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Attorneys for Plaintiffs,
Justin Adamo, Gabriel Padilla, and Brigitte Reyes

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

JUSTIN ADAMO, an individual;
GABRIEL PADILLA, an individual;
BRIGITTE REYES, an individual;
individually on behalf of themselves and
all others similarly situated, under the
Private Attorney General Act (PAGA),
pursuant to Labor Code §§ 2698, et seq.

Plaintiffs;

v.

CLARK PEST CONTROL, INC., a
California Corporation; JMP BROS. INC.,
a California Corporation; JAMES F.
CLARK, JR, an individual and DOES 1-
50, inclusive.

Defendants.

Case No.: 20CECG00418

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION TO APPROVE
PAGA SETTLEMENT AGREEMENT**

NOTICE IS HEREBY GIVEN to all parties and their attorneys of record that the attached
Order re Approval of PAGA Settlement Agreement was entered on May 10, 2022. A true and
correct copy of the ORDER is attached as Exhibit "1".

**MICHAEL J. F. SMITH,
A PROFESSIONAL CORPORATION**

Dated: May 11, 2022

By: /s/ John L. Migliazzo
John L. Migliazzo,
Attorney for Plaintiffs

Exhibit “1”

FILED

MAY 10 2022

Michael J.F. Smith, #109426

John L. Migliazzo, # 272066

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

BY _____ DEPUTY

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FRESNO COUNTY SUPERIOR COURT

By: Louana Peterson, Deputy

Attorneys for Plaintiffs,

Justin Adamo, Gabriel Padilla, and Brigitte Reyes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

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Case No.: 20CECG00418

~~PROPOSED~~ ORDER GRANTING
MOTION TO APPROVE
SETTLEMENT PURSUANT TO
PRIVATE ATTORNEYS GENERAL
ACT ("PAGA")

Date: April 7, 2022

Time: 3:30 p.m.

Dept: 501

The Honorable D. Tyler Tharpe

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

This matter came on regularly before the Court for hearing on April 7, 2022, before the
Hon. D. Tyler Tharpe in Department 501 of the above-entitled Court at 3:30 p.m. John L.
Migliazzo of the Law Office of Michael J. F. Smith, APC, appeared on behalf of Plaintiffs,
Justin Adamo, Gabriel Padilla, and Brigitte Reyes. Daniel Klingenger of the LeBeau Thelen,
LLP appeared on behalf of Defendants, JMP Bros., Inc. and James Clark, Jr.

[PROPOSED] ORDER GRANTING MOTION TO APPROVE SETTLEMENT PURSUANT
TO PRIVATE ATTORNEYS GENERAL ACT ("PAGA")

1
2 Having reviewed the moving and opposing papers on Plaintiff's Motion to Approve
3 Settlement Pursuant to the Private Attorneys General Act ("PAGA") and oral argument of
4 counsel having been received by the Court, the Court finds, adjudges and orders as follows:

5 The Court hereby grants Plaintiffs' motion for approval of the settlement under PAGA
6 for the following reasons:

7 **1. Introduction**

8 Under Labor Code section 2699, subdivision (a), the Private Attorneys General Act of
9 2004 ("PAGA"), "Notwithstanding any other provision of law, any provision of this code that
10 provides for a civil penalty to be assessed and collected by the Labor and Workforce
11 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
12 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
13 brought by an aggrieved employee on behalf of himself or herself and other current or former
14 employees pursuant to procedures specific in Section 2699.3."

15 Also, under section 2699, subdivision (g)(1): "Except as provided in paragraph (2), an
16 aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action
17 pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and
18 other current or former employees against whom one or more of the alleged violations was
19 committed. Any employee who prevails in any action shall be entitled to an award of reasonable
20 attorney's fees and costs..."

21 "The superior court shall review and approve any settlement of any civil action filed
22 pursuant to this part. The proposed settlement shall be submitted to an agency at the same time it
23 is submitted to the court." (Lab. Code section 2699, subd. (i)(2).)

24 There are very few cases discussing section 2699, and none discuss the standards under
25 which a court is to assess a settlement. Nor has the legislature provided any structure or
26 standards for making the assessment. Published California case law has not done so either.
27 However, the common practice when ruling on PAGA settlements seems to be to follow existing
28 law on class action settlements.

