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FILED

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

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FRESNO COUNTY SUPERIOR COURT

By: A. Hoffman, Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF FRESNO**

11 **SERGIO MARTINEZ GARCIA**, individually,
12 and on behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 **TRI-VALLEY PLASTERING, INC.**, a
16 California corporation; and DOES 1 through
17 10, inclusive,

18 Defendants

Case No.: 22CECG00591

CLASS AND REPRESENTATIVE ACTION

[Hon. Jeffrey Y. Hamilton, Dept. 503]

**AMENDED [REDACTED] ORDER
GRANTING PLAINTIFF'S RENEWED
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT AND JUDGMENT**

FINAL APPROVAL HEARING:

Date: December 21, 2023

Time: 3:30 p.m.

Dept.: 503

Complaint Filed: February 24, 2022

Trial Date: Not set

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

2 On April 20, 2023, the Court entered an Order granting Plaintiff Sergio Martinez Garcia's
3 ("Plaintiff") Motion for Preliminary Approval of Class Action and PAGA Settlement, conditional
4 class certification, and approval of Class Notice, and setting a Final Approval Hearing (the
5 "Preliminary Approval Order"), thereby preliminarily approving a settlement of the above-entitled
6 action (the "Action") that was reached between Plaintiff and Defendant Tri-Valley Plastering, Inc.
7 ("Defendant," and together with Plaintiff, the "Parties"), in accordance with the Parties' Class Action
8 and PAGA Settlement and Class Notice (the "Settlement" or "Settlement Agreement"). The
9 Settlement Agreement was attached as Exhibit 1 to the Declaration of Kane Moon in Support of
10 Plaintiff's Renewed Motion for Preliminary Approval of Class Action and PAGA Settlement, and
11 which, together with the exhibits annexed thereto, set forth the terms and conditions for settlement
12 of the Action. The Court now has before it a Proposed Final Order and Judgment to finally approve
13 the Settlement.

14 Due and adequate notice having been given to Class Members, and the Court having reviewed
15 the Settlement Agreement and duly considered Plaintiff's Renewed Motion for Final Approval of
16 Class Action and PAGA Settlement, the supporting declarations and exhibits thereto, all other papers
17 filed and proceedings had hereto, the record in this Action, and any oral argument, and good cause
18 appearing,

19 **THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

20 1. The Court, for purposes of this Final Order and Judgment, refers to all terms and
21 definitions as set forth in the Settlement Agreement.

22 2. Plaintiff's Renewed Motion for Final Approval of Class Action and PAGA
23 Settlement, including a motion for payment of attorneys' fees and litigation costs to Class Counsel,
24 class representative service award, Settlement Administrator's fees, and PAGA Penalties to the
25 California Labor and Workforce Development Agency (the "LWDA") (collectively "Renewed
26 Motion for Final Approval"), and whether the Settlement should be finally approved as fair,
27 reasonable, and adequate as to Class Members, came before Department 503 of this Court, the
28 Honorable Jeffrey Y. Hamilton presiding, on December 21, 2023.

1 3. The Court finds that the Settlement Agreement appears to have been made and entered
2 into in good faith, the terms of which are fair, reasonable, and adequate; was reached following
3 meaningful discovery and investigation conducted by Plaintiff and his counsel of record (“Class
4 Counsel”); is the result of serious, informed, adversarial, and arms-length negotiations between the
5 Parties; and therefore, meets the requirements for final approval. In so finding, the Court has
6 considered all the evidence presented, including evidence regarding the strength of Plaintiff’s claims;
7 the risk, expense, and complexity of the claims presented; the likely duration of further litigation; the
8 amount offered in the Settlement; the extent of investigation and discovery completed; and the
9 experience and views of Class Counsel. The Court has further considered the absence of objections
10 to and requests for exclusion from the Settlement by Class Members. Accordingly, the Court hereby
11 **GRANTS** Plaintiff’s Renewed Motion for Final Approval and **ORDERS** Judgment to be entered
12 in accordance with the terms herein.

