

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/13/2024 at 01:26:00 PM
Clerk of the Superior Court
By Mariejo Guyot, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ISAIAH HARRIS, *et al.*

Plaintiff,

v.

AUSTAL USA LLC, *et al.*

Defendants.

Case No. 37-2023-00034540-CU-OE-CTL

Hon. James A Mangione
Dept. 75

CLASS ACTION

**Amended ~~[Proposed]~~ Order Granting
Preliminary Approval of Class Action
Settlement**

Motion for Prelim. App. Hearing

Date: February 23, 2024

Time: 9:00 a.m.

Action Filed: August 11, 2023

1 This matter came on for hearing on February 23, 2024 at 9:00 a.m. in Department 75 of the
2 above-captioned Court on Plaintiff’s Motion Preliminary Approval of Class Action Settlement
3 (“Motion”).

4 Having fully reviewed the Motion, the supporting Memorandum of Points and Authorities,
5 Declaration of Nicholas J. Ferraro (and its exhibits), including the settlement agreement (“Settlement”),
6 and the notice attached as an exhibit to the Settlement, and in recognition of the Court’s duties (to make
7 a preliminary determination as to the reasonableness of any proposed class action settlement; to ensure
8 proper notice is provided to all class members in accordance with due process requirements; and to set
9 a final approval hearing to consider the good faith, fairness, adequacy and reasonableness of the
10 proposed Settlement), the Court makes the following determinations and orders:

11 1. The Court conditionally finds, for the purposes of approving this settlement only, the
12 proposed Class—defined in the Settlement as “all individuals currently or formerly employed by Austal
13 in California as hourly, non-exempt employees during the Class Period [of August 11, 2019 through
14 October 2, 2023]” meets the requirements for certification under § 382 of the California Code of Civil
15 Procedure: (a) the proposed class is ascertainable and so numerous joinder of all class members is
16 impracticable; (b) there are questions of law or fact common to the proposed class, and a well-defined
17 community of interest among members of the proposed class with respect to the subject matter of the
18 class action; (c) the claims of the class representative are typical of the claims of the members of the
19 proposed class; (d) the class representative appears to be adequate to serve in that role; (e) a class action
20 is superior to other available methods for an efficient adjudication of this controversy in the context of
21 settlement; and (f) counsel of record for the Plaintiff are qualified to serve as class counsel.

22 2. The Court finds, on a preliminary basis, the Settlement, incorporated by this reference
23 in full, and made a part of this Order, appears to be within the range of reasonableness of a settlement
24 which could ultimately be given final approval by this Court.

25 3. The Court further finds, on a preliminary basis, (a) the non-reversionary Gross
26 Settlement Amount is fair and reasonable to the class when balanced against the probable outcome of
27 further litigation relating to class certification, liability and damages issues, and potential appeals;
28 (b) sufficient investigation, research, and informal discovery, have been conducted such that counsel

1 for the parties are able to reasonably evaluate their respective positions; (c) settlement at this time will
2 avoid substantial costs, delay, and risks presented by further prosecution of the litigation; and (d) the
3 proposed Settlement was reached through prudent and non-collusive negotiations.

4 4. The Court finds the allocation from the common fund to PAGA penalties, including the
5 LWDA's 75% share, as fair, adequate, and reasonable in light of the overall gross settlement and that
6 the proposed settlement of PAGA penalties has been adequately submitted to the LWDA in advance of
7 the preliminary approval hearing. Therefore, the Court **APPROVES** the PAGA payment pursuant to
8 Labor Code § 2699(1)(2).

9 5. Accordingly, good cause appearing, the Motion for Order Granting Preliminary
10 Approval of Class Action Settlement is **GRANTED**.

11 6. Class members are therefore defined pursuant to the terms set forth in the Settlement.

12 7. The Court further finds the proposed notice fairly and adequately advises class members
13 of (a) pendency of the Settlement; (b) conditional class certification for settlement purposes only;
14 (c) preliminary Court approval of the proposed Settlement; (d) the date, time and place of the Final
15 Approval Hearing; (e) the terms of the proposed Settlement and the benefits available to the class under
16 the Settlement; (f) their right to receive a proportionate share of the Net Settlement Amount without
17 the need to return a claim form; (g) their right to request exclusion, and the procedures and deadline for
18 doing so; (h) their right to object to the Settlement, and the procedure and deadline for doing so; and
19 (i) their right to appear at the final approval hearing.

