

1 **ACKERMANN & TILAJEF, P.C.**
2 Craig J. Ackermann (SBN 229832)
3 cja@ackermanntilajef.com
4 315 South Beverly Drive, Suite 504
5 Beverly Hills, California 90212
6 Telephone: (310) 277-0614
7 Facsimile: (310) 277-0635

8 **LAW OFFICE OF TATIANA HERNANDEZ, P.C.**
9 Tatiana Hernández, Esq. (SBN 255322)
10 tatiana@thlawpc.com
11 315 South Beverly Drive, Suite 504
12 Beverly Hills, California 90212
13 Telephone: (213) 909-1248
14 Facsimile: (310) 388-0639

15 Attorneys for Plaintiff, the Proposed Settlement Class, the LWDA, and the Aggrieved
16 Employees

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SAN DIEGO**

19 NOELLE NAKAGAKI, an individual, on
20 behalf of the State of California, as a private
21 attorney general, and on behalf of all
22 Aggrieved Employees, and on behalf of all
23 others similarly situated,

24 **PLAINTIFF,**

25 v.

26 **PROVEN STAFFING CONSULTANTS,**
27 **LLC, a California Corporation, and DOES 1 to**
28 **50, inclusive,**

DEFENDANT.

Case No. 37-2022-00026848-CU-OE-CTL

**[REVISED PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 21, 2023,
Time: 1:30 p.m.
Dept.: C-72
Judge: Timothy Taylor

1 On April 21, 2023, the Court held a hearing on Plaintiff, Noelle Nakagaki’s (“Plaintiff”) Motion
2 for Final Approval of Class Action Settlement between Plaintiff and Defendant, Proven Staffing
3 Consultants, LLC (“Defendant”) (collectively, the “Parties”), and Plaintiff’s Motion for Attorneys’ Fees
4 and Costs.

5 Due and adequate notice having been given to Class Members, and the Court having considered
6 the Joint Stipulation of Class and Representative Action Settlement (the “Settlement Agreement” or
7 “Settlement”), all of the legal authorities and documents submitted in support thereof, all papers filed and
8 proceedings had herein, all oral and written comments received regarding the proposed settlement, and
9 having reviewed the record in this litigation, having taken the matter under submission, and good cause
10 appearing, the Court GRANTS final approval of the Settlement and ORDERS AND MAKES THE
11 FOLLOWING FINDINGS AND DETERMINATIONS:

12 1. All terms used in this Order Granting Final Approval of Class Action Settlement (the
13 “Order”) shall have the same meanings given as those terms are used and/or defined in the Parties’
14 Settlement Agreement.¹

15 2. The Court has personal jurisdiction over the Parties to this litigation and subject matter
16 jurisdiction to approve this Settlement and all exhibits thereto.

17 3. For settlement purposes only, the Court finally certifies the Settlement Class, as defined in
18 the Settlement Agreement and as follows:

19 *“Settlement Class Representative and all other California residents who are or were employed by*
20 *Defendant and who worked from home at any point during at least one pay period during the Class*
21 *Period and did not receive reimbursement for work-related home office expenses.”*

22 4. The Class Period is March 15, 2020 to February 27, 2022.

23 5. The Court deems this definition sufficient for the purpose of California Rule of Court
24 3.765(a) and for the purpose of effectuating the Settlement.

25 6. The Court finds that an ascertainable class of 253 Class Members exists and a well-defined
26 community of interest exists in the questions of law and fact involved because in the context of the

27 _____
28 ¹ A copy of the Settlement Agreement is in the Court record as Exhibit A to the Declaration of Craig J. Ackermann in Support
of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and is made a part of this Order.

1 Settlement: (i) all related matters, predominate over any individual questions; (ii) the claims of the Plaintiff
2 are typical of claims of the Settlement Class Members; and (iii) in negotiating, entering into and
3 implementing the Settlement, Plaintiff and Class Counsel have fairly and adequately represented and
4 protected the interest of the Settlement Class Members.

5 7. The Court is satisfied that Phoenix Settlement Administrators, which functioned as the
6 Settlement Administrator, completed the distribution of the Class Notice to the Class in a manner that
7 complies with California Rule of Court 3.766 and due process and constitutes the best notice practicable
8 under the circumstances. The Class Notice informed 254 individuals on the original class list of the
9 Settlement terms, their rights to do nothing and receive their settlement share, their rights to submit a
10 request for exclusion, their rights to comment on or object to the Settlement, and their rights to appear at
11 the Final Approval Hearing and be heard regarding approval of the Settlement. Adequate periods of time
12 to respond and to act were provided by each of these procedures.

13 8. Not a single Class Member filed or submitted a written objection to the Settlement as part
14 of this notice process.

15 9. Only one potential Class Member, Andrew Wassell, timely opted out of the Settlement.
16 Andrew Wassell is not subject to the class release of claims, and he will not receive an individual
17 settlement. However, he is subject to the aggrieved employee release of claims and will receive his pro
18 rata portion of the Aggrieved Employees' 25% allocation of the PAGA Payment.

