

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 27 2023

BY Jessica Garcez
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

11 JONHATAN BARAJAS, individually, and on
12 behalf of all others similarly situated,

Plaintiff,

13
14 v.

15 FINAL PHASE CONSTRUCTION, INC., a
16 California corporation; and DOES 1 to 10,
17 inclusive,

Defendants.

Case No.: CIVSB2118622

CLASS ACTION

[Assigned to: Hon. Joseph T. Ortiz, Dept. S-17]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action Settlement, Memorandum of Points and Authorities; Declaration of Justin F. Marquez; and Declaration of Jonhatan Barajas]

PRELIMINARY APPROVAL HEARING

Date: April 27, 2023

Time: 1:30 p.m.

Dept: S-17

ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

BY FAX

1 The Court has before it Plaintiff Jonathan Barajas (“Plaintiff”) Motion for Preliminary
2 Approval of Class Action Settlement. Having reviewed the Motion for Preliminary Approval
3 of Class Action Settlement, the Declaration of Justin F. Marquez, the Class Action and PAGA
4 Settlement Agreement and Class Notice (which is referred to here as the “Settlement” or
5 “Settlement Agreement”), and good cause appearing, the Court hereby finds and orders as
6 follows:

7 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
8 be fair, adequate, and reasonable and therefore meets the requirements for preliminary approval.
9 The Court grants preliminary approval of the Settlement and the Settlement Class based upon
10 the terms set forth in the Settlement Agreement between Plaintiff and Defendant Final Phase
11 Construction, Inc. (“Defendant”), attached to the Declaration of Justin F. Marquez in Support
12 of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement as Exhibit 2.

13 2. The Settlement falls within the range of reasonableness of a settlement which
14 could ultimately be given final approval by this Court, and appears to be presumptively valid,
15 subject only to any objections that may be raised at the Final Approval Hearing and final
16 approval by this Court. The Court notes that Defendant has agreed to create a common fund of
17 \$250,000.00 to cover (a) settlement payments to class members who do not validly opt out; (b)
18 a \$10,000.00 payment to the State of California, Labor & Workforce Development Agency
19 (“LWDA”) for its share of the settlement of claims for penalties under the Private Attorneys
20 General Act (“PAGA”), with 75% of which (\$7,500.00) being paid to the LWDA and 25%
21 (\$2,500.00) being paid to the Aggrieved Employees; (c) Class Representative service payment
22 of up to \$10,000.00 for Plaintiff; (d) Class Counsel’s attorneys’ fees, not to exceed 33 1/3% of
23 the Gross Settlement Amount (\$83,333.33), and up to \$20,000.00 in costs for actual litigation
24 expenses incurred by Class Counsel; and (e) Settlement Administration Costs of up to
25 \$8,500.00.

26 3. The Court preliminarily finds that the terms of the Settlement appear to be within
27 the range of possible approval, pursuant to California Code of Civil Procedure § 382 and
28 applicable law. The Court finds on a preliminary basis that: (1) the settlement amount is fair

1 and reasonable to the class members when balanced against the probable outcome of further
2 litigation relating to class certification, liability and damages issues, and potential appeals; (2)
3 significant informal discovery, investigation, research, and litigation have been conducted such
4 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
5 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented
6 by the further prosecution of the litigation; and (4) the proposed settlement has been reached as
7 the result of intensive, serious, and non-collusive negotiations between the Parties with the
8 assistance of a well-respected class action mediator. Accordingly, the Court preliminarily finds
9 that the Settlement Agreement was entered into in good faith.

10 4. A final fairness hearing on the question of whether the proposed settlement,
11 attorneys' fees and costs to Class Counsel, payment to the LWDA for its share of the settlement
12 of claims for penalties under the PAGA, and the class representative's enhancement award
13 should be finally approved as fair, reasonable and adequate as to the members of the class is
14 hereby set in accordance with the Implementation Schedule set forth below.

15 5. The Court provisionally certifies for settlement purposes only the following class
16 (the "Settlement Class"): all individuals employed by Final Phase Construction, Inc. in
17 California and classified as an hourly-paid or non-exempt employee during the Class Period.

18 6. "Class Period" means the period from June 25, 2017 to November 3, 2022.

19 7. "PAGA Period" means the period from April 15, 2020 to November 3, 2022.

20 8. The Court finds, for settlement purposes only, that the Settlement Class meets the
21 requirements for certification under California Code of Civil Procedure § 382 in that: (1) the
22 Settlement Class Members are so numerous that joinder is impractical; (2) there are questions
23 of law and fact that are common, or of general interest, to all Settlement Class Members, which
24 predominate over individual issues; (3) Plaintiff's claims are typical of the claims of the
25 Settlement Class Members; (4) Plaintiff and Class Counsel will fairly and adequately protect
26 the interests of the Settlement Class Members; and (5) a class action is superior to other
27 available methods for the fair and efficient adjudication of the controversy.

28 9. The Court appoints as Class Representative, for settlement purposes only,

1 Plaintiff Jonathan Barajas. The Court further preliminarily approves Plaintiff's ability to
2 request an incentive award up to \$10,000.00.

3 10. The Court appoints, for settlement purposes only, Justin F. Marquez, Benjamin
4 H. Haber, and Arrash T. Fattahi of Wilshire Law Firm, PLC as Class Counsel. The Court further
5 preliminarily approves Class Counsel's ability to request attorneys' fees of up to one-third of
6 the Total Settlement Amount (\$83,333.33), and costs not to exceed \$20,000.00.

7 11. The Court appoints CPT Group, Inc. as the Settlement Administrator with
8 reasonable administration costs estimated not to exceed \$8,500.00.

9 12. The Court approves, as to form and content the Class Notice, attached to the
10 Settlement Agreement. The Court finds on a preliminary basis that plan for distribution of the
11 Notice to Settlement Class Members satisfies due process, provides the best notice practicable
12 under the circumstances, and shall constitute due and sufficient notice to all persons entitled
13 thereto.

14 13. The Parties are ordered to carry out the Settlement according to the terms of the
15 Settlement Agreement.

16 14. Any class member who does not timely and validly request exclusion from the
17 settlement may object to the Settlement Agreement.

18 15. The Court orders the following Implementation Schedule:

19 Defendant to provide Class List to the 20 Settlement Administrator	May 29, 2023
21 Settlement Administrator to mail the Notice 22 Packets	June 12, 2023
23 Response Deadline	July 27, 2023
24 25 26 Deadline for Administrator to Submit Report	7 days before Plaintiff's Deadline to file Motion for Final Approval, Request for Attorneys' Fees and Costs, and Service 27 Award to Plaintiff

1 Deadline to file Motion for Final Approval, 2 Request for Attorneys' Fees and Costs, and 3 Service Award to Plaintiff	16 court days before hearing on Motion for Final Approval, Request for Attorneys' Fees and Costs, and Service Award to Plaintiff
4 5 Final Approval Hearing 6	Sept. 8 th , 2023 at 1:30 a.m. (p.m.), or first available date thereafter, in Department S-19

7 16. The Court further ORDERS that, pending further order of this Court, all proceedings
 8 in this lawsuit, except those contemplated herein and in the settlement, are stayed.

9 **IT IS SO ORDERED.**

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 11
 12 DATE: 4/27/23

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 14 _____
 15 Hon. Joseph T. Ortiz
 16 San Bernardino County Superior Court
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