

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
Nakagaki v. Proven Staffing Consultants, LLC
Case No. 37-2022-00026848-CU-OE-CTL

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

A California court authorized this notice. This is not a solicitation from a lawyer.

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class and Private Attorneys General Act (“PAGA”) representative action (“the Action”) filed in the San Diego County Superior Court has been reached by Proven Staffing Consultants, LLC (“Proven” or “Defendant”) and Noelle Nakagaki (“Plaintiff”), an individual, on behalf of herself and all others similarly situated and has been granted Preliminary Approval by the Court supervising the Action. The San Diego County Superior Court has ordered that this Notice be sent to you because you may be a Settlement Class Member. The purpose of this Notice is to inform you of the Settlement of this class and representative action and your legal rights under the Settlement as follows:

- Proven has agreed to settle a lawsuit brought on behalf of all California residents who are or were employed by Proven and worked from home at any point during at least one pay period during the period between March 15, 2020 and February 27, 2022 (the “Class Period”) and did not receive reimbursement for work-related home office expenses (hereafter, “Settlement Class”).
- The proposed Settlement resolves all alleged claims regarding Proven’s alleged failure to reimburse business expenses under Labor Code section 2802, incurred as a result of working from home during the COVID-19 pandemic. The Settlement also resolves claims for unfair competition and for civil penalties under California’s Private Attorneys General Act (“PAGA”) arising out of the alleged failure to reimburse business expenses. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases Proven from liability for these claims.
- The parties in the lawsuit disagree on whether Proven is liable for the allegations raised in this case and how much money could have been won if the employees won at trial. Proven denies all liability and believes that it paid you and other employees properly under the law.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

| | |
|-------------------------|---|
| Get a Payment | If you are a qualifying member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you do not exclude yourself you will give up certain rights and claims as set forth on page 4 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. |
| Exclude Yourself | You will get no payment (except for your portion of the PAGA Payment, if applicable). Please send a letter to the Settlement Administrator to request exclusion as provided below. This is the only option that allows you to preserve and potentially bring your own claim against Proven about the legal claims in this case. The Settlement will bind all Settlement Class Members who do not request exclusion. |
| Object | To object, you must write to the Court about why you do not like the settlement. You will remain a Settlement Class Member, receive a payment, and remain bound by the Settlement. Directions are provided below. |

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains the terms and details of a proposed settlement of a class and representative action lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff filed this lawsuit in San Diego County Superior Court on behalf of the Settlement Class. The lawsuit alleges that members of the Settlement Class were not reimbursed for work-related home office expenses incurred during the COVID-19 pandemic and were subjected to unfair business practices. The lawsuit seeks reimbursement of expenses, restitution, civil penalties, interest, and attorneys' fees and costs.

Proven denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. Proven contends, among other things, that it complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. Proven further denies that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit.

The Court has made no ruling and will make no ruling on the merits of the Action, its allegations, or its claims.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did **not** decide in favor of the Plaintiff or Proven. Plaintiff thinks she would have prevailed on her claims at a trial. Proven does not think that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

B. Who is in the Class?

The Settlement Class consists of all California residents who are or were employed by Proven and who worked from home at any point during at least one pay period during the Class Period (between March 15, 2020 and February 27, 2022) and did not receive reimbursement for work-related home office expenses.

C. What does the Settlement provide?

1. Settlement Amount.

Proven will pay a total of Eighty-One Thousand Dollars and Zero Cents (\$81,000.00) (the "Total Maximum Settlement Payment" or "TMSP") to settle the lawsuit.

The following sums will be paid from the TMSP: all settlement payments to the Settlement Class, Settlement Class Counsel's attorneys' fees in an amount not to exceed \$20,250.00 (25% of the TMSP), Settlement Class Counsel's actual litigation costs and expenses in an amount not to exceed \$3,000.00, settlement administration costs estimated in an amount not to exceed \$7,500.00, the \$10,000 amount allocated to and designated as penalties under PAGA (75% of which will be paid to the California Labor and Workforce Development Agency (LWDA) and 25% of which will be paid to Aggrieved Employees), and an incentive payment to Plaintiff in an amount not to exceed \$7,500.00.

The funds used for the TMSP shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved incentive payment to the Plaintiff, Court-approved attorneys' fees and litigation costs and expenses to Settlement Class Counsel, settlement administration costs, and the payment to the LWDA at the same time and manner as the settlement payments to the Settlement Class Members and Aggrieved Employees.

2. Remainder

"Remainder" means the TMSP minus Settlement Class Counsel's attorneys' fees and litigation costs and expenses, settlement administration costs, the payment to the LWDA and PAGA Payment, and the incentive payment to Plaintiff.

3. Your Individual Payment Amount.

Proven will provide the Settlement Administrator with the number of months that each Settlement Class Member worked during the Class Period and PAGA Period. Each Settlement Class Member shall receive their pro rata share of the Remainder based on the number of months they worked within the Class Period, except each month during which a Settlement Class Member was required to work from home will be counted as 1 month and each month a Settlement Class Member worked from home voluntarily will be counted as 0.5 month for purposes of the calculation.

