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on behalf of themselves and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

DAWN JANOWSKI, on behalf of herself
and all others similarly situated, and the
general public,

Plaintiffs,

v.

J B MECHANICAL, INC., a California
corporation; MAS SERVICE, a business
entity of unknown form; MAS, INC., a
business entity of unknown form; JOHN
BILLHEIMER, an individual and DOES 1
through 50, inclusive,

Defendants.

Case No.: 23STCV31249

CLASS ACTION

Assigned for All Purposes To:

Hon. Edward G. Weil

Dept.: 39

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date:

Time:

Dept.: 39

Original Complaint Filed: September 6, 2023

First Amended Complaint Filed: November 9, 2023

Second Amended Complaint Filed: May 20, 2024

Trial Date: None Set

1 **RECITALS**

2 During a mediation on October 10, 2024, Plaintiffs DAWN JANOWSKI and ELLEN
3 WEBB-TURNER (“Plaintiffs”), on behalf of themselves and on behalf of the Putative Class, and J
4 B MECHANICAL, INC. (“Defendant J B”) and Defendant JOHN BILLHEIMER (“Defendant
5 Billheimer”) (collectively, “Defendants”) entered into a class action and PAGA settlement, the
6 terms and conditions of which are set forth in the parties’ Class Action and PAGA Settlement
7 Agreement, which is attached as Exhibit 1 to the Declaration of Enoch J. Kim, filed concurrently
8 with the Motion for Preliminary Approval (hereafter collectively, the “Settlement” or “Settlement
9 Agreement”). Unless otherwise provided in this Order, all capitalized terms shall have the same
10 meaning as set forth in the Settlement Agreement.

11 Plaintiffs’ motion for an order preliminarily approving the settlement of this action,
12 approving the form notice of settlement, and setting a final approval hearing (“Motion”) came on
13 for hearing in Department 39 of this Court on _____.

14 This Court, having fully considered Plaintiffs’ Motion, the Memorandum in support, the
15 Declarations in support, the Settlement Agreement, and the proposed form of Class Notice, finds
16 that: (1) the proposed settlement appears fair, reasonable, and adequate, and that a final hearing
17 should be held after notice to the Class (defined below) of the proposed settlement to determine if
18 the Settlement Agreement and settlement are fair, reasonable, and adequate, such that a Final Order
19 and Judgment should be entered in this action based upon the Settlement Agreement, and (2) the
20 PAGA Settlement is fair and adequate and should be approved.

21 **THE COURT ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:**

22 **ORDER PROVISIONALLY CERTIFYING SETTLEMENT CLASS AND**
23 **APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**

24 1. The Court finds that certification of the following class, for settlement purposes only,
25 is appropriate:

26 “all persons employed by Defendant in California and classified as hourly, non-
27 exempt employees who worked for Defendant during the Class Period,” which is from
28 September 6, 2019, to the date this Court approves the Preliminary Approval Motion.

1 2. The Court grants preliminary approval of the terms and conditions contained in the
2 Settlement Agreement. The Court finds that the terms of the Settlement Agreement are within the
3 range of possible approval at the final approval hearing.

4 3. The Court preliminarily finds, for settlement purposes only, that the Class meets
5 (i) the ascertainability and numerosity requirements; (ii) the commonality requirement because, in
6 the absence of class certification and settlement, each individual Class Member would have to
7 litigate core common issues of law and fact, all relating to Defendants' alleged wage-and-hour
8 violations asserted in the action; (iii) the typicality requirement because Plaintiffs and the Class
9 Members' claims all arise from the same alleged events and course of conduct, and are based on the
10 same legal theories; and (iv) the adequacy of representation requirement because Plaintiffs have the
11 same interests as all members of the Class, and they are represented by experienced and competent
12 counsel.

