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ATTORNEY FOR (Name): Plaintiff

FOR COURT USE ONLY

**Electronically
FILED**

12/9/2022

by Superior Court of California, County of San Mateo

ON

By

/s/ Nesha Gaines
Deputy Clerk**SUPERIOR COURT OF CALIFORNIA, COUNTY OF** San Mateo

STREET ADDRESS: 400 County Center

MAILING ADDRESS: 400 County Center

CITY AND ZIP CODE: Redwood City, CA 94063

BRANCH NAME: Hall of Justice

PLAINTIFF/PETITIONER: Ricardo Colin Covarrubias

DEFENDANT/RESPONDENT: Peninsula Custom Homes, Inc.

**NOTICE OF ENTRY OF JUDGMENT
OR ORDER**

CASE NUMBER:

22-CIV-02733

(Check one):

**UNLIMITED CASE**(Amount demanded
exceeded \$25,000)**LIMITED CASE**(Amount demanded was
\$25,000 or less)**TO ALL PARTIES :**

1. A judgment, decree, or order was entered in this action on (date): December 7, 2022
2. A copy of the judgment, decree, or order is attached to this notice.

Date: December 9, 2022

Jean-Claude Lapuyade, Esq.

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and *(check one)*:

- a. ☐ deposited the sealed envelope with the United States Postal Service.
- b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:

- a. on *(date)*:
- b. from *(city and state)*:

4. The envelope was addressed and mailed as follows:

a. Name of person served:

Street address:

City:

State and zip code:

c. Name of person served:

Street address:

City:

State and zip code:

b. Name of person served:

Street address:

City:

State and zip code:

d. Name of person served:

Street address:

City:

State and zip code:

☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

5. Number of pages attached ____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

RICARDO COLIN COVARRUBIAS, an
individual(S), on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

v.

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

Defendants.

Case No. 22-CIV-02733

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: December 6, 2022
Time: 2:00 p.m.

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

FILED
SAN MATEO COUNTY

DEC - 7 2022

Clerk of the Superior Court

By

DEPUTY CLERK

Electronically
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11/9/2022

CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

1 This matter having come before the Honorable Judge Marie S. Weiner of the Superior Court of
2 the State of California, in and for the County of San Mateo, at 2:00 p.m. on December 6, 2022, with
3 Jean-Claude Lapuyade, Esq., of the JCL Law Firm, APC and ~~Shani O. Zakay, Esq. of the Zakay Law~~
4 ~~Group, APC~~ as counsel for plaintiff RICARDO COLIN COVARRUBIAS ("Plaintiff"), and Jonathan
5 R. Babione, Esq. and ~~Adam Nathaniel Aree, Esq.~~ of Ferber Law, APC appearing for defendant
6 PENINSULA CUSTOM HOMES, INC. (hereinafter "Defendant"). The Court, having carefully
7 considered the brief, argument of counsel and all the matters presented to the Court, and good cause
8 appearing, hereby GRANTS Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Stipulation of Settlement of Class and PAGA
11 Action Claims and Release of Claims ("Settlement Agreement" or "Agreement"), a true and correct
12 copy of which is attached ~~hereto~~ ^{to the Lapuyade Declaration.} as Exhibit "1". This is based on the Court's determination that the
13 Settlement Agreement is within the range of possible final approval, pursuant to the provisions of
14 Section 382 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all terms
16 defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
18 Defendant shall pay is Two Hundred Twenty-Five Thousand Dollars (\$225,000). It appears to the
19 Court on a preliminary basis that the settlement amount and terms are fair, adequate, and reasonable as
20 to all Class Members when balanced against the probable outcome of further litigation relating to
21 certification, liability, and damages issues. It further appears that investigation and research have been
22 conducted such that counsel for the Parties are able to reasonably evaluate their respective positions. It
23 further appears to the Court that settlement at this time will avoid substantial additional costs by all
24 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the
25 litigation. It further appears that the Settlement has been reached as the result of ~~intensive, serious, and~~
26 non-collusive arms-length negotiations.

27 4. The Court preliminarily finds that the Settlement appears to be within the range of
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1 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court
2 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily
3 finds that the monetary settlement awards made available to the Class Members are fair, adequate, and
4 reasonable when balanced against the probable outcome of further litigation relating to certification,
5 liability, and damages issues.

6 5. Plaintiff seeks an award of a Class Counsel Award the amount of up-to one-third of the
7 Gross Settlement Amount for attorneys' fees, currently estimated at Seventy-Five Dollars (\$75,000),
8 an award of litigation costs and expenses not to exceed Fifteen Thousand Dollars (\$15,000), and
9 proposed Class Representative Service Award to the Class Representative, Ricardo Colin Covarrubias,
10 in an amount not to exceed Ten Thousand Dollars (\$10,000). ~~While these awards appear to be within~~
11 ~~the range of reasonableness,~~ The Court will not approve the Class Counsel Award or Class
12 Representative Service Award until the Final Approval Hearing.

13 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification of
14 a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other
15 proceeding should this Settlement not become final. For settlement purposes only, the Court
16 conditionally certifies the following Class:

17 "All non-exempt employees who are or previously were employed by
18 Defendant and performed work in California during the period between July
19 5, 2018 and October 3, 2022."

