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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SEVERO JOHN HERNANDEZ,
UMEET NAND, KRISTOFER BARR,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

CHRISTENSEN BROTHERS
GENERAL ENGINEERING, INC., a
California Corporation; CALEB
CHRISTENSEN, and DOES 1-20,
inclusive

Defendants.

Case No. 5:22-cv-00836 AB (SPx)

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE
ACTION SETTLEMENT**

Date: July 28, 2023
Time: 10:00 a.m.
Courtroom: 7B

Complaint Filed: March 17, 2021
Trial Date: None Set

Judge: Hon. André Birotte Jr.
Magistrate Judge: Hon. Sheri Pym

Upon review of the Motion for Preliminary Approval of Class and Representative Action Settlement (Dkt. No. 46) and all papers filed therewith, the Court **GRANTS** the Motion and preliminarily approves the Settlement.

The putative class and representative action entitled *Hernandez, et al. v. Christensen Brothers General Engineering, Inc., et al.*, Case No. 5:22-cv-00836 AB (SPx) is pending before this Court (the “Action”). The Court has reviewed the Stipulation of Class and PAGA Settlement (the “Settlement”), and is familiar with the claims and proceedings to date in this matter.

For purposes of this Order, capitalized terms used below have the meaning

1 ascribed to them in the Settlement, unless otherwise defined. This Court has
2 subject matter and personal jurisdiction over the Parties, including all Class
3 Members and Aggrieved Employees.

4 **IT IS HEREBY ORDERED:**

5 1. Preliminary Approval of Proposed Settlement. The Court finds,
6 under Fed. R. Civ. P. 23(e)(1)(B), that it “will likely be able to (i) approve the
7 proposal under Rule 23(e)(2).” The Settlement is fair, reasonable and adequate
8 and within the range of reasonableness. The Court finds that: (a) the Settlement
9 resulted from extensive arm’s length negotiations; and (b) the Settlement is
10 sufficient to warrant notice of the Settlement to persons in the Settlement Class
11 and a full hearing on the approval of the Settlement.

12 2. Provisional Class Certification for Settlement Purposes Only. The
13 Court provisionally finds, for settlement purposes only and conditioned upon the
14 entry of this Order, that the prerequisites for a class action under Fed. R. Civ. P.
15 23(a) are satisfied in that: (1) the Settlement Class certified herein consists of
16 approximately 340 individuals, and joinder of all such persons would be
17 impracticable; (2) there are questions of law and fact that are common to the
18 Class, (3) the claims of Plaintiffs are typical of the claims of the Settlement Class
19 they seek to represent for purposes of settlement; and (4) Plaintiffs and Class
20 Counsel are adequate representatives of the Settlement Class. The Court also
21 finds that Fed. R. Civ. P. 23(b)(3) is satisfied, in that the questions of law and fact
22 common to the Settlement Class predominate over any questions affecting any
23 individual Class Member and that a class action is superior to other available
24 means of adjudicating this dispute.

25 3. Settlement Class (or “Class Members) Definition. Pursuant to Fed.
26 R. Civ. P. 23(c), this Court hereby provisionally certifies for settlement purposes
27 only, a Settlement Class consisting of “as all current and former ‘Field
28 Employees’ (Defined as Defendants’ non-exempt employees in the positions of i)

1 Foreman; ii) Operator; iii) Pipelayer; iv) Laborer; v) Cement Mason; vi)
2 Teamster; vii) Driver; and viii) similarly titled positions) of Defendants who
3 worked at any time during the period of November 18, 2016 through the earlier
4 of: 1) August 30, 2023; or 2) the date of Preliminary Approval.” The “Class
5 Members” or “Settlement Class” will not include any person who submits a
6 timely and valid Request for Exclusion as provided in the Settlement.

7 4. PAGA Aggrieved Employee Definition. The Court hereby approves
8 a group of Aggrieved Employees defined under the Settlement as “all current and
9 former non-exempt employees of Defendants who worked for Defendants at any
10 time during the period of November 17, 2019 up to the earlier of: i) the date the
11 Court grants Preliminary Approval; or ii) August 30, 2023.”

12 5. Class Representatives and Class Counsel. Plaintiffs Severo John
13 Hernandez (“Plaintiff Hernandez”), Umeet Nand (“Plaintiff Nand”), and Kristofer
14 Barr (“Plaintiff Barr”) (collectively “Plaintiffs”) are designated as the
15 representatives of the provisionally certified Settlement Class. The Court
16 preliminarily finds that Plaintiffs are similarly situated to absent Class Members
17 and therefore typical of the Settlement Class, and that they will be adequate class
18 representatives. Daniel J. Brown and Ethan C. Surls of Stansbury Brown Law, PC
19 and Sam Kim and Yoonis Han of Verum Law Group, APC, whom the Court finds
20 are experienced and adequate counsel for purposes of these settlement approval
21 proceedings, are hereby designated as Class Counsel.

