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HERIBERTO APARICIO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

HERIBERTO APARICIO, individually and
on behalf of others similarly situated,

Plaintiff,

vs.

ADVANTAGE PAINTING SOLUTIONS,
INC., a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVDS2013809

*Assigned for all purposes to: Hon. David Cohn,
Dept. S-26*

**~~[PROPOSED]~~ ORDER APPROVING
SETTLEMENT PURSUANT TO
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT AND
ENTERING JUDGMENT**

Hearing Date: July 6, 2021
Hearing Time: 10:00 a.m.
Department: S-26

Complaint Filed: July 13, 2020
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Having reviewed and considered Plaintiff's Motion for Order Approving Settlement
3 Pursuant to California Labor Code Private Attorneys General Act and Entering Judgment, and good
4 cause appearing for the same, it is hereby **ORDERED, ADJUDGED, AND DECREED AS**
5 **FOLLOWS:**

6 1. The Court hereby approves the Joint Stipulation of PAGA Settlement and Release of
7 Claims attached as Exhibit 2 to the Declaration of Heather Davis ("Settlement Agreement" or
8 "Settlement.") as a fair, reasonable, and adequate resolution of the PAGA claims alleged in the
9 Action.

10 2. The Settlement Agreement is hereby deemed incorporated herein as if expressly set
11 forth. Final judgment is hereby entered in conformity with the Settlement. All terms used herein
12 shall have the same meaning as defined in the Settlement Agreement.

13 3. This Court has jurisdiction over the subject matter of this Action, and over all Parties
14 to this Action, including Plaintiff Heriberto Aparicio ("Plaintiff"), the State of California, and all
15 PAGA Class Members.

16 4. The Court designates Phoenix Settlement Administrators, Inc. ("Phoenix") as the
17 third-party Settlement Administrator for mailing the PAGA Class Members cover letters,
18 distribution of the Gross Settlement Amount, and other duties set forth in the Settlement.

19 5. Within twenty-one (21) calendar days after entry of this Order and Judgment,
20 Defendant will provide Phoenix the PAGA Class Members' Data as defined in the Settlement
21 Agreement.

22 6. Provided the Judgment becomes Final, within twenty-eight (28) calendar days of the
23 Effective Date, Defendant Advantage Painting Solutions, Inc. ("Defendant") is hereby ordered to
24 deposit the Gross Settlement Amount of One Million Dollars and Zero Cents (\$1,000,000.00) into
25 the Settlement Account established by Phoenix.

26 7. Within fourteen (14) calendar days of receipt of the Settlement Account Deposit from
27 Defendant, Phoenix shall distribute the Gross Settlement Amount as provided in the Settlement and
28 set forth below:

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- 1 a. ~~Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00)~~ to PAGA Class
2 Counsel for attorneys' fees ("PAGA Class Counsel Fees Payment"), which is thirty-five
3 (35%) of the Gross Settlement Amount, and attorneys' costs ("PAGA Class Counsel
4 Litigation Expenses Payment") in the amount of Eleven Thousand Three Hundred and
5 Ninety-One Dollars and Sixty-Six Cents (\$11,391.66), from the Gross Settlement
6 Amount as final payment for and complete satisfaction of any and all attorneys' fees and
7 costs incurred by and/or owed to PAGA Class Counsel related to the Action;
- 8 b. Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff Heriberto
9 Aparicio ("PAGA Representative Payment") from the Gross Settlement Amount, to
10 compensate him for his services in prosecuting the Action and performing work in
11 support of the Action;
- 12 c. Four Thousand Five Hundred Ninety-Five Dollars and Zero Cents (\$4,595.00) to the
13 Settlement Administrator, Phoenix Settlement Administrators ("Settlement
14 Administrator Payment") from the Gross Settlement Amount for administration
15 expenses incurred by the Settlement Administrator; and
- 16 d. The Net Settlement Amount remaining after the deduction of the PAGA Class Counsel
17 Fees Payment, PAGA Class Counsel Litigation Expenses Payment, PAGA
18 Representative Payment, and Settlement Administrator Payment (\$626,513.34), shall be
19 distributed to the California Labor and Workforce Development Agency ("LWDA") and
20 PAGA Class Members. 75% of the Net Settlement Amount (\$469,885.00) shall be
21 distributed to the LWDA ("LWDA Payment"). 25% of the Net Settlement Amount
22 (\$156,628.34,) shall be distributed to the PAGA Class Members on a pro rata basis based
23 on the number of Pay Periods worked by each PAGA Class Member ("PAGA Class
24 Payment"). Phoenix shall mail each PAGA Class Member their PAGA Class Member
25 Payment Share check along with the Notice attached to the Settlement as Exhibit A.

26 8. All checks to the PAGA Class Members shall remain valid and negotiable for 180
27 days from the date of their issuance to the PAGA Class Members. If any checks are not cashed
28 within 180 days of mailing, those funds shall be transmitted to the Controller of the State of
California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure

1 § 1500, et seq. in the names of those PAGA Class Members who did not cash their checks until such
2 time they claim their property.

