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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**
10 **(UNLIMITED JURISDICTION)**

11 MARGARITA PEREZ and MARIA DE LA
12 LUNA HUERTA on behalf of themselves and all
13 others similarly situated, and the general public,
14 and as “Aggrieved Employees” on behalf of
15 other “Aggrieved Employees” and the State of
California under the Labor Code Private
Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18 WORKFORCE PERSONNEL, INC., California
19 Corporation; DIAMOND WIPES
20 INTERNATIONAL, INC., California
Corporation; and DOES 1–50, inclusive,

21 *Defendant(s).*
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Case No. CIVSB2220822

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT WITH
DEFENDANT WORKFORCE
PERSONNEL**

Action filed: September 19, 2022
Dept: 17, The Honorable Joseph
T. Ortiz

25 The Motion of Plaintiff Maria De La Luna Huerta (hereafter referred to as “Plaintiff”) for
26 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
27 The Honorable Joseph T. Ortiz presiding. The Court having considered the Motion, the Class

1 Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement
2 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

3 1. The Court grants preliminary approval of the Settlement and the Settlement Class
4 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
5 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
6 has determined only that there is sufficient evidence to suggest that the proposed settlement might
7 be fair, adequate, and reasonable, and that any final determination of those issues will be made at
8 the final hearing. The Court will make a determination at the hearing on the motion for final
9 approval of class action settlement (the “Final Approval Hearing”) as to whether the Settlement
10 is fair, adequate and reasonable to the Settlement Class.
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12 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
13 all individuals Defendant Workforce Personnel, Inc. (“Defendant”) employed at Diamond Wipes
14 International, Inc.’s Chino location as an hourly, non-exempt employee during the Class Period
15 (collectively “Class Members”). The “Class Period” shall mean the period of time from
16 September 19, 2018, through the date of preliminary approval of this Settlement.
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18 3. Based on its records, Defendant estimates that, as of the date of the Settlement
19 Agreement, (1) there are 244 Class Members and 19,396.00 Total Work Weeks during the Class
20 period. If the Work Weeks and/or Class Members as of the date the Court approves the settlement
21 exceeds the referenced 19,396.00 Work Weeks and/or 244 Class Members by more than 10.00%,
22 the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class
23 Representative Service Payment, and the LWDA payment, will increase proportionally according
24 to the number of additional Work Weeks or Class Members, whichever results in a higher increase
25 in the Gross Settlement Amount.
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4. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

5. This action is provisionally certified pursuant to section 382 of the California Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for purposes of settlement only with respect to the proposed Settlement Class.

6. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under the Settlement Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

7. No later than three (3) business days after receipt of the Class Data, the

1 Administrator shall notify Class Counsel that the list has been received and state the number of
2 Class Members, Aggrieved Employees, Work Weeks, and PAGA Pay Periods in the Class Data.

3 8. Using best efforts to perform as soon as possible, and in no event later than 14
4 days after receiving the Class Data, the Administrator will send to all Class Members identified
5 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
6 with Spanish translation, substantially in the forms attached to the Settlement Agreement as
7 **Exhibits A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar
8 amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class
9 Member, and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate
10 these amounts. Before mailing Notice Packets, the Administrator shall update Class Member
11 addresses using the National Change of Address database.
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13 9. Not later than three (3) business days after the Administrator’s receipt of any
14 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
15 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
16 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
17 the Notice Packet to the most current address obtained. The Administrator has no obligation to
18 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
19 returned by the USPS a second time.
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21 10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law
22 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s
23 contact information is Gordon C. Strange, Esq., Law Offices of Gordon C. Strange, 15333 Culver
24 Drive, No. 340-223, Irvine, CA 92604.
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26 11. The deadlines for Class Members’ written objections, Challenges to Work Weeks
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1 and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an additional
2 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
3 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
4 with the re-mailed Notice Packet.

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6 12. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
7 discovers any persons who believe they should have been included in the Class Data and should
8 have received Notice Packet, the Parties will expeditiously meet and confer in person or by
9 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
10 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
11 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
12 requiring them to exercise options under the Settlement Agreement not later than 14 days after
13 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.

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15 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
16 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
17 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus
18 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
19 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
20 the Class Member's election to be excluded from the Settlement and includes the Class Member's
21 name, address and email address or telephone number. To be valid, a Request for Exclusion must
22 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
23 in Settlement form, attached as Exhibit B to the Settlement Agreement, may be used for this
24 purpose but is not required.

