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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
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SETTING
A SETTLEMENT FAIRNESS HEARING**

Date: February 10, 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's ("Plaintiff") application for an Order Granting
2 Preliminary Approval of Class Action Settlement was filed with the Court on January 19,
3 2023, and a hearing was held before this Court on February 10, 2023. Appearances for
4 Plaintiff and Defendants Sansei Gardens, Inc. and New Image Landscape Company (together,
5 "Defendants") were noted on the record.

6 The Court has considered the Joint Stipulation and Settlement of PAGA and Class
7 Action Claims ("Stipulation" or "Settlement Agreement") and all other papers filed in this
8 action. The terms used herein utilize the same definitions as set forth in the Settlement
9 Agreement.

10 NOW THEREFORE, IT IS HEREBY ORDERED:

11 1. This Court grants preliminary approval of the Settlement Agreement between
12 Plaintiff and Defendants filed herewith. The Settlement Agreement appears to be fair,
13 adequate, and reasonable to the Class.

14 2. The Class Representative and Defendants (hereafter, "Settling Parties"), through
15 their counsel of record in the Litigation, have reached an agreement to settle all claims in the
16 Litigation on behalf of the Class (as defined below and in the Settlement Agreement) as a
17 whole.

18 3. The Court hereby approves the following Class for settlement purposes:

19 All individuals who are or were employed as hourly, non-exempt
20 employees by Defendants during the Class Period, who have not
21 signed Defendants' December 2020 Arbitration Agreement.

22 Should for whatever reason the Settlement Agreement not become Final, the fact that
23 the Parties were willing to stipulate to certification of a class as part of the Settlement
24 Agreement shall have no bearing on, or be admissible in connection with, the Litigation. The
25 Class Period is

26 4. The Court appoints and designates: (a) Plaintiff Karina Mosqueda as the Class
27 Representative and (b) B. James Fitzpatrick and Laura L. Franklin of Fitzpatrick & Swanston;
28 and Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C. as Class Counsel for the

1 Class. Class Counsel is authorized to act on behalf of the Class with respect to all acts or
2 consents required by, or which may be given, pursuant to the Settlement Agreement, and such
3 other acts reasonably necessary to finalize the Settlement Agreement and its terms. Any Class
4 Member may enter an appearance through his or her own counsel at such Class Member's own
5 expense. Any Class Member who does not enter an appearance or appear on his or her own
6 behalf will be represented by Class Counsel.

7 5. The Court hereby approves the terms and conditions provided for in the
8 Settlement Agreement. The Court finds that on a preliminary basis the Settlement Agreement
9 falls within the range of reasonableness of a settlement, including the amount of the PAGA
10 penalties, and appears to be presumptively valid, subject only to any objections that may be
11 raised at the final fairness hearing and final approval by the Court. It appears to the Court on a
12 preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Class
13 Members when balanced against the probable outcome of further litigation relating to liability
14 and damages issues. It also appears that investigation, research, and court proceedings have
15 been conducted so that counsel for the Settling Parties are able to reasonably evaluate their
16 respective positions. It appears to the Court that settlement at this time will avoid substantial
17 additional costs by all Settling Parties, as well as avoid the delay and risks that would be
18 presented by the further prosecution of the Litigation. It also appears that settlement has been
19 reached as a result of intensive, serious, and non-collusive arm's-length negotiations.

20 6. A final fairness hearing on the question of whether the proposed Settlement
21 Agreement, the allocation of payments to Class Members, attorneys' fees and costs to Class
22 Counsel, the payment to the Settlement Administrator, the payment of PAGA penalties to the
23 Labor and Workforce Development Agency and Aggrieved Employees, and the Class
24 Representative Enhancement Award should be finally approved as fair, reasonable, and
25 adequate as to the members of the Class is hereby set for _____ at _____ a.m.
26 in this Court.

27 7. The Court hereby approves, as to form and content, the Notice of Pendency of
28 Class Action ("Notice") to be sent to Class Members, which is attached as **Exhibit A** to the

1 Settlement Agreement. The Court finds that distribution of the Notice to Class Members
2 substantially in the manner and form set forth in the Settlement Agreement and this Order
3 meets the requirements of due process and shall constitute due and sufficient notice to all
4 parties entitled thereto.

5 8. The Court appoints and designates Phoenix Settlement Administrators as the
6 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide
7 the approved Notice to Class Members using the procedures set forth in the Settlement
8 Agreement.

9 9. Any Class Member may choose to opt out of and be excluded from the
10 settlement as provided in the Settlement Agreement and Notice and by following the
11 instructions for requesting exclusion. Any person who timely and properly opts out of the
12 settlement will not be bound by the Settlement Agreement or have any right to object, appeal,
13 or comment thereon. However, a Class Member who validly excludes him/herself from the
14 Settlement may also be considered an Aggrieved Employee under the terms of the Settlement
15 and may not exclude him/herself from the portion of the Settlement that pertains to Released
16 PAGA Claims. Any request for exclusion must be in writing and signed by each such Class
17 Member opting out and must otherwise comply with the requirements delineated in the Notice.
18 Class Members who have not requested exclusion by submitting a valid and timely request by
19 the deadline shall be bound by all determinations of the Court, the Settlement Agreement, and
20 Judgment.

21 10. Any Class Member may object to the Settlement Agreement or express his or
22 her views regarding the Settlement Agreement and may present evidence and file briefs or
23 other papers that may be proper and relevant to the issues to be heard and determined by the
24 Court as provided in the Notice.

25 11. Any portion of the Individual Settlement Payment and/or Individual PAGA
26 Payment not cashed within one-hundred eighty (180) days from the date of issuance of the
27 check shall be entirely paid to the Watsonville Law Center, after all payments for the
28 Settlement Administration Costs, Plaintiff's Enhancement Award, Attorneys' Fees, Attorneys'

1 Costs, and PAGA Award have been fully paid.

2 12. The Motion for Final Approval shall be filed by the Class Representative no
3 later than sixteen (16) court days before the Settlement Fairness Hearing.

4 13. The Court reserves the right to adjourn or continue the date of the Settlement
5 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice
6 to the Class, and retains jurisdiction to consider all further applications arising out of or
7 connected with the Class Settlement Agreement.

8 IT IS SO ORDERED.

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10 DATED: _____

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