

FILED
KERN COUNTY

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BY Grew DEPUTY

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

DAVID BANGLEY, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

BEDON CONSTRUCTION, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: BCV-23-103251

Assigned for All Purposes to:
Honorable Thomas S. Clark
Department 17

CLASS ACTION

**~~PROPOSED~~ AMENDED ORDER OF
FINAL APPROVAL AND JUDGMENT**

Hearing Date: November 4, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department 17

Complaint Filed: September 28, 2023
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff David Bangley's ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Class Action and PAGA Settlement Agreement ("Settlement
4 Agreement," "Settlement," or "Agreement"), hereby **FINDS AND ORDERS**:

5 Plaintiff and Defendant Bedon Construction, Inc. ("Defendant") entered the Settlement
6 Agreement on or about April 8, 2024 to settle this lawsuit.

7 The Court entered an order dated May 28, 2024 preliminarily approving the settlement of
8 this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure section
9 382 and California Rule of Court 3.769, ordering notice to be sent to the Class Members,
10 providing the Class Members with an opportunity to object to the Settlement or exclude
11 themselves from the Class, and scheduling a Final Approval Hearing.

12 The Court held a Final Approval Hearing on November 4, 2024 to determine whether to
13 give final approval to the Settlement of this lawsuit.

14 1. Incorporation of Other Documents. This Amended Order of Final Approval and
15 Judgment ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise
16 provided herein, all capitalized terms in this Order and Judgment shall have the same meaning as
17 set forth in the Settlement Agreement.

18 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
19 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
20 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
21 including jurisdiction to approve the Settlement and grants final certification of the Class.

22 3. Final Class Certification. The Court finds that the Class satisfies all applicable
23 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
24 process. The Court certifies the Class consisting of all current and former hourly-paid or non-
25 exempt employees who were employed by Defendant within the State of California at any time
26 during the period from October 6, 2016, through August 30, 2023 ("Class" and "Class Period").¹

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28 ¹ After reviewing the Class Data, the Administrator determined that the Escalator Clause
has been triggered. Defendant elected to shorten the Class Period.

1 There are one hundred eighty-three (183) Class Members who did not submit valid and timely
2 Requests for Exclusion from the Settlement ("Participating Class Members").

3 4. Adequacy of Representation. Class Counsel fully and adequately represented the
4 Class for the purposes of entering and implementing the Settlement and satisfied the
5 requirements of Code of Civil Procedure section 382.

6 5. Class Notice. The Court finds that the Court Approved Notice of Class Action
7 Settlement and Hearing Date for Final Court Approval ("Class Notice") and its distribution to the
8 Class Members were implemented pursuant to the Settlement and this Court's Preliminary
9 Approval Order. The Court also finds the Class Notice:

- 10 a. constitutes notice reasonably calculated to apprise the Class Members of: (i)
11 pendency of this lawsuit; (ii) material terms and provisions of the Settlement
12 Agreement and their rights; (iii) their right to object to any aspect of the
13 Settlement Agreement; (iv) their right to exclude themselves from the Settlement
14 Agreement; (v) their right to receive settlement payments; (vi) their right to
15 appear at the Final Approval Hearing; and (vii) binding effect of the orders and
16 judgment in this lawsuit on all the Participating Class Members;
- 17 b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure
18 section 382, California Rule of Court 3.769, and due process;
- 19 c. constitutes the best practicable notice to the Class Members under the
20 circumstances of this lawsuit; and
- 21 d. constitutes notice reasonable, adequate, and sufficient to the Class Members.

22 6. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
23 any action to enforce the terms and provisions of the Settlement Agreement.

24 7. Final Settlement Approval. The terms and provisions of the Settlement
25 Agreement have been entered into in good faith and are the product of arm's-length negotiations
26 by experienced counsel who have carried out a meaningful investigation of the claims. The
27 Settlement Agreement and all its terms and provisions are fully and finally approved as fair,
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1 reasonable, adequate, and in the best interests of the Parties. The Parties are hereby directed to
2 implement the Settlement Agreement according to its terms and provisions.

