

FILED/ENDORSED

JAN 12 2022

By: _____

Deputy Clerk

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Jessica L. Hart (Cal. State Bar No. 331441)

Shimoda Law Corp.

4 9401 East Stockton Boulevard, Suite 120
5 Elk Grove, CA 95624
6 Telephone: (916) 525-0716
7 Facsimile: (916) 760-3733

8 Attorneys for Plaintiff YENG FANG
9 individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

11 YENG FANG, individually and on behalf of
12 all other similarly situated employees,

13 Plaintiff,

14 vs.

15 INTERPRESS TECHNOLOGIES, INC., a
16 California Corporation; RODERICK MINER,
17 an individual; FRANCINE OSBORN, an
18 individual; and DOES 1 to 100, inclusive,

19 Defendants.
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Case No. 34-2021-00292937

CLASS ACTION

**PROPOSED ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation Number: 2604256

Date: January 11, 2022

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Shama H. Mesiwala

Filed: January 22, 2021

FAC Filed: April 1, 2021

Trial Date: Not Set

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CIVIL

[PPSD] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on January 11, 2022 at 1:30 p.m., in Department 53
4 before Hon. Shama H. Mesiwala, presiding. Named Plaintiff Yeng Fang ("Plaintiff") filed this
5 putative class action on January 22, 2021. The operative Complaint alleges that Defendants Interpress
6 Technologies, Inc. and Roderick Miner, ("Defendants") violated California law by 1) failing to pay
7 overtime wages; 2) failing to pay minimum wages; 3) committing meal period violations; 4)
8 committing rest period violations 5) committing wage statement violations; 6) failing to timely pay
9 wages; 7) failing to reimburse expenses; and 8) engaging in unfair competition. Plaintiff has also
10 alleged Defendants are liable for civil penalties under the Private Attorneys General Act ("PAGA")
11 based on these violations. Plaintiff sought attorneys' fees and costs as part of this Action. Defendants
12 denied all of Plaintiff's claims and denied that this case was appropriate for class treatment. No class
13 has been certified.

14 The parties have agreed to settle the class and PAGA claims. Defendants will provide
15 monetary consideration in exchange for a release of claims consistent with the terms of the proposed
16 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and
17 Release ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
18 Agreement. The Court, having received and considered Plaintiff's Motion for Preliminary Approval of
19 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
20 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
21 FOLLOWS:

22 **1. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
23 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 All non-exempt employees that have or continue to work for Defendants
27 in California from January 22, 2017, up to either (1) the Preliminary
28 Approval Date, or (2) November 27, 2021, whichever is earlier.

The Court recognizes that the foregoing definition is for Class Member identification purposes

1 only and is not intended to capture the claims at issue or limit or alter the released claims under the
2 Agreement.

3 The Court finds that Class Members meet the ascertainability and numerosity requirements since
4 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
5 the definition and the number of Class Members would make joinder impractical. The commonality and
6 predominance requirements are met for settlement purposes since there are questions of law and fact
7 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
8 contentions that Defendants caused the violations outlined above by 1) failing to correctly incorporate
9 the value of the non-discretionary remuneration, such as, quarterly bonuses and shift differentials in the
10 regular rate of pay when calculating overtime and double time; 2) failing to provide meal and rest
11 periods in compliance with California law due to their facially invalid policies and practice of failing to
12 properly document meal periods and/or relieve employees of all duty; 3) failing to pay employees for all
13 hours worked due to their rounding policies in effect during the class period and failure to pay for off-
14 the-clock virtual meetings and trainings; 4) failing to pay reimbursements for business-related cell phone
15 use, including phone use to clock in and out of work, as well as for required virtual meetings and
16 trainings; and 5) failing to accurately itemize the hours and wages earned on paystubs issued to class
17 members. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims
18 also derive from these violations. Additionally, Class Members seek the same remedies under state
19 law. The typicality requirement for settlement purposes is also satisfied since the claims of the Class
20 Representative is based on the same facts and legal theories as those applicable to the class members.

21 The Court also finds that preliminarily and conditionally certifying the settlement class is
22 required to avoid each Class Member from litigating similar claims individually. This settlement will
23 achieve economies of scale for Class Members with relatively small individual claims and conserve the
24 resources of the judicial system.

25 The Court finds that Plaintiff Yeng Fang and Plaintiff's counsel, Galen T. Shimoda
26 Justin P. Rodriguez, and Jessica L. Hart of the Shimoda Law Corp., to be adequate representatives of the
27 settlement class. The Court appoints them as class representative and class counsel, respectively.

