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LAW AND MOTION DEPT. 50154
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

NICHOLAS B. TOY, on behalf of himself and
all others similarly situated;

Plaintiff,

v.

MYERS & SONS CONSTRUCTION, LLC, a
California Limited Liability Company;
MYERS & SONS, L.P., a California Limited
Partnership; and DOES 1-50, inclusive;

Defendants.

CASE NO.: 34-2020-00279448

CLASS ACTION

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; AND ENTRY
OF FINAL JUDGMENT THEREON**

HEARING DATE

Date: February 9, 2022

Time: 9:00 a.m.

Dept.: 54

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AND
ENTRY OF FINAL JUDGMENT THEREON**

BY FAX

1 The Motion for Final Approval of the Settlement (the "Final Approval Motion") as set
2 forth in the Class Action Settlement Agreement and Release of Claims (the "Settlement
3 Agreement" and/or the "Settlement") came for hearing on February 9, 2022, in Department 54 of
4 the above-entitled court.

5 The Final Approval Motion was unopposed by Defendants Myers & Sons Constructions,
6 L.L.C. and Myers & Sons, L.P. ("Defendants"). Having considered the Final Approval Motion,
7 the Settlement Agreement, declarations in support thereof, and all other materials properly before
8 the Court and having conducted an inquiry pursuant to California Rules of Court, rule 3.769(g),
9 the Court finds that the Settlement Agreement was entered by all parties in good faith, and the
10 Settlement Agreement is approved. Due and adequate notice having been given to the Settlement
11 Class, and the Court having considered the Settlement Agreement, all papers filed, and
12 proceedings had herein, and all oral and written comments received regarding the proposed
13 Settlement, and having reviewed the record in this Action, and good cause appearing,

14 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

15 1. The Court, for purposes of this Judgment and Order ("Judgment"), refers to all
16 defined terms (*i.e.*, terms with initial capitalization) as set forth in the Settlement Agreement.

17 2. The Court has jurisdiction over the subject matter of this Action, the Class
18 Representative, the Settlement Class Members, and Defendants.

19 3. The Court finds that the distribution of the Notice Packet, as provided for in the
20 Amended Order Granting Preliminary Approval of Class Action Settlement, constituted the best
21 notice practicable under the circumstances to all Settlement Class Members and fully met the
22 requirements of California law and due process under the California and United States
23 Constitution. Based on evidence and other material submitted, the actual notice to the Settlement
24 Class was adequate.

25 4. The Court finds that the instant Action presented a good faith dispute of the claims
26 alleged, and the Court finds in favor of Settlement approval. Specifically, the claims on behalf
27 of the Settlement Class Members included claims for (1) failure to provide complete and accurate
28 itemized wage statements, (2), failure to reimburse business expenses (3) unfair business

1 practices, and (4) PAGA Payments based on Labor Code violations alleged in the Complaint.

2 5. All Settlement Class Members who did not opt-out of the Settlement are entitled
3 to payment pursuant to the Settlement and this Judgment.

4 6. The Court approves the Settlement, as set forth in the Settlement Agreement and
5 each of the releases and other terms, as fair, just, reasonable, and adequate as to the Settling
6 Parties. The Settling Parties are directed to perform in accordance with the terms set forth in the
7 Settlement Agreement.

8 7. The Settling Parties are to bear their own costs, except as otherwise provided in
9 the Settlement Agreement.

10 8. For purposes of effectuating this Order and Judgment (including the Released
11 Claims of Participating Class Members), this Court has certified the following class: "all current
12 and former non-exempt employees employed by Defendants at any time during the Class Period
13 [May 26, 2016 through September 20, 2021]." The Court deems this definition sufficient for
14 purposes of California Rules of Court, rule 3.765(a).

