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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SONOMA**

12 SETH SWAN; individually, and on behalf of
13 other members of the general public similarly
14 situated, and on behalf of other aggrieved
15 employees pursuant to the California Private
16 Attorneys General Act;

17 Plaintiff,

18 vs.

19 PACE SUPPLY CORP., a California
20 corporation; and DOES 1 through 100,
21 inclusive,

22 Defendants.

Case No.: SCV258764

Honorable René Auguste Chouteau
Department 18

CLASS ACTION

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Date: February 6, 2019
Time: 3:00 p.m.
Department: 18

Complaint Filed: May 6, 2016
Trial Date: None Set

1 This matter has come before the Honorable René Auguste Chouteau in Department 18 of
2 the above-entitled Court, located at 3055 Cleveland Avenue, Santa Rosa, California 95403, on
3 Plaintiff Seth Swan's ("Plaintiff") duly noticed Motion for Final Approval of Class Settlement,
4 Attorneys' Fees, Costs, and Service Award ("Motion for Final Approval"). Lawyers *for* Justice,
5 PC appeared on behalf of Plaintiff and the Class. Gordon Rees Scully Mansukhani, LLP appeared
6 on behalf of Defendant PACE Supply Corp. ("Defendant").

7 On April 11, 2018, Plaintiff and Defendant (collectively, the "Parties") executed the Class
8 Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement
9 Agreement"), which, together with the exhibits annexed thereto, set forth the terms and conditions
10 for settlement of the above-entitled action ("Action"). On September 7, 2018, the Court entered an
11 Order Granting Approval of PAGA Settlement and Preliminary Approval of Class Action
12 Settlement ("Preliminary Approval Order"), thereby approving the settlement and release of the
13 Released Claims which arise under California Labor Code section 2698, *et seq.* ("PAGA
14 Settlement") and allocation of \$250,000 for the PAGA Payment, and preliminarily approving the
15 settlement and release of the Released Claims which do not arise under California Labor Code
16 section 2698, *et seq.* ("Class Settlement") in the Action.

17 **I. FINDINGS**

18 Based on the oral and written argument and evidence presented in connection with the
19 Motion for Final Approval, the Court makes the following findings:

20 1. All terms used herein shall have the same meaning as defined in the Settlement
21 Agreement and Preliminary Approval Order.

22 2. This Court has jurisdiction over the subject matter of this Action and over all Parties
23 to this litigation, including the Class Members.

24 3. The Court finds that the applicable requirements of California Code of Civil
25 Procedure section 382 and California Rule of Court 3.769, *et seq.* have been satisfied with respect
26 to the Class Settlement and the class defined as follows:

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1 All current and former hourly-paid or non-exempt employees who directly
2 worked for Defendant within the State of California at any time during the period
3 from May 6, 2012 continuing up to and including August 9, 2017 ("Class" or
4 "Class Members").

4 4. Based on a review of the papers submitted by Plaintiff and of the applicable law, the
5 Court finds that the Gross Settlement Fund of **\$5,000,000.00** and the terms set forth in the
6 Settlement Agreement are fair, reasonable, and adequate.

7 **Notice to Class**

8 5. In compliance with the Preliminary Approval Order, Notice of Class Action
9 Settlement ("Notice") was mailed by first class U.S. mail to the Class Members at their last known
10 addresses on or about November 16, 2018. Mailing of the Notice to Class Members at their last
11 known addresses was the best notice practicable under the circumstances and was reasonably
12 calculated to communicate actual notice of the litigation and the Class Settlement to the Class. The
13 Notice provided to the Class Members fully and accurately informed the Class Members of all
14 material elements of the Class Settlement and of their opportunity to participate in, object to or
15 comment thereon, or to seek exclusion from the Class Settlement; was the best notice practicable
16 under the circumstances; was valid, due, and sufficient notice to all Class Members; and complied
17 fully with the laws of the State of California, the United States Constitution, due process and other
18 applicable law. The Notice fairly and adequately described the Class Settlement and provided Class
19 Members with adequate instructions and a variety of means to obtain additional information.

20 6. The deadline for opting out of, or objecting to, the Class Settlement was December
21 17, 2018 ("Response Deadline"). There was an adequate interval between notice and the Response
22 Deadline to permit Class Members to choose what to do and act on their decision. A full
23 opportunity has been afforded to the Class Members to participate in the Final Approval Hearing,
24 and all Class Members and other persons wishing to be heard have been heard. Class Members also
25 have had a full and fair opportunity to exclude themselves from the Class Settlement. Accordingly,
26 the Court determines that all Class Members who did not timely and properly submit a Request for
27 Exclusion are bound by the Class Settlement and this Final Approval Order and Judgment thereon.

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1 **Fairness of Settlement**

2 7. The Settlement Agreement is entitled to a presumption of fairness. *Dunk v. Ford*
3 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.