Separately, 25% of the \$10,000 allocated to PAGA, or \$2,500, will be distributed to Aggrieved Employees (i.e., all California residents who are or were employed by Proven and who worked from home at any point during at least one pay period during the period between July 31, 2020 and February 27, 2022 and did not receive reimbursement for work-related home office expenses ("PAGA Period")) based on the number of months (calculated as set forth in the paragraph above) each Aggrieved Employee worked during the PAGA Period.

4. Tax Matters.

The Settlement Administrator will distribute IRS Forms 1099 (and the equivalent California forms) to Settlement Class Members and Aggrieved Employees reflecting the payments each Settlement Class Member and Aggrieved Employee receives under the Settlement. For tax purposes, settlement payments to Settlement Class Members will be classified as reimbursement payments and interest. The pro rata portion of the PAGA Payment that is paid to each Aggrieved Employee will be classified as penalties. Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Reimbursement payments, interest, and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding. The Settlement Administrator shall issue an IRS form 1099 for payments of reimbursements, interest, and penalties.

Nothing in this Notice or the Settlement is intended to be tax advice. Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

D. What are you giving up to get a payment and stay in the Class?

The Releasing Parties hereby fully, finally, and forever, waive, release, and discharge Defendant and all other Released Parties and Persons of and from any and all Settled Claims and promise never to assert in any forum any and all Settled Claims as of the Final Effective Date. Upon the date Defendant fully funds the TMSP, all Settlement Class Members will be bound by the Settlement and releases herein, regardless of whether or not they received a settlement payment.

“Releasing Party” or “Releasing Parties” means and refers to the Settlement Class and its members, agents, partners, joint venturers, affiliates, predecessors, successors, spouses, heirs, assigns, insurers, and any other Persons or entities claiming by or through the Settlement Class, in their capacities as such.

“Released Party” or “Released Parties” means and refers to: (a) Proven Staffing Consultants, LLC, and each and all of its past or present partners, parents, clients (including, but not limited to BioDuro, LLC), subsidiaries, affiliates, investors, owners, or related entities (regardless of whether such partners, parents, clients, subsidiaries, affiliates, or related entities are individuals, corporations, partnerships, limited partnerships, limited liability companies, or other forms of entity); (b) each and all of the predecessor or successor entities of any of those entities identified in subparagraph (a); (c) any other individuals or entities of any kind, which have been or could be alleged to be in any manner responsible (whether on an alter ego, joint employer, statutory employer, integrated enterprise, or any other theory) for any actual or alleged violations described in Section 2.22 (“Settled Claims”); and (d) all past and present directors, officers, representatives, insurers, agents, shareholders, partners, members, managers, lawyers, and employees of any of the individuals or entities identified in subparagraphs (a), (b), or (c).

“Settled Claims” means and refers to any and all claims, liabilities, guarantees, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action, of every kind and/or nature whatsoever, whether now known or unknown, suspected or unsuspected, asserted or unasserted, latent or patent, regardless of legal theory or type or amount of relief or damages claimed, which any Releasing Party now has or at any time ever had against Released Parties, that are alleged in the Complaint or which could have been alleged in the Complaint based on the facts, claims and/or allegations asserted in the Complaint and/or PAGA Letters (“Claims”), including: (a) alleged failure to provide timely and/or complete reimbursement for necessary business-related expenditures, including but not limited to Claims under California Labor Code Section 2802, California Business and Professions Code Section 17200, *et seq.*, and PAGA; and (b) any other state or federal law, statute, regulation, or ordinance imposing liability and/or obligations regarding the reimbursement of business expenses, or that could be brought based on the factual allegations in the Complaint, including Fair Labor Standards Act (FLSA) claims that could have been brought based on the factual allegations in the Complaint. Without in any way limiting the foregoing, Settled Claims shall include all Claims under statutes and regulations set forth in this Section, based on unreimbursed business expenses, whether enforced directly or pursuant to California Labor Code Section 2699, California Business and Professions Code Section 17200, *et seq.*, or any other mechanism.

“Final Effective Date” means and refers to the later of the following: (a) the 65th calendar day after entry of a signed order finally approving the Agreement and Settlement provided no motion to intervene or motion to vacate the judgment, appeal, writ or other appellate proceeding has been filed; or (b) the 7th calendar day after any motion to intervene or motion to vacate the judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally dismissed with no material change to the terms of the Agreement and there is no right to pursue further remedies or relief, whichever is later.

