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~~Attorneys for Plaintiff, Jose Elias Barajas~~

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ARMANDO DIAZ-GARCIA, as an individual,
and on behalf of all other similarly situated
employees,

Plaintiff,

vs.

AWESOME PRODUCTS, INC., a California
corporation and DOES 1-50, inclusive,

Defendant.

JOSE ELIAS BARAJAS, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

AWESOME PRODUCTS, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 30-2021-01193589-CU-OE-CXC
Consolidated with Case No.: 30-2021-
01217438-CU-OE-CXC

[Honorable Lon F. Hurwitz, Department
CX103]

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

*[Filed concurrently with the Supplemental
Plaintiffs' Notice of Motion and Motion for
Preliminary Approval, Declaration of Kane
Moon, Declaration of Armond Jackson, and
Declaration of Plaintiff Jose Elias Barajas]*

PRELIMINARY APPROVAL HEARING

Date: ~~October 6, 2023~~ February 23, 2024

Time: 1:30 PM

Dept: CX103

Complaint Filed: April 2, 2021

Trial Date: Not Set

1 The Court has before it the unopposed Motion for Preliminary Approval of Class and
2 PAGA Action Settlement (“Motion”) of Plaintiffs Armando Diaz-Garcia and Jose Elias Barajas
3 (“Plaintiffs”). Having reviewed the Notice of Motion, Motion, the Declaration of Kane Moon,
4 the Declaration of Armond Jackson, the Declaration of Plaintiff Armando Diaz-Garcia, the
5 Declaration of Plaintiff Jose Elias Barajas, and the Joint Stipulation of Class and PAGA Action
6 Settlement (“Settlement”), and good cause appearing, **THE COURT HEREBY ORDERS AS**
7 **FOLLOWS:**

8 1. The Settlement, which is attached as **Exhibit 1** to the Declaration of Kane Moon
9 in Support of Plaintiffs’ Motion for Preliminary Approval of Class and PAGA Action
10 Settlement, appears to be fair, adequate and reasonable, and therefore, meets the requirements
11 for preliminary approval. ROA 271. The Settlement appears to be fair and reasonable in light of
12 the good faith, non-collusive negotiations between Plaintiffs and Defendant Awesome Products,
13 Inc. (together, the “Parties”), which resulted in the Settlement; the significant informal
14 discovery, investigation, and analysis conducted by the Parties, which enabled them to
15 intelligently evaluate, litigate and mediate the alleged claims; and the probable outcome of
16 further litigation relating to class certification, liability and damages issues; the substantial
17 costs, delay and risks of further litigation relating to the same; and the risk of potential appeal.

18 2. The Settlement provides that Defendant will pay a Gross Settlement Amount of
19 \$630,000.00, which will be used to pay the Individual Class Payments; PAGA Settlement
20 Payment in the amount of \$60,000.00, with 75% (\$45,000.00) allocated to the LWDA PAGA
21 Payment, and 25% (\$15,000.00) allocated to the Individual PAGA Payment; the Class Counsel
22 Fees Payment, which is not to exceed one third of the Gross Settlement Amount, or
23 \$210,000.00; the Class Counsel Litigation Expenses Payment, which is not to exceed
24 \$20,000.00; the Class Representative Service Payments, which are not to exceed \$7,500.00
25 each; and the Administration Expenses Payment, which is not to exceed \$106,000.00. These
26 terms appear to contain the requisite criteria for preliminary approval, pursuant to *California*
27 *Code of Civil Procedure* section 382 and other applicable law; and appear to fall within the
28 range of reasonableness which could ultimately be granted final approval.

1 3. The Class, which includes all non-exempt employees of Defendant who worked
2 in California from April 2, 2017, through March 31, 2023 (“Class Period”), including any
3 employee employed through any staffing agency, professional employer organization, or
4 temporary employment agency utilized by Defendant during the Class Period, which are
5 identified as Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise Personnel,
6 Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and Dynamic Staffing, is
7 provisionally certified for settlement purposes only. The Class is provisionally certified because
8 it appears to meet the following requirements for certification under *California Code of Civil*
9 *Procedure* section 382: (1) the Class is so numerous that joinder is impractical; (2) there are
10 questions of law and fact that are common, or of general interest, to all Settlement Class
11 Members which predominate over individual issues; (3) Plaintiffs’ claims are typical of the
12 claims of the Settlement Class Members; (4) Plaintiffs and Class Counsel will fairly and
13 adequately protect the interests of the Settlement Class Members; and (5) a class action is
14 superior to other available methods for the fair and efficient adjudication of the controversy.
15 The Court notes that Class Members who do not request exclusion from the Settlement may
16 object thereto and may raise their objections at the Final Fairness Hearing on the Settlement.