- 4 a. The Settlement was reached through arm's length bargaining between the
5 Parties during a mediation before Mark S. Rudy, Esq., a respected mediator
6 experienced in mediating complex labor and employment matters. There has
7 been no collusion between the Parties in reaching the Settlement.
- 8 b. Plaintiff's investigation and discovery have been sufficient to allow the
9 Court and counsel to act intelligently.
- 10 c. Counsel for both Parties are experienced in similar employment class action
11 litigation. All counsel recommended approval of the Settlement Agreement.
- 12 d. The percentage of objectors and Requests for Exclusion is small. As of the
13 date of this Final Approval Order and Judgment, no objections to the Class
14 Settlement were received and only one (1) Request for Exclusion from the
15 Class Settlement was received by the Settlement Administrator.

16 8. The consideration to be given to the Class Members who did not submit a timely
17 and valid Request for Exclusion from the Class Settlement ("Settlement Class Members") under
18 the terms of the Settlement Agreement is fair, reasonable and adequate considering the strengths
19 and weaknesses of the claims asserted in this action and is fair, reasonable, and adequate
20 compensation for the release of Released Claims, given the uncertainties and risks of the litigation
21 and the delays which would ensue from continued prosecution of the Action.

22 9. The Settlement Agreement is finally approved as fair, adequate, and reasonable and
23 in the best interests of the Class.

24 **Attorney's Fees and Costs**

25 10. The Court finds that an award of \$1,750,000 for attorney's fees and \$63,354.90 for
26 reimbursement of litigation costs and expenses to Lawyers *for* Justice, PC are fair and reasonable,
27 in light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and
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1 the results achieved by Class Counsel. The requested attorneys' fees and reimbursement of
2 litigation costs and expenses are hereby approved.

3 **Service Award**

4 11. The Court finds that the Service Award of \$6,000 to Plaintiff Seth Swan is fair and
5 reasonable in light of the risks and burdens undertaken by Plaintiff in this Action and for his time
6 and effort in bringing and prosecuting this matter on behalf of the Class, and the Service Award is
7 hereby approved.

8 **Settlement Administration Expenses**

9 12. The Court finds that payment to the Settlement Administrator, Simpluris, Inc.
10 ("Simpluris"), for Settlement Administration Expenses in the amount of \$13,066 is appropriate for
11 the services and costs of administration of the Settlement in light of the work performed by the
12 Settlement Administrator, and the Settlement Administration Expenses are hereby approved.

13 **II. ORDERS**

14 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED,
15 ADJUDGED, AND DECREED:

16 1. The Court hereby directs that the Settlement be affected in accordance with the
17 Settlement Agreement and the following terms and conditions.

18 2. The Court hereby makes final its earlier conditional certification of the Class for the
19 purposes of settlement only, as set forth in the Preliminary Approval Order. The Class is defined to
20 include:

21 All current and former hourly-paid or non-exempt employees who directly worked
22 for Defendant within the State of California at any time during the period from May
23 6, 2012 continuing up to and including August 9, 2017.

24 3. All persons who meet the foregoing definition are members of the Settlement Class,
25 except for the one individual, Christopher Barbush, who filed a timely and valid Request for
26 Exclusion from the Class Settlement.

27 4. Defendant shall fund the Gross Settlement Fund within thirty (30) calendar days of
28 the Effective Date, in accordance with the terms set forth in the Settlement Agreement.

1 5. The Settlement Administrator shall issue payment in the amount of \$1,750,000 to
2 Lawyers *for* Justice, PC for attorneys' fees and \$63,354.90 for reimbursement of litigation costs
3 and expenses, according to the terms set forth in the Settlement Agreement.

4 6. The Settlement Administrator shall issue payment of the Service Award in the
5 amount of \$6,000 to Plaintiff Seth Swan, according to the terms set forth in the Settlement
6 Agreement.

7 7. The Settlement Administrator shall issue payment of \$13,066 to itself for settlement
8 and notice administration services, according to the terms set forth in the Settlement Agreement.

9 8. The Settlement Administrator shall issue payment in the amount of \$182,500 to the
10 California Labor and Workforce Development Agency, and the remaining penalties in the amount
11 of \$62,500 shall be distributed as PAGA Settlement Shares to each PAGA Group Member,
12 according to the methodology and terms set forth in the Settlement Agreement.

13 9. The Settlement Administrator shall distribute payments for Individual Settlement
14 Shares to each Settlement Class Member, according to the methodology and terms set forth in the
15 Settlement Agreement.

