

ERIC A. GROVER (SBN 136080)
eagrover@kellergrover.com
ROBERT W. SPENCER (SBN 238491)
rspencer@kellergrover.com
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861

SCOT BERNSTEIN (SBN 94915)
swampadero@sbernsteinlaw.com
**LAW OFFICES OF SCOT D. BERNSTEIN,
A PROFESSIONAL CORPORATION**
101 Parkshore Drive, Suite 100
Folsom, California 95630
Telephone: (916) 447-0100
Facsimile: (916) 933-5533

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

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: March 3, 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 Plaintiff Frank Sica (“Class Representative” or “Plaintiff”) and Defendant Madison
2 Industrial Services Team, Limited Partnership (“Defendant” or “Madison”) have entered into a
3 “Joint Stipulation of Class Action and PAGA Settlement and Release of Claims” (the “Settlement
4 Agreement”) which, if approved, would resolve this putative class action. Upon review and
5 consideration of the motion papers submitted by the parties, including the Settlement Agreement
6 and all exhibits thereto, the Court determines and orders as follows:

7 1. The Court has jurisdiction over this matter and venue is proper.

8 2. This action is provisionally certified as a class action, for settlement purposes
9 only, pursuant to Federal Rule of Civil Procedure 23. The settlement Class is defined as
10 follows: “All current and former hourly on-site employees who worked for Defendant in
11 California during the Class Period. An individual Class Member also may be an Aggrieved
12 Employee if he or she falls within the “Aggrieved Employee” definition.” The Class Period is
13 defined as September 30, 2016 through September 30, 2021, inclusive.

14 3. For the Labor Code §§ 2699, *et seq.*, Private Attorneys General Act (“PAGA”)
15 claims in this action, the Aggrieved Employees are defined as “All current and former hourly
16 on-site employees who worked for Defendant in California at any time during the PAGA
17 Period.” The PAGA Period is September 14, 2019 through September 30, 2021, inclusive. All
18 individual Aggrieved Employee are also Class Members.”

19 4. The Court preliminarily approves the proposed settlement as set forth in the
20 Settlement Agreement as within the range of possible final approval.

21 5. The Court preliminarily appoints Keller Grover LLP and the Law Offices of Scot
22 D. Bernstein, A Professional Corporation, as Class Counsel.

23 6. The Court preliminarily appoints Frank Sica as Class Representative for the
24 settlement Class.

25 7. The Court preliminarily finds, for purposes of this settlement only, that the Class
26 Representative and Class Counsel fairly and adequately represent and protect the interests of the
27 absent Class Members.
28

1 8. The Court approves and appoints Simpluris, Inc. (“Simpluris”) to serve as the
2 Settlement Administrator and directs Simpluris to carry out all duties and responsibilities of the
3 Settlement Administrator specified in the Settlement Agreement.

4 9. Pursuant to Federal Rule of Civil Procedure 23, the Court approves the manner
5 of class notice set forth in the Settlement Agreement. The Court approves the form and content
6 of the revised notice form proposed by counsel, specifically the revised Notice of Class and
7 PAGA Action Settlement (the “revised Notice”), which is attached to the February 3, 2022
8 Declaration of Robert Spencer as Exhibit A. The Court finds that the revised Notice constitutes
9 the best notice practicable under the circumstances and is valid, due and sufficient notice to the
10 Class of the pendency of the action, preliminary certification of the Class, the terms of the
11 settlement, procedures to become a settlement Class Member (as defined in the Settlement
12 Agreement), procedures for objecting to the settlement, procedures to opt out of the settlement,
13 and the time and place of the Final Approval Hearing. The proposed manner of class notice
14 satisfies the requirements of due process, and complies with applicable law, including Federal
15 Rule of Civil Procedure 23.

16 10. No later than 21 calendar days after this Order is entered by the Court,
17 Defendant shall provide the Settlement Administrator with the with whatever telephone
18 numbers Defendant has for Class Members and Aggrieved Employees and the Class Data and
19 Aggrieved Employee Data, as defined in the Settlement Agreement sections I.D. and I.G, for
20 purposes of preparing and mailing the revised Notice to Class Members, as well as undertaking
21 its other obligations. The Settlement Administrator shall be obligated to keep the telephone
22 numbers and Class and Aggrieved Employee Data confidential and shall take reasonable and
23 necessary precautions to maintain the confidentiality of the data. The Settlement Administrator
24 shall not distribute or use the telephone numbers or Class Data or Aggrieved Employee Data or
25 any information contained therein for any purpose other than to administer this settlement.

26 11. Within 14 calendar days after receiving the Class Data and Aggrieved Employee
27 Data, the Settlement Administrator shall send Class Members, via first-class U.S. mail to their
28

1 last known addresses, the Court-approved revised Notice. The Settlement Administrator will
2 perform address updates and verifications as necessary prior to the first mailing.

3 12. If any revised Notice is returned as undeliverable, the Settlement Administrator
4 shall attempt to contact the addressee by telephone and, if needed, perform skip-traces on
5 returned mail and will re-mail the revised Notices to updated addresses (if any) as soon as
6 possible upon return of the undeliverable revised Notices.

