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Attorneys for Plaintiff,
Steven Joneson II

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

STEVEN JONESON II an individual,
individually and on behalf of himself and all
others similarly situated, under the Private
Attorney General Act (PAGA), pursuant to
Labor Code §§ 2698, et seq.

Plaintiff,

v.

JAMES MC KOANE ENTERPRISES, INC.
dba CLAWSON MOTORSPORTS, a
California Corporation; and DOES 1-50,

Defendants.

) Case No.: 22CECG02366

)
) **[PROPOSED] ORDER GRANTING**
) **APPROVAL OF SETTLEMENT**
) **UNDER THE CALIFORNIA**
) **PRIVATE ATTORNEYS GENERAL**
) **ACT OF 2004 ("PAGA")**

) Date: July 6, 2023

) Time: 3:30 p.m.

) Dept: 502

) The Honorable Kristi Culver Kapetan

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

This matter came on regularly before the Court for hearing on July 6, 2023, before the
Hon. Kristi C. Kapetan in Department 502 of the above-entitled Court at 3:30 p.m. Michael J. F.
Smith of the Law Office of Michael J. F. Smith, APC, appeared on behalf of Plaintiff, Steven
Joneson. Derek Haynes of Porter Scott appeared on behalf of Defendant, James Mc Koane
Enterprises, Inc.

1 Having reviewed the moving and opposing papers on Plaintiff's Motion to Approve
2 Settlement Pursuant to the Private Attorneys General Act ("PAGA") and oral argument of
3 counsel having been received by the Court, the Court finds, adjudges and orders as follows:

4 The Court hereby grants Plaintiff's motion for approval of the settlement under PAGA
5 for the following reasons:

6 **1. Introduction**

7 Under Labor Code section 2699, subdivision (a), the Private Attorneys General Act of
8 2004 ("PAGA"), "Notwithstanding any other provision of law, any provision of this code that
9 provides for a civil penalty to be assessed and collected by the Labor and Workforce
10 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
11 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
12 brought by an aggrieved employee on behalf of himself or herself and other current or former
13 employees pursuant to procedures specific in Section 2699.3."

14 Also, under section 2699, subdivision (g)(1): "Except as provided in paragraph (2), an
15 aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action
16 pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and
17 other current or former employees against whom one or more of the alleged violations was
18 committed. Any employee who prevails in any action shall be entitled to an award of reasonable
19 attorney's fees and costs..."

20 "The superior court shall review and approve any settlement of any civil action filed
21 pursuant to this part. The proposed settlement shall be submitted to an agency at the same time it
22 is submitted to the court." (Lab. Code section 2699, subd. (i)(2).)

23 There are very few cases discussing section 2699, and none discuss the standards under
24 which a court is to assess a settlement. Nor has the legislature provided any structure or
25 standards for making the assessment. Published California case law has not done so either.
26 However, the common practice when ruling on PAGA settlements seems to be to follow existing
27 law on class action settlements.

1 **2. Notice to the LWDA**

2 Labor Code section 2699, subdivision (l)(1) states “The superior court shall review and
3 approve any settlement of any civil action filed pursuant to this part. The proposed settlement
4 shall be submitted to an agency at the same time it is submitted to the court.”

5 The proof of service and declaration of John L. Migliazzo reflects that the LWDA was
6 given notice of the motion, and the LWDA has been given the opportunity to object to the
7 settlement.

8 **3. Fairness of the Settlement**

9 “[A court must be] provided with basic information about the nature and magnitude of
10 the claims in question and the basis for concluding that the consideration being paid for the
11 release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker Retail, Inc.*
12 (2008) 168 Cal.App.4th 116, 133.)

