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6 Attorneys for Plaintiff FREDERICK MCCLURE

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/26/2022 at 03:58:00 PM
Clerk of the Superior Court
By Mariejo Guyot, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

11 FREDERICK MCCLURE, individually, and on
12 behalf of all others similarly situated

13 Plaintiff,

14 vs.

15 POWER MAINTENANCE SERVICES, INC.
16 dba PILOT PAINTING & CONSTRUCTION, a
California corporation; and DOES 1 through 10,
17 inclusive.

18 Defendants.

Case No.: 37-2021-00022333-CU-OE-CTL

[Assigned for All Purposes to Honorable John S.
Meyer, Department C-64]

NOTICE OF ENTRY OF ORDER

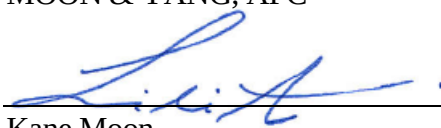
Action Filed: May 20, 2021
Trial Date: Not Set

1 **TO THE COURT, TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 19, 2022 Department C-64 of the San Diego
3 County Superior Court, located at 330 W. Broadway San Diego, California 92101, entered two
4 minute orders. A copy of the Court Orders is attached hereto as “Exhibit A” and “Exhibit B.”
5

6 Dated: April 26, 2022

MOON & YANG, APC

7
8 By:  _____

Kane Moon
Lilit Ter-Astvatsatryan
Attorneys for Plaintiff
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EXHIBIT A

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Attorneys for Plaintiff FREDERICK MCCLURE

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/19/2022 at 03:25:00 PM

Clerk of the Superior Court
By Richard Day, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

FREDERICK MCCLURE, individually, and on
behalf of all others similarly situated

Plaintiff,

vs.

POWER MAINTENANCE SERVICES, INC.
dba PILOT PAINTING & CONSTRUCTION, a
California corporation; and DOES 1 through 10,
inclusive.

Defendants.

Case No.: 37-2021-00022333-CU-OE-CTL

~~[PROPOSED]~~ **ORDER GRANTING
PLAINTIFF'S UNOPPOSED MOTION FOR
AN ORDER APPROVING SETTLEMENT
OF CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

Date: April 15, 2022
Time: 10:30 a.m.
Courtroom: Dept. C-64

Action Filed: May 20, 2021
Trial Date: Not Set

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

2 Plaintiff FREDERICK MCCLURE (“Plaintiff”) and Defendant POWER MAINTENANCE
3 SERVICES, INC. dba PILOT PAINTING & CONSTRUCTION (“Defendant”) (Plaintiff and Defendant
4 are the “Parties”) have reached terms of settlement of this action alleging a claim for relief pursuant to the
5 Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”).

6 Pursuant to PAGA, Plaintiff has filed a motion for approval of the settlement of the claims asserted
7 against Defendant in this action. Specifically, Plaintiff moves for an order:

8 1. granting approval of the terms of the Agreement pursuant to the Labor Code Private
9 Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the settlement;
10 the amount of distributions to the State and Aggrieved Employees; the amount of payment to
11 Plaintiff for general release of claims; the amounts allocated to attorney’s fees and costs; the amount
12 allocated to the settlement administrator; and,

13 2. directing disbursement of the Gross Settlement Amount pursuant to the terms of the
14 Agreement.

15 The JOINT STIPULATION OF PAGA SETTLEMENT AND RELEASE OF CLAIMS (referred
16 to as the “Agreement,” or “Settlement,” and attached to the Declaration of Lilit Ter-Astvatsatryan as
17 Exhibit “1”) is conditioned upon the Court’s approval. Capitalized terms in this Order have the same
18 meaning as in the Settlement unless indicated otherwise. A summary of the terms of the Settlement is as
19 follows:

- 20 (a) The Aggrieved Employees: The Aggrieved Employees consist of all individuals
21 employed by Defendant in California in an hourly non-exempt capacity at any time
22 during the PAGA Period, i.e., from May 17, 2020, through January 31, 2022.
23 (Settlement, ¶ 2.)
- 24 (b) No Reversion: The Settlement is **non-reversionary**. (Settlement, ¶ 35.)
- 25 (c) Gross Settlement Amount: Defendant agrees to pay the Gross Settlement Amount
26 of **\$190,000.00** (hereinafter referred to as the “Gross Settlement Amount”) for
27 settlement of the PAGA Penalties, which includes the Employee PAGA Portion
28 payable to Aggrieved Employees, LWDA Payment payable to the LWDA, Court-

1 awarded Attorneys' Fees of forty per cent (40%) (not to exceed \$76,000.00) to
2 Plaintiff's Counsel, Court-awarded Litigation Costs documented by Plaintiff
3 Counsel's billing statements (not to exceed \$15, 000.00) to Plaintiff's Counsel, and
4 a Court-awarded payment to the Settlement Administrator for Settlement
5 Administration Costs (not to exceed \$3,500.00). (Settlement, ¶ 9.)

