

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 05 2023

BY *V. Sanchez*
VICTORIA SANCHEZ, DEPUTY

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

Brandon M. Chang (SBN 316197)

brandon@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, JOHN KELLEY,
on behalf of himself and all others similarly situated
and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JOHN KELLEY, an individual and on behalf
of all others similarly situated and aggrieved,

Plaintiff,

v.

APPLUS TECHNOLOGIES, INC., a
Delaware corporation; APPLUS IDIADA
KARCO ENGINEERING, LLC, a California
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: CIVSB2204889

[Assigned to the Hon. Jessica Morgan in Dept.
S-26]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT, APPLICATION FOR
ATTORNEYS' FEES AND COSTS, AND
SERVICE AWARD**

1 This matter having come before the Court for a final fairness hearing pursuant to the Order
2 of this Court dated October 12, 2023, granting preliminary approval (“Preliminary Approval Order”)
3 of the class and representative action settlement upon the terms set forth in the Joint Stipulation re:
4 Class Action and Representative Action Settlement (“Settlement Agreement”), attached to the
5 declaration of Vedang J. Patel filed on August 16, 2023, submitted in support of Motion for
6 Preliminary Approval of the Class and Representative Action Settlement and Certifying Class for
7 Settlement Purposes; and due and adequate notice having been given to the Class Members as
8 required in the Preliminary Approval Order; and the Court having considered all papers filed and
9 proceedings had herein and otherwise being fully informed and good cause appearing therefore, it
10 is hereby **ORDERED, ADJUDGED AND DECREED THAT:**

11 1. The Motion for Final Approval of Class Action and Representative Action
12 Settlement; Service Award; and Reasonable Attorneys’ Fees and Costs is hereby granted in its
13 entirety.

14 2. All terms used herein shall have the same meaning as defined in the Settlement
15 Agreement.

16 3. This Court has jurisdiction over the subject matter of this litigation and over all
17 Parties to this litigation, including all Class Members.

18 4. For settlement purposes only, The Court certifies the following (2) settlement classes
19 for the purpose of settlement only:

20 a. “Settlement Class,” “Settlement Class Members” or “Class Members”: all persons
21 currently or formerly employed by Applus Idiada Karco Engineering, LLC, a
22 California limited liability company (“Applus” or “Defendant”) in California as
23 non-exempt hourly employees at any time during the period between March 8, 2018
24 through November 17, 2022 (“Class Period”).

25 b. “FCRA/ICRAA/CCRAA/BTB Class Members”: means all persons currently or
26 formerly employed by Defendant, either directly or through any subsidiary, staffing
27 agency, or professional employer organization as non-exempt, hourly-paid
28

employees from March 8, 2020 through November 17, 2022 (“FCRA/ICRAA/CCRAA/BTB Class Period”) in the State of California.

5. The parties released shall include Defendant, its affiliates, parents, subsidiaries, officers, directors, shareholders, employees and managing agents. (“Released Parties”).

6. “Plaintiff” refers to plaintiff John Kelley.

7. Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment and payment by Defendant to the Settlement Administrator of the full Gross Settlement Amount and Employer’s Taxes necessary to effectuate the Settlement, Plaintiff and all Participating Class Members release all claims asserted in the Operative Complaint Action, or any and all claims that could have been asserted based on the factual allegations in the Operative Complaint, as follows:

a. Class Released Claims: For the duration of the Class Period, the release includes, for applicable Participating Class Members all claims that were asserted or could have been asserted in the Operative Complaint, including: (1) all claims for failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims for failure to provide meal periods; (4) all claims for failure to provide rest periods; (5) all claims for waiting time penalties; (6) all claims for wage statement violations; (7) all claims for failure to indemnify for business expenses; and (8) all claims for unfair competition.

b. FCRA/ICRAA/CCRAA/BTB Released Claims: For the duration of the FCRA/ICRAA/CCRAA/BTB Class Period, the release includes, for applicable Participating Class Members, all claims that were asserted or could have been asserted in the Operative Complaint pursuant to the Fair Credit Reporting Act (15 U.S.C. § 1681, et seq.), the California Investigative Consumer Reporting Agencies Act (California Civil Code section 1786, et seq.), the Consumer Credit Reporting Agencies Act (California Civil Code section 1785.1, et seq.), and the “Ban the Box” Law (California Labor Code sections 432.7 and 432.8, and California Government Code section 12952).

