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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

)
) **SETTLEMENT AGREEMENT**
) **PURSUANT TO THE CALIFORNIA**
) **PRIVATE ATTORNEYS GENERAL**
) **ACT (“PAGA”); PROOF OF**
) **SUBMISSION TO LWDA**

) Date: July 6, 2023

) Time: 3:30 p.m.

) Dept: 502

) The Honorable Kristi Culver Kapetan

On April 28, 2023, the parties completed the execution of a settlement agreement under the California Private Attorneys General Act of 2004 (“Agreement”). The Agreement is being presented to this Court in support of Plaintiff’s Motion for Approval of Settlement Under the California Private Attorneys General Act of 2004 (PAGA). Attached as Exhibit “1” is a true and correct copy of the entire PAGA settlement agreement.¹

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¹ The settlement agreement erroneously identifies the LWDA Case Number as LWDA-CM-885945-21. The actual case number is LWDA-CM-885945-22.

1 Dated: June 12, 2023

**MICHAEL J. F. SMITH,
A PROFESSIONAL CORPORATION**

4 By: /s/John L. Migliazzo
5 John L. Migliazzo,
6 Attorney for Plaintiff,
7 Steven Joneson II

8 **The foregoing document described above has been served on the California Labor and**
9 **Workforce Development Agency (“Agency”) via the Agency’s online filing system (Labor**
10 **Code § 2699(l)(2)):**

11 Labor and Workforce Development Agency (<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>)

12 EXECUTED ON **June 12, 2023** at Fresno, California.

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

16 /s/John L. Migliazzo
17 John L. Migliazzo

Exhibit “1”

**PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
AGREEMENT AND LIMITED RELEASE**

This Private Attorneys General Act Settlement Agreement and Release ("Agreement") is made by and between STEVEN JONESON II ("Plaintiff"), on behalf of himself and as a proxy/agent for the California Labor Workforce Development Agency ("LWDA"), and JAMES MC KOANE ENTERPRISES, INC. ("Defendant"). Plaintiff and Defendant are collectively referred to herein as the "Parties" and each may be individually referred to as a "Party."

WHEREAS, On May 26, 2022, Plaintiff, Steven Joneson II, on behalf of himself and on behalf of all "Covered Employees", notified the Labor and Workforce Development Agency ("LWDA") of his allegations that Defendants had violated various labor code violations, including wage and hour claims and claims for retaliation. The LWDA assigned the following case number: Case No. LWDA-885945-21. The LWDA did not provide any notice that it intended to investigate Plaintiff's allegations. A First Amended PAGA Notice was lodged with the LWDA and served on Defendant on March 15, 2023.

WHEREAS, Plaintiff filed on August 3, 2022, the action currently pending in the Superior Court of California, County of Fresno, entitled Joneson v. James McKoane Enterprises, Inc., Case No. 22CECG02366. On September 9, 2022, Plaintiff filed a First Amended Complaint.

WHEREAS, Defendant filed a general denial to the allegations in Plaintiff's First Amended Complaint on October 26, 2022, denying all material allegations of liability and asserting various affirmative defenses.

WHEREAS, certain disputes have arisen between the Parties concerning Defendant's wage statements, payment of wages, maintenance of work records and related employment practices, as applied to non-exempt employees employed by Defendant in California between May 26, 2021, and March 31, 2023 (the "PAGA Period"). These employees are hereinafter referred to as the "PAGA Employees."

WHEREAS, on March 10, 2023, the parties engaged in extensive mediation before experienced mediator and retired judge from the Fresno County Superior Court, the Honorable Donald S. Black (Ret.). Prior to mediation, Plaintiffs and Defendants engaged in informal discovery that included the exchange of time and pay records for Plaintiff, payroll data for PAGA Employees, the number of PAGA Employees, and other policy documents. Defendants also produced personnel documents for Plaintiff. The Parties also participated in various telephonic conferences and exchanged information related to PAGA exposure.

WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the PAGA Representative Claim, and have arrived at the settlement after extensive, arms-length negotiations in a full day private mediation, taking into account all relevant factors, present and potential ("Settlement").

WHEREAS, California Labor Code section 2699(l) requires Court approval of "any penalties sought as part of a proposed settlement agreement" pursuant to PAGA.

NOW THEREFORE, in consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

1. EFFECTIVE DATE

1.1. "Effective Date" will be 10 days after the motion for approval is granted.

