

Electronically Received 07/30/2024 11:16 AM

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

FILED
Superior Court of California
County of Sacramento
08/30/2024
D. Johnson-Mellado, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

DAMIEN HENDRICKS, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

BGDS LLC, a California limited liability
company; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 34-2022-00328328-CU-OE-GDS

Assigned for All Purposes to:
Honorable Jill Talley
Department 23

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: August 30, 2024
Hearing Time: 9:00 a.m.
Hearing Place: Department 23

Complaint Filed: October 12, 2022
FAC Filed: November 29, 2023
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Damien Hendricks’
2 (“Plaintiff”) Motion for Final Approval of Class Action Settlement, and considering the papers
3 submitted in support of the motion, including the Class Action and PAGA Settlement Agreement
4 (“Settlement Agreement,” “Settlement,” or “Agreement”), hereby **FINDS AND ORDERS:**

5 Plaintiff and Defendant BGDS LLC (“Defendant”) entered the Settlement Agreement on
6 or about January 9, 2024 to settle this lawsuit.

7 The Court entered an order dated May 7, 2024 preliminarily approving the settlement of
8 this lawsuit (“Preliminary Approval Order”), consistent with the Code of Civil Procedure section
9 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members, providing
10 Class Members with an opportunity to object to the Settlement or exclude themselves from the
11 Class, and scheduling a Final Approval Hearing.

12 The Court held a Final Approval Hearing on August 30, 2024 to determine whether to
13 give final approval to the Settlement of this lawsuit.

14 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
15 (“Order and Judgment”) incorporates the Settlement Agreement. Unless otherwise provided
16 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
17 in the Settlement Agreement.

18 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
19 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
20 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
21 including jurisdiction to approve the Settlement and grants final certification of the Class.

22 3. Final Class Certification. The Court finds the Class satisfies all applicable
23 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
24 process. The Court certifies the Class consisting of all current and former hourly-paid, non-
25 exempt employees of Defendant within the State of California at any time during the period of
26 May 15, 2019, through December 1, 2023 (“Class,” “Class Members,” and “Class Period”).
27 There are four hundred fifty-two (452) Class Members who did not submit valid and timely
28 Requests for Exclusion from the Settlement (“Participating Class Members”).

1 4. Adequacy of Representation. Class Counsel fully and adequately represented the
2 Class for purposes of entering and implementing the Settlement and satisfied the requirements of
3 Code of Civil Procedure section 382.

4 5. Class Notice. The Court finds the Court Approved Notice of Class Action
5 Settlement and Hearing Date for Final Court Approval (“Class Notice”) and its distribution to
6 Class Members were implemented pursuant to the Settlement and this Court’s Preliminary
7 Approval Order. The Court also finds the Class Notice:

- 8 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
9 pendency of this lawsuit; (ii) material terms and provisions of the
10 Settlement Agreement and their rights; (iii) their right to object to any
11 aspect of the Settlement Agreement; (iv) their right to exclude themselves
12 from the Settlement Agreement; (v) their right to receive settlement
13 payments; (vi) their right to appear at the Final Approval Hearing; and
14 (vii) binding effect of the orders and judgment in this lawsuit on all
15 Participating Class Members;
- 16 b. constitutes notice that fully satisfied the requirements of Code of Civil
17 Procedure section 382, California Rule of Court 3.769, and due process;
- 18 c. constitutes the best practicable notice to Class Members under the
19 circumstances of this lawsuit; and
- 20 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

21 6. Final Settlement Approval. The terms and provisions of the Settlement
22 Agreement have been entered into good faith and are the product of arm’s-length negotiations by
23 experienced counsel who have done a meaningful investigation of the claims. The Settlement
24 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
25 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the
26 Settlement Agreement according to its terms and provisions.

27 ///

28 ///

1 7. Binding Effect. The terms and provisions of the Settlement Agreement and this
2 Order and Judgment are binding on Plaintiff, Participating Class Members, Aggrieved
3 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
4 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
5 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
6 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
7 that were or could have been raised in this lawsuit and are encompassed by the Released Class
8 Claims and Released Private Attorneys General Act of 2004 (“PAGA”) Claims. The Settlement
9 Agreement will have no binding effect upon, and provide no res judicata preclusion to, those
10 Class Members who have submitted timely requests for exclusion.

11 8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
12 any action to enforce the terms and provisions of the Settlement Agreement.

