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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PHILLIP TING, an individual; on behalf of
himself and all others similarly situated and the
general public,

Plaintiffs,

vs.

INPRODUCTION, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 22STCV34682

[Assigned for All Purposes to:
The Hon. Elihu M. Berle, Dept. 6]

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

Date: July 26, 2024

Time: 9:00 a.m.

Dept: 6

1 **I. INTRODUCTION**

2 On May 14, 2024, this Court held a hearing on Plaintiff’s Motion for Preliminary
3 Approval of Class Action Settlement. At the hearing, the Court had various comments regarding
4 the parties Settlement. This supplemental brief, along with the Supplemental Declarations of
5 Aaron Bartz, Walter Haines, and Phillip Ting, the Amendment to the Settlement Agreement, and
6 revised Class Notice, addresses the Court’s comments and concerns, in the order in which they
7 were raised at the May 14, 2024 hearing.

8 **II. CONDITIONAL CERTIFICATION OF THE CLASS**

9 **A. Class Certification Is Appropriate in this Case**

10 The proposed settlement seeks conditional certification of the Class. The Class is
11 defined as follows:

12 All current and former non-exempt employees who have performed work in the state of
13 California for Defendant at any time during the period beginning from October 31, 2018
14 through September 9, 2023.¹

15 The certification of the Class is essential to the settlement. California public policy
16 favors the use of the class action device. Richmond v. Dart Industries (1981) 29 Cal.3d 462,
17 469. CCP §382 authorizes class action suits in California when “the question is one of the
18 common or general interest, of many persons, or when the parties are numerous, and it is
19 impracticable to bring them all before the courts, one or more may sue or defend for the benefit
20 of all.” To obtain certification, a party must establish the existence of both an ascertainable class
21 and a well-defined community of interest among class members. Linder v. Thrifty Oil Co.
22 (2000) 23 Cal. 4th 429, 435. The “community of interest” requirement depends on three factors:

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26 ¹ The parties amended the Settlement Agreement such that the class period now
27 ends on September 9, 2023, and the escalator provision is no longer necessary. There are 3,206
28 workweeks during the period of October 31, 2018 and September 9, 2023. See Supplemental
Declaration of Aaron A. Bartz (“Supp. Bartz Decl.”), ¶¶ 3, 8.a.)

(1) whether common issues of law or fact predominate; (2) whether the class representatives have claims that are typical of the class; and (3) whether the class representatives will adequately represent the class. Richmond, *supra*, 29 Cal.3d at 470. Because the policy of favoring use of class actions is so strong, any doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to later modification. Richmond, *supra*, 29 Cal.3d at 473-75. Except in extraordinary circumstances not present here, the trial court does not weigh the merits of the claims in ruling on a motion for class certification. Linder, *supra*, 23 Cal.4th at 443. The seminal California Supreme Court decision of Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 326 has reemphasized the procedural nature of the certification motion.

B. The Proposed Class Is Ascertainable and Numerous

For a class to exist, the class description must be sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member of the proposed Class by reference to objective criteria. The class definition, as set forth in the parties Settlement Agreement and reiterated above, is sufficiently specific to enable potential Class Members, and the court, to readily determine the parameters of the class. (*See Clothesrigger, Inc. V. GTE Corp.* (1987) 191 Cal.App.3d 605, 617.)

Here, there are approximately 285 Class Members, all of whom have been identified by Defendant's employment and payroll records (*See* Supp. Bartz Decl., ¶ 3). This is sufficient to satisfy numerosity requirements. As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21. *See Ansari v. New York Univ.*, 179 F.R.D. 112, 114 (S.D.N.Y. 1998) (citing a thorough review of cases in 5 MOORE'S FEDERAL PRACTICE §23.22[3][a] (Matthew Bender 3d ed. 1999)). The Ninth Circuit has not offered a precise numerical standard; other District Courts have, however, enacted presumptions that the numerosity requirement is satisfied by a showing of 25-30 members. *See, e.g., In re Kirschner Med. Corp. Sec. Litig.*, 139 F.R.D. 74, 78 (D. Md. 1991); *EEOC v. Printing Indus., Inc.*, 92 F.R.D. 51, 53 (D.D.C. 1981), *Slaven v. BP America*,

1 Inc., 190 F.R.D. 649, 654 (C.D. Cal. 2000).

2 **C. Common Issues of Law or Fact Predominate**

3 Common questions of law and fact predominate here for purposes of settlement, as the
4 main issues involve the legality of Defendant's policies regarding the failure to pay all wages
5 due to its failure to pay all hours worked off-the-clock, failure to provide all legally compliant
6 off duty and uninterrupted meal periods, the failure to provide all legally compliant off duty and
7 uninterrupted paid rest periods, failure to timely furnish accurate itemized wage statements,
8 failure to timely pay all former employees all wages owed, and failure to reimburse employees
9 for their reasonable and necessary expenses. (See Supp. Bartz Decl., ¶ 5). Whether each
10 member of the Class might be required to ultimately justify an individual claim does not
11 preclude maintenance of a class action (see, e.g. Collins v. Rocha (1972) 7 Cal.3d 232, 238).
12 Plaintiff contends that these are all pay policy questions that are uniform and can be proven by
13 common objective evidence. The evidence to support these claims consists of pay policies,
14 payroll records, time records and pay stubs given to all Class Members. (See Supp. Bartz Decl.,
15 ¶ 6). In assessing whether common issues predominate over individual issues, it is not necessary
16 that the Class Members' claims or their circumstances be identical. L.A. Fire & Police Protective
17 League (1972) 23 Cal.App.3d 67, 74 (in an overtime action, the fact that there were 19 different
18 subgroups of employees did not preclude finding that common issues predominated.) California
19 law specifically authorizes class actions when a defendant's corporate policies result in injury to
20 a group of plaintiffs. In Stephens v. Montgomery Ward & Co., Inc. (1987) 193 Cal.App.3d 411,
21 421, the court held that testimony from the class representative, coupled with proof of company-
22 wide policies and practices, was sufficient to prove that common issues affecting the class of
23 employees as a whole predominated over individual issues. See Sav-On, *supra*, 34 Cal.4th 319.