[PROPOSED] ORDER GRANTING MOTION TO APPROVE SETTLEMENT PURUSANT
TO PRIVATE ATTORNEYS GENERAL ACT ("PAGA")

1 **2. Notice to the LWDA**

2 Labor Code section 2699, subdivision (l)(1) states “The superior court shall review and
3 approve any settlement of any civil action filed pursuant to this part. The proposed settlement
4 shall be submitted to an agency at the same time it is submitted to the court.”

5 The proof of service and declaration of John L. Migliazzo reflects that the LWDA was
6 given notice of the motion, and the LWDA has been given the opportunity to object to the
7 settlement.

8 **3. Fairness of the Settlement**

9 “[A court must be] provided with basic information about the nature and magnitude of
10 the claims in question and the basis for concluding that the consideration being paid for the
11 release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker Retail, Inc.*
12 (2008) 168 Cal.App.4th 116, 133.)

13 In *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, the Court of
14 Appeal stated that, “[the] court [must] receive and consider sufficient information on a core legal
15 issue, affecting the strength of the case for plaintiffs on the merits, to make the requisite
16 independent assessment of the reasonableness of the terms of the settlement.” (*Id.* at p. 798)

17 “The well-recognized actors that the trial court should consider in evaluating the
18 reasonableness of a class action settlement agreement include ‘the strength of plaintiffs’ case, the
19 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class
20 action status through trial, the amount offered in settlement, the extent of discovery completed
21 and stage of the proceedings, the experience and views of counsel, the presents of a
22 governmental participant, and the reaction of the class members to the proposed settlement.’ This
23 list ‘is not exhaustive and should be tailored to each case.’ Relying on an earlier edition of
24 Newberg on Class Actions, the court in *Dunk* asserted that ‘a presumption of fairness exists
25 where: (1) the settlement is reached through arms’-length bargaining; (2) investigation and
26 discovery are sufficient to allow counsel and the court to act intelligently; (2) counsel is
27 experienced in similar litigation; and (4) the percentage of objectors is small.” (*Kullar, supra*, at
28 p. 128, internal citations omitted)

[PROPOSED] ORDER GRANTING MOTION TO APPROVE SETTLEMENT PURUSANT
TO PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)

1 Here it appears the gross settlement of PAGA claims of \$150,000 (at least \$93,000 net to
2 the LWDA and covered employees) is reasonable, even though the potential recovery for the
3 time period prior to the change in policy is in excess of \$500,000. The settlement was reached
4 after mediation and subsequent settlement negotiations, and was the product of arms' length
5 negotiations and after more than two years of litigation. There was some uncertainty about the
6 outcome of litigation, especially since the court has the discretion to reduce the total amount of
7 PAGA penalties if it concludes that the penalties are duplicative and unduly punitive. The PAGA
8 portion of the settlement will go 75% to the LWDA and 25% to the covered employees. There
9 are 148 covered employees who are eligible to receive the penalties. The attorneys will also
10 receive \$50,000 from the settlement as fees, plus costs.

11 It appears that the settlement is fair and reasonable under the circumstances, especially
12 since the Defendants have not operated with employees since February 17, 2020 and Defendants
13 took steps to improve their process of recording hours worked before being purchased by
14 Rollins, Inc. The fact that the employer took good faith steps to comply with the law, no longer
15 has employees, penalties appear duplicative and overlapping, PAGA case law has substantially
16 changed the landscape of what can be recovered, each militates against large, cumulative
17 penalties against it. Thus, Plaintiffs would have been unlikely to recover the maximum potential
18 penalties if it had gone to trial, and accepting \$150,000 in settlement is not unreasonable.

19 There is a relatively small number of covered employees who will receive payments, so
20 each employee will receive a fairly significant sum of money from the settlement. The LWDA
21 will also receive a substantial sum of money from the settlement. Also, Plaintiffs would have had
22 to incur substantial additional costs and fees if the case went to trial, with the attendant risk of
23 obtaining a small award, or none at all. Plaintiffs' counsel already incurred substantial costs and
24 fees to litigate the case, which went through several rounds of discovery and a *Belaire-West*
25 notice. Therefore, the court intends to find that the amount of the settlement is fair and
26 reasonable.