13 9. Release by Participating Class Members. Effective on the date when Defendant
14 fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the
15 Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of
16 themselves and their former and present representatives, agents, attorneys, heirs, administrators,
17 successors, and assigns, release the Released Parties from the Released Class Claims.

18 a. Release by Aggrieved Employees. Effective on the date when Defendant
19 fully funds the entire Gross Settlement Amount and funds all employer
20 payroll taxes owed on the Wage Portion of the Individual Class Payments,
21 all Participating and Non-Participating Class Members, who are
22 Aggrieved Employees, are deemed to release, on behalf of themselves and
23 their former and present representatives, agents, attorneys, heirs,
24 administrators, successors, and assigns, the Released Parties from the
25 Released PAGA Claims.

26 ///

27 ///

28 ///

1 b. Plaintiff's Release. Effective on the date when Defendant fully funds the
2 entire Gross Settlement Amount and funds all employer payroll taxes
3 owed on the Wage Portion of the Individual Class Payments, Plaintiff and
4 his former and present spouses, representatives, agents, attorneys, heirs,
5 administrators, successors, and assigns generally release and discharge
6 Released Parties from the Plaintiff's Release. Furthermore, Plaintiff
7 expressly waives and relinquishes the provisions, rights, and benefits, if
8 any, of section 1542 of the Civil Code.

9 c. Released Parties. The Released Parties include Defendant and each and all
10 its officers, agents, directors, supervisors, employees, representatives,
11 insurers and their successors and assigns, subsidiaries, affiliated entities,
12 and all persons acting by, through, under, or in concert with any of them.

13 10. Class Representative Service Payment. The Court finds the Class Representative
14 Service Payment of \$10,000, to be paid by Defendant to Plaintiff, out of the Gross Settlement
15 Amount, to be reasonable and appropriate. The Class Representative Service Payment is to be
16 paid pursuant to the terms and provisions set forth in the Agreement.

17 a. The rationale for making enhancement payments is class representatives
18 should be compensated for the expense and risk they incurred in
19 conferring a benefit on the Class. Criteria courts consider include: (i) risk
20 to the class representatives in commencing suit; (ii) notoriety and personal
21 difficulties; (iii) amount of time and effort spent by the class
22 representatives; (iv) duration of the litigation; and (v) personal benefit (or
23 lack thereof) enjoyed by class representatives.

24 b. The Court reviewed Plaintiff's declaration outlining his involvement.
25 Given the risks inherent in the services as the class representative, duration
26 of the case and time involved, and benefits created for the Class, the Court
27 approves the payment of the Class Representative Service Payment of
28 \$10,000 to Plaintiff.

11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment.

The Court finds the Class Counsel Fees Payment of \$122,500, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. The Court also finds the Class Counsel Litigation Expenses Payment as reimbursement for actual litigation costs incurred of \$9,740.77, to be paid by Defendant to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and provisions set forth in the Settlement. Defendant shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Class Members. Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiff or Class Members in connection with or related in any manner to this lawsuit, Settlement, settlement administration, Released Class Claims, and Released PAGA Claims.

a. The Court has an independent right and responsibility to review the Class Counsel Fees Payment and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The Class Counsel Fees Payment of \$122,500 is thirty-five percent (35%) of the common fund created for the benefit of the Class and is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk undertaken, difficult nature of this litigation, skills required, percentage fees award in previous and other cases, and contingent fees charged in the marketplace, the Court finds the Class Counsel Fees Payment is consistent with the marketplace, is reasonable, and is approved.

b. The Court reviewed the declaration of Douglas Han regarding the costs expended in prosecuting this case. Under the terms of the Settlement, Class Counsel may seek reimbursement of up to \$20,000 in litigation costs. The Court finds Class Counsel expended \$9,740.77 in litigation

costs, and such costs were reasonable. The Court approves the payment of the Class Counsel Litigation Expenses Payment of \$9,740.77 from the common fund for the reimbursement of Class Counsel's litigation costs.

12. Administration Expenses Payment. The Court finds Administration Expenses Payment of \$9,859.92, to be paid by Defendant to the Administrator out of the Gross Settlement Amount, to be reasonable and appropriate. The Administration Expenses Payment are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

a. The Court reviewed the declaration of Makenna Snow from ILYM Group, Inc., the Administrator. The Court finds notice was provided to the Class pursuant to the Preliminary Approval Order, constitutes the best practicable notice to the Class, and satisfied due process. Thus, the Court approves the payment of the Administration Expenses Payment of \$9,859.92 for the Administrator's services in administering the Settlement.

