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FILED
Superior Court of California
County of Los Angeles
08/27/2025
David W. Slayton, Executive Officer / Clerk of Court
By: E. Muñoz Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

10 KENNETH NESMITH, on behalf of himself
and other similarly situated employees in the
11 State of California,

12 Plaintiff,

13 v.

14 RCS SAFETY, LLC., DBA ROADWAY
15 CONSTRUCTION SERVICE, and DOES 1
16 through 50 inclusive,

17 Defendant.

Case No.: 23STCV18913

[Assigned for All Purposes to the Hon. William F. Highberger, Dept. 10]

~~AMENDED [PROPOSED]~~ ORDER
GRANTING PLAINTIFF’S MOTION FOR: (1) PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; (2) PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS; (3) APPROVAL OF THE CLASS NOTICE AND NOTICE PLAN; (4) APPOINTMENT OF CLASS COUNSEL AND CLASS REPRESENTATIVE; (5) APPOINTMENT OF SETTLEMENT ADMINISTRATOR; AND (6) SETTING A FINAL APPROVAL HEARING

Date: August 5, 2025
Time: 3:30 p.m.
Dept: 10
Judge: Hon. William F. Highberger

Amended Complaint Filed: October 2, 2023
Complaint Filed: August 9, 2023
Trial Date: None set

1 Plaintiff Kenneth Nesmith’s (“Plaintiff”) Motion for Preliminary Approval of Class Action and
2 PAGA Action Settlement with Defendant RCS Safety, LLC dba Roadway Construction Service
3 (“Defendant” or “RCS”) (Plaintiff and Defendant collectively referred to as the “Parties”) came before
4 this Court on August 5, 2025, at 3:30 p.m. The Court, having considered the proposed Class Action and
5 PAGA Settlement Agreement and Class Notice (the “Settlement Agreement”), Plaintiff’s Motion for
6 Preliminary Approval, and all papers filed in support, **HEREBY ORDERS THE FOLLOWING:**

7 1. The Court grants preliminary approval of the Settlement and preliminarily finds that:
8 (1) the Settlement is fair and reasonable to the Class when balanced against the possible risks of further
9 litigation, including issues relating to class certification, liability, calculating damages, and potential
10 appeals; (2) significant investigation, research, and litigation have been conducted, such that the Parties
11 are able to fairly evaluate their respective positions; (3) settlement at this time will avoid the substantial
12 cost, delay and risk presented by further litigation of the action; and (4) the Settlement was reached after
13 serious, informed, and non-collusive negotiations, which were conducted at arms’ length by experienced
14 counsel.

15 2. This Order incorporates by reference all defined terms set forth in the Settlement
16 Agreement, which is attached as Exhibit 1 to the Declaration of Hali M. Anderson in Support of Plaintiff’s
17 Motion for Preliminary Approval of Class Action and PAGA Action Settlement (“Anderson Decl.”), filed
18 on February 4, 2025.

19 3. The Court finds that the proposed Class meets the requirements of numerosity,
20 commonality, and typicality to justify certification, and that there is adequate and fair representation.

21 4. The Court grants provisional certification of the class, which the Settlement Agreement
22 defines as all persons employed by Defendant in California and classified as a non-exempt employee who
23 worked for Defendant during the Class Period. The “Class Period” means the period from August 9, 2019,
24 to December 1, 2024.

25 5. The Settlement Class includes all persons who are members of the Class and who have not
26 properly and timely opted out of the litigation in accordance with the requirements set forth in the Notice
27 and Settlement Agreement.

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1 6. Class members who wish to request exclusion from or object to the Settlement must follow
2 the procedures set forth in the Settlement Agreement and Class Notice.

3 7. The Court approves the appointment of Plaintiff Kenneth Nesmith as Class Representative.

4 8. The Court approves the appointment of Plaintiff’s Counsel: Hali M. Anderson and
5 Samara A. Bahu of GRAHAMHOLLIS APC as Class Counsel.

6 9. The Court preliminarily confirms that the notice of settlement served by Plaintiff on the
7 California Labor and Workforce Development Agency (“LWDA”) satisfies the requirements of the
8 Private Attorneys General Act (“PAGA”).

9 10. The Court finds that the Settlement of claims under the PAGA as reflected in the Settlement
10 Agreement to be fair and reasonable and in compliance with all the requirements of California law.

