlement Agreement.

1 23. It is hereby ordered that the Settlement Administrator shall issue payment to itself
2 in the amount of \$6,250.00, in accordance with the terms and methodology set forth in Settlement
3 Agreement.

4 24. It is hereby ordered that the Settlement Administrator shall issue payment in the
5 amount of \$5,000.00 to Plaintiff Candace Evans for her Enhancement Payment, according to the
6 terms and methodology set forth in the Settlement Agreement.

7 25. It is hereby ordered that the Settlement Administrator issue payment in the amount
8 of \$156,199.56 to Class Counsel for attorneys' fees, in accordance with the terms and methodology
9 set forth in the Settlement Agreement. However, the Court requires that ten percent (10%) of the
10 attorneys' fees award be kept in the Settlement Administrator's trust fund until the completion of
11 the distribution process and Court approval of a final accounting.

12 26. It is hereby ordered that the Settlement Administrator issue payment in the amount
13 of \$10,754.05 to Class Counsel for reimbursement of litigation costs and expenses, in accordance
14 with the terms and methodology set forth in the Settlement Agreement.

15 27. It is hereby ordered that the Settlement Administrator shall distribute Individual
16 Settlement Payments to the Settlement Class Members no earlier than the Effective Date, and no
17 later than forty-five (45) calendar days after the Effective Date, according to the methodology and
18 terms set forth in the Settlement Agreement.

19 28. Each check issued to a Settlement Class Member for his or her Individual
20 Settlement Payment shall be valid for a period of one hundred and eighty (180) calendar days from
21 the date of their issuance, and thereafter, shall be canceled. The funds associated with such
22 canceled checks shall be paid out pursuant to California Code of Civil Procedure section 384 to
23 the following *cy pres* recipient: Legal Services of Northern California.

24 29. A Compliance Hearing Regarding Distribution of Settlement Funds is set for March
25 26, 2024 at 3:00 p.m. The Settlement Administrator's declaration regarding distribution of
26 settlement funds and the stipulation to amend the judgment shall be filed with the Court on or
27 before _____ T & A J & G _____.

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1 **JUDGMENT**

2 **THE COURT HEREBY ENTERS JUDGMENT AS FOLLOWS:**

3 30. The Court hereby enters Judgment by which Defendant is bound to perform under
4 the terms of the Settlement Agreement and pursuant to this Final Approval Order and Judgment,
5 and by which, as of the Effective Date and full funding of the Maximum Settlement Amount,
6 Plaintiff, Settlement Class Members, and the State of California shall waive, release, and discharge
7 Released Parties of any and all Released Claims.

8 a. The “Effective Date” means the last day on which to appeal an order
9 granting final approval of the Settlement Agreement if timely objections are filed, or the resolution
10 of any such appeal that does not alter the terms of the settlement. (Settlement Agreement, § A.12.)

11 b. “Released Parties” means Defendant and Defendant's affiliates,
12 parents, and each of their company-sponsored employee benefit plans, and their respective
13 successors and predecessors in interest, all of their respective officers, directors, employees,
14 administrators, fiduciaries, trustees and agents, and each of their past, present and future officers,
15 directors, shareholders, employees, agents, principals, heirs, representatives, attorneys,
16 accountants, auditors, consultants, insurers and reinsurers. (Settlement Agreement, § A.24.)

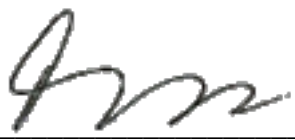
17 c. “Released Claims” means the following: all claims, charges,
18 complaints, liens, demands, causes of action, obligations, damages and liabilities, known or
19 suspected, that each participating class member had, now has, or may hereafter claim to have
20 against the Released Parties, and that were asserted in the Action, or that arise from or could have
21 been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts,
22 disclosures, statements, omissions or failures to act alleged in the Action that have arisen during
23 the time period April 18, 2015, through February 2, 2021. The Released Claims specifically
24 include, but are not limited to: (1) Unpaid Overtime Wages (Lab. Code §§ 510 and 1198); (2) Meal
25 Period Violations (Lab. Code §§ 226.7 and 512); (3) Rest Period Violations (Lab. Code § 226.7);
26 (4) Unpaid Minimum Wages (Lab. Code §§ 1194, 1197 and 1197.1); (5) Failure to Timely Pay
27 Final Wages (Lab. Code §§ 201 and 202); (6) Failure to Timely Pay Wages During Employment
28 (Lab. Code § 204); (7) Non-Compliant Wage Statements (Lab. Code § 226); (8) Failure to

1 Maintain Payroll Records (Lab. Code § 1174); (9) Failure to Reimburse Business Expenses (Lab.
2 Code §§ 2800 and 2802); (10) Unfair Business Practices (Bus. & Prof. Code §§ 17200, *et seq.*);
3 (11) and Penalties under the California Private Attorneys General Act for violation or breach of
4 the California Labor Code arising from or related to the conduct alleged in the operative
5 Complaint, including without limitation, Labor Code sections 201, 202, 203, 204, 226(a), 226.7,
6 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and Industrial Welfare
7 Commission Wage Orders, including *inter alia*, Wage Orders 4-2001, 7-2001, and 9-2001. This
8 release shall not apply to claims for workers' compensation benefits, unemployment insurance
9 benefits, pension or retirement benefits, or any other claim or right that as a matter of law cannot
10 be waived or released. (Settlement Agreement, § A.23.)

11 31. After entry of this Final Approval Order and Judgment, pursuant to California Rules
12 of Court, Rule 3.769(h), the Court shall retain jurisdiction to construe, interpret, implement, and
13 enforce the Settlement Agreement and this Final Approval Order and Judgment, to hear and
14 resolve any contested challenge to a claim for settlement benefits, and to supervise and adjudicate
15 any dispute arising from or in connection with the distribution of settlement benefits.

16 32. Notice of entry of this Final Approval Order and Judgment shall be given to the
17 Class Members by posting a copy of the Final Approval Order and Judgment on Phoenix
18 Settlement Administrators' website for a period of at least sixty (60) calendar days after the date
19 of entry of this Final Approval Order and Judgment. Individualized notice is not required.

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21 Dated: 08/17/2023 _____



HONORABLE BRAD SELIGMAN
JUDGE OF THE SUPERIOR COURT
Brad Seligman / Judge

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