2. RELEASES

- 2.1. **Release by LWDA and Plaintiff.** Upon the Effective Date and upon payment of the Gross Settlement Fund, the LWDA and Plaintiff, shall fully release and forever discharge claims for civil penalties under PAGA as plead or that could have been plead arising out of the same operative facts set forth the Second Amended Complaint or the predicate PAGA letter arising during the PAGA Period (“Released Claims”), against Defendant and its past, present, and future parents, affiliated companies, subsidiaries, divisions, predecessors, successors, partners, joint venturers, shareholders, consultants, advisors, insurers, reinsurers and assigns, and each of their past, present and future officers, investors, directors, executives, trustees, agents, employees, attorneys, representatives, and any other persons or entities acting on behalf of or in concert with any of the foregoing, including, but expressly not limited to (hereinafter “Released Parties”). Such claims for Civil Penalties include, but are not necessarily limited to, claims predicated upon the alleged violation of Labor Code sections 201, 202, 203, 204, 210, 223, 226, 226.2, 226.3, 226.6, 233, 246, 248.5, 500, 510, 551, 552, 558, 1102.5, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1197.5, and 2699, and IWC Wage Order 7–2001. Except as to the Plaintiff who will be entering into an individual settlement agreement as to his claims, the released claims do not include any underlying individual claims or causes of action the PAGA Employees may have, and relief they may seek, individually, against Released Parties with respect to violations of the California Labor Code. The Release only includes claims under PAGA, arising out of the facts, circumstances, and primary rights at issue in the Action. It does not include the individual claims of PAGA Employees.
- 2.2. It is understood and agreed that this Agreement neither releases the Released Parties from liability, if any, to PAGA Employees for violations of any predicate statutes other than PAGA, nor effects a waiver of claims by PAGA Employees against the Released Parties for the same, except that the Released Parties retain and are entitled to assert any and all arguments or defenses they believe they have as to the PAGA Employees, including res judicata, collateral estoppel, or equitable estoppel, on the basis that any or all PAGA Employees have been fully compensated for any and all alleged injuries, as a result of this Settlement and the payments described herein. This paragraph shall not be construed as a release of any individual claims of PAGA employees.
- 2.3. **Release by Plaintiff.** Plaintiff separately agrees to a general release through the Effective Date of any and all claims that he ever has had or may have had against Defendant and all Released Parties, including any and all claims under State or Federal law. Specifically, Plaintiff and Defendant have separately negotiated a comprehensive settlement of all individual claims, including those otherwise impacted by Section 1542 of the Civil Code, which agreement will become effective upon Final Approval of this agreement.
- 2.4. **Amendment to the Complaint.** The Parties agree that the Parties will stipulate to the filing of a Second Amended Complaint to add causes of action based on rest period violations and paid sick leave violations.

3. SETTLEMENT APPROVAL BY COURT

- 3.1. **Plaintiff to Prepare.** Plaintiff’s Counsel shall prepare, file and serve a motion or stipulation for approval of the PAGA penalties pursuant to California Labor Code §2699(l) advocating that the penalties are fair, adequate, and reasonable, which will draw no opposition from Defendant or Defense Counsel.

4. NOTICE TO PAGA EMPLOYEES

- 4.1. No later than 20 days after the Effective Date, Defendant shall provide the Court-Approved Settlement Administrator with a list of all PAGA Employees (the “PAGA Employees List”). The PAGA Employees List shall state each PAGA Employee’s (1) full name, (2) last known address, (3) social security number, and (4) the total number of semi-monthly pay periods (or their equivalent) worked during the PAGA Period. This information shall be treated as and remain confidential and shall be used solely to manage the notice process described herein, shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant, the individual in question, or by order of the Court.
- 4.2. No later than 20 days after receipt of the Gross Settlement Fund (defined below) from Defendant, the Settlement Administrator will mail settlement checks and a letter explaining why the check is being sent to the PAGA Employees identified on the PAGA Employees List. Prior to mailing the Notices, the Settlement Administrator shall check the addresses provided using the National Change of Address database. Should any of the Notices be returned as undeliverable, the Settlement Administrator will have five (5) calendar days after it receives the returned undeliverable mail to search for a more current address for the PAGA Employee (via a skip trace or other reasonable method) and to re-mail Notices to the traced address.

