

FILED

KERN COUNTY SUPERIOR COURT
08/21/2024BY Fogerson, Vickie
DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

JESÚS MUÑIZ, as an individual and on behalf
of all persons similarly situated,

Plaintiff,

v.

NORMAN ETCHISON, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: BCV-22-101571-BCB

CLASS AND REPRESENTATIVE ACTION

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT AND REQUEST FOR AWARD
OF ATTORNEYS' FEES, COSTS, AND
SERVICE PAYMENT, AND JUDGMENT

Date: August 21, 2024
Time: 8:30 a.m.
Division: H
Judge: Hon. Bernard C. Barmann Jr.

Complaint Filed: June 23, 2022
Trial Date: None Set

This matter came before the Honorable Bernard C. Barmann Jr. in Division H of the Superior Court of the State of California, in and for the County of Kern, on August 21, 2024 at 8:30 a.m., on Plaintiff Jesús Muñiz's ("Plaintiff") Motion for Final Approval of Class Action and PAGA Settlement and Request for Award of Attorneys' Fees, Costs, and Class Representative Payment ("Plaintiff's Motion for Final Approval") pursuant to California Rules of Court, rule 3.769, and Labor Code section 2698 et seq.

On April 23, 2024, the Court granted Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement and entered an Order in accordance therewith.

1 Due and adequate notice having been given to the Class, and having duly considered all papers,
2 evidence, and oral arguments in this matter to date, including the Settlement of Class Action and Release
3 of Claims and Plaintiff's Motion for Final Approval, and good cause appearing, the Court ORDERS as
4 follows:

5 1. This Order shall incorporate the parties' Settlement of Class Action and Release of Claims
6 ("Settlement Agreement" or "Settlement"), and to the extent that the terms are defined in the Settlement
7 Agreement, all defined terms contained herein shall have the same meaning as set forth in the Settlement
8 Agreement.

9 2. This Court has jurisdiction over the claims asserted in this Action and personal jurisdiction
10 over Plaintiff, Defendant Norman Etchison, Inc. ("Defendant"), the Class Members, and the PAGA
11 Employees, as defined in the Settlement Agreement. The Class Members and the PAGA Employees, as
12 defined in the Settlement Agreement, are collectively referred to herein as "Settlement Class Members."

13 3. This Court finds that the applicable requirements of the California Code of Civil Procedure
14 section 382 and California Rules of Court, rule 3.769, have been satisfied with respect to the Settlement
15 Class Members and the Settlement. The Court makes final its earlier provisional certification of the
16 following settlement Class for the purposes of settlement only:

17 All current and former non-exempt employees of Defendant Norman
18 Etchison, Inc., who are or were employed with Defendant in the state of
California at any time between June 23, 2018, and April 23, 2024.

19 4. The Court also confirms the following appointments: Plaintiff Jesús Muñiz as the Class
20 Representative; GrahamHollis APC as Class Counsel; and Phoenix Settlement Administrators as the
21 Administrator.

22 5. The Court finds that the Notice of Class Action Settlement that was approved on
23 April 23, 2024 and transmitted to the Settlement Class Members fully and accurately informed the
24 Settlement Class Members of all material elements of the Settlement, including their opportunity to
25 request exclusion from the Settlement or object to the Settlement (notwithstanding the PAGA portion of
26 the Settlement), was the best notice practicable under the circumstances; was valid, due, and sufficient
27 notice to all Settlement Class Members; and complied fully with the laws of the state of California, the
28 United States Constitution, due process, rule 3.766 of the California Rules of Court, and all other

1 applicable laws.

2 6. Based on the Declaration of Jarrod Salinas Regarding Notice and Settlement
3 Administration, the Court finds that no Settlement Class Members have submitted a valid request for
4 exclusion or objected to the Settlement.