20 8. The Court further finds the proposed notice, attached hereto as **Exhibit 1**, provides the
21 best practicable notice to the Class and comports with the constitutional requirements, including those
22 of due process. The Court further finds that mailing of the notice to the last known address of all class
23 members with measures taken for verification of an address and skip tracing of bad addresses, as
24 specifically described within the Settlement, constitutes an effective method of notifying class members
25 of their rights with respect to the class action and the Settlement.

26 9. Therefore, for good cause, the Court **APPROVES** the notice for distribution to the class
27 pursuant to the notice procedures set forth in full in the Settlement.

28 Accordingly, it is **ORDERED** that:

1 a. CPT Group, Inc. be appointed the Administrator of the Settlement, as more
2 specifically set forth in the Settlement;

3 b. Ferraro Vega Employment Lawyers be appointed as class counsel;

4 c. Plaintiff Isaiah Harris be appointed as class representative;

5 d. All deadlines, terms, and conditions set forth in the Settlement incorporated by
6 reference into this Order shall apply and govern the notice procedure and response deadlines;

7 e. Any class member who desires to object may appear in Court at the Final
8 Approval Hearing to present oral objections;

9 f. If for any reason the Court does not execute and file an Order Granting Final
10 Approval of Class Action Settlement, or if the Effective Date, as defined in the Settlement, does not
11 occur for any reason whatsoever, the Settlement and the proposed Settlement that is the subject of this
12 Order, and all evidence and proceedings had in connection therewith, shall be restored without
13 prejudice to the *status quo ante*, pursuant to the terms set forth in the Settlement.

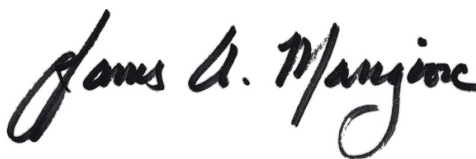
14 10. **IT IS FURTHER ORDERED** that the Final Approval Hearing shall be held before the
15 undersigned at **9:00 a.m.** on **August 2, 2024**, in this Department.

16 11. At the Final Approval Hearing, the Court will consider the fairness, adequacy, and
17 reasonableness of the proposed Settlement preliminarily approved in his Order and notice process to
18 be effectuated, and to consider the application for a class representative service payment to the class
19 representative, the administration expenses, attorneys' fees, and costs.

20 12. The Court reserves the right to continue the Final Approval Hearing without further
21 notice to the class. However, if written objections are submitted, class counsel is ordered to serve
22 notice on any such objecting class member of the new date and time of the Final Approval Hearing.

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24 **IT IS SO ORDERED.**

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26 Date: 03/13/2024



27 The Honorable James A Mangione
28 Judge of the Superior Court

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EXHIBIT 1
Amended Class Notice

NOTICE OF CLASS ACTION SETTLEMENT

Isaiah Harris et al. v. Austal USA LLC et al.

Superior Court of the State of California for the County of San Diego

Case No. 37-2023-00034540-CU-OE-CTL

This notice is to the following individuals in connection with a pending class action settlement:

“Class” or “Class Member(s)” means all individuals currently or formerly employed by Austal in California as hourly, non-exempt employees during the period from August 11, 2019, through October 2, 2023, or the date of preliminary approval, whichever is earlier.

Read this notice carefully. Your legal rights could be affected whether you act or not.

The Superior Court of the State of California for the County of San Diego (the “Court”) has preliminarily approved this class and representative action lawsuit filed by Isaiah Harris (“Class Representative”) against Austal USA LLC (“Austal”) for alleged wage and hour violations (the “Lawsuit”).

The Lawsuit is based on various causes of action: (1) failure to pay all regular and minimum, (2) meal period violations, (3) rest period violations, (4) paid sick leave violations, (5) untimely payment of wages, (6) wage statement violations, (7) waiting time penalties, (8) failure to reimburse business expenses, (9) violations of the unfair competition laws, and (10) civil penalties under the Private Attorneys General Act. Austal denies all claims and maintains it has fully complied with the law.