3 8. Binding Effect. The terms and provisions of the Settlement Agreement and this
4 Order and Judgment are binding on Plaintiff, Participating Class Members, Aggrieved
5 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
6 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
7 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
8 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
9 that were or could have been raised in this lawsuit and are encompassed by the Released Class
10 Claims and Released Private Attorneys General Act of 2004 ("PAGA") Claims.

11 9. Release by Participating Class Members. Effective on the date when Defendant
12 fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the
13 Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of
14 themselves and their former and present representatives, agents, attorneys, heirs, administrators,
15 successors, and assigns, release the Released Parties from the Released Class Claims.

16 a. Release by Aggrieved Employee. Effective on the date when Defendant fully
17 funds the entire Gross Settlement Amount and funds all employer payroll taxes
18 owed on the Wage Portion of the Individual Class Payments, all Participating and
19 Non-Participating Class Members, who are Aggrieved Employees, are deemed to
20 release, on behalf of themselves and their former and present representatives,
21 agents, attorneys, heirs, administrators, successors, and assigns, the Released
22 Parties from the Released PAGA Claims.

23 b. Plaintiff's Release. Effective on the date when Defendant fully funds the entire
24 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage
25 Portion of the Individual Class Payments, Plaintiff and his former and present
26 spouses, representatives, agents, attorneys, heirs, administrators, successors, and
27 assigns generally release and discharge the Released Parties from the Plaintiff's
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1 Release. Plaintiff also expressly waives and relinquishes the provisions, rights,
2 and benefits, if any, of section 1542 of the Civil Code.

- 3 c. Released Parties. The Released Parties include Defendant and its past, present,
4 and/or future, direct and/or indirect, officers, directors, employees, agents,
5 representatives, attorneys, insurers, partners, investors, shareholders,
6 administrators, parent companies, subsidiaries, affiliates, divisions, predecessors,
7 successors, assigns, and joint venturers.

8 10. Class Representative Service Payment. The Court finds that the Class
9 Representative Service Payment of \$10,000, to be paid by Defendant to Plaintiff out of the Gross
10 Settlement Amount, to be reasonable and appropriate. The Class Representative Service Payment
11 is to be paid pursuant to the terms and provisions set forth in the Agreement.

- 12 a. The rationale for making enhancement payments is class representatives should
13 be compensated for the expense and risk they incurred in conferring a benefit on
14 the Class. Criteria courts consider include: (i) risk to the class representatives in
15 commencing suit; (ii) notoriety and personal difficulties; (iii) amount of time and
16 effort spent by the class representatives; (iv) duration of the litigation; and (v)
17 personal benefit (or lack thereof) enjoyed by class representatives.

- 18 b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the
19 risks inherent in the services as the class representative, duration of the case and
20 time involved, and benefits created for the Class, the Court approves the payment
21 of the Class Representative Service Payment of \$10,000 to Plaintiff.

22 11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment.
23 The Court finds that the Class Counsel Fees Payment of \$192,500, to be paid by Defendant to
24 Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate.
25 Additionally, the Court finds that the Class Counsel Litigation Expenses Payment as
26 reimbursement for actual litigation costs incurred of \$11,496.81, to be paid by Defendant to
27 Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Such fees
28 and costs are to be paid pursuant to the terms and provisions set forth in the Settlement

1 Agreement. Defendant shall not be required to pay for any other attorneys' fees and expenses,
2 costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or
3 Class Members. Defendant shall also not be required to pay for any other attorneys' fees and
4 expenses, costs, or disbursements incurred by Plaintiff or Class Members in connection with or
5 related in any manner to this lawsuit, Settlement Agreement, settlement administration, and/or
6 Released Class Claims and Released PAGA Claims.

7 a. The Court has an independent right and responsibility to review the Class Counsel
8 Fees Payment and only award so much as it determines reasonable. (See
9 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
10 127-128.) The Class Counsel Fees Payment of \$192,500 is thirty-five percent
11 (35%) of the common fund created for the benefit of the Class and is supported by
12 use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.*
13 (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk
14 undertaken, difficult nature of this litigation, skills required, percentage fees
15 award in previous and other cases, and contingent fees charged in the
16 marketplace, the Court finds that the Class Counsel Fees Payment is consistent
17 with the marketplace, is reasonable, and is approved.