THE FINAL APPROVAL HEARING

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the “Final Approval Hearing”) on April 21, 2023 at 1:30 p.m. at 330 West Broadway, in Department 72 of the San Diego County Superior Court. The Court will determine: (i) whether the Settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (ii) whether the Settlement Class Members should be bound by the terms of the Settlement; (iii) the amount of the attorneys’ fees and costs awarded to Settlement Class Counsel; (iv) the amount approved for payment to the Settlement Administrator for the costs of administering the Settlement; and (v) the amount that should be awarded to Plaintiff as an incentive payment. At the Final Approval Hearing, the Court will hear any objections, as well as any arguments for and against the proposed Settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself, as explained in more detail on page 4 below.

The Final Approval Hearing may be continued without further notice to the Class. You may contact Settlement Class Counsel, listed in this Notice, to inquire into the date and time of the Final Approval Hearing.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

WHAT ARE YOUR OPTIONS?

• OPTION 1 – GET A PAYMENT

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NOT REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE IN ORDER TO RECEIVE THIS PAYMENT.

The estimated amount of your settlement payment is \$<<\$>. The amount of the settlement payment paid to each Settlement Class Member is based upon the number of months worked for Proven in California between March 15, 2020 and February 27, 2022, except each month during which a Settlement Class Member was required to work from home will be counted as 1 month and each month a Settlement Class Member worked from home voluntarily will be counted as 0.5 month. According to payroll records maintained by Proven, your number of months worked for Proven in California between March 15, 2020 and February 27, 2022 is <<Months>>.

If you believe that the number of months stated is incorrect, you may dispute the number of months by submitting a dispute in writing to the Settlement Administrator, which must contain your full name, address, signature, and last four digits of your Social Security number; the case name and number of the Action; and any facts supporting your dispute, along with any supporting materials confirming that the months attributed to you are incorrect. Your dispute must be postmarked to the Settlement Administrator at P.O. Box 7208, Orange, CA 92863 no later than February 27, 2023. Please be advised that your number of months is presumed to be correct, unless you submit a dispute and supporting documentation to the Settlement Administrator no later than February 27, 2023. If you believe that the number of months stated is correct, you do not have to do anything.

The settlement payment you will receive will be a full and final settlement of the Released Claims described in Section D above.

• OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any payment or benefits from the proposed Settlement (except for your portion of the PAGA Payment, if applicable). You will **not** be bound by a judgment in this case and you will have the right to file your own lawsuit against Proven, subject to time limits called statutes of limitations and other potential defenses that Proven may assert, and to pursue your own claims in a separate suit.

You can request exclusion or “opt out” of the Settlement Class by sending a letter to the Settlement Administrator at P.O. Box 7208, Orange, CA 92863 by first class U.S. mail which must contain your name, signature, address, telephone number, the last four digits of your Social Security number, and a clear statement that you opt out or request exclusion from the Settlement. To be valid, your request for exclusion must be postmarked no later than February 27, 2023.

Anyone who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement (except for his or her portion of the PAGA Payment, if applicable) and will not be bound by the Settlement or have any right to object, appeal, or comment thereon. Individuals who fail to submit a valid and timely request for exclusion on or before February 27, 2023, are Class Members and will be bound by all terms of the Settlement and any final disposition entered in this Action if the Court approves the Settlement.

• OPTION 3 – OBJECT TO THE SETTLEMENT

If you are a Settlement Class Member and would like to object to the Settlement, you should not submit a request for exclusion (*i.e.*, do not opt out). If you submit both a request for exclusion and an objection, your request for exclusion will be void and you will be deemed a part of the Settlement Class and bound by the Settlement.

To object to the Settlement in writing, you must complete, sign, and send a written notice of objection to the Settlement Administrator at P.O. Box 7208, Orange, CA 92863, postmarked no later than February 27, 2023, setting forth your full name, address, last four digits of your Social Security number, the case name and number of the Action, and a clear statement of the basis for your objection, along with supporting documentation.

You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. You need not file a notice of intention to appear at the Final Approval Hearing at the same time as your objection is filed. Filing the notice of intention to appear is not necessary to preserve the right to appear at the Final Approval Hearing. If you object, but the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as a Settlement Class Member who does not object.

CHANGE OF ADDRESS

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your settlement payment or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator at P.O. Box 7208, Orange, CA 92863. Otherwise, your settlement payment may not reach you. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed "Joint Stipulation of Class and Representative Action Settlement" which is available for viewing online on the following website: <https://www.phoenixclassaction.com/nakagaki-v-proven-staffing-consultants/>

In addition, you can view the Action's records online by visiting the Court's website <https://roa.sdccourt.ca.gov/roa/>, entering the Case Number in the search box, and selecting "Search."

ANY INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO SETTLEMENT CLASS COUNSEL LISTED BELOW OR TO THE SETTLEMENT ADMINISTRATOR, Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863, Telephone: (800) 523-5773. Please refer to the *Nakagaki v. Proven Staffing Consultants, LLC* Class Action Settlement.

Settlement Class Counsel:

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PROVEN STAFFING CONSULTANTS, LLC WILL NOT RETALIATE AGAINST YOU FOR PARTICIPATING IN THIS SETTLEMENT.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.