7 13. Class Members who wish to receive a settlement payment are not required to
8 submit a claim form.

9 14. Any Class Member who seeks exclusion from the Class must email or mail a
10 signed, written request to be excluded from the settlement (“Request for Exclusion”) to the
11 email or mailing addresses specified in the revised Notice that must be emailed or postmarked
12 no later than 45 calendar days after the date the revised Notice is first mailed by the Settlement
13 Administrator (the “Response Deadline”), as described in the Settlement Agreement section
14 III.L.7. The email date or postmark date on the Request for Exclusion envelope shall be the
15 exclusive means used to determine whether the Request for Exclusion was timely submitted.
16 The Request for Exclusion must state that the Class Member wishes to exclude himself or
17 herself from the class action Settlement and (1) must contain the name, address, and the last
18 four digits of the Social Security number or Employee ID number of the person requesting
19 exclusion; (2) if mailed, must be signed by the Class Member; (3) must be emailed or
20 postmarked by the Response Deadline and returned to the Settlement Administrator at the
21 specified email or mailing address; and (4) must contain a typewritten or handwritten notice
22 stating, in substance, as follows: “I wish to opt out of the Settlement of the class action lawsuit
23 entitled *Sica v. Madison Industrial*.”

24 15. Any Class Member who seeks to object to the settlement must deliver in-person
25 or mail a written statement of objection (“Notice of Objection”) to the Court at the address
26 specified in the Notice which must be postmarked no later than the Response Deadline, as
27 described in the Settlement Agreement section III.L.8. The filing date if delivered in-person or
28 or postmark date if mailed shall be deemed to be the exclusive means for determining whether a

1 Notice of Objection was timely submitted. In order for an objection to be complete, a Notice of
2 Objection must be signed by the Class Member and state (1) the case name and number; (2) the
3 name of the Class Member; (3) the address of the Class Member; (4) the last four digits of the
4 Class Member's Social Security number or Employee ID number; (4) the basis for the objection
5 and any supporting documents; and (5) whether or not the Class Member intends to appear at
6 the final approval hearing. Class Members who fail to make objections in the manner specified
7 above may be deemed to have waived any objections and to be foreclosed from making any
8 objections to the Settlement, whether by appeal or otherwise. The failure to submit a written
9 objection does not waive a Settlement Class Member's right to appear and orally object at the
10 final approval hearing.

11 16. Plaintiff shall file his motion for awards of attorneys' fees and costs, the Class
12 Representative Incentive Award/General Release Payment, and settlement administration costs
13 no later than May 9, 2022, which is 14 calendar days before the Response Deadline. Plaintiff
14 shall file his motion for final approval no later than June 2, 2022, which is 35 calendar days
15 before the final approval hearing.

16 17. The Final Approval Hearing shall be held on July 7, 2022 at 1:30 p.m., at which
17 time the Court will determine whether the settlement should be finally approved as a fair,
18 reasonable, and adequate to the Class Members; whether the PAGA settlement should be
19 approved; whether the Final Approval Order and Judgment should be entered; whether Class
20 Counsel's application for attorneys' fees and expenses should be approved; whether the request
21 for the Class Representative's incentive award and general release payment should be approved;
22 and whether the request for the payment of administration costs should be approved.

23 18. The Court reserves the right to modify the date of the Final Approval Hearing
24 and related deadlines set forth herein. The Final Approval Hearing may be postponed,
25 adjourned or continued by Order of the Court without further notice to the Class.

26 19. Pending the final determination of whether the settlement should be approved,
27 all proceedings in the action, except as necessary to implement the settlement or comply with
28 the terms of the Settlement Agreement or this Order, are hereby stayed.

20. Should, for whatever reason, the settlement not become final, the fact that the Parties were willing to stipulate to certification of the Class as part of the settlement shall have no bearing on, nor be admissible in connection with, the issue of whether a class should be certified in a non-settlement context.

21. In the event the settlement is not finally approved or is terminated, canceled or fails to become effective for any reason, the Parties will be returned to their former positions, and specifically the provisional certification will be of no effect.

22. Below is a chart of the important case deadlines set forth above:

<u>Description</u>	<u>Basis for Calculation</u>	<u>Deadline</u>
Defendant to provide Class Data to Settlement Administrator	21 calendar days after receiving Class Data	March 24, 2022
Settlement Administrator to mail revised Notice	14 calendar days after receiving Class Data	April 7, 2022
Response Deadline for Class Members re Requests for Exclusion and Notices of Objection	45 calendar days from date of initial mailing of revised Notice	May 23, 2022
Deadline to file Motion for Approval of Attorneys' Fees and Costs, Incentive Award, and Settlement Administration Costs	14 calendar days before Response Deadline	May 9, 2022
Deadline to file Motion for Final Approval of Settlement	91 calendar days after anticipated March 3, 2022 preliminary approval date and 35 days before final approval hearing	June 2, 2022
Hearing on Motion for Final Approval of Settlement and Attorneys' Fees and Costs, Incentive Award, and Settlement Administration Costs	35 calendar days after filing of Motion for Final Approval of Settlement	July 7, 2022

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: _____, 2022

THE HONORABLE KANDIS A. WESTMORE
United States Magistrate Judge