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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

16 MARTIN MARISCAL, DANIEL GARCIA,
17 RAFAEL ROJAS, JOSE HERNANDEZ, AND
18 LUIS VAZQUEZ individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

19 Plaintiffs,

20 v.

21 JANCO INDUSTRIES, INC., a California
corporation; TERRY ALEXANDER, an
22 individual; ANDREW ALEXANDER, an
individual; and DOES 1-50, Inclusive,

23 Defendants.
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Lead Case No: STK-CV-UOE-2022-7290

[Consolidated Case No. STK-CV-UOE-2022-9998; STK-CV-UOE-2022-8450; STK-CV-UOE-2022-8790]

[PROPOSED] ORDER GRANTING FINAL APPROVAL

Date: December 4, 2024
Time: 9:00 a.m.

Judge: Hon. George J. Abdallah
Dept.: 10A

NOV 07 2024

1 Plaintiffs’ motion for an order finally approving the Class Action and PAGA Settlement
2 Agreement (“Agreement”) and Motion for Class Counsel Award and Class Representative Service
3 Award duly came on for hearing on December 4, 2024, before the above-entitled Court. Zakay Law
4 Group, APLC, the JCL Law Firm, APC, Gaines & Gaines, and Drew Lewis, PC appeared on behalf
5 of Plaintiffs MARTIN MARISCAL (“Plaintiff Mariscal”), DANIEL GARCIA (“Plaintiff Garcia”),
6 RAFAEL ROJAS (“Plaintiff Rojas”), JOSE HERNANDEZ (“Plaintiff Hernandez”), and LUIS
7 VASQUEZ (“Plaintiff Vasquez”) (collectively “Plaintiffs”). Gordon Rees Scully Mansukhani
8 appeared on behalf of Defendants JANCO INDUSTRIES, INC., TERRY ALEXANDER, and
9 ANDREW ALEXANDER (hereinafter “Defendants”).

10 **I.**

11 **FINDINGS**

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

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

16 2. This Court has jurisdiction over the subject matter of this litigation pending
17 in the California Superior Court for the County of San Joaquin (“Court”), Case No. STK-CV-UOE-
18 2022-7290, entitled *Mariscal et al. v. Janco Industries, Inc., et al.*, and over all Parties to this
19 litigation, including the Class.

20 **Preliminary Approval of the Settlement**

21 3. On August 6, 2024, the Court granted preliminary approval of a class-wide
22 settlement. At this same time the court approved certification of a provisional settlement class for
23 settlement purposes only. The Court confirms this Order and finally approves the settlement and
24 the certification of the Class.

25 **Notice to the Class**

26 4. In compliance with the Preliminary Approval Order, the Class Notice was
27 mailed by first class mail to the Class Members at their last known addresses on September 11,
28 2024. Mailing of the Class Notice to their last known addresses was the best notice practicable under

1 the circumstances and was reasonably calculated to communicate actual notice of the litigation and
2 the proposed settlement to the members of the Class Members. The Court finds that the Class Notice
3 provided fully satisfies the requirements of California Rules of Court, rule 3.769.

4 5. The Response Deadline for opting out or objecting was October 26, 2024.
5 There was an adequate interval between notice and deadline to permit Class Members to choose
6 what to do and act on their decision. No Class Members objected. No Class Members requested to
7 be excluded.

8 **Fairness Of The Settlement**

9 6. The Agreement provides for a Gross Settlement Amount of \$2,000,000.00.
10 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
11 Cal.App.4th 1794, 1801.)

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

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

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

20 d. No objections were received. No requests for exclusion were
21 received.

22 e. The participation rate is high. 100% of Class Members will be
23 participating in the Settlement and will be sent settlement payments.

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

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

3 **PAGA Penalty Amount**

4 9. The Agreement provides for a payment of PAGA Penalty Amount in the
5 amount of \$100,000.00. The Court has reviewed the PAGA Penalty Amount and finds and
6 determines that the PAGA Penalty Amount and the allocation of \$75,000.00 to LWDA and
7 \$25,000.00 to Aggrieved Employees is fair and reasonable and complies with the requirements set
8 forth in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.

9 **Class Counsel Award**

10 10. The Agreement provides for a payment for Class Counsel Award in the
11 amount not to exceed 35% of the Gross Settlement Amount, or \$700,000.00. Subject to Court
12 approval, the Class Counsel Award consists of attorneys' fees not to exceed 35% of the Gross
13 Settlement Amount, or \$700,000.00, and reimbursement of litigation expenses in an amount of up
14 to \$30,000.00.