3 9. Upon the funding of the Gross Settlement Amount, each PAGA Class Member, and
4 without the need to manually sign a release document, in exchange for the consideration recited in
5 this Agreement, on behalf of himself or herself and on behalf of his/her current, former, and future
6 heirs, executors, administrators, attorneys, agents, and assigns, shall and does hereby fully and
7 finally release Defendant and Defendant's parents, predecessors, successors, subsidiaries, affiliates,
8 partners, owners, assigns, franchisors, and trusts, and all of its employees, officers, agents, attorneys,
9 stockholders, fiduciaries, and other service providers including, but not limited to, O'Hagan Meyer
10 (collectively hereinafter the "Releasees"), from any and all claims for the recovery for civil
11 penalties, attorneys' fees, and costs permissible under PAGA which Plaintiff and/or the PAGA Class
12 Members had, or may claim to have, against Releasees, arising out of the violations alleged in the
13 Complaint or the PAGA Notice or that reasonably could have been alleged, whether known or
14 unknown, based on the facts and legal theories contained in the Complaint or the PAGA Notice,
15 including unpaid straight and overtime wages (including any work off-the-clock and nonproductive
16 time for any piece rate work), failure to provide reporting time pay, failure to pay employees all
17 minimum wages and overtime wages owed including by failing to pay all overtime and double time
18 at the correct regular rate of pay, failure to provide compliant meal and rest breaks, failure to pay
19 them all premium wages owed for short, late or missed meal and rest periods, failure to pay all
20 wages owed at discharge or resignation; failure to timely pay wages within the times permissible
21 under Labor Code section 204; failure to provide complete and accurate wage statements; failure to
22 keep complete and accurate payroll records; failure to reimburse necessary business-related
23 expenses and internet service; violations of Labor Code Sections 201, 202, 203, 204, 226(a), 226.2,
24 226.3, 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, and
25 2802 (the "PAGA Released Claims") that accrued during the PAGA Period. PAGA Class Members
26 cannot opt out of or object to the PAGA Release. The PAGA Released Claims described above
27 expressly exclude all claims made by PAGA Class Members for individual wage claims, vested
28 benefits, wrongful termination, unemployment insurance, disability, social security, workers'
compensation, claims while classified as exempt, and claims outside of the PAGA Period.

1 10. Upon the funding of the Gross Settlement Amount, in exchange for the consideration
2 set forth in this Agreement, Plaintiff Heriberto Aparicio, on behalf of himself only, shall waive,
3 release, acquit and forever discharge the Released Parties, from any and all claims, actions, charges,
4 complaints, grievances and causes of action, of whatever nature, whether known or unknown, which
5 exist or may exist on Plaintiff's behalf as of the date of this Agreement, including, but not limited
6 to, any and all tort claims, contract claims, wage claims, wrongful termination claims, retaliation
7 claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,
8 personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims,
9 fraud claims, *quantum meruit* claims, and any and all claims arising under any federal, state or other
10 governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation
11 the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, the
12 Americans with Disabilities Act, the Employee Retirement Income Security Act, Title VII of the
13 Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family
14 Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California
15 Business & Professions Code Section 17200, *et seq.*, and any and all claims arising under any
16 federal, state or other governmental statute, law, regulation or ordinance. This release by Plaintiff is
17 not intended to release any claims that cannot be waived or released as a matter of law, including
18 specifically, without limitation, any claim under the California workers' compensation statute.
19 Plaintiff further waives the provisions of California Civil Code § 1542.

20 11. The Court finds that Plaintiff gave notice to the California Labor Workforce and
21 Development Agency ("LWDA") and to Defendant of his intention to pursue claims for civil
22 penalties under PAGA arising out of the facts and legal theories alleged in the Complaint, that the
23 LWDA did not give notice that it intended to investigate these claims within 65 days of receiving
24 Plaintiff's notice, and that Plaintiff is therefore authorized to pursue these claims on behalf of the
25 LWDA. The Court further finds that Plaintiff gave notice of this proposed settlement of those claims
26 under PAGA to the LWDA in accordance with Labor Code section 2699(1)(2), and that the LWDA
27 has not expressed any objection to the proposed settlement. Accordingly, this Judgment also bars
28 the LWDA, or any other agency of the State of California, or any person acting on its behalf, from
collecting any penalties due to any of them, or any unpaid wages due to PAGA Class Members, to

1 the extent those penalties or unpaid wages arise out of the PAGA Released Claims or the facts giving
2 rise to those claims. *Arias v. Super. Ct.*, 46 Cal.4th 969, 985-986 (2009).

3 12. Plaintiff's Counsel are directed to submit a copy of this Order and Judgment to the
4 California Labor and Workforce Development Agency within ten (10) calendar days of entry of the
5 Judgment.

6 13. Without affecting the finality of this Order and Judgment, the Court shall retain
7 continuing jurisdiction over this action and the parties, and over all matters pertaining to the
8 implementation and enforcement of the terms of the PAGA Settlement Agreement pursuant to Civil
9 Procedure section 664.6. Except as provided to the contrary herein, any disputes or controversies
10 arising with or with respect to the interpretation, enforcement, or implementation of the PAGA
11 Settlement Agreement shall be presented to the Court for resolution.

12 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

13 DATED: 7.6.21

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15 JUDGE OF THE SUPERIOR COURT
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