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FILED
Superior Court of California
County of Los Angeles

04/04/2023

David W. Slayton, Executive Officer / Clerk of Court

By: A. Rosas Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JOSE RAMIREZ, individually, and on behalf
of all others similarly situated,

Plaintiff,
v.

MARKWINS BEAUTY PRODUCTS, INC., a
California corporation; MARKWINS
BEAUTY BRANDS, INC., a California
corporation; PARTNERS PERSONNEL –
MANAGEMENT SERVICES, LLC, a limited
liability company; and DOES 1 through 10,
inclusive,
Defendants

Case No.: 21STCV31253

Assigned For All Purposes To The Honorable Stuart
M. Rice

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR AN ORDER
APPROVING SETTLEMENT OF CLAIMS
BROUGHT PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

Date: April 4, 2023
Time: 10:30 a.m.
Courtroom: Dept. 1
Judge: Hon. Stuart M. Rice

Action Filed: August 20, 2021
Trial Date: Not Set

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1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 Plaintiff JOSE RAMIREZ (“Plaintiff”) and Defendants Markwins Beauty Products, Inc.,
3 Markwins Beauty Brands, Inc. (together “Markwins”) and Partners Personnel – Management Services,
4 LLC (“Partners Personnel”) (Defendants shall be collectively referred to as “Defendants”) (Plaintiff and
5 Defendants are the “Parties”) have reached the terms of a settlement of this action alleging a claim for
6 relief pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*
7 (“PAGA”).

8 Pursuant to PAGA, Plaintiff, on behalf of the Parties, has filed a motion for approval of the
9 settlement of the claims asserted against Defendants in this action. Specifically, Plaintiff moves for an
10 order:

11 1. granting approval of the terms of the Agreement pursuant to the Labor Code Private
12 Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
13 settlement; the amount of distributions to the State and Aggrieved Employees; the amounts
14 allocated to attorneys’ fees and costs; and, the amount allocated to the settlement administrator;
15 and,

16 2. directing disbursement of the Gross Settlement Amount pursuant to the terms of the
17 Agreement.

18 The PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
19 RELEASE (referred to as the “Agreement,” or “Settlement,” and attached to the Declaration of Kane
20 Moon as Exhibit 1) is conditioned upon the Court’s approval. Capitalized terms in this Order have the
21 same meaning as in the Settlement unless indicated otherwise. A summary of the terms of the
22 Settlement is as follows:

- 23 (a) The Aggrieved Employees: The Aggrieved Employees (also known as the
24 “PAGA Members”) are: “All non-exempt employees of Partners Personnel who
25 were placed at Markwins within the State of California from January 25, 2021
26 through the date of approval of this settlement by the court.” It is estimated that
27 there are approximately **11,000** pay periods during the period from January 25,
28 2021 through September 25, 2022. (Agreement, ¶ 1.19, 4.1.)

- (b) No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 3.1.)
- (c) Gross Settlement Amount: Defendants agree to pay the maximum sum of **\$212,500.00** (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of Individual PAGA Payments, the LWDA PAGA Payment, Plaintiff’s Counsel’s attorneys’ fees and costs and the settlement administrator’s fees and costs. (Agreement, ¶ 1.10.)
- (d) Net Settlement Amount: At least **\$119,118.31** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$89,338.73** under the Agreement, and Aggrieved Employees will receive at least **\$29,779.58**. (Agreement, ¶ 1.15.)
- (e) Attorneys’ Fees: Plaintiff’s Counsel request an award of attorneys’ fees in the amount of **\$70,833.33**, which is one third of the GSA. (Agreement, ¶ 3.2.1.)
- (f) Litigation Costs: Plaintiff’s Counsel’s litigation costs are capped to a maximum amount of **\$20,000.00**. Those actual costs are **\$14,548.36** which include the future costs of motion filing, hearing attendance, and CaseAnywhere fees. Therefore, **\$14,548.36** is requested by Plaintiff for litigation costs. (Agreement, ¶¶ 3.2.1.)
- (g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator Phoenix Class Action Administration Solutions, which has agreed to perform Administrator duties for a flat fee not to exceed **\$8,000.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 3.2.2.)
- (h) General Release Payment: Upon approval of this PAGA settlement Plaintiff shall receive a general release payment as a consideration for a general release of his individual claims in accordance with the separate individual settlement agreement entered between the Parties. The General Release Payment is not included in the GSA (Agreement, ¶ 5.1.)

- (i) Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the Unclaimed Property Fund or like fund. (Agreement, ¶ 4.4.3.)
- (j) Release: In exchange for the above settlement consideration, Defendants shall be entitled to a release from the LWDA and each and every Aggrieved Employee, including Plaintiff.¹ (Agreement, ¶¶ 5.1-5.2.)
- (k) Notice to LWDA: The Declaration of Kane Moon confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Moon Decl., ¶ 42 and Exh. 4.)