13 4. The Court certifies, for settlement purposes only, the following Class (the “Settlement
14 Class”): All persons who worked for Defendant in California as an hourly paid, non-exempt
15 employee between February 24, 2018 through March 25, 2023. Excluded from the Settlement Class
16 are all persons who properly and timely elected to opt out from the Settlement.

17 5. The deadline to request exclusion from or to submit written objections to the
18 Settlement was July 17, 2023. No requests for exclusion or written objections were received.

19 6. The Court Approved Notice of Class Action Settlement and Hearing Date for Final
20 Court Approval (the “Notice”), which was attached to the Settlement Agreement as Exhibit A and
21 provided to the Class pursuant to the plan for distribution described under the Settlement Agreement,
22 conformed with the requirements of California Rules of Court 3.766 and 3.769, and constituted the
23 best notice practicable under the circumstances, by providing individual and adequate notice of the
24 proceedings and of the matters set forth therein to Class Members. The Notice fully satisfied the
25 requirements of due process and provided the Class Members with adequate instructions and a variety
26 of means to obtain additional information.

27 7. A full opportunity has been afforded to the Settlement Class Members to participate
28 in the Final Approval Hearing, and all Settlement Class Members and other persons wishing to be

1 heard have been heard and/or had an opportunity to be heard. The Settlement Class Members have
2 had a full and fair opportunity to exclude themselves from the Settlement or object to the Settlement.
3 Accordingly, the Court determines that all Settlement Class Members who did not timely and validly
4 opt out of the Settlement ("Participating Class Members") are bound by this Final Order and
5 Judgment.

6 8. Release As to All Participating Settlement Class Members. Effective on the date when
7 Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed
8 on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel
9 will release claims against all Released Parties as follows (Settlement Agreement, ¶ 5):

10 a. Plaintiff's Release. In addition to the releases made in paragraphs 5.2 and 5.3, Plaintiff
11 will make the following additional general release. Plaintiff releases the Released Parties
12 from all claims, demands, rights, liabilities and causes of action of every nature and
13 description whatsoever, known or unknown, asserted or that might have been asserted,
14 whether in tort, contract, or for violation of any state or federal statute, rule or regulation
15 arising out of, relating to, or in connection with any act or omission by or on the part of
16 any of the Released Parties committed or omitted prior to the execution hereof ("Plaintiff's
17 Release"). Plaintiff and Defendant both stipulate and agree that each of them have
18 expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
19 rights and benefits of Section 1542 of the California Civil Code, or any other provision
20 under federal or state law, which provides:

21 A general release does not extend to claims which the creditor or
22 releasing party does not know or suspect to exist in his or her favor
23 at the time of executing the release, which if known by him or her
24 must have materially affected his or her settlement with the debtor or
released party.

25 The Parties understand that the General Release does not release any claims that they
26 cannot lawfully released. It is also understood and agreed by Defendant that this release
27 does not limit Plaintiff from filing and seeking damages for any Workers' Compensation
28 claims and/or unemployment insurance claims that are currently pending or may be filed

1 in the future. Defendant represents that as of the date of this Memorandum execution
2 Defendant has not filed any unemployment insurance claims related to his employment
3 with Defendant. (Settlement Agreement, ¶ 5.1.)