17 4. The Aggrieved Employees, which include all non-exempt employees of
18 Defendant who worked in California from February 23, 2020, through March 31, 2023 (“PAGA
19 Period”), including any employee employed through any staffing agency, professional employer
20 organization, or temporary employment agency utilized by Defendant during the Class Period,
21 which are identified as Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise
22 Personnel, Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and Dynamic
23 Staffing, are provisionally approved for settlement purposes only.

24 5. The Class Representatives, Settlement Class Members, and Aggrieved Employees
25 (regardless of whether they are Settlement Class Members), will release claims in accordance
26 with the terms of the Settlement upon final approval by the Court of this Settlement and
27 Defendant’s payment of all sums due pursuant to this Settlement, and except as to such rights or
28 claims as may be created by this Settlement.

1 6. Effective on the date Defendant fully funds the entire Gross Settlement Amount and
2 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs,
3 Settlement Class Members, Aggrieved Employees, and Class Counsel will release the class and
4 PAGA claims against all Released Parties as follows:

5 a. **Released Parties.** “Released Parties” means Defendant and all of their past,
6 present, and future respective subsidiaries, dba’s, affiliates, parents,
7 predecessors, successors, investors, and their current and former employees,
8 managing agents, servants, consultants, agents, directors, officers, members,
9 independent contractors, representatives, insurers, reinsurers, attorneys; and
10 any staffing agency, professional employer organization, or temporary
11 employment agency utilized by Defendant during the Class Period, including
12 Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise
13 Personnel, Randstad, the Baron HR, Fairway Staffing, Selective Personnel,
14 and Dynamic Staffing, and any of their past, present, and future respective
15 subsidiaries, dba’s, affiliates, parents, predecessors, successors, investors,
16 and their current and former employees, managing agents, servants,
17 consultants, agents, directors, officers, members, independent contractors,
18 representatives, insurers, reinsurers, attorney. *Settlement*, ¶ 2.37.

19 b. **Released Class Claims.** “Released Class Claims” means all claims that
20 were alleged, or reasonably could have been alleged, in the Operative
21 Complaint, and ascertained in the course of the Action, that arose during the
22 Class Period including with respect to the following claims: (a) failure to
23 pay all overtime wages owed; (b) failure to pay minimum wages owed; (c)
24 failure to provide meal periods, or premium pay for non-compliant meal
25 periods; (d) failure to authorize and permit rest periods, or premium pay for
26 non-compliant rest periods; (e) failure to issue accurate, itemized wage
27 statements and maintain payroll records; (f) failure to pay all wages due
28 upon separation of employment; (g) failure to reimburse for necessary

business expenses; (h) all claims under California Business & Professions Code § 17200 for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above; (i) violation of or claims under the following sections of the California Labor Code sections 201, 202, 203, 204, 206, 210, 218.6, 226, 226(c), 226.3, 226.7, 227.3, 510, 512, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2802; and (j) violation of the California Industrial Wage Orders that could have been premised on the facts, claims, causes of action or legal theories described above, as well as any potential penalties, interest or attorneys’ fees associated with all of such causes of action under California law (“Released Class Claims”). Except as set forth in Section 5.3 of this Agreement, Settlement Class Members do not release any other claims, including claims for vested benefits, wrongful. *Settlement*, ¶¶ 2.35, 5.2.

- c. **Released PAGA Claims.** “Released PAGA Claims” means all claims demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act that were alleged, or reasonably could have been alleged, based on the claims asserted in the Operative Complaint or Plaintiffs’ respective Notices of Labor Code Violations and PAGA Penalties and ascertained in the course of the Action arising during or with respect to the PAGA Period including, but not limited to, civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699 in connection with violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3, 246, 432, 510, 512, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1198.5, 2802, and 2810.5 (“Released PAGA Claims”). The Released PAGA Claims excludes all claims outside of the PAGA Period. *Settlement*, ¶¶ 2.36, 5.3.