13 In *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, the Court of
14 Appeal stated that, “[the] court [must] receive and consider sufficient information on a core legal
15 issue, affecting the strength of the case for plaintiffs on the merits, to make the requisite
16 independent assessment of the reasonableness of the terms of the settlement.” (*Id.* at p. 798)

17 “The well-recognized actors that the trial court should consider in evaluating the
18 reasonableness of a class action settlement agreement include ‘the strength of plaintiffs’ case, the
19 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class
20 action status through trial, the amount offered in settlement, the extent of discovery completed
21 and stage of the proceedings, the experience and views of counsel, the presents of a
22 governmental participant, and the reaction of the class members to the proposed settlement.’ This
23 list ‘is not exhaustive and should be tailored to each case.’ Relying on an earlier edition of
24 Newberg on Class Actions, the court in *Dunk* asserted that ‘a presumption of fairness exists
25 where: (1) the settlement is reached through arms’-length bargaining; (2) investigation and
26 discovery are sufficient to allow counsel and the court to act intelligently; (2) counsel is
27 experienced in similar litigation; and (4) the percentage of objectors is small.” (*Kullar, supra*, at
28 p. 128, internal citations omitted)

1 Here, the gross settlement of PAGA claims of \$460,615.50 (almost \$300,000 net to the
2 LWDA and covered employees) is reasonable. The settlement was reached after mediation and
3 subsequent settlement negotiations, and was the product of arms' length negotiations and after
4 almost one year litigation. There was some uncertainty about the outcome of litigation,
5 especially since the court has the discretion to reduce the total amount of PAGA penalties if it
6 concludes that the penalties are duplicative and unduly punitive. The PAGA portion of the
7 settlement will go 75% to the LWDA and 25% to the covered employees. There are
8 approximately 414 covered employees who are eligible to receive the penalties that worked from
9 the time period of May 26, 2021 to March 31, 2023. Plaintiff's counsel also will receive
10 \$153,538.50 from the settlement as fees.

11 It appears that the settlement is fair and reasonable under the circumstances, especially
12 since it appears Defendant took reasonable steps to address policies at issue in this lawsuit.
13 The fact that the employer took good faith steps to comply with the law, penalties appear
14 duplicative and overlapping, PAGA case law has substantially changed the landscape of what
15 can be recovered, each militates against large, cumulative penalties against it. Thus, Plaintiff
16 would have been unlikely to recover the maximum potential penalties if it had gone to trial, and
17 accepting \$450,000 (subject to an escalator) in settlement is not unreasonable.

18 There is a relatively small number of covered employees who will receive payments, so
19 each employee will receive a fairly significant sum of money from the settlement. The LWDA
20 will also receive a substantial sum of money from the settlement. Also, Plaintiff would have had
21 to incur substantial additional costs and fees if the case went to trial, with the attendant risk of
22 obtaining a small award, or none at all. Plaintiff's counsel already incurred substantial costs and
23 fees to litigate the case, but has been efficient in keeping costs to a minimum. Therefore, the
24 court intends to find that the amount of the settlement is fair and reasonable.

25 **4. Attorneys' Fees**

26 Plaintiff's counsel seeks an order awarding fees of \$153,538.50, or 1/3rd of the gross
27 PAGA settlement. While the court has discretion to make a fee award based on a percentage of
28 the settlement, the court is not required to do so. It can also use the lodestar method to calculate

1 fees, or it can order plaintiff's counsel to provide enough information to double check the
2 reasonableness of a percentage fee award using a lodestar-style analysis. (*Laffitte v. Robert Half*
3 *International, Inc.* (2016) 1 Cal.5th 480, 503, internal citations omitted.)

