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CLERK OF THE SUPERIOR COURT

BY

X. Schmitt DEPUTY CLERK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED**

JOSE LOZANO, individually, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiff,

v.

PETERSON BROTHERS CONSTRUCTION,
INC., a California Corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 22CV-00103

Assigned for All Purposes to:
Honorable Brian McCabe
Courtroom 8

CLASS ACTION

**~~PROPOSED~~ ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: August 26, 2022
Hearing Time: 8:15 a.m.
Hearing Place: Courtroom 8

Complaint Filed: January 7, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Jose Lozano's ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class
3 Representative Enhancement Payment, and after considering the papers submitted in support of
4 the motion, including the Joint Stipulation of Class Action Settlement and Release ("Settlement
5 Agreement," "Settlement," or "Agreement"), hereby FINDS AND ORDERS as follows:

6 Plaintiff and Defendant Peterson Brothers Construction, Inc. ("Defendant") entered a
7 Settlement Agreement on or about March 4, 2022 to settle this class action lawsuit.

8 The Court entered an Order dated April 8, 2022 preliminarily approving the settlement
9 of this class action lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
10 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
11 Members, scheduling a Fairness Hearing for August 26, 2022, and providing Class Members
12 with an opportunity to object, request exclusion, or submit a Claim Form.

13 The Court held a Fairness Hearing on August 26, 2022 to determine whether to give
14 final approval to the settlement of this class action.

15 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
16 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
17 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
18 in the Settlement Agreement.

19 2. Jurisdiction. Because adequate notice has been disseminated, and all Class
20 Members have been given the opportunity to request exclusion, the Court has personal
21 jurisdiction to the claims of all Class Members. The Court has subject matter jurisdiction over
22 this class action, including jurisdiction to approve the settlement, grant final certification of the
23 Class, and dismiss the class action.

24 3. Final Class Certification. The Court finds the Class satisfies all applicable
25 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
26 process. Accordingly, the Court certifies a Class consisting of all current and former hourly-
27 paid or non-exempt employees of Defendant within the State of California at any time during
28 the period from June 4, 2016, to January 4, 2022 ("Class," "Class Members," and "Class

Period”). There are two hundred forty-three (243) Class Members who submitted timely and valid Claim Forms for participation in the Class Action Settlement (“Claimants”) who will receive their share of the Net Settlement Amount.

4. Adequacy of Representation. As Class Counsel, Douglas Han, Shunt Tatavos-Gharajeh, Phillip Song, and Chancellor Nobles of the Justice Law Corporation have fully and adequately represented the Class for purposes of entering and implementing the Settlement and have satisfied the requirements of Code of Civil Procedure section 382.

5. Notice Packet. The Court finds the Notice of Class Action Settlement and Claim Form (collectively, known as the “Notice Packet”) and its distribution to Class Members have been implemented pursuant to the Agreement and this Court’s Preliminary Approval Order. The Court also finds the Notice Packet:

a. constitutes notice reasonably calculated, under the circumstances, to apprise Class Members of: (i) the pendency of the class action; (ii) the material terms and provisions of the Settlement and their rights under the Settlement; (iii) their right to object to any aspect of the proposed Settlement; (iv) their right to exclude themselves from the Class and the Settlement; (v) their right to claim an Individual Settlement Payment by submitting a Claim Form; (vi) their right to appear at the Settlement Fairness Hearing; and (vii) the binding effect of the orders and judgment in the class action, whether favorable or unfavorable, on Class Members who do not affirmatively opt-out of this Stipulation of Settlement by submitting a timely and valid Request for Exclusion (“Settlement Class Members”);

b. constitutes notice fully satisfying the requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due process;

c. constitutes notice reasonable, adequate, and sufficient to the Class; and

d. constitutes the best practicable notice to Class Members.

6. Final Settlement Approval. The terms and provisions of the Settlement were entered in good faith and are the product of arm’s-length negotiations by experienced counsel who have done a meaningful investigation of the claims in the dispute. The Settlement and all its terms and provisions are fully and finally approved as fair, reasonable, adequate, and in the

1 best interests of the Parties. The Parties are hereby directed to implement the Settlement
2 according to its terms and provisions.