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26 14. The Administrator may not reject a Request for Exclusion as invalid because it
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1 fails to contain all the information specified in the Class Notice. The Administrator shall accept
2 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
3 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
4 determination shall be final and not appealable or otherwise susceptible to challenge. If the
5 Administrator has reason to question the authenticity of a Request for Exclusion, the
6 Administrator may demand additional proof of the Class Member's identity. The Administrator's
7 determination of authenticity shall be final and not appealable or otherwise susceptible to
8 challenge.
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10 15. Every Class Member who does not submit a timely and valid Request for Exclusion
11 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
12 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
13 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the
14 Participating Class Member actually receives the Class Notice or objects to the Settlement.
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16 16. Every Class Member who submits a valid and timely Request for Exclusion is a
17 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
18 right to object to the class action components of the Settlement. Plaintiff releases all claims for
19 civil penalties that could have been sought by the Labor Commissioner for the violations
20 identified in Plaintiffs pre-filing letter to the LWDA; Plaintiff does not release the claim for wages
21 or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class
22 Member.
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24 17. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days
25 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
26 whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and/or PAGA
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1 Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a
2 dispute. A Work Week Dispute form, attached as Exhibit C to the Settlement Agreement, may
3 be used for this purpose but is not required. The Class Member may challenge the allocation by
4 communicating with the Administrator via fax, email or mail. The Administrator must encourage
5 the challenging Class Member to submit supporting documentation. In the absence of any
6 contrary documentation, the Administrator is entitled to presume that the Work Weeks contained
7 in the Class Notice are correct so long as they are consistent with the Class Data. The
8 Administrator's determination of each Class Member's allocation of Work Weeks and/or PAGA
9 Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The
10 Administrator shall promptly provide copies of all challenges to calculation of Work Weeks
11 and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's
12 determination the challenges.

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15 18. Objections to Settlement. Only Participating Class Members may object to the
16 class action components of the Settlement and/or this Agreement, including contesting the
17 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
18 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

19 19. Participating Class Members may send written objections to the Administrator, by
20 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
21 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
22 Participating Class Member who elects to send a written objection to the Administrator must do
23 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
24 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
25 to the Settlement Agreement as Exhibit D may be used for this purpose but is not required.
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20. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

21. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under the Settlement Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

22. The Court approves, as to form and content, the Class Notice in substantially the form attached as Exhibit A to the Settlement Agreement, the Election Not to Participate in Settlement form in substantially the form attached as Exhibit B to the Settlement Agreement, the Work Weeks Dispute form in substantially the form attached as Exhibit C to the Settlement Agreement, and the Objection form in substantially the form attached as Exhibit D to the Settlement Agreement.

23. The Court approves, for settlement purposes only, David Glenn Spivak of The Spivak Law Firm and Louis M. Benowitz of Benowitz Law Corporation as Class Counsel.

24. The Court approves, for settlement purposes only, Maria De La Luna Huerta as the Class Representative.

25. The Court approves Apex Class Action as the Administrator.

26. The Court preliminarily approves Class Counsel's request for attorneys' fees and costs subject to final review by the Court.

27. The Court preliminarily approves the estimated Administrator costs payable to the Administrator subject to final review by the Court.

28. The Court preliminarily approves Plaintiff's Class Representative Service Payment subject to final review by the Court.

29. A Final Approval Hearing shall be held on ____ at _____.m. in Department S17 of the Superior Court for the State of California, County of San Bernardino, located at the San Bernardino District – Civil Division, 247 West Third Street, Dept. S17, San Bernardino, CA 92415-0210 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys’ fees and costs and the Class Representative Service Payment to the Class Representative. The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys’ fees and litigation costs shall be served and filed with this Court on or before _____. Plaintiff’s counsel must give notice to any objecting party of any continuance of the hearing of the motion for final approval.

30. If for any reason the Court does not execute and file a Final Approval Order and judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the proposed Settlement that is the subject of this order, and all evidence and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement.

31. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to members of the Class. The Plaintiff shall give

1 prompt notice of any continuance to Settlement Class Members who object to the Settlement.

2 **IT IS SO ORDERED.**

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5 **DATE**

THE HONORABLE JOSEPH T. ORTIZ
SUPERIOR COURT JUDGE