

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

AUG 01 2022

A. Behrmann

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

VICTOR TORRES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

GIBSON PERFORMANCE
CORPORATION, a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: RIC2002842

[Assigned for All Purposes to Hon. Angel M.
Bermudez, Dept. S302]

**[PROPOSED] ORDER AND JUDGMENT
GRANTING PLAINTIFF'S MOTION FOR
SETTLEMENT APPROVAL OF CLAIMS
BROUGHT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT AND
REASONABLE ATTORNEYS' FEES, COSTS,
AND ENHANCEMENT AWARD**

Date: August 1, 2022
Time: 10:30 a.m.
Dept.: S302

Reservation ID: 013127351548

[Concurrently filed with:

- Plaintiff's Notice of Motion and Motion for Settlement Approval; MPA in Support Thereof
- Compendium of Declarations Filed With Plaintiff's Motion for Settlement Approval
- Proof of Service
- Proof of Service (on LWDA)]

Filed: July 24, 2020
Trial: Not Set

1 This matter came on regularly for hearing before this Court on August 1, 2022, at 10:30 a.m.
2 Having considered the parties' PAGA Settlement Agreement ("Settlement"), the documents and
3 evidence presented in support thereof, and recognizing the disputed factual and legal issues involved
4 in this case, the risks of further prosecution, the substantial benefits to be received by the State of
5 California and the Aggrieved Employees pursuant to the Settlement, the fair, reasonable, and adequate
6 nature of the settlement obtained as a result of good faith arm's-length negotiations between the parties,
7 the Court hereby makes a final ruling that the settlement is approved pursuant to Labor Code § 2699(l).
8 Good cause appearing therefor, the Court hereby GRANTS Plaintiff's Motion for Settlement Approval
9 of Claims Brought under the Private Attorneys General Act and Reasonable Attorneys' Fees, Costs,
10 and Enhancement Award and ORDERS as follows:

- 11 1. The "Aggrieved Employees" shall be defined as:
12 All current and former hourly, non-exempt employees of Defendant Gibson
13 Performance Corporation who worked in California at any time from July 29, 2019
14 through date the Court grants approval of this Settlement.
- 15 2. The "PAGA Period" means the time period from July 29, 2019 through the date the
16 Court grants approval of the Settlement.
- 17 3. The Court hereby approves the Settlement as set forth in the Settlement as fair,
18 reasonable, and adequate, and directs the parties to effectuate the Settlement according to the terms of
19 the Settlement.
- 20 4. Per the Settlement Agreement being approved herein, Defendant Gibson Performance
21 Corporation ("Gibson Performance" or "Defendant") shall deposit the Gross Settlement Amount of
22 One Hundred Sixty-Five Thousand Dollars and Zero Cents (\$165,000.00) (unless the Gross Settlement
23 Amount is increased pursuant to Paragraph III.4 of the Settlement) with the Settlement Administrator
24 in three (3) equal installments of \$55,000, with the first payment due within five (5) court days of Court
25 approval of the Settlement, the second payment due six (6) months after the first payment, and the third
26 payment due within (6) months after the second payment. The Settlement Administrator shall hold all
27 portions of the Gross Settlement Amount in an interest-bearing account for the benefit of the Aggrieved
28 Employees until the time for disbursement. However, if the Settlement Administrator determines that

1 the Escalator Clause in Section III.4 of the Settlement has been triggered, Defendant is ordered to
2 deposit with the Settlement Administrator the increased Gross Settlement Amount as required and
3 calculated pursuant to the Escalator Clause in Section III.4 of the Settlement, or the PAGA Period shall
4 end on the date that the pay period count reaches 10% above 3,300 periods, whichever Defendant
5 elects. Specifically, the Escalator Clause in Section III.4 of the Settlement provides that that there are
6 an estimated 3,300 pay periods worked by the Aggrieved Employees during the PAGA Period of July
7 29, 2019 through the date the Court grants approval of this settlement. If the number of pay periods
8 worked by the Aggrieved Employees during the PAGA Period is more than 10% greater than this
9 figure (i.e. greater than 3,631 pay periods), Defendant agrees to, at its option, either: (i) increase the
10 Gross Settlement Amount on a proportional basis (i.e., if there was a 15% increase in the number of
11 pay periods worked by Aggrieved Employees, Defendant would agree to increase the Gross Settlement
12 Amount by 15%) or (ii) close the PAGA release period as of the date the total pay periods worked by
13 the Aggrieved Employees is 3,631 or less.

14 5. The Court hereby approves, as to form and content, the Notice of PAGA Settlement and
15 Release of Claims attached to the Settlement as Exhibit B. A true and correct copy of the Notice of
16 PAGA Settlement and Release of Claims is attached hereto as **Exhibit A**.

17 6. The Court hereby appoints Simpluris as Settlement Administrator.

18 7. Within ten (10) business days after the Court signs this Order, Defendant shall provide,
19 the Settlement Administrator with information for Aggrieved Employees. Defendant will in good faith
20 compile from its records a list of Aggrieved Employees that will be in a computer-readable format,
21 such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last
22 known mailing address, start date and termination date, if any, and Social Security number. the
23 Settlement Administrator will maintain the list in the highest of confidence, and access shall be limited
24 to those with a need to use the list as part of the administration of the Settlement and none of the
25 information contained in the list shall be disclosed to third Parties or to Plaintiff's Counsel without the
26 express written consent of counsel for Defendant.