3 7. Binding Effect. The terms and provisions of Agreement and this Order and
4 Judgment are binding on the Settlement Class Members, as well as their heirs, executors and
5 administrators, successors, and assigns, and those terms shall have res judicata and other
6 preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by
7 or on behalf of any such persons, to the extent those claims, lawsuits, or other proceedings
8 involve matters that were or could have been raised in the class action and are encompassed by
9 the release of the Released Claims. The Agreement will have no binding effect upon, and
10 provide no res judicata preclusion to, Class Members who opted out.

11 8. Release of Claims by Class Members. Upon the Effective Date, Plaintiff and
12 Settlement Class Members will be deemed to have fully, finally, and forever released, settled,
13 compromised, relinquished, and discharged with respect to all the Released Parties any and all
14 Released Claims for any period during the Released Claims Period.

15 a. General Release by the Class Representative. Plaintiff shall provide a separate
16 general release to all the Released Parties as set forth in the Agreement.
17 Furthermore, Plaintiff expressly waives and relinquishes any rights or benefits
18 available to them under the provisions of section 1542 of the Civil Code.

19 b. Released Parties. The Released Parties are Defendant, and its former and present
20 parents, subsidiaries, and affiliates, and current and former officers, directors,
21 owners, employees, partners, shareholders and agents, and the predecessors and
22 successors, assigns, and legal representatives of all such entities and individuals.

23 9. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
24 any action to enforce the terms and provisions of the Settlement Agreement.

25 10. Class Representative Enhancement Payment. The Court finds the Class
26 Representative Enhancement Payment of \$10,000, to be paid by Defendant to Plaintiff out of
27 the Maximum Settlement Amount, to be reasonable and appropriate. The Class Representative
28 Enhancement Payment is to be paid pursuant to the terms and provisions of the Agreement.

1 a. The rationale for making enhancement payments is the class representatives
2 should be compensated for the expense and risk they have incurred in conferring
3 a benefit on other class members. Such enhancement payments are appropriate if
4 they are necessary to induce individuals to participate in the suit. Criteria courts
5 may consider include the: (1) risk in commencing this suit; (2) notoriety and
6 personal difficulties encountered; (3) amount of time and effort spent; (4)
7 duration of the litigation; and (5) personal benefit (or lack thereof) enjoyed.

8 b. The Court reviewed Plaintiff's declaration outlining his involvement in the case.
9 Given the risks inherent in his services as the Class Representative, the duration
10 of the case and time involved, and the benefits created for the Class, the Court
11 approves the Class Representative Enhancement Payment of \$10,000.

12 11. Attorneys' Fees and Costs. The Court finds an award of attorneys' fees of
13 \$1,302,000, to be paid out of the Maximum Settlement Amount by Defendant to Class Counsel,
14 to be reasonable and appropriate. The Court finds an award attorneys' costs for actual litigation
15 costs of \$20,908.97, to be paid by Defendant to Class Counsel out of the Maximum Settlement
16 Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the
17 terms and provisions of the Settlement. Defendant shall not be required to pay for any other
18 attorneys' fees, costs, or disbursements incurred by Class Counsel or any other counsel
19 representing Plaintiff or Class Members. Defendant shall not be required to pay for any other
20 attorneys' fees, costs, or disbursements incurred by Plaintiff or Class Members in connection
21 with or related to the class action, the Settlement, the administration of the Settlement, and/or
22 the Released Claims.

23 a. The Court has an independent right and responsibility to review the requested
24 attorneys' fees and only award so much as it determines reasonable. (See
25 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
26 127-28.) The attorneys' fees requested by Class Counsel of \$1,302,000 is thirty-
27 five percent (35%) of the common fund created for the benefit of the Class
28 Members and is supported by use of the percentage-fee method. (See *Laffitte v.*

Robert Half International, Inc. (2016) 1 Cal.5th 480, 504.) Considering the excellent results achieved for the Class, the financial risk taken by Class Counsel, the novel and difficult nature of this litigation, the skill required to deal with these issues, the percentage fees award in other cases, and the contingent fees charged in private marketplace, the Court finds the request for the attorneys' fees is consistent with the legal marketplace, is reasonable, and is approved.

