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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 04 2022

BY 
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

8 JUAN OLIVARES, as an individual and on behalf
9 of all others similarly situated,

10 Plaintiff,

11 vs.

12 BRICKLEY CONSTRUCTION COMPANY,
13 INC. a California corporation; and DOES 1
14 through 100, inclusive,

Defendants.

Case No. CIV SB 2025107

*[Assigned for all purposes to the Hon.
David Cohn]*

**[PROPOSED] FINAL ORDER OF
APPROVAL OF CLASS ACTION
SETTLEMENT AND FINAL
JUDGMENT**

Date: April 4, 2022
Time: 10:00 a.m.
Dept.: S26

Complaint Filed: November 3, 2020
Trial Date: None Set

1 This matter came on regularly for hearing before this Court on April 4, 2022, at 8:30 a.m.
2 pursuant to California Rule of Court 3.769 and this Court's November 30, 2021 Order Granting
3 Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"). Having
4 considered the Parties' Joint Stipulation of Class Action Settlement (the "Settlement" or
5 "Settlement Agreement") attached as Exhibit A to the Declaration of Daniel J. Brown In Support
6 of Plaintiff's Motion for Preliminary Approval of Settlement, filed on September 21, 2021, and
7 the submissions of counsel, and recognizing the sharply disputed factual and legal issues involved
8 in this case, the risks of further prosecution and the benefits to be received by the Class pursuant
9 to the Settlement, the Court hereby makes a final ruling that the proposed Settlement is fair,
10 reasonable, and adequate, and is the product of good faith, arm's-length negotiations between the
11 Parties.

12 Unless otherwise indicated, all terms used in this Order shall have the same meaning as
13 that assigned to them in the Settlement.

14 Good cause appearing thereof, the Court hereby GRANTS Plaintiff's Motion for Final
15 Approval of Class Action Settlement and ORDERS as follows:

16 1. The conditional class certification contained in the Preliminary Approval Order is
17 hereby made final, and the Court thus certifies, for purposes of the Settlement only, a Settlement
18 Class consisting of:

19 All current and former hourly non-exempt employees of Brickley Construction
20 Company, dba Brickley Environmental, within California at any time during the period
of November 3, 2016 through September 15, 2021.

21 2. Plaintiff Juan Olivares is hereby confirmed as Class Representative, and Daniel J.
22 Brown of Stansbury Brown Law is hereby confirmed as Class Counsel.

23 3. Notice was provided to the Settlement Class as set forth in the Settlement, which
24 was preliminarily approved by the Court on December 27, 2021, and the notice process has been
25 completed in conformity with the Court's Order. The Court finds that said notice was the best
26 notice practicable under the circumstances. The Class Notice provided due and adequate notice
27 of the proceedings and matters set forth herein, informed Class Members of their rights, and fully
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1 satisfied the requirements of California Code of Civil Procedure § 1781(e), California Rule of
2 Court 3,769, and due process.

3 4. The Court finds that no Class Member objected to the Settlement, that two (2)
4 individuals opted-out of the Settlement, and that the 98.1% participation rate in the Settlement
5 supports final approval. The two (2) individuals who opted out are: Edgar O. Gomez Garcia and
6 Skyler T. Jones.

7 5. The Court hereby approves the settlement as set forth in the Settlement as fair,
8 reasonable, and adequate, and directs the Parties to effectuate the Settlement according to its
9 terms.

10 6. For purposes of settlement only, the Court finds that (a) the members of the
11 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
12 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
13 community of interest among members of the Settlement Class with respect to the subject matter
14 of the litigation; (c) the claims of the Class Representative are typical of the claims of the members
15 of the Settlement Class; (d) the Class Representative has fairly and adequately protected the
16 interests of the Class Members; (e) a class action is superior to other available methods for an
17 efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as counsel
18 for the Class Representative and the Settlement Class.

19 7. The Court finds that given the absence of objections, and objections being a
20 prerequisite to appeal, that this Order and Judgment shall be considered final as of the date of
21 notice of entry.

22 8. The Court orders that the portions of the Gross Settlement Amount of Five
23 Hundred Thousand Dollars and Zero Cents (\$500,000.00) not previously deposited with the
24 Settlement Administrator shall be deposited with the Settlement Administrator, ILYM Group,
25 Inc. ("ILYM"), as provided in the Settlement.

