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FILED
Superior Court of California
County of Los Angeles

05/29/2024

David W. Slayton, Executive Officer / Clerk of Court

By: E. Muñoz Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JOSE JESUS MARTINEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

DESERT CONCEPTS CONSTRUCTION,
INC., a California corporation; and DOES 1
through 10, inclusive,

Defendants

Case No.: 20STCV08933

CLASS AND REPRESENTATIVE ACTION

[Hon. William F. Highberger, Dept. 10]

**~~[PROPOSED]~~ ORDER GRANTING
FINAL APPROVAL OF CLASS AND
PAGA ACTION SETTLEMENT**

[Filed with Plaintiff's Notice of Motion and
Memorandum of Points and Authorities, the
Declarations of Kane Moon, Nick Castro, and
Plaintiff, [Proposed] Judgment]

FINAL APPROVAL HEARING:

Date: May 29, 2024

Time: 10:00 a.m.

Dept.: 10

Action Filed: March 5, 2020

Trial Date: Not set

1 **~~PROPOSED~~ FINAL APPROVAL ORDER**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 On January 17, 2024, the Court entered an Order Granting Preliminary Approval of Class
4 and PAGA Action Settlement (the “Preliminary Approval Order”), which granted conditional class
5 certification, approved the Class Notice, and preliminarily approved a settlement of the above-
6 entitled action (the “Action”) that was reached between Plaintiff Jose Jesus Martinez (“Plaintiff”)
7 and Defendant Desert Concepts Constructions, Inc. (“Defendant,” and together with Plaintiff, the
8 “Parties”), in accordance with the Parties’ Class Action and PAGA Settlement Agreement and Class
9 Notice (the “Settlement”). The Settlement was attached as **Exhibit 1** to the Declaration of Kane
10 Moon in Support of Plaintiff’s Motion for Preliminary Approval of Class and PAGA Action
11 Settlement that was filed on November 30, 2023.

12 Due and adequate notice having been given to Class Members, and the Court having reviewed
13 the Settlement and duly considered Plaintiff’s Motion for Final Approval of Class and PAGA Action
14 Settlement, the supporting declarations and exhibits thereto, all other papers filed and proceedings
15 had hereto, the record in this Action, and any oral argument, and good cause appearing,

16 **THE COURT HEREBY ORDERS AND DECREES AS FOLLOWS:**

17 1. The Court, for purposes of this Final Approval Order, refers to all terms and
18 definitions as set forth in the Settlement.

19 2. Plaintiff’s Motion for Final Approval of Class and PAGA Action Settlement,
20 including a motion for payment of attorneys’ fees and costs, a service payment to Plaintiff,
21 administration expenses, and PAGA Penalties (collectively “Motion for Final Approval”), and
22 whether the Settlement should be finally approved as fair, reasonable, and adequate as to Class
23 Members, came before Department 10 of this Court, the Honorable William F. Highberger presiding,
24 on May 29, 2024.

25 3. The Court finds that the Settlement appears to have been made and entered into in
26 good faith, the terms of which are fair, reasonable, and adequate; was reached following meaningful
27 discovery and investigation conducted by Plaintiff and his counsel of record; is the result of serious,
28 informed, adversarial, and arms-length negotiations between the Parties; and therefore, meets the

requirements for final approval. In so finding, the Court has considered all the evidence presented, including evidence regarding the strength of Plaintiff's claims; the risk, expense, and complexity of the claims presented; the likely duration of further litigation; the settlement amount offered; the extent of investigation and discovery completed; and the experience and views of Plaintiff's Counsel. The Court has further considered the absence of Class Member objections to, and Requests for Exclusion from, the Settlement. Accordingly, the Court hereby **GRANTS** Plaintiff's Motion for Final Approval and **ORDERS** Judgment to be entered in accordance with the terms herein.

4. The Court certifies, for settlement purposes only, the following Class (the "Settlement Class"):

All persons employed by Defendant in California and classified as non-exempt hourly paid employee who worked for Defendant during the Class Period. The "Class Period" means the period starting on March 5, 2016 to March 14, 2023. Excluded from the Settlement Class are any employees who worked exclusively on prevailing wage projects and any Class Member who submits a signed and timely Request for Exclusion.

