

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com

Attorneys for Plaintiff and Class Members

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JAMES ABERNATHY, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

DEACON CONSTRUCTION, LLC, an
Oregon limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 20CV367327

[Assigned for all purposes to the Hon. Charles F.
Adams, Dept. 7]

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

Date: February 6, 2025
Time: 1:30 P.M.
Dept.: 7

Action Filed: June 17, 2020
Trial Date: None Set

1 Plaintiff James Abernathy and Defendant Deacon Construction, LLC (“Defendant”)
2 (collectively, the “Settling Parties”) have entered into the Joint Stipulation of Class Action and
3 PAGA Settlement (“Agreement” or “Settlement Agreement”) to settle the above-captioned class
4 action subject to the Court’s approval (the “Settlement”).

5 This matter is now before the Court on Plaintiff’s Motion for Final Approval of Class
6 Action Settlement. The Court has read, heard, and considered all the pleadings and documents
7 submitted, and the presentations made in connection with the Motion which came on for hearing
8 on February 6, 2025.

9 **I. BACKGROUND**

10 On June 17, 2020, Plaintiff initiated this action in the Superior Court of California,
11 County of Santa Clara, alleging the following class and PAGA claims: (1) violation of Labor
12 Code §§ 226.7 and 512; (2) violation of Labor Code § 2802; (3) violation of Labor Code § 226;
13 (4) violation of Business and Professions Code § 17200, *et seq.*; and (5) violation of Labor Code
14 § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”).

15 **A. Class Members**

16 The “Class Members” are defined as “all current and former non-exempt employees of
17 Defendants who were employed in the State of California at any time during the Class Period
18 and who worked more than five hours in any shift” (the “Class”) and “all current and former
19 exempt employees of Defendants who were employed in the State of California at any time
20 between April 6, 2019, through June 21, 2020” (the “Exempt Class”) (the Class and Exempt
21 Class collectively, “Class Members”).

22 **B. Operation of the Settlement**

23 Pursuant to the Preliminary Approval Order, this Court conditionally certified the Class
24 and granted preliminary approval of the Settlement. The Preliminary Approval Order also
25 approved of the proposed form of class notice and notice plan. The Court entered the Preliminary
26 Approval Order after review and consideration of the pleadings filed in connection herewith, and
27 the oral presentations made by counsel at the hearing.

28 In compliance with the Preliminary Approval Order, the Notice of Class Action

1 Settlement ("Class Notice") was sent to all Class Members via first class mail. The notice
2 dissemination process was timely completed.

3 This Court finds that the Settlement appears to be the product of serious, informed, non-
4 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential
5 treatment to any individuals. The Court finds that the Settlement was entered into in good faith
6 pursuant to California Code of Civil Procedure § 877.6. The Court further finds that the
7 Settlement is fair, reasonable, and adequate and that Plaintiff has satisfied the standards for final
8 approval of a class action settlement under California law. Under the provisions of California
9 Code of Civil Procedure § 382 and Federal Rule of Civil Procedure 23, as approved for use by
10 the California state court in *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971), the trial court
11 has discretion to certify a class where:

12 [Q]uestions of law or fact common to the members of the class
13 predominate over any questions affecting only individual members,
14 and that a class action is superior to the available methods for the
15 fair and efficient adjudication of the controversy...Fed. R. Civ.
Proc. 23.

16 Certification of a settlement class is the appropriate judicial device under these circumstances.

17 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
18 FOLLOWS:

19 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
20 Settlement Agreement filed in this case.

21 2. The Court has jurisdiction over the subject matter of the litigation, the Class
22 Representative, the other Participating Class Members, and Defendant.

23 3. The Court finds that the dissemination of the Class Notice disseminated to the
24 Class Members, constituted the best notice practicable under the circumstances to all Persons
25 within the definition of Class Members, and fully met the requirements of California law and due
26 process under the United States Constitution. No Notice of Objection was received by the Parties
27 or the Court through the date of this Order. The Court finds that no Class Member submitted a
28 Request for Exclusion from the Settlement as determined by the Settlement Administrator.

