

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: Heredia vs. Alan Smith Pool Plastering, Inc.

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2020-01163609-CU-OE-CXC

I certify that I am not a party to this cause. I certify that that the following document(s), Order - Other dated 01/27/25, was transmitted electronically by an Orange County Superior Court email server on January 29, 2025, at 3:52:29 PM PST. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

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, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

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7 Attorneys for Plaintiff, GUSTAVO ROSETE HEREDIA, on behalf of himself and
all others similarly situated /or aggrieved,

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

10
11 GUSTAVO ROSETE HEREDIA, on behalf of
himself and all others similarly situated or
12 aggrieved,

13 Plaintiffs, 

14 v.

15 ALAN SMITH POOL PLASTERING, INC., a
16 California corporation; ALAN M. SMITH, an
individual; and DOES 1 through 100, inclusive,

17 Defendants.
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JAN 27 2025

DAVID H. YAMASAKI, Clerk of the Court

BY: J. Phu, DEPUTY

CASE NO.: 30-2020-01163609-CU-OE-CXC

*[Assigned to the Hon. Randall J. Sherman in
Dept. CX105]*

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

1 This matter having come before the Court on April 26, 2024 for a final fairness hearing
2 pursuant to the Order of this Court dated May 26, 2023, granting preliminary approval
3 (“Preliminary Approval Order”) of the class and representative action settlement upon the terms
4 set forth in the Joint Stipulation Re: Class Action and Representative Action Settlement as well as
5 the First and Second Amendments to Joint Stipulation Re: Class and Representative Action
6 Settlement (collectively, “Settlement Agreement”) submitted in support of Motion for Preliminary
7 Approval of the Class and Representative Action Settlement and Certifying Class for Settlement
8 Purposes; and due and adequate notice having been given to the Class Members as required in the
9 Preliminary Approval Order; and the Court having considered all papers filed and proceedings had
10 herein and otherwise being fully informed and good cause appearing therefore, it is hereby

11 **ORDERED, ADJUDGED AND DECREED THAT:**

12 1. On April 26, 2024, the Motion for Final Approval of Class Action and
13 Representative Action Settlement; Enhancement Award; and Reasonable Attorneys’ Fees and
14 Costs was granted in 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.

28 5. One Class Member named Tyler Mayernick opted out and zero Class Members

1 objected to the settlement.

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

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

19 8. For settlement purposes only, the Court certifies the following class: all current and
20 former non-exempt employees who worked for Alan Smith Pool Plastering, Inc. at any time from
21 October 6, 2016 through February 7, 2022 ("Class Period") in California ("Class Members").

22 9. Nothing contained in this Settlement Agreement shall be construed or deemed in
23 admission of liability, culpability, negligence, or wrongdoing on the part of Defendants.

24 10. Effective upon May 10, 2024, when the Court entered an Order and Judgment
25 granting Final Approval of the Settlement, and payment by Defendants to the Settlement
26 Administrator ILYM Group, Inc. ("ILYM") of the full Gross Settlement Amount and Employers'
27 Taxes necessary to effectuate the Settlement, Plaintiff and Participating Class Members release the
28 Released Parties as defined in the parties' Settlement Agreement of all claims against the Released

1 Parties asserted in the First Amended Complaint filed in the Action, or any and all claims that may
2 be asserted against the Released Parties based on the factual allegations in the First Amended
3 Complaint in the Action, as follows: For Participating Class Members, the release includes, for
4 the duration of the Class Period: (a) all claims for failure to pay minimum wages; (b) all claims for
5 failure to pay overtime wages; (c) all claims for failure to provide compliant meal and/or rest
6 periods or compensation in lieu thereof; (d) failure to timely pay all wages due upon termination,
7 resignation, or other separation of employment; (e) all claims for non-compliant wage statements;
8 (f) all claims for failure to reimburse business expenses; (g) violation of Labor Code section 226,
9 subdivision (c); and (h) all claims asserted through California Business & Professions Code §
10 17200 *et seq.* arising out of the Labor Code violations referenced in the Action (“Class Released
11 Claims”). For Aggrieved Employees, the release includes, for the duration of the PAGA Period
12 (*i.e.*, September 3, 2019 through February 7, 2022), all claims released during the Class Period, as
13 well as all claims for civil penalties under PAGA arising out of Labor Code sections 210, 226.3,
14 558, 1197.1, and 2699 based on the factual allegations and Labor Code sections alleged to have
15 been violated in the PAGA Notice and/or First Amended Complaint, which includes, without
16 limitation, Labor Code sections 200, 201, 202, 203, 204, 226, 246, 432, 510, 512, 1174, 1194,
17 1197, 1198.5, 2802 and 2810.5 (the “PAGA Released Claims”).