11 11. The Court approves the form and content of the Class Notice, in substantially the form
12 attached to the Settlement Agreement as Exhibit A and finds that the proposed method of disseminating
13 the Class Notice meets all the due process requirements; provides the best notice practicable under the
14 circumstances; constitutes notice that is reasonably calculated, under the circumstances, to apprise Class
15 Members of the pendency of the Action and their right to exclude themselves from or object to the
16 proposed Settlement and to appear at the Final Approval Hearing; is reasonable and constitutes due,
17 adequate, and sufficient notice to all Class Members; and meets all applicable requirements under
18 California law, due process, and any other applicable rules or law.

19 12. The Court preliminarily approves the definition and disposition of the Gross Settlement
20 Amount of One Million One Hundred Thousand Dollars (\$1,100,000), which is inclusive of (1) all
21 Individual Class Payments to participating Class Members, (2) all Individual PAGA Payments to
22 Aggrieved Employees, (3) the LWDA PAGA Payment, (4) the Class Counsel Fees Payment, (5) the Class
23 Counsel Expenses Payment, (6) the Class Representative Service Payment, and (7) the Administration
24 Expenses Payment. Assuming the Court awards each of these amounts to the full extent requested in the
25 Settlement, the total Net Settlement Amount available for distribution to Participating Class Members will
26 total approximately \$667,370. This amount is calculated as the Gross Settlement Amount of \$1,100,000
27 minus the following amounts:

28 a. Class Counsel Fees Payment: \$366,630;

- b. Class Counsel Litigation Costs: \$25,000;
- c. Settlement Administrator Expenses: \$8,500;
- d. Class Representative Service Payment: \$7,500;
- e. PAGA Penalties: \$25,000 (\$16,250 to the LWDA and \$8,750 to Aggrieved Employees).

13. The Court approves the retention of Apex Class Action, LLC (“Apex”) as the Settlement Administrator, to be paid out of the Gross Settlement Amount, and hereby directs Apex to provide the approved Class Notice to class members and administer the Settlement in accordance with the procedures set forth in the Settlement Agreement and implementation schedule set forth below.

14. In the event the Settlement does not become effective in accordance with the terms of the Settlement Agreement, or the Settlement is not finally approved by this Court, is not approved in whole or in part by the Court or any appellate court and/or other court of review, or is terminated, cancelled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, the Parties shall revert to their respective positions as of the commencement of the litigation, and the Settlement Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose including, but not limited to, an admission by any Party of liability or non-liability or of the certifiability of a litigation class or the appropriateness of maintaining a representative action.

15. The Court hereby imposes a stay on all litigation of the Action pending the Final Approval Hearing and prohibits Plaintiff and/or Class Members from instituting, commencing, or prosecuting any claims covered by the Action against Defendant or the Releasees pending the Final Approval Hearing.

16. The Court orders the following implementation schedule for further proceedings, as provided in the Settlement Agreement:

Deadline for Defendant to provide the Settlement Administrator with the Following Data for Each Class Member: full name; last known mailing address; last known telephone number; social security number; dates of employment; and such other information as necessary for the	Twenty (20) business days after the Court grants Preliminary Approval
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1	Settlement Administrator to calculate individual Class Member Workweeks.	
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3	Deadline for Settlement Administrator to mail the Notice to Class Members.	Fourteen (14) calendar days of receiving the Class Member list
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5	Deadline for Class Members to submit a Request for Exclusion or written objection to the Settlement.	Sixty (60) calendar days after the Notice is mailed
6		
7		
8	Final Approval Hearing	November 20, 2025 at 1:30 p.m.
9		
10	Effective Date of Settlement	Date the Court signs the Final Approval Order and Judgment, if no objections to the Settlement
11	Payment Obligation Date(s)	Defendant shall fund the settlement, including Defendant's share of payroll taxes for the wage portion of the settlement, with an initial payment of 50% within forty-five (45) days of after the Court grants final approval of the Settlement. Thereafter, Defendant shall pay the remaining amount quarterly (25%) commencing once calendar quarter after the initial payment and the remaining amount (25%) one calendar quarter thereafter.
12		
13		
14		
15		
16	Deadline for Settlement Administrator to Mail Individual Settlement Payments	Within ten (10) business days after Defendant fully funds the remaining 50% of the settlement
17	Date Uncashed Checks become Void	One hundred eighty (180) calendar days after mailing of the Individual Settlement Payment Checks

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19 The Court hereby sets a hearing date for Plaintiff Kenneth Nesmith's Motion for Final Approval

20 of Class Action and PAGA Action Settlement and Award of Attorney's Fees, Costs, and Class

21 Representative's Service Payment on: November 20, 2025 at 1:30 p.m. in Department 10 of this Court.

22 **IT IS SO ORDERED.**

23 Dated: 08/27/2025



W.F. Highberger

William F. Highberger / Judge

Hon. William F. Highberger
 Judge of the Superior Court