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7 Attorneys for Plaintiff IVAN GRANILLO

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO
11

12 IVAN GRANILLO, individually, and on behalf
13 of all others similarly situated,

14 *Plaintiff,*

15 vs.

16 PROFORM INTERIOR CONSTRUCTION,
17 INC., a California corporation; and DOES 1
18 through 10, inclusive,

19 *Defendants.*
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FILED
San Diego Superior Court

APR 26 2024

Clerk of the Superior Court
By: B. Orihuela, Deputy

Case No.: 37-2022-00003449-CU-OE-CTL

CLASS ACTION

**PROPOSED ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 26, 2024
Time: 9:30 a.m.
Courtroom: Dept. C-66
Judge: Hon. Kenneth J. Medel

Action Filed: January 27, 2022
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 This matter came on for hearing on April 26, 2024, upon Plaintiff's Motion for Final Approval of
3 the proposed settlement of this action on the terms set forth in the CLASS ACTION AND PAGA
4 SETTLEMENT AGREEMENT AND CLASS NOTICE (the "Agreement") *see* Declaration of H. Scott
5 Leviant in Support of Plaintiff's Motion for Final Approval of Class and Representative Action
6 Settlement ["Leviant Decl."], at Exh. 1).

7 After reviewing the Agreement, the Notice process, having reviewed the entire record on this
8 action, having heard the argument of Counsel for respective Parties, and good cause appearing, the Court
9 Orders as follows:

10 1. To the extent defined in the Agreement, the terms in this Order shall have the meanings
11 set forth therein.

12 2. The Court finds that the Settlement has been reached as a result of intensive, serious and
13 non-collusive arms-length negotiations. The Court further finds that the Parties have conducted thorough
14 investigation and research, and the attorneys for the Parties are able to reasonably evaluate their
15 respective positions. The Court also finds that settlement at this time will avoid additional substantial
16 costs, as well as avoid the delay and risks that would be presented by the further prosecution of the
17 action. The Court finds that the risks of further prosecution are substantial.

18 3. The parties' Settlement is granted final approval as it meets the criteria for final
19 settlement approval. In granting final approval of the class action settlement the Court has considered the
20 factors identified in *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), as approved in *Wershba v.*
21 *Apple Computer, Inc.*, 91 Cal. App. 4th 224 (2001) and *In re Microsoft IV Cases*, 135 Cal. App. 4th 706
22 (2006). The Court finds that the terms of the proposed class action Settlement are fair, reasonable, and
23 adequate, pursuant to California Code of Civil Procedure § 382. The settlement falls within the range of
24 possible approval as fair, adequate and reasonable, and appears to be the product of arm's-length and
25 informed negotiations and to treat all Class Members fairly. The Settlement Class meets the
26 requirements for conditional certification for settlement purposes only under Code of Civil Procedure
27 § 382.

1 4. The Class Notice provided to the Settlement Class conforms with the requirements of
2 Code of Civil Procedure § 382, Civil Code § 1781, Rules of Court 3.766 and 3.769, the California and
3 United States Constitutions, and any other applicable law, and constitutes the best notice practicable
4 under the circumstances, by providing individual notice to all Class Members who could be identified
5 through reasonable effort, and by providing due and adequate notice of the proceedings and of the
6 matters set forth therein to the other Class Members. The Class Notice fully satisfied the requirements
7 of due process.

8 5. The following persons are certified as Class Members solely for the purpose of entering
9 a settlement in this matter:

10 All persons employed by and who worked for PROFORM as a non-exempt employee
11 in California at any time during the Class Period ("Class Period" means the period from
12 January 27, 2018, to April 18, 2023.) (Settlement, ¶¶ 1.5, 1.12.) "Participating Class
Member" means a Class Member who does not submit a valid and timely Request for
Exclusion from the Class portion of the Settlement. (Settlement, ¶ 1.37.)

13 No Class Members requested exclusion from the Class. All Class Members are Participating Class
14 Members and are bound by the Final Approval Order and Judgment in the Action.

15 6. All Class Members who worked at any time between January 21, 2021 and April 18,
16 2023 are "Aggrieved Employees" for purposes of distributing the \$7,500.00 as Individual PAGA
17 Payments. Class Members cannot opt out of the release of the PAGA claims and will therefore receive
18 a share of the \$7,500.00, irrespective of whether they are Participating Class Members.

19 7. Plaintiff IVAN GRANILLO is appointed as the Class Representative. The Court finds
20 Plaintiff's counsel are adequate, as they are experienced in wage and hour class action litigation and
21 have no conflicts of interest with absent Class Members, and that they adequately represented the
22 interests of absent class members in the Litigation. Kane Moon, H. Scott Leviant, and Mariam
23 Ghazaryan, of Moon Law Group, PC, are appointed Class Counsel.

24 8. The Court appoints Phoenix Settlement Administrators to act as the Settlement
25 Administrator, pursuant to the terms set forth in the Agreement.

26 9. Upon entry of this Final Approval Order and the Judgment, funding of the Settlement and
27 compensation to the Class Members shall be implemented pursuant to the terms of the Settlement.

28 10. In addition to any recovery that Plaintiff may receive under the Settlement as a Class

1 Member, and in recognition of the Plaintiff's efforts on behalf of the Settlement Class, the Court hereby
2 approves the payment of a Class Representative Enhancement Payment to Plaintiff in the amount of
3 \$5,000.00.