5 7. In accordance with California law, the Court hereby GRANTS final approval of the
6 Settlement and finds it fair, reasonable, and adequate, and in the best interest of the Settlement Class
7 Members as a whole. Specifically, the Court finds that the Settlement is the result of serious, informed,
8 adversarial, and arm's-length negotiations between the parties and that the terms of the Settlement are, in
9 all respects, fair, adequate, and reasonable. In so finding, the Court has considered all the evidence
10 presented, including evidence regarding the strength of Plaintiff's case; the risks, expense, and complexity
11 of claims presented; the likely duration of further litigation; the amount offered in the Settlement; the
12 extent of investigation and discovery completed; and the experience and views of Class Counsel. The
13 Court ORDERS and directs that the Settlement be effectuated in accordance with the Settlement
14 Agreement and the following terms and conditions.

15 8. The Court finds that a full opportunity has been afforded to the Settlement Class Members
16 to participate in the hearing on Plaintiff's Motion for Final Approval, and all Settlement Class Members
17 and other persons wishing to be heard, have been heard. The Settlement Class Members have had a full
18 and fair opportunity to exclude themselves from the Settlement. Therefore, the Court ORDERS that,
19 pursuant to the Settlement Agreement, and as of the Effective Date, Plaintiff and all Settlement Class
20 Members will have released Defendant and the other Released Parties (as defined in the Settlement
21 Agreement) of all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights,
22 liabilities, penalties, and legal theories of relief or liability of whatever nature, known or unknown, that
23 were alleged in the Action or Plaintiff's operative Complaint filed in the Action or could have been alleged
24 or pled in the Action or Plaintiff's operative Complaint, based upon the allegations, facts, legal theories,
25 or causes of action alleged in the Action, including, but not limited to, claims for relief for: (1) failure to
26 timely pay minimum, regular, and/or overtime wages pursuant to Labor Code sections 204, 210, 510, 558,
27 1194, 1194.2, 1197, 1197.1, and 1198, and IWC Wage Order No. 14-2001, as well as all other applicable
28 Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (2) failure

1 to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal
2 periods pursuant to Labor Code sections 204, 226.7, 512, 558, 1198, and/or IWC Wage Order No. 14-
3 2001, as well as all other applicable Labor Code provisions alleged or that could have been alleged with
4 respect to Plaintiff's claim; (3) failure to provide legally compliant rest periods and/or timely pay premium
5 wages for non-compliant rest periods pursuant to Labor Code sections 204, 226.7, 1198, and/or IWC
6 Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have
7 been alleged with respect to Plaintiff's claim; (4) failure to timely pay all wages earned during employment
8 pursuant to Labor Code sections 204 and 210, as well as all other applicable Labor Code provisions alleged
9 or that could have been alleged with respect to Plaintiff's claim; (5) failure to timely pay all wages due
10 and owing upon separation of employment and/or pay the required waiting time penalties pursuant to
11 Labor Code sections 201, 202, and 203, as well as all other applicable Labor Code provisions alleged or
12 that could have been alleged with respect to Plaintiff's claim; (6) failure to furnish accurate itemized wage
13 statements pursuant to Labor Code sections 226, 226.3, and/or IWC Wage Order No. 14-2001, as well as
14 all other applicable Labor Code provisions alleged or that could have been alleged with respect to
15 Plaintiff's claim; (7) failure to maintain accurate records pursuant to Labor Code sections 226, 1174,
16 1174.5, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions
17 alleged or that could have been alleged with respect to Plaintiff's claim; and (8) violation of California's
18 Unfair Competition Law, Business and Professions Code sections 17200 et seq. (collectively, the
19 "Released Class Claims"). The period of the Released Class Claims shall extend to the limits of the Class
20 Period. The res judicata effect of the Judgment will be the same as that of the Released Class Claims.

