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behalf of himself and all others similarly situated  
and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

SERGIO RODRIGUEZ, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

ACRA AEROSPACE, LLC, a Delaware  
limited liability company; CHRIS JONES, an  
individual; MARTY MICHAEL, an individual,  
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 30-2020-01171360-CU-OE-  
CXC

[Assigned to the Hon. Randall J. Sherman, in  
Dept. CX105]

**~~[PROPOSED]~~ ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AND  
CERTIFYING CLASS FOR  
SETTLEMENT PURPOSES ONLY**

This Court, having considered the Motion of plaintiff Sergio Rodriguez (“Plaintiff”) for Preliminary Approval of the Class Action Settlement and Provisional Class Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations of David D. Bibiyan, Vedang J. Patel, Plaintiff, and Jodey Lawrence, the Stipulation for Class Action and Representative Action Settlement (the “Settlement Agreement”), the Notice of Proposed Class Action Settlement (“Class Notice”), and the other documents submitted in support of the Motion for Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

1. The definitions set out in the Settlement Agreement are incorporated by reference into this Order; all terms defined therein shall have the same meaning in this Order.

1       2.       The Court certifies the following settlement class for the purpose of settlement only:  
2 all current and former non-exempt, hourly-paid employees who worked for defendants Acra  
3 Aerospace, LLC (“New ACRA”), Chris Jones (“Jones”), and Marty Michael (“Michael” and with  
4 Jones, “Old ACRA,” and collectively with New ACRA, “Defendants”) at any time during period  
5 between April 18, 2017 through February 14, 2022 (“Class Period”) in California (“Class  
6 Members”).

7       3.       The Court preliminarily appoints named plaintiff Sergio Rodriguez as Class  
8 Representative and David D. Bibiyan and Jeffrey D. Klein of Bibiyan Law Group, P.C. as Class  
9 Counsel.

10      4.       The Court preliminarily approves the proposed class settlement upon the terms and  
11 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the  
12 settlement appears to be within the range of reasonableness of settlement that could ultimately be  
13 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement  
14 amount is fair, adequate and reasonable as to all potential settlement class members when balanced  
15 against the probable outcome of further litigation relating to liability and damages issues. It further  
16 appears that extensive and costly investigation and research has been conducted such that counsel  
17 for the parties at this time are reasonably able to evaluate their respective positions. It further  
18 appears to the Court that the settlement at this time will avoid substantial additional costs by all  
19 parties, as well as the delay and risks that would be presented by the further prosecution of the  
20 Action. It further appears that the settlement has been reached as the result of intensive, non-  
21 collusive, arms-length negotiations utilizing an experienced third party neutral.

22      5.       The Court, approves, as to form and content, the Class Notice that has been submitted  
23 herewith.

24      6.       The Court directs the mailing of the Class Notice by first-class mail to the Class  
25 Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds  
26 that dissemination of the Class Notice set forth in the Settlement Agreement complies with the  
27 requirements of law and appears to be the best notice practicable under the circumstances.

28      ///

1       7.       The Court hereby preliminarily approves the definition and disposition of the Gross  
2 Settlement Amount **\$750,000.00**, which is inclusive of: attorneys' fees not to exceed thirty-five  
3 percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement  
4 Agreement, amounts to **\$262,500.00**, in addition to actual costs incurred not to exceed **\$25,000.00**;  
5 an incentive award of **\$7,500.00** to Plaintiff; costs of settlement administration of no more than  
6 \$6,250.00; and Private Attorneys' General Act of 2004 ("PAGA") penalties in the amount of  
7 **\$40,000.00**, of which **\$30,000.00** (75%) will be paid to the Labor and Workforce Development  
8 Agency ("LWDA") and **\$10,000.00** to "Aggrieved Employees", defined as Class Members working  
9 for New ACRA during the period from **July 28, 2019 through February 14, 2022** ("PAGA Period")  
10 as non-exempt, hourly-paid employees in California.

11       8.       The Gross Settlement Amount expressly excludes Employer Taxes, which will be  
12 **paid separately** and apart by Defendant on the wages portion of the Gross Settlement Amount.

