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

AUG 30 2023

BY Jessica Garcez  
JESSICA GARCEZ, DEPUTY

**FAXED**

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN BERNARDINO**

12 ANGEL GARCIA, individually, and on behalf of  
13 other members of the public similarly situated;

14 Plaintiff,

15 vs.

16 J&B INVESTMENTS, INC. dba J&B  
17 MATERIALS, INC., a California corporation;  
18 PACIFIC GYPSUM SUPPLY, INC., a Georgia  
19 Corporation; GYPSUM MANAGEMENT AND  
SUPPLY, INC., a Georgia Corporation; and  
DOES 1 through 25, inclusive.

20 Defendants.  
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Case No. CIVSB2208601

Honorable Joseph T. Ortiz  
Department 17

15 **[PROPOSED] FINAL ORDER**  
16 **APPROVING CLASS ACTION AND PAGA**  
17 **SETTLEMENT AND JUDGMENT**

Date: August 16, 2023  
Time: 1:30 p.m.  
Dept.: 17

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1 Plaintiffs Angel Garcia, Christian Melendez, Jack Mahan, Athena Neri, and Eduardo Lopez  
2 Lopez’s (collectively, “Plaintiffs”) Motion for Final Approval of Class Action and PAGA Settlement  
3 came before this Court on **August 16, 2023 at 1:30 p.m.** in Department 17 of the above-captioned  
4 Court located at 247 West 3rd Street, San Bernardino, California 92415.

5 Having received and considered the Joint Stipulation and Settlement Agreement of Class  
6 Action and Representative Action Claims (“Settlement Agreement” or “Settlement”), Plaintiffs’  
7 Motion for Final Approval of Class Action and PAGA Settlement and Motion for Approval of  
8 Attorneys’ Fees and Costs, Administration Costs, and Incentive Awards, the supporting papers filed  
9 by the Parties, the Declarations of Jonathan M. Genish, Jordan S. Esensten, Ian M. Silvers, Antonia  
10 McKee, Angel Garcia, Christian Melendez, Jack Mahan, Athena Neri, Eduardo Lopez Lopez, and  
11 Kaylie O’Connor on behalf of CPT Group, Inc., and the evidence and argument received by the Court  
12 in conjunction with the Amended Unopposed Motion for Preliminary Approval of Class Action,  
13 Representative Action and Collective Action Settlement and documents thereto, the Court grants final  
14 approval of the Settlement and **HEREBY ORDERS AND MAKES THE FOLLOWING**  
15 **DETERMINATION:**

16 1. This Court has jurisdiction over the subject matter of the above-captioned action and  
17 over Plaintiffs and Defendants J&B Investments, Inc. d/b/a J&B Materials, Inc., Pacific Gypsum  
18 Supply, Inc., and Gypsum Management and Supply, Inc. (collectively, “Defendants”) (collectively,  
19 with Plaintiffs, the “Parties”), including all members of the Class.

20 2. The Court finds that the Class, defined as “All current and former non-exempt, hourly-  
21 paid employees of Defendants employed in California at any time during the Class Period,” is properly  
22 certified as a class for settlement purposes only. The “Class Period” is defined as April 5, 2014 through  
23 April 18, 2023.

24 3. The Court appoints Plaintiffs Angel Garcia, Christian Melendez, Jack Mahan, Athena  
25 Neri, and Eduardo Lopez Lopez as the Class Representatives for settlement purposes only.

26 4. The Court appoints Jonathan M. Genish of Blackstone Law, APC, Jordan S. Esensten  
27 of Esensten Law, Ian Silvers of Bisnar | Chase, and Joseph Lavi of Lavi & Ebrahimian, LLP as Class  
28 Counsel for settlement purposes only.

1           5.       The Notice of Pendency of Class Action (“Notice”) provided to the Class conforms  
2 with the requirements of California Code of Civil Procedure section 382, California Civil Code section  
3 1781, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and  
4 any other applicable law, and constitutes the best notice practicable under the circumstances, by  
5 providing individual notice to all Class Members who could be identified through reasonable effort,  
6 and by providing due and adequate notice of the proceedings and of the matters set forth therein to the  
7 other Class Members. The Notice fully satisfied the requirements of due process.