4 b. Release by Participating Class Members Who Are Not Aggrieved Employees. All
5 Participating Class Members, on behalf of themselves and their respective former and
6 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
7 release Released Parties from all claims, losses, damages, liquidated damages, penalties,
8 interest, liabilities, causes of action, civil complaints, arbitration demands or suits which
9 arise from the facts asserted in the Operative Complaint, including all claims under the
10 California Labor Code as alleged in the Operative Complaint, including violations for
11 meal periods, rest breaks, non-productive time, off the clock work, unpaid overtime and
12 minimum wages, timely payment of wages, wage statements, waiting time penalties,
13 unreimbursed business expenses, penalties under the Private Attorneys General Act
14 sections 2698, *et seq.*, and violations of California Unfair Competition Law (Cal. Bus. &
15 Prof. Code §§ 17200, *et seq.*) occurring during the Class Period. Except as set forth in
16 Sections 5.2 and 5.3 of this Agreement, Participating Class Members do not release any
17 other claims, including claims for vested benefits, wrongful termination, violation of the
18 Fair Employment and Housing Act, unemployment insurance, disability, social security,
19 workers' compensation, or claims based on facts occurring outside the Class Period.
20 (Settlement Agreement, ¶ 5.2.)

21 c. Release by Non-Participating Class Members Who Are Aggrieved Employees. All Non-
22 Participating Class Members who are Aggrieved Employees are deemed to release, on
23 behalf of themselves and their respective former and present representatives, agents,
24 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all
25 claims for PAGA penalties that were alleged, or reasonably could have been alleged, based
26 on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice
27 attached hereto as Exhibit B. (Settlement Agreement, ¶ 5.3.)

28 d. Identity of the Released Parties. "Released Parties" shall mean: Defendant and any parent,

1 subsidiary, affiliate, predecessor or successor, and all agents, employees (current and
2 former), officers, directors, insurers and attorneys. (Settlement Agreement, ¶ 1.41.)

3 9. The Parties shall bear their own respective attorneys' fees and costs, except as
4 otherwise provided for in the Settlement Agreement and approved by the Court.

5 10. The Court finds that the Gross Settlement Amount, the Net Settlement Amount, and
6 the methodology used to calculate Individual Class and PAGA Payments to Participating Class
7 Members and Aggrieved Employees are fair and reasonable. The Court thus authorizes the
8 Administrator to pay settlement allocations in accordance with the terms of the Settlement
9 Agreement. Defendant shall pay into a common fund a total of \$1,250,000.00 (the "Gross Settlement
10 Amount") to resolve the Action. Defendant shall fund the Gross Settlement Amount, and also fund
11 the amounts necessary to fully pay the employer's share of payroll taxes on the wage portion of
12 Individual Class Payments, as calculated by the Administrator, by transmitting the funds to the
13 Administrator no later than 60 days after the Effective Date, as that term is defined under the
14 Settlement Agreement. Payments to Class Members shall be distributed within 14 calendar days after
15 the receipt of funding and in accordance with the terms of the Settlement Agreement.

16 11. A total amount of **\$100,000.00** shall be allocated to resolution of the Released PAGA
17 Claims under the Private Attorneys General Act of 2004 ("PAGA"), and distributed as follows: 25%
18 (**\$25,000.00**) to the Aggrieved Employees and 75% (**\$75,000.00**) to the LWDA. The LWDA's claims
19 for the Released PAGA Claims are hereby extinguished.

20 12. The Court confirms the appointment of Plaintiff as the Class Representative. In
21 addition to any recovery that Plaintiff is eligible to receive under the Settlement Agreement as a Class
22 Member, the Court approves and orders a service payment in the amount of **\$5,000.00** from the Gross
23 Settlement Amount to Plaintiff for his role and service as the Class Representative, for the risks and
24 work attendant to that role, and for his general release of claims, both known and unknown, and
25 waiver of Section 1542 rights.

26 13. The Court confirms the appointment of Moon Law Group, PC as Class Counsel, as
27 they are experienced in wage and hour class action litigation, have no apparent conflicts of interest
28 with Plaintiff or other Class Members, and have adequately represented Class interests. The Court

1 approves and orders the payment to Class Counsel from the Gross Settlement Amount for reasonable
2 attorneys' fees in the amount of **\$277,109.00**, as well as **\$12,267.78** for reimbursement of litigation
3 costs actually incurred. The Court finds that the fees and costs amounts are reasonable in light of the
4 benefits provided to the Class.

