

Larry W. Lee (State Bar No. 228175)
Kwanporn “Mai” Tulyathan (State Bar No. 316704)
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
ktulyathan@diversitylaw.com

William L. Marder (State Bar No. 170131)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile
bill@polarislawgroup.com

Attorneys for Plaintiff, the Class, and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

TONY CATELLI, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

INNOVATIVE CONSTRUCTION
SOLUTIONS, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: MSC21-01257

(Assigned for all purposes to the Honorable
Edward G. Weil, Department 39)

**[PROPOSED] ORDER GRANTING
PLAINTIFF’S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: TBD
Time: 9:00 a.m.
Dept.: 39

Complaint Filed: June 1, 2021
Trial Date: None Set

1 Plaintiff Tony Catelli's ("Plaintiff") application for an Order Granting Preliminary
2 Approval of Class Action Settlement was filed with the Court on December 14, 2022, and a
3 hearing was held before this Court on _____. Appearances for Plaintiff and
4 Defendant Innovative Construction Solutions ("Defendant") at the hearing were noted on the
5 record.

6 The Court has considered the Joint Stipulation of Class Action and PAGA Settlement
7 ("Settlement Agreement") and all other papers filed in this action.

8 **NOW THEREFORE, IT IS HEREBY ORDERED:**

9 1. The Court grants preliminary approval to the settlement based on the terms set
10 forth in Settlement Agreement. This Order incorporates by reference the definitions in the
11 Settlement Agreement, and all terms defined therein shall have the same meaning in this Order
12 as set forth in the Settlement Agreement.

13 2. The settlement provides for Defendant to pay the Maximum Settlement Amount
14 of \$30,000.00. The Court preliminarily finds that the settlement is fair, adequate, and reasonable
15 to the Class, and preliminarily approves the terms of the settlement. This preliminary approval is
16 subject to the objections of Class Members and final review by the Court.

17 3. A Final Approval Hearing shall be held before this Court on
18 _____, at 9:00 a.m. in Department 39 of the Superior Court of the State of
19 California for the County of Contra Costa, to determine all necessary matters concerning the
20 settlement, including: whether the proposed settlement of the Action on the terms and conditions
21 provided for in the settlement is fair, adequate, and reasonable and should be finally approved by
22 the Court; whether the Final Approval Order and Judgment should be entered; whether the Plan
23 of Allocation contained in the settlement should be approved as fair, adequate, and reasonable to
24 the Class Members; and whether to finally approve the PAGA Allocation, Attorneys' Fees and
25 Costs, Class Representative Enhancement Payment, and Settlement Administration Costs. The
26 motion for final approval and the motion for award of attorneys' fees and costs shall be filed no
27 later than sixteen (16) court days before the Final Approval Hearing.

28 4. The Court recognizes that the Plaintiff and the Defendant stipulate and agree to

1 certification of the Class for settlement purposes only. This stipulation will not be deemed
2 admissible in this or any other proceeding should this settlement not become final. Whether or
3 not the settlement is finally approved, neither the Settlement Agreement, nor any document,
4 statement, proceeding, or conduct related to the Settlement Agreement may be admitted in any
5 proceeding as an admission by Defendant or any of the Released Parties, the Plaintiff, or any
6 person within the definition of the Class.

7 5. The Class Period is from June 1, 2020, through April 26, 2021. The PAGA Period
8 is from April 13, 2020, through April 26, 2021. For settlement purposes only, the Court certifies
9 the following Class: “all current and former employees of Defendant who worked in California
10 and received an Initial Physical Wage Statement during the Class Period.”

11 6. The Court hereby appoints Tony Catelli as the representative of the Class. The
12 Court further appoints Diversity Law Group, P.C. and Polaris Law Group as counsel for the
13 Class (“Class Counsel”).

14 7. The Agreement specifies for an attorneys' fees award not to exceed one-third of
15 the Maximum Settlement Amount, an award of litigation expenses incurred, not to exceed
16 \$5,000.00, and proposed Enhancement Payment to the Class Representative in an amount not to
17 exceed \$2,500.00. While these awards appear to be within the range of reasonableness, the Court
18 will not approve the amount of attorneys’ fees and costs until the Final Approval Hearing.
19 Similarly, the Court will not decide the amount of the Class Representative Enhancement
20 Payment until the Final Approval Hearing.