1 4. The Court approves the settlement of the above-captioned action, as set forth in
2 the Settlement Agreement, as fair, just, reasonable, and adequate as to the Settling Parties. The
3 Settling Parties are directed to perform in accordance with the terms set forth in the Settlement
4 Agreement.

5 5. Except as otherwise provided in the Settlement Agreement, the Settling Parties
6 are to bear their own costs and attorneys' fees.

7 6. The Court hereby certifies the following classes ("Class Members") for settlement
8 purposes only:

9 all current and former non-exempt employees of Defendants who
10 were employed in the State of California at any time during the Class
11 Period and who worked more than five hours in any shift (the
12 "Class"); and

13 all current and former exempt employees of Defendants who were
14 employed in the State of California at any time between April 6,
15 2019, through June 21, 2020 (the "Exempt Class").

16 7. With respect to the Class Members and for purposes of approving the Settlement
17 only and for no other purpose, this Court finds and concludes that: (a) the Class Members are
18 ascertainable and so numerous that joinder of all members is impracticable; (b) there are
19 questions of law or fact common to the Class Members, and there is a well-defined community
20 of interest among the Class Members with respect to the subject matter of the claims in the
21 Litigation; (c) the claims of Class Representative are typical of the claims of the Class Members;
22 (d) the Class Representative has fairly and adequately protected the interests of the Class
23 Members; (e) a class action is superior to other available methods for an efficient adjudication of
24 this controversy; and (f) the counsel of record for the Class Representative, *i.e.*, Class Counsel,
25 are qualified to serve as counsel for the Plaintiff in his individual and representative capacity and
26 for the Class Members.

27 8. Defendant shall fund \$650,000.00 of the total Gross Settlement Amount, pursuant
28 to the terms of the Settlement Agreement.

 9. The Court approves the Individual Settlement Payment and Collective PAGA

Members Payment amounts, which shall be distributed pursuant to the terms of the Settlement Agreement.

10. The \$650,000.00 Gross Settlement Amount shall be used to pay (a) Class Counsel attorneys' fees in the amount of \$214,166.67 and reimbursement of costs in the amount of \$30,820.64; (b) an incentive payment to the Class Representative James Abernathy to reimburse him for his unique services in the following amount: \$10,000.00; (c) the sum of \$45,000.00 to be paid to the Labor and Workforce Development Agency for PAGA penalties; (d) PAGA penalties of \$15,000.00 to be distributed to the aggrieved employees; and (3) \$8,250.00 to the administrator Phoenix Settlement Administrators (the "Settlement Administrator") for its fees and costs relating to the settlement administration process. The Court finds that these amounts are fair and reasonable. Defendant is directed to make such payments in accordance with the terms of the Settlement Agreement. The allocation and distribution of these amounts shall be performed by Settlement Administrator.

11. As of the date of this Order, all members of the Class who have not opted out are hereby deemed to have waived and released all Released Claims and are forever barred and enjoined from prosecuting the Released Claims against the Released Parties as fully set forth in the Settlement. Further, all members of the Exempt Class who have not opted out are hereby deemed to have waived and released all Exempt Released Claims and are forever barred and enjoined from prosecuting the Exempt Released Claims against the Released Parties as fully set forth in the Settlement. In addition, all PAGA Members are enjoined from prosecuting the PAGA Released Claims against the Released Parties as set forth in the Settlement, and all Exempt PAGA Members are enjoined from prosecuting the Exempt PAGA Released Claims against the Released Parties as set forth in the Settlement. The Settlement is not an admission of liability or wrongdoing by Defendant, nor is this Order a finding of the validity of any claims in the Action or of any fault, omission, or wrongdoing by Defendant.

12. The Court hereby enters final judgment in this case in accordance with the terms of the Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of the Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction

1 over the action and the Parties, including all Participating Class Members, for purposes of
2 enforcing and interpreting this Order and the Settlement.

3 **IT IS SO ORDERED AND ADJUDGED.**

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5 DATED: _____

6 HON. CHARLES F. ADAMS
7 SUPERIOR COURT OF CALIFORNIA
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