7. For settlement purposes only, the Class Representatives appointed for this matter are Plaintiffs Armando Diaz-Garcia and Jose Elias Barajas. The Class Representative Settlement Payments, which are not to exceed \$7,500.00 each, are preliminarily approved.

8. For settlement purposes only, Class Counsel appointed for this matter is Jackson, APC and Moon Law Group, PC. The Class Counsel Fees Payment, which is not to exceed \$210,000.00; and Class Counsel Litigation Expenses Payment, which is not to exceed \$20,000.00, are preliminarily approved.

9. For settlement purposes only, the Administrator appointed for this matter is ILYM Group, Inc. The Administration Expenses Payment, which is not to exceed \$6,450.00, is preliminarily approved.

10. For settlement purposes only, the Notice Packet to be sent to Class Members, as to form and content, is adequate. Further, on a preliminary basis, the plan for distribution of the Notice Packet to Class Members satisfies Due Process, provides the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Class Notice is attached to the Settlement as Exhibit A.

11. A Final Fairness Hearing on the question of whether the Settlement terms, including the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payments, should be finally approved as fair, adequate and reasonable as to the Settlement Class Members is hereby set in accordance with the following Implementation Schedule:

Defendant to provide Class Data to the Administrator	Within fifteen (15) calendar days from the date of preliminary approval by the Court
Administrator to mail the Notice Packets by First Class Mail	Within fourteen (14) days after the Administrator receives the Class Data
Response Deadline	Within sixty (60) days after the Administrator initially mails the Notice Packet to Class Members and Aggrieved Employees <u>(plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed)</u>
Deadline to file Motion for Final Approval	No later than sixteen (16) court days prior to the Final Fairness Hearing

Final Fairness Hearing	_____, 2023 at _____ in Department CX103 of the Superior <u>Court of the State of California, County of</u> <u>Orange, Department CX103, located at</u> <u>751 West Santa Ana Boulevard, Santa</u> <u>Ana, California 92701</u> Orange County Superior Court.
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12. If any of the dates in the above schedule fall on a weekend, or bank or court holiday, the time to act shall be extended to the next business day.

13. Pending further order of this Court, all proceedings in this lawsuit, except those contemplated herein and in the Settlement, are stayed.

14. To facilitate the administration of the Settlement pending final approval, the Court hereby enjoins the Plaintiffs and all Settlement Class Members from filing or prosecuting any claims, suits or administrative proceedings, including filing claims with the Division of Labor Standards Enforcement of the California Department of Industrial Relations, regarding claims released by the Settlement, unless and until such Class Members have filed valid Requests for Exclusion with the Administrator and the time for filing claims with the Administrator has lapsed.

15. The Settlement is preliminarily approved but is not an admission by the Defendant of the validity of any claims in the instant Class and PAGA action, or of any wrongdoing or violation of law by Defendant.

16. Neither the Settlement nor any related document shall be offered or received in evidence in any civil, criminal, or administrative action or proceeding other than such proceedings as may be necessary to consummate or enforce the Agreement and Settlement.

17. The obligations set forth in the Settlement are deemed part of this Order. The Parties are to carry out the Settlement in accordance with its terms.

IT IS SO ORDERED.

DATE: _____

Honorable Lon W. Hurwitz
Judge of the Orange County Superior Court

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 1055 West Seventh Street, Suite
1880, Los Angeles, California 90017. On ~~February 9, 2024~~~~January 25, 2024~~, I served the
5 foregoing document described as:

6 **ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION SETTLEMENT**

7 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
8 addressed as follows:

9 Eric S. Oto
Law Offices of Eric S. Oto
10 1111 South Grand Avenue, Suite 517
Los Angeles, California 90015
11 Telephone: (213) 749-7540
Facsimile: (213) 607-1363
12 Email: eso@otoesq.com
Attorney for Defendant
13 Western Pacific Crane & Equipment, LLC

14
15 [✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the
16 parties to accept electronic service, I caused the documents to be sent to the persons at
the electronic service addresses listed above via e-mail. I did not receive an error
message.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19 Executed this, ~~February 9, 2024~~~~January 25, 2024~~ at Los Angeles, California.

20
21 _____
Type or Print Name

Signature