26 9. Any Settlement funds that remain uncashed after 180 days after they are mailed
27 shall be delivered to the California State Controller's Office Unclaimed Property Fund, with the
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1 identity of the Participating Class Member to whom the funds belong, to be held for the
2 Participating Class Member per California Unclaimed Property Law, in the interest of justice.

3 10. The Court finds that the Individual Settlement Payments, as provided for in the
4 Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to
5 distribute the Individual Settlement Payments in conformity with the terms of the Settlement. The
6 Court further orders that any envelope transmitting a Settlement Payment to a Settlement Class
7 Member shall bear the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS
8 ENCLOSED." The Court further orders that if any of the Settlement Class Members are
9 Defendant's current employees and the Settlement Payment mailed to those current employees is
10 returned to the Settlement Administrator as being undeliverable, and the Settlement Administrator
11 is unable to locate a valid mailing address, the Settlement Administrator shall arrange with
12 Defendant to have those Settlement Payments delivered to the employees at their place of
13 employment. The Court further orders that any settlement distribution check is to be negotiated
14 at least 90 days but not more than 180 days from the date of mailing.

15 11. The Court finds that an Enhancement Payment in the amount of \$5,000.00 for
16 Plaintiff Juan Olivares is appropriate for his risks undertaken and service to the Settlement Class.
17 The Court finds that this payment is fair, reasonable, and adequate, and orders that the Settlement
18 Administrator make this payment in conformity with the terms of the Settlement.

19 12. The Court finds that attorneys' fees in the amount of \$166,500.00, and actual
20 litigation costs of \$11,158.59 for Class Counsel, are fair, reasonable, and adequate, and orders
21 that the Settlement Administrator distribute these payments to Class Counsel in conformity with
22 the terms of the Settlement.

23 13. The Court finds that a payment to the Labor & Workforce Development Agency
24 ("LWDA") in the amount of \$15,000.00 for the LWDA's share of civil penalties under the Labor
25 Code Private Attorneys General Act is fair, reasonable, and adequate, and orders that the
26 Settlement Administrator make this payment in conformity with the terms of the Settlement.

27 14. The Court orders that the Settlement Administrator shall be paid \$7,671.56 from
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1 the Gross Settlement Amount for all of its work done and to be done until the completion of this
2 matter, and finds that sum appropriate.

3 15. Pursuant to the terms of Settlement, the employer's share of payroll taxes for the
4 portion of the Net Settlement Amount allocated to wages shall be paid by Defendant separately,
5 and in addition to, the Gross Settlement Amount.

6 16. The Court finds and determines that upon satisfaction of all obligations under the
7 Settlement and this Order, all Settlement Class Members will be bound by the Settlement and will
8 have released the Released Claims as set forth in the Settlement.

9 17. Settlement is not an admission by Defendant, nor is this Order and Final Judgment
10 a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order
11 and Final Judgment, the Settlement, nor any document referred to herein, nor any action taken to
12 carry out the Settlement, shall be construed or deemed an admission of liability, culpability, or
13 wrongdoing on the part of Defendant.

