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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ANDREA MARQUEZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

NIHON KOHDEN AMERICA, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 30-2021-01184495-CU-OE-CXC

Assigned for All Purposes to:
Honorable Randall J. Sherman
Department CX-105

CLASS ACTION

**PLAINTIFF'S SUPPLEMENTAL BRIEF
IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

[Reservation ID: 73931273]

RELATED TO ROA NUMBER 100

[Supplemental Declaration of Proposed
Class Counsel (Douglas Han); and Amended
[Proposed] Order filed concurrently
herewith]

Hearing Date: July 14, 2023
Hearing Time: 10:00 a.m.
Hearing Place: Department CX-105

Complaint Filed: February 17, 2021
FAC Filed: December 30, 2022
Trial Date: None Set

Plaintiff Andrea Marquez (“Plaintiff”) provide this supplemental submission in response to the Court’s tentative ruling on Plaintiff’s Motion for Preliminary Approval of Class Action Settlement originally scheduled for hearing on April 7, 2023. On April 6, 2023, prior to the scheduled preliminary approval hearing, the Court issued a tentative ruling ordering Plaintiff and Defendants Nihon Kohden America, Inc. and Vaco LLC (“Defendants”) to make changes to the Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”).

The chart below lists each of the Court’s issues from the tentative ruling and the revisions/submissions made to address each issue.

Ruling	Revisions/Submissions
(1) Unnamed class members are not parties to the settlement agreement. Thus, the provision in § II.G of the settlement agreement that “none of Plaintiff, Class Members, or Class Counsel will oppose Defendants’ efforts to use this agreement to prove that Plaintiff and Class Members have resolved and are forever barred as a matter of law from re-litigating the Released Claims” must delete the phrase “Class Members” in its first (but not second) instance. This court will not approve injunctions against or covenants not to sue by class members. Res judicata and collateral estoppel arguments should provide defendants with sufficient protection against facing these same claims again.	The Settlement Agreement has been amended accordingly. (Supplemental Declaration of Douglas Han in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Supp. Han Decl.”), ¶ 4; Exhibit 2, ¶ 2.)

1 2 3 4 5 6	(2) Similarly, the parties must remove the following sentence from § III.L of the settlement agreement: “Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims.”	The Settlement Agreement has been amended accordingly. (Supp Han Decl., <i>supra</i> , at ¶ 5; Exhibit 2, <i>supra</i> , at ¶ 3.)
7 8 9 10 11 12 13 14	(3) Since “all Eligible Aggrieved Employees” also aren’t parties to the settlement agreement, the parties also must remove that group from the sentence in § III.M of the settlement agreement which states that certain people “are hereby voluntarily and knowingly barred as a matter of law from bringing” certain PAGA claims.	The Settlement Agreement has been amended accordingly. (Supp Han Decl., <i>supra</i> , at ¶ 6; Exhibit 2, <i>supra</i> , at ¶ 4.)
15 16 17 18 19 20 21 22 23 24 25 26 27	(4) The so-called “Class Size Escalator” clause in § III.P.23 of the settlement agreement is unacceptable. The parties may not give notice to putative class members that they’re part of a class, and then after final approval tell some of them they aren’t actually class members. In fact, since the class period ended on January 27, 2022, over a year ago, the parties already should know the approximate (if not exact) number of workweeks during the class period and shouldn’t have to wonder if there will be a 10% increase. Finally, since defendants won’t	The Settlement Agreement has been amended accordingly. (Supp Han Decl., <i>supra</i> , at ¶ 7; Exhibit 2, <i>supra</i> , at ¶ 5.)

1	be paying any more or less total money	
2	regardless of the number of total workweeks,	
3	the court fails to understand the rationale of	
4	changing the class period depending on the	
5	number of total workweeks.	
6	(5) The “Object” portion of § 6 of the class	The Class Notice has been amended
7	notice must inform class members that they	accordingly.
8	have the right to orally object to the settlement	
9	at the hearing. In the first sentence of that	(Supp Han Decl., <i>supra</i> , at ¶ 8; Exhibit 3,
10	section, change “a legal objection” to “an	<i>supra</i> , at §§ 6, 8.)
11	objection”. In the last paragraph of § 8 of the	
12	class notice, on line 3, change “any objections	
13	must be mailed” to “any written objections	
14	must be mailed”.	
15	(6) The title of the opt-out form is unwieldy	The Settlement Agreement has been amended
16	and confusing, and should be changed from	accordingly.
17	“Election Not to Participate in (‘Opt Out’	
18	From) Class Action Settlement” to either	(Supp Han Decl., <i>supra</i> , at ¶ 9; Exhibit 2,
19	“Request for Exclusion Form” or “Opt-Out	<i>supra</i> , at ¶ 1.)
20	Form”.	
21		The Class Notice has been amended
22		accordingly.
23		
24		(Supp Han Decl., <i>supra</i> , at ¶ 9; Exhibit 3,
25		<i>supra</i> , at § 7.)
26		

	The Exclusion Form has been amended accordingly. (Supp Han Decl., <i>supra</i>, at ¶ 9; Exhibit 4, <i>supra</i>, at p. 1.)
(7) The first paragraph of the opt-out form is flat-out wrong in saying, “IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE ANY PAYMENT FROM THE SETTLEMENT.” Change “FROM THE SETTLEMENT” to “FROM THE CLASS ACTION PORTION OF THE SETTLEMENT”.	The Exclusion Form has been amended accordingly. (Supp Han Decl., <i>supra</i>, at ¶ 10; Exhibit 4, <i>supra</i>, at p. 1.)
(8) In the last bolded paragraph of the opt-out form, change “between February 18, 2021 to January 27, 2022” to either “between/and” or “from/to”.	The Exclusion Form has been amended accordingly. (Supp Han Decl., <i>supra</i>, at ¶ 11; Exhibit 4, <i>supra</i>, at p. 1.)

Dated: June 22, 2023

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

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