13       9.       Defendants shall pay the Gross Settlement Amount (*i.e.* \$375,000 to be paid by Old  
14 ACRA and \$375,000.00 to be paid by New ACRA) to the Settlement Administrator within **thirty**  
15 **(30) calendar days of execution of the Settlement Agreement**. And, within fifteen (15) calendar  
16 days of the Settlement Administrator providing notice to Old ACRA and New ACRA of the  
17 employer payroll taxes owed in connection with the Gross Settlement Amount (but in no event  
18 sooner than fifteen (15) days from the signing of this Agreement), Old ACRA and New ACRA shall  
19 each deposit Fifty Percent (50%) of the total employer payroll taxes owed into the QSA (or pay  
20 Fifty Percent (50%) of the total employer payroll taxes to the Settlement Administrator).

21       10.       Furthermore, in the event the Gross Settlement Amount is increased pursuant to the  
22 Settlement Agreement, Old ACRA and New ACRA shall make payment of any increase in the Gross  
23 Settlement Amount to the Settlement Administrator within fifteen (15) calendar days of notice by  
24 the Settlement Administrator. Old ACRA and New ACRA shall make payment of any increase in  
25 the Gross Settlement Amount equally (*i.e.* 50% to be paid by Old ACRA and 50% to be paid by  
26 New ACRA).

27       11.       Class Member's "Workweeks" shall mean the number of weeks that a Settlement  
28 Class Member was employed by and worked for the ACRA Defendants in a non-exempt, hourly

1 position during the Class Period in California, based on hire dates, re-hire dates, and termination  
2 dates.

3 12. The Settlement is based on Defendant's representation that there are no more than  
4 12,552 Workweeks worked during the Class Period through February 14, 2022, the date of  
5 mediation. In the event that it is determined that the number of Workweeks worked by Class  
6 Members during the Class Period increases by more than 5%, or 628 Workweeks, as of February  
7 14, 2022, then the Gross Settlement Amount shall be increased proportionally by the Workweeks in  
8 excess of 12,552 Workweeks multiplied by the Workweek Value. The Workweek Value shall be  
9 calculated by dividing the originally agreed-upon Gross Settlement Amount (\$750,000.00) by  
10 12,552, which amounts to a Workweek Value of \$59.75. Thus, for example, should there be 14,000  
11 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by \$86,447.  
12 ((14,000 Workweeks – 12,552 Workweeks) x \$59.70 per Workweek.).

13 13. The Court deems Phoenix Settlement Administrators ("Phoenix") the Settlement  
14 Administrator, and payment of administrative costs, not to exceed \$6,250.00, out of the Gross  
15 Settlement Amount for services to be rendered by Phoenix on behalf of the class.

16 14. The Settlement Administrator shall prepare and submit to Class Counsel and  
17 Defendant's Counsel a declaration attesting to the completion of the notice process as set forth in  
18 the Settlement Agreement, including the number of attempts to obtain valid mailing addresses for  
19 and re-sending of any returned Class Notices, as well as the identities, number of, and copies of all  
20 opt-outs and objections received.

21 15. The Court directs Defendants to, within ten (10) calendar days of this Order, provide  
22 the Settlement Administrator with the "Class List" for Class Members. The Class List will include  
23 for each Settlement Class Member, his or her: (1) name; (2) last known address(es) currently in  
24 Defendant's possession, custody, or control; (3) last known telephone number(s) currently in  
25 Defendant's possession, custody, or control; (4) last known Social Security Number(s) in  
26 Defendant's possession, custody, or control; and (5) the dates of employment (i.e., hire dates, and  
27 if applicable, re-hire date(s) and/or separation date(s) and excluding any weeks not worked for each  
28 Settlement Class Member ("Class List") which shall be made available to Class Counsel upon

1 request.

2 16. Because Social Security Numbers are included in the Class List, the Settlement  
3 Administrator shall maintain the Class List in confidence and shall only access and use the list to  
4 administer the settlement in conformity with the Court's orders.