18 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
19 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
20 seek reimbursement of up to \$25,000 in litigation costs. The Court finds that
21 Class Counsel expended \$11,496.81 in litigation costs, and that such costs were
22 reasonable. Thus, the Court approves the payment of the Class Counsel Litigation
23 Expenses Payment of \$11,496.81 from the common fund for the reimbursement
24 of Class Counsel's litigation costs.

25 12. Administration Expenses Payment. The Court finds that the Administration
26 Expenses Payment of \$7,950, to be paid by Defendant to the Administrator out of the Gross
27 Settlement Amount, to be reasonable and appropriate. The Administration Expenses Payment are
28 to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

1 a. The Court reviewed the declaration of Nicole Bench from ILYM Group, Inc., the
2 Court-approved Administrator. The Court finds that notice was provided to the
3 Class pursuant to the Preliminary Approval Order, constitutes the best practicable
4 notice to the Class, and satisfies due process. Thus, the Court approves the
5 payment of the Administration Expenses Payment of \$7,950 for the
6 Administrator's services in administering the Settlement.

7 13. PAGA Penalties. The Court finds that the PAGA Penalties of \$20,000, seventy-
8 five percent (75%) of which (\$15,000) will be paid to the California Labor and Workforce
9 Development Agency out of the Gross Settlement Amount and twenty-five percent (25%) of
10 which (\$5,000) shall be distributed to the Aggrieved Employees, on a pro rata basis, to be
11 reasonable and appropriate. The PAGA Penalties is to be paid pursuant to the terms and
12 provisions set forth in the Settlement Agreement.

13 14. Funding the Gross Settlement Amount. Defendant shall fund the Gross Settlement
14 Amount by transmitting the funds to the Administrator no later than fourteen (14) calendar days
15 of the Effective Date. Within fourteen (14) calendar days after Defendant fully funds the Gross
16 Settlement Amount, the Administrator will mail checks to the appropriate entities and persons.

17 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
18 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the
19 Settlement was the product of arm's-length negotiations following extensive litigation,
20 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
21 Michael Ludwig, an experienced and well-respected mediator.

22 a. The fairness of the Settlement is demonstrated by there being no objections to and
23 no requests for exclusion from the Settlement.

24 b. The fairness of the Settlement is further illustrated by the gross *average*
25 Individual Class Payment being approximately \$1,683.35, and the gross *highest*
26 Individual Class Payment being about \$7,807.60.

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1 16. Uncashed Checks. The Class Members must cash or deposit their settlement
2 checks within one hundred eighty (180) calendar days after the checks are mailed to them.
3 Uncashed checks will be canceled and transmitted to Defendant with a \$50,000 cap. If the
4 amount of uncashed checks exceeds \$50,000, then the amounts exceeding \$50,000 will be
5 canceled and transmitted to the *cy pres* recipient Community Action Partnership of Kern County.

6 17. Modification of Agreement. The Participating Class Members are hereby
7 authorized to agree to and adopt amendments to or modifications of the Agreement by an express
8 written instrument signed by all Parties or their representatives and approved by the Court. Such
9 amendments or modifications shall be consistent with this Order and Judgment and cannot limit
10 the rights of the Participating Class Members under the Agreement.

11 18. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
12 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
13 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
14 and for any other necessary purpose, including, without limitation:

- 15 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
16 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
17 arise out of the Settlement or this Order and Judgment;
- 18 b. entering such additional orders as may be necessary or appropriate to protect or
19 effectuate this Order and Judgment approving the Settlement, and permanently
20 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the
21 fair and orderly administration of the Settlement; and
- 22 c. entering any other necessary or appropriate orders to protect and effectuate this
23 Court's retention of continuing jurisdiction.

24 The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment,
25 Class Counsel Litigation Expenses Payment, and Class Representative Service Payment is
26 GRANTED. The Administrator is directed to carry out the terms of the Settlement forthwith.

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1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

8 IT IS SO ORDERED.

9
10 DATED: 11-4-24



HONORABLE THOMAS S. CLARK
SUPERIOR COURT JUDGE