22 6. Final Approval Hearing. The Court orders that each Class Member
23 will be given a full opportunity to object to the proposed Settlement and request
24 for Class Counsel’s costs and fees award, and to participate at a Final Approval
25 Hearing, which the Court sets for **Friday, January 12, 2024, at 10:00 a.m.**,
26 Courtroom 7B of the United States District Court for the Central District of
27 California, 350 West First Street, Los Angeles, California 90012. **Class members**
28 **may also attend the hearing remotely via Zoom; the Zoom link is available at**

1 <http://www.cacd.uscourts.gov/honorable-andr%C3%A9-birotte-jr> . The Court
2 will determine whether the Settlement of the Action pursuant to the terms and
3 conditions of the Settlement should be approved as fair, reasonable, and adequate,
4 and finally approved pursuant to Fed. R. Civ. P. 23(e). The Court will rule on
5 Class Counsel's application for Class Counsel's costs and fees award, and Class
6 Representative Enhancement and General Release Payments at that time. Any
7 Class Member seeking to object to the proposed Settlement may file a written
8 notice of objection by the Response Deadline, with the Settlement Administrator,
9 and appear at the Final Approval/Settlement Fairness Hearing. The Final
10 Approval/Settlement Fairness Hearing may be postponed, adjourned, or
11 continued by order of the Court without further notice to the Class. After the Final
12 Approval/Settlement Fairness Hearing, the Court may enter a Final Judgment in
13 accordance with the Settlement that will adjudicate the rights of the Settlement
14 Class Members with respect to the claims being settled.

15 7. Administration. The Court authorizes Phoenix Settlement
16 Administrators as Settlement Administrator to retain for the purpose of
17 administering the Settlement reasonable administration costs up to \$6,000.00.

18 8. Class Notice Packet. The form and content of the proposed Class
19 Notice and Request for Exclusion form attached as Exhibit B to the Declaration
20 of Daniel J. Brown in Support of Preliminary Approval of Class and
21 Representative Action Settlement (Dkt. No. 47-1) filed concurrently with
22 Plaintiffs' Motion for Preliminary Approval of Class and Representative Action
23 Settlement, and the notice methodology described in the Settlement are hereby
24 approved. The Settlement Administrator will administer the notice process in
25 accordance with the Settlement. Specifically:

- 26 a. Class Data. Within thirty (30) calendar days after the preliminary
27 approval date, Defendants will provide the Settlement Administrator
28 with a class list for purposes of preparing, printing and mailing

1 Notice Packets (comprised of the class notice and Request for
2 Exclusion Form) to Class Members and Aggrieved Employees,
3 setting forth the following information for each Class Member and
4 Aggrieved Employee: (1) Social Security number; (2) full name; (3)
5 last known address; and (4) start and end dates of employment.

6 b. Notice Date. Within seven (7) calendar days after receiving the Class
7 Member and Aggrieved Employee data from Defendants as provided
8 herein, the Settlement Administrator will mail copies of the Notice
9 Packet to all Class Members and Aggrieved Employees via regular
10 First-Class U.S. Mail.

11 c. Findings Concerning Notice. The Court finds that the form, content
12 and method of the disseminating notice: (i) complies with Fed. R.
13 Civ. P. 23(c)(2), as it is the best practicable notice under the
14 circumstances, given the contact information that Defendants
15 maintain, and is reasonably calculated, under all of the
16 circumstances, to apprise the Class Members of the pendency of the
17 Action, the terms of the Settlement, and their right to object to the
18 Settlement or exclude themselves from the Settlement; (ii) complies
19 with Rule 23(e), as it is reasonably calculated, under the
20 circumstances, to apprise the Settlement Class Members of the
21 pendency of the Action, the terms of the Settlement, and their rights
22 under the Settlement, including but not limited to, their right to
23 object to or exclude themselves from the Settlement and other rights
24 under the terms of the Settlement; and (iii) meets all applicable
25 requirements of law, including, but not limited to, 28 U.S.C. § 1715,
26 Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the
27 United States Constitution. The Court further finds that the Notice
28 Packet is written in simple terminology, is readily understandable by

1 Class Members, and complies with the Federal Judicial Center’s
2 illustrative class action notices. At the Court’s recommendation, the
3 parties agreed to, and are hereby **ORDERED** to, include in the
4 Settlement Hearing portion of the Notice a statement that Class
5 Members may attend the Final Settlement Hearing via Zoom, and a
6 link to Judge Birotte’s webpage with the Zoom link.

