

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Monnett De La Torre (State Bar #272884)
Sydney S. Castillo-Johnson (State Bar #343881)
5440 Morehouse Drive, Suite 3500
San Diego, CA 92121
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

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

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, APLC as counsel for plaintiff RICARDO COLIN COVARRUBIAS ("Plaintiff"), and Jonathan
5 R. Babione, Esq. and Adam Nathaniel Arce, 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 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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5. Plaintiff seeks an award of a Class Counsel Award the amount of up-to one-third of the Gross Settlement Amount for attorneys' fees, currently estimated at Seventy-Five Dollars (\$75,000), an award of litigation costs and expenses not to exceed Fifteen Thousand Dollars (\$15,000), and proposed Class Representative Service Award to the Class Representative, Ricardo Colin Covarrubias, in an amount not to exceed Ten Thousand Dollars (\$10,000). While these awards appear to be within the range of reasonableness, the Court will not approve the Class Counsel Award or Class Representative Service Award until the Final Approval Hearing.

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

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

7. The Court concludes that, for settlement purposes only, the Class meets the requirements for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b) common questions of law and fact predominate, and there is a well-defined community of interest amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the Class Representative are typical of the claims of the Class Members; (d) the Class Representative will fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other 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 11. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator. No later than
18 twenty (20) days after entry of this order, Defendant shall provide, to the Settlement Administrator the
19 Class Data, including information regarding Class Members that Defendant will in good faith compile
20 from its records, including each Class Member’s full name; last known address; Social Security
21 Number; and dates of employment during the Class Period and PAGA Period. No later than fourteen
22 (14) calendar days after receiving the Class Data from Defendant, the Settlement Administrator shall
23 mail the Class Notice to all identified, potential Class Members via first class regular U.S. Mail using
24 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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Settlement of the Released Claims that are set forth in the Notice. All requests for exclusion must be postmarked or received by the Response Deadline which is forty-five (45) calendar days after the date the Class Notice is mailed to the Class Members or, in the case of a re-mailed Notice, not more than fifteen (15) calendar days after the original Response Deadline. Any such person who chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual Class Settlement Payment under the Settlement and will not be bound by the Settlement, or have any right to object, appeal or comment thereon. Class Members who have not requested exclusion shall be bound by all determinations of the Court, the Agreement and Judgment. A request for exclusion may only opt out that particular individual, and any attempt to affect an opt-out of a group, class, or subclass of individuals is not permitted and will be deemed invalid.

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

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

15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder

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

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

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

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