

Electronically

FILED

By Superior Court of California, County of San Mateo

ON 09/30/2022

By /s/ Jimenez, Vanessa

Deputy Clerk

Electronically
RECEIVED

9/28/2022

CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

1 **BIBIYAN LAW GROUP, P.C.**
David D. Bibiyan (Cal. Bar No. 287811)
2 *david@tomorrowlaw.com*
Diego Aviles (Cal. Bar No. 315533)
3 *diego@tomorrowlaw.com*
Vedang J. Patel (Cal. Bar No. 328647)
4 *vedang@tomorrowlaw.com*
8484 Wilshire Blvd., Suite 500
5 Beverly Hills, California 90211
Tel: (310) 438-5555 Fax: (310) 300-1705

6 Attorneys for Plaintiff, HUGO FUENTES HERNANDEZ,
7 on behalf of himself and all others similarly situated and aggrieved

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN MATEO**

10

11 HUGO FUENTES HERNANDEZ, on behalf
12 of himself and all others similarly situated,

13 Plaintiffs,

14 v.

15 TERRA FIRMA LANDSCAPES INC., a
California corporation; TERRA FIRMA
16 LANDSCAPES DESIGN, INC., a California
corporation; WILLIAM BRIAN KOCH, an
17 individual; and DOES 1 through 100,
inclusive,

18 Defendants.

19

20

21

CASE NO.: 20-CIV-04700

[Assigned for all purposes to the Hon. Nancy L.
Fineman in Dept. 4]

**FIRST AMENDED ~~PROPOSED~~ ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION AND
REPRESENTATIVE ACTION
SETTLEMENT, APPLICATION FOR
ATTORNEYS' FEES AND COSTS, AND
SERVICE AWARD**

22 This matter having come before the Court on September 20, 2022 for a final fairness hearing
23 pursuant to the Order of this Court dated July 14, 2022, granting preliminary approval ("Preliminary
24 Approval Order") of the class and representative action settlement upon the terms set forth in the
25 Stipulation re: Class Action and Representative Action Settlement Agreement ("Settlement
26 Agreement") submitted in support of Motion for Preliminary Approval of the Class and
27 Representative Action Settlement and Certifying Class for Settlement Purposes; and due and
28 adequate notice having been given to the Class Members as required in the Preliminary Approval

1 Order; and the Court having considered all papers filed and proceedings had herein and otherwise
2 being fully informed and good cause appearing therefore, it is hereby **ORDERED, ADJUDGED**
3 **AND DECREED THAT:**

4 1. The Motion for Final Approval of Class Action and Representative Action
5 Settlement; Service Award; and Reasonable Attorneys' Fees and Costs is hereby granted in its
6 entirety.

7 2. All terms used herein shall have the same meaning as defined in the Settlement
8 Agreement.

9 3. This Court has jurisdiction over the subject matter of this litigation and over all
10 Parties to this litigation, including all Class Members.

11 4. For settlement purposes only, the Court certifies the following class: all current and
12 former non-exempt, hourly-paid employees who worked for defendants Terra Ferma Landscapes
13 Inc., Terra Ferma Landscapes Design Inc., and William Brian Koch (collectively, "Defendants"), at
14 any time during period between October 26, 2016 to October 26, 2021 ("Class Period") in California
15 ("Class Members").

16 5. Defendant shall pay the Gross Settlement Amount of \$308,189.60. The Parties
17 negotiated the Settlement based on an understanding that the Class Period consists of no more than
18 8,475 Workweeks during the Class Period. If the total number of Workweeks during the Class
19 Period exceeded 9,322, then the Gross Settlement Amount would be increased proportionally by the
20 Workweeks in excess of 8,475 multiplied by the Workweek Value. The Workweek value shall be
21 calculated by dividing the Gross Settlement Amount by 8,475. The Parties agreed the Workweek
22 Value amounts to and the settlement amounts to \$35.30 per Workweek ($\$300,000 / 8,475$
23 Workweeks). The total number of Workweeks, pursuant to the Declaration of Jarrod Salinas of
24 Phoenix Settlement Administrators, the Settlement Administrator, thus the Gross Settlement
25 Amount was increased by \$8,189.60 [$(9,554 \text{ Workweeks} - 9,322 \text{ Workweeks}) \times \35.30], for a total
26 Gross Settlement Amount of \$308,189.60 to be paid by Defendants.

27 6. The parties released shall include Defendants and each of their past, present, and
28 future respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint ventures

1 and assigns, and each of these entities' past or present directors, officers, employees, partners,
2 members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and personal
3 or legal representatives (collectively, the "Released Parties").

4 7. "Plaintiff" refers to Plaintiff Hugo Fuentes Hernandez.

