

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 06 2023

BY 
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

EPIGMENIO RIVAS HERRERA, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

O. W. LEE CO. INC., a California corporation;
and DOES 1 through 100

Defendants.

Case No. CIVSB2109747

*[Assigned for all purposes to Hon. David S.
Cohn; Dept. S-26]*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND FINAL
JUDGMENT**

Date: July 6, 2023

Time: 10:00 a.m.

Dept: S-26

Complaint Filed: April 8, 2021

Trial Date: None set.

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1. Final judgment is hereby entered in conformity with the Settlement Agreement and this Final Approval Order.

All of Defendant O.W. Lee's current and former non-exempt employees who performed work for O.W. Lee in California at any time from October 12, 2016 to March 1, 2021 ("Class Period"), and who did not previously sign a severance agreement with O.W. Lee.

4. Notice was provided to Settlement Class members as set forth in the Settlement, which was approved by the Court on January 24, 2023, and the notice process has been completed in conformity with the Settlement and the Court's Preliminary Approval Order. The Court finds that said notice was the best notice practicable under the circumstances. The Class Notice provided due and adequate notice of the proceedings and matters set forth therein, informed Settlement Class members of their rights, and fully satisfied the requirements of California Code

1 of Civil Procedure § 1781(e), California Rule of Court 3.769, and due process.

2 5. The Court finds that no Settlement Class member objected to the Settlement, that
3 no Settlement Class member opted out of the Settlement, and that the 100% participation rate in
4 the Settlement supports final approval.

5 6. The Court hereby approves the settlement as set forth in the Settlement as fair,
6 reasonable, and adequate, and directs the parties to effectuate the Settlement according to its
7 terms.

8 7. For purposes of settlement only, the Court finds that: (a) the members of the
9 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
10 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
11 community of interest among members of the Settlement Class with respect to the subject matter
12 of the litigation; (c) the claims of the Class Representative are typical of the claims of the
13 Settlement Class members; (d) the Class Representative has fairly and adequately protected the
14 interests of the Settlement Class members; (e) a class action is superior to other available methods
15 for an efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as
16 counsel for the Class Representative and the Settlement Class.

17 8. The Court finds that given the absence of objections to the Settlement, this Order
18 shall be considered final as of the date of entry.

19 9. The Court finds that the Individual Settlement Awards, as provided for in the
20 Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to
21 distribute the Individual Settlement Awards in conformity with the terms of the Settlement.

22 10. The Court finds that an Enhancement Award in the amount of \$7,500.00 to
23 Plaintiff is appropriate for Plaintiff's risks undertaken and his service to the Settlement Class. The
24 Court finds that this payment is fair, reasonable, and adequate, and orders that the Settlement
25 Administrator make this payment in conformity with the terms of the Settlement.

26 11. The Court finds that attorneys' fees in the amount of \$166,666.67 and litigation
27 costs of \$19,322.80 for Class Counsel are fair, reasonable, and adequate in light of the common
28 fund created by the Settlement, and orders that the Settlement Administrator distribute these

1 payments to Class Counsel in conformity with the terms of the Settlement.

2 12. The Court orders that the Settlement Administrator shall be paid \$7,000.00 from
3 the Gross Settlement Amount in conformity with the terms of the Settlement, for all of its work
4 done and to be done until the completion of this matter and finds that sum appropriate.

5 13. The Court finds that the payment to the California Labor & Workforce
6 Development Agency ("LWDA") in the amount of \$15,000.00 for its share of the settlement of
7 Plaintiff's representative claim under the PAGA is fair, reasonable, and adequate, and orders the
8 Settlement Administrator to distribute this payment to the LWDA in conformity with the terms
9 of the Settlement.

10 14. This Court orders that any settlement checks shall be negotiable for 180 calendar
11 days from the date of issuance of the check, and that any settlement checks that remain uncashed
12 after 180 days after they are mailed shall be placed in a *cy pres* fund and awarded to Legal Aid
13 Society of San Bernardino in accordance with Section 384 of the California Code of Civil
14 Procedure.

15 15. As of the date that: (i) the Final Effective Date occurs and (ii) the settlement is
16 fully funded, Plaintiff and every member of the Settlement Class will fully, forever, and
17 irrevocably release and discharge Defendant and any and all of Defendant's past and present
18 shareholders, owners, affiliates, divisions, d/b/a's, parents, subsidiaries, predecessors, successors,
19 assigns, employees, directors, attorneys, insurers, and accountants (collectively, the "Released
20 Parties") from all claims against the Released Parties under California law that were asserted in
21 the operative Complaint, or which could have been asserted in the Action based on the facts and
22 circumstances as alleged in the operative Complaint, including claims for: (i) failure to pay
23 overtime wages; (ii) minimum wage violations; (iii) meal period violations; (iv) rest period
24 violations; (v) wage statement violations; (vi) failure to timely pay final wages at termination; and
25 (vii) any claims for or under Business & Professions Code § 17200 based on any of the above
26 claims, arising from Settlement Class members' employment with Defendant during the Class
27 Period (collectively, the "Class Released Claims"). In addition, all Settlement Class members who
28 worked for Defendant in California at any time from October 12, 2019 through the end of the

1 Class Period (the "PAGA Period"), regardless whether they opt out, will release all claims for
2 civil penalties under the PAGA based on any of the claims (i)-(vi) mentioned above, arising from
3 their employment with Defendant during the PAGA Period (the "PAGA Released Claims"). The
4 period of the release of the Class Released Claims shall extend to the limits of the Class Period.
5 The period of the release of the PAGA Released Claims shall extend to the limits of the PAGA
6 Period.

7 16. This document shall constitute a final judgment pursuant to California Rule of
8 Court 3.769(h), which provides, "If the court approves the settlement agreement after the final
9 approval hearing, the court must make and enter judgment. The judgment must include a provision
10 for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment.
11 The court may not enter an order dismissing the action at the same time as, or after, entry of
12 judgment." The Court will retain jurisdiction to enforce the Settlement, the Final Approval Order,
13 and this Judgment.

14 17. Plaintiff shall file a disbursement declaration on or before July 8, 2024 ~~April 15, 2024~~.

15 **IT IS SO ORDERED.**

16 Dated: 7.6, 2023

17 **DAVID COHN**
18 Honorable David S. Cohn
19 Judge of the Superior Court
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