18 11. Each of the Parties has entered into this Settlement Agreement with the intention to
19 avoid further disputes and litigation, and the attendant inconvenience and expense.

20 12. As set forth in the Court’s May 10, 2024 Order and Judgment for Final Approval of
21 Class and Representative Action Settlement, the Settlement Agreement provides for a “Gross
22 Settlement Amount” of \$800,000.00. From the Gross Settlement Amount individual settlement
23 payments to Class Members, Court approved attorneys’ fees of \$280,000.00 and costs of
24 \$18,297.42, Settlement Administrator costs of \$8,746.50, a Service Award to Gustavo Rosete
25 Heredia of \$7,500.00, and PAGA penalties in the amount of \$50,000.00, of which \$37,500.00
26 (75%) will be paid to the LWDA and \$12,500.00 (25%) will be paid to Aggrieved Employees.
27 The payment of the settlement funds by Defendants, as well as the payment of individual
28 settlement checks to Class Members and Employers’ Taxes, will be made as set forth in the

1 Settlement Agreement.

2 13. As set forth in the Court's May 10, 2024 Order and Judgment for Final Approval
3 of Class and Representative Action Settlement, the Court awards Class Counsel attorneys' fees in
4 the total amount of \$280,000.00, which is thirty-five percent (35%) of the Gross Settlement
5 Amount and to be deducted therefrom. In addition, the Court awards Class Counsel
6 reimbursement of their costs of \$18,297.42 to be deducted from the Gross Settlement Amount.
7 Attorneys' fees and costs will be paid by the Settlement Administrator from the Gross Settlement
8 Amount as set forth in the Settlement Agreement. In approving the payment of attorneys' fees, the
9 Court finds that the Settlement conferred a significant benefit on the Class and the necessity and
10 financial burden of private enforcement of California labor laws makes an attorney fee award to
11 Plaintiff's Class Counsel appropriate. The amount of this award is based on the lodestar analysis,
12 subject to a reasonable multiplier, for awarding reasonable attorney's fees and costs and is
13 reasonable, fair and eminently justified. In setting an award of attorneys' fees, costs and expenses,
14 this Court has considered the following factors: (a) the time and labor required; (b) preclusion of
15 other employment; (c) the contingent nature of the cases; (d) the experience, reputation and ability
16 of Plaintiff's Counsel and the skill they displayed in the litigation; (e) the results achieved and
17 benefits conferred on the Class; and (f) the reaction of Plaintiff and the Settlement Class
18 Members. (See, e.g., *Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Dunk v. Ford Motor Co.* (1996)
19 48 Cal.App.4th 1794, 1810 fn. 21.)

20 14. As set forth in the Court's May 10, 2024 Order and Judgment for Final Approval
21 of Class and Representative Action Settlement, the Court approves a service award to Plaintiff
22 Gustavo Rosete Heredia in the amount of \$7,500.00 in consideration for Plaintiff's time, effort
23 and risk incurred on behalf of the Settlement Class. The Service Award will be paid to Plaintiff
24 by the Settlement Administrator from the Gross Settlement Amount as set forth in the Settlement
25 Agreement.

26 15. As set forth in the Court's May 10, 2024 Order and Judgment for Final Approval
27 of Class and Representative Action Settlement, the Court approves the Settlement Administrator's
28 cost in the amount of \$8,746.50. The Settlement Administrator, ILYM, shall be paid the cost of

1 administration of the settlement from the Gross Settlement Amount.

