

Benjamin H. Haber (SBN 315664)
benjamin.haber@wilshirelawfirm.com
Daniel J. Kramer (SBN 314625)
daniel.kramer@wilshirelawfirm.com
Bradford Smith (SBN 345879)
bradford.smith@wilshirelawfirm.com

WILSHIRE LAW FIRM

3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

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

NELSON CHAVIRA, MICHAEL BIRD,
MICHAEL MCCREVEN, and MICKEY
LATHUM, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

MARK III CONSTRUCTION, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 34-2021-00308972-CU-OE-GDS

**CLASS & PAGA REPRESENTATIVE
ACTION**

[Assigned for all purposes to: Hon Jill Talley,
Dept. 23]

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

[Filed with the Declaration of Benjamin H.
Haber, Declaration of Nelson Chavira,
Declaration of Michael Bird, Declaration of
Michael McCreven, Declaration of Mickey
Lathum, and Proposed Order]

PRELIMINARY APPROVAL HEARING

Date: June 6, 2025
Time: 9:00 a.m.
Dept: 23

Complaint filed: September 21, 2021
Trial date: Not set

1 The Court has before it Plaintiffs Nelson Chavira, Michael Bird, Michael McCreven, and
2 Mickey Latham's (collectively, "Plaintiffs") Motion for Preliminary Approval of Class Action
3 Settlement. Having reviewed the Motion for Preliminary Approval of Class Action Settlement,
4 the Declaration of Benjamin H. Haber, the Class Action and PAGA Settlement Agreement and
5 Class Notice (which is referred to here as the "Settlement Agreement"), and good cause
6 appearing, the Court hereby finds and orders as follows:

7 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
8 be fair, adequate, and reasonable and therefore meets the requirements for preliminary approval.
9 The Court grants preliminary approval of the Settlement and the Settlement Class based upon
10 the terms set forth in the Settlement Agreement between Plaintiffs and Defendant Mark III
11 Construction, Inc. ("Defendant"), attached to the Declaration of Benjamin H. Haber in Support
12 of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement as Exhibit 1.

13 2. The Settlement falls within the range of reasonableness of a settlement which
14 could ultimately be given final approval by this Court, and appears to be presumptively valid,
15 subject only to any objections that may be raised at the Final Approval Hearing and final
16 approval by this Court. The Court notes that Defendant has agreed to create a common fund of
17 \$1,175,000.00 to cover (a) settlement payments to class members who do not validly opt out;
18 (b) a \$50,000.00 payment to the State of California, Labor & Workforce Development Agency
19 for its share of the settlement of claims for penalties under the Private Attorneys General Act,
20 with 75% of which (\$37,500.00) will be paid to the LWDA and 25% (\$12,500.00) will be paid
21 to eligible Aggrieved Employees; (c) Class Representative service payment of up to \$10,000.00
22 each for Plaintiffs Nelson Chavira, Michael Bird, Michael McCreven, and Mickey Latham
23 (\$40,000.00 total); (d) Class Counsel's attorneys' fees, not to exceed 33 1/3% of the Gross
24 Settlement Amount (\$391,666.67), and up to \$40,000.00 in costs for actual litigation expenses
25 incurred by Class Counsel; and (e) Settlement Administration Costs of up to \$15,000.00.

26 3. The Court preliminarily finds that the terms of the Settlement appear to be within
27 the range of possible approval, pursuant to California Code of Civil Procedure § 382 and
28 applicable law. The Court finds on a preliminary basis that: (1) the settlement amount is fair

1 and reasonable to the class members when balanced against the probable outcome of further
2 litigation relating to class certification, liability and damages issues, and potential appeals; (2)
3 significant informal discovery, investigation, research, and litigation have been conducted such
4 that counsel for the parties at this time are able to reasonably evaluate their respective positions;
5 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented
6 by the further prosecution of the litigation; and (4) the proposed settlement has been reached as
7 the result of intensive, serious, and non-collusive negotiations between the Parties with the
8 assistance of a well-respected class action mediator. Accordingly, the Court preliminarily finds
9 that the Settlement Agreement was entered into in good faith.

10 4. A final fairness hearing on the question of whether the proposed settlement,
11 attorneys' fees and costs to Class Counsel, payment to the State of California, Labor &
12 Workforce Development Agency for its share of the settlement of claims for penalties under the
13 Private Attorneys General Act, and the class representative's enhancement award should be
14 finally approved as fair, reasonable and adequate as to the members of the class is hereby set in
15 accordance with the Implementation Schedule set forth below.

