

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
Arrash T. Fattahi (SBN 333676)
afattahi@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 ALAMEDA**

CUITLAHUAC NINO, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

J.W. PETERSON PAINTING, INC., a
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: RG21111509

**CLASS AND REPRESENTATIVE
ACTION**

[Assigned for all purposes to: Hon. Michael
Markman, Dept. 23]

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

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; Declaration of Justin F.
Marquez; Declaration of Plaintiff Cuitlahuac
Nino; Declaration of Jeffrey G. McClure;
Declaration of Kyle V. Peterson; and
Declaration of Julie Green]

PRELIMINARY APPROVAL HEARING

Date: August 15, 2024

Time: 10:00 a.m.

Dept: 23

Complaint filed: September 1, 2021

FAC filed: February 25, 2022

Trial date: Not set

1 The Court has before it Plaintiff Cuitlahuac Nino's ("Plaintiff") Motion for Preliminary
2 Approval of Class Action Settlement. Having reviewed the Motion for Preliminary Approval
3 of Class Action Settlement, the Declarations of Justin F. Marquez, Plaintiff Cuitlahuac Nino,
4 Jeffrey G. McClure, Kyle V. Peterson, and Julie Green, the Class Action and PAGA Settlement
5 Agreement and Class Notice (which is referred to here as the "Settlement Agreement"), and
6 good cause 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 Plaintiff and Defendant J.W. Peterson
11 Painting, Inc. ("Defendant", and together with Plaintiff, the "Parties"), attached to the
12 Declaration of Justin F. Marquez in Support of Plaintiff's Motion for Preliminary Approval of
13 Class Action Settlement as **Exhibit 1**.

14 2. The Settlement falls within the range of reasonableness of a settlement which
15 could ultimately be given final approval by this Court, and appears to be presumptively valid,
16 subject to any objections that may be raised at the Final Approval Hearing. The Court notes
17 that Defendant has agreed to create a common fund of \$325,000.00 to cover (a) settlement
18 payments to class members who do not validly opt out; (b) a \$25,000.00 payment to the State
19 of California, Labor & Workforce Development Agency ("LWDA") for its share of the
20 settlement of claims for penalties under the Private Attorneys' General Act ("PAGA"), with
21 75% (\$18,750.00) being paid to the LWDA and 25% (\$6,250.00) being paid to eligible
22 Aggrieved Employees; (c) Class Representative service payment of up to \$7,500.00 for
23 Plaintiff; (d) Class Counsel's attorneys' fees, not to exceed 33 1/3% of the Gross Settlement
24 Amount (\$108,333.33) and up to \$25,000.00 in costs for actual litigation expenses incurred by
25 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, LWDA for its
12 share of the settlement of claims for penalties under PAGA, and the class representative's
13 enhancement award should be finally approved as fair, reasonable and adequate as to the
14 members of the class is hereby set in accordance with the Implementation Schedule set forth
15 below.

16 5. The Court provisionally certifies for settlement purposes only the following class
17 (the "Settlement Class"): "a person employed by J.W. Peterson Painting, Inc. in California and
18 classified as an hourly-paid, non-exempt employee during the Class Period."

19 6. "Class Period" means the period from March 7, 2017 to April 29, 2023.

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

28 8. The Court appoints as Class Representative, for settlement purposes only,

Plaintiff Cuitlahuac Nino. The Court further preliminarily approves Plaintiff's ability to request an incentive award up to \$7,500.00.

9. The Court appoints, for settlement purposes only, Justin F. Marquez and Arrash T. Fattahi of Wilshire Law Firm, PLC as Class Counsel. The Court further preliminarily approves Class Counsel's ability to request attorneys' fees of up to one-third of the Total Settlement Amount (\$108,333.33) and costs not to exceed \$25,000.00.

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

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

12. The Parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

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

14. The Court orders the following Implementation Schedule:

Defendant's deadline to provide Class Data to the Settlement Administrator	Not later than 15 days after the Court grants Preliminary Approval of the Settlement
Settlement Administrator's deadline to mail the Notice	Not later than 14 days after receipt of the Class Data from the Defendant
Response Deadline	45 days after Notice is mailed out by the Settlement Administrator and an additional 14 days if the Notice is remailed to a Class Member
Deadline to file Motion for Final Approval,	16 court days before hearing on Motion for

Request for Attorneys' Fees and Costs, and Service Award to Plaintiff	Final Approval.
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. Michael Markman
Alameda County Superior Court

PROOF OF SERVICE

Nino v. J.W. Peterson Painting, Inc., et al.
RG21111509

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Ashley Narinyans, 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 ashley.narinyans@wilshirelawfirm.com.

On July 24, 2024, 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:

Jeffrey G. McClure (SBN 152974)
jeff@laborcounsel.com
Anne Kelson Hummel (SBN 257851)
akh@laborcounsel.com
DAVENPORT GERSTNER & McCLURE
2540 Camino Diablo, Suite 200
Walnut Creek, California 94597
Telephone: (925) 279-3430
Fax: (925) 932-1961

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.

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor & Workforce Development Agency Online Filing Site.

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

Executed on July 24, 2024, at Los Angeles, California.



Ashley Narinyans