1 c. PAGA Released Claims: For Aggrieved Employees, and, to the extent permitted by
2 law the State of California, the release includes, for the duration of the PAGA Period,
3 all claims for PAGA penalties asserted in the PAGA Notice or in the Operative
4 Complaint pursuant to claims under California Labor Code sections 96, 98.6, 200,
5 201, 201.3, 202, 203, 204, 210, 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232,
6 232.5, 246 (et seq.), 404, 432, 432.3, 432.5, 432.6, 432.7, 432.8, 510, 512, 558,
7 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1527,
8 2699 (et seq.), 2802, 2810.3, 2810.5, 3366, 3457, 6401, 6402, 6403, 6409.6, 6432,
9 8397.4, 12952; the applicable Wage Order(s); and California Business and
10 Professions Code sections 16600, 16700, 17200 (et seq.); among others.

11 8. Distribution of the Notice of Proposed Class Action Settlement and Date for Final
12 Approval Hearing ("Class Notice") directed to the Class Members as set forth in the Settlement
13 Agreement and the other matters set forth herein have been completed in conformity with the
14 Preliminary Approval Order, including individual notice to all Class Members who could be
15 identified through reasonable effort, and was the best notice practicable under the circumstances.
16 This Class Notice provided due and adequate notice of the proceedings and of the matters set forth
17 therein, including the proposed class settlement set forth in the Settlement Agreement, to all persons
18 entitled to such Class Notice, and the Class Notice fully satisfied the requirement of due process.

19 9. Zero (0) Class Members opted out of the Settlement and zero (0) Class Members
20 objected to the Settlement, thus all Class Members are Participating Class Members.

21 10. The Court further finds that the Settlement is fair, reasonable and adequate and that
22 Plaintiff has satisfied the standards and applicable requirements for final approval of class action
23 settlement under California law, including the provisions of Code of Civil Procedure section 382
24 and Federal Rules of Civil Procedure, Rule 23, approved for use by the California state courts in
25 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

26 11. This Court hereby approves the settlement set forth in the Settlement Agreement and
27 finds that the settlement is, in all respects, fair, adequate and reasonable and directs the parties to
28 effectuate the settlement according to its terms. The Court finds that the settlement has been reached

1 as a result of intensive, serious and non-collusive arm's length negotiations. The Court further finds
2 that the Parties have conducted extensive and costly investigation and research and counsel for the
3 parties are able to reasonably evaluate their respective positions. The Court also finds that
4 settlement at this time will avoid additional substantial costs, as well as avoid the delay and risks
5 that would be presented by the further prosecution of this Action. The Court has noted the
6 significant benefits to the Class Members under the settlement. The Court also finds that the classes
7 are properly certified as a class for settlement purposes only.

8 12. The Court approves Plaintiff as the Class Representative.

9 13. The Court approves David D. Bibiyan and Vedang Patel of Bibiyan Law Group, P.C
10 of Bibiyan Law Group, P.C., as Class Counsel.

11 14. The Court approves ILYM Group Inc. ("ILYM" or "Settlement Administrator") as
12 the Settlement Administrator.

13 15. The Court hereby awards Class Counsel attorneys' fees in the total amount of
14 \$78,232.08, which is one-third (1/3) of the Gross Settlement Amount and to be deducted therefrom.
15 In addition, the Court awards Class Counsel reimbursement of their costs of \$15,216.82 to be
16 deducted from the Gross Settlement Amount. Attorneys' fees and costs will be paid by the
17 Settlement Administrator from the Gross Settlement Amount as set forth in the Settlement
18 Agreement. In approving the payment of Attorneys' Fees, the Court finds that the Settlement
19 conferred a significant benefit on the Class and the necessity and financial burden of private
20 enforcement of California labor laws makes an attorneys' fee award to Class Counsel appropriate.