16 5. The Court provisionally certifies for settlement purposes only the following class
17 (the "Settlement Class"): "all persons employed by Defendant in California and classified as an
18 hourly-paid or non-exempt employee who worked for Defendant during the Class Period."

19 6. "Class Period" means the period from means the period from September 29, 2017
20 to August 30, 2024, or the date the Court grants preliminary approval of the Settlement,
21 whichever is earlier.

22 7. The Court finds, for settlement purposes only, that the Settlement Class meets the
23 requirements for certification under California Code of Civil Procedure § 382 in that: (1) the
24 Settlement Class Members are so numerous that joinder is impractical; (2) there are questions
25 of law and fact that are common, or of general interest, to all Settlement Class Members, which
26 predominate over individual issues; (3) Plaintiffs' claims are typical of the claims of the
27 Settlement Class Members; (4) Plaintiffs and Class Counsel will fairly and adequately protect
28 the interests of the Settlement Class Members; and (5) a class action is superior to other

1 available methods for the fair and efficient adjudication of the controversy.

2 8. The Court appoints as Class Representative, for settlement purposes only,
3 Plaintiffs Nelson Chavira, Michael Bird, Michael McCreven, and Mickey Lathum. The Court
4 further preliminarily approves Plaintiffs' ability to request incentive awards of up to \$10,000.00
5 each (\$40,000.00 total).

6 9. The Court appoints, for settlement purposes only, Benjamin H. Haber and Daniel
7 J. Kramer of Wilshire Law Firm, PLC as Class Counsel. The Court further preliminarily
8 approves Class Counsel's ability to request attorneys' fees of up to one-third of the Total
9 Settlement Amount (\$391,666.67), and costs not to exceed \$40,000.00.

10 10. The Court appoints ILYM Group, Inc. as the Settlement Administrator with
11 reasonable administration costs estimated not to exceed \$15,000.00.

12 11. The Court approves, as to form and content the Class Notice, attached to the
13 Settlement Agreement. The Court finds on a preliminary basis that plan for distribution of the
14 Notice to Settlement Class Members satisfies due process, provides the best notice practicable
15 under the circumstances, and shall constitute due and sufficient notice to all persons entitled
16 thereto.

17 12. The parties are ordered to carry out the Settlement according to the terms of the
18 Settlement Agreement.

19 13. Any class member who does not timely and validly request exclusion from the
20 settlement may object to the Settlement Agreement.

21 14. The Court orders the following Implementation Schedule:

23 Defendants to provide Class List to the 24 Settlement Administrator	15 days after notice of entry of the Court's order granting Motion for Preliminary 25 Approval
26 Settlement Administrator to mail the Notice 27 Packets	14 days after receipt of the Class List from the Defendant

Response Deadline	60 days after Notice is mailed out by the Settlement Administrator
Deadline to Provide Written Objections, if any	60 days after Notice is mailed out by the Settlement Administrator
Deadline to file Motion for Final Approval, Request for Attorney's Fees and Costs, and Service Award to Plaintiff	16 court days before hearing on Motion for Final Approval, which is _____;
Final Approval Hearing	_____ at _____ a.m./p.m., or first available date thereafter, in Department 23. The hearing may be continued to another date without further notice to the Class Members.

15. The Court further ORDERS that, pending further order of this Court, all proceedings in this lawsuit, except those contemplated herein and in the settlement, are stayed.

IT IS SO ORDERED.

DATE:

Hon. Jill Talley
Sacramento County Superior Court

PROOF OF SERVICE

Chavira, et al. v. Mark III Construction, Inc., et al.
34-2022-00314710-CU-OE-GDS

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Rebecca Padilla, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is rebecca.padilla@wilshirelawfirm.com.

On May 14, 2025, I served the foregoing **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Lisa Bradner
LB@castleemploymentlaw.com
Tim Del Castillo
tdc@castleemploymentlaw.com
admin@castleemploymentlaw.com
CASTLE LAW CALIFORNIA EMPLOYMENT COUNSEL, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661
Telephone: (916) 587-9106

Attorneys for Defendant

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

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

Executed on May 14, 2025, at Los Angeles, California.



Rebecca Padilla