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Clerk of the Superior Court

JUL 26 2024

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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By: T. Abas, Deputy Clerk

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By: T. Abas

Attorneys for Plaintiff OSKAR LIZARRAGA, as an individual, and on behalf of all similarly situated employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF SAN DIEGO

OSKAR LIZARRAGA, as an individual and
on behalf of all similarly situated employees,

Case No.: 37-2022-00038496-CU-OE-CTL

CLASS ACTION

Plaintiff,

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL AND JUDGMENT**

v.

AMERICAN SCAFFOLD, LLC, and DOES 1
through 50, inclusive,

Assigned for all purposes:
Hon. Gregory W. Pollack, Dept. C-71

Defendant.

Date: July 26, 2024
Time: 9:30 a.m.
Dept.: C-71

Complaint Filed: September 27, 2022
Trial Date: No Trial Date Set

1 **[PROPOSED] ORDER AND JUDGMENT OF FINAL APPROVAL**

2 WHEREAS, this matter has come before the Court for hearing pursuant to the Order
3 Granting Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement for
4 final approval of the Settlement between Plaintiff Oskar Lizarraga ("Plaintiff") and Defendant
5 American Scaffold, LLC ("Defendant") (collectively referred to as "the Parties") as set forth in the
6 Parties' Joint Stipulation of Class Action Settlement and Release ("Settlement" or "Settlement
7 Agreement") filed contemporaneously herewith as Exhibit A to the Declaration of John A. Young
8 in Support of Plaintiff's Motion for Final Approval of Class Action Settlement, and the Court
9 having considered all papers filed and the proceedings had and otherwise being fully informed,

10 **THE COURT HEREBY MAKES THE FOLLOWING DETERMINATIONS AND**
11 **ORDERS:**

12 1. This Order incorporates by reference the definitions in the Settlement Agreement
13 and all terms defined therein shall have the same meaning in this Order as set forth in the
14 Settlement Agreement.

15 2. This Court has jurisdiction over the subject matter of this litigation and over all
16 Parties to this litigation, including the Plaintiff and Class Members.

17 3. Pursuant to the Preliminary Approval Order, the appointed Settlement
18 Administrator, Phoenix Settlement Administrators ("Settlement Administrator"), mailed the Court
19 Approved Notice of Proposed Class Action Settlement ("Notice") to all Class Members known
20 address by First Class U.S. Mail. The Notice fairly and adequately informed Class Members of
21 the terms of the proposed Settlement and the benefits available to Class Members thereunder. The
22 Notice further informed Class Members of the pendency of the Action, of the proposed Settlement,
23 of Class Members' right to receive their share of the Settlement (if approved), of the scope and
24 effect of the Released Claims, of the preliminary Court approval of the proposed Settlement, of
25 exclusion and objection timing and procedures, of the date of the Final Approval Hearing, and of
26 the right to file documentation in support of or in opposition to the Settlement and to appear in
27 connection with the Final Approval Hearing. Class Members had adequate time to consider this
28 information and to use the procedures identified in the Notice. The Court finds and determines

1 that this notice procedure afforded adequate protections to Class Members and provides the basis
2 for the Court to make an informed decision regarding approval of the Settlement based on the
3 responses of Class Members. The Court finds and determines that the Notice provided in the
4 Action was sufficient, which satisfied the requirements of law and due process.

5 4. The Court finds that the Settlement offers significant monetary recovery to Class
6 Members and finds that such recovery is fair, adequate and reasonable when balanced against
7 further litigation related to liability, and damages issues. The Court further finds that the Parties
8 have conducted sufficient investigation, discovery, research and litigation such that Class Counsel
9 and Defense Counsel are able to reasonably evaluate their respective positions at this time. The
10 Court finds that the proposed Settlement, at this time, will avoid substantial additional costs by all
11 Parties, as well as avoid the risks and delay inherent to further prosecution of the Action. The
12 Court further finds that the Parties reached the Settlement as the result of intensive, serious and
13 non-collusive, arms-length negotiations. Thus, the Court approves the Settlement set forth in the
14 Settlement Agreement and finds that the Settlement is, in all respects, fair, adequate and reasonable
15 and directs the Parties to effectuate the Settlement according to its terms.

16 5. In response to the Notice of Class Action Settlement, zero (0) Class Members
17 objected to the Settlement and one (1) Class Member submitted a valid Opt-Out Form. The opt out
18 Class Member is: Mustafa Farha, which is excluded from the Settlement Class but still considered
19 to be PAGA Member.

20 6. The Court hereby orders the Settlement Administrator to distribute the Individual
21 Settlement Payment and Individual PAGA Payment to Class Members in accordance with the
22 provisions of the Settlement Agreement. The Individual Settlement Payment and Individual
23 PAGA Payment checks shall remain valid for a period of one hundred eighty (180) calendar days.