6 (d) Attorneys' Fees: Plaintiff's Counsel will not seek an amount greater than
7 **\$76,000.00** for attorneys' fees. (Settlement, ¶ 25.)

8 (e) Litigation Costs: Plaintiff's Counsel seek reimbursement of actual litigation costs
9 and expenses documented by Plaintiff Counsel's billing statements in the amount
10 up to **\$15,000.00** incurred in prosecuting this Action ("Litigation Costs"), to
11 Plaintiff's Counsel. (Settlement, ¶ 25.)

12 (f) Settlement Administration: Payment to Aggrieved Employees and administration
13 will be accomplished through third-party settlement administrator Phoenix
14 Settlement Administrators, Inc. (Settlement, ¶ 18), which has agreed to perform
15 Administrator duties for an amount of up to **\$3,500.00**, which is reasonable, based
16 on all of the services offered. (Settlement, ¶ 26)

17 (g) Uncashed Checks: Funds represented by checks returned as undeliverable after a
18 re-mailing, and funds represented by checks remaining un-cashed for more than
19 180 days after issuance, will be tendered to State of California, Labor Workforce
20 and Development Agency, in the name associated with each Aggrieved Employee
21 whose Employee Payment checks are canceled. (Settlement, ¶ 35.)

22 (h) Release: In exchange for the above settlement consideration, all Aggrieved
23 Employees including Plaintiff, and the State of California (including the LWDA)
24 shall release Defendant and the Released Parties from the PAGA Released
25 Claims.¹ (Settlement, ¶ 27.)

26
27 ¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46
28 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty
employees as well as the government are bound by the judgment in an action brought under the act....").

After reviewing the Settlement and other related documents, and the filings submitted by Plaintiff,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and conditions set forth in the Settlement. The Court finds that the terms of the proposed settlement are reasonable. In granting approval of the settlement the Court has considered the factors identified in *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

2. The Court hereby identifies the Aggrieved Employees as:

All current and former hourly non-exempt employees who worked for Defendant in California during the designated PAGA Period (May 17, 2020, through January 31, 2022).

3. The Court hereby finds the Settlement was the product of informed, non-collusive negotiations conducted at arms' length by the Parties. In making these findings, the Court considered Defendant's potential liability, the benefit to the State of California, allocation of settlement proceeds among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties' respective positions rather than the result of a finding of liability at trial. The Court further finds that the terms of the Settlement have no obvious deficiencies. The Court finds that the risks of further prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of the totality of the circumstances, or (2) that no penalties would be awarded for some or all of the alleged violations.

4. The Court hereby approves Phoenix Settlement Administrators, Inc. to serve as the Administrator. The Administrator will be paid pursuant to the Agreement's terms for such distribution, in the requested amount of **\$3,500.00** out of the Settlement Sum to effectuate Administration.

5. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be **\$190,000.00**, less administration costs, attorney's fees, and costs. The LWDA shall receive 75% of the penalties allocated, which is **\$82,604.87**. Aggrieved Employees shall receive 25% of the penalties allocated, which is **\$27,534.96**.

6. The Court hereby awards Counsel, Moon & Yang, APC, attorneys' fees in the amount of **\$63,333.33**, which is 33% of the settlement fund, and reduced from the originally requested 40% or

1 \$76,000.00. The Court finds that 33% attorneys’ fees are reasonable compared to amounts routinely
2 approved in similar settlements and as guided by the California Supreme Court’s decision concerning the
3 awarding of fees from monetary funds for class members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th
4 480, 503 (2016). Counsel proceeded on a contingency basis despite the uncertainty of any fee award.
5 Counsel were necessarily precluded from pursuing other potential sources of fees because of work in
6 connection with this Action. The Court observed that this is not a class action. It is more akin to contingent
7 representation with an additional requirement of Court review due to the qui tam nature of a PAGA claim.
8 Attorneys’ fees that are fifty percent of a common fund are typically considered the upper limit, with thirty
9 to forty percent commonly awarded in cases where the settlement is relatively small. *See Van Vranken v.*
10 *Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases where 30-50
11 percent was awarded involved “smaller” settlement funds of under \$10 million). Using class action fee
12 awards as a comparison, the custom and practice in class actions is to award approximately one-third of a
13 fund as a fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (“Empirical studies
14 show that, regardless whether the percentage method or the lodestar method is used, fee awards in class
15 actions average around one-third of the recovery.”).