4 11. The Court approves the payment of attorneys' fees to Class Counsel in the total amount
5 of \$100,000.00 to Moon Law Group, PC. Litigation expenses awarded to Moon Law Group, PC, are
6 approved by the Court in the amount of \$14,710.48.

7 12. The Court approves and orders payment in the amount of \$8,000.00 to Phoenix
8 Settlement Administrators, for performance of its services as the Settlement Administrator.

9 13. Upon completion of administration of the Settlement, the Parties shall file a declaration
10 stating that all amounts payable under the Settlement have been paid and that the terms of the Settlement
11 have been completed.

12 14. The Court sets a non-appearance case review regarding compliance with all fund
13 distribution requirements under the Settlement for AUG 30 2024, at 9:15 AM, in
14 Dept. SM 1 of the above-entitled Court. A Final Report, including any declaration from the Settlement
15 Administrator regarding compliance, shall be filed with the Court no later than
16 AUG 16 2024.

17 15. The Court approves and orders payment in the amount of \$22,500.00 to the Labor and
18 Workforce Development Agency in compromise of claims under the Labor Code Private Attorneys
19 General Act of 2004 (Labor Code § 2698 *et seq.*). Further, \$7,500.00 shall be distributed to Class
20 Members as required under the Settlement.

21 16. Once Defendants fully fund the Settlement by paying all amounts due under the
22 Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid
23 and timely request for exclusion as to claims other than the PAGA claim, and, as to the PAGA claim,
24 each Aggrieved Employee, regardless of whether they have requested exclusion from the Settlement of
25 Class claims, will release claims as follows:

26 All Participating Class Members, on behalf of themselves and their respective former
27 and present representatives, agents, attorneys, heirs, administrators, successors, and
28 assigns, release Released Parties from any and all claims that were alleged, or
reasonably could have been alleged, arising, accruing, or existing during the Class
Period based on the facts stated in the Operative Complaint, regardless of legal theory

1 asserted, including any and all claims, debts, liabilities, demands, obligations,
2 guarantees, costs, expenses, attorneys' fees, damages, liquidated damages, penalties,
3 actions, or causes of action of any nature under state, federal, or local law, whether
4 statutory, common law or administrative law arising from any and all allegations that
5 PROFORM: (1) failed to provide meal periods (Lab. Code §§ 204, 223, 226.7, 512 and
6 1198 and Wage Order); (2) failed to provide rest periods (Lab. Code §§ 204, 223, 226.7
7 and 1198 and Wage Order); (3) failed to pay minimum and overtime time wages (Lab.
8 Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198 and Wage Order as to
9 minimum wage); (4) failed to provide accurate itemized wage statements (Lab. Code §§
10 226(a)); (5) failed to timely pay all final wages (Lab. Code §§ 201, 202 and 203); (6)
11 failed to indemnify for job-related expenses (Lab. Code § 2802); and (7) engaged in
12 Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.) ("Released Claims"). This
13 Release also covers all claims for interest, attorneys' fees and costs related to the
14 Action. In addition, any Class Member who has not timely and appropriately opted out
15 of this Settlement in accordance with the Request for Exclusion process set forth in
16 Section 7.9 [of the Agreement] shall be a Participating Class Member and forever
17 agrees that he or she shall not institute a claim, nor accept back pay, unpaid wages,
18 liquidated damages, penalties of any nature, attorneys' fees and costs, or any other relief
19 from any other suit, class, collective action, or representative or administrative claim, or
20 other claim of any sort or nature whatsoever against the Released Parties containing
21 Released Claims. Notwithstanding, no Class Member is permitted to submit a Request
22 for Exclusion from or object to the settlement of the PAGA Claim and all Aggrieved
23 Employees shall be bound by the release of the PAGA Claim regardless of whether the
24 Aggrieved Employee timely submits a valid Request for Exclusion. Except as set forth
25 in Section 5.5 of [the] Agreement, Participating Class Members do not release any other
26 claims, including claims for vested benefits, wrongful termination, violation of the Fair
27 Employment and Housing Act, unemployment insurance, disability, social security,
28 workers' compensation, or claims based on facts occurring outside the Class Period.

All Class Members who are Aggrieved Employees are deemed to release, on behalf of
themselves and their respective former and present representatives, agents, attorneys,
heirs, administrators, successors, and assigns, the Released Parties from all claims for
PAGA penalties that were alleged, or reasonably could have been alleged, arising,
accruing, or existing during the PAGA Period based on the facts stated in the Operative
Complaint and the PAGA Notice attached [to the Agreement] as Exhibit B.

"Released Parties" means PROFORM and each of its former and present directors,
officers, shareholders, owners, former and present managing employees, attorneys,
agents, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

17. The Parties are ordered to give notice of this final Order and Judgment to the LWDA,
pursuant to Labor Code § 2699(1)(3).

18. The Court hereby directs the Parties to effectuate the terms of the Settlement as set forth
in the Settlement Agreement.

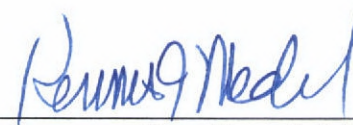
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1 19. The Court retains jurisdiction to consider all further applications arising out of or in
2 connection with the settlement.

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4 **IT IS SO ORDERED.**

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7 Dated: 4.27.24

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Hon. Kenneth J. Medel
SAN DIEGO SUPERIOR COURT JUDGE