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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

RICARDO COLIN COVARRUBIAS, an
individual, on behalf of himself and on behalf
of all persons similary situated,

Plaintiff,

v.

PENINSULA CUSTOM HOMES, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 22-CIV-02733

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: April 18, 2023
Time: 2:00 p.m.

Judge: Hon. Marie S. Weiner
Dept.: 2

FILED
SAN MATEO COUNTY

APR 20 2023

Clerk of the Superior Court

By

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3/23/2023

CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

1 Plaintiff's motion for an order finally approving the Stipulation of Settlement of Class and
2 PAGA Action Claims and Release of Claims ("Agreement") and Motion for Class Counsel Award
3 and Class Representative Service Awards duly came on for hearing on April 18, 2023, before the
4 above-entitled Court. Zakay Law Group, APLC and the JCL Law Firm, APC appeared on behalf
5 of Plaintiff RICARDO COLIN COVARRUBIAS ("Plaintiff"). Ferber Law, APC appeared on
6 behalf of Defendant PENINSULA CUSTOM HOMES, INC. (hereinafter "Defendant").

7 **I.**

8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

11 1. All capitalized terms used herein shall have the same meaning as defined in
12 the Agreement.

13 2. This Court has jurisdiction over the subject matter of this litigation pending
14 in the California Superior Court for the County of San Mateo ("Court"), Case No. 22-CIV-02733,
15 entitled *Covarrubias v. Peninsula Custom Homes, Inc.*, and over all Parties to this litigation,
16 including the Class.

17 **Preliminary Approval of the Settlement**

18 3. On December 6, 2022, the Court granted preliminary approval of a class-wide
19 settlement. At this same time, the court approved certification of a provisional settlement class for
20 settlement purposes only. The Court confirms this Order and finally approves the settlement and
21 the certification of the Class.

22 **Notice to the Class**

23 4. In compliance with the Preliminary Approval Order, the Notice Packet was
24 mailed by first class mail to the Class Members at their last known addresses on December 29, 2022.
25 Mailing of the Notice Packet to their last known addresses was the best notice practicable under the
26 circumstances and was reasonably calculated to communicate actual notice of the litigation and the
27 proposed settlement to the members of the Class Members. The Court finds that the Notice Packet
28 provided fully satisfies the requirements of California Rules of Court, rule 3.769.

1 5. The Response Deadline for opting out or objecting was February 13, 2023.
2 There was an adequate interval between notice and deadline to permit Class Members to choose
3 what to do and act on their decision. No Class Members objected. Two Class Members requested
4 exclusion. The name of the Class Members who opted out are Jesus Fuentes and Arturo Martinez.
5 Approximately 96.67% of the Class Members will be participating in the Settlement and will be
6 sent Individual Settlement Payments.

7 **Fairness Of the Settlement**

8 6. The Agreement provides for a Gross Settlement Amount of \$225,000.00.
9 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
10 Cal.App.4th 1794, 1801.)

11 a. The settlement was reached through arms-length bargaining between
12 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
13 settlement.

14 b. The Parties' investigation and discovery have been sufficient to allow
15 the Court and counsel to act intelligently.

16 c. Counsel for all parties are experienced in similar employment class
17 action litigation and have previously settled similar class claims on behalf of employees claiming
18 compensation. All counsel recommended approval of the Settlement.

19 d. The percentage of objectors and requests for exclusion is small. No
20 objections were received. No requests for exclusion were received.

21 e. The participation rate is high. Approximately 96.67% of Class
22 Members will be participating in the Settlement and will be sent settlement payments.

23 7. The consideration to be given to the Class Members under the terms of the
24 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
25 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
26 Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
27 litigation and the delays which would ensue from continued prosecution of the Action.
28

1 8. The Agreement is finally approved as fair, adequate, and reasonable and in
2 the best interests of the Settlement Class Members.

3 **Attorneys' Fees and Litigation Expenses**

4 9. The Agreement provides for a Class Counsel Award in the amount of up to
5 Ninety Thousand Dollars and Zero Cents (\$90,000.00). Subject to Court approval, the Class
6 Counsel Award consists of attorneys' fees equal to one-third (1/3) of the Gross Settlement Amount,
7 or Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) and reimbursement of costs and
8 expenses in the amount of Ten Thousand Four Hundred Eighty Four Dollars and Thirty Cents
9 (\$10,484.30).

10 10. A Class Counsel Award of Eighty Five Thousand Four Hundred Eighty Four
11 Dollars and Thirty Cents (\$85,484.30) comprised of attorneys' fees in the amount of Seventy-Five
12 Thousand Dollars and Zero Cents (\$75,000.00) and reimbursement of actually incurred costs and
13 expenses in the amount of Ten Thousand Four Hundred Eighty Four Dollars and Thirty Cents
14 (\$10,484.30) is reasonable in light of the contingent nature of Class Counsel's fee, the hours worked
15 by Class Counsel, and the results achieved by Class Counsel. The requested attorneys' fee award
16 represents 1/3 of the common fund, which is reasonable and at the low end of the range for fee
17 awards in common fund cases and is supported by Class Counsel's lodestar.

18 **Class Representative Service Awards**

19 11. The Agreement provides for a Class Representative Service Award of Ten
20 Thousand Dollars and Zero Cents (\$10,000.00) Plaintiff, subject to the Court's approval. The Court
21 finds that the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff is reasonable
22 in light of the risks and burdens undertaken by the Plaintiff in this class action litigation.