15 9. With respect to the Participating Class Members and for purposes of approving
16 this Settlement, this Court finds and concludes as follows: (a) the Settlement Class Members are
17 ascertainable and so numerous that joinder of all Settlement Class Members is impracticable; (b)
18 there are questions of law or fact common to the Settlement Class Members, and there is a well-
19 defined community of interest among the Settlement Class Members with respect to the subject
20 matter of the Action; (c) the claims of the Class Representatives are typical of the claims of the
21 Settlement Class Members; (d) the Class Representatives have fairly and adequately protected
22 the interests of the Settlement Class Members; (e) a class action is superior to other available
23 methods for an efficient adjudication of this controversy; and (f) the counsels of record for the
24 Class Representative, *i.e.*, Class Counsel, are qualified to serve as counsel for the Plaintiff in his
25 individual and representative capacity and for the Participating Class Members.

26 10. By this Judgment, the Class Representative shall release, relinquish, and
27 discharge, and each of the Participating Class Members shall be deemed to have, and by operation
28 of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all

1 Released Claims, as defined in the Settlement Agreement.

2 11. Neither the Settlement Agreement nor the Settlement terms contained therein, nor
3 any act performed or document executed pursuant to or in furtherance of the Settlement
4 Agreement or the Settlement (i) is or may be deemed to be or may be used by the Class
5 Representatives or Participating Class Members as an admission of, or evidence of, the validity
6 of any of the Settlement Class Members' Released Claims, or of any wrongdoing or liability of
7 Defendant or any of the other Released Parties; or (ii) is or may be deemed to be or may be used
8 by the Class Representative or Participating Class Members as an admission of, or evidence of,
9 any fault or omission of Defendants or any of the other Released Parties in any civil, criminal, or
10 administrative proceeding in any court, administrative agency, or other tribunal. Defendants or
11 any of the other Released Parties may file the Settlement Agreement and/or the Judgment from
12 this Action in any other action that may be brought against it or them in order to support a defense
13 or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith
14 settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or
15 similar defense or counterclaim.

16 12. The "Settlement Amount" to be paid under the Settlement Agreement is \$350,000.
17 From this amount, Class Counsel collectively sought an award of Attorneys' Fees of \$116,666.66,
18 and actual Costs in the amount of \$10,407.28, Class Representative Service Payment for the Class
19 Representative of \$10,000, \$10,750 to the Settlement Administrator, Phoenix Settlement
20 Administrators, and \$7,500 to the LWDA for PAGA Penalties. Defendants do not oppose these
21 requests. The Court finds that the Settlement Amount is fair, reasonable, and adequate, and
22 awards the payments as set forth above from the Settlement Amount. After deducting the
23 foregoing payments from the Settlement Amount, the remainder shall form the Net Settlement
24 Amount payable to the Participating Class Members as set forth in the Settlement Agreement and
25 as calculated by the Settlement Administrator.

26 13. The Settlement Administrator is directed to calculate the Participating Class
27 Member's Individual Settlement Payments from the Net Settlement Amount and issue all
28 payments in accordance with the Settlement Agreement.

1 14. Concurrently with mailing the settlement checks to the Participating Class
2 Members, the Settlement Administrator shall include a Notice of Entry of Judgment to all
3 Participating Class Members either on a postcard or as a detachable portion of the check for the
4 Participating Class Members, noting the following: "Please be advised that on [date] the Superior
5 Court of California for the County of Sacramento entered Judgment in the case entitled *Toy v.*
6 *Myers & Sons Construction, LLC*, Case No. 34-2020-00279448, on behalf of all Participating
7 Class Members employed by Defendants at any time during the Class Period [May 26, 2016 to
8 September 20, 2021].

9 15. Participating Class Members shall have 180 days to negotiate the Settlement check
10 from the date of issuance by the Settlement Administrator. In the event that a Participating Class
11 Member does not negotiate his/her check within this time period, the uncashed check along with
12 any interest that has accrued thereon, shall be submitted to the State of California Unclaimed
13 Property Fund.

14 16. This document shall constitute a Judgment for purposes of California Rule of
15 Court 3.769(h).

16 17. The Court reserves exclusive and continuing jurisdiction over the Action, the Class
17 Representative, the Participating Class Members, and Defendants for the purposes of supervising
18 the implementation, enforcement, construction, administration, and interpretation of the
19 Settlement Agreement and this Judgment.

20 **IT IS SO ORDERED.**

21 Dated: 2-9-, 2022



Christopher E. Krueger
JUDGE OF THE SUPERIOR COURT

CHRISTOPHER E. KRUEGER