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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY CONTRA COSTA**

FERNANDO RAMOS and KEVIN
NIKAIDO, individuals; all others
similarly situated, and on behalf of the
general public,

Plaintiffs,

v.

DAVIDON HOMES a California limited
partnership; DAVIDON
CORPORATION; and
DOES 1-100, inclusive,

Defendants.

Case No. C23-01240

*[Assigned for All Purposes to the
Hon. Edward G. Weil, Dept. 39]*

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE,
SETTING OF FINAL APPROVAL
HEARING DATE**

Date:
Time:

Complaint Filed: May 24, 2023
Trial Date: None Set

1 **I. RECITALS**

2 This action is currently pending before this Court as a putative class action and
3 representative action (the “Action”). Plaintiffs Fernando Ramos and Kevin Nikaido have applied
4 to this Court for an order preliminarily approving the settlement of the Action in accordance with
5 the Joint Stipulation and Settlement Agreement (the “Agreement”), which together with the
6 exhibit annexed thereto, sets forth the terms and conditions for a proposed settlement and entry
7 of judgment upon the terms and conditions set forth therein. The Court has read and considered
8 the Memorandum of Points and Authorities in support of Plaintiffs’ Motion for Preliminary
9 Approval of Class and PAGA Action Settlement, Conditional Certification, Approval of Class
10 Notice, Setting of Final Approval Hearing Date (“Preliminary Approval Motion”) and the
11 declarations submitted therewith. For purposes of this Order, the Court adopts all defined terms
12 as set forth in the Agreement.

13 **II. FINDINGS**

14 After review and consideration of the Agreement and the Preliminary Approval Motion
15 and the papers in support thereof, the Court hereby finds and orders as follows:

16 1. The Agreement falls within the range of reasonableness meriting possible final
17 approval.

18 2. The certification of the Class solely for purposes of settlement is appropriate in
19 that: (a) the Class Members are ascertainable and so numerous that joinder of all Class Members
20 is impracticable; (b) there are questions of law and fact common to the Class which predominate
21 over any individual questions; (c) Plaintiffs’ claims are typical of the claims of the Class; (d)
22 Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of
23 the Class; and (e) a class action, and class-wide resolution of the action via class settlement
24 procedures is superior to other available methods for the fair and efficient adjudication of the
25 controversy.

26 3. The Agreement, and the obligations of the Parties as set forth therein, is fair,
27 reasonable, and is an adequate settlement of this case and is in the best interests of the Class in
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light of the factual, legal, practical, and procedural considerations raised by this case.

4. Plaintiffs do not have any conflicts that would preclude them from serving as Class Representatives, and the appointment comports with the requirements of due process.

5. Class Counsel does not have any conflicts that would preclude them from acting as Class Counsel, and they meet the requirements for appointment as Class Counsel and the requirements of due process.

6. The Notice of Class Action Settlement (“Class Notice”) attached as **Exhibit A** to the Agreement complies with due process because the Class Notice is reasonably calculated to adequately apprise Class Members of: (a) the pending lawsuit; (b) the terms of the proposed Agreement; and (c) their rights, including the right to either participate in the settlement, exclude themselves from the settlement, or object to the settlement. Plaintiffs’ proposed plan for notifying the Class Members and settlement administration is the best notice practicable under the circumstances.

III. ORDER

The Court having considered the papers submitted in support of the motion for preliminary approval, HEREBY ORDERS THE FOLLOWING:

1. The Court finds on a preliminary basis that the provisions of the Agreement are fair, just, reasonable, and adequate and, therefore, meet the requirements for preliminary approval.

2. The following Class is conditionally certified for purposes of settlement only: All hourly, non-exempt employees who were employed by Defendants Davidon Homes and Davidon Corporation at any time during March 19, 2020, to October 29, 2024 within the State of California.

3. The Agreement provides for the following release as to Participating Class Members,¹ which is hereby approved conditionally: All Participating Class Members will release and discharge the Released Parties² from any and all claims pled in the operative complaint, or

¹ A Participating Class Member is a Class Member who does not submit a valid and timely request to exclude themselves from this Settlement.

² The Released Parties are defined in the Agreement as “Defendants and their past or present

1 claims that could have been pled based on the factual allegations pled in the operative complaint.

2 The Released Claims shall be for the Class Period.

3 4. This settlement also releases claims under the Private Attorneys General Act of
4 2004 (“PAGA”). These claims are asserted on behalf of PAGA Aggrieved Employees defined as:
5 All Class Members who worked at least one pay period for Davidon Homes and Davidon
6 Corporation between March 6, 2022 to October 29, 2024.