16 10. Any and all checks for payment of Individual Settlement Shares to Settlement Class
17 Members and PAGA Settlement Shares to PAGA Group Members that are not cashed within one
18 hundred eighty (180) calendar days from the date they are issued will be cancelled. Sixty (60)
19 calendar days before the expiration of the 180-day period, the Settlement Administrator shall mail
20 one (1) reminder postcard to Settlement Class Members and PAGA Group Members to whom
21 settlement checks are mailed but not cashed, reminding them of their deadline to cash the checks.
22 Funds associated with cancelled PAGA Settlement Share checks will be transmitted to the
23 California Department of Industrial Relations Unpaid Wage Fund, in the name of the PAGA Group
24 Member whose check is cancelled, within ten (10) calendar days of the expiration of the 180-day
25 period, in accordance with the Settlement Agreement. Funds associated with cancelled Individual
26 Settlement Share checks will be transmitted in accordance with the Settlement Agreement, as
27 follows: twenty -five percent (25%) to the State Treasury for deposit in the Trial Court Improvement
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1 and Modernization Fund and seventy-five percent (75%) to the State Treasury for deposit into the
2 Equal Access Fund of the Judicial Branch.

3 11. As a result of final approval by the Court of the Settlement, the Court hereby enters
4 Judgment by which all PAGA Group Members shall be conclusively determined to have given a
5 release of any and all Released Claims which arise under California Labor Code sections 2698, *et*
6 *seq.* against the Released Parties and all Settlement Class Members fully and finally release and
7 discharge the Released Parties from the Released Claims (as defined below):

8 a. "Released Claims" means all claims described in paragraph 52 of the
9 Settlement Agreement, as follows:

10 Any and all claims, debts, wages, liabilities, demands, obligations, penalties,
11 guarantees, costs, expenses, attorneys' fees, damages, actions or causes of
12 action of whatever kind or nature, that were pled or which could have been
13 pled based on the factual allegations contained in the Complaint, arising
14 under California law, including, but not limited to, any claims for unpaid
15 wages, unpaid minimum wage or overtime, record-keeping violations, wage
16 statement violations, meal period and rest period violations including claims
17 for premium pay, unreimbursed business-related expenses, interest, "waiting
18 time" penalties, violations of Labor Code sections 510, 1198, 226(a), 226.7,
19 512, 1194, 1197, 1197.1, 201, 202, 203, 204, 1174(d), 2800, and 2802, other
20 statutory penalties including but not limited to those arising under Labor
21 Code sections 1197, 1197.1, 1198, liquidated damages, restitution (including
22 but not limited to pursuant to Business & Professions Code sections 17200,
23 *et seq.*), costs, and attorneys' fees, which arose during the period beginning
24 May 6, 2012 and continuing up to and including August 9, 2017.

25 b. "Released Parties" means:

26 Defendant Pace Supply corp. and its present and former parent companies,
27 subsidiaries, as well as their shareholders, officers, directors, employees,
28 successors, and assigns.

12. This Final Approval Order and Judgment shall bind each Settlement Class Member
to the Class Settlement and each PAGA Group Member to the PAGA Settlement, and has *res*
judicata effect, and bars all Settlement Class Members and PAGA Group Members from bringing
any action asserting their Released Claims under the Settlement Agreement.

13. The Settlement Agreement is not an admission by Defendant, nor is this Final
Approval Order and Judgment a finding of the validity of any claims in the Action or of any

wrongdoing by any party. Neither this Final Approval Order and Judgment, the Settlement Agreement, any document referred to herein, nor any action taken to carry out the Settlement Agreement may be construed or deemed an admission as to the existence or non-existence of liability, culpability, negligence, or wrongdoing of any party. The entering into or carrying out of the Settlement Agreement, and any negotiations or proceedings related thereto, may not be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendant and may not be submitted in evidence in any action or proceeding against Defendant in any court, administrative agency or other tribunal for any purpose whatsoever, other than to enforce the provisions of this Final Approval Order and Judgment, the Settlement Agreement, or any related agreement or release.

14. It is not necessary to send notice of entry of this Final Approval Order and Judgment to individual Class Members. Notice of entry of this Final Approval Order and Judgment will be provided to the Class Members by posting a copy of the Final Approval Order and Judgment on the Settlement Administrator's website for a period of at least sixty (60) calendar days after the date of entry of this Final Approval Order and Judgment. The time for any appeal will run from the Court's entry of the Final Approval Order and Judgment.

15. Pursuant to California Rule of Court 3.769(h), after entry of this Final Approval Order and Judgment, the Court will retain jurisdiction to construe, interpret, implement, and enforce the Settlement Agreement, to hear and resolve any contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute arising out of or in connection with the distribution of settlement benefits.

16. If the Settlement does not become final and effective in accordance with the terms of the Settlement Agreement, then this Final Approval Order and Judgment, and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

IT IS SO ORDERED.

Dated: _____

By: _____
The Honorable René Auguste Chouteau
Judge of the Superior Court

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