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 7 NORMAN ETCHISON, INC.

FILED
 KERN COUNTY SUPERIOR COURT
 04/23/2024

BY Fogerson, Vickie
 DEPUTY

8
 9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
 10 **COUNTY OF KERN—METROPOLITAN DIVISION**

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

13 Plaintiff,

14 vs.

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

16 Defendants.

Case No. BCV-22-101571-BCB

~~REVISED [PROPOSED]~~ ORDER
 GRANTING MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION AND PAGA SETTLEMENT

*[Filed concurrently with the Declaration of
 Jazmine Flores]*

Date: April 23, 2024
 Time: 8:30 a.m.
 Division: H
 Judge: Hon. Bernard C. Barmann, Jr.

Complaint Filed: June 23, 2022
 Trial Date: None

21 Plaintiff Jesús Muñiz's ("Plaintiff") Motion for Preliminary Approval of Class Action and
 22 PAGA Settlement with Defendant Norman Etchison, Inc. ("Defendant") (collectively, the "Parties")
 23 came before this Court on April 23, 2024. The Court, having considered the Parties' proposed Settlement
 24 of Class Action and Release of Claims ("Settlement Agreement" or "Settlement"), Plaintiff's Motion
 25 for Preliminary Approval, and all papers filed in support thereof,

26 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

27 1. This Order Granting Motion for Preliminary Approval of Class Action and PAGA
 28 Settlement ("Order") incorporates by reference all defined terms set forth in the Settlement Agreement,

1 which is attached as Exhibit 1 to the Declaration of Graham S.P. Hollis in Support of Plaintiff's
2 Motion for Preliminary Approval of Class Action and PAGA Settlement, filed on March 13, 2024.
3 To the extent the terms used in this Order are defined in the Settlement Agreement, the defined terms
4 shall have the same meaning as set forth in the Settlement Agreement.

5 2. This Court has jurisdiction over the claims asserted in this Action and has personal
6 jurisdiction over Plaintiff, Defendant, and the Class.

7 3. The Court conditionally finds, for settlement purposes only, that the proposed Class
8 meets the requirements for certification under California Code of Civil Procedure section 382. The
9 Court provisionally certifies, for settlement purposes only, pursuant to California Code of Civil
10 Procedure section 382 and California Rules of Court, rule 3.764, the Class defined as follows:

11 All individuals who are or were employed by Defendant Norman Etchison, Inc. as
12 non-exempt employees in the State of California at any time during the period
between June 23, 2018 and the date of preliminary approval.

13 4. Should for any reason the Settlement not become final, the fact that the Parties were
14 willing to stipulate to class certification as part of the Settlement shall have no bearing on, nor be
15 admissible in connection with, the issue of whether a class should be certified in a non-settlement
16 context.

17 5. Plaintiff Jesús Muñoz is hereby appointed and designated, for settlement purposes only,
18 as the representative of the Class.

19 6. The following attorneys are hereby appointed and designated as counsel for Plaintiff
20 and the Class: Graham S.P. Hollis, Nathan J. Reese, and Dawn M. Berry of GrahamHollis APC
21 ("Class Counsel"). The Court conditionally finds that Class Counsel is qualified to serve as counsel
22 for the Class. Class Counsel is authorized to act on behalf of the Class with respect to all acts or
23 consents required by, or which may be given pursuant to, the Settlement, and such other acts
24 reasonably necessary to consummate the Settlement. Any Class Member may enter an appearance
25 through counsel of such Class Member's own choosing and at such Class Member's own expense.
26 Any Class Member who does not enter an appearance or appear on his or her own will be represented
27 by Class Counsel.

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1 7. The Court finds on a preliminary basis that the Settlement appears to be fair, reasonable,
2 and adequate, and one that would ultimately merit final approval by this Court. The Court has reviewed
3 the Settlement and recognizes the value thereof to the Class Members. The Court finds, on a preliminary
4 basis, that the Settlement is fair, adequate, and reasonable as to all Class Members when balanced
5 against the potential outcomes of further litigation relating to liability and damages issues. The Court
6 further finds that the Settlement has been reached as the result of serious and non-collusive, arm's-
7 length negotiations by the Parties.

8 8. A Final Approval Hearing shall be held before this Court, located at 1215 Truxtun
9 Avenue, Bakersfield, CA 93301, on August 21, 2024 at 8:30 ~~a.m.~~^{p.m.} in Division H,
10 to determine all necessary matters concerning the Settlement, including: whether the proposed
11 Settlement of the Action should be finally approved by the Court; whether a Judgment, as provided
12 in the Settlement Agreement, should be entered herein; whether the plan of allocation contained in the
13 Settlement Agreement should be finally approved as fair, reasonable, and adequate to the Class
14 Members; and to finally approve the Class Counsel Fees Payment, the Class Counsel Expenses
15 Payment, the Class Representative Service Payment, the PAGA Payment, and the Administration
16 Expenses Payment.

17 9. Plaintiff shall file his motion for final approval of the Settlement, including a request
18 for approval for the Class Representative Service Payment, the Class Counsel Fees Payment, the Class
19 Counsel Expenses Payment, the PAGA Payment, and the Administration Expenses Payment no later
20 than 16 court days prior to the Final Approval Hearing.

21 10. Within 21 calendar days of this Order, Defendant shall provide the Administrator with
22 the Class Data, consisting of each Class Members' name, last known address, Social Security number,
23 number of Workweeks worked during the Class Period and the number of PAGA Pay Periods worked
24 during the PAGA Period.