5. The Court finds that the settlement of Plaintiff's claim under the Private Attorneys General Act (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA") is fair and reasonable. The Court further finds evidence that Plaintiff has notified the California Labor and Workforce Development Agency (the "LWDA") of the Settlement, provided a copy of the Settlement to the LWDA, and that the LWDA has not objected or asserted any opposition to the Settlement. Accordingly, the Court orders the following individuals are subject to the PAGA Settlement:

All persons employed by Defendant in California and classified as a non-exempt hourly paid employee who worked for Defendant during the PAGA Period ("Aggrieved Employees"). The "PAGA Period" means the period starting on March 5, 2016 through January 17, 2024. Excluded from this definition are any of Defendant's employees who worked exclusively on prevailing wage projects and time spent by Defendant's employees working on prevailing wage projects.

6. The Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (the "Class Notice"), which was attached to the Settlement as **Exhibit A** and

1 provided to the Class pursuant to the plan for distribution described under the Settlement, conformed
2 with the requirements of California Rules of Court 3.766 and 3.769, and constituted the best notice
3 practicable under the circumstances, by providing individual and adequate notice of the proceedings
4 and of the matters set forth therein to Class Members. The Class Notice fully satisfied the
5 requirements of due process and provided the Class Members with adequate instructions and a variety
6 of means to obtain additional information.

7 7. The Court finds that the deadline for Class Members to submit a Request for
8 Exclusion or to submit written objections to the Settlement was May 7, 2024. The Court further finds
9 that Class Members have had a full and fair opportunity to exclude themselves from, or object to, the
10 Settlement.

11 8. The Court finds that no Requests for Exclusion were submitted. Accordingly, all Class
12 Members remain in the Settlement Class and are bound by this Final Approval Order and the
13 concurrently filed Judgment.

14 9. The Court finds that a full opportunity has been afforded to Class Members to object
15 to the Settlement and participate in the Final Approval Hearing. All Class Members and other persons
16 wishing to be heard have been heard and/or had an opportunity to be heard. No written objections
17 were received, and no Class Members appeared at the Final Approval Hearing to present any
18 objections.

19 10. Effective on the date when Defendant fully funds the entire Gross Settlement Amount
20 and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
21 claims will be released as follows:

- 22 a. Released Parties: Defendant and each of its former and present directors, officers,
23 shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns,
24 subsidiaries, and affiliates.
- 25 b. Plaintiff's Release: Plaintiff and his or her respective former and present spouses,
26 representatives, agents, attorneys, heirs, administrators, successors, and assigns
27 generally, release and discharge Released Parties from all claims, transactions, or
28 occurrences, including, but not limited to: (a) all claims that were, or reasonably could

1 have been, alleged, based on the facts contained, in the Operative Complaint and (b)
2 all PAGA claims that were, or reasonably could have been, alleged based on facts
3 contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during
4 the Action and released under 6.2, below. ("Plaintiff's Release.") Plaintiff's Release
5 does not extend to any claims or actions to enforce this Agreement, or to any claims
6 for vested benefits, unemployment benefits, disability benefits, social security
7 benefits, workers' compensation benefits that arose at any time, or based on
8 occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may
9 discover facts or law different from, or in addition to, the facts or law that Plaintiff
10 now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall
11 be and remain effective in all respects, notwithstanding such different or additional
12 facts or Plaintiff's discovery of them.

13 i. Plaintiff's Waiver of Rights under California Civil Code § 1542: For
14 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes
15 the provisions, rights, and benefits, if any, of Section 1542 of the California
16 Civil Code, which reads: A general release does not extend to claims that
17 the creditor or releasing party does not know or suspect to exist in his or her
18 favor at the time of executing the release, and that if known by him or her
19 would have materially affected his or her settlement with the debtor or
20 Released Party.