21 9. The Court further ORDERS that, pursuant to the Settlement Agreement, and as of the
22 Effective Date, Plaintiff and all PAGA Employees will have released Defendant and the other Released
23 Parties (as defined in the Settlement Agreement) of all claims pursuant to or under the Private Attorneys
24 General Act (codified in Labor Code sections 2698 et seq.) that were or could have been alleged in the
25 Action based upon the allegations, facts, legal theories or causes of action alleged in the Action, including,
26 but not limited to, claims for relief for: (1) failure to timely pay minimum, regular, and/or overtime wages
27 pursuant to Labor Code sections 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and/or IWC Wage
28 Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or that could have been

1 alleged with respect to Plaintiff's claim; (2) failure to provide legally compliant meal periods and/or timely
2 pay premium wages for non-compliant meal periods pursuant to Labor Code sections 204, 226.7, 512,
3 558, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions
4 alleged or that could have been alleged with respect to Plaintiff's claim; (3) failure to provide legally
5 compliant rest periods and/or timely pay premium wages for non-compliant rest periods pursuant to Labor
6 Code sections 204, 226.7, 1198, and/or IWC Wage Order No. 14-2001, as well as all other applicable
7 Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's claim; (4) failure
8 to timely pay all wages earned during employment pursuant to Labor Code sections 204 and 210, as well
9 as all other applicable Labor Code provisions alleged or that could have been alleged with respect to
10 Plaintiff's claim; (5) failure to timely pay all wages due and owing upon separation of employment and/or
11 pay the required waiting time penalties pursuant to Labor Code sections 201, 202 and 203, as well as all
12 other applicable Labor Code provisions alleged or that could have been alleged with respect to Plaintiff's
13 claim; (6) failure to furnish accurate itemized wage statements pursuant to Labor Code sections 226, 226.3,
14 and/or IWC Wage Order No. 14-2001, as well as all other applicable Labor Code provisions alleged or
15 that could have been alleged with respect to Plaintiff's claim; (7) failure to maintain accurate records
16 pursuant to Labor Code sections 226, 1174, 1174.5, 1198, and/or IWC Wage Order No. 14-2001, as well
17 as all other applicable Labor Code provisions alleged or that could have been alleged with respect to
18 Plaintiff's claim (collectively, the "Released PAGA Claims"). The period of the Released PAGA Claims
19 shall extend to the limits of the PAGA Period. The res judicata effect of the Judgment will be the same as
20 that of the Released PAGA Claims.

21 10. It is ORDERED that by this Final Approval Order and Judgment and pursuant to the
22 Settlement Agreement, as of the Effective Date, Plaintiff will have released, relinquished, and discharged
23 Defendant and the other Released Parties (as defined in the Settlement Agreement) of all claims set forth
24 in the "General Release by Plaintiff" in Section 5.3 of the Settlement Agreement; each of the Participating
25 Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally and
26 forever released, relinquished, and discharged all Released Class Claims as defined in Section 1.37 of the
27 Settlement; and each of the PAGA Employees shall be deemed to have, and by operation of the Judgment
28 shall have, fully, finally and forever released relinquished, and discharged all Released PAGA Claims as

1 defined in Section 1.38 of the Settlement.

2 11. It is ORDERED that Settlement Class Members shall be prohibited and permanently
3 enjoined from pursuing in any fashion the Released Class Claims and Released PAGA Claims against the
4 Released Parties. The terms and provisions of the Settlement Agreement, the release of the Released Class
5 Claims, and this Order and Judgment are binding on all the Settlement Class Members, as well as their
6 heirs, executors and administrators, successors, and assigns, and those terms shall have res judicata and
7 other preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by or
8 on behalf of any such persons, to the extent those claims, lawsuits, or other proceedings involve matters
9 that were or could have been raised in this matter and are encompassed by the release of the Released
10 Class Claims. All Class Members who have not timely opted out of the Settlement shall be permanently
11 enjoined and forever barred from asserting any of the Released Class Claims against the Released Parties,
12 according to the terms of the Settlement. Additionally, the terms and provisions of the Settlement
13 Agreement, the release of the Released PAGA Claims, and this Order and Judgment are binding on all the
14 PAGA Employees, as well as their heirs, executors and administrators, successors, and assigns, and those
15 terms shall have res judicata and other preclusive effect in all pending and future claims, lawsuits, or other
16 proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits, or other
17 proceedings involve matters that were or could have been raised in this matter and are encompassed by
18 the release of the Released PAGA Claims.

