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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 28 2022

L.H.
L. Howell

Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF RIVERSIDE**

9 ISIDORO ALVARADO, individually and
10 on behalf of others similarly situated,

11 Plaintiff,

12 vs.

13 KIWI II CONSTRUCTION, INC., a
14 California Corporation; and DOES 1 through
15 50, inclusive,

16 Defendants.

Case No.: RIC2001558

*Assigned for all purposes to the Honorable
Sunshine S. Sykes, Dept. 6*

**~~[PROPOSED]~~ FINAL ORDER AND
JUDGMENT**

Date: February 24, 2022

Time: 8:30 a.m.

Dept: 6

Complaint Filed: June 8, 2020

Trial Date: None Set

~~**[PROPOSED] ORDER**~~

1
2 The Motion of Plaintiff Isidoro Alvarado (“Plaintiff”) for Final Approval of Class Action
3 and PAGA Settlement came regularly for hearing before this Court on February 24, 2022,
4 pursuant to California Rule of Court 3.769 and this Court’s earlier Order Granting Preliminary
5 Approval of Class Action Settlement (“Preliminary Approval Order”). Having considered the
6 Parties’ Amended Joint Stipulation of Class Action and PAGA Settlement filed on October 19,
7 2021, and attached as Exhibit 3 to the Supplemental Declaration of Heather Davis in Support of
8 Plaintiff’s Motion for Preliminary Approval (“Settlement” or “Settlement Agreement”) and the
9 documents and evidence presented in support thereof, and recognizing the sharply disputed
10 factual and legal issues involved in this case, the risks of further prosecution, and the substantial
11 benefits to be received by the Class Members pursuant to the Settlement, the Court hereby makes
12 a final ruling that the proposed Settlement is fair, reasonable, and adequate, and is the product of
13 good faith, arm’s length negotiations between the Parties. Good cause appearing therefor, the
14 Court hereby GRANTS Plaintiff’s Motion for Final Approval of Class Action Settlement and
15 HEREBY ORDERS THE FOLLOWING:

16 1. Final judgment is hereby entered in conformity with the Settlement and this Court’s
17 Preliminary Approval Order. All terms used herein shall have the same meaning as defined in the
18 Settlement Agreement.

19 2. The conditional class certification contained in the Preliminary Approval Order is
20 hereby made final, and the Court thus certifies, for purposes of the Settlement only, a Class
21 defined as: “All current and former hourly-paid, non-exempt employees employed by Defendant
22 Kiwi II Construction, Inc. and who worked within the State of California at any time between
23 June 8, 2016, and March 26, 2021.”

24 3. Plaintiff is hereby confirmed as the Class Representative, and Heather Davis of
25 Protection Law Group, LLP is hereby confirmed as Class Counsel.

26 4. Notice was provided to Class Members as set forth in the Settlement Agreement,
27 which was approved by the Court on October 28, 2021, and the notice process has been completed
28 in conformity with the Court’s Orders. The Court finds that said notice was the best notice

1 practicable under the circumstances. The Class Notice provided due and adequate notice of the
2 proceedings and matters set forth therein, informed Class Members of their rights, and fully
3 satisfied the requirements of California Code of Civil Procedure section 1781(e), California Rule
4 of Court 3.769, and due process.

5 5. The Court hereby finds the Settlement was entered into in good faith pursuant to and
6 within the meaning of California Code of Civil Procedure section 877.6. The Court further finds
7 that the Settlement is fair, adequate, and reasonable and that Plaintiff has satisfied the standards
8 and applicable requirements for final approval of this class action Settlement under California
9 law, including the provisions of California Code of Civil Procedure section 382 and Federal Rule
10 of Civil Procedure 23, approved for use by the California state courts in *Vasquez v. Superior*
11 *Court*, 4 Cal.3d 800, 821 (1971).