7 5. The Agreement provides for the following release as to PAGA Aggrieved
8 Employees, which is hereby approved conditionally: Aggrieved Employees shall release
9 Defendants and the Released Parties from any and all claims for civil penalties under the
10 California Labor Code and the Private Attorneys General Act of 2004 pled in the operative
11 Notices to the LWDA and the operative complaint. The PAGA Released Claims shall be for the
12 PAGA Period.

13 6. The settlement appears to be fair, adequate and reasonable to the Class. The
14 settlement falls within the range of reasonableness and appears to be presumptively valid, subject
15 only to any objections that may be raised at the Final Approval Hearing and final approval by this
16 Court.

17 7. Plaintiffs are conditionally approved as the Class Representatives for the Class.

18 8. The Agreement provides for Class Representative Enhancement Payments of
19 \$10,000 (\$5,000 each) payable to Plaintiffs Fernando Ramos and Kevin Nikaido for their services
20 as class representatives. The requested Class Representative Enhancement Payments of \$5,000
21 for each Plaintiff will be reviewed at time of final approval. Criteria for evaluation of
22 representative payment requests are discussed in *Clark v. American Residential Services LLC*
23 (2009) 175 Cal.App.4th 785, 804- 807.

24 9. Mara Law Firm, PC, Molteni Employment Law and The Byrne Law Group are
25 conditionally approved as Class Counsel for the Class.

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28 officers, directors, employees and agents which could be jointly liable with Defendants for the
claims alleged.”

1 10. Class Counsel seek \$300,000 in attorneys' fees and up to \$40,000 in actual
2 litigation costs. Following typical practice, however, the fee award will not be considered at this
3 time, but only as part of final approval.

4 11. A Final Approval Hearing on the question of whether the settlement, attorneys'
5 fees and costs to Class Counsel, and Class Representatives Enhancement Payment should be
6 finally approved as fair, reasonable and adequate as to Class Members is to be scheduled in
7 Department 39. Class Counsel are to obtain a hearing date for the motion for final approval from
8 the Department clerk. Other dates in the scheduled notice process should track as appropriate to
9 the hearing date.

10 12. The Court confirms APEX as the Settlement Administrator.

11 13. The proposed payment of up to \$10,000 in costs to APEX for its services as the
12 Settlement Administrator is conditionally approved.

13 14. The Agreement provides from the Gross Settlement Fund a PAGA Payment of
14 \$45,000 (75% of which shall be paid to the Labor and Workforce Development Agency, and 25%
15 of which shall be distributable to Aggrieved Employees).

16 15. The Court approves, as to form and content, the Notice of Class Action Settlement
17 in substantially the form attached as **Exhibit A** to the Agreement. The Court approves the
18 procedure for Class Members to participate in, to opt out of, and to object to, the settlement as set
19 forth in the notice.

20 16. The Court directs the mailing of the notice of class action settlement by first class
21 mail to Class Members in accordance with the Implementation Schedule below. The Court finds
22 the dates selected for the mailing and distribution of the notice, as set forth in the Implementation
23 Schedule, meet the requirements of due process and provide the best notice practicable under the
24 circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

25 17. The ultimate judgment must provide for a compliance hearing after the settlement
26 has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one
27 week before the compliance hearing date. Five percent (5%) of the attorney's fees are to be
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withheld by the claims administrator pending satisfactory compliance as found by the Court.

IV. IMPLEMENTATION SCHEDULE

The Court orders the following Implementation Schedule for further proceedings:

Deadline for Defendant to submit Class and PAGA Data to Settlement Administrator	10 calendar days from the date of this Order
Deadline for Settlement Administrator to Mail Class Notices to Class Members	10 calendar days from receipt of the Class Data
Deadline for Class Members to Postmark Requests for Exclusion, Objections, or Disputes (“Response Deadline”)	45 days from the mailing of the Class Notices
Deadline for Class Counsel to file a Motion for Final Approval	16 court days prior to the Final Approval Hearing
Deadline to Provide the Court with the Settlement Administrator’s Declaration Outlining Requests for Exclusion, Objections, and Disputes	16 court days prior to the Final Approval Hearing

IT IS SO ORDERED.

Dated: _____

By _____
Honorable Edward G. Weil
Contra Costa County Superior Court Judge