19 12. Defendant is ORDERED to fund the Gross Settlement Amount of \$350,000. Defendant is
20 further ORDERED to deposit the Gross Settlement Amount into a Qualified Settlement Fund with the
21 Administrator within 30 calendar days after the Effective Date. The Gross Settlement Amount is the
22 maximum total amount that Defendant is required to pay for any and all purposes under the Settlement.

23 13. The Administrator, Phoenix Settlement Administrators, is ORDERED to distribute the
24 Gross Settlement Amount in accordance with the Settlement Agreement.

25 14. In accordance with Labor Code section 2699(1)(2), the Court has reviewed the Settlement
26 Agreement as it relates to the allocation of civil penalties under PAGA. The Court finds that the allocation
27 of \$20,000 in PAGA Penalties for claims under the PAGA is fair, reasonable, and appropriate. The Court
28 GRANTS approval of the allocation of PAGA Penalties in the amount of \$20,000 towards claims under

1 the PAGA, which shall be paid from the Gross Settlement Amount.

2 15. The Court ORDERS that \$15,000 (75% of the \$20,000 in PAGA Penalties) be allocated to
3 the LWDA PAGA Payment, and paid to the California Labor and Workforce Development Agency
4 (“LWDA”) from the Gross Settlement Amount, as required by statute.

5 16. The Court ORDERS that \$5,000 (25% of the \$20,000 in PAGA Penalties) be allocated to
6 the Net Settlement Amount for distribution to PAGA Employees who worked during the PAGA Period,
7 as defined by the Settlement Agreement.

8 17. The Court ORDERS that the amount remaining in the Net Settlement Amount, estimated
9 to be \$192,050.74, be issued to the Settlement Class Members based on the number of workweeks worked
10 during the Class Period, as defined by the Settlement Agreement.

11 18. Any checks issued to the Settlement Class Members shall remain valid and negotiable for
12 180 calendar days from the date of their issuance. If after 180 calendar days of mailing, the checks cashed
13 by Settlement Class Members total less than 100-percent of the Net Settlement Amount, the amount
14 remaining will be redistributed among those Settlement Class Members who cashed the checks sent to
15 them (the “Redistribution”) on a pro-rata basis in proportion to their original Individual Class Payment,
16 as long as the costs of Redistribution are less than the amount left for Redistribution. If the costs of
17 Redistribution are less than the amount left for re-distribution, the Redistribution will take place within 30
18 calendar days after the 180-day check cashing deadline. The Settlement Administrator shall be paid the
19 costs of Redistribution from the amount left for Redistribution. The checks sent as part of the
20 Redistribution must be cashed within 60 calendar days of mailing. If the costs of Redistribution are more
21 than the amount to be redistributed, or any unclaimed amounts remain 60 calendar days after the
22 Redistribution, the unclaimed amounts shall go to the *cy pres*, Wounded Heroes Fund, or other approved
23 *cy pres* recipient. Class Members who do not timely cash their Individual Class Payments and/or
24 Individual PAGA Payments and whose checks are cancelled shall nevertheless be bound by all of the
25 terms of the Settlement, including without limitation, the applicable releases set forth in the Settlement.

26 19. The Court finds that a Service Payment in the amount of \$7,500 to named Plaintiff
27 Jesús Muñiz is fair and reasonable for the work performed and the risks associated with bringing this
28 Action. The Court awards and thus ORDERS that the Administrator issue a Service Payment to Plaintiff

1 in the amount of \$7,500, which shall be paid from the Gross Settlement Amount. The Service Payment is
2 in addition to any payment Plaintiff is entitled to under the Settlement.