8           6.       The Court finds the Settlement was entered into in good faith, that the Settlement is  
9 fair, reasonable, and adequate, and that the Settlement satisfies the standards and applicable  
10 requirements for final approval of this class action settlement under California law, including the  
11 provisions of California Code of Civil Procedure section 382 and California Rules of Court, Rule  
12 3.769.

13           7.       The Settlement Agreement is not an admission by Defendants, or by any other Released  
14 Party, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendants  
15 or any other Released Party. Neither this Order, the Settlement, nor any document referred to herein,  
16 nor any action taken to carry out the Settlement, may be construed as, or may be used as, an admission  
17 of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendants or  
18 any of the other Released Parties.

19           8.       No Settlement Class Members have objected to the terms of the Settlement.

20           9.       Upon entry of this Order, compensation to the Settlement Class Members and PAGA  
21 Employees as those terms are defined in the Settlement Agreement shall be paid pursuant to the terms  
22 of the Settlement.

23           10.      In addition to any recovery that Plaintiffs may receive under the Settlement, and in  
24 recognition of the Plaintiffs’ efforts on behalf of the Class, the Court hereby approves the payments  
25 from the Gross Settlement Amount of Incentive Awards to Plaintiffs in the amounts of \$7,500.00 to  
26 Plaintiff Christian Melendez and \$5,000.00 each (total, \$20,000.00) to Plaintiffs Athena Neri, Jack  
27 Mahan, Angel Garcia, and Eduardo Lopez Lopez.

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1           11.     The Court approves the payment from the Gross Settlement Amount of attorneys' fees  
2 to Class Counsel in the sum of \$583,333.33 (one-third of the Gross Settlement Amount), which shall  
3 be divided amongst Class Counsel pursuant to the Joint Prosecution Agreement.

4           12.     The Court approves the payment from the Gross Settlement Amount of reimbursement  
5 of actual litigation expenses to Class Counsel in the sum of \$84,633.60, which shall be divided  
6 amongst Class Counsel pursuant to the Joint Prosecution Agreement.

7           13.     The attorneys' fees and reimbursement of litigation costs and expenses to Class  
8 Counsel are reasonable amounts. The reasonableness of the fee award is determined based on a  
9 reasonable percentage of the common fund obtained for the Class. Awarding fees on a percentage  
10 basis encourages efficient litigation practices and reflects the actual benefit obtained for the Class.

11           14.     The Court approves and orders payment from the Gross Settlement Amount in the  
12 amount of \$11,500.00 to CPT Group, Inc. for performance of settlement administration services.

13           15.     The Court approves and orders payment in the amount of \$150,000.00 to the Labor  
14 Workforce and Development Agency as 75% of the payment allocated toward PAGA penalties.

15           16.     The Parties are ordered to give notice of the judgment to all Class Members in  
16 accordance with California Rules of Court, rule 3.771(b).

17           17.     Funds from any settlement checks remaining uncashed after one hundred and eighty  
18 (180) days will be distributed pursuant to the Code of Civil Procedure section 384, to the Controller  
19 of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §  
20 1500 et seq., for the benefit of those Settlement Class Members and PAGA Employees who did not  
21 cash their checks until such time that they claim their property.

22           18.     The "Released Parties" are defined as J&B Investments, Inc. d/b/a J&B Materials, Inc.,  
23 Pacific Gypsum Supply, Inc., and Gypsum Management and Supply, Inc., and any of their past, present  
24 and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, as well as  
25 each of their past, present and future officers, directors, employees, partners, members, shareholders  
26 and agents, attorneys, insurers, reinsurers and any individual or entity which could be jointly liable  
27 with Defendants.

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1           19.     Upon the date the Settlement is funded, the Settlement Class Members and Plaintiffs  
2 release all claims pleaded in the Operative Complaint and which could have been alleged based upon  
3 the facts, allegations and/or claims pleaded in the Operative Complaint against the Released Parties  
4 for work performed during the Class Period.