23 **Settlement Administration Costs**

24 12. The Agreement provides for Settlement Administration Costs to be paid in
25 an amount not to exceed \$7,000.00. The Declaration of the Settlement Administrator provides that
26 the actual claims administration expenses were \$7,000.00. The amount of this payment is
27 reasonable in light of the work performed by the Settlement Administrator.

1 II.

2 ORDERS

3 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

4 1. The Class is certified for the purposes of settlement only. The Settlement
5 Class is hereby defined to include all non-exempt employees who are or previously were employed
6 by Defendant and performed in California ("Class") from July 5, 2018 to October 3, 2022 ("Class
7 Period").

8 2. Every person in the Class who did not submit and timely and validly Request
9 for Exclusion is a Settlement Class Member. The Court finds, based on the declaration of the
10 Settlement Administrator, that two Class Members opted-out of the Settlement. The Class Members
11 who opted out are Jesus Fuentes and Arturo Martinez.

12 3. The Agreement is hereby approved as fair, reasonable, adequate, and in the
13 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with
14 this Order and the terms of the Agreement.

15 4. Class Counsel are awarded attorneys' fees in the amount Eighty Five
16 Thousand Four Hundred Eighty Four Dollars and Thirty Cents (\$85,484.30) for the Class Counsel
17 Award comprised of one-third of the Gross Settlement Amount, or Seventy-Five Thousand Dollars
18 and Zero Cents (\$75,000.00) and litigation expenses in the amount of Ten Thousand Four Hundred
19 Eighty Four Dollars and Thirty Cents (\$10,484.30). Class Counsel shall not seek or obtain any other
20 compensation or reimbursement from Defendant, Plaintiff, or members of the Class.

21 5. The payment of the Class Representative Service Award to Plaintiff in the
22 amount of \$10,000.00 is approved.

23 6. The payment of \$7,000.00 to the Settlement Administrator for Settlement
24 Administration Costs is approved.

25 7. The PAGA Settlement of \$10,000.00 is hereby approved as fair, reasonable,
26 adequate and adequately protects the interests of the public and the LWDA. Further, the Court finds
27 that Plaintiff and Class Counsel negotiated the PAGA Settlement at arms-length, absent of any fraud
28 or collusion.

1 8. Final Judgment is hereby entered in this action. The Final Judgment shall
2 bind each Settlement Class Member. The Final Judgment shall operate as a full release and discharge
3 of Defendant from all class claims reasonably arising out of the facts alleged in the operative
4 complaint which occurred during the Class Period including all claims, rights, demands, liabilities,
5 and causes of action, reasonably arising from, or related to, the same set of operative facts as those
6 set forth in the operative complaint during the Class Period, including, but not limited to: (i) all
7 claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for
8 unpaid minimum wages; (iv) all claims for failure to reimburse for necessary business expenses; (v)
9 all claims for the failure to timely pay wages upon termination based on the preceding claims; (vi)
10 all claims for the failure to timely pay wages during employment based on the preceding claims,
11 (vii) all claims for wage statement violations based on the preceding claims; (viii) all claims asserted
12 through California Business & Professions Code §§ 17200, *et seq.*, arising from the alleged labor
13 code violations alleged in the operative complaint; and (ix) all claims for monies owed due to the
14 “off-the-clock” work. To the extent employees are required to “opt-in” to have this release be
15 deemed effective under federal law, the acceptance and negotiation of any settlement check shall be
16 deemed effective for that purpose.

17 9. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
18 California and all Aggrieved Employees, pursuant to the California Labor Code Private Attorneys’
19 General Act (“PAGA”) and shall release Defendant from all PAGA claims alleged in the operative
20 complaint at the time the Court enters an order preliminarily approving this Settlement and
21 Plaintiff’s PAGA notice to the LWDA which occurred during the PAGA Period, including all
22 claims, right, demands, liabilities, and causes of action, for the PAGA penalties arising from: (i) all
23 claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for
24 unpaid minimum wages; (iv) all claims for failure to reimburse for necessary business expenses; (v)
25 all claims for the failure to timely pay wages upon termination based on the preceding claims; (vi)
26 all claims for failure to timely pay wages during employment based on the preceding claims; (vii)
27 all claims for wage statement violations based on the preceding claims; and (viii) all claims for
28 monies owed due to “off-the-clock” work.

1 10. The term "Aggrieved Employees" is hereby defined as all non-exempt
2 employees who are or previously were employed by Defendant and performed work in California
3 during the PAGA Period. The PAGA Period means the period between November 9, 2020 to
4 October 3, 2022.

5 11. In addition to the release given by each Settlement Class Member, Plaintiff
6 also generally releases Defendant from any and all claims as set forth in the General Release by
7 Plaintiff in the Agreement.

8 12. The Agreement is not an admission by Defendant, nor is this Final Approval
9 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by
10 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
11 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
12 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering
13 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
14 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
15 to the denials or defenses by Defendant and shall not be offered in evidence in any action or
16 proceeding against Defendant in any court, administrative agency or other tribunal for any purpose
17 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and
18 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,
19 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and
20 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
21 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
22 or issue preclusion or similar defense as to the claims being released by the Settlement.

23 13. Notice of entry of this Final Approval Order and Judgment shall be given to
24 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice
25 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
26 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
27 in the Notice Packet.

28

14. After entry of Final Judgment, the Court shall retain jurisdiction to construe, interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in connection with the distribution of settlement benefits.

15. If the Settlement does not become final and effective in accordance with the terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment, and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

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IT IS SO ORDERED.

DATED: April 18, 2023

Hon. Marie S. Weiner
Judge, Superior Court for the State of California,
County of San Mateo