5 8. Upon the entry of this Order granting Final Approval of the Settlement, entry of
6 Judgment, and payment by Defendants to the Settlement Administrator of the full Gross Settlement
7 Amount (as the same may be escalated pursuant to this Agreement), Plaintiff and all Participating
8 Class Members release the Released Parties of all claims against the Released Parties asserted in the
9 Complaint filed in the Action, or any and all claims that may be asserted against the Released Parties,
10 to the fullest extent permitted by law, based on the factual allegations in the First Amended
11 Complaint filed in the Action, as follows: For the duration of the Class Period, the release includes
12 (a) all claims for failure to pay overtime wages; (b) all claims for failure to pay minimum wages;
13 (c) all claims for failure to provide compliant meal and rest periods and associated premium pay;
14 (d) failure to timely pay all wages due upon termination or resignation; (e) all claims for non-
15 compliant wage statements; (f) failure to indemnify work related expenses; (g) all claims asserted
16 through California Business & Professions Code § 17200 *et seq.* arising out of the Labor Code
17 violations referenced in the First Amended Complaint; and (h) Labor Code sections for which there
18 are class allegations alleged to have been violated in the First Amended Complaint, including Labor
19 Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1199 and 2802
20 (collectively, the "Class Released Claims").

21 9. For Aggrieved Employees, the release includes, for the duration of the PAGA Period,
22 all claims for civil penalties under PAGA arising out of Labor Code Sections 210, 226.3, 558,
23 1197.1, and 2699 based on the factual allegations and Labor Code sections alleged to have been
24 violated in the First Amended Complaint, which includes, without limitation, (a) all claims for
25 failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for
26 failure to provide compliant meal and rest periods and associated premium pay; (d) failure to timely
27 pay all wages due upon termination or resignation; (e) all claims for non-compliant wage statements;
28 (f) failure to indemnify work related expenses, as well as Labor Code sections 201, 202, 203, 204,

1 226, 226.3, 226.7, 227.3, 246, 432, 510, 512, 1174, 1194, 1194.2, 1197, 1198.5, 1197.1, 2802 and
2 2810.5, as well as 218.6 and 558 to the extent they are tethered to the Class Released Claims or the
3 Labor Code sections implicated in the PAGA Notice (the “PAGA Released Claims”). Collectively,
4 the Class Released Claims and PAGA Released Claims shall be referred to as the “Released
5 Claims”.

6 10. Distribution of the Notice of Class Action Settlement (“Class Notice” or “Notice”)
7 directed to the Class Members as set forth in the Settlement Agreement and the other matters set
8 forth herein have been completed in conformity with the Preliminary Approval Order, including
9 individual notice to all Class Members who could be identified through reasonable effort, and was
10 the best notice practicable under the circumstances. This Class Notice provided due and adequate
11 notice of the proceedings and of the matters set forth therein, including the proposed class settlement
12 set forth in the Settlement Agreement, to all persons entitled to such Class Notice, and the Class
13 Notice fully satisfied the requirement of due process.

14 11. Zero (0) Settlement Class Members opted out of the Settlement and zero (0)
15 Settlement Class Members objected to the Settlement.

16 12. The Court further finds that the Settlement is fair, reasonable and adequate and that
17 plaintiff Albino Nunez has satisfied the standards and applicable requirements for final approval of
18 class action settlement under California law, including the provisions of Code of Civil Procedure
19 section 382 and Federal Rules of Civil Procedure, rule 23, approved for use by the California state
20 courts in *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

21 13. This Court hereby approves the settlement set forth in the Settlement Agreement and
22 finds that the settlement is, in all respects, fair, adequate and reasonable and directs the parties to
23 effectuate the settlement according to its terms. The Court finds that the settlement has been reached
24 as a result of intensive, serious and non-collusive arm’s length negotiations. The Court further finds
25 that the Parties have conducted extensive and costly investigation and research and counsel for the
26 parties are able to reasonably evaluate their respective positions. The Court also finds that
27 settlement at this time will avoid additional substantial costs, as well as avoid the delay and risks
28 that would be presented by the further prosecution of this Action. The Court has noted the

1 significant benefits to the Class Members under the settlement. The Court also finds that the class
2 is properly certified as a class for settlement purposes only.

3 14. Nothing contained in the Settlement Agreement shall be construed or deemed in
4 admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. Each of the
5 Parties has entered into this Settlement Agreement with the intention to avoid further disputes and
6 litigation, and the attendant inconvenience and expense. This Settlement Agreement shall be
7 inadmissible in evidence in any action or proceeding, except an action or proceeding to approve,
8 interpret, or enforce its terms.

9 15. The Court approves Plaintiff as class representative.

10 16. The Court approves David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C.
11 as Class Counsel.

12 17. The Court approves Phoenix Settlement Administrators (“PSA”) as the Settlement
13 Administrator.