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[PROPOSED] ORDER GRANTING MOTION TO APPROVE SETTLEMENT PURUSANT
TO PRIVATE ATTORNEYS GENERAL ACT ("PAGA")

1 **4. Attorneys' Fees**

2 Plaintiff's counsel seeks an order awarding fees of \$50,000, or 1/3rd of the gross PAGA
3 settlement. While the court has discretion to make a fee award based on a percentage of the
4 settlement, the court is not required to do so. It can also use the lodestar method to calculate fees,
5 or it can order plaintiff's counsel to provide enough information to double check the
6 reasonableness of a percentage fee award using a lodestar-style analysis. (*Laffitte v. Robert Half*
7 *International, Inc.* (2016) 1 Cal.5th 480, 503, internal citations omitted.)

8 Here, Plaintiffs' counsel has included a fairly detailed breakdown of how the fees were
9 calculated under the lodestar analysis. Plaintiffs' counsel states that his firm incurred 277.50
10 hours of attorney time on the case through March 15, 2022, with the attorneys billing \$450 per
11 hour for Mr. Migliazzo, \$650 per hour for Mr. Smith, and \$250 for Mr. Nunes. The total lodestar
12 amount of fees is thus \$115,257.50, subject to a potential multiplier of hourly rates. Under the
13 Laffey Matrix, Plaintiffs' lodestar would be \$189,054.

14 The hourly rates appear reasonable in light of the skill and experience of the attorneys,
15 and are consistent with the rates awarded to other attorneys in the Fresno area with similar
16 degrees of skill and experience. The time expended on the case also seems reasonable, especially
17 considering the case involved several years of litigation, a mediation, extensive written
18 discovery, extensive settlement discussions, records review, and the *Belaire-West* process.
19 Therefore, the request for \$50,000 in attorney's fees, which is considerably less than the actual
20 amount of fees incurred on the case, is reasonable. Thus, the court intends to approve the request
21 for \$50,000 in attorney's fees from the PAGA portion of the settlement.

22 **5. Individual Settlement Payment to Plaintiffs.**

23 Plaintiff also seeks court approval for the \$350,000 individual settlement payment to the
24 named Plaintiff, Plaintiffs. Plaintiff's counsel will receive \$116,667.66 in attorneys' fees, plus
25 reimbursement of \$2,401.81 in costs, from the individual settlement.

26 After deduction of attorneys' fees and costs, Plaintiffs are receiving a pro rata share of the
27 settlement proceeds of \$230,930.52 based on their damage calculations: 1) Justin Adamo will
28 receive \$90,063.29; 2) Gabriel Padilla will receive \$78,516.72 and 3) Brigitte Reyes will receive

[PROPOSED] ORDER GRANTING MOTION TO APPROVE SETTLEMENT PURUSANT
TO PRIVATE ATTORNEYS GENERAL ACT ("PAGA")

1 \$62,351.51.)

2 Here, Plaintiffs' estimated damages are significant: Justin Adamo: \$244,477.52, plus
3 emotional distress (Adamo Decl. ¶ 12); Gabriel Padilla: \$220,741.68, plus emotional distress
4 (Padilla Decl. ¶ 12); Brigitte Reyes: \$185,912.02 (no emotional distress) (Reyes Decl. ¶ 11) So
5 the total individual claims are estimated to be \$651,131.22, plus emotional distress for Adamo
6 and Padilla, plus attorneys' fees and costs.

7 The PAGA claims were not used as a bargaining chip to bolster individual claims, and
8 the allocation to both PAGA and individual claims appears to be reasonable.

9 **6. Court Costs and Settlement Administrator Fees.**

10 The Court hereby approves the appointment of Simpluris, Inc. as the Settlement
11 Administrator and the proposed notice to go to employees. The administration costs of \$3,000
12 appears reasonable.

13 Plaintiff also seeks an award of court costs of \$2,310.90, to be paid out of the individual
14 settlement. This amount appears to be reasonable in light of the nature of this case, the amount of
15 discovery, the length of litigation, and *Belaire-West* opt-out procedure. Therefore, the court
16 approves the requested costs.

17 **7. Third Amended Complaint.**

18 The Court approves the stipulated Third Amended Complaint. Plaintiffs shall file the
19 Third Amended Complaint within 10 days of this Order.

20 **IT IS SO ORDERED, ADJUDGED, AND DECREED**

21
22 Dated: 5/10/2022

23 
The Honorable D. Tyler Tharpe
Judge of the Superior Court

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[PROPOSED] ORDER GRANTING MOTION TO APPROVE SETTLEMENT PURUSANT
TO PRIVATE ATTORNEYS GENERAL ACT ("PAGA")

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