24 7. All Settlement Class Members, regardless of whether or not they cash their
25 Individual Class Payment check(s), will be bound by the releases detailed in this Settlement
26 Agreement. Settlement Class Members must cash or deposit their Individual Class Payment and
27 Individual PAGA Payment checks within one hundred and eighty (180) calendar days after the
28 checks are mailed to them. If any checks remain uncashed or not deposited by the expiration of

1 the 180-day period, the Settlement Administrator will submit the amount of the uncashed or not
2 deposited payments to California State Controller as unclaimed property in the name of the
3 Settlement Class Member who did not cash his or her check.

4 8. The Court finds that the Gross Settlement Amount (\$990,000.00), Net Settlement
5 Amount, and the methodology used to calculate and pay each Individual Settlement Payment and
6 Individual PAGA Payment, in accordance with the Settlement, are fair and reasonable.

7 9. For purposes of this Final Approval Order and this Settlement only, the Court
8 hereby confirms the appointment of the named Plaintiff as the class representative for the Class
9 Members. Further, the Court finally approves the Class Representative's Service Award to
10 Plaintiff, as fair and reasonable, in the amount of ten thousand dollars (\$10,000.00). The Court
11 hereby orders the Settlement Administrator to distribute the Class Representative's Service Award
12 to the Plaintiff in accordance with the provisions of the Settlement.

13 10. The Court hereby approves the PAGA Allocation in the amount of twenty-five
14 thousand dollars (\$25,000.00) of which 75% or eighteen thousand seven hundred fifty dollars
15 (\$18,750.00) will be sent by the Settlement Administrator to the Labor and Workforce
16 Development Agency ("LWDA") and 25% or six thousand two hundred fifty dollars (\$6,250.00)
17 will be distributed to the PAGA Members in accordance with the provisions of the Settlement.

18 11. For purposes of this Final Approval Order and this Settlement only, the Court
19 hereby confirms the appointment of Kevin Mahoney and John Young of Mahoney Law Group,
20 APC as Class Counsel for Class Members. Further, the Court finally approves a Class Counsel
21 Fees and Costs Award, as fair and reasonable, of three hundred thirty thousand dollars
22 (\$330,000.00) for attorneys' fees to be distributed to Class Counsel.

23 12. Further the Court approves Plaintiff's Counsel's costs in the amount of ten thousand
24 eight hundred fifty-six dollars and fifteen cents (\$10,856.15). At the time of Settlement, Class
25 Counsel estimated their final costs were not to exceed fourteen thousand dollars (\$14,000.00). The
26 remaining amount of three thousand one hundred forty-three dollars and eighty-five cents
27 (\$3,143.85) will become part of the Net Settlement Amount for distribution to Class Members.
28 Class Counsel's receipt of the Class Counsel Fees Payment shall fully satisfy all fees and litigation

costs incurred by Class Counsel that represented Plaintiff and Class Members in the Action. The Court hereby orders the Settlement Administrator to distribute the Class Counsel Fees Payment to Class Counsel in accordance with the provisions of the Settlement Agreement and this Order.

13. For purposes of this Final Approval Order and this Settlement only, the Court hereby confirms the appointment of Phoenix Settlement Administrators as the Settlement Administrator to administer the Settlement of this matter as more specifically set forth in the Settlement Agreement and further finally approves Settlement Administration Costs, as fair and reasonable, of eleven thousand dollars (\$11,000.00).

14. The Court directs Defendant to fund all amounts due under the Settlement Agreement to be funded no later than fourteen (14) days after Final Judgment. Individual Settlement Payments will be mailed via First-Class U.S. Mail to Class Members no later than fourteen (14) calendar days after the Gross Settlement Amount is fully funded as set forth in the Settlement Agreement.

15. As of the Response Deadline, all Settlement Class Members who did not submit a timely and valid Request for Exclusion shall be deemed to have released the Released Parties from all Released Claims, as defined as:

Any and all claims during the Class Period which were or could have been raised based on the facts, conduct, and/or omissions alleged in the Action, including all wage and hour claims, demands, rights, liabilities, and causes of action for unpaid wages, including minimum wage payments, regular wages, overtime wages; failure to pay wages during employment; failure to pay all wages due upon separation of employment; meal and rest break violations; meal and rest break premiums, failure to reimburse for necessary business expenditures, violation of the Private Attorney General Act (California Labor Code section 2698, et seq.), civil and statutory penalties, interest, liquidated damages, attorney's fees and costs, claims under California Labor Code sections 90.5, 201-204, 225.5, 226, 510, 512, 1174, 1194, 1194.2, 1197, 1198, 2802, 2698-2699.5, and applicable Industrial Welfare Commission Wage Order, and claims under California Business & Professions

1 Code sections 17200-17204. It is understood and agreed that Released Claims do
2 not include claims for workers' compensation, unemployment, or disability
3 benefits of any nature, nor any claims, actions, or causes of action which may be
4 possessed by Settlement Class Members under state or federal discrimination
5 statutes, including, without limitation, the California Fair Employment and
6 Housing Act, California Government Code section 12940, et seq.; the Unruh Civil
7 Rights Act, California Civil Code section 51, et seq.; the California Constitution;
8 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.; the Americans
9 with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the Employee
10 Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, et seq.;
11 and all of their implementing regulations and interpretive guidelines. The Released
12 Claims are limited to the Class Period.