1 8. Within seven (7) business days of receiving the Aggrieved Employees' information
2 from Defendant, the Settlement Administrator will circulate to counsel for all Parties an anonymized
3 spreadsheet containing the Individual Settlement Payments to each Aggrieved Employee and the data
4 used to calculate said payments. The Settlement Administrator shall also determine whether the
5 Escalator Clause in Section III.4 of the Settlement has been triggered. The Settlement Administrator
6 shall obtain approval from all counsel for all Parties of the calculations before mailing Individual
7 Settlement Payments.

8 9. Within five (5) calendar days of the date Defendant fully funds the Gross Settlement
9 Amount, the Settlement Administrator will perform second search on the National Change of Address
10 database to update the Aggrieved Employees' addresses.

11 10. Within seven (7) calendar days of the date Defendant fully funds the Gross Settlement
12 Amount, the Settlement Administrator shall mail copies of the Notice of PAGA Settlement and Release
13 of Claims, in both English and Spanish, along with his or her Individual PAGA Payment to all
14 Aggrieved Employees via regular First-Class U.S. Mail. A true and correct copy of the Notice of
15 PAGA Settlement and Release of Claims is attached hereto as Exhibit A.

16 11. All settlement distribution checks will remain negotiable for 180 days. Any Settlement
17 funds that remain uncashed after 180 calendar days after they are mailed shall be delivered to the
18 California State Controller's Office – Unclaimed Property Fund in the name of the Settlement Class
19 member.

20 12. The Court finds that attorneys' fees in the total amount of \$55,000.00¹ (with 46.5% or
21 \$25,575 to Haines Law Group, APC, 31% or \$17,050 to Lidman Law, APC, and 22.5% or \$12,375 to
22 Michael Burgis & Associates, PC) (Haines Law Group, APC, 31% or \$17,050 to Lidman Law, APC
23 are collectively, "Plaintiff's Counsel"), and reimbursement of litigation costs of \$10,721.39 to Haines
24 Law Group, APC are fair, reasonable, and adequate, and orders that the Settlement Administrator
25

26 _____
27 ¹ If the Gross Settlement Amount increases due to the triggering of the Escalator Clause in Section III.4 of the
28 Settlement, the amount of attorneys' fees awarded to Plaintiff's counsel and Michael Burgis & Associates PC
shall increase commensurately.

1 distribute these payments to Plaintiff's Counsel as provided for in the Settlement. Within seven (7)
2 calendar days of the date Defendant fully funds the Gross Settlement Amount, Simpluris is directed to
3 distribute to Plaintiff's Counsel the Court-approved attorneys' fees and costs.

4 13. The Court orders that the Settlement Administrator shall be paid \$3,000.00 for all of its
5 work done and to be done until the completion of this matter and finds that sum appropriate.

6 14. The Court finds that enhancement award of \$5,000.00 to Plaintiff Victor Torres, is fair
7 and reasonable in recognition of the unique contributions he has made and the risks he undertook on
8 behalf of the Aggrieved Employees and the State of California, and orders that the Settlement
9 Administrator distribute this payment to Plaintiff as provided for in the Settlement Agreement. Within
10 seven (7) calendar days of the date Defendant fully funds the Gross Settlement Amount, Simpluris is
11 directed to distribute to Plaintiff the Court-approved enhancement award.

12 15. The Court finds that the amount from the Gross Settlement Amount remaining after
13 deductions for: (i) Plaintiff's Counsel's attorneys' fees and costs, (ii) enhancement award to Plaintiff;
14 and (iii) Settlement Administrator fees ("Net Settlement Amount") shall be distributed as follows:
15 75% shall to be paid to the California Labor and Workforce Development Agency ("LWDA") and
16 25% to be distributed to the Aggrieved Employees pro rata based on the proportional number of pay
17 periods worked by each Aggrieved Employee during the PAGA Period, as provided for in the
18 Settlement. The Court finds that these amounts and the distribution formula as set forth in the
19 Settlement is fair, adequate, and reasonable, and orders that payment be made to the LWDA and
20 Aggrieved Employees in accordance with the terms of the Settlement.

21 16. The Court hereby approves the release as set forth in the Settlement. Specifically,
22 following entry of this Order and Final Judgment, in his capacity as a Private Attorney General or
23 "aggrieved employee" acting on behalf of himself, the State of California and all Aggrieved
24 Employees, Plaintiff hereby releases Defendant and its past and present officers, directors, employees,
25 and agents (collectively, the "Released Parties") from any and all claims for civil penalties arising
26 during the PAGA Period under the Labor Code Private Attorneys General Act ("PAGA"), Labor Code
27 § 2698 et seq. based on the violations pled in the Seventh Cause of Action of the First Amended
28

1 Complaint in the Action and the PAGA exhaustion letter dated July 29, 2020 that arose during the
2 PAGA Period, including any related claims for attorneys' fees, costs, or interest resulting therefrom;
3 Plaintiff does not release any Aggrieved Employee's claim for wages or damages ("Released Claims").

