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KARINA MOSQUEDA, on behalf of herself and all similarly situated employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

KARINA MOSQUEDA, on behalf of
herself and all similarly aggrieved
employees,

Plaintiff,

v.

SANSEI GARDENS, INC.; NEW IMAGE
LANDSCAPE COMPANY; and DOES 1
through 50, inclusive,

Defendants.

Case No. 21CV000325

(Assigned to the Hon. Thomas W. Wills, Dept.
15)

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

Date: December 8, 2023

Time: 8:30 A.M.

Dept.: 15

Complaint Filed: February 3, 2021

FAC Filed: September 27, 2022

Trial Date: Not Set

1 Plaintiff Karina Mosqueda (“Plaintiff”) and Defendants Sansei Gardens, Inc. and New
2 Image Landscaping Company (together, “Defendants”) (together with Plaintiff, the “Parties”)
3 have entered into the Joint Stipulation and Settlement of PAGA and Class Action Claims
4 (“Settlement Agreement”) to settle the above-captioned class action subject to the Court’s
5 approval (the “Settlement”).

6 This matter is now before the Court on Plaintiff’s Motion for Final Approval of Class
7 Action Settlement. The Court has read, heard, and considered all the pleadings and documents
8 submitted, and the presentations made in connection with the Motion which came on for
9 hearing on December 8, 2023.

10 **I. BACKGROUND**

11 On February 3, 2021, Plaintiff filed a representative action complaint in the Superior
12 Court of California, County of Monterey. Plaintiff subsequently filed a First Amended
13 Complaint on September 27, 2022. The First Amended Complaint is the operative Complaint
14 (“Complaint”) and asserts claims for: (1) failure to provide meal periods or compensation in
15 lieu thereof; (2) failure to provide rest periods or compensation in lieu thereof; (3) failure to
16 pay hourly and overtime wages; (4) failure to pay prevailing wages; (5) failure to comply with
17 itemized employee wage statement requirements; (6) failure to pay all wages upon
18 termination; (7) failure to reimburse business expenses; (8) unfair business practices; and (9)
19 penalties pursuant to the Private Attorneys General Act (“PAGA”).

20 **A. Class Members**

21 The “Settlement Class” is defined as “all individuals who are or were employed as
22 hourly, non-exempt employees by Defendants during the Class Period, who have not signed
23 Defendants’ December 2020 Arbitration Agreement.” The Class Period is from February 3,
24 2017 to April 28, 2023.

25 **B. Operation of the Settlement**

26 Pursuant to the Preliminary Approval Order, this Court conditionally certified the
27 Settlement Class and granted preliminary approval of the Settlement. The Preliminary
28 Approval Order also approved of the proposed form of class notice and notice plan. The Court

1 entered the Preliminary Approval Order after review and consideration of the pleadings filed
2 in connection herewith, and the oral presentations made by counsel at the hearing.

3 In compliance with the Preliminary Approval Order, the Notice of Pendency of Class
4 Action ("Notice") was sent to all Settlement Class Members via first class mail. The notice
5 dissemination process was timely completed.

6 This Court finds that the Settlement appears to be the product of serious, informed,
7 non-collusive negotiations, has no obvious deficiencies, and does not improperly grant
8 preferential treatment to any individuals. The Court finds that the Settlement was entered into
9 in good faith pursuant to California Code of Civil Procedure § 877.6. The Court further finds
10 that the Settlement is fair, reasonable, and adequate and that Plaintiff has satisfied the
11 standards for final approval of a class action settlement under California law. Under the
12 provisions of California Code of Civil Procedure § 382 and Federal Rule of Civil Procedure
13 23, as approved for use by the California state court in *Vasquez v. Superior Court*, 4 Cal. 3d
14 800, 821 (1971), the trial court has discretion to certify a class where:

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

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

21 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
22 AS FOLLOWS:

- 23 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
24 Settlement Agreement filed in this case.
- 25 2. The Court has jurisdiction over the subject matter of the litigation, the Class
26 Representative, the Class Members, and Defendant.
- 27 3. The Court finds that the dissemination of the Notice disseminated to the
28 Settlement Class Members, constituted the best notice practicable under the circumstances to

1 all Persons within the definition of the Settlement Class, and fully met the requirements of
2 California law and due process under the United States Constitution. No objections or disputes
3 were received by the Parties or the Court through the date of this Order. The Court finds that
4 zero (0) Class Members submitted a valid and timely Request for Exclusion from the
5 Settlement as determined by the Settlement Administrator.

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

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

12 6. The Court hereby certifies the following Settlement Class for settlement
13 purposes only: all individuals who are or were employed as hourly, non-exempt employees by
14 Defendants during the Class Period (February 3, 2017, through April 28, 2023), who have not
15 signed Defendants' December 2020 Arbitration Agreement.

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

28 8. Defendant shall fund \$1,000,000.00 of the total Gross Settlement Amount

1 pursuant to the terms of the Settlement Agreement.

2 9. The Court approves the Individual Settlement Payment and Individual PAGA
3 Payment amounts, which shall be distributed pursuant to the terms of the Settlement
4 Agreement.

5 10. The \$1,000,000.00 Gross Settlement Amount shall be used to pay (a) Class
6 Counsel attorneys' fees in the amount of \$333,333.33 and reimbursement of costs in the
7 amount of \$5,668.24; (b) a service payment to Class Representative Karina Mosqueda for
8 prosecuting this action on behalf of the Settlement Class in the amount of \$5,000.00; (c) the
9 sum of \$56,250.00 to be paid to the California Labor and Workforce Development Agency
10 ("LWDA") pursuant to the PAGA; (d) the sum of \$18,750.00 to be paid to the Aggrieved
11 Employees pursuant to the PAGA; and (e) \$13,500.00 to the settlement administrator Phoenix
12 Settlement Administrators (the "Settlement Administrator") for its fees and costs relating to
13 the settlement administration process. The Court finds that these amounts are fair and
14 reasonable. The allocation and distribution of these amounts from the \$1,000,000.00 Gross
15 Settlement Amount shall be performed by the Settlement Administrator pursuant to the terms
16 of the Settlement Agreement. The Court also finds that Plaintiff's counsel complied with the
17 notice procedures to the LWDA as required by PAGA to settle the PAGA claims.

18 11. As of the date of this Order, all Class Members are hereby deemed to have
19 waived and released all Released Claims against the Released Parties as fully set forth in the
20 Settlement. By means of this Order, all Aggrieved Employees are hereby deemed to have
21 waived and released all Released PAGA Claims against the Released Parties as fully set forth
22 in the Settlement. The Class Representative shall be bound by the additional general release
23 provided in the Settlement Agreement. The Settlement is not an admission of liability or
24 wrongdoing by Defendants, nor is this Order a finding of the validity of any claims in the
25 action or of any fault, omission, or wrongdoing by Defendant.

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

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

3 13. The Court sets a hearing to confirm the distribution of the Settlement as set forth
4 herein for _____, 2024, at _____ a.m. The Parties shall
5 submit a declaration from the Administrator regarding the distribution of the Settlement no
6 later than ____ days before the hearing.

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

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9 DATED: _____

10 HON. THOMAS W. WILLS
11 SUPERIOR COURT OF CALIFORNIA
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