

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

Iona Levin (SBN 294657)

iona@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, ROBERT SCHAFFINO, on
behalf of himself and all others similarly situated
and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ROBERT SCHAFFINO, on behalf of himself
and all others similarly situated

Plaintiff,

v.

M.O. DION & SONS, INC., a California
corporation; AMBER RESOURCES, LLC., a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 20STCV38023

[Assigned to the Hon. Gail Killefer in Dept.
37]

**[PROPOSED] FIRST AMENDED ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION AND
REPRESENTATIVE ACTION
SETTLEMENT, APPLICATION FOR
ATTORNEYS' FEES AND COSTS, AND
SERVICE AWARD**

This matter having come before the Court on March 3, 2023 for a final fairness hearing pursuant to the Order of this Court, granting preliminary approval ("Preliminary Approval Order") of the class and representative action settlement upon the terms set forth in the First Amended Joint Stipulation re: Class Action and Representative Action Settlement ("Settlement Agreement") submitted in support of Motion for Preliminary Approval of the Class and Representative Action Settlement and Certifying Class for Settlement Purposes; and due and adequate notice having been given to the Class Members as required in the Preliminary Approval Order; and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed and good cause appearing therefore, it is hereby **ORDERED, ADJUDGED AND DECREED THAT:**

1 1. The Motion for Final Approval of Class Action and Representative Action
2 Settlement; Service Award; and Reasonable Attorneys' Fees and Costs is hereby granted in its
3 entirety.

4 2. All terms used herein shall have the same meaning as defined in the Settlement
5 Agreement.

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

8 4. For settlement purposes only, the Court certifies the following class: all current and
9 former non-exempt, hourly-paid employees who worked for defendants M.O. Dion & Sons, Inc.
10 and Amber Resources, LLC doing business as Sawyer Petroleum ("Defendants") at any time during
11 the period from July 30, 2019 through October 25, 2021 ("Class Period") in California ("Class
12 Members").

13 5. The parties released shall mean Defendants, and each of their past, present, and future
14 respective subsidiaries, dba's, affiliates, PEOs, staffing agencies, parents, predecessors, successors,
15 divisions, joint ventures, investors and assigns, and their respective current and former employees,
16 managing agents, partners, servants, consultants, agents, directors, officers, shareholders, members,
17 principals, independent contractors, representatives, insurers, co-insurers, reinsurers, attorneys, and
18 personal or legal representatives ("Released Parties").

19 6. "Plaintiff" refers to plaintiff Robert Schaffino.

20 7. Upon the Effective Final Settlement Date and payment by Defendants to the
21 Settlement Administrator of the full Gross Settlement Amount and Employer's Taxes necessary to
22 effectuate the Settlement, Plaintiff and all Participating Class Members waive, release, and
23 discharge the Released Parties, of all claims against the Released Parties asserted in the Action , or
24 any and all claims that could be asserted against the Released Parties based on the factual allegations
25 in the Action, as follows: For the duration of the Class Period, the release includes: (a) all claims
26 for failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims
27 for failure to provide compliant meal and rest periods and associated compensation and/or premium
28 pay; (d) all claims for the failure to timely pay wages; (e) all claims for the failure to timely pay all

1 wages due upon termination or resignation; (f) all claims for non-compliant wage statements; (g) all
2 claims for failure to furnish employees with legally compliant documents to obtain or hold
3 employment; (h) all claims for failure to provide reimbursements for necessary work-related
4 expenses pursuant to Labor Code Section 2802; (i) all claims for failure to maintain and produce
5 accurate payroll and employment records; (k) all claims asserted through California Business &
6 Professions Code § 17200 *et seq.* arising out of the Labor Code violations referenced in the Action;
7 (j) all claims for failure to timely pay wages before separation of employment; and violation of
8 Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1198.5 and
9 2802 (the “Class Released Claims”).

10 8. For Aggrieved Employees, the release includes, for the duration of the PAGA Period,
11 all claims for civil penalties for the Class Released Claims, as well as all claims for civil penalties
12 under PAGA arising out of Labor Code Sections 210, 226.3, 558, 1197.1, and 2699 based on the
13 factual allegations and Labor Code sections alleged or that could have been alleged based on the
14 factual allegations to have been violated in the Action, including, without limitation, Labor Code
15 sections 200, 201, 202, 203, 204, 226, 226.7, 246, 404, 432, 510, 512, 558.1, 1174, 1194, 1194.2,
16 1197, 1197.1, 1198.5, 2802 and 2810.5 (“PAGA Released Claims”). This release also includes a
17 release from the State of California (to the extent the Plaintiff is permitted to provide such a release
18 for the State of California for the PAGA Period) of all PAGA claims alleged in the Operative
19 Complaint which occurred during the PAGA Period.

20 9. Distribution of the Notice of Class Action Settlement (“Class Notice” or “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 settlement
26 set forth in the Settlement Agreement, to all persons entitled to such Class Notice, and the Class
27 Notice fully satisfied the requirement of due process.

28 10. Zero (0) Settlement Class Members opted out of the Settlement and zero (0)

1 Settlement Class Members objected to the Settlement, thus all Settlement Class Members are
2 Participating Class Members.