- b. The Court reviewed Douglas Han's declaration regarding the costs expended in the prosecution of this case. Under the terms of the Settlement, Class Counsel may seek reimbursement of up to \$30,000 in litigation costs. The Court finds Class Counsel expended \$20,908.97 in litigation costs and that such costs were reasonable. The Court approves the payment of attorneys' costs of \$20,908.97 for the reimbursement of the costs and expenses incurred by Class Counsel.

12. Claims Administration Costs. The Court finds the Claims Administration Costs of \$9,995, to be paid by Defendant to the Claims Administrator out of the Maximum Settlement Amount, to be reasonable and appropriate. The Claims Administration Costs are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

- a. The Court reviewed the declaration of Cassandra Polites from Simpluris, Inc. ("Simpluris"), the Court-approved Claims Administrator. The Court finds notice was provided to the Class pursuant to the Preliminary Approval Order, the notice constitutes the best practicable notice to the Class, and the notice satisfied due process. Thus, the Court approves a payment for Claims Administration Costs of \$9,995 for Simpluris' services in administering the Settlement.

13. PAGA Payment. The Court finds the Private Attorneys General Act of 2004 ("PAGA") Payment of \$100,000, seventy-five percent (75%) of which (\$75,000) will be paid by Defendant to the California Labor and Workforce Development Agency ("LWDA Payment") out of the Maximum Settlement Amount and twenty-five percent (25%) of which (\$25,000) will be distributed, pro rata, based on weeks worked to all PAGA Aggrieved

1 Employees, to be reasonable and appropriate. The PAGA Payment is to be paid pursuant to the
2 terms and provisions of the Agreement.

3 14. Funding of the Settlement. Within three (3) business days after the Final
4 Approval of the Settlement, the Claims Administrator will provide the Parties with an
5 accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement.
6 Defendant will deposit all Court-approved costs, fees and payments, and claim amounts from
7 the Maximum Settlement Amount into a Qualified Settlement Fund ("QSF") account to be
8 established by the Claims Administrator within fifteen (15) business days of the Effective Date.
9 Afterwards, within three (3) business days of the Court granting final approval, the Claims
10 Administrator will calculate all payments due.

11 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
12 Settlement is entitled to a presumption of fairness. In his moving papers, Plaintiff contends the
13 proposed Settlement was the product of arm's-length negotiations following extensive
14 litigation, discovery, and exchange of documentation. The negotiations were facilitated with the
15 help of mediator Deborah Saxe, an experienced and well-respected class action mediator.

16 a. With respect to the benefit to the Class, the *average* Individual Settlement
17 Payment is about \$3,803.23, and the *highest* Individual Settlement Share is
18 around \$6,560.81 under the proposed allocation.

19 b. There were no Notices of Objection to and no Requests for Exclusion from the
20 Settlement. This is further proof of the fairness of the Settlement.

21 16. Uncashed Checks. Any checks issued by the Claims Administrator to Claimants
22 will be negotiable for at least one hundred twenty (120) calendar days. Uncashed settlement
23 checks will be sent to California State Controller.

24 17. Modification of Settlement Agreement. The Settlement Class Members are
25 hereby authorized to agree to and adopt amendments to or modifications of the Settlement by a
26 written instrument signed by the named Parties and counsel for all Parties or their successors-in-
27 interest. Such amendments or modifications shall be consistent with this Order and Judgment
28 and cannot limit the rights of Settlement Class Members under the Settlement.

18. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and Judgment. This Court expressly retains jurisdiction for the administration, interpretation, effectuation, and/or enforcement of the Agreement and of this Order and Judgment, and for any other necessary purpose, including, without limitation:

- a. enforcing the terms and provisions of the Agreement and resolving any disputes, claims, or causes of action in the class action that, in whole or in part, are related to or arise out of the Agreement or this Order and Judgment;
- b. entering such additional orders as may be necessary or appropriate to protect or effectuate this Order and Judgment approving the Agreement, and permanently enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of the Agreement; and
- c. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction.

The Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement Payment is GRANTED. The Claims Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

IT IS SO ORDERED.

DATED:

HONORABLE BRIAN MCCABE
SUPERIOR COURT JUDGE

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On August 31, 2022, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Lozano v. Peterson Brothers Construction, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-827698-21**
Court Case No.: 22CV-00103
Merced County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 31, 2022, at Pasadena, California.



Mariah Anderson