Austal’s records reflect you worked **[[Individual Workweeks]]** workweeks during the Class Period of August 11, 2019, through October 2, 2023. Based on this information, your Individual Class Payment is estimated to be \$**[[Individual Class Payment]]** (less any applicable state and federal withholdings). The Individual PAGA Payment is estimated to be \$**[[Individual PAGA Payment]]**, which is included in the Individual Class Payment amount. The actual amount you may receive will likely be different and will depend on multiple factors, such as how many other individuals decide to opt out.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You do not have to do anything in response to this notice. If you do nothing, you will remain eligible to automatically receive an Individual Class Payment if the Court grants final approval of the settlement. In such case, you will be bound by the release provisions in the settlement.
OPT OUT	You may opt out of the Class Action Settlement by submitting a Request for Exclusion form. If you opt out, you may not object to the Settlement, you will not receive an Individual Class Payment, and you shall not be bound by the release provisions in the settlement. <i>You may not opt out of the PAGA Settlement.</i>

OBJECT	You may object to the Class Action Settlement by submitting a written objection. If the Court grants final approval of the settlement despite your objection, you will remain eligible to automatically receive an Individual Class Payment if the Court grants final approval of the settlement. In such case, you will be bound by the release provisions in the settlement. <i>You may not object to the PAGA Settlement.</i>
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The Court’s final approval hearing is scheduled to take place on **[[Final Approval Hearing Date]]** at **[[Final Approval Hearing Time]]** in Dept. 75 of the San Diego Superior Court, located at 330 W Broadway, San Diego, CA 92101. You do not have to attend but you do have the right to appear. ***For more information, please carefully read this notice.***

1. WHAT IS THE ACTION ABOUT?

The Class Representative is former employee of Austal. The Class Representative alleged Austal violated California labor and employment laws as follows: (1) failure to pay all regular and minimum, (2) meal period violations, (3) rest period violations, (4) paid sick leave violations, (5) untimely payment of wages, (6) wage statement violations, (7) waiting time penalties, (8) failure to reimburse business expenses, (9) violations of the unfair competition laws, and (10) civil penalties under the Private Attorneys General Act. Plaintiffs are represented by [Ferraro Vega Employment Lawyers](#) (“Class Counsel.”)

Austal denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT ARE PROPOSED SETTLEMENT TERMS?

At the Final Approval Hearing, the Class Representative, through Class Counsel, will ask the Court to approve a Gross Settlement Amount of \$425,000 and authorize the following deductions: Class Representative Service Payment (\$10,000), Class Counsel Attorneys’ Fees in the amount of 33.33% of the Gross Settlement (\$141,652.50), Class Counsel Litigation Costs (not to exceed \$20,000), the LWDA’s 75% portion of the PAGA Payment (\$7,500.00), and the Administration Expenses to be paid to the third-party settlement administrator (not to exceed \$10,000).

After making the above deductions in amounts approved by the Court, the Administrator will calculate and distribute making Individual Class Payments to Participating Class Members based on their Class Period Workweeks. 20% of each Individual Class Payment shall constitute taxable wages (“Wage Portion”) and 80% shall constitute interest and penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms.

Austal will separately pay employer payroll taxes it owes on the Wage Portion. The Administrator will report the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

You will be treated as a Participating Class Member, participating fully in the settlement, unless you submit a signed Request for Exclusion by the **[[Response Deadline]]** “Response Deadline”.

After the Judgment is final and Austal has fully funded the settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of

the claims released under the settlement, as follows:

Release by Participating Class Members: All Participating Class Members release Released Parties from any and all claims, damages, and penalties alleged in the Operative Complaint and arising out of the facts in the Operative Complaint during the Class Period, including, without limitation, claims for: (1) failure to pay all regular and minimum, (2) meal period violations, (3) rest period violations, (4) paid sick leave violations, (5) untimely payment of wages, (6) wage statement violations, (7) waiting time penalties, (8) failure to reimburse business expenses, (9) violations of the unfair competition laws, and (10) civil penalties under the Private Attorneys General Act. Participating Class Members **do not** release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts outside of the Operative Complaint or outside the Class Period.