12 6. The Court hereby approves the Settlement set forth in the Settlement Agreement
13 and finds that the Settlement is, in all respects, fair, adequate and reasonable, and directs the
14 Parties to effectuate the Settlement according to its terms. The Court finds that the Settlement has
15 been reached as a result of intensive, serious and non-collusive arms-length negotiations. The
16 Court further finds that the Parties have conducted extensive investigation and research, and
17 counsel for the Parties are able to reasonably evaluate their respective positions. The Court also
18 finds that Settlement at this time will avoid additional substantial costs, as well as avoid the delay
19 and risks that would be presented by the further prosecution of the Action.

20 7. Upon the funding of the Gross Settlement Amount and all applicable employer-side
21 payroll taxes, each of the Participating Class Members shall release Defendant Kiwi II
22 Construction, Inc. and its officers, directors, employees, and agents (collectively the “Released
23 Parties”) from all claims stated in the Complaint and those claims based on the facts alleged in
24 the Complaint, including but not limited to the following claims: (i) failure to pay all regular
25 wages, minimum wages and overtime wages due; (ii) failure to provide meal periods or
26 compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof;
27 (iv) failure to reimburse necessary business expenses; (v) failure to provide complete, accurate
28 wage statements; (vi) failure to pay wages timely at time of termination or resignation; (vii) failure

1 to provide timely pay wages during employment; (viii) unfair business practices that could have
2 been premised on the claims, causes of action or legal theories of relief described above or any of
3 the claims, causes of action or legal theories of relief pleaded in the Action; (ix) failure to maintain
4 required payroll records; (x) all claims under PAGA or for civil penalties that could have been
5 premised on the facts alleged in the Complaint, including but not limited to the California Code
6 of Regulations and to Labor Code sections 210, 226, 226.3, 1174.5, 1197.1, 558, and 2699; and
7 (xi) any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes,
8 interest or attorneys' fees or costs resulting therefrom. This release is limited to those claims that
9 arose during the Class Period.

10 8. All PAGA Members, regardless of whether they submitted timely and valid
11 Requests for Exclusion from the Class portion of the Settlement, and the State of California
12 hereby release all claims under PAGA that could have been premised on the claims stated in the
13 Complaint and Plaintiff's letters to the LWDA or claims which could have been raised based on
14 the facts therein. This release is limited to those claims that arose during the PAGA Period.

15 9. Additionally, for himself only, upon the funding of the Gross Settlement Amount
16 and all employer-side payroll taxes, Plaintiff will waive all rights and benefits of California Civil
17 Code §1542 with respect to the Released Claims, which provides as follows: "A general release
18 does not extend to claims which the creditor does not know or suspect to exist in his or her favor
19 at the time of executing the release and that, if known by him or her, would have materially
20 affected his or her settlement with the debtor or released party."

21 10. The Court finds that only one Settlement Class Member, Bryce Badger, timely
22 opted out of the Class and is hereby excluded from this Settlement and the above release as to
23 Class Claims, but this individual will still be included in the Settlement as a PAGA Member, if
24 he is eligible, and will release PAGA claims as stated in the Agreement. The participation rate
25 of 99.44% of the Class in the Settlement supports final approval.

26 11. The Court finds that there have been no objections to the Settlement.
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1 12. The Court hereby approves the Settlement as set forth in the Settlement Agreement
2 as fair, reasonable, and adequate, and directs the Parties to effectuate the Settlement Agreement
3 according to its terms.

4 13. The Court orders that within fourteen days of the Effective Date (as defined in the
5 Settlement Agreement), Defendant deposit the amount of \$647,460.00 with Phoenix Settlement
6 Administrators (“Settlement Administrator”), as provided for in the Settlement Agreement.

7 14. The Court finds that the Class Representative Incentive Payment, as provided for
8 in the Settlement, is fair, reasonable, and adequate, and approves and orders the payment of
9 \$7,500 to Plaintiff Isidoro Alvarado in accordance with the terms of the Settlement.

10 15. The Court finds that attorneys’ fees in the amount of \$226,611.00 and actual
11 litigation costs of \$8,200.89 for Class Counsel are fair, reasonable, and adequate, and orders that
12 the Settlement Administrator distribute these payments to Class Counsel in accordance with the
13 terms of the Settlement.