4 Here, Plaintiff's counsel has included a fairly detailed breakdown of how the fees were
5 calculated under the lodestar analysis. Plaintiff's counsel states that his firm incurred 210.25
6 hours of attorney time on the case, with the attorneys billing \$450 per hour for Mr. Migliazzo,
7 \$650 per hour for Mr. Smith, and \$300 for Mr. Nunes. The total lodestar amount of fees is thus
8 \$86,900, subject to an appropriate multiplier of counsels' hourly rates. Under the Laffey Matrix,
9 Plaintiffs' lodestar would be \$145,339.25, subject to an appropriate multiplier of counsels'
10 hourly rates. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Laffitte, supra*, 1
11 Cal.5th at 489.) While there is no exact science to selecting a multiplier, at a multiplier of at least
12 two (2) is not unreasonable in light of the risk attained by Plaintiff's counsel and results
13 achieved, for a total attorneys' fees enhancement of \$173,800 (or \$290,678.50 under the Laffey
14 Matrix

15 The hourly rates appear reasonable in light of the skill and experience of the attorneys,
16 and are consistent with the rates awarded to other attorneys in the Fresno area with similar
17 degrees of skill and experience. The time expended on the case also seems reasonable in light of
18 the record before this Court. Therefore, the request for \$153,538.50 in attorney's fees, which is
19 considerably less than the actual amount of fees incurred on the case after a multiplier of two (2),
20 is reasonable. Thus, the court intends to approve the request for \$153,538.50 in attorney's fees
21 from the PAGA portion of the settlement.

22 **5. Individual Settlement Payment to Plaintiff.**

23 Plaintiff also seeks court approval for the \$150,000 individual settlement payment to the
24 named Plaintiff. Plaintiff's counsel will receive \$50,000 in attorneys' fees, which is consistent
25 with the private counsel's fee agreement with Plaintiff.

26 Here, Plaintiff's estimated damages are significant: approximately \$630,881.85
27 (Migliazzo Decl. ¶¶ 80-85), plus punitive exposure and attorneys' fees and costs.

1 The PAGA claims were not used as a bargaining chip to bolster individual claims, and
2 the allocation to both PAGA and individual claims appears to be reasonable.

3 **6. Court Costs and Settlement Administrator Fees.**

4 The Court hereby approves the appointment of Simpluris, Inc. as the Settlement
5 Administrator and the proposed notice to go to employees. The administration costs of \$4,000
6 appears reasonable.

7 Plaintiff also seeks an award of court costs of \$4,272.31. This amount appears to be
8 reasonable in light of the nature of this case and is supported by the Declaration of John L.
9 Migliazzo. Therefore, the court approves the requested costs.

10 **IT IS SO ORDERED, ADJUDGED, AND DECREED**

11 Dated: _____

12 _____
13 The Kristi C. Kapetan
14 Judge of the Superior Court

1 **PROOF OF SERVICE**

2 My business address is 1391 West Shaw Avenue, Suite D, Fresno, California 93711. I
3 am employed in Fresno County, California. I am over the age of 18 years and am not a party to
4 this case.

5 On the date indicated below, I served the foregoing document(s) described as on all
6 interested parties in this action by serving a true copy of the following to the addresses identified
7 below:

- 8 1. [PROPOSED] ORDER GRANTING APPROVAL OF SETTLEMENT UNDER
9 THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")

10 Derek J. Haynes
11 Dylan T. de Wit
12 **PORTER & SCOTT**
13 350 University Avenue, Suite 200
14 Sacramento, CA 95825
15 dhaynes@porterscott.com
16 ddewit@porterscott.com

17 [X] (BY ELECTRONIC MAIL) I caused such documents to be scanned into PDF format
18 and sent via electronic mail to the electronic mail addressee(s) of the addressee(s)
19 designated.

20 **The foregoing document(s) described above has been served on the California Labor and
21 Workforce Development Agency ("Agency") via the Agency's online filing system (Labor
22 Code § 2699(l)(2)):**

23 Labor and Workforce Development Agency ([https://www.dir.ca.gov/Private-Attorneys-General-
24 Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html))

25 EXECUTED ON **June 23, 2023** at Fresno, California.

26 [X] (STATE) I declare under penalty of perjury under the laws of the State of California
27 that the foregoing is true and correct.

28 /s/John L. Migliazzo
John L. Migliazzo