Release by PAGA Members: All PAGA Members and the LWDA release Released Parties from, and are forever barred from pursuing such against Released Parties for, the PAGA claims alleged in and/or arising out of the facts alleged in the Operative Complaint and Plaintiff's operative Notice of Labor Code Violations during the PAGA Period, including, without limitation penalties for violations of Labor Code sections 204, 204b, 210, 226, 226.3, 226.7, 246 through 248.7, 510, 512, 516, 1194, 1198, 2699(g), 2802, and 2804, as well as all relevant IWC Wage Orders, predicated on the underlying alleged violations for: (1) unpaid overtime, (2) unpaid paid sick leave, (3) unpaid meal period premium wages, (4) unpaid rest period premium wages, (5) untimely payment of wages during employment, (6) non-complaint wage statements, and (7) unreimbursed employee expenses.

3. HOW IS MY INDIVIDUAL CLASS SETTLEMENT CALCULATED?

The number of Class Workweeks you worked during the class period are stated on the first page of this notice. The Administrator will calculate Individual Class Payments by (1) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and then (2) multiplying the result by the number of Workweeks worked by each respective Participating Class Member. In other words, you will receive a proportional recovery based on your length of employment in relation to other Class Members.

4. HOW CAN I CORRECT THE NUMBER OF WORKWEEKS?

You have until the Response Deadline to correct or challenge the number of Workweeks. You can submit your challenge by signing and sending a letter to the Administrator via mail or email to the Administrator at the following address:

Administrator:
CPT Group, Inc.
50 Corporate Park
Irvine, CA, 92606
(800) 542-0900
info@cptgroup.com

The Administrator will accept Austal’s calculation of Workweeks as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you.

5. HOW WILL I GET PAID?

The Administrator will send, by U.S. mail, a single check to every Participating Class Member following the Effective Date of this Settlement. Your check will be sent to the same address as this notice. If you change your address, notify the Administrator as soon as possible.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Complete the attached Request for Exclusion form and mail or email it to the Administrator before the Response Deadline.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement by submitting a written objection to the Administrator before the Response Deadline. To object, please provide a written statement to the Administrator advising what you object to, why you object, and any facts that support your objection. Please sign the objection and identify the Action and include your name, current address, telephone number, and your approximate dates of employment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You may, but are not required to, attend the Final Approval Hearing on **[[Final Approval Hearing Date]]** at **[[Final Approval Hearing Time]]** in Dept. 75 of the San Diego County Superior Court, located at 330 W Broadway, San Diego, CA 92101. At the hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to the LWDA, Class Counsel, the Class Representative(s), and the Administrator. The Court will invite comment from objectors, Class Counsel, and Defense Counsel before making a decision.

It is possible the Court will reschedule the Final Approval Hearing. Please review the Court’s online docket or contact the Administrator or Class Counsel to verify the date and time of the Final Approval Hearing if you believe it may have been continued or otherwise changed.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Austal and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to go to the Court’s website, access the Register of Actions, and search for the case using the case number at the top of this notice. You can also telephone or send an email to counsel for the Parties at the address below:

<u>Class Counsel</u> Nicholas J. Ferraro (State Bar No. 306528) Lauren N. Vega (State Bar No. 306525)	<u>Austal’s Counsel</u> 20Boris Sorsher (State Bar No. 251718) Joshua D. Klein (State Bar No. 322099)
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Ferraro Vega Employment Lawyers, Inc. 3160 Camino del Rio South, Suite 308 San Diego, California 92108 (619) 693-7727 telephone classactions@ferrarovega.com	Fisher & Phillips LLP 2050 Main Street, Suite 1000 Irvine, CA 92614 (949) 798-2101 bsorsher@fisherphillips.com
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10. WHAT IF I LOSE MY SETTLEMENT CHECK OR FAIL TO CASH IT?

If you lose or misplace your settlement check, the Administrator will replace it if you request a replacement before the void date on the face of the original check. If your check is already void or you have otherwise failed to cash it, it will be provided to the State of California’s Unclaimed Property Division in your name. For more information, please review how to process a claim for your funds with the State of California, https://www.sco.ca.gov/upd_form_claim.html.