13. PAGA Penalties. The Court finds the PAGA Penalties of \$25,000, seventy-five percent (75%) of which (\$18,750) will be paid to the LWDA out of the Gross Settlement Amount and twenty-five percent (25%) of which (\$6,250) will be distributed to Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Penalties is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

14. Funding the Gross Settlement Amount. Should Defendant be able to fund the Gross Settlement Amount in one (1) lump-sum payment, Defendant shall fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than the Effective Date. Should Defendant require two (2) installment payments to fund the Gross Settlement Amount, Defendant shall transmit fifty percent (50%) of the Gross Settlement Amount to the Administrator no later than the Effective and the remaining fifty percent (50%) of the Gross Settlement Amount (and employer's share of payroll taxes) three (3) months thereafter. In either case, Defendant will not be required to fund the Gross Settlement Amount earlier than April 1, 2024. Within fourteen (14) calendar days after Defendant fully funds the Gross Settlement Amount, the Administrator will mail checks to the appropriate persons and entities.

1 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
2 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the
3 Settlement was the product of arm's-length negotiations following extensive litigation,
4 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
5 Jason Marsilli, an experienced and well-respected mediator.

6 a. The fairness of the Settlement is demonstrated by there being no
7 objections to and no requests for exclusion from the Settlement.

8 b. The fairness of the Settlement is further illustrated by the gross *average*
9 Individual Class Payment being approximately \$382.52, and the gross
10 *highest* Individual Class Payment being about \$3,208.13.

11 16. Uncashed Checks. Participating Class Members and Aggrieved Employees must
12 cash or deposit their settlement checks within one hundred eighty (180) calendar days after the
13 checks are mailed by the Administrator to them. Uncashed settlement checks will be canceled
14 and transmitted to the California Controller's Unclaimed Property Fund.

15 17. Modification of Settlement Agreement. The Participating Class Members are
16 hereby authorized to agree to and adopt amendments to or modifications of the Settlement
17 Agreement by an express written instrument signed by all Parties or their representatives and
18 approved by the Court. Such amendments or modifications shall be consistent with this Order
19 and Judgment and cannot limit the rights of Participating Class Members under the Settlement.

20 18. Final Accounting and Compliance. The Court sets a compliance hearing for July
21 25, 2025 in Department 23. Within five ⁽¹⁵⁾~~(5)~~ court days before this hearing, Plaintiff shall file a
22 compliance status report. Pursuant to Code of Civil Procedure section 384, the compliance status
23 report shall specify the total amount paid to Participating Class Members and the residual of the
24 unclaimed settlement funds that will be paid to the entity identified as the recipient of such funds
25 in the Settlement Agreement.

26 ///

27 ///

28 ///

1 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
2 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
3 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
4 and for any other necessary purpose, including, without limitation:

- 5 a. enforcing the terms and provisions of the Settlement and resolving any
6 disputes, claims, or causes of action in this lawsuit that, in whole or in
7 part, are related to or arise out of the Settlement or this Order and
8 Judgment;
- 9 b. entering such additional orders as may be necessary or appropriate to
10 protect or effectuate this Order and Judgment approving the Settlement,
11 and permanently enjoining Plaintiff from initiating or pursuing related
12 proceedings, or to ensure the fair and orderly administration of the
13 Settlement; and
- 14 c. entering any other necessary or appropriate orders to protect and effectuate
15 this Court's retention of continuing jurisdiction.

16 The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment,
17 Class Counsel Litigation Expenses Payment, and Class Representative Service Payment is
18 GRANTED. The Administrator is directed to carry out the terms of the Agreement forthwith.

19 ///

20 ///

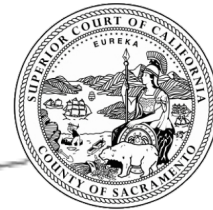
21 ///

1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

8
9 **IT IS SO ORDERED.**

10
11 DATED: 08/30/2024

Jill Talley



12 HONORABLE JILL TALLEY
13 SUPERIOR COURT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com.

On September 3, 2024, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Hendricks v. BGDS LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-989632-23**
Court Case No.: 34-2022-00328328-CU-OE-GDS
Sacramento County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[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 September 3, 2024, at Pasadena, California.



Mariah Anderson