5. SETTLEMENT PAYMENT PROCEDURES:

- 5.1. **Gross Settlement Fund.** No later than 20 days after the Effective Date and subject to Paragraph 5.2, Defendant hereby agrees to make a payment to an account designated by the Settlement Administrator in the amount of **Four Hundred Fifty Thousand Dollars and Zero Cents** (\$450,000) (the “Gross Settlement Fund”), which shall be all inclusive, encompassing (i) up to \$150,000 for an award of attorneys’ fees; (ii) up to \$6,000 for reimbursement of actual costs associated with Plaintiff Counsel’s litigation and settlement of the Release Claims; (iii) Up to \$7,500 for any and all costs of third party administration of the settlement; and (iv) after deduction of the amounts enumerated above, the net distribution amount of PAGA Penalties (*see* Paragraph 5.3), estimated to be approximately \$286,500 to the LWDA and PAGA Employees.
- 5.2. **Escalator.** Defendant represents that as of February 21, 2023, there were approximately 395 PAGA Employees and 8,401 semi-monthly pay periods at issue. If, at the time of court approval, the actual number of semi-monthly pay periods at issue exceeds the 8,401 estimate by more than 10% (9,201, or the “Escalation Threshold”), the Gross Settlement Fund shall be increased by the same percentage by which the actual number of semi-monthly pay periods at issue exceeds the Escalation Threshold. By way of example, if the actual number of semi-monthly pay periods at issue were 9,400, the Gross Settlement Fund would increase by 1.72% (9,400 reflects an excess of 159 over the 9,201 Escalation Threshold, and $159 \div 9.201 = 1.72\%$), or \$7,740, to \$457,740.
- 5.3. **Net PAGA Penalties Amount.** The PAGA Penalties to be approved by the Court will be referred to as the “Net PAGA Penalties Amount,” which shall be all inclusive, encompassing all payments to the LWDA and PAGA Employees.
- 5.3.1. The Net Penalties Amount shall be allocated to civil penalties (the “Penalties Fund”). A total of seventy-five percent (75%) of the Net PAGA Penalties Amount, shall be paid to the California Labor & Workforce Development Agency (“LWDA PAGA Payment”). The remaining twenty-five percent (25%) of the Net PAGA Penalties Amount shall be paid to the PAGA Employees (the “PAGA Employees Fund”). The entirety (100%) of the PAGA Employees Fund shall be payable to the PAGA

Employees, and each PAGA Employee shall receive a *pro rata* share of this amount as further detailed below.

- 5.4. Allocation of PAGA Employees' Fund.** Each PAGA Employee shall be sent a pro rata share of the PAGA Employees Fund. Each PAGA Employee's pro rata share shall be determined based on the number of semi-monthly pay periods (or their equivalent) that he or she worked for Defendant or any Released Party in the State of California during the PAGA Period, calculated as follows: the total number of semi-monthly pay periods (or their equivalent) worked by each individual *divided by* the aggregate number of semi-monthly pay periods (or their equivalent) worked by all aggrieved employees.
- 5.5. Distribution and Taxes:** Because all amounts recovered pursuant to this settlement are civil penalties claimed under PAGA, the Individual Settlement Shares shall be treated as 1099 income (MISC- Box 3). All individual settlement shares will be reported on IRS Form 1099 by the Settlement Administrator, if required, and provided to the respective PAGA Employee and applicable governmental authorities. Within twenty (20) calendar days of distributing the Gross Settlement Fund, the Settlement Administrator shall provide to Plaintiff's and Defendant's Counsel written confirmation verifying that it effected disbursement of the Gross Settlement Fund pursuant to the terms of this Agreement.
- 5.6. Expiration of Settlement Checks:** Settlement checks issued to PAGA Employees pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are issued by the Settlement Administrator. After the 180 day-period, the Settlement Administrator shall remit any unclaimed funds to the Unclaimed Property Fund with an identification of the PAGA Employees and the amounts allocated to each.
- 5.7. Attorneys' Fees and Costs:** Defendant also agree that Plaintiff's attorneys shall be entitled to claim an Attorneys' Fees Payment of One-Third (1/3) of the Gross Settlement Fund (\$150,000) and an Attorneys' Costs Payment of actual costs of no more than \$6,000 as compensation for the reasonable attorneys' fees and reimbursement of costs incurred in connection with work performed to litigate the Lawsuit, which shall be deducted by the administrator from the Gross Settlement Fund. Should the Court not approve the fees and costs as claimed but approve instead a lower or higher amount from the Gross Settlement Fund, this agreement shall remain in effect as modified as to the Attorneys' Fee Payment and/or Attorneys' Cost Payment. This is a non-reversionary settlement. If any portion of the amount sought for fees and costs that are not awarded to Plaintiff's counsel or to the third-party administrator will not revert to Defendant, but will be part of the Net PAGA Penalties Amount to be redistributed to Covered Employees on a pro rata basis as set forth in Paragraph 5.3.
- 5.8. No Effect on Employee Benefits:** The payments made to PAGA Employees pursuant to this Agreement shall have no effect on employee benefits. Defendant shall not make as part of this Agreement, nor be required to make, any deductions, nor pay any monthly contributions for any insurance, retirement, bonuses, 403(b), or profit-sharing plans related to monies paid as a result of this Agreement. The Individual Settlement Shares paid to PAGA Employees shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, bonuses, vacation, holiday pay, retirement plans, etc.) of PAGA Employees. The Parties agree that any Individual Settlement Shares paid to PAGA Employees under the terms of this Agreement do not represent any modification of PAGA Employees' previously credited hours of service or other eligibility criteria under an employee benefit plan sponsored by Defendant. Further, any Individual Settlement Shares are penalties and thus shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, and employee benefit plan or bonus plan sponsored by Defendant.