5 14. The Court confirms the appointment of Phoenix Class Action Administration
6 Solutions as the Administrator, who has fulfilled its initial notice and reporting duties owed under
7 the Settlement Agreement. The Court approves and orders the payment of **\$12,000.00** from the Gross
8 Settlement Amount to the Administrator for the costs of settlement administration.

9 15. In accordance with California Rule of Court 3.771(b), notice of this Final Order and
10 Judgment will be given to the Class by the Administrator, who will post the Final Order and
11 Judgment on a website maintained by the Administrator, the address of which was provided to
12 Class Members in the Notice, for a period of not less than 90 calendar days after entry.

13 16. This Final Order and Judgment is intended to be a final disposition of the Action in
14 its entirety and is intended to be immediately appealable.

15 17. The obligations set forth in the Settlement Agreement are deemed part of this Final
16 Order and Judgment, and the Parties are ordered to carry out the Settlement Agreement according to
17 its terms and provisions.

18 18. Following entry of this Final Order and Judgment, and without affecting the finality
19 thereof, the Court shall retain jurisdiction over the Parties, the Action, and the Settlement solely for
20 purposes of (i) enforcing the Settlement Agreement and/or Judgment, (ii) addressing settlement
21 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

22 19. The Settlement Agreement is finally approved but is not an admission by Defendant
23 of the validity of any claims in this Action, or of any wrongdoing by Defendant or of any violation
24 of law. Neither the Settlement Agreement nor any related document shall be offered or received in
25 evidence in any civil, criminal, or administrative action or proceeding other than such proceedings
26 as may be necessary to consummate or enforce the Settlement.

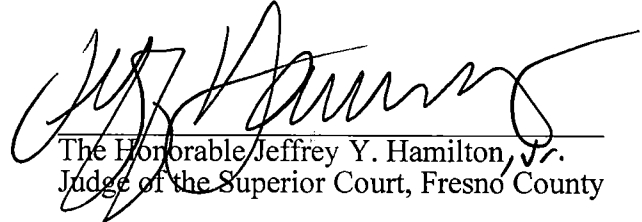
27 20. The Court sets a Hearing re: Amended Judgment pursuant to Code of Civil
28 Procedure section 384 on December 4, 2024 at 3:30 p.m. in Department 503. Class Counsel are

1 ordered to file a proposed amended judgment (as needed) and a verified, final report and declaration
2 by the Settlement Administrator regarding payouts of settlement funds no later than November 18,
3 2024. A proposed amended judgment need not be filed and appearance will not be required at the
4 Hearing if the Settlement Administrator's declaration filed prior to the Hearing reports that all the
5 distributions under the Settlement Agreement are complete, that Class Member shares were paid out
6 to Participating Class Members and/or Aggrieved Employees, and that any uncashed Class Member
7 shares were transmitted to the California Controller's Unclaimed Property Fund in the name of the
8 Class Member who failed to cash the check thereby leaving no "unpaid residue" subject to the
9 requirements of Code of Civil Procedure section 384 as Class Members who did not cash their
10 check, for whatever reason, can obtain those funds at a later time.

11 **IT IS SO ORDERED.**

12 DATE:

1/2/24


The Honorable Jeffrey Y. Hamilton, Jr.
Judge of the Superior Court, Fresno County

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **AMENDED [PROPOSED] ORDER GRANTING PLAINTIFF'S RENEWED MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AND JUDGMENT** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

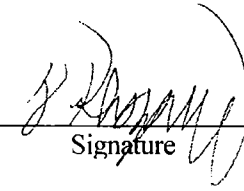
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Attorneys for Defendant TRI-VALLEY PLASTERING, INC

[✓] **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 e-mail address or e-mail of record in this action. I did not receive, within a reasonable time after the transmission, any electronic Message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **December 26, 2023** at Los Angeles, California.

Jason Khozam
Type or Print Name



Signature