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Attorneys for Plaintiff
FRANK SICA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FRANK SICA, on behalf of himself, and all
others similarly situated, and all aggrieved
employees,

Plaintiff,

v.

MADISON INDUSTRIAL SERVICES TEAM,
LIMITED PARTNERSHIP; and DOES 1
through 50, inclusive,

Defendant.

Case No: 4:20-cv-08347-KAW

CLASS ACTION

**DECLARATION OF ERIC A. GROVER IN
SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: August 4, 2022

Time: 1:30 p.m.

Ctrm: TBD

Judge: Kandis A. Westmore

Complaint Filed: September 30, 2020

FAC filed: November 19, 2020

Removal Date: November 25, 2020

1 I, ERIC A. GROVER, declare as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I
3 am a partner in the law firm Keller Grover LLP, co-counsel for Plaintiff Frank Sica (“Plaintiff”
4 or “Class Representative”) and co-Class Counsel in this action. I have personal knowledge of
5 the facts stated herein and, if called as a witness, I could and would testify competently to the
6 facts set forth below.

7 2. The experience of Class Counsel is detailed in the declarations of Eric A. Grover
8 and Scot Bernstein filed in support of Plaintiff’s Motion for Award of Attorneys’ Fees and
9 Costs, Class Representative Incentive/General Release Payment, and Settlement Administration
10 Costs (“Fee Motion”) and will not be repeated here. See Dkts. 41-1 and 41-3.

11 3. A true and correct copy of the Joint Stipulation of Class Action and PAGA
12 Settlement and Release of Claims (“Settlement Agreement”) entered into by Plaintiff and
13 Madison Industrial Services Team, Limited Partnership (“Defendant” or “Madison”) is attached
14 as Exhibit A to my Fee Motion declaration. See Dkt. 41-1. My Fee Motion declaration also
15 discusses in detail the factual and procedural background of the case, Class Counsel’s work in
16 litigating and settling the case, and preliminary approval and notice process through May 17,
17 2022 and that lengthy discussion will not be repeated here. See Dkt. 41-1, ¶¶ 5-29.

18 **Notice Process Update**

19 4. Evelin Reyes of Simpluris, the Court-approved Settlement Administrator, provided
20 a declaration as part of the Fee Motion that was current through May 16, 2022. See Dkt. 41-4.
21 The May 31, 2022 deadline to opt-out or object has now passed and Ms. Reyes has provided a
22 supplemental declaration updating the notice process and providing updated estimated
23 distribution calculations. See Supplemental Declaration of Evelin Reyes of Simpluris, Inc.
24 (“Supplemental Simpluris Decl.”). Set forth below is a summary of the information contained in
25 the Supplemental Simpluris Declaration.

26 5. Ultimately only seven Class Notices out of 377 were determined to be
27 undeliverable, a 98% success rate.
28

6. Class Members did not have to file a claim to participate in the Settlement. The deadline to opt out, object or submit a dispute was May 31, 2022. Simpluris did not receive any disputes from Class Members. Simpluris received no opt-outs and no objections, timely or late. Class Counsel has not received any disputes, objections or opt outs, timely or late. Class Counsel has not received notice that any objections have been submitted to the Court. Accordingly, there are 377 Settlement Class Members.

7. The updated estimated Net Settlement Fund is \$403,147.46. With no opt-outs, the average settlement payment is estimated to be \$1,069.36 [$\$403,147.46/377$] and the highest estimated payment is \$5,133.65.

Class Counsel's Assessment of the Fairness of the Settlement

8. Based on my years of experience and my own independent investigation and evaluation, I am of the opinion that settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and it is in the best interests of the Class Members in light of all known facts and circumstances and the expenses and risks inherent in litigation. If the proposed Class is not certified, most Class Members would likely not pursue any individual claims. Moreover, I am familiar with efforts by defendants in other cases to oppose class certification and with class action settlements involving wage and hour issues and have a strong understanding of the trends in both the likelihood of certification and the value of settlements. I also personally have settled multiple class action cases involving alleged unpaid wage, meal period, and termination pay practices. Based on that knowledge, I am of the opinion the Settlement is fair, reasonable, and adequate and is in the best interests of the Class Members.

