

KELLER GROVER LLP
1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax. 415.543.7861

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: February 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

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

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

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

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

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

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

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

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

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 notice form proposed by counsel, specifically the Notice of Class and PAGA Action
7 Settlement (the “Notice”), which is attached to the Settlement Agreement as Exhibit 1. The
8 Court finds that the Notice constitutes the best notice practicable under the circumstances and is
9 valid, due and sufficient notice to the Class of the pendency of the action, preliminary
10 certification of the Class, the terms of the settlement, procedures to become a settlement Class
11 Member (as defined in the Settlement Agreement), procedures for objecting to the settlement,
12 procedures to opt out of the settlement, and the time and place of the Final Approval Hearing.
13 The proposed manner of class notice satisfies the requirements of due process, and complies
14 with applicable law, including Federal Rule of Civil Procedure 23.

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

24 11. Within 14 calendar days after receiving the Class Data and Aggrieved Employee
25 Data, the Settlement Administrator shall send Class Members, via first-class U.S. mail to their
26 last known addresses, the Court-approved Notice. The Settlement Administrator will perform
27 address updates and verifications as necessary prior to the first mailing.
28

12. If any Notice is returned as undeliverable, the Settlement Administrator shall perform skip-traces on returned mail and will re-mail the Notices to updated addresses (if any) as soon as possible upon return of the undeliverable Notices.

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

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

15. Any Class Member who seeks to object to the settlement must mail a written statement of objection (“Notice of Objection”) to the Court at the address specified in the Notice which must be postmarked no later than the Response Deadline, as described in the Settlement Agreement section III.L.8. The postmark date of mailing shall be deemed to be the exclusive means for determining whether a Notice of Objection was timely submitted. In order for an objection to be complete, a Notice of Objection must be signed by the Class Member and state (1) the case name and number; (2) the name of the Class Member; (3) the address of the Class Member; (4) the last four digits of the Class Member’s Social Security number or Employee ID number; (4) the basis for the objection and any supporting documents; and (5)

whether or not the Class Member intends to appear at the final approval hearing. Class Members who fail to make objections in the manner specified above may be deemed to have waived any objections and to be foreclosed from making any objections to the Settlement, whether by appeal or otherwise. The failure to submit a written objection does not waive a Settlement Class Member's right to appear and orally object at the final approval hearing.

16. Plaintiff shall file his motion for awards of attorneys' fees and costs, the Class Representative Incentive Award/General Release Payment, and settlement administration costs no later than 14 calendar days before the Response Deadline. Plaintiff shall file his motion for final approval no later than 35 calendar days before the final approval hearing.

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

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

19. Pending the final determination of whether the settlement should be approved, all proceedings in the action, except as necessary to implement the settlement or comply with 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.

IT IS SO ORDERED.

Dated: _____, 2022

THE HONORABLE KANDIS A. WESTMORE
United States Magistrate Judge

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