14 18. As of the date of this Order and Final Judgment and the full funding of the Gross
15 Settlement Amount as called for in the Settlement, Plaintiff and every member of the Settlement
16 Class (except for Edgar O. Gomez Garcia and Skyler T. Jones, who timely submitted Request for
17 Exclusion forms) shall be deemed to have released and discharged Defendant and Defendant's
18 former and present parents, subsidiaries and affiliated companies and entities, franchisors and
19 franchisees, and its current, former, and future owners, officers, shareholders, directors,
20 members, managers, operators, employees, partners, affiliates, subsidiaries, shareholders,
21 attorneys, insurers, payroll providers, joint venturers, and agents, and any successors, assigns, or
22 legal representatives and any individual or entity who or which could be jointly liable with
23 Defendant and all persons or entities acting by, through under or in concert with any of them
24 (collectively the "Released Parties") for any and all claims, liabilities, demands, obligations,
25 penalties, costs, expenses, attorney's fees, damages, action or causes that are alleged, or that
26 reasonably could have been alleged based on the facts alleged in the Action, including claims for:
27 (a) failure to pay minimum wages ((California Labor Code sections 558, 558.1 1194, 1197; IWC
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1 Wage Order No. 16-2001, section 4); (b) failure to pay overtime wages (California Labor Code
2 sections 510, 558, 558.1, 1194, 1198; IWC Wage Order No. 16-2001, section 3); (c) failure to
3 provide accurate itemized wage statements (California Labor Code sections 226(a); IWC Wage
4 Order No. 16-2001, section 7); (d) failure to pay final wages upon separation of employment
5 (California Labor Code section 201-203); (e) failure to pay wages during employment (California
6 Labor Code sections 204, 210, 558, and 558.1) (f) failure to provide timely, duty-free meal
7 periods and/or pay required meal period premiums (Labor Code sections 226.7, 512, 558,
8 558.1, and IWC Wage Order 16-2001); (g) failure to provide compliant rest periods and/or pay
9 rest required period premiums (Labor Code section 226.7, 512, 558, 558.1, and IWC Wage Order
10 16-2001; IWC Sage Order No. 16-2001, section 11); (h) failure to reimburse necessary
11 expenditures in discharge of duties (California Labor Code section 2800, 2802, and 2804); & (i)
12 all claims for unfair business practices under California Business & Professions Code Section
13 17200 *et seq.* that could have been premised on the claims, causes of action or legal theories of
14 relief described above in (a)–(i). (collectively, the “Released Claims”). The period of the Release
15 shall extend to the limits of the Class Period, which is from November 3, 2016 through September
16 15, 2021.

17 Plaintiff and all Class Members who were employed by Defendant in California at any
18 time from June 24, 2019 to September 15, 2021, will not have the opportunity to opt out or object
19 to the PAGA Settlement Amount, as described in paragraphs 18-19, 34 of the Settlement, and/or
20 the Released PAGA Claims set forth in the Settlement although the release of PAGA claims will
21 be subject to Court approval.

22 Notwithstanding the paragraphs above nor anything else in the Settlement, Plaintiff’s
23 waiver and release in the Settlement does not apply to (i) those rights that as a matter of law
24 cannot be waived, including, but not limited to, workers’ compensation claims, pending or
25 otherwise; and (ii) rights or claims arising out of this Settlement.

26 19. The releases identified herein shall be null and void should the Settlement not be
27 fully funded.

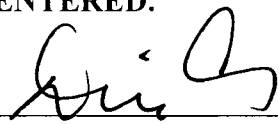
1 20. This document shall constitute a final judgment pursuant to California Rule of
2 Court 3.769(h) which provides, "If the court approves the settlement agreement after the final
3 approval hearing, the court must make and enter judgment. The judgment must include a
4 provision for the retention of the court's jurisdiction over the parties to enforce the terms of the
5 judgment. The court may not enter an order dismissing the action at the same time as, or after,
6 entry of judgment." Pursuant to section 664.6 of the California Code of Civil Procedure, the
7 Court will retain jurisdiction to enforce the Settlement, this Final Order and Judgment.

8 21. The Settlement Class Members will be provided notice with their Individual
9 Settlement Payments that the Final Order and Judgment is posted on the landing page of the
10 Settlement Administrator's website. A copy of the Final Order and Judgment entered by the Court
11 shall be posted by the Settlement Administrator on the Settlement Administrator's website on the
12 landing page at (<https://ilymgroup.com/>).

13 22. The Settlement Administrator shall file a declaration regarding the disbursement
14 of Settlement funds on or before July 3, 2023, and the date for the Final Report (Nonappearance)
15 Hearing shall be set for July 10, 2023. The declaration shall state the date the checks were mailed,
16 the total number of checks mailed to Settlement Class Members, the average amount of those
17 checks, the number of checks that remain uncashed, the total value of those uncashed checks, the
18 average amount of the uncashed checks, and the nature and date of the disposition of those
19 unclaimed funds.

20 **IT IS SO ORDERED. JUDGMENT IS HEREBY ENTERED.**

21 Dated: 4/4, 2022



Honorable David Cohn
Judge of the Superior Court