3 20. The Court finds that a Class Counsel Fees Payment in the amount of \$116,666.67 falls
4 within the range of reasonableness and the result achieved justifies the award sought. The Court awards
5 and therefore ORDERS that the Administrator issue a Class Counsel Fees Payment in the amount of
6 \$116,666.67 to GrahamHollis APC, which shall be paid from the Gross Settlement Amount.

7 21. The Court finds that Class Counsel's request for actual and documented litigation costs
8 incurred in the amount of \$11,532.59 falls within the range of reasonableness and the result achieved
9 justifies the award sought. The Court awards and thus ORDERS that the Administrator issue a Class
10 Counsel Expenses Payment for actual and documented litigation costs incurred in the amount of
11 \$11,532.59 to GrahamHollis APC, which shall be paid from the Gross Settlement Amount.

12 22. The Court finds that the request for Administration Expenses Payment in the amount of
13 \$7,250 is fair, reasonable, and appropriate. The Court awards and thus ORDERS that the Administrator
14 issue payment for Administration Expenses Payment to Phoenix Settlement Administrators in the amount
15 of \$7,250, which shall be paid from the Gross Settlement Amount.

16 23. Plaintiff's Motion for Final Approval is GRANTED.

17 24. A Judgment shall be entered in this action. The Judgment shall bind each Class Member
18 who has not opted out of the Settlement, and all PAGA Employees, and conditioned upon Defendant's
19 obligation to make timely payment under Section 3 of the Settlement, shall operate as a full release and
20 discharge of the Released Class Claims for Class Members against the Released Parties and of the
21 Released PAGA Claims for PAGA Employees against the Released Parties, as set forth in the Settlement
22 Agreement. All rights to appeal the Judgment have been waived. The Judgment and this Final Approval
23 Order shall have res judicata effect and bar all Class Members who have not timely opted out of the
24 Settlement from bringing or maintaining any action asserting any of the Released Class Claims. The
25 Judgment and this Final Approval Order shall also have res judicata effect and bar all PAGA Employees
26 from bringing or maintaining any action asserting any of the Released PAGA Claims.

27 25. This Final Approval Order and Judgment shall be binding on Plaintiff, all Participating
28 Class Members, all PAGA Employees, and the State of California, who are hereby barred by the doctrine

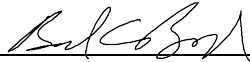
1 of res judicata from asserting any and all of the Released Class Claims and Released PAGA Claims, as
2 those terms are defined by the Settlement. (*See Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 986 [judgment in
3 a representative action brought by an aggrieved employee under PAGA is binding not only on the named
4 employee plaintiff but also on state labor law enforcement agencies and any aggrieved employee not a
5 party to the proceeding].)

6 26. Pursuant to rule 3.769, subdivision (h), of the California Rules of Court, this Court retains
7 exclusive and continuing jurisdiction over this action and the parties for the purposes of: (a) supervising
8 the implementation, enforcement, construction, and interpretation of the Settlement Agreement, and the
9 Order of Final Approval and Judgment; and (b) supervising distribution of amounts paid under this
10 Settlement.

11 27. The Court sets a compliance hearing regarding the distribution of the Gross Settlement
12 Amount for May 20, 2025 at 8:30 a.m./~~p.m.~~ in Division H of the Kern County Superior Court.
13 At least 10 calendar days before the hearing, Class Counsel and the Administrator shall submit a summary
14 accounting of the Net Settlement Fund identifying distributions made as ordered herein, the number and
15 value of any uncashed checks, the status of the redistributed funds, the status of any unresolved issues,
16 and any other matters appropriate to bring to the Court's attention. Counsel may appear at the compliance
17 hearing remotely.

18 **IT IS SO ORDERED AND JUDGMENT IS HEREBY ENTERED.**

19 Dated: August 21, 2024



Honorable Bernard C. Barmann Jr.
Judge of the Superior Court

Signed: 8/21/2024 09:12 AM