9. I believe the Maximum Settlement Amount and Net Settlement Amount to be fair and reasonable. After subtracting out the amounts allocated to pay the costs of administration (not to exceed \$9,000), Class Counsels' fees (up to \$195,000) and actual litigation costs (\$15,352.54), the Class Representative Incentive Award/General Release Payment (\$7,500), and the \$20,000 PAGA Payment, all of which are subject to the Court's approval, the Net Settlement Amount is estimated to be \$403,147.46. The Net Settlement Amount will be distributed to all

Settlement Class Members based on the formula set forth in the Settlement Agreement and summarized below.

10. Settlement Class Members, *i.e.*, Class Members who have not submitted a timely and valid request for exclusion, did not need to submit a claim form to receive an Individual Settlement Payment. All Class Members are also Aggrieved Employees and will receive an Individual PAGA Payment.

11. To determine the Individual Settlement Payments, Simpluris will calculate the total number of Qualified Shifts for all Settlement Class Members. The number of Qualified Shifts for each Settlement Class Member then will be divided by the total number of Qualified Shifts for all Settlement Class Members. The result of that division will be the “Payment Ratio” for each Settlement Class Member. Each Settlement Class Member’s Payment Ratio then will be multiplied by the Net Settlement Amount to calculate that Settlement Class Member’s share of the Net Settlement Amount, except that no gross Individual Settlement Payment will be less than \$25. A share of the Net Settlement Amount will be provided only to those individuals who satisfy the definition of Settlement Class Members, *i.e.*, Class Members who do not submit a timely and valid Request for Exclusion.

12. Because no Class Members opted out, the average settlement payment will be approximately \$1,069.36 (\$403,147.46/377). For the reasons explained herein and in the Fee Motion, including the various defenses and other risks of litigation, the proposed settlement amount is reasonable under the circumstances.

13. The Settlement Agreement and Class Notice provided Class Members with the opportunity to submit disputes, request exclusion from the class action settlement or to object to the settlement terms. Class Members had until May 31, 2022 to submit disputes, opt-out or object.

14. The Settlement provides that \$20,000 of the MSA will be allocated to the settlement of the PAGA claims. Of that amount, 75%, or \$15,000, will be paid to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code and 25% – or \$5,000 – will be allocated to the Aggrieved

1 Employees, all of whom are also Class Members. The average Individual PAGA Payment is
2 estimated at \$13.26 [\$5,000/377].

3 15. Prosecution of this case resulted in tangible benefits for the Class Members in the
4 following respects. Through this settlement: (1) participating Class Members will receive their
5 recoveries now as opposed to waiting additional time for the same, or possibly a worse, result;
6 (2) participating Settlement Class Members will receive a guaranteed result that compares
7 favorably with other similar class action settlements of this type; and (3) settlement at this
8 juncture will translate into significant savings in Class Counsel's fees and costs which inevitably
9 would have increased had the case progressed through trial, appeals, etc.

10 16. Notably, Defendant has legal and factual grounds for defending this action,
11 creating significant risk to the Class Members in continuing the litigation. Defendant consistently
12 asserted, for example, that, for the Labor Code § 1194.2 liquidated damages claim and the Labor
13 Code § 203 waiting time penalty claim, a level of willfulness is required to impose liability in
14 connection with both of these claims. Defendant has argued that, before the decision of the
15 California court of appeal in *Gutierrez v. Brand Energy Services of California, Inc.* (2020) 50
16 Cal.App.5th 786, it was uncertain whether the pre-shift time at issue in this case was
17 compensable, thus defeating any argument that Defendant's actions were willful. Also,
18 Defendant has argued that Section 301 of the federal Labor Management Relations Act
19 ("LMRA") preempts Plaintiff's meal break and PAGA claims due to an allegedly valid collective
20 bargaining agreement ("CBA"). *See e.g., Marquez v. Toll Glob. Forwarding*, 804 F. App'x 679,
21 680-81 (9th Cir. 2020) (finding § 301 of the LMRA preempted the plaintiff's meal period claims,
22 citing *Curtis v. Irwin Industries, Inc.*, 913 F.3d 1146, 1155 (9th Cir. 2019) among other cases;
23 *Radcliff v. San Diego Gas & Elec. Co.*, 519 F. Supp. 3d 743, 748 (S.D. Cal. 2021) (finding that §
24 301 of the LMRA preempted PAGA claims related to alleged overtime and meal period
25 violations), citing *Curtis*, 913 F.3d at 1150, n.3. Defendant argues that meal period claims are
26 statutorily barred under Labor Code § 512(e) due to the alleged CBA. *See e.g., Marquez*, 804 F.
27 App'x at 680-81, citing Lab. Code § 512(e). Further, Defendant has contended that a class action
28 could not be properly maintained because Plaintiff could not satisfy the criteria to certify a class