3 11. The Court further finds that the Settlement is fair, reasonable and adequate and that
4 Plaintiff has satisfied the standards and applicable requirements for final approval of class action
5 settlement under California law, including the provisions of Code of Civil Procedure section 382
6 and Federal Rules of Civil Procedure, rule 23, approved for use by the California state courts in
7 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

8 12. This Court hereby approves the settlement set forth in the Settlement Agreement and
9 finds that the settlement is, in all respects, fair, adequate and reasonable and directs the parties to
10 effectuate the settlement according to its terms. The Court finds that the settlement has been reached
11 as a result of intensive, serious and non-collusive arm's length negotiations. The Court further finds
12 that the Parties have conducted extensive and costly investigation and research and counsel for the
13 parties are able to reasonably evaluate their respective positions. The Court also finds that
14 settlement at this time will avoid additional substantial costs, as well as avoid the delay and risks
15 that would be presented by the further prosecution of this Action. The Court has noted the
16 significant benefits to the Class Members under the settlement. The Court also finds that the class
17 is properly certified as a class for settlement purposes only.

18 13. Nothing contained in the Settlement Agreement shall be construed or deemed in
19 admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. Each of the
20 Parties has entered into this Settlement Agreement with the intention to avoid further disputes and
21 litigation, and the attendant inconvenience and expense. This Settlement Agreement shall be
22 inadmissible in evidence in any action or proceeding, except an action or proceeding to approve,
23 interpret, or enforce its terms.

24 14. The Court approves Plaintiff as class representative.

25 15. The Court approves David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C
26 of Bibiyan Law Group, P.C. as Class Counsel.

27 16. The Court approves Phoenix Settlement Administrators ("Phoenix" or "Settlement
28 Administrator") as the Settlement Administrator.

1 17. The Court hereby awards Class Counsel attorneys' fees in the total amount of
2 \$105,000.00, which is thirty-five percent (35%) of the Gross Settlement Amount and to be deducted
3 therefrom. In addition, the Court awards Class Counsel reimbursement of their costs of \$12,609.56
4 to be deducted from the Gross Settlement Amount. Attorneys' fees and costs will be paid by the
5 Settlement Administrator from the Gross Settlement Amount as set forth in the Settlement
6 Agreement. In approving the payment of Attorneys' Fees, the Court finds that the Settlement
7 conferred a significant benefit on the Class and the necessity and financial burden of private
8 enforcement of California labor laws makes an attorneys' fee award to Class Counsel appropriate.

9 18. The amount of this award is based on a lodestar analysis and is subject to a reasonable
10 multiplier for awarding reasonable attorney's fees and costs—it is thus reasonable, fair and
11 eminently justified. In setting an award of attorneys' fees, costs and expenses, this Court has
12 considered the following factors: (a) the time and labor required; (b) preclusion of other
13 employment; (c) the contingent nature of the cases; (d) the experience, reputation and ability of
14 Plaintiff's Counsel and the skill they displayed in the litigation; (e) the reasonable hourly rate of
15 attorneys' fees assessed by Class Counsel associated with prosecution of this Class Action, to wit:
16 David Bibiyan, Esq.: \$800; Diego Aviles: \$575; Vedang J. Patel, Esq.: \$450; Iona Levin, Esq.:
17 \$400; \$300; paralegals at \$150 and legal assistants at \$75; (f) the results achieved and benefits
18 conferred on the Settlement Class; and (g) the reaction of Settlement Class Members. (*See, eg:*
19 *Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
20 1810 fn. 21.)

21 19. The court hereby approves an incentive award of \$7,500.00 to Plaintiff Robert
22 Schaffino, in consideration for his time, effort, and risk incurred on behalf of the Settlement Class,
23 and for providing a general release and releasing unknown claims pursuant to Civil Code section
24 1542. The incentive award will be paid to Plaintiff by the Settlement Administrator from the Gross
25 Settlement Amount as set forth in the Settlement Agreement.

26 20. The Court hereby approves the Settlement Administrator's cost in the amount of
27 \$10,000.00. The Settlement Administrator, Phoenix Settlement Administrators, shall be paid the
28 cost of administration of the settlement from the Gross Settlement Amount.

1 21. The Court hereby approves the PAGA penalties amount of \$20,000.00, of which
2 \$15,000.00 shall be paid to the LWDA and the remaining \$5,000.00 to be distributed to the
3 “Aggrieved Employees”, defined as Class Members working for Defendant during the period from
4 July 30, 2019 through October 25, 2021 (“PAGA Period”) as non-exempt, hourly-paid employees
5 in California.

6 22. Except as expressly provided herein, the Parties each shall bear all of their own fees
7 and costs in connection with this matter.

8 23. Any checks from this distribution that are not cashed by Participating Class Members
9 within one hundred and eighty (180) calendar days from the date of their issuance shall be canceled
10 and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash
11 residue pursuant to Code of Civil Procedure section 384 (“Unpaid Residue”). The Unpaid Residue
12 plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted
13 to Legal Aid at Work for use in Los Angeles County, *cy pres* recipient.

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

17 25. An Order to Show Cause Hearing Re: Final Administration of the Class Action
18 Settlement is hereby scheduled for 12/21/2023, at 8: 30 a.m., in Department 37 of the
19 above entitled Court. At least five (5) calendar days prior to said OSC hearing, the Parties shall file
20 a declaration confirming that the claims have been paid and that administration of all of the terms
21 and conditions of the class action settlement have been completed. Should the Court find that said
22 declaration has sufficiently evidenced full and complete administration of the class action
23 settlement, said OSC hearing will go off-calendar.

24 ///

25 ///

26 ///

27 ///

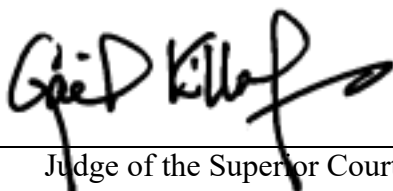
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

IT IS SO ORDERED.

Dated: 04/17/2023, 2023



Judge of the Superior Court