5 17. Upon receipt of the Class List, the Settlement Administrator shall perform an address  
6 search using the United States Postal Service National Change of Address (the "NCOA") database  
7 and update the addresses contained on the Class List with the newly found addresses, if any. To the  
8 extent that this process yields an updated address, that updated address shall replace the last known  
9 address and be treated as the new last known address for purposes of this Settlement, and for  
10 subsequent mailings.

11 18. Within seven (7) calendar days of receiving the Class List from Defendant, the  
12 Settlement Administrator shall mail the Class Notice, in English and Spanish, to the Settlement  
13 Class Members, via first-class regular U.S. Mail, using the most current mailing address information  
14 available.

15 19. The deadline by which Class Members may dispute the number of Workweeks  
16 worked, and the deadline by which Class Members may opt out or object in writing shall be 45  
17 days from the date of the mailing of the Class Notice, unless the Class Member had their Class  
18 Notice re-mailed. Class Members who are re-mailed a Class Notice shall have fifteen (15) calendar  
19 days from the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is  
20 later, in which to postmark a Request for Exclusion, objection, or to dispute the information  
21 provided in the Class Notice. This shall be known as the "Response Deadline."

22 20. The Class Notice shall instruct Settlement Class Members on how to exclude  
23 themselves from the Settlement Class. Any Settlement Class Member may request exclusion from  
24 (i.e., "opt out" of) the Settlement by mailing a written request to be excluded from the Settlement  
25 (the "Request for Exclusion") to the Settlement Administrator, postmarked on or before the  
26 Response Deadline. To be valid, a Request for Exclusion must include: (1) the Class Member's  
27 name; (2) the Class Member's Social Security Number; (3) the Class Member's signature; and (4)  
28 the following statement: "Please exclude me from the Settlement Class in the *Rodriguez v. ACRA*

1 *Aerospace, LLC* matter” or any statement of similar meaning standing for the proposition that the  
2 Class Member does not wish to participate in the Settlement . The Settlement Administrator shall  
3 immediately provide copies of all Requests for Exclusion to Class Counsel and Defendant’s Counsel  
4 and shall report the Requests for Exclusions that it receives, to the Court, in its declaration to be  
5 provided in advance of the Final Approval Hearing. Any Settlement Class Member who requests  
6 exclusion using this process will not be entitled to receive any payment from the Class Settlement  
7 & will not be bound by the Settlement Agreement or have any right to object, appeal or comment  
8 on the Settlement. Any Settlement Class Member who does not opt out of the Settlement by  
9 submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement,  
10 including those pertaining to the Released Claims, as well as any Judgment that may be entered by  
11 the Court if Final Approval of the Settlement is granted.

12 21. Any Class Member who does not submit a timely and valid Request for Exclusion  
13 shall be deemed a “Participating Class Member” and be bound by the terms of the Settlement,  
14 including the releases provide therein.

15 22. Settlement Class Members will have an opportunity to dispute the information  
16 provided in their Class Notice (the “Workweek Dispute”). Any such disputes must be mailed to the  
17 Settlement Administrator by the Settlement Class Member, postmarked on or before the Response  
18 Deadline. The Settlement Administrator shall immediately provide copies of all disputes to Class  
19 Counsel and Defendants’ Counsels and shall immediately attempt to resolve all such disputes  
20 directly with relevant Settlement Class Member(s) with the assistance of the Defendants and Class  
21 Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute..