25 11. The Court hereby approves, as to form and content, the Notice of Class Action
26 Settlement ("Class Notice"), attached as Exhibit A to the Settlement Agreement. The Court finds that
27 distribution of the Class Notice, substantially in the manner and form set forth in the Settlement
28

1 Agreement and this Order, meets the requirements of due process, is the best notice practicable under
2 the circumstances, and will constitute due and sufficient notice to all persons entitled thereto.

3 12. Counsel for the Parties are authorized to correct any typographical errors in the Class
4 Notice and make clarifications, to the extent the same are found or needed, so long as such corrections
5 do not materially alter the substance of the documents.

6 13. The Court hereby appoints Phoenix Settlement Administrators as the Administrator.
7 The Administrator shall administer the Settlement in accordance with the Settlement Agreement and
8 this Order.

9 14. The Court orders the Administrator to simultaneously mail or cause to be mailed to
10 Class Members the Class Notice by first class mail at their last known address within 15 calendar days
11 of receiving the Class Data from Defendant. The Settlement Administrator shall use the procedures
12 and methods outlined in the Settlement Agreement.

13 15. Any Class Member may dispute the number of Workweeks and/or Pay Periods
14 credited to them in the Class Notice. Class Members shall have 60 calendar days from the date of
15 mailing of the Class Notice in which to submit a written dispute as to the number of Workweeks
16 and/or Pay Periods credited to them.

17 16. Any Class Member may elect to be excluded from the class action portion of the
18 Settlement by submitting a timely written Request for Exclusion to the Administrator, as provided in
19 the Settlement Agreement and Class Notice. To be valid, all Requests for Exclusion must be post
20 marked on or before the Response Deadline. Class Members who do not submit a timely Request for
21 Exclusion to the Settlement Administrator shall be bound by the Settlement Agreement, all
22 determinations of this Court, and final judgment. PAGA Employees are bound by and cannot request
23 to be excluded from the PAGA Settlement.

24 17. Any Class Member who did not submit a Request for Exclusion from the Settlement
25 may object to the Settlement or express his or her views regarding the Settlement and may present
26 evidence, and file briefs or other papers that may be proper and relevant to the issues to be heard and
27 determined by the Court, as provided in the Settlement Agreement and Class Notice. All objections
28 must be post marked on or before the end of the Response Deadline. Any Class Member who does

1 not make their objection at or before the final approval hearing shall be deemed to have waived any
2 such objection and shall be foreclosed from objecting to the Settlement at a later date.

3 18. The Settlement is not a concession or admission and shall not be used against
4 Defendant or any of the Released Parties as an admission or indication with respect to any claim of
5 any fault or omission by Defendant or any of the Released Parties. Whether or not the Settlement is
6 finally approved, neither the Settlement, nor any document, statement, proceeding, or conduct related
7 to the Settlement, nor any reports or accounts thereof, shall in any event be:

8 A. Construed as, offered or admitted in evidence as, received as or deemed to be
9 evidence for any purpose adverse to Defendant or any of the Released Parties,
10 including, but not limited to, evidence of a presumption, concession, indication, or
11 admission by Defendant or any of the Released Parties of any liability, fault,
12 wrongdoing, omission, concession, or damage; or

13 B. Disclosed, referred to, or offered or received in evidence against Defendant or any
14 of the Released Parties in any further proceeding in the Action, or in any other civil,
15 criminal, or administrative action or proceeding, except for purposes of settling the
16 Action pursuant to the Settlement Agreement.

17 19. As of the date this Order is signed, all dates and deadlines associated with the Action
18 shall be stayed, other than those pertaining to the administration of the Settlement of the Action.

19 20. The Court further orders that to facilitate administration of the Settlement, all Class
20 Members, including Plaintiff, are hereby enjoined from filing or prosecuting any claims, cases, suits
21 or administrative proceedings (including filing or pursuing claims with the California Division of
22 Labor Standards Enforcement) regarding claims released by the Settlement, unless and until any such
23 Class Member has filed a valid and timely written Request for Exclusion with the Administrator.

24 21. In the event the Settlement does not become effective in accordance with the terms of
25 the Settlement Agreement, or the Settlement is not finally approved, or is terminated, canceled, or
26 fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated
27 and the Parties shall revert to their respective positions as of before entering into the Settlement
28 Agreement.

1 22. The Court reserves the right to adjourn or continue the date of the Final Approval
2 Hearing and all dates provided for in the Settlement Agreement without further notice to Class
3 Members, and retains jurisdiction to consider all further applications arising out of or connected with
4 the proposed Settlement.

5 **IT IS SO ORDERED.**

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8 Dated: April 23, 2024


HON. BERNARD C. BARMANN, JR.,
Judge of the Superior Court

Signed: 4/23/2024 09:01 AM

Case No. BCV-22-101571

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF KERN

I am employed in the County of Kern, State of California. I am over the age of eighteen years, and I am not a party to the within action. My business address is 5016 California Avenue, Suite 3, Bakersfield, California 93309. My email address is coliver@bbr.law.

On **March 26, 2024**, I served the following document(s) described as:

**REVISED [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

on the interested parties in this action by placing a true and correct copy thereof enclosed and addressed as follows:

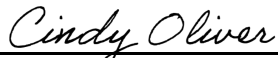
GRAHAM HOLLIS, APC
GRAHAM S.P. HOLLIS, ESQ.
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mrodriguez@grahamhollis.com;

Attorneys for Plaintiff
JESÚS MUÑIZ

☒ **BY ELECTRONIC MAIL** Upon the parties referenced above by transmitting an e-mail message on the below date to the e-mail addresses above that included a .PDF attachment to the document(s) served in accordance with the agreement between the parties and Section 1010.6 of the California Code of Civil Procedure.

Executed on **March 26, 2024**, at Bakersfield, California.

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


Cynthia M. Oliver