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and all similarly aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

JUAN RAMON TORRES REYES, on behalf
of himself and all similarly aggrieved
employees,

Plaintiff,

v.

MB LABOR CONTRACTING, INC.;
D'ARRIGO BROS. CO., OF CALIFORNIA;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV000682

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SETTING
A SETTLEMENT FAIRNESS HEARING**

Date: June 28, 2024

Time: 8:30 A.M.

Dept.: 14

Complaint Filed: March 11, 2022

Trial Date: None Set

1 Plaintiff Juan Ramon Torres Reyes's ("Class Representative" or "Plaintiff")
2 application for an Order Granting Preliminary Approval of Class Action Settlement was filed
3 with the Court on June 5, 2024, and a hearing was held before this Court on June 28, 2024.
4 Appearances for Plaintiff and Defendants MB Labor Contracting, Inc. and D'Arrigo Bros. Co.
5 of California (together, "Defendants") were noted on the record.

6 The Court has considered the Joint Stipulation of Class Action and PAGA Settlement
7 ("Agreement" or "Settlement Agreement") and all other papers filed in this action. The terms
8 used herein utilize the same definitions as set forth in the Settlement Agreement.

9 NOW THEREFORE, IT IS HEREBY ORDERED:

10 1. This Court grants preliminary approval of the Settlement Agreement between
11 Plaintiff and Defendants filed herewith. The Settlement Agreement appears to be fair,
12 adequate, and reasonable to the Class.

13 2. The Class Representative and Defendants (hereafter, "Settling Parties"), through
14 their counsel of record in the Litigation, have reached an agreement to settle all claims in the
15 Litigation on behalf of the Class (as defined below and in the Settlement Agreement) as a
16 whole.

17 3. The Court hereby approves the following Class for settlement purposes:

18 all current and former non-exempt employees of Defendant MB
19 Labor Contracting, Inc. that were assigned to work for Defendant
20 D'Arrigo Bros. Co., of California in California, at any time from
March 11, 2018, to October 24, 2023.

21 Should for whatever reason the Settlement Agreement not become Final, the fact that
22 the Parties were willing to stipulate to certification of a class as part of the Settlement
23 Agreement shall have no bearing on, or be admissible in connection with, the Litigation.

24 4. The Court appoints and designates: (a) Plaintiff Juan Ramon Torres Reyes as the
25 Class Representative and (b) B. James Fitzpatrick and Laura L. Franklin of Fitzpatrick &
26 Swanston; and Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C. as Class
27 Counsel for the Class. Class Counsel is authorized to act on behalf of the Class with respect to
28 all acts or consents required by, or which may be given, pursuant to the Settlement Agreement,

1 and such other acts reasonably necessary to finalize the Settlement Agreement and its terms.
2 Any Class Member may enter an appearance through his or her own counsel at such Class
3 Member's own expense. Any Class Member who does not enter an appearance or appear on
4 his or her own behalf will be represented by Class Counsel.

5 5. The Court hereby approves the terms and conditions provided for in the
6 Settlement Agreement. The Court finds that on a preliminary basis the Settlement Agreement
7 falls within the range of reasonableness of a settlement, including the amount of the PAGA
8 penalties, and appears to be presumptively valid, subject only to any objections that may be
9 raised at the final fairness hearing and final approval by the Court. It appears to the Court on a
10 preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Class
11 Members when balanced against the probable outcome of further litigation relating to liability
12 and damages issues. It also appears that investigation, research, and court proceedings have
13 been conducted so that counsel for the Settling Parties are able to reasonably evaluate their
14 respective positions. It appears to the Court that settlement at this time will avoid substantial
15 additional costs by all Settling Parties, as well as avoid the delay and risks that would be
16 presented by the further prosecution of the Litigation. It also appears that settlement has been
17 reached as a result of intensive, serious, and non-collusive arm's-length negotiations.