21 c. Release by Participating Class Members Who Are Not Aggrieved Employees: All
22 Participating Class Members, on behalf of themselves and their respective former and
23 present representatives, agents, attorneys, heirs, administrators, successors, and
24 assigns, release Released Parties from (i) all claims that were alleged, or reasonably
25 could have been alleged, based on the Class Period facts stated in the Operative
26 Complaint and ascertained in the course of the Action including, all
27 statutes/ordinances referenced in the Operative Complaint and corresponding
28 provisions of the California Industrial Welfare Commission Wage Orders and the

1 California Code of Regulations, including but not limited to (1) the California Code
2 of Regulations, Title 8, §11050, (2) Labor Code Sections 201, 202, 203, 204, 218.5,
3 218.6, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, 2802, and 2698
4 et seq., as related to the above claims; (3) the Fair Labor Standards Act, 29 U.S.C. §
5 201 et seq., Participating Class Members who negotiate or otherwise deposit their
6 Settlement Payment Check will be deemed to have opted into the Action for purposes
7 of the Fair Labor Standards Act (“FLSA”) and as to those Class Members, they
8 expressly waive and release any FLSA claims arising during the Class Period and
9 reasonably related to the claims and allegations in the Operative Complaint. This
10 release excludes the release of claims not permitted by law. The following language
11 will be printed on the reverse of each Settlement Payment Check, or words to this
12 effect: “By endorsing or otherwise negotiating this check, I acknowledge that I read,
13 understood, and agree to the terms set forth in the Notice of Class Action Settlement
14 and I consent to join in the FLSA portion of the Action, elect to participate in the
15 settlement of the FLSA claims, and agree to release all of my FLSA claims that are
16 covered by the Settlement,” and (4) all related federal, state or local statutes, common
17 law, ordinances, regulations, or provisions relating to the facts and claims in the
18 Action, including claims for continuing wages, failure to pay wages, failure to pay
19 wages in a timely manner, failure to pay minimum wages, failure to pay overtime,
20 failure to provide allegedly required wage statements, failure to provide meal or rest
21 breaks, liquidated damages, civil penalties, premium wages, claims for injunctive
22 relief and restitution under California Business & Professions Code § 17200, interest,
23 costs and attorneys’ fees, including Labor Code Sections 218.5 and 218.6, Code of
24 Civil Procedure Section 1021.5 and Civil Code Section 3287. Except as set forth in
25 Section 5.3 of this Agreement, Participating Class Members do not release any other
26 claims, including claims for vested benefits, wrongful termination, violation of the
27 Fair Employment and Housing Act, unemployment insurance, disability, social
28 security, workers’ compensation, or claims based on facts occurring outside the Class

Period.

- d. Release by Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action including, all statutes/ordinances referenced in the Operative Complaint and corresponding provisions of the California Industrial Welfare Commission Wage Orders and the California Code of Regulations, including but not limited to (1) the California Code of Regulations, Title 8, §11050, and (2) Labor Code Sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1198, 2802, and 2698 et seq., as related to the above claims.

11. The Parties shall bear their own respective attorneys' fees and costs, except as otherwise provided for in the Settlement and approved by the Court.

12. The Court finds that the Gross Settlement Amount ("GSA"), the Net Settlement Amount, and the methodology used to calculate Individual Class Payments and Individual PAGA Payments to Participating Class Members and Aggrieved Employees, respectively, are fair and reasonable. Thus, Court authorizes the Administrator to calculate and pay individual settlement allocations in accordance with the terms of the Settlement.

13. Defendant is ordered to fully fund the GSA (**\$300,000.00**), and also the amounts necessary to fully pay its share of payroll taxes owed on the Wage Portions of Individual Class Payments, by transmitting the funds to the Administrator according to the following schedule:

- a. An initial payment of \$100,000.00 within five (5) business days of this Final Approval Order; and
- b. Six equal monthly payments starting thirty (30) calendar days after the initial payment due date.

14. Within fourteen (14) calendar days after Defendant's funding, the Administrator shall

1 disburse, in the amounts approved by the Court as provided below, the following: (1) the Class
2 Counsel Fees Payment; (2) the Class Counsel Litigation Expenses Payment; (3) the Class
3 Representative Service Payment; (4) the Administration Expenses Payment; (5) the LWDA PAGA
4 Payment; and (6) the 25% share of PAGA Penalties payable to Aggrieved Employees in Individual
5 PAGA Payments. The remainder shall constitute the Net Settlement Amount and be distributed to
6 Participating Class Members in Individual Class Payments.