1 under Federal Rules of Civil Procedure, Rule 23 and that Plaintiffs would lose a contested class
2 certification motion.

3 17. With regard to the PAGA claims, even if Plaintiff succeeds, there is a substantial
4 risk that the amount of the PAGA penalties awarded will be less than the maximum statutory
5 amount. Labor Code § 2699(e)(2) provides that the court sets the amount of PAGA penalties
6 after trial. In setting the penalties to be assessed, the Court has wide latitude.¹ Examples of
7 cases in which the court substantially reduced the PAGA penalties are listed in the Grover
8 Declaration submitted with the Motion for Preliminary Approval. Dkt. 27-1.

9 18. The settlement offers the Class Members the opportunity to obtain a monetary
10 settlement payment now, avoiding the risks that Defendant might succeed in any of its arguments.
11 For those reasons and the more detailed reasoning explained in the Grover Declaration submitted
12 with the Motion for Preliminary Approval (Dkt. 27-1) regarding the limitations inherent in the
13 unpaid wages claims and the various defenses and other risks of litigation, the settlement is
14 reasonable under the circumstances.

15 19. Exemplifying the overwhelming support that the absent Class Members have
16 demonstrated for this settlement is the fact no Class Members opted out or objected to the
17 settlement. The lack of objections and opt-outs speaks volumes about the fairness,
18 reasonableness and adequacy of this settlement.

19 **Residual Funds**

20 20. The Settlement provides that Individual Settlement Payment checks mailed out to
21 Settlement Class Members shall be valid for 180 days from the date of issuance. After the 180
22 days, if any Individual Settlement Payment checks remain uncashed, the remaining funds will be
23 distributed to the Parties' selected *cy pres* recipient, subject to the Court's approval. The *cy pres*
24 recipient is Legal Aid at Work, a 501(c)(3) organization that works to assist low-wage workers

25 _____
26 ¹ See e.g., *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d 1058, 1100, 1104 (N.D. Cal. 2019)
27 (finding that, under Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA
28 penalties as the Court sees fit" and reducing the PAGA penalty award significantly from the
maximum penalties possible).

1 with legal representation, education and policy advocacy, aiming to enforce and strengthen
2 workers' rights. (<https://legalaidatwork.org>). Counsel for the Parties and Defendant have no
3 connection to proposed *cy pres* recipient.

4 **Payment to the LWDA**

5 21. As part of the Settlement, Defendant has agreed to pay \$20,000 to settle the PAGA
6 penalty claims, of which a payment of \$15,000 will go to the LWDA and \$5,000 will be paid to
7 the Aggrieved Employees.

8 **Class Counsel's Fees and Costs:**

9 22. Class Counsel provided their lodestar information through May 16, 2022 as part of
10 the Fee Motion. See Dkt. 41-1 at ¶¶ 55-67, Exs. B-E; Dkt. 41-3 at ¶¶ 3-4, 6-10, Ex. 2. Since
11 then, Keller Grover LLP has spent an additional 10 hours and \$7,575.00 in lodestar litigating this
12 action, including working with the Settlement Administrator and Defense Counsel, speaking
13 with Class Members and drafting the final approval motion papers.

14 23. Keller Grover and co-Class Counsel expect to spend another 10 hours preparing
15 for and attending the final approval hearing and addressing settlement distribution matters
16 through the end of the case. Class Counsel's total lodestar as of June 29, 2022 is \$223,672.50
17 and total expected lodestar is approximately \$230,000.00.

18 I declare under penalty of perjury under the laws of the State of California and the United
19 States that the foregoing is true and correct, and that this Declaration was executed on this 29th
20 day of June 2022, at San Francisco, California.

21 /s/ Eric A. Grover
22 ERIC A. GROVER
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