2 16. Pursuant to the Court's Order Granting Preliminary Approval of the Settlement
3 Agreement as well as the Court's Order and Judgment Granting Final Approval of Class and
4 Representative Action Settlement, Defendants Alan Smith Pool Plastering, Inc. and Alan M.
5 Smith (collectively, "Defendants") must fund the settlement account with \$800,000.00 as well as
6 Employers' Taxes and any other funds required by the parties' Settlement Agreement in
7 accordance with the terms of the Settlement Agreement. All funds shall be disbursed to
8 Plaintiff's Counsel, Plaintiff, the Labor Workforce and Development Agency, the Settlement
9 Administrator, Class Members and Aggrieved Employees pursuant to the Order Granting Final
10 Approval and Settlement Agreement. The funds associated with uncashed expired checks shall
11 be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure
12 section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, shall be
13 transmitted to Legal Aid at Work, 180 Montgomery Street, Suite 600, San Francisco, California
14 94101 for use in Orange County in the manner set out in the Settlement Agreement.

15 17. Pursuant to the Declaration of Nick Castro of ILYM Group, Inc., the Settlement
16 Administrator, \$52,961.81 remains uncashed after the check cashing deadline of December 1,
17 2024 and no interest accrued on the funds as they were being held in a non-interest-bearing
18 account pursuant to the parties' Settlement Agreement. Thus, the Settlement Administrator shall
19 transmit \$52,961.81 to Legal Aid at Work, for use in Orange County in the manner set out in the
20 Settlement Agreement.

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

23 19. The Court approves Gustavo Rosete Heredia as both the Class and Private
24 Attorneys General Act representative.

25 20. The Court approves David D. Bibiyan of Bibiyan Law Group, P.C. and Jasmin K.
26 Gill of J. Gill Law Group, P.C. as class counsel.

27 21. The Court approves ILYM as the Settlement Administrator.

28 22. The Court finds that class settlement on the terms set forth in the Settlement

1 Agreement was made in good faith, and constitutes a fair, reasonable and adequate compromise of
2 the released claims against Defendant.

3 23. Within seven (7) calendar days after payment of the full Gross Settlement Amount
4 by Defendants, as well as Employer Taxes, the Settlement Administrator shall distribute all
5 payments due under the Settlement, including the Individual Settlement Payments to Participating
6 Class Members and Individual PAGA Payments to Aggrieved Employees, as well as the Court-
7 approved payments for the Service Award to Plaintiff, attorneys' fees and litigation costs and
8 expenses to Class Counsel, Administration Costs to the Settlement Administrator, and the portion
9 of the LWDA payment payable to the LWDA.

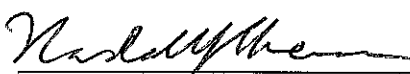
10 24. The Settlement Administrator is ordered to provide notice of the Final Judgment
11 entered in this Action by posting the same on its website for a period of no less than one (1) year
12 from May 10, 2024.

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

16 26. This document shall constitute a Judgment for purposes of California Rules of
17 Court, Rule 3.769(h).

18
19 **IT IS SO ORDERED.**

20 Dated: January 27, 2025



Judge of the Superior Court
JUDGE RANDALL J. SHERMAN

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 515 South Flower
Street, Suite 1800, Los Angeles, California 90071.

5 On January 16, 2025, and pursuant to California Code of Civil Procedure section
6 1010.6 and California Rules of Court, Rule 2.251(c), among other authorities, I caused a true and
correct copy of the following document(s) described as: (1) **[PROPOSED] AMENDED ORDER
7 AND JUDGMENT GRANTING FINAL APPROVAL OF CLASS AND
8 REPRESENTATIVE ACTION SETTLEMENT, APPLICATION FOR ATTORNEYS'
FEES AND COSTS, AND ENHANCEMENT AWARD;** and (2) **DECLARATION OF NICK
9 CASTRO OF ILYM GROUP, INC. REGARDING DISBURSEMENT OF THE
SETTLEMENT FUNDS** to be served by electronic transmission to the below-referenced
electronic e-mail addresses as follows:

10 David D. Bibiyan
11 Vedang Patel
12 Jennifer Echeverria
13 Nadia Rodriguez
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23 **Counsel for Defendants Alan Smith Pool Plastering, Inc. and Alan M. Smith**

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed on January 16, 2025, at Los Angeles, California.

26 _____
27 */s/ Adriana Gonzalez*
28 Adriana Gonzalez