4 17. In light of his enhancement award described above, Plaintiff personally agrees to
5 release, in addition to the PAGA Released Claims, all claims, whether known or unknown, under
6 federal law or state law, to the fullest extent permitted by law, against the Released Parties through the
7 date Plaintiff signs this Agreement. Plaintiff further understands that this release includes unknown
8 claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the
9 California Civil Code, which provides:

10 **A general release does not extend to claims that the creditor or releasing party**
11 **does not know or suspect to exist in his or her favor at the time of executing the**
12 **release and that, if known by him or her, would have materially affected his or**
13 **her settlement with the debtor or released party.**

14 Notwithstanding the above nor anything else in this Agreement, this waiver and release does
15 not apply to: (i) those rights as a matter of law that cannot be waived, including, but not limited to,
16 workers' compensation claims; (ii) rights or claims arising out of this Agreement after the date this
17 Agreement is executed by Plaintiff; and (iii) rights or claims arising out of this Agreement; and (iv)
18 rights or claims arising after the date this Agreement is executed by Plaintiff. The Agreement in no
19 way affects Plaintiff's entitlement and/or benefits to be received by Plaintiff in workers' compensation
20 pursuant to the jurisdiction of workers' compensation.

21 18. The releases identified herein shall be null and void if Defendant fails to fully fund the
22 Settlement.

23 19. Upon entry of this Order and Judgment, the Court retains jurisdiction to enforce the
24 terms of the Settlement.

25 20. Plaintiff shall file a declaration executed by the Settlement Administrator confirming
26 the final distribution of funds on or before March 29, 2024.

27 //

21. A Final Accounting (Nonappearance) Hearing shall be set for April 5, 2024.

IT IS SO ORDERED AND ADJUDGED.

Dated: 8.1., 2022

By:

Honorable Angel M. Bermudez
Judge of the Superior Court

EXHIBIT A

EXHIBIT A

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Victor Torres v. Gibson Performance Corporation
Riverside County Superior Court Case No. RIC2002842

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX - ____

I. NOTICE OF PAGA SETTLEMENT

On [date of court approval], the Riverside County Superior Court (the "Court") approved a settlement in the above-captioned action filed and disputes raised Victor Torres (collectively, "Plaintiff") on behalf of himself and all other aggrieved employees.

In the disputes, Plaintiff sought to recover civil penalties for alleged violations of the California Labor Code on behalf of the California Labor and Workforce Development Agency ("LWDA") and other aggrieved employees under the California Private Attorneys General Act (the "PAGA"). These civil penalties are based on Plaintiff's allegations that Gibson Performance Corporation ("Gibson"): failed to: (1) pay all minimum wages owed; (2) pay all overtime wages owed; (2) provide meal periods; (4) authorize and permit rest periods; (5) provide accurate, itemized wage statements. As a result, Plaintiff sought civil penalties under the PAGA.

The Court has **not** made a determination about the merits of Plaintiff's claims. This Notice is not an expression of any opinion by the Court as to the merits of Plaintiffs' claims.

Gibson denies Plaintiff's allegations and denies it engaged in any wrongful conduct. Gibson maintains that it complied with the California Labor Code at all times. Gibson agreed to settle this lawsuit solely for the purposes of compromising and settling highly disputed claims and to avoid the cost and operational burden of continued litigation. There has been no admission of or finding of wrongdoing by Gibson.

You are receiving this Notice because you are in the group of employees referred to as "Aggrieved Employees," which is defined as: "all current and former non-exempt employees of Gibson Performance Corporation who worked in California at any time from July 29, 2019 through [the date the Court grants approval of this Settlement]. ("PAGA Period")."

II. INDIVIDUAL PAGA PAYMENT

The enclosed check represents your individual share of the Settlement. Each individual PAGA payment was calculated on a pro rata basis (*i.e.*, proportional) based on the number of pay periods worked by each Aggrieved Employee in the PAGA Period. Your individual PAGA payment has been calculated at \$[AMOUNT PAID TO THIS EMPLOYEE].

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties, and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences, if any, of

your individual PAGA payment. Neither Plaintiff nor Gibson, nor their respective attorneys, has made any representations or warranties regarding the taxation of your Individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

III. RELEASE

The Court has approved the Parties' Settlement Agreement ("Settlement"). Plaintiff and the State of California release Gibson and its past and present officers, directors, employees, and agents ("Released Parties") from any and all claims for civil penalties under arising during the PAGA Period under the Labor Code Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.* based on the violations pled in Seventh Cause of Action of the First Amended Complaint in the Action and the PAGA exhaustion letter dated July 29, 2020 that arose during the PAGA Period, including any related claims for attorneys' fees, costs, or interest resulting therefrom; Plaintiff does not release any Aggrieved Employee's claim for wages or damages ("Released Claims").

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, Simpluris, at [ADMINISTRATOR INFO] with any questions.

Settlement checks will be void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Controller's Office under the unclaimed property laws in the name of the Aggrieved Employee to whom the check was issued. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.