19 10. The Court hereby approves the terms set forth in the Settlement Agreement, including the
20 \$81,000.00 Total Maximum Settlement Payment ("TMSP"), and finds that the Settlement Agreement is,
21 in all respects, fair, adequate, and reasonable, consistent and compliant with all applicable requirements
22 of the California Code of Civil Procedure, the California and United States Constitutions, including the
23 Due Process clauses, the California Rules of Court, and any other applicable law, and in the best interests
24 of each of the Parties and Class Members. The Court directs the Parties to effectuate the Settlement
25 Agreement according to its terms and declares this Settlement Agreement to be binding on all participating
26 Settlement Class Members. The Court finds that the Settlement Agreement has been reached as a result
27 of informed and non-collusive arm's-length negotiations. The Court further finds that the Parties have
28 conducted extensive investigation and research, and their attorneys were able to reasonably evaluate their

1 respective positions. The Court further finds that the allocation of PAGA penalties is fair and reasonable
2 under the circumstances.

3 11. The Court also finds the PAGA Payment is fair and reasonable, and that Plaintiff
4 provided notice of the proposed Settlement to the Labor and Workforce Development Agency
5 (LWDA) and will fully and adequately comply with the notice requirements of California Labor
6 Code section 2699(1). The Court hereby approves the PAGA Payment.

7 12. The Court also finds that Settlement now will avoid additional and potentially substantial
8 litigation costs, as well as delay and risks if the Parties were to continue to litigate the case. Additionally,
9 after considering the monetary recovery provided as part of the Settlement in light of the challenges posed
10 by continued litigation, the Court concludes that Class Counsel secured significant relief for Settlement
11 Class Members.

12 13. The Court confirms Noelle Nakagaki as Class Representative and finds her to be adequate.

13 14. The Court confirms Craig J. Ackermann and Avi Kreitenberg of Ackermann & Tilajef,
14 P.C. and Tatiana Hernandez of the Law Office of Tatiana Hernandez, P.C., as Class Counsel, and finds
15 each of them to be adequate, experienced, and well-versed in similar class action litigation.

16 15. The terms of the Settlement Agreement, including the TMSP of **\$81,000.00**, and the
17 individual settlement payments, are fair, adequate, and reasonable to the Settlement Class and to each
18 Settlement Class Member, and the Court grants final approval of the Settlement set forth in the Settlement
19 Agreement, subject to this Order. The Court approves the following allocations, which fall within the
20 ranges stipulated by and through the Settlement Agreement:

21 a. The **\$7,000.00** designated for payment to Phoenix Settlement Administrators, as the
22 Settlement Administrator, is fair and reasonable and less than the amount preliminarily
23 approved by this Court. The Court grants final approval of, and orders the Parties to make,
24 the payment to the Settlement Administrator in accordance with the Settlement Agreement.

25 b. The **\$20,250.00** requested by Plaintiff and Class Counsel for the Class Counsel's attorneys'
26 fees is fair and reasonable in light of the benefit obtained for the Class. The Court grants
27 final approval of, awards, and orders the Class Counsel fees payment to be made in
28 accordance with the Settlement Agreement.

- 1 c. The Court awards **\$2,153.32** in litigation costs, an amount which the Court finds to be
2 reflective of the reasonable costs incurred. The Court grants final approval of and orders
3 the Class Counsel litigation expenses payment in this amount to be made in accordance
4 with the Settlement Agreement.²
- 5 d. While the Court understands the risks associated with agreeing to be named as a class
6 representative [*see Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1433 (cost burden
7 falls on class reps, not absent class members)], the Court concludes that \$6,500.00 is a
8 reasonable award for Plaintiff. The Court hereby GRANTS final approval of a class
9 representative payment of **\$6,500.00** to be deducted from the TMSP.
- 10 e. The Court ORDERS that the remainder of the proposed class representative payment
11 (**\$1,000.00**) will be poured over into the net settlement sum fund for distribution to the
12 participating class members.
- 13 f. The Court grants final approval of the **\$10,000.00** PAGA Payment, 75% of which (i.e.,
14 **\$7,500**) shall be paid to the LWDA and orders the payment to be made in accordance with
15 the Settlement Agreement. The remaining 25% of the PAGA Payment shall be distributed
16 to the Aggrieved Employees in accordance with the Settlement Agreement.

17 16. The Court orders the Parties to comply with and carry out all terms and provisions of the
18 Settlement, to the extent that the terms thereunder do not contradict or conflict with this Order, in which
19 case the provisions of this Order shall take precedence and supersede the Settlement.

20 17. The Settlement Agreement is not an admission by Defendant, nor is this Order a finding of
21 the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement
22 Agreement, nor any document referred to herein, nor any action taken to carry out the Settlement
23 Agreement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission,
24 concession, or liability whatsoever by or against Defendant.