14 18. The Court hereby awards Class Counsel attorneys' fees in the total amount of
15 \$92,456.90, which is thirty percent (30%) of the Gross Settlement Amount (\$308,189.60) and to be
16 deducted therefrom. In addition, the Court awards Class Counsel reimbursement of their costs of
17 \$13,337.27 to be deducted from the Gross Settlement Amount. Attorneys' fees and costs will be
18 paid by the Settlement Administrator from the Gross Settlement Amount as set forth in the
19 Settlement Agreement. In approving the payment of Attorneys' Fees, the Court finds that the
20 Settlement conferred a significant benefit on the Class and the necessity and financial burden of
21 private enforcement of California labor laws makes an attorneys' fee award to Class Counsel
22 appropriate.

23 19. The amount of this award is based on a lodestar analysis and is subject to a reasonable
24 multiplier for awarding reasonable attorney's fees and costs—it is thus reasonable, fair and
25 eminently justified. In setting an award of attorneys' fees, costs and expenses, this Court has
26 considered the following factors: (a) the time and labor required; (b) preclusion of other
27 employment; (c) the contingent nature of the cases; (d) the experience, reputation and ability of
28 Plaintiff's Counsel and the skill they displayed in the litigation; (e) the reasonable hourly rate of

1 attorneys' fees assessed by Class Counsel associated with prosecution of this Class Action, to wit:
2 David Bibiyan, Esq.: \$750; Diego Aviles, Esq.: \$550; Sara Ehsani-Nia, Esq: \$450 Vedang J. Patel,
3 Esq.: \$400; Ronen Zaragof, Esq.: \$400; paralegals at \$150 and legal assistants at \$75; (f) the results
4 achieved and benefits conferred on the Settlement Class; and (g) the reaction of Settlement Class
5 Members. (*See, eg: Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Dunk v. Ford Motor Co.* (1996) 48
6 Cal.App.4th 1794, 1810 fn. 21.)

7 20. The court hereby approves an incentive award of \$5,000.00 to Plaintiff Hugo Fuentes
8 Hernandez in consideration for his time, effort, and risk incurred on behalf of the Settlement Class,
9 and for providing a general release and releasing unknown claims pursuant to Civil Code section
10 1542. The incentive award will be paid to Plaintiff by the Settlement Administrator from the Gross
11 Settlement Amount as set forth in the Settlement Agreement.

12 21. The Court hereby approves the Settlement Administrator's cost in the amount of
13 \$7,250.00. The Settlement Administrator, Phoenix Settlement Administrators, shall be paid the cost
14 of administration of the settlement from the Gross Settlement Amount.

15 22. The Court hereby approves the PAGA penalties amount of \$10,000.00, of which
16 \$7,500.00 shall be paid to the LWDA and the remaining \$2,500.00 to be distributed to the
17 "Aggrieved Employees," defined as Class Members working for Defendants as non-exempt, hourly-
18 paid employees in California during the period from September 16, 2019 to October 26, 2021
19 ("PAGA Period").

20 23. Except as expressly provided herein, the Parties each shall bear all of their own fees
21 and costs in connection with this matter.

22 24. Participating Class Members will have one hundred eighty (180) days from the date
23 of issuance of the check to cash their check. Within seven (7) calendar days after expiration of the
24 180-day period, checks for such payments shall be canceled and funds associated with such checks
25 shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil
26 Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as
27 provided in Code of Civil Procedure section 384, shall be transmitted to Legal Aid at Work, 180
28 Montgomery St., Suite 600, San Francisco, California 94104 for use in San Mateo County.

1 25. The Court finds that the class settlement on the terms set forth in the Settlement
2 Agreement was made in good faith, and constitutes a fair, reasonable and adequate compromise of
3 the released claims against Defendant.

4 26. An Order to Show Cause Hearing Re: Final Administration of the Class Action
5 Settlement is hereby scheduled for October 17, 2023 at 2:00 p.m. ~~or on _____ at 2:00~~
6 ~~p.m.~~, in Department 4 of the above entitled Court. At least five (5) calendar days prior to said OSC
7 hearing, the Parties shall file a declaration confirming that the claims have been paid and that
8 administration of all of the terms and conditions of the class action settlement have been completed.
9 Should the Court find that said declaration has sufficiently evidenced full and complete
10 administration of the class action settlement, said OSC hearing will go off-calendar.

11 27. Without affecting the finality of the Judgment in any way, this Court hereby retains
12 continuing jurisdiction over the interpretation, implementation and enforcement of the settlement
13 and all orders and judgments entered in connection therewith.

14
15 **IT IS SO ORDERED.**

Electronically
SIGNED

By /s/ Fineman, Nancy
09/28/2022

16
17 Dated: _____, 2022

Judge of the Superior Court

18
19
20
21
22
23
24
25
26
27
28