15 11. A Class Counsel Award of \$730,000, comprised of attorneys' fees in the
16 amount of \$700,000.00 and reimbursement of litigation expenses in an amount of \$30,000, is
17 reasonable in light of the contingent nature of Class Counsel's fee, the hours worked by Class
18 Counsel, and the results achieved by Class Counsel. The requested attorneys' fee award represents
19 35% of the common fund, which is reasonable, and is supported by Class Counsel's lodestar.

20 **Class Representative Service Award**

21 12. The Agreement provides for a Class Representative Service Award of up to
22 \$15,000.00 to each Plaintiff, Martin Mariscal, Daniel Garcia, Rafael Rojas, and Jose Hernandez,
23 and an award in the amount of \$30,000.00 to Plaintiff Luis Vazquez, subject to the Court's approval.
24 The Court finds that the amount of \$15,000.00 for each Plaintiff, Martin Mariscal, Daniel Garcia,
25 Rafael Rojas, and Jose Hernandez, and the amount of \$30,000 to Plaintiff Luis Vazquez is
26 reasonable in light of the risks and burdens undertaken by Plaintiffs in this class action litigation.

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1 **Settlement Administration Costs**

2 13. The Agreement provides for Settlement Administration Costs to be paid in
3 an amount not to exceed \$13,000. The Declaration of the Settlement Administrator provides that
4 the actual claims Settlement Administration Costs were \$13,000. The amount of this payment is
5 reasonable in light of the work performed by the Settlement Administrator.

6 **II.**

7 **ORDERS**

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

9 1. The Class is certified for the purposes of settlement only. The Settlement
10 Class is hereby defined to include:

11 All non-exempt employees who are or previously were employed by
12 Defendant Janco Industries, Inc. and performed work in California
13 during the period beginning August 19, 2018, to January 12, 2024.

14 2. There are 988 members of the Class. Every person in the Class who did not
15 opt out is a Participating Class Member. After providing Notice to the Class, there are zero (0)
16 objections to the Settlement and zero (0) requests for exclusion. There are 988 participating Class
17 members.

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

21 4. Defendants shall fund the Gross Settlement Amount on the Funding Date. In
22 exchange, the Settlement Class Members shall release the “Released Parties” from the “Class
23 Released Claims” and the “Aggrieved Employees” shall release the “Released Parties” from the
24 “PAGA Released Claims.”

25 a. The “Released Parties” means Defendants, together with their
26 officers, directors, employees, members, member managers, owners, affiliates and agents. The
27 Parties intend that the Released Parties shall be defined as broad as legally permissible.

1 b. The “Class Released Claims” are defined as all class claims alleged,
2 or reasonably could have been alleged based on the facts alleged, in the Operative Complaint in the
3 Action, or reasonably could have been alleged based on the facts alleged in the Operative Complaint,
4 which occurred during the Class Period, and expressly excluding all other claims, including claims
5 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
6 workers’ compensation, and class claims outside of the Class Period.

7 c. The “Aggrieved Employees” are defined as all non-exempt
8 employees who are or previously were employed by Defendant Janco Industries, Inc., (“Defendant
9 Janco”) and performed work in California during the PAGA Period [July 13, 2021, through January
10 12, 2024].

11 d. The “Released PAGA Claims” are defined as all PAGA claims
12 alleged in the Operative Complaint and Plaintiffs’ PAGA notices to the LWDA, or reasonably could
13 have been alleged based on the facts alleged in the Operative Complaint and Plaintiffs’ PAGA
14 notices to the LWDA, which occurred during the PAGA Period, and expressly excluding all other
15 claims, including claims for vested benefits, wrongful termination, unemployment insurance,
16 disability, social security, workers’ compensation, and PAGA claims outside of the PAGA Period.

17 5. Plaintiffs waive, release, acquit and forever discharge the Released Parties
18 from any and all claims, whether known or unknown, which exist or may exist on either Plaintiffs’
19 behalf as of the date of this Agreement, including but not limited to any and all tort claims, contract
20 claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy
21 claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims,
22 invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and
23 all claims arising under any federal, state or other government statute, law, regulation or ordinance,
24 including, but not limited to claims for violation of the Fair Labor Standards Act, the California
25 Labor Code, the Wage Orders of California’s Industrial Welfare Commission, other state wage and
26 hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act
27 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964,
28 the California Fair Employment and Housing Act, the California Family Rights Act, the Family

1 Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions
2 Code Section 17200 et seq., and any and all claims arising under any federal, state or other
3 government statute, law, regulation or ordinance. Plaintiffs also waive and relinquish any and all
4 claims, rights or benefits that they may have under California Civil Code § 1542, which provides as
5 follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
7 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
8 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM
9 OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
10 THE DEBTOR OR RELEASED PARTY.