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1 **2. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

2 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit

3 A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of
4 a settlement, which could ultimately be given final approval by this Court. The Court also
5 acknowledges that Class Members may object to the settlement at a fairness hearing approved by this
6 Court or opt-out of being bound by the preliminarily approved Agreement.

7 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
8 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
9 preliminarily approves the Agreement and all terms therein as if stated here in full, including the
10 \$425,000 Gross Settlement Amount.

11 The Court orders that Plaintiff Yeng Fang will receive \$15,000 as a Class Representative
12 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
13 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

14 The Court orders and approves Simpluris Inc. to act as the Claims Administrator in this case.
15 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
16 \$6,500. Any difference between the actual cost of the Claims Administrator and the approved payment
17 will be redistributed to Qualified Claimants on a pro-rata basis.

18 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
19 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
20 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
21 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
22 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
23 *v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
24 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
25 Thirt Five Percent (35%) of the Gross Settlement Amount, *i.e.* \$148,750, to be appropriate
26 compensation for Class Counsel. The attorneys' fees request is within the range that has been approved
27 by other Courts in similar cases and is reasonable in light of the circumstances of this case, the
28 substantial and beneficial results obtained on behalf of Class Members, and the contingent nature of the

1 recovery over the course of this case, which included potential loss at summary judgment, certification,
2 and/or trial proceedings. Additionally, the Court orders that up to \$15,000 of the settlement proceeds
3 will be paid to Class Counsel for reasonable costs incurred in this case. Any difference between the
4 actual costs incurred and the \$15,000 shall be paid to the Qualified Claimants on a pro-rata basis.

5 The Court approves of the ten-thousand-dollar (\$10,000) PAGA Payment, which shall be paid
6 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
7 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
8 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
9 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
10 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
11 furthering the purpose of the Labor Code and LWDA.

12 The Court approves of the identified *cypres* distribution plan wherein any checks issued to
13 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
14 paid out 50/50 to Capital Pro Bono, Inc., and the Center for Workers Rights. No portion of the Gross
15 Settlement Amount will revert to Defendants for any reason. The releases and waivers for Class
16 Members who do not opt out of being bound by the Agreement (*i.e.* Qualified Claimants), Aggrieved
17 Employees, and the Class Representative are also approved by the Court as set forth in the Agreement.

18 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
19 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

20 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
21 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
22 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
23 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,
24 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness
25 hearing to be conducted on the date set forth below. The Court further finds that the Notice of
26 Settlement and proposed distribution of such notice by first class mail to each identified Class Member
27 at his or her most recent address based on a National Change of Address database search from the Class
28 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement

1 returned as "undeliverable" or "not at this address" comports with all constitutional requirements,
2 including those of due process.

3 The Court also finds that because there is a strong interest in providing Class Members the
4 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
5 privacy rights, the sharing of employment information, including social security numbers, is not a
6 serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide first and last
7 name, last known mailing address, social security number, hire and termination dates, total number of
8 workweeks during which the Class Member performed any actual work to the Claims Administrator
9 only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the
10 Agreement and approved by this Order. The Claims Administrator shall only use this information for
11 settlement purposes identified herein, and this information shall be kept confidential, not be shared with
12 any third-party, and used only to administer the settlement.

13 4. IMPLEMENTATION SCHEDULE

14 Accordingly, with good cause shown, the Court hereby approves and orders that the following
15 implementation schedule be adhered to:

16 Last day for Defendants to provide Claims 17 Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
18 Last day for Claims Administrator to complete 19 NCOA search, update Class Member mailing 20 information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants
21 Last day for Class Members to opt-out, submit 22 disputes, submit objections, and submit data 23 requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
24 Last day for Claims Administrator to provide 25 Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period

1 2 3 4 5	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 calendar days after the Final Approval Date
6 7	Last day for Defendants to fund settlement	Within 21 calendar days after the Final Approval Date
8 9 10 11	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 14 days after Defendants last day to fund the settlement
12 13 14	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
15 16 17	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
18 19	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of May 12, 2022, at 1:30 p.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any

1 purpose other than approving a settlement class. The parties will revert to their respective positions as if
2 no settlement had been reached at all.

3 **IT IS SO ORDERED.**

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5 Date: JAN 12 2022



Judge of the Superior Court

SHAMA H. MESIWALA