13 16. After Settlement administration has been completed in accordance with the
14 Settlement Agreement, the Parties shall file a report with this Court certifying compliance with the
15 terms of the Settlement.

16 17. Neither this Final Approval Order, the Settlement Agreement, nor any document
17 referred to herein, nor any action taken to carry out the Settlement Agreement is, may be construed
18 as, or may be used by Plaintiff as an admission by or against Defendant or any of the other Released
19 Parties of any fault, wrongdoing or liability whatsoever. Nor is this Final Approval Order a finding
20 of the validity of any claims in the Action or of any wrongdoing by Defendant or any of the other
21 Released Parties. The entering into or carrying out of the Settlement Agreement, and any
22 negotiations or proceedings related thereto, shall not in any event be construed as an admission or
23 concession with regard to the denials or defenses by Defendant or any of the other Released Parties
24 and shall not be offered in evidence by Plaintiff against Defendant or any of the Released Parties
25 in any action or proceeding in any court, administrative agency or other tribunal for any purpose
26 whatsoever other than to enforce the provisions of this Final Approval Order, the Settlement
27 Agreement, or any related agreement or release. Notwithstanding these restrictions, any of the
28 Released Parties may file in the Action or in any other proceeding this Final Approval Order, the

1 Settlement Agreement, or any other papers and records on file in the Action as evidence of the
2 Settlement and to support a defense of res judicata, collateral estoppel, release, waiver or other
3 theory of claim preclusion, issue preclusion or similar defense.

4 18. The Court hereby enters judgment, with prejudice, for the reasons set forth above,
5 and in accordance with the terms set forth in the Settlement Agreement.

6 19. Without affecting the finality of this Final Approval Order in any way, this Court
7 hereby retains continuing jurisdiction over the interpretation, implementation and enforcement of
8 the Settlement and all orders and judgments entered in connection therewith.

9 20. Plaintiff shall submit a to the Court a report on June 30, 2025 (or
10 _____), pursuant to Code of Civil Procedure section 384, subdivision (b), in the form
11 of a declaration from the Settlement Administrator or other declarant with personal knowledge of
12 the facts. The report shall be in the form of a declaration from the Settlement Administrator or
13 other declarant with personal knowledge of the facts, and to describe (i) the date the checks were
14 mailed, (ii) the total number of checks mailed to class members, (iii) the average amount of those
15 checks, (iv) the number of checks that remained uncashed and were redistributed, (v) the total value
16 of those uncashed checks, (vi) the average amount of the uncashed checks, (vii) the nature and
17 date of the disposition of those unclaimed funds, and (viii) other amounts disbursed pursuant to the
18 Settlement .

19 21. This document shall constitute a Judgment for purposes of California Rule of Court
20 3.769(h).

21 **IT IS SO ORDERED AND JUDGMENT IS HEREBY ENTERED.**

22
23
24 Dated: _____


THE HONORABLE GREGORY W.
POLLACK
JUDGE OF THE SUPERIOR COURT,
COUNTY OF SAN DIEGO

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PROOF OF SERVICE

Code of Civ. Proc. § 1013a, subd. (3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802.

On **July 2, 2024**, I served [X] true copies [] originals of the following document(s):
[PROPOSED] ORDER GRANTING FINAL APPROVAL AND JUDGMENT. I served the document(s) on the person(s) below as follows:

Aaron Buckley, Esq. Aaron Schu, Esq. QUARLES & BRADY LLP 101 West Broadway Ninth Floor San Diego, CA 92101	Attorneys for Defendant AMERICAN SCAFFOLD, LLC Telephone: (619) 237-5200 Emails: aaron.buckley@quarles.com aaron.schu@quarles.com mark.rachel@quarles.com deb.baranowski@quarles.com
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The document(s) were served by the following means:

☒ **By e-mail:** Based upon court order or an agreement of the parties to accept service by e-mail, I caused the document(s) to be sent to the persons at the electronic service addresses listed above from the email address edavies-miller@mahoney-law.net. Within a reasonable time after the transmission, no error, electronic message or any other indication that the transmission was unsuccessful was received.

☒ **(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **July 2, 2024**, at Long Beach, California.



Emily Davies-Miller