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7 Attorneys for Plaintiff, NATHAN SMITH, on behalf of himself
and all others similarly situated or aggrieved,

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF STANISLAUS – CIVIL DIVISION**

10 NATHAN SMITH, on behalf of himself and
11 all others similarly situated or aggrieved,

12 Plaintiffs,

13 v.

14 MCMILLEN ENTERPRISES, INC., a
15 California corporation, doing business as
"United Paying"; DAVID JOSEPH
16 MCMILLEN, an individual; and DOES 1
through 100, inclusive,
17 Defendants.

CASE NO.: CV-20-002938

[Assigned for all purposes to the Hon. John R.
Mayne in Dept. 21]

**~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT, APPLICATION FOR
ATTORNEYS' FEES AND COSTS, AND
ENHANCEMENT AWARD**

[Lodged concurrently with Motion for
Preliminary Approval]

HEARING INFORMATION:

DATE: April 8, 2022
TIME: 8:30 a.m.
DEPT: 21

1
2 This matter having come before the Court on April 8, 2022 for a final fairness hearing
3 pursuant to the Order of this Court dated December 2, 2021, granting preliminary approval
4 ("Preliminary Approval Order") of the class and representative action settlement upon the terms
5 set forth in the Joint Stipulation Re: Class Action and Representative Action Settlement
6 ("Settlement Agreement") submitted in support of Motion for Preliminary Approval of the Class
7 and Representative Action Settlement and Certifying Class for Settlement Purposes; and due and
8 adequate notice having been given to the Class Members as required in the Preliminary Approval
9 Order; and the Court having considered all papers filed and proceedings had herein and otherwise
10 being fully informed and good cause appearing therefor, it is hereby **ORDERED, ADJUDGED**
11 **AND DECREED THAT:**

12 1. The Motion for Final Approval of Class Action and Representative Action
13 Settlement; Enhancement Award; and Reasonable Attorneys' Fees and Costs is hereby granted in
14 its entirety.

15 2. The definitions set out in the Settlement Agreement are incorporated by reference
16 into this Order; all terms defined therein shall have the same meaning in this Order as defined in
17 the Settlement Agreement.

18 3. This Court has jurisdiction over the subject matter of this litigation and over all
19 Parties to this litigation, including all Class Members.

20 4. Distribution of the Notice of Settlement of Class Action Lawsuit ("Class Notice")
21 directed to the Class Members as set forth in the Settlement Agreement and the other matters set
22 forth herein have been completed in conformity with the Preliminary Approval Order, including
23 individual notice to all Class Members who could be identified through reasonable effort, and was
24 the best notice practicable under the circumstances. This Class Notice provided due and adequate
25 notice of the proceedings and of the matters set forth therein, including the proposed class
26 settlement set forth in the Settlement Agreement, to all persons entitled to such Class Notice, and
27 the Class Notice fully satisfied the requirement of due process.

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1 5. Zero Class Members opted out and zero Class Members objected to the settlement.

2 6. The Court further finds that the settlement is fair, reasonable and adequate and that

3 plaintiff Nathan Smith ("Plaintiff") has satisfied the standards and applicable requirements for

4 final approval of class action settlement under California law, including the provisions of Code of

5 Civil Procedure section 382 and Federal Rules of Civil Procedure, rule 23, approved for use by the

6 California state courts in *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

7 7. This Court hereby approves the class settlement set forth in the Settlement

8 Agreement and finds that the settlement is, in all respects, fair, adequate and reasonable and

9 directs the parties to effectuate the settlement according to its terms. The Court finds that the

10 settlement has been reached as a result of intensive, serious and non-collusive arm's length

11 negotiations. The Court further finds that the parties have conducted extensive and costly

12 investigation and research and counsel for the parties are able to reasonably evaluate their

13 respective positions. The Court also finds that settlement at this time will avoid additional

14 substantial costs, as well as avoid the delay and risks that would be presented by the further

15 prosecution of this action. The Court has noted the significant benefits to the Class Members

16 under the settlement. The Court also finds that the class is properly certified as a class for

17 settlement purposes only.

18 8. For settlement purposes only, the Court certifies the following class: all current and

19 former non-exempt, hourly-paid employees who worked for defendants McMillen Enterprises,

20 Inc., a California corporation, doing business as "United Paving" ("United Paving") and David

21 Joseph McMillen ("McMillen" and, collectively with United Paving, "Defendants") from July 8,

22 2016 through July 31, 2021 ("Class Period") in California ("Class Members").

23 9. Nothing contained in this Settlement Agreement shall be construed or deemed in

24 admission of liability, culpability, negligence, or wrongdoing on the part of Defendants.

25 10. Effective only upon the Final Approval Date, entry of Judgment, and payment by