20 7. The Court concludes that, for settlement purposes only, the Class meets the requirements
21 for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is
22 ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b)
23 common questions of law and fact predominate, and there is a well-defined community of interest
24 amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the
25 Class Representative are typical of the claims of the Class Members; (d) the Class Representative will
26 fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other
27 available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified

1 to act as counsel for the Class Representative in her individual capacity and as the representative of the
2 Class Members.

3 8. The Court provisionally appoints plaintiff RICARDO COLIN COVARRUBIAS as the
4 representative of the Class.

5 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
6 A.P.C., and Shani Zakay, of the Zakay Law Group, APLC, as Class Counsel for the Class Members.

7 10. The Court hereby approves, as to form and content, the Proposed Notice of Settlement
8 of Class and Representative Action ("Class Notice") attached to the Agreement as **Exhibit "A"**. The
9 Court finds that both notices appear to fully and accurately inform the Class Members and PAGA
10 Members of all material elements of the proposed Settlement, including right of any Class Member to
11 be excluded from the Class by submitting a written request for exclusion, and of each Class Member's
12 right and opportunity to object to the Settlement. The Court further finds that the distribution of the
13 notices substantially in the manner and form set forth in the Agreement and this Order meets the
14 requirements of due process, is the most reasonable notice under the circumstances, and shall constitute
15 due and sufficient notice to all persons entitled thereto. The Court orders the mailing of the notices by
16 first class mail, pursuant to the terms set forth in the Agreement.

17 ^{approves}
18 11. The Court hereby ~~appoints~~ ILYM Group, Inc., as Settlement Administrator. No later than
19 twenty (20) days after entry of this order, Defendant shall provide, to the Settlement Administrator the
20 Class Data, including information regarding Class Members that Defendant will in good faith compile
21 from its records, including each Class Member's full name; last known address; Social Security
22 Number; and dates of employment during the Class Period and PAGA Period. No later than fourteen
23 (14) calendar days after receiving the Class Data from Defendant, the Settlement Administrator shall
24 mail the Class Notice to all identified, potential Class Members via first class regular U.S. Mail using
the most current mailing address information available.

25 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
26 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
27 Settlement as provided in the Notice by following the instructions for requesting exclusion from the
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1 Settlement of the Released Claims that are set forth in the Notice. All requests for exclusion must be
2 postmarked or received by the Response Deadline which is forty-five (45) calendar days after the date
3 the Class Notice is mailed to the Class Members or, in the case of a re-mailed Notice, not more than
4 fifteen (15) calendar days after the original Response Deadline. Any such person who chooses to opt
5 out of and be excluded from the Settlement will not be entitled to an Individual Class Settlement
6 Payment under the Settlement and will not be bound by the Settlement, or have any right to object,
7 appeal or comment thereon. Class Members who have not requested exclusion shall be bound by all
8 determinations of the Court, the Agreement and Judgment. A request for exclusion may only opt out
9 that particular individual, and any attempt to affect an opt-out of a group, class, or subclass of
10 individuals is not permitted and will be deemed invalid.

11 13. Any Class Member who has not opted out may appear at the final approval hearing and
12 may object or express the Class Member's views regarding the Settlement and may present evidence
13 and file briefs or other papers that may be proper and relevant to the issues to be heard and determined
14 by the Court as provided in the Notice. Class Members will have forty-five (45) days from the date the
15 Settlement Administrator mails the Class Notice to postmark their written objections to the Settlement
16 Administrator.

17 14. A final approval hearing shall be held before this Court on April 18, 2023 at
18 2:00 PM in Department 2 of the San Mateo County Superior Court to determine all necessary matters
19 concerning the Settlement, including: whether the proposed settlement of the Action on the terms and
20 conditions provided for in the Agreement is fair, adequate and reasonable and should be finally
21 approved by the Court; whether an Order Granting Final Approval should be entered herein; whether
22 the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable
23 to the Class; and to finally approve the Class Counsel Award, Class Representative Service Award, and
24 the Settlement Administration Costs. All papers in support of the motion for final approval and the
25 motion for Attorneys' Fees and Costs and Class Representative Service Award shall be filed with the
26 Court and served on all counsel no later than sixteen (16) court days before the hearing.

27 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
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shall be construed as a concession or admission by Defendant in any way, and shall not be used as evidence of, or used against Defendant as, an admission or indication in any way, including with respect to any claim of any liability, wrongdoing, fault or omission by Defendant or with respect to the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession or damage.

16. In the event the Settlement does not become effective in accordance with the terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Agreement. In such an event, the Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

17. Pending final determination of whether the Settlement should be approved, Class Representative and all Class Members are barred and enjoined from filing, commencing, prosecuting, intervening in, instigating or in any way participating in the commencement or prosecution of any lawsuit, action or administrative, regulatory, arbitration or other proceeding, in any forum, asserting any claims that are, or relate in any way to, the Released Claims, unless and until they submit a timely request for exclusion pursuant to the Agreement.

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1 18. The Court reserves the right to adjourn or continue the date of the final approval hearing
2 and all dates provided for in the Agreement without further notice to Class Members and retains
3 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

4 19. Plaintiff shall file and serve Notice of Entry of this Order,
5 including to the LWDA

6 Dated: 12/6/22

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JUDGE OF THE SUPERIOR COURT

8 MARIE S. WEINER
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