After reviewing the Settlement and other related documents, and the filings submitted by Plaintiff, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and conditions set forth in the Agreement. The Court finds that the terms of the proposed settlement are reasonable. In granting approval of the settlement the Court has considered the factors identified in *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

2. The Court hereby identifies the Aggrieved Employees as:

All non-exempt employees of Partners Personnel who were placed at Markwins within the State of California from January 25, 2021 through the date of approval of this settlement by the court.

3. The Court hereby finds the Settlement was the product of informed, non-collusive negotiations conducted at arms' length by the Parties. In making these findings, the Court considered Defendants' potential liability, the benefit to the State of California, allocation of settlement proceeds among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties'

¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....").

1 respective positions rather than the result of a finding of liability at trial. The Court further finds that the
2 terms of the Settlement have no obvious deficiencies. The Court finds that the risks of further
3 prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of
4 the totality of the circumstances, or (2) that no penalties would be awarded for some or all of the alleged
5 violations.

6 4. The Court hereby approves Phoenix Class Action Administration Solutions to serve as
7 the Administrator. The Administrator will be paid pursuant to the Agreement's terms for such
8 distribution, in the requested amount of **\$8,000.00** out of the Gross Settlement Amount to effectuate the
9 administration of the Settlement.

10 5. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be
11 **\$212,500.00**, less administration costs, attorneys' fees, and costs awarded to Plaintiff's counsel. After
12 these amounts are deducted from the GSA, the amount remaining to distribute as penalties is
13 **\$119,118.31**. The LWDA shall receive 75% of the penalties allocated, which is **\$89,338.73**. Aggrieved
14 Employees shall receive 25% of the penalties allocated, which is **\$29,779.58**.

15 6. The Court hereby awards Plaintiff's Counsel attorneys' fees in the amount of **\$70,833.33**.
16 The Court finds that the attorneys' fees are reasonable compared to amounts routinely approved in
17 similar settlements and as guided by the California Supreme Court's decision concerning the awarding of
18 fees from monetary funds for class members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503
19 (2016). Counsel proceeded on a contingency basis despite the uncertainty of any fee award. Counsel
20 were necessarily precluded from pursuing other potential sources of fees because of work in connection
21 with this Action. The Court observed that this is not a class action. It is more akin to contingent
22 representation with an additional requirement of Court review due to the qui tam nature of a PAGA
23 claim. Attorneys' fees that are fifty percent of a common fund are typically considered the upper limit,
24 with thirty to forty percent commonly awarded in cases where the settlement is relatively small. *See Van*
25 *Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases
26 where 30-50 percent was awarded involved "smaller" settlement funds of under \$10 million). Based on
27 these considerations, including the lodestar cross-check, a fee award of one third of the total settlement
28 amount is reasonable.

7. The Court hereby awards Plaintiff's Counsel litigation costs in the total amount of **\$14,548.36.**

8. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on the provisions and timelines set forth in the Agreement.

Pursuant to the terms of the Settlement, the released persons and entities include Defendants (as defined above) and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates (referred to in the Settlement as the "Released Parties").

9. Upon entry of the Order approving this Settlement and the Judgment thereon, PAGA claims are released as follows:

Effective on the date when Defendants fully fund the entire Gross Settlement Amount, all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice ("Released Claims"). With the exception of Plaintiff who will provide a general release of all claims, this settlement shall not impact aggrieved employees' ability to assert claims other than the PAGA claims being released by this Agreement, i.e., the Released PAGA Claims.

10. The action is DISMISSED WITH PREJUDICE.

11. The Court will enter Final Judgment in accordance with this Order.

12. The Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination of all controversies relating thereto.

13. Plaintiff to file a Final Distribution Report by January 25, 2024. Non-Appearance Case Review Re: Distribution is scheduled for 02/01/2024 at 04:00 PM in Department 1 at Spring Street Courthouse.

IT IS SO ORDERED.

Dated: 04/04/2023



A handwritten signature in black ink, appearing to read "Stuart M. Rice".

Stuart M. Rice / Judge

Hon. Honorable Stuart M. Rice
LOS ANGELES COUNTY SUPERIOR COURT
JUDGE

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I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1055 West Seventh Street, Suite 1880, Los Angeles, California 90017. On February 24, 2023, I served the foregoing document described as:

X by placing ____ the original X a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Brandon McKelvey
Timothy B. Nelson
Douglas R. Leach
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*Attorneys for Defendant Partners
Personnel
Management Services, LLC*

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 24, 2023, at Los Angeles, California.

Signature