14 16. The Court orders that the Settlement Administrator be paid \$7,500.00 from the
15 Gross Settlement Amount for all of its work done and to be done until the completion of this
16 matter and finds that sum appropriate.

17 17. The Court approves and orders the payment in the amount of \$37,500 (75% of
18 \$50,000) from the Class Settlement Amount to the California Labor Workforce Development
19 Agency for penalties arising under the Labor Code Private Attorneys General Act of 2004
20 (“PAGA”). The remaining \$12,500 (25% of \$50,000) shall be distributed to the PAGA Members
21 as set forth in the Agreement.

22 18. The Court hereby approves and orders payment of Individual Settlement Payments
23 from the Net Settlement Amount to the Participating Class Members and PAGA Members on a
24 *pro rata* basis as set forth in the Agreement.

25 19. Envelopes transmitting the Individual Settlement Payment to Participating Class
26 Members and PAGA Members shall bear the notation, “YOUR CLASS ACTION SETTLEMENT
27 CHECK IS ENCLOSED.”

28 20. If any Individual Settlement Payment issued to a current employee is returned as

1 undeliverable, and the Settlement Administrator is unable to locate a valid mailing address, then
2 the Settlement Administrator shall arrange with Defendant to have these payments delivered to
3 these current employees at their place of employment.

4 21. The Settlement Administrator shall mail a reminder postcard to any Participating
5 Class Member and/or PAGA Member whose Individual Settlement Payment check has not been
6 negotiated within 60 days of the date of the mailing.

7 22. All Individual Settlement Payment checks that are not cashed within 180 days of
8 mailing shall be void, and these funds shall be transferred to the California State Controller's
9 Office and held in trust for Participating Class Members and PAGA Members pursuant to
10 California Unclaimed Property Law, Civil Code Section 1500 et seq.

11 23. Provided the Settlement becomes effective under the terms of the Agreement, the
12 Court also hereby orders that the deadline for mailing the Court-approved Individual Settlement
13 Payments, Class Counsel's Fees and Costs, and Class Representative Incentive Payment is as set
14 forth in the Agreement.

15 24. Neither the Settlement nor any of the terms set forth in the Settlement is an
16 admission by Defendant, or any of the other Released Parties, nor is this Final Order a finding of
17 the validity of any claims in the Action or of any wrongdoing by Defendant, or any of the other
18 Released Parties. Neither this Final 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, or any of the other Released Parties, of any fault, wrongdoing
21 or liability whatsoever.

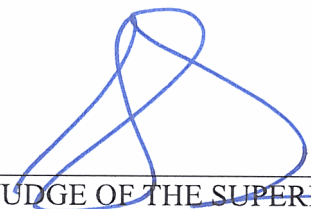
22 25. Without affecting the finality of this Judgment, the Court shall retain continuing
23 jurisdiction over this action and the Parties, including all Participating Class Members and PAGA
24 Members, and over all matters pertaining to the implementation and enforcement of the terms of
25 the Settlement pursuant to California Rule of Court 3.769(h) and California Code of Civil
26 Procedure section 664.6. Except as provided to the contrary herein, any disputes or controversies
27 arising with or with respect to the interpretation, enforcement, or implementation of the Settlement
28 shall be presented to the Court for resolution.

1 26. A hearing regarding the disbursement of settlement payments is set for
2 8/25/22, at 8:30 (a.m./p.m.) A final report shall be submitted by
3 Plaintiff at least five (5) court days in advance of the hearing.

4 27. Class Counsel shall file a Notice of Entry of Judgment within five (5) court days
5 of receipt of this judgment attaching the Final order and Judgment, and this Notice of Entry of
6 Judgment shall be posted on the Settlement Administrator's website for a period of no less than
7 60 days in order to provide notice to the Class.

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9 **IT IS SO ORDERED.**

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11 Dated: 2/25/22

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13 By: 
14 JUDGE OF THE SUPERIOR COURT
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16 SUNSHINE S. SYKES
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