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LAW AND MOTION DEPT. 53154
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiffs RICARDO GOMEZ and RICARDO GOMEZ, SR.
on behalf of themselves and similarly situated employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

RICARDO GOMEZ and RICARDO GOMEZ, SR., individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

KLEARY MASONRY, INC., a California Corporation;
MICHAEL G. KLEARY, an individual;
NICK KLEARY, an individual;
DIANA KLEARY, an individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00278067

CLASS ACTION

**PROPOSED ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Reservation No. 2555119

Date: September 30, 2021

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Shama Mesiwala

Filed: 5/6/2020

FAC Filed: 6/30/2020

SAC Filed: 1/5/2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on September 30, 2021, at 1:30 p.m., in Department 53 before
4 Hon. Shama Mesiwala, presiding. Named Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr.
5 ("Plaintiffs") filed this putative class action on May 6, 2020. The operative Complaint alleges that
6 Defendants Kleary Masonry, Inc., Michael G. Kleary, Nick Kleary, and Diana Kleary ("Defendants")
7 violated California law by failing to pay minimum wages, failing to pay overtime wages, failing to
8 provide meal and rest periods, failing to provide accurate wage statements, failing to pay all wages due
9 upon termination, failing to reimburse expenses, failing to pay prevailing wages, failing to properly
10 calculate the regular rate for overtime purposes, failing to pay reporting time pay, and engaging in
11 unfair competition. Plaintiffs have also alleged Defendants are liable for a civil penalties under the
12 Private Attorneys General Act ("PAGA") based on these violations. Plaintiffs sought attorneys' fees
13 and costs as part of this Action. Defendants denied all of Plaintiffs' claims and denied that this case
14 was appropriate for class treatment. No class has been certified. The class action settlement was
15 preliminarily approved by this Court on March 16, 2021.

16 The parties have agreed to settle the class and PAGA claims. Defendants will provide
17 monetary consideration in exchange for a release of claims consistent with the terms of the proposed
18 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and
19 Release ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
20 Agreement. The Court, having received and considered Plaintiffs' Motion for Final Approval of Class
21 Action and PAGA Settlement, the declarations in support, the Agreement, the Notice of Settlement,
22 and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

23 **1. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
24 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

25 The Court finds that certification of the following class for settlement purposes only is
26 appropriate under the California Code of Civil Procedure and related case law:

27 All individuals who have, or continue to, perform work for Defendants in
28 California as non-exempt, hourly employees from May 6, 2016 up to
February 2, 2021.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes
2 only and is not intended to capture the claims at issue or limit or alter the released claims under the
3 Agreement.

4 The Court finds that Class Members meet the ascertainability and numerosity requirements since
5 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
6 the definition and the number of Class Members would make joinder impractical. The commonality and
7 predominance requirements are met for settlement purposes since there are questions of law and fact
8 common to Class Members. The common questions of law or fact in this case all stem from Plaintiffs'
9 contentions that Defendants caused the violations outlined above by 1) failing to pay putative class
10 members for all time spent at the shop and all time spent driving from the shop to the first jobsite or
11 from the last jobsite back to the shop; 2) failing to pay putative class members reporting time or wages
12 owed for time spent where Defendants required them to report to the shop or jobsite, but ultimately sent
13 them home without any work; 3) failing to authorize and permit putative class members to take all meal
14 and rest periods; 4) failing to pay putative class members all prevailing wages owed for work on public
15 works jobs; 5) failing to pay putative class members all overtime wages owed on public works jobs; 6)
16 failing to incorporate the value of prevailing wage rates into putative class members' regular rates of pay
17 for the purpose of calculating overtime wages on non-public works jobs where putative class members
18 worked on public works and non-public works jobs in the same workweek; and 7) failing to reimburse
19 putative class members for the use of their personal cellphones, vehicles, and tools for work. The
20 PAGA, waiting time penalty, wage statement violation, and unfair competition claims also derive from
21 these violations. Additionally, Class Members seek the same remedies under state law. The typicality
22 requirement for settlement purposes is also satisfied since the claims of the class representatives based
23 on the same facts and legal theories as those applicable to the class members.

24 The Court also finds that certifying the settlement class is required to avoid each Class Member
25 from litigating similar claims individually. This settlement will achieve economies of scale for Class
26 Members with relatively small individual claims and conserve the resources of the judicial system.

1 The Court finds that Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr. and Plaintiffs' counsel,
2 Galen T. Shimoda and Justin P. Rodriguez of the Shimoda Law Corp., to be adequate representatives of
3 the settlement class. The Court appoints them as class representative and class counsel, respectively.