22 23. Only Settlement Class Members who do not opt out of the Settlement (*i.e.*,  
23 Participating Class Members) may object to the Settlement. In order for any Settlement Class  
24 Member to object to this Settlement in writing, or any term of it, he or she must do so by mailing a  
25 written objection to the Settlement Administrator at the address or phone number provided on the  
26 Class Notice no later than the Response Deadline. The Settlement Administrator shall email a copy  
27 of the Objection forthwith to Class Counsel and Defendant’s counsel and attach copies of all  
28 Objections to the Declaration it provides Class Counsel, which Class Counsel shall file in support

1 of Plaintiff's Motion for Final Approval. The Objection should set forth in writing: (1) the  
2 Objector's name; (2) the Objector's address; (3) the last four digits of the Objector's Social Security  
3 Number; (4) the Objector's signature; (5) a statement of whether the Objector plans to appear at the  
4 Final Approval Hearing; and (6) the reason(s) for the Objection, along with whatever legal authority,  
5 if any, the Objector asserts in support of the Objection. If a Settlement Class Member objects to the  
6 Settlement, the Settlement Class Member will remain a member of the Settlement Class and if the  
7 Court approves this Agreement, the Settlement Class Member will be bound by the terms of the  
8 Settlement in the same way and to the same extent as a Settlement Class Member who does not  
9 object. The date of mailing of the Class Notice to the objecting Settlement Class Member shall be  
10 conclusively determined according to the records of the Settlement Administrator. Settlement Class  
11 Members need not object in writing to be heard at the Final Approval Hearing; they may object or  
12 comment in person at the hearing at their own expense. Class Counsel and Defendant's Counsel  
13 may respond to any objection lodged with the Court up to five (5) court days before the Final  
14 Approval Hearing.

15 24. Participating Class Members may (though are not required to) appear at the Final  
16 Approval hearing, either in person or through the objector's own counsel. The failure to file and  
17 serve a written objection does not waive a Participating Class Member's right to appear at and make  
18 an oral objection at the Final Approval Hearing.

19 25. If a Settlement Class Members submits both an Objection and a Request for  
20 Exclusion, the Request for Exclusion will control and the Objection will be void.

21 26. All papers filed in support of final approval, including supporting documents for  
22 attorneys' fees and costs, shall be filed by \_\_\_\_\_ August 22, 2023.

23 27. A Final Approval Hearing shall be held with the Court on September 8, 2023 at  
24 \_\_\_\_\_ 10:00 a.m. in Department CX-105 of the above Court to determine: (1) whether  
25 the proposed settlement is fair, reasonable, and adequate and should be finally approved by the  
26 Court; (2) the amount of attorneys' fees and costs to award Class Counsel; (3) the amount of  
27 incentive award to the Class Representatives; (4) the amount to be paid to the Settlement  
28 Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the LWDA and

1 Aggrieved Employees.

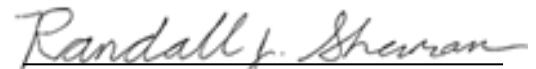
2 28. No more than seven (7) calendar days after payment by Defendant of the Gross  
3 Settlement Amount, as well as payment by Defendant of the Employer Taxes, the Settlement  
4 Administrator shall distribute all payments due under the Settlement, including Individual  
5 Settlement Payments to Participating Class Members, Individual PAGA Payments to Aggrieved  
6 Employees, Court-approved payments for the Service Award to Plaintiff, attorneys' fees and  
7 litigation costs and expenses to Class Counsel, approved settlement administration costs to the  
8 Settlement Administrator, and the LWDA Payment to the LWDA.

9 29. Individual Settlement Payment and Individual PAGA Payment checks shall remain  
10 valid and negotiable for one hundred and eighty (180) calendar days after the date of their  
11 issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such  
12 payments shall be canceled and funds associated with such checks shall be considered unpaid,  
13 unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid  
14 Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil  
15 Procedure section 384, shall be transmitted to Legal Aid at Work, 180 Montgomery Street, Suite  
16 600, San Francisco, California 94104, the *cy pres* recipient, for use in Los Angeles County. The  
17 Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code  
18 of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel  
19 along with a proposed amended judgment that is consistent with the provisions of Code of Civil  
20 Procedure section 384.

21 30. In the event the settlement does not become effective in accordance with the terms  
22 of the Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to  
23 become effective for any reason, this Order shall be rendered null and void and shall be vacated,  
24 and the parties shall revert to their respective positions as of the entry of the Settlement Agreement.

25 **IT IS SO ORDERED.**

26  
27 Dated: April 28, 2023

  
RJ Sherman/Judge of the Sup. Court