5.9. Disputes Relating to Settlement Administration. Any disputes concerning administration of the Settlement which cannot be resolved by the Parties shall be submitted to and resolved by the Court.

6. IMPACT OF NON-APPROVAL BY COURT

6.1. Should the Court not approve the PAGA penalties, the Parties shall request leave and work jointly to make reasonable efforts to remedy the settlement in order to obtain the Court's approval. If the Parties are unable to resolve the Court's objections or concerns, this Agreement will be deemed void and the Parties agree to cooperate to return the case to the procedural stance in place as of March 10, 2023.

7. ENFORCEMENT AND CONTINUING JURISDICTION OF THE COURT

7.1. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain continuing jurisdiction over this Lawsuit and over all Parties, to the fullest extent to enforce and effectuate the terms and intent of the Settlement and this Agreement. The agreement shall be admissible to enforce the terms thereof, if necessary, and the prevailing party in any such proceeding shall be entitled to recover attorneys' fees and costs.

8. NO ADMISSION OF WRONGDOING

8.1. Defendant denies that it or any Released Party has engaged in any unlawful activity, failed to comply with the law in any respect, or that it or they have any liability to anyone under the claims asserted in the Action. The Parties agree that this Agreement does not constitute an admission by Defendant or any of the Released Parties of any of the matters alleged in the action or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, Defendant or any of the Released Parties.

9. NON-EVIDENTIARY USE

9.1. Neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose—in any action or proceeding in whatever forum—adverse to Plaintiff, the LWDA, Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against Plaintiff, the LWDA, or any of the Released Parties in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to attempt to establish that a PAGA Employee and/or the LWDA has resolved or been compensated for any claims made by that employee.

10. CHOICE OF LAW

10.1. The rights and obligations of the Parties under this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. California law shall govern the interpretation of this Agreement even if a choice of law analysis under state or federal law would dictate that another forum's law be applied.

11. COOPERATION

11.1. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

12. SEVERABILITY

12.1. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and deleted from this Agreement, and neither that provision nor its severance and deletion shall affect the validity of the remaining provisions.

13. ADDITIONAL TERMS

13.1. This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

13.2. Given that all Parties hereto had the opportunity to draft, review, and edit the language of this Agreement, no presumption for or against any Party arising out of drafting all or any part of this Agreement may be applied in any action relating to, connected to, or involving this Agreement. Accordingly, the Parties hereby waive the benefit of any legal principle or rule providing that, in cases of uncertainty, the language of a contract should be interpreted against the Party who caused the uncertainty to exist.

13.3. This Agreement may be executed in counterparts. A signature by way of facsimile shall serve as an original for all purposes.

13.4. Headings in this Agreement are included solely for convenience and shall not control the meaning or interpretation of any provision of this Agreement.

14. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by Plaintiff and an authorized officer of Defendant.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Private Attorneys General Act Settlement Agreement and Release as of the date set forth below.

4/25/2023

Date



STEVEN JONESON II

4/28/2023

Date



JAMES MC KOANE ENTERPRISES, INC.

[print name and title]

APPROVED AS TO FORM

4/25/23 John L. Migliaro (John L. Migliaro)
Date MICHAEL J.F. SMITH, APC.
Attorneys for Steven Joneson II

28 Apr 2023 Paul J. Fine
Date FINE, BOGGS & PERKINS LLP
Attorneys for James Mc Koane Enterprises, Inc.