13 4. The Court further finds, preliminarily and for settlement purposes only, that common
14 issues predominate over individual issues in this litigation and that class treatment is superior to the
15 other means of resolving this dispute. Employing the class device here will not only achieve
16 economies of scale for Class Members with individual claims, but also conserve the resources of
17 the judicial system and preserve public confidence in the integrity of the system by avoiding the
18 waste and delay of repetitive proceedings. In addition, certifying the class will prevent inconsistent
19 adjudications of similar issues and claims.

20 5. For settlement purposes only, the Court finds that Plaintiffs are adequate class
21 representatives and appoint them as such. The Court further finds that Emil Davtyan, David
22 Yeremian, David Keledjian, Enoch J. Kim, David Arakelyan, and Norayr Zakaryan of D.Law, Inc.,
23 have adequately represented Plaintiffs and the Class in this litigation, and the Court appoints them
24 as Class Counsel.

25 6. The Court appoints Phoenix Class Action Administration Solutions ("Phoenix") to
26 perform the duties of a Settlement Administrator for the purpose of issuing the Class Notice and
27 administering the Settlement.

28 7. The Court recognizes that certification under this Order is for *settlement purposes*

1 *only*, and shall not constitute or be construed as a finding by the Court, or an admission on the part
2 of Defendants, that this action is appropriate for class treatment for litigation purposes. Entry of this
3 Order is without prejudice to the rights of Defendants to oppose class certification in the actions,
4 should the proposed Settlement Agreement not be granted final approval.

5 **PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**

6 8. The Court has reviewed the Settlement Agreement and the proposed Class Notice to
7 the Settlement Agreement. The Court finds, on a preliminary basis, that the settlement amount, as
8 described in the Settlement Agreement appears to be within the range of reasonableness of a
9 settlement that could ultimately be given final approval by this Court. It appears to the Court on a
10 preliminary basis that:

11 a. The settlement amount is fair and reasonable to all Class Members when
12 balanced against the probable outcome of further litigation relating to liability and damages issues;

13 b. Extensive and costly investigation and research have been conducted such
14 that counsel for the parties at this time are reasonably able to evaluate their respective positions;

15 c. Settlement at this time will avoid additional substantial costs, such as those
16 that have already been incurred by both parties, as well as avoid the delay and risks that would be
17 presented by the further prosecution of this litigation; and

18 d. The proposed settlement has been reached as the result of intensive, serious,
19 and non-collusive arm's-length negotiations.

20 9. The Court further approves the following representative group of employees as
21 governed by the Settlement Agreement with respect to the PAGA claim:

22 "a person employed by Defendant in California and classified as an hourly, non-
23 exempt employee who worked for Defendant during the PAGA Period," which is
24 from September 6, 2022, to the date this Court approves the Preliminary Approval
25 Motion.

26 10. The Court grants approval of the PAGA Settlement pursuant to the terms and
27 conditions contained in the Settlement Agreement. The Court finds that the terms of the PAGA
28 Settlement are fair and reasonable and approves the PAGA Settlement pursuant to Labor Code

1 § 2699(1)(2).

2 11. Because a PAGA action is not a class action, Class Members may not opt out of, or
3 object to, the PAGA Settlement.

4 12. If the Court does not grant final approval of the Settlement Agreement, approval of
5 the PAGA Settlement will be vacated.

6 **APPROVAL OF DISTRIBUTION OF THE CLASS NOTICE**

7 **AND TIMELINE FOR SENDING CLASS NOTICE**

8 13. This Court finds that the Class Notice fairly and adequately advises the potential
9 Class Members of the terms of the Settlement and the process for the Class Members to obtain the
10 benefits available under the Settlement Agreement, as well as the right of Class Members to opt out
11 of the class, to file documentation in opposition to the proposed settlement, and to appear at the
12 settlement hearing to be conducted on the date set by the Court. The Court further finds that the
13 Class Notice and proposed distribution of such Class Notice by first-class mail to each identified
14 Class Member at their last known address comports with all constitutional requirements, including
15 those of due process under the United States and California constitutions, and meets the
16 requirements of Code of Civil Procedure § 382 and California Rules of Court rule 3.766.
17 Accordingly, good cause appearing therefore, the Court hereby approves the proposed Class Notice.