18 6. A final fairness hearing on the question of whether the proposed Settlement
19 Agreement, the allocation of payments to Class Members, attorneys' fees and costs to Class
20 Counsel, the payment to the Settlement Administrator, the payment of PAGA penalties to the
21 Labor and Workforce Development Agency and Aggrieved Employees, and the Class
22 Representative Enhancement Payment should be finally approved as fair, reasonable, and
23 adequate as to the members of the Class is hereby set for _____, at _____ a.m.
24 in this Court.

25 7. The Court hereby approves, as to form and content, the Notice of Proposed Class
26 Action Settlement ("Notice Packet") to be sent to Class Members, which is attached as
27 **Exhibit A** to the Settlement Agreement. The Court finds that distribution of the Notice Packet
28 to Class Members substantially in the manner and form set forth in the Settlement Agreement

1 and this Order meets the requirements of due process and shall constitute due and sufficient
2 notice to all parties entitled thereto.

3 8. The Court appoints and designates CPT Group as the Settlement Administrator.
4 The Court hereby directs the Settlement Administrator to provide the approved Notice Packet
5 to Class Members using the procedures set forth in the Settlement Agreement.

6 9. Any Class Member may choose to opt out of and be excluded from the
7 settlement as provided in the Settlement Agreement and Notice Packet and by following the
8 instructions for requesting exclusion. Any person who timely and properly opts out of the
9 settlement will not be bound by the Settlement Agreement or have any right to object, appeal,
10 or comment thereon. However, a Class Member who validly excludes him/herself from the
11 settlement may also be considered an Aggrieved Employee under the terms of the Settlement
12 and may not exclude him/herself from the portion of the Settlement that pertains to Released
13 PAGA Claims. Any Request for Exclusion must be in writing and signed by each such Class
14 Member opting out and must otherwise comply with the requirements delineated in the Notice
15 Packet. Class Members who have not requested exclusion by submitting a valid and timely
16 request by the deadline shall be bound by all determinations of the Court, the Settlement
17 Agreement, and Judgment.

18 10. Any Class Member who does not opt out may object to the Settlement
19 Agreement or express his or her views regarding the Settlement Agreement and may present
20 evidence and file briefs or other papers that may be proper and relevant to the issues to be
21 heard and determined by the Court as provided in the Notice Packet.

22 11. Any portion of the Individual Settlement Payment and/or individual PAGA
23 Payment not cashed within one-hundred eighty (180) days from the date of issuance of the
24 check shall be entirely paid to the State Bar of California's Justice Gap Fund, after all
25 payments for the Settlement Administration Costs, Class Representative Enhancement
26 Payment, Class Counsel Award of attorneys' fees and costs, and PAGA Payment have been
27 fully paid.

28 12. As provided in the Settlement Agreement and subject to the Court's final approval

1 of the Settlement Agreement prior to distribution, Defendant MB Labor Contracting, Inc. shall
2 make three equal payments of Fifty-Five Thousand Seven Hundred Sixty-One Dollars and
3 Thirty-One Cents (\$55,761.31) to fund the Gross Settlement Amount into a Qualified Settlement
4 Account to be established by the Settlement Administrator, as follows:

- 5 a. The first payment will be due within 30 days of Plaintiff's service on
6 Defendants of a filed copy of the Court's Preliminary Approval Order.
7 b. The second payment will be due 90 days after the date that the first
8 payment is due.
9 c. The third payment along with the MB Labor's share of payroll taxes will
10 be due 180 days after the date that the first payment is due.

11 13. The Motion for Final Approval shall be filed by the Class Representative no
12 later than sixteen (16) court days before the Settlement Fairness Hearing.

13 14. The Court reserves the right to adjourn or continue the date of the Settlement
14 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice
15 to the Class, and retains jurisdiction to consider all further applications arising out of or
16 connected with the Settlement Agreement.

17 IT IS SO ORDERED.

18
19 DATED: _____

HON. CARRIE M. PANETTA
SUPERIOR COURT OF CALIFORNIA