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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ANDREA MARQUEZ, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

v.

NIHON KOHDEN AMERICA, INC., a California corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 30-2021-01184495-CU-OE-CXC

Assigned for All Purposes to:
Honorable Randall J. Sherman
Department CX-105

CLASS ACTION

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT AND
SETTING HEARING FOR FINAL
APPROVAL OF SETTLEMENT**

[Reservation ID: 73931273]

Hearing Date: July 14, 2023
Hearing Time: 10:00 a.m.
Hearing Place: Department CX-105

Complaint Filed: February 17, 2021
FAC Filed: December 30, 2022
Trial Date: None Set

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2 The Motion for Preliminary Approval of Class Action Settlement came before this
3 Court, the Honorable Randall J. Sherman presiding, on July 14, 2023, at 10:00 a.m. The Court,
4 having considered the papers submitted in support of the Motion for Preliminary Approval of
5 Class Action Settlement, **ORDERS THE FOLLOWING:**

6 1. This Order incorporates by reference the definitions in the Joint Stipulation of
7 Settlement and Release, as amended (“Settlement Agreement,” “Settlement,” or “Agreement”),
8 and all terms defined therein shall have the same meaning in this Order as set forth in the
9 Settlement Agreement.

10 2. It appears to the Court on a preliminary basis the Settlement is fair, adequate, and
11 reasonable. The Court recognizes the value of the monetary recovery provided to all Class
12 Members and preliminarily finds such recovery is fair, adequate, and reasonable when balanced
13 against further litigation related to liability and damages issues. It appears the Parties conducted
14 significant investigation, discovery, and research such that the Parties’ counsel can reasonably
15 evaluate their respective positions at this time. It further appears to the Court the Settlement, at
16 this time, will avoid substantial additional costs by all Parties, as well as avoid the risks and
17 delay inherent in further prosecution of this case. It also appears the Parties reached the
18 Settlement as the result of intensive, serious, and non-collusive, arm’s-length negotiations
19 facilitated by an experienced and neutral mediator. Thus, the Court finds on a preliminary basis
20 the Settlement appears to be within the range of reasonableness of a settlement that could be
21 granted final approval by this Court. Accordingly, the Motion for Preliminary Approval of Class
22 Action Settlement is hereby **GRANTED**.

23 3. The following persons are conditionally certified as “Class Members” or the
24 “Class” for Settlement purposes only: all current and former hourly-paid or non-exempt
25 employees of Vaco LLC who were assigned to work at Nihon Kohden America, Inc. within the
26 State of California during the time period from February 18, 2017 to January 27, 2022. Nihon
27 Kohden America, Inc. and Vaco LLC are collectively known as “Defendants.” The
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1 “Participating Class Members” means all Class Members who do not submit valid and timely
2 requests to exclude themselves from the Settlement.

3 4. The “Eligible Aggrieved Employees” means the aggrieved employees eligible to
4 recover settlement funds from the Private Attorneys General Act of 2004 (“PAGA”) Payment
5 and consists of all current and former hourly-paid or non-exempt employees of Vaco LLC who
6 were assigned to work at Nihon Kohden America, Inc. within the State of California during the
7 time period from February 18, 2021 to January 27, 2022.

8 5. The Class preliminary satisfies the certification requirements of a class because
9 the Class Members are readily ascertainable, and a well-defined community of interest exists in
10 the questions of law and fact affecting the Parties.

11 6. Plaintiff Andrea Marquez (“Plaintiff”) is appointed as the class representative.

12 7. Justice Law Corporation is appointed as Class Counsel.

13 8. The Parties’ proposed notice plan is constitutionally sound and hereby approved
14 as the best notice practicable. The proposed Notice of Class Action Settlement (“Class Notice”),
15 attached hereto as **Exhibit A**, is sufficient to inform Class Members of the terms of the
16 Settlement Agreement, their rights to receive monetary payments under the Settlement
17 Agreement, and date and location of the Final Approval Hearing. In addition, the Class Notice
18 fairly, plainly, accurately, and reasonably informs Class Members of: (a) nature of the action,
19 definition of the Class, identity of Class Counsel, and material terms of the Settlement; (b)
20 Plaintiff’s and Class Counsel’s application for the Attorney Fee Award, Cost Award, and Class
21 Representative Enhancement Payment; (c) formulas used to determine settlement payments; (d)
22 Class Members’ right to appear through counsel if they desire; (e) how to object to or submit a
23 request for exclusion from the Settlement; and (f) how to obtain additional information regarding
24 this case and the Settlement. The Court finds the notice requirements of California Rule of Court,
25 rule 3.769, subdivision (f) are satisfied and that the Class Notice adequately advises Class
26 Members of their rights under the Settlement. The Parties’ counsel are authorized to correct any
27 typographical errors in the Class Notice and make clarifications, to the extent the same are found

1 or needed, so long as such corrections do not materially alter the substance of the Class Notice
2 and other notice documents.