11 6. Thus, notwithstanding the provisions of section 1542, and to implement a full
12 and complete release and discharge of the Released Parties, Plaintiffs expressly acknowledge this
13 Order is intended to include in its effect, without limitation, all claims Plaintiffs do not know or
14 suspect to exist in Plaintiffs' favor at the time of signing this Settlement Agreement, and that this
15 Settlement Agreement contemplates the extinguishment of any such claims. Plaintiffs warrant that
16 each of them has read the Settlement Agreement, including this waiver of California Code section
17 1542, and that Plaintiffs have consulted with or had the opportunity to consult with counsel for
18 Plaintiffs' choosing about the Order, and specifically about this waiver of section 152, and that
19 Plaintiffs understand this Order and the section 1542 waiver, so Plaintiffs freely and knowingly
20 enter into this Order. Plaintiffs further acknowledge that Plaintiffs later may discover facts different
21 from or in addition to those Plaintiffs now know or believe to be true regarding the matters released
22 or described in this Order, and even so Plaintiffs agree that the releases and agreements contained
23 in this Order shall remain effective in all respects notwithstanding any later discovery of any
24 different or additional facts. Plaintiffs expressly assume any and all risk of any mistake in connection
25 with the true facts involved in the matters, disputes, or controversies released or described in this
26 Order or with regard to any facts now unknown to Plaintiffs relating thereto.

27 7. Neither Plaintiffs nor Class Counsel are currently aware, as of the date of the
28 Settlement Agreement is fully executed, (a) unalleged claim in addition to, or different from, those

1 which are finally and forever settled and released against the Released Parties by this Order and
2 settlement, and (b) unalleged facts or legal theories upon which any claims or causes of action could
3 be brought against any Released Parties, except such facts and theories specifically alleged in the
4 operative Complaint in this Action. Plaintiffs and Class Counsel will further represent that, other
5 than this Action, they have no current intention of asserting any other claims against any of the
6 Released Parties in any judicial or administrative forum as of the execution of the Settlement
7 Agreement. Plaintiffs and Class Counsel will further represent that, as of the signing of the
8 Settlement Agreement, they do not currently know of or represent any persons who have expressed
9 any interest in pursuing litigation or seeking any recovery against any Released Parties. This
10 includes all Plaintiffs and any claims they may have or had, including any individual claims, which
11 will be released in the settlement agreement and herein via Cal. Civ. Code section 1542 waiver. The
12 Parties acknowledge, understand and agree that the representations described in this paragraph are
13 essential to this Order or this settlement and this settlement would not have been entered into were
14 it not for these representations.

15 8. Class Counsel are awarded a Class Counsel Award in the amount of
16 \$730,000, comprised of attorney fees in the amount not to exceed 35% of the Gross Settlement
17 Amount, or \$700,000.00 and litigation expenses in the amount of \$30,000. Class Counsel shall not
18 seek or obtain any other compensation or reimbursement from Defendants, Plaintiffs, or members
19 of the Class.

20 9. The payment of the Class Representative Service Awards to Plaintiff, Martin
21 Mariscal, Daniel Garcia, Rafael Rojas, and Jose Hernandez, in the amount of \$15,000.00 each, and
22 the amount of \$30,000 to Plaintiff Luis Vazquez is approved.

23 10. The payment of \$13,000.00 to the Settlement Administrator for Settlement
24 Administration Costs is approved.

25 11. The PAGA Penalty Amount of \$100,000.00 is hereby approved as fair,
26 reasonable, adequate, and adequately protects the interests of the public and the LWDA. Further,
27 the Court finds that Plaintiffs and Class Counsel negotiated the PAGA Penalty Amount at arms-
28 length, absent of any fraud or collusion.

1 12. Final Judgment is hereby entered in this action. The Final Judgment shall
2 bind each Participating Class Member.

3 13. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
4 California and all Aggrieved Employees, pursuant to the California Private Attorneys' General Act
5 ("PAGA").

6 14. The Court further finds and determines that Class Counsel satisfied California
7 Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of claims arising
8 under the Private Attorney General Act ("PAGA") on June 3, 2024, and again on August 19, 2024.

9 15. The Court orders Class Counsel to comply with California Labor Code §
10 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the Court's
11 entry of this Order.

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

27 17. Notice of entry of this Final Approval Order and Judgment shall be given to
28 Class Counsel on behalf of Plaintiffs and all Class Members. It shall not be necessary to send notice

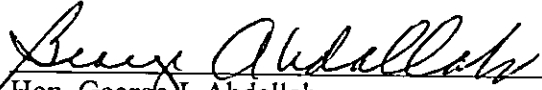
1 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
2 Approval Order and Judgment shall be posted on the Administrator's website as indicated in the
3 Class Notice.

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

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

13 **IT IS SO ORDERED.**

14 DATED: Dec. 4, 2024
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17 
18 Hon. George J. Abdallah

JUDGE OF THE SUPERIOR COURT
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