21 8. The Court hereby approves, as to form and content, the Notice of Settlement
22 attached as Exhibit A to the Settlement Agreement. The Court finds that the distribution of the
23 Notice of Settlement substantially in the manner and form set forth in the Settlement Agreement
24 and this Order meets the requirements of due process, is the best notice practicable under the
25 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
26 Court hereby approves on a preliminary basis the Maximum Settlement Amount as provided for
27 in the Settlement Agreement. It appears to the Court on a preliminary basis that the settlement
28 amount and terms are fair, adequate, and reasonable as to all potential Class Members when

1 balanced against the probable outcome of further litigation relating to liability and damages
2 issues. It further appears that: investigation and research have been conducted such that counsel
3 for the Parties at this time are able to reasonably evaluate their respective positions; that
4 settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the
5 delay and risks that would be presented by the further prosecution of the Action; and that the
6 settlement has been reached as the result of intensive, serious, and non-collusive, arm's-length
7 negotiations.

8 9. The Court hereby appoints Phoenix Settlement Administrators as Settlement
9 Administrator. Within 21 days of this Order, Defendant will provide to the Settlement
10 Administrator an electronic database containing the Class List. Within 10 days of receipt of the
11 Class List from Defendant, the Settlement Administrator will mail the Notice of Settlement to all
12 Class Members via first-class regular U.S. Mail to their most current, known mailing address.

13 10. Any Class Member may choose to opt out of and be excluded from the Class as
14 provided in the Notice of Settlement by following the instructions for requesting exclusion from
15 the Class that are set forth in the Notice of Settlement. PAGA Employees may not opt out of the
16 PAGA portion of the settlement. All Requests for Exclusion must be submitted within forty-five
17 (45) days from the date the Notice of Settlement is first mailed. Any such person who chooses to
18 opt out of and be excluded from the Class will not be entitled to any recovery under the
19 settlement and will not be bound by the non-PAGA portion of the settlement or have any right to
20 object, appeal, or comment thereon. Any written request to opt out must comply with the
21 instructions in the Notice of Settlement and be signed by each such person opting out. Class
22 Members who have not validly requested exclusion shall be bound by all determinations of the
23 Court, the Agreement, and the Judgment.

24 11. Any Class Member who has not opted out may appear at the final approval
25 hearing and may object or express their views regarding the settlement and may present evidence
26 and file briefs or other papers that may be proper and relevant to the issues to be heard and
27 determined by the Court as provided in the Notice of Settlement. Class Members will have 45
28 days from the date the Notice of Settlement is mailed to postmark their written objections to the

1 Settlement Administrator. Class Members who fail to timely submit objections in the manner
2 specified above shall be deemed to have waived any objections and shall be foreclosed from
3 making any objection (whether by appeal or otherwise) to the settlement.

4 12. The settlement is not a concession or admission and shall not be used against
5 Defendant as an admission or indication with respect to any claim of any fault or omission by
6 Defendant. Whether or not the settlement is finally approved, neither the settlement, nor any
7 document, statement, proceeding, or conduct related to the settlement, nor any reports or
8 accounts thereof, shall in any event be construed as, offered, or admitted in evidence as, received
9 as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited
10 to, evidence of a presumption, concession, indication, or admission by Defendant of any liability,
11 fault, wrongdoing, omission, concession, or damage.

12 13. In the event the settlement does not become effective in accordance with the
13 terms of the Settlement Agreement, or the settlement is not finally approved, or is terminated or
14 fails to become effective for any reason, this Order shall be rendered null and void and shall be
15 vacated, and the Parties shall revert to their respective positions as of before entering into the
16 Settlement Agreement.

17 14. The Court reserves the right to adjourn or continue the date of the final approval
18 hearing and all dates provided for in the Settlement Agreement without further notice to Class
19 Members and retains jurisdiction to consider all further applications arising out of or connected
20 with the proposed settlement.

21 **IT IS SO ORDERED.**

22 DATED: _____

HON. EDWARD G. WEIL
SUPERIOR COURT OF CALIFORNIA