26 Defendants to the Settlement Administrator Phoenix of the full Gross Settlement Amount and

27 Employers' Taxes necessary to effectuate the Settlement, Plaintiff and Participating Class

28 Members waive, release, and discharge all claims, demands, rights, liabilities, causes of action,

1 injuries, grievances, obligations, losses, damages, penalties, interest, fines, debts, liens, liabilities,
2 attorneys' fees, costs and any other form of relief or remedy in law or equity, of every nature and
3 description whatsoever, asserted or that might have been asserted against Defendants and each of
4 their past, present, and future respective subsidiaries, dba's, affiliates, parents, divisions, related
5 entities, joint venturers, insurers and reinsurers, and company-sponsored employee benefit plans
6 of any nature and their successors, assigns and predecessors in interest, including all of their
7 officers, directors, shareholders, members, partners, owners, co-employers, employees, agents,
8 principals, heirs, spouses, associates, representatives, accountants, auditors, consultants, attorneys,
9 administrators, fiduciaries, trustees, and agents (the "Released Parties") in the First Amended
10 Complaint filed in this Action, or that may be asserted against the Released Parties based on the
11 factual allegations in the First Amended Complaint filed in this Action, whether arising under
12 federal, state or other applicable law; including, but not limited to, California Labor Code and any
13 applicable IWC Wage Orders, expressly including, for the duration of the Class Period, those
14 which arise out of, relate to, or are in connection with: (a) all claims for failure to pay overtime
15 wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to provide
16 compliant meal and rest periods and associated premium pay; (d) all claims for failure to timely
17 pay wages during employment; (e) all claims for the failure to timely pay wages upon termination;
18 (f) all claims for non-compliant wage statements; and (g) all claims asserted through California
19 Business & Professions Code § 17200 *et seq.* arising out of the Labor Code violations referenced
20 in the First Amended Complaint filed in this Action. The release extends to the Fair Labor
21 Standards Act, 29 USC § 201 ("FLSA"), *et seq.* only insofar as a Settlement Class Members
22 timely cash their Individual Settlement Payment checks. Only in such an instance will a
23 Settlement Class Member be deemed to have opted into the action for the purposes of the FLSA
24 and thereby released any claims he or she may have under the FLSA. For individuals employed
25 during the PAGA Period (*i.e.*, April 11, 2019 through July 31, 2021), all claims released during
26 the Class Period, as well as all asserted PAGA claims for penalties arising out of Labor Code
27 Sections 210, 226.3, 558, 1197.1 and 2699 based on the factual allegations and Labor Code
28 sections alleged to have been violated in the First Amended Complaint filed on September 18,

1 Class Members. (See, e.g. *Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Dunk v. Ford Motor Co.*
2 (1996) 48 Cal.App.4th 1794, 1810 fn. 21.)

3 14. The Court hereby approves a service award to Plaintiff in the amount of \$7,500.00
4 in consideration for his time, effort and risk incurred on behalf of the Settlement Class. The
5 Service Award will be paid to Plaintiff by the Settlement Administrator from the Gross
6 Settlement Amount as set forth in the Settlement Agreement.

7 15. The Court hereby approves the Settlement Administrator's cost in the amount of
8 \$5,995.00. The Settlement Administrator, Phoenix Settlement Administrators ("Phoenix"), shall
9 be paid the cost of administration of the settlement from the Gross Settlement Amount.

10 16. Except as expressly provided herein, the parties each shall bear all of their own
11 fees and costs in connection with this matter.

12 17. The Court approves Nathan Smith as both the Class and Private Attorneys General
13 Act representative.

14 18. The Court approves David D. Bibiyan of Bibiyan Law Group, P.C. and Jasmin K.
15 Gill of J. Gill Law Group, P.C. as class counsel.

16 19. The Court approves Phoenix as the Settlement Administrator.

17 20. Class Members will have one hundred eighty (180) calendar days from the date of
18 mailing of the check to cash their check. For any checks from the distribution that are not cashed
19 by Participating Class Members within one hundred eighty (180) calendar days from the date of
20 mailing of the checks, the Settlement Administrator Phoenix will pay over the amount represented
21 by the check to the California State Controller's Office, with the identity of the Participating
22 Class Member to whom the funds belong, to be held for the Participating Class Member per
23 California Unclaimed Property Law, in the interest of justice. The money paid to the California
24 State Controller's Office will remain the Participating Class Member's property. This will allow
25 Participating Class Members who did not cash their checks to collect their Individual Settlement
26 Amounts at any time in the future. There will be no unpaid residue or unclaimed or abandoned
27 class member funds and the California Code of Civil Procedure section 384 shall not apply.

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1 21. The Court finds that class settlement on the terms set forth in the Settlement
2 Agreement was made in good faith, and constitutes a fair, reasonable and adequate compromise of
3 the released claims against Defendant.

4 22. Within seven (7) calendar days after the Final Approval Date, the Settlement
5 Administrator shall distribute all payments due under the Settlement, including the Individual
6 Settlement Payments to Participating Class Members, as well as the Court-approved payments for
7 the Service Award to Plaintiff, attorneys' fees and litigation costs and expenses to Class Counsel,
8 Administration Costs to the Settlement Administrator, and the portion of the LWDA payment
9 payable to the LWDA.

10 23. The Settlement Administrator is ordered to provide notice of the Final Judgment
11 entered in this Action by posting the same on its website for a period of no less than one (1) year.

12 24. An Order to Show Cause Hearing Re: Final Administration of the Class Action
13 Settlement is hereby scheduled for 12/6, 2022, 8:30am, in Department 21 of the
14 Stanislaus County Superior Court, City Towers Courthouse. At least ten (10) calendar
15 days prior to said OSC hearing, the parties shall file a declaration confirming that the claims
16 have been paid and that administration of all of the terms and conditions of the class action
17 settlement have been completed. Should the Court find that said Declaration has sufficiently
18 evidenced full and complete administration of the class action settlement, said OSC hearing will
19 go off-calendar.

20 25. Without affecting the finality of the Judgment in any way, this Court hereby
21 retains continuing jurisdiction over the interpretation, implementation and enforcement of the
22 settlement and all orders and judgments entered in connection therewith.

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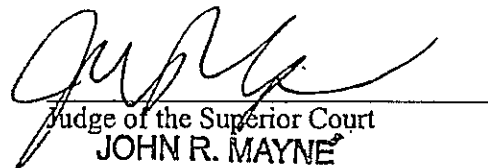
24 IT IS SO ORDERED.

25 Dated: 5/9/22, 2022

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Judge of the Superior Court
JOHN R. MAYNE