5           The “Class Released Claims” include:

- 6           a.     The claims set forth in the Operative Complaint, specifically, (1) failure to  
7 pay and/or accurately calculate minimum, regular, overtime, double time,  
8 prevailing and vacation wages (Violations of Labor Code §§ 227.3, 510,  
9 1194, 1194.2, 1197, 1197.1, 1198, 1770); (2) failure to provide meal periods  
10 or pay premiums in lieu thereof (Violations of Labor Code §§ 512, 226.7,  
11 and the applicable Wage Orders); (3) failure to provide rest periods or pay  
12 premiums in lieu thereof (Violation of Labor Code § 226.7 and the  
13 applicable Wage Order); (4) failure to reimburse and indemnify expenses  
14 (Violation of Labor Code §§ 2800 and 2802); (5) failure to timely pay wages  
15 during and upon termination of employment (Violation of Labor Code §§  
16 201-204); (6) failure to furnish and/or keep timely and accurate wage  
17 statements and employment records (Violation of Labor Code §§ 226, 1174,  
18 1174.5); violation of California Unfair Competition Law (Violation of  
19 Business & Professions Code § 17200 *et seq.*); (8) Violation of the  
20 California Private Attorneys General Act of 2004 (Labor Code § 2698 *et*  
21 *seq.*); (9) violation of the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*);
- 22           b.     Any claims predicated on the same or similar facts and/or claims alleged in  
23 the Operative Complaint and/or PAGA letter or amended PAGA letter sent  
24 to the LWDA by Plaintiffs during the pendency or prior to the Actions and  
25 incorporated therein, as well as any claims that could have been pled which  
26 arise from the facts alleged in the Operative Complaint concerning Plaintiffs  
27 or the Class Members, including any claims for unpaid wages (including  
28 minimum, regular, vacation, prevailing and overtime wages), unlawful  
rounding of employee time punches, untimely wage payments both during  
and at the end of employment, noncompliant meal periods, noncompliant  
rest periods, noncompliant wage statements, failure to reimburse and  
indemnify business expenses, failure to correctly calculate the regular rate  
of pay, and claims for interest, penalties (including, but not limited to,  
waiting time penalties), or premiums in connection therewith, as well as any  
claims under the California Labor Code and California Industrial Welfare  
Commission Wage Orders that were alleged or which could have been  
alleged under the facts, allegations and/or claims pleaded in the Operative  
Complaint;
- c.     Any claims for injunctive relief, declaratory relief, restitution, fraudulent  
business practices or punitive damages alleged or which could have been  
alleged under the facts, allegations and/or claims pleaded in the Operative  
Complaint;
- d.     In addition, to the extent required by law, the cashing of the settlement  
check by the Settlement Class Member shall be deemed to be an opt-in for  
purposes of releasing Released Parties from any claims under the Fair Labor  
Standards Act (“FLSA”) that were alleged or could have been alleged under  
the facts, allegations and/or claims pleaded in the Operative Complaint  
consistent with *Rangel v. PLS Check Cashers of Cal., Inc.*, 899 F.3d 1106,

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1110-11 (9th Cir. 2018) (holding opt-out release of California state law claims was *res judicata* against FLSA claims “which were direct federal law counterparts to the state law claims settled”).

20. Upon the date the Settlement is funded, Plaintiffs and the PAGA Employees hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all claims for violation of the California Private Attorneys General Act of 2004 (Labor Code § 2698 *et seq.*), (“PAGA claims”) as alleged in the Operative Complaint, which includes those alleged in the PAGA letter(s) sent to the LWDA by Plaintiffs that arose at any time during the PAGA Period. The PAGA Employees will be issued a check for their share of the PAGA Payment and will not have the opportunity to opt out of, or object to, the PAGA Payment and release of the PAGA Claims.

21. This Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the Settlement, and any and all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination of all controversies relating thereto.

22. A ~~non-appearance~~ case review re Compliance of Distribution is set for 5/24/24 at 8:30 am in Department 5 of this Courthouse located at 247 West 3rd Street, San Bernardino, California 92415. The Settlement Administrator shall file a final report by \_\_\_\_\_ indicating that the disbursements were made pursuant to the Settlement. *No appearance necessary if final report is submitted. P*

**IT IS SO ORDERED.**

Dated: 8/30/23

  
\_\_\_\_\_  
Honorable Joseph T. Ortiz  
Judge of the Superior Court