18 14. The Settlement Administrator shall, as soon as practicable, but no later than
19 _____, cause the Class Notice to be mailed by first class mail to all
20 known members of the Class certified by this Court in this action to the most recent address in
21 Defendants' business records for each known member of the Class. The mailing of the Class Notices
22 directed in this Order constitutes the best notice practicable under the circumstances and sufficient
23 notice to all members of the Class.

24 15. The costs of settlement administration, including the cost of printing and mailing the
25 Class Notices, shall be paid from the Gross Settlement Amount. Such costs shall be withheld from
26 the Gross Settlement Amount by the Settlement Administrator pursuant to the terms of the
27 Settlement Agreement.

28 16. Each member of the Class who wishes to be excluded from the Class must submit a

1 request to be excluded from the Settlement by the deadline set forth in the Class Notice. Any Class
2 Member who does not submit a timely request to be excluded from the Settlement consistent with
3 the terms of the Settlement Agreement shall be bound by the terms of the Settlement Agreement.

4 **OBJECTIONS TO SETTLEMENT**

5 17. Any member of the Class who has not timely elected to be excluded from the Class,
6 and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement
7 or the proposed settlement, or to the award of attorneys' fees and costs, shall provide to the
8 Settlement Administrator a written statement of the objection, as well as the specific reasons, if any,
9 for each objection. The Settlement Administrator will promptly transmit any objections it receives
10 to Class Counsel and Defendants' counsel.

11 18. All written objections must be signed by the Class Member and include the
12 information specified in the Class Notice.

13 19. A Class Member may appear either in person or through personal counsel at the Final
14 Hearing to object to the Settlement. If represented by personal counsel, the counsel will be hired at
15 the Class Member's expense.

16 20. Class Counsel and Defendants' counsel shall promptly furnish each other with copies
17 of any and all objections or written requests for exclusion that come into their possession.

18 **FINAL APPROVAL FAIRNESS HEARING**

19 21. The Court grants Plaintiffs' motion to set a settlement hearing for final approval of
20 the Settlement Agreement on _____, at _____ a.m./p.m. in Department 39 of this Court
21 ("Final Hearing"), as set forth in the Class Notice, to determine whether the proposed settlement of
22 this action is fair, reasonable and adequate and should be finally approved. The Court will also
23 consider at the Final Hearing whether applications for Plaintiffs' attorneys' fees and costs and class
24 representative service payments to Plaintiffs should be granted and, if so, in what amounts.

25 22. Class Counsel shall file Plaintiffs' memorandum in support of the final approval of
26 the Settlement Agreement and their request for approval of the attorneys' fees, litigation costs, and
27 service payments no later than 16 court days prior to the Final Hearing. After the Final Hearing, the
28 Court may enter a Final Order and Final Judgment in accordance with the Settlement Agreement

1 that will adjudicate the rights of all Class Members.

2 23. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts
3 necessary to fully pay Defendant's share of payroll taxes in two installments. The two payments,
4 totaling the Gross Settlement Amount, shall be made as follows:

- 5 • The first installment payment in the amount of \$350,000.00 shall be made 30 days
6 after the Court grants Final Approval of the Settlement;
- 7 • The second installment in the amount of \$250,000.00 shall be made 90 days after the
8 first installment.

9 24. All discovery and other pretrial proceedings in this action are stayed and suspended
10 until further order of this Court, except such actions as may be necessary to implement the
11 Settlement Agreement and this Order.

12 25. If, for any reason, the Court does not grant final approval of the Settlement, all
13 evidence and proceedings held in connection therewith shall be without prejudice to the status quo
14 ante rights of the parties to the litigation as more specifically set forth in the Settlement Agreement.

15 **IT IS SO ORDERED.**

16
17 Dated: _____, 2025

JUDGE OF THE SUPERIOR COURT