3 9. The rights of any potential dissenters to the Settlement are adequately protected in
4 that they may exclude themselves from the Agreement. To exclude themselves, dissenters must
5 follow the procedures outlined in the Agreement and Class Notice. The Election Not to
6 Participate In (“Opt Out” From) Class Action Settlement (“Exclusion Form”) is attached hereto
7 as **Exhibit B**. The Class Notice and Exclusion Form are known as the “Notice Packet.”

8 10. The Court preliminarily approves the settlement of claims under Labor Code
9 section 2698, *et seq.* (PAGA) according to the terms and conditions in the Settlement
10 Agreement.

11 11. The Court finds the notice of settlement Plaintiff provided to the California Labor
12 and Workforce Development Agency satisfies the notice requirements of Labor Code section
13 2699(1)(2).

14 12. Phoenix Class Action Administration Solutions is appointed to act as the
15 Settlement Administrator. The Settlement Administrator is ordered to carry out the settlement
16 according to the terms of the Agreement and in conformity with this Order, including
17 disseminating the Notice Packet according to the notice plan described in the Agreement. The
18 Notice Packet will only be in English, meaning a translation will not be necessary.

19 13. Within fourteen (14) calendar days after entry of the Preliminary Approval Order,
20 Defendants shall deliver the Class Data to the Settlement Administrator. The Settlement
21 Administrator will conduct a National Change of Address Database search for all Class Members
22 to obtain the most up-to-date address information.

23 14. Within thirty (30) calendar days after entry of the Preliminary Approval Order,
24 the Settlement Administrator will mail the Notice Packet to all identified Class Members via
25 first-class regular U.S. Mail, using the most current mailing address information available.

26 15. If a Notice Packet is returned because of an incorrect address, within ten (10)
27 calendar days after receipt of the returned Notice Packet, the Settlement Administrator will
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1 conduct a search for a more current address for the Class Member and remail the Notice Packet
2 to the Class Member. The Settlement Administrator will conduct a skip trace to attempt to find
3 the Class Member's current address. The Settlement Administrator will be responsible for taking
4 reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is
5 returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a
6 minimum: (a) tracking of all undelivered mail; (b) performing address searches for all mail
7 returned without a forwarding address; and (c) promptly remailing Notice Packets to Class
8 Members for whom new addresses are found. If the Settlement Administrator is unable to locate
9 a better address, the Notice Packet shall be remailed to the original address. Those Class
10 Members who receive a remailed Notice Packet, whether by skip trace or forwarded mail, will
11 have an additional ten (10) calendar days from the original Response Deadline to postmark an
12 Exclusion Form or an objection to the Settlement.

13 16. The procedures and deadline for Class Members to request exclusion from or to
14 object to the Settlement in writing is adopted as described in the Settlement Agreement. Any
15 Class Member who intends to object to the final approval of the Settlement Agreement in writing
16 must submit an objection to the Settlement Administrator by mail in accordance with the
17 Settlement Agreement.

18 17. The Parties are ordered to carry out the settlement according to the terms of the
19 Settlement. If the Settlement does not become final and effective, the fact the Parties were
20 willing to stipulate to certification of the Class as part of the Settlement shall have no bearing on
21 and shall not be admissible or used in any way in connection with the question of whether the
22 Court should certify any claims in a non-settlement context in this case or in any other lawsuit.

23 ~~18. To the extent permitted by law, pending a determination as to whether the~~
24 ~~Settlement should be finally approved, Participating Class Members, whether directly,~~
25 ~~representatively, or in any other capacity, whether or not such persons have appeared in this case,~~
26 ~~shall not institute or prosecute any of the Released Claims against the Released Parties.~~

27 19. Pending further orders of this Court, all proceedings in this matter, except those
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1 contemplated in this Order and in Settlement Agreement, are stayed.

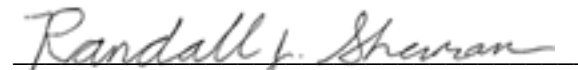
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3 20. The proposed dates for future events contemplated herein and under the
4 Settlement Agreement are set forth below:

5 a.	Deadline for Defendant to deliver Class Data to Settlement Administrator	Within fourteen (14) calendar days after entry of the Preliminary Approval Order
6 b.	Deadline for Settlement Administrator to mail the Notice Packet to Class Members	Within thirty (30) calendar days after entry of the Preliminary Approval Order
7 c.	Deadline for Class Members to postmark requests for exclusion, written objections, and written disputes to the Settlement Administrator	Within sixty (60) calendar days from the initial mailing of the Notice Packet
8 d.	Deadline for Class Members to postmark requests for exclusion, written objections, and disputes to the Settlement Administrator if they receive remailed Notices Packets	Within an additional ten (10) calendar days from the original Response Deadline
9 e.	Deadline for Class Counsel to file Motion for Final Approval of Settlement, Attorney Fee Award, Cost Award, and Class Representative Enhancement Payment	Sixteen (16) Court days before Final Approval Hearing in conformity with Code of Civil Procedure section 1005
10 f.	Final Approval Hearing	December 15, 2023 at 10:00 a.m. in Department CX-105

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18 **IT IS SO ORDERED.**

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20 Dated: **July 14, 2023**

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22 Honorable Randall J. Sherman
23 Judge of the Superior Court
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