16 7. The Court hereby awards Counsel litigation costs in the amount of **\$13,026.84**.

17 8. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on the
18 provisions and timelines set forth in the Agreement.

19 9. Upon entry of this Order, Plaintiff, the Aggrieved and the State of California (including the
20 LWDA) shall release Defendant and the Released Parties from the PAGA Released Claims and shall be
21 forever barred from pursuing the PAGA Released Claims against Defendant and the Released Parties.

22 10. This action is hereby DISMISSED WITH PREJUDICE.

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1 11. The Court shall retain jurisdiction with respect to all matters related to the administration and
2 consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the subject
3 matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination
4 of all controversies relating thereto.

5 **IT IS SO ORDERED.**

6
7 Dated: 4/19/22



Hon. John S. Meyer
San Diego County Superior Court Judge

EXHIBIT B

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Attorneys for Plaintiff FREDERICK MCCLURE

ELECTRONICALLY FILED
Superior Court of California,
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04/19/2022 at 03:25:00 PM

Clerk of the Superior Court
By Richard Day, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

FREDERICK MCCLURE, individually, and on
behalf of all others similarly situated

Plaintiff,

vs.

POWER MAINTENANCE SERVICES, INC.
dba PILOT PAINTING & CONSTRUCTION, a
California corporation; and DOES 1 through 10,
inclusive.

Defendants.

Case No.: 37-2021-00022333-CU-OE-CTL

[Assigned for All Purposes to Honorable John S.
Meyer, Department C-64]

**[PROPOSED] JUDGMENT FOLLOWING
ORDER GRANTING APPROVAL OF
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

Date: April 15, 2022
Time: 10:30 a.m.
Courtroom: Dept. C-64

Action Filed: May 20, 2021
Trial Date: Not Set

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

2 Plaintiff FREDERICK MCCLURE (“Plaintiff”) and Defendant POWER MAINTENANCE
3 SERVICES, INC. dba PILOT PAINTING & CONSTRUCTION (“Defendant”) (collectively, the
4 “Parties”) have reached terms of settlement for a representative action. On April 15, 2022, or
5 _____the Court issued an order granting Plaintiff’s Motion for an order approving settlement
6 of claims brought pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*,
7 against Defendant in this action (“Approval Order”). The settlement is memorialized in the JOINT
8 STIPULATION OF PAGA SETTLEMENT AND RELEASE OF CLAIMS (referred to as the
9 “Agreement,” or “Settlement,” and attached to the Declaration of Lilit Ter-Astvatsatryan as Exhibit “1”).

10 **JUDGMENT**

11 The Approval Order is incorporated herein in its entirety.

12 In accordance with and for the reasons stated in the Approval Order, Judgment shall be entered
13 whereby the Plaintiff, all PAGA Employees (or “Aggrieved Employees”), and the State of California
14 (including the LWDA), shall release Defendant and the Released Parties from the PAGA Released Claims
15 and take nothing from Defendant and the Released Parties, except as expressly set forth in the Approval
16 Order and the Settlement.

17 The Aggrieved Employees are:

18 All individuals employed by Defendant in California in an hourly non-exempt capacity
19 at any time during the PAGA period (May 17, 2020 through January 31, 2022).

20 Distributions shall issue in the amounts authorized in the attached Approval Order, according to the
21 deadlines specified in the Settlement.

22 Pursuant to California Code of Civil Procedure Section 664.6 and Rule 3.769(h) of the California
23 Rules of Court, this Court reserves exclusive and continuing jurisdiction over this action, the Plaintiff,
24 Aggrieved Employees, and Defendant, for the purposes of:

- 25 (a) supervising the implementation, enforcement, construction, and interpretation of the Settlement,
26 the plan of allocation, the Approval Order, and the Judgment; and
27 (b) supervising distribution of amounts paid under this Settlement.

28 The Judgment set forth herein is intended to be a final disposition of the Action in its entirety and

1 is intended to be immediately appealable.

2 **IT IS SO ORDERED.**



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4 Dated: 4/19/22

5 Hon. John S. Meyer
6 San Diego County Superior Court Judge
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I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

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Elissa L. Gysi
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[✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Ivette Hernandez
Type or Print Name


Signature