- 7 d. Exclusion from Class. The Court hereby approves the proposed
8 procedure for Class Members to exclude themselves from the
9 Settlement, which is to submit the Request for Exclusion Form no
10 later than Sixty (60) days following the date on which the Settlement
11 Administrator first mails the Notice Packet to the Class Members.
12 Any Class Member who submits a Request for Exclusion will not be
13 entitled to any recovery under the Settlement and will not be bound
14 by the terms of the settlement, except as to the Released PAGA
15 Claims, or have any right to object, appeal or comment thereon.

16 9. Class Counsel Award. The Court preliminarily approves Class
17 Counsel’s ability to request attorneys’ fees, costs and expenses, including fees of
18 up to one fourth (1/4) of the Maximum Settlement Amount (currently estimated
19 to be \$62,500.00), plus a request for costs and expenses not to exceed
20 \$100,000.00 supported by declaration from Class Counsel.

21 10. Effect of Failure to Approve the Settlement. In the event the
22 Settlement is not finally approved by the Court, or for any reason the Parties fail
23 to obtain a Final Judgment as contemplated in the Settlement, or the Settlement is
24 terminated pursuant to its terms for any reason, then the following will apply:

- 25 a. All orders and findings entered in connection with the Settlement
26 will become null and void and have no further force and effect, will
27 not be used or referred to for any purposes whatsoever, and will not
28 be admissible or discoverable in any other proceeding;

- 1 b. The conditional certification of the Settlement Class pursuant to this
2 Order will be vacated automatically and void; no doctrine of waiver,
3 estoppel or preclusion will be asserted in any litigated certification
4 proceedings in the Action;
- 5 c. The Settlement and its existence will be inadmissible to establish any
6 fact relevant to class certification, including whether a class should
7 be certified in a non-settlement context in the Action, whether
8 Plaintiffs' counsel should be appointed as Class Counsel, and
9 whether Plaintiffs should be appointed as Class Representatives, any
10 alleged liability of Defendants for the matters alleged in the Action,
11 or for any other purpose;
- 12 d. Any funds to be awarded under this Settlement will be returned to
13 Defendants as of the date and time immediately prior to the
14 execution of this Settlement, and the Parties will proceed in all
15 respects as if this Settlement had not been executed, except that any
16 fees already incurred by the Settlement Administrator will be borne
17 equally by the Parties; and
- 18 e. Nothing contained in this Order is, or may be construed as, any
19 admission or concession by or against Defendants or Plaintiffs on
20 any point of fact or law.

21 11. Deadlines. The deadlines set by this Order are as follows:

Event	Date
Deadline for Defendants to Provide Class Data to Settlement Administrator	No later than 30 days after the Preliminary Approval date
Deadline for Settlement Administrator to Mail Notice Packets	No later than 7 calendar days after receiving class data from Defendants
Response Deadline for Class Members to Submit notice of objection or	Within 60 days after the Notice Packets are mailed

Request for Exclusion Form	
Deadline for Plaintiffs to File Their Motion for Final Approval of Class Action Settlement, Class Representatives' Enhancement Payment, and Attorneys' Fees and Costs ("Final Approval Motion")	December 1, 2023
Deadline for Parties to File Response to Any Objections	The Parties will file any responses to objections no later than the deadline to file the Motion for Final Approval, unless filed within ten (10) days of the Motion for Final Approval filing deadline, in which case the Parties will have ten (10) days to respond.
Final Settlement Hearing	Friday January 12, 2024, at 10:00 a.m. (Class Members may attend in person or via Zoom, see paragraph 6 above)

12. Extension of Deadlines. Upon application of the Parties and for good cause, the Court may extend the deadlines set forth in this Order without further notice to the Class. Settlement Class Members must check the settlement website (<http://www.phoenixclassaction.com/class-action-lawsuits/judgments/>) regularly for updates and further details regarding this Action.

13. Retaining Jurisdiction. This Court maintains jurisdiction over the administration, consummation, validity, enforcement, and interpretation of the Settlement, the final judgment, and any final order approving attorneys' fees and expenses and Enhancement Payments, and for any other necessary purpose.

Dated: August 1, 2023



HONORABLE ANDRÉ BIROTTE JR.
U.S. DISTRICT COURT JUDGE