4 **2. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

5 The Court has reviewed the Agreement, which was submitted with Plaintiffs' Motion as Exhibit
6 A. After the settlement was preliminarily approved on March 16, 2021, the Parties and the Claims
7 Administrator determined there was an increase in workweeks during the Class Period, triggering an
8 increase to the Gross Settlement Amount under the terms forth in Section 10.1 of the Agreement.
9 Pursuant to the terms of the Agreement under Section 10.1 and the increase from 21,861 to 39,070.21
10 workweeks for Class Members during the Class Period, the Gross Settlement Amount is now
11 \$1,621,432.00. The Court finds that the terms of the Agreement, including the Gross Settlement
12 Amount of \$1,621,432.00, falls within the range of reasonableness and is fair, reasonable, adequate for
13 the class. The Court also acknowledges that Class Members were able to object to the settlement
14 through the administration process and at a fairness hearing. No such objections were made by the class
15 members and zero class members opted out of the settlement.

16 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
17 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
18 grants final approval to the Agreement and all terms therein as if stated here in full, including the
19 \$1,621,432.00 Gross Settlement Amount.

20 The Court orders that Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr. will receive \$15,000
21 each as a Class Representative Enhancement Payment in addition to any amount Plaintiffs may be
22 entitled to under the Agreement's pro rata distribution formula for Plaintiffs' time and effort on behalf of
23 Class Members.

24 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
25 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are stated by the
26 Administrator to be \$11,759. The difference between the actual cost of the Claims Administrator
27 originally allocated amount of \$12,500.00 will be redistributed to Qualified Claimants on a pro-rata
28 basis.

1 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
2 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
3 accurately traced as set forth in the Agreement, Plaintiffs and Class Counsel were able to negotiate on
4 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
5 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
6 *v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
7 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
8 thirty five percent (35%) of the Gross Settlement Amount, *i.e.* \$567,501.20, to be appropriate
9 compensation for Class Counsel. The attorneys' fees request is within the range that has been approved
10 by other Courts in similar cases and is reasonable in light of the circumstances of this case, the
11 substantial and beneficial results obtained on behalf of Class Members, and the contingent nature of the
12 recovery over the course of this case, which included potential loss at summary judgment, certification,
13 and/or trial proceedings. Additionally, the Court orders that up to \$6,368,68 of the settlement proceeds
14 will be paid to Class Counsel for reasonable costs incurred in this case. The difference between the
15 actual costs incurred and the originally allocated amount of \$10,000 shall be paid to the Qualified
16 Claimants on a pro-rata basis.

17 The Court approves of the Twenty Thousand (\$20,000) PAGA Payment, which shall be paid
18 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
19 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
20 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
21 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
22 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
23 furthering the purpose of the Labor Code and LWDA.

24 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
25 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
26 paid out 50/50 to Capital Pro Bono, Inc. and the Center For Workers' Rights.
27
28

1 The releases and waivers for Class Members who did not opt out of being bound by the
2 Agreement (*i.e.* Qualified Claimants), Aggrieved Employees, and the Class Representatives are also
3 approved by the Court as set forth in the Agreement.

4 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
5 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

6 The Court finds that the Notice of Settlement, which is Exhibit A to the Declaration of Lindsay
7 Kline, and the maintaining of a website where Class Members could access, free of charge, all
8 documents filed with the Court fairly and adequately advised Class Members of this litigation, the terms
9 of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number of
10 workweeks worked during the Class Period, their estimated pro rata share of the Net Settlement
11 Amount, how to participate in the settlement, how to file documentation in opposition to the proposed
12 settlement, and when to appear at the fairness hearing. The Court further finds that the website and
13 Notice of Settlement and distribution of such notice by first class mail to each identified Class Member
14 at his or her most recent address based on a National Change of Address database search from the Class
15 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement
16 returned as "undeliverable" or "not at this address" comported with all constitutional requirements,
17 including those of due process.

18 **4. IMPLEMENTATION SCHEDULE**

19 Accordingly, with good cause shown, the Court hereby approves and orders that the following
20 implementation schedule be adhered to:

21 22 23 24 25 26 27 28	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 calendar days after the Final Approval Date
	Last day for Defendants to fund settlement	Within 21 calendar days after the Final Approval Date

1 2 3 4	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	The Effective Date
5 6 7	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
8 9	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
10 11	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

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14 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
15 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the
16 Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
17 Agreement.

18 **IT IS SO ORDERED.**

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20 Date: SEP 30 2021

21 By: SHAMA H. MESIWALA
22 Judge of the Superior Court
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