7 15. A total amount of \$30,000.00 shall be allocated as “PAGA Penalties,” payable from
8 the GSA, for resolution of claims under PAGA and distributed as follows: 75% (**\$22,500.00**) to the
9 LWDA (the “LWDA PAGA Payment”) and 25% (**\$7,500.00**) to Aggrieved Employees.

10 16. The Court confirms the appointment of Plaintiff as the Class Representative, for
11 settlement purposes only. In addition to the amount Plaintiff is eligible to receive as a Settlement
12 Class Member and/or Aggrieved Employee, the Court approves and orders a service payment to
13 Plaintiff in the amount of **\$7,500.00** (the “Class Representative Service Payment”), payable from the
14 GSA, for his role and service as the Class Representative, for the risks and work attendant to that
15 role, and for his general release of claims, both known and unknown, and waiver of section 1542
16 rights.

17 17. The Court confirms the appointment of the attorneys of Moon Law Group, PC,
18 including Kane Moon, Allen Feghali, and Charlotte Mikat-Stevens, as Class Counsel, for settlement
19 purposes only, as they are experienced in wage and hour class action litigation, have no apparent
20 conflicts of interest with Plaintiff, other Class Members, or the Administrator, and have adequately
21 represented Class interests. The Court approves and orders the payments to Class Counsel, payable
22 from the GSA, of **\$100,000.00** for reasonable attorneys’ fees (the “Class Counsel Fees Payment”),
23 **\$13,746.51**
24 and of ~~**\$20,000.00**~~, for reimbursement of actual litigation costs (the “Class Counsel Litigation
25 Expenses Payment”). The Court finds that these amounts are reasonable considering the benefits
26 provided to the Class.

27 18. The Court confirms the appointment of Apex Class Action Administration as the
28 Administrator, who has fulfilled its initial notice and reporting duties. The Court approves and orders
the payment to the Administrator of **\$13,350.00** (the “Administrator Expenses Payment”), payable

1 from the GSA, for settlement administration.

2 19. Pursuant to California Code of Civil Procedure section 384, following the expiration
3 of the 180-day check-cashing deadline, should there be any uncashed checks, the Administrator shall
4 transmit those amounts to the California Controller's Unclaimed Property Fund in the name of each
5 Class Member and/or Aggrieved Employee who failed to cash their settlement check prior to the void
6 date.

7 20. In accordance with California Rule of Court 3.771(b), notice of this Final Approval
8 Order and the concurrently filed Judgment will be given to the Settlement Class by the
9 Administrator, who will post an electronic copy thereof on its website for no less than ninety (90)
10 calendar days following entry.

11 21. This Final Approval Order and the concurrently filed Judgment are intended to be a
12 final disposition of the Action in its entirety and are intended to be immediately appealable.

13 22. The obligations set forth in the Settlement are deemed part of this Final Approval
14 Order and the concurrently filed Judgment, and the Parties and Administrator are ordered to carry
15 out the Settlement according to its terms and provisions.

16 23. Following entry of the concurrently filed Judgment, and without affecting the finality
17 thereof, pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
18 continuing jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i)
19 enforcing the Settlement and/or Judgment, (ii) addressing settlement administration matters, and (iii)
20 addressing such post-Judgment matters as are permitted by law.

21 24. The Settlement is finally approved but is not an admission by Defendant of the
22 validity of any claims in this Action, or of any wrongdoing by Defendant or of any violation of
23 law. Neither the Settlement nor any related document shall be offered or received in evidence in
24 any civil, criminal, or administrative action or proceeding other than such proceedings as may be
25 necessary to consummate or enforce the Settlement.

7/22/25 at 9 a.m.

26 25. The Court sets a Non-Appearance Case Review re: Distribution on ~~July , 2025 at~~
27 ~~1:00 a.m./p.m. in Department 10~~. Class Counsel are ordered to file a final report and declaration
28 by the Administrator regarding settlement distribution no later than five (5) court days prior to the

Case Review. No appearance will be required at the Case Review if the Administrator's declaration reports that all the distributions under the Settlement are complete.

IT IS SO ORDERED.

DATE: 05/29/2024



A handwritten signature in black ink, reading "W. F. Highberger", is written over a horizontal line.

THE HON. WILLIAM F. HIGHBERGER
William F. Highberger / Judge
Judge of the Superior Court, Los Angeles County