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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 23 2024

BY Victoria Sanchez
VICTORIA SANCHEZ, DEPUTY

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

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Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO
CIVIL JUSTICE CENTER**

ABRAHAM AGUSTINO, LISA
ROSANA, individually, and on behalf of
all other similarly situated,

Plaintiffs,

v.

SALEM CHRISTIAN HOMES, INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: CIVSB2308778

[Hon. Jessica L. Morgan, Dept. S26]

[CLASS ACTION]

**[PROPOSED] ORDER AND JUDGMENT
GRANTING FINAL APPROVAL**

1 **[PROPOSED] ORDER AND JUDGMENT**

2 The Court has before it Plaintiffs' unopposed Motion for Final Approval of Class Action
3 Settlement.

4 On March 22, 2024, Plaintiffs filed a motion for preliminary approval requesting that the
5 Court preliminarily approve the Settlement Agreement entered into between Plaintiffs Abraham
6 Agustino and Lisa Rosana, on behalf of themselves and the Class ("Plaintiffs") and Salem Christian
7 Homes, Inc. ("Defendant") (collectively, "the Parties").

8 On May 3, 2024, the Court issued an order granting preliminary approval. The Court
9 preliminarily approved that this litigation could be maintained as a class action for settlement
10 purposes and, therefore, it conditionally certified the following Class (the "Class" or "Settlement
11 Class") for settlement purposes:

12 All non-exempt employees who worked for Defendant in California from
13 April 14, 2019 through February 29, 2024.

14 The Court conditionally approved for settlement purposes the PAGA allocation of this
15 settlement to the California Labor and Workforce Development Agency ("LWDA") and PAGA
16 Members ("PAGA Member" or "PAGA Members"), for settlement purposes:

17 The PAGA Period is from February 11, 2022, through February 29, 2024.

18 The Court appointed, for settlement purposes, the Law Office of Scott Ernest Wheeler as
19 Class Counsel, Plaintiffs as representatives for the Class, and Phoenix Settlement Administrators
20 as the Settlement Administrator.

21 The Court further directed the Parties to provide notice to the Class via U.S Mail to each
22 Class Members' last known mailing address. The Class Notice was mailed to Class Members in
23 both English and Spanish, informed them of the material terms of the Settlement, including, *inter*
24 *alia*, (a) the nature of the case and claims asserted, (b) each Class Member's estimated individual
25 settlement payment; (c) the payments to Class Counsel for attorneys' fees and costs, payment to
26 the Class Representatives as service awards, payment to the Settlement Administrator for
27 settlement administration costs, and payment to the California Labor and Workforce Development
28 Agency for PAGA penalties; (d) the claims that Class Members release if they do not exclude

1 themselves from the Settlement, (e) the right of any Class Member to object to the proposed
2 Settlement, and an explanation of the procedures to exercise that right; (f) the right of any Class
3 Member to exclude themselves from the proposed Settlement, and an explanation of the procedures
4 to exercise that right; (g) the right of any Class Member to dispute compensable work weeks and
5 attributable to them; and (h) the date, time, and location of the Final Approval Hearing which is
6 now before the Court.

7 The Court, upon Notice having been given in conformance with the Preliminary Approval
8 Order, and having considered the proposed Settlement, as well as all papers filed, hereby
9 **ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

10 1. This Court has jurisdiction over the subject matter of the action and over all Parties
11 to the action, including all members of the Settlement Class.

12 2. The Settlement Class, defined as “All current and former hourly-paid or non-exempt
13 employees of Defendant in the State of California, at any time from April 14, 2019 through
14 February 29, 2024”, is certified as a Class for settlement purposes pursuant to California Code of
15 Civil Procedure § 382 in that: (a) the Class is so numerous that joinder is impractical; (b) there are
16 questions of law and fact that are common, or of general interest, to the Class, which predominate
17 over any individual issues; (c) Plaintiffs’ claims are typical of the claims of the Class; (d) Plaintiffs
18 and Plaintiffs’ counsel will fairly and adequately protect the interests of the Class; and (e) a class
19 action is superior to other available methods for the fair and efficient adjudication of the
20 controversy.

21 3. There have been no objections and zero (0) requests for exclusion.

22 4. No workweek disputes have been submitted by any Class Members or PAGA
23 Member.

24 5. The Class Notice provided to the Settlement Class conforms with the requirements
25 of California Code of Civil Procedure § 382, California Rules of Court 3.766 and 3.769, the
26 California and United States Constitutions, and any other applicable law, and constitutes the best
27 notice practicable under the circumstances, by providing individual notice to all Class Members
28 who could be identified through reasonable effort, and by providing due and adequate notice of the

1 proceedings and of the matters set forth therein to the other Class Members. The Class Notice fully
2 satisfied the requirements of due process.

3 6. The Court finds the Settlement was entered into in good faith, that the Settlement is
4 fair, reasonable, and adequate, and that the Settlement satisfies the standards and applicable
5 requirements for final approval of this class action settlement under California law, including
6 California Rules of Court, Rule 3.769.

7 7. Neither the Settlement nor any of the terms set forth in the Settlement Agreement
8 and Amendment to the Settlement Agreement are admissions by Defendant, or any of the other
9 Released Parties, of liability on any of the allegations alleged in the action, nor is this Order a
10 finding of the validity of any claims in the action, or of any wrongdoing by the Defendant, or any
11 of the other Released Parties.