21 16. The court hereby approves an incentive award \$7,500.00 to Plaintiff, in consideration
22 for his time, effort, and risk incurred on behalf of the Settlement Class, and for providing a general
23 release and releasing unknown claims pursuant to Civil Code section 1542. The incentive award
24 will be paid to Plaintiff by the Settlement Administrator from the Gross Settlement Amount as set
25 forth in the Settlement Agreement.

26 17. The Court hereby approves the Settlement Administrator's cost in the amount of
27 \$5,500.00. The Settlement Administrator, ILYM Group Inc., shall be paid the cost of administration
28 of the settlement from the Gross Settlement Amount.

1 18. The Court hereby approves the PAGA penalties amount of \$20,000.00, of which
2 \$15,000.00 shall be paid to the LWDA and the remaining \$5,000.00 to be distributed to the "PAGA
3 Class Members," defined as Class Members working as hourly-paid, non-exempt employees during
4 the period from June 15, 2021 through November 17, 2022 ("PAGA Period") in the State of
5 California.

6 19. Except as expressly provided herein, the Parties each shall bear all of their own fees
7 and costs in connection with this matter.

8 20. Any funds from uncashed checks shall be transmitted to Legal Aid at Work, 180
9 Montgomery Street, Suite 600, San Francisco, California 94104, the cy pres recipient, for use in San
10 Bernardino County.

11 21. Defendant shall make payment of \$234,696.26, the Gross Settlement Amount, and
12 Employer Taxes, to the Settlement Administrator. The Gross Settlement Amount will be paid within
13 thirty (30) calendar days of the Final Approval Date.

14 22. Within seven (7) calendar days after payment of the full Gross Settlement Amount
15 and Employer Taxes by Defendant or as soon thereafter as practicable, the Settlement Administrator
16 shall distribute Payments from the QSA for: (1) the Incentive Award to Plaintiff as specified in this
17 Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid to Class
18 Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement Administrator
19 Costs, as specified in this Agreement and approved by the Court; (4) the LWDA Payment, as
20 specified in this Agreement and approved by the Court; and (5) Individual PAGA Payments as
21 specified in this Agreement and approved by the Court. The balance remaining shall constitute the
22 funds from which Individual Settlement Payments and FCRA/ICRAA/CCRAA/BTB Settlement
23 Payments shall be made to Participating Class Members, less applicable taxes and withholdings. All
24 interests accrued shall be for the benefit of the Class Members and distributed on a pro rata basis to
25 Participating Class Members based on the amount of their Individual Settlement Payment,
26 FCRA/ICRAA/CCRAA/BTB Settlement Payment, and Individual PAGA Payment compared to the
27 total amount to be distributed to Participating Class Members and Aggrieved Employees.

28 ///

1 23. The Court finds that the class settlement on the terms set forth in the Settlement
2 Agreement was made in good faith, and constitutes a fair, reasonable and adequate compromise of
3 the released claims against Defendant.

4 24. An Order to Show Cause Hearing Re: Final Administration of the Class Action
5 Settlement is hereby scheduled for 10-21-24, at 8:30 a.m., in Department S-26 of the
6 above entitled Court. At least five (5) calendar days prior to said OSC hearing, the Parties shall file
7 a declaration confirming that the claims have been paid and that administration of all of the terms
8 and conditions of the class action settlement have been completed. Should the Court find that said
9 declaration has sufficiently evidenced full and complete administration of the class action
10 settlement, said OSC hearing will go off-calendar.

11 25. Without affecting the finality of the Judgment in any way, this Court hereby retains
12 continuing jurisdiction over the interpretation, implementation and enforcement of the Settlement
13 and all orders and judgments entered in connection therewith.

14 ///

15 **IT IS SO ORDERED.**

16 Dated: 2/5, 2024



Judge of the Superior Court