25 18. Nothing in the Settlement or this Order purports to extinguish or waive Defendant's rights
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27 ² The Settlement Agreement contemplates litigation cost reimbursement in the amount of \$3,000.00, which was preliminarily
28 approved by this Court and noticed to the Class, but Class Counsel is only seeking litigation cost reimbursement in the amount
of \$2,153.32, the amount actually incurred by Class Counsel with the balance to be added to the Remainder to be distributed
pro rata to the participating Settlement Class Members.

1 to continue to oppose the merits of the claims in this Action or class treatment of these claims in this case
2 if the Settlement fails to become final or effective, or in any other case without limitation. The Settlement
3 is not an admission by Defendant, nor is this Order or the subsequent Judgment that Plaintiff has asked
4 the Court to enter based on this Order a finding of the validity of any allegations against Defendant in the
5 Court proceeding or any wrongdoing by Defendant. Neither the Settlement nor this Order or the
6 subsequent Judgment is a finding that certification of the Class is proper for any purpose or proceeding
7 other than for settlement purposes.

8 19. All participating Settlement Class Members shall be bound by the Settlement and this
9 Order, and shall fully, finally, and forever, waive, release, and discharge Defendant and all other Released
10 Parties³ and Persons from any and all Settled Claims⁴ as set forth in the Settlement Agreement, and are
11 permanently barred and enjoined from prosecuting against Defendant and the other Released Parties any
12 and all of the Settlement Class Members' Settled Claims as defined in the Settlement Agreement.

13 20. Plaintiff, on behalf of herself and the State of California, and all Aggrieved Employees,
14 including their heirs, agents, representatives, successors, assigns and estates, shall fully, finally, and
15 forever, release and discharge Defendant and the Released Parties from any and all Settled Claims as set
16 forth in the Agreement, including all causes of action, claims, demands, rights, and liability, arising from
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18 ³ "Released Parties" means and refers to: (a) Proven Staffing Consultants, LLC, and each and all of its past or present partners,
19 parents, clients (including, but not limited to BioDuro, LLC), subsidiaries, affiliates, or related entities (regardless of whether
20 such partners, parents, clients, subsidiaries, affiliates, or related entities are individuals, corporations, partnerships, limited
21 partnerships, limited liability companies, or other forms of entity); (b) each and all of the predecessor or successor entities of
22 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; 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). (S.A., ¶ 2.20).

23 ⁴ "Settled Claims" means and refers to any and all claims, liabilities, guarantees, rights, demands, suits, matters, obligations,
24 liens, damages, losses, costs, expenses, debts, actions, and causes of action, of every kind and/or nature whatsoever, whether
25 now known or unknown, suspected or unsuspected, asserted or unasserted, latent or patent, regardless of legal theory or type
26 or amount of relief or damages claimed, which any Releasing Party now has or at any time ever had against Released Parties,
27 that are alleged in the Complaint or which could have been alleged in the Complaint based on the facts, claims and/or allegations
28 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. (S.A., ¶ 2.22).

1 or based on a claim for civil penalties under PAGA, Labor Code sec. 2698, *et seq.*, for any violations of
2 the Labor Code or Wage Orders alleged or that could have been alleged in the Complaint based on the
3 facts and allegations alleged therein, as well as any based on the alleged violations asserted in the January
4 31, 2022 and April 5, 2022 PAGA Letters for the PAGA Period, and are permanently barred and enjoined
5 from prosecuting against Defendant and the other Released Parties any and all of the Settled Claims as
6 defined in the Agreement.

7 21. Plaintiff is bound by the general release of claims against Defendant and the other Released
8 Parties and waiver of Civil Code section 1542, as set forth in the Settlement Agreement, and is
9 permanently barred from prosecuting against Defendant and the other Released Parties any and all of
10 Plaintiff's Released Claims as defined in the Agreement.

11 22. The Parties shall bear their own respective attorneys' fees and costs except as otherwise
12 provided in the Settlement Agreement.

13 23. The Court approves the one hundred eighty (180) day period for cashing of checks. Any
14 funds associated with stale checks that have not been cashed within one hundred eighty (180) days will
15 be sent to the California State Controller's Office: Unclaimed Property Fund.

16 24. The Settlement Administrator, within five (5) days of the date of this Order, shall give
17 notice to the Settlement Class pursuant to Rule 3.771(b) of the California Rules of Court, by posting a
18 copy of this order and judgment on its website for 60 days.

19 25. Pursuant to California Rule of Court 3.769(h), the Court retains jurisdiction solely for
20 purposes of enforcing the terms of the Settlement Agreement, supervising the administration and
21 distribution of the TMSP, and addressing such post-Judgment matters as may be appropriate under court
22 rules or applicable law.

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28 26. Plaintiff or the Settlement Administrator shall file with the Court a report regarding the

1 status of distribution within sixty (60) days after all funds have been distributed.

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3 **IT IS SO ORDERED.**

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5 DATED: 4/21/23



6 HON. TIMOTHY TAYLOR
7 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA

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