24 **D. Plaintiff's Claims Are Typical of the Class Claims**

25 Typicality simply means that the representative's claims be similar to those of Class
26 Members. The interests of the class representative need not be identical to those of other Class
27 Members; the class representative must simply be similarly situated. B.W.I. Custom Kitchen v.

Owens-Illinois, Inc. (1987) 191 Cal.App.3d 1341, 1347; Classen v. Weller (1983) 145 Cal.App.3d 27, 46. Here, the class representative, Phillip Ting, worked for Defendant in California as an hourly, non-exempt employee who worked during the Class Period and worked pursuant to Defendant's uniform pay, meal, and rest policies applicable to all hourly employees working within California (*See* Supp. Bartz Decl., ¶ 7; Supplemental Declaration of Phillip Ting ("Supp. Ting Decl."), ¶ 3).

E. Adequacy of Representation

Adequacy of representation depends on whether Plaintiff's class representative and Plaintiff's attorneys are qualified to conduct the proposed litigation and whether the representative Plaintiff's interests are antagonistic to those of the Class. In this case, the representative Plaintiff has the same injuries and damages similar to those of the Class he seeks to represent, he has agreed to act as a class representative and in the best interests of the class, and Plaintiff has no claims that are antagonistic to the Class. (*See* Supp. Ting Decl., ¶¶ 3-5). Plaintiff's counsel are also very experienced and qualified, and have been approved to act as class counsel in numerous class and representative actions. (*See* Supp. Bartz Decl., ¶¶ 10-12; Supplemental Declaration of Walter Haines ("Supp. Haines Decl."), ¶¶ 3-4).

III. THE PARTIES HAVE REVISED THE SETTLEMENT AGREEMENT TO ADDRESS THE COURT'S CONCERNS

At the prior hearing on May 14, 2024, the Court raised several issues with respect to the parties' Settlement Agreement ("Agreement"). Those issues have been addressed as follows:

- In Section 1.5 of the Agreement, the parties have set an end date to the Class Period, so that it is now September 9, 2023.² As a result of this change, there is no longer an

² The PAGA Period dates are unchanged in the Agreement, and are between October 13, 2021 and December 16, 2023. This is because the PAGA Period is for a much narrower scope of time, and did not affect the escalator clause. There are approximately 151 PAGA aggrieved employees and 1153 PAGA pay periods. ("Supp. Bartz Decl."), ¶ 4.)

1 escalator clause that is necessary, because the number of workweeks, i.e. 3,206, is less than the
2 trigger for the escalator clause in Section 9 of the Agreement. (Supp. Bartz Decl., ¶ 8.a.)

3 • In Section 3.1 of the Agreement, the parties have deleted the first clause “Except
4 as otherwise provided by Paragraph 9 below,” because paragraph 9 (the escalator provision) was
5 stricken from the Agreement, because it is no longer necessary based on the earlier class period
6 end date. Moreover, the reference to paragraph 4.2 in that section has been changed to paragraph
7 4.3, which is the correct paragraph obligating Defendant to fund the settlement. (Supp. Bartz
8 Decl., ¶ 8.b.)

9 • Section 6.2.2, which sets forth the class members’ release, has also been
10 amended, to reflect that it is not releasing PAGA claims. Instead, the sole release for PAGA
11 claims is set forth in section 6.3 of the Agreement. (Supp. Bartz Decl., ¶ 8.c.)

12 • Section 9 of the Agreement has been deleted in its entirety. As set forth above,
13 the escalator provision is unnecessary now that the class period end date is September 9, 2023,
14 which caps the number of workweeks at 3,206. (Supp. Bartz Decl., ¶ 8.d.)

15 • Section 10 of the Agreement has been amended such that the language permitting
16 Defendant to decrease the Gross Settlement Amount depending on the number of exclusions has
17 now been deleted. (Supp. Bartz Decl., ¶ 8.e.)

18 **IV. THE CLASS NOTICE HAS BEEN REVISED**

19 In accordance with the changes to the Settlement Agreement, the Class Notice has been
20 revised to reflect the correct Class Period dates, the revised release language, and the correct
21 Department Number 6 for the hearing on the final approval of the settlement. (Supp. Bartz
22 Decl., ¶ 9.a-c.)

23 **V. CLASS COUNSEL AND PLAINTIFF HAVE SUBMITTED SUPPLEMENTAL** 24 **DECLARATIONS TO SUPPORT THEIR ADEQUACY**

25 In accordance with the Court’s comments, class counsel submit supplemental
26 declarations testifying to their adequacy to represent the class, including class counsel’s
27 experience and a listing of prior cases in which class counsel has been approved to act as lead or
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1 co-counsel, and the Plaintiff class representative provides evidence that he has agreed to act as
2 the class representative and understands his responsibilities. (Supp. Bartz Decl., ¶¶ 10-12; Supp.
3 Haines Decl., ¶ 4; Supp. Ting Decl., ¶ 5.)

4 **VI. CONCLUSION**

5 Based on the foregoing, Plaintiff respectfully requests that this Court preliminarily
6 approve the Settlement, approve the Class Notice, and set the date and time for the Final
7 Approval Hearing.

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9 Dated: June 14, 2024

BARTZ LAW GROUP, APC

10 //Aaron Bartz//

11 Aaron A. Bartz

12 Attorneys for Plaintiff PHILLIP TING and
13 all others similarly situated
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