12 8. A class action settlement is presumed to be fair if: ““(1) it is reached through arm’s
13 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
14 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
15 is small.”” *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 52 (quotation omitted). The Court finds
16 that the Settlement is presumptively fair based on the foregoing factors because it was negotiated
17 based on sufficient information through arm’s length negotiations, under the auspices of a well-
18 respected mediator, by counsel experienced in wage and hour class action litigation.

19 9. Beyond determining whether a settlement is entitled to a presumption of fairness, a
20 court must further consider factors such as: (1) the strength of plaintiffs’ case; (2) the risk and
21 expense of further litigation; (3) the risk of maintaining class status through trial; (4) the amount
22 offered in settlement; (5) the extent of discovery completed; (6) the experience and views of
23 counsel; (7) the presence of a government participant; and (8) and the reaction of the class members
24 to the proposed class settlement. See, *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801;
25 *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. The Court finds that each of these
26 factors weigh in support final approval.

27 10. First, the Court recognizes there are real risks to Plaintiffs and the Class if they were
28 to proceed with the litigation.

1 11. Second, the risk and expense of further litigation supports the reasonableness of the
2 Settlement. For example, the Court recognizes that Plaintiffs' ability to prove damages on a
3 classwide basis at trial would be an expensive, time-consuming, and uncertain proposition.

4 12. Third, there are real risks that a Class would not be certified absent this Settlement.

5 13. Fourth, the Settlement was reached based on extensive investigation and informal
6 discovery, including thorough expert analysis of pertinent time and payroll data and other records
7 for the Class.

8 14. Fifth, Class Counsel, who is experienced in wage and our class action litigation,
9 endorse the Settlement as fair and reasonable and in the best interest of the Class.

10 15. Sixth, notice was provided to the California Labor and Workforce Development
11 Agency ("LWDA") and it has not indicated that it objects to or opposes the Settlement.

12 16. Finally, the reaction of the Class to the Settlement is positive. There have been no
13 objections and zero (0) exclusions. There are no work week disputes.

14 17. In sum, based on consideration of the foregoing factors, and the Court's familiarity
15 with the litigation, the Court finds that the Settlement is in all respects fair, reasonable, and
16 adequate, is in the best interest of the Class, and it is hereby finally approved.

17 18. Upon entry of this Order, compensation to the Settlement Class Members shall be
18 effected pursuant to the terms of the Settlement Agreement.

19 19. In addition to any recovery that Plaintiffs may receive as a Settlement Class Member
20 under the Settlement, and in recognition of Plaintiffs' efforts on behalf of the Settlement Class, the
21 Court hereby approves the payment of Class Representative Service Awards in the combined
22 amount of \$12,000 to Plaintiffs, \$6,000 to Abraham Agustino and \$6,000 to Lisa Rosana. The
23 Court finds that this amount is appropriate based on the factors articulated in *Golba v. Dick's*
24 *Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251. Among other things, Plaintiffs, Abraham
25 Agustino and Lisa Rosana took on risks, both financial and in terms of future employment
26 prospects, by agreeing to act as the Class Representatives, devoted considerable time and energy
27 time to this action for the benefit of the Class, agreed to a section 1542 waiver, which does not
28 apply to the release of Class Members, and achieved an excellent result for the Class.

1 20. With respect to attorneys' fees, the Court approves the amount of \$195,188.11 based
2 on a percentage of the recovery method. The Gross Settlement Amount represents a true common
3 fund, as Defendant is obligated to pay this entire amount, and no portion of the Gross Settlement
4 Amount will revert to Defendant. In addition, the Court finds that \$195,188.11, which represents
5 one-third of the Gross Settlement Amount, is reasonable and appropriate.

6 21. Cross-checking the reasonableness of this amount against Class Counsel's lodestar
7 further supports the reasonableness of the attorneys' fees award. *See Laffitte*, 1 Cal.5th at 506 (trial
8 courts have "discretion to conduct a lodestar cross-check on a percentage fee."). Based on Class
9 Counsel's lodestar to date of \$211,820.00, which the Court finds is reasonable, an award of
10 \$195,188.11 which represents an implied negative multiplier.

11 22. The Court also finds that the \$18,512.59 litigation costs incurred and requested by
12 Class Counsel were necessary and appropriate.

13 23. Accordingly, the Court approves the payment of attorneys' fees to Class Counsel in
14 the amount of \$195,188.11 and reimbursement of reasonable litigation expenses in the amount of
15 \$18,512.59.

16 24. The Court approves the payment of settlement administration costs in the amount
17 of \$9,250.00 to Phoenix Settlement Administrators.

18 25. The Court approves and orders payment in the amount of \$50,000 allocated as
19 PAGA penalties (75% or \$37,500 allocated to the LWDA and 25% or \$12,500 allocated to the
20 PAGA Group Members) which represents a fair and equitable sum for resolution of claims raised
21 pursuant to California Labor Code section 2698 *et seq.*

22 26. The Gross Settlement Amount, the Net Settlement Amount, and the methodology
23 used to calculate and pay each Settlement Class Member's individual settlement payment are fair
24 and reasonable, and the Court authorizes the Settlement Administrator to issue individual
25 settlement payments to each Settlement Class Member pursuant to the terms of the Settlement
26 Agreement.

27 27. Upon the Effective Date, Plaintiffs and all members of the Settlement Class, shall
28 have, by operation of this Order and the accompanying Judgment, fully, finally, and forever

