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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

KELLY HOOVER,)
)
Plaintiff,)
)
vs.)
)
MOM365, INC., a Missouri Corporation;)
and DOES 1 to 100, inclusive,)
)
Defendants.)
)
_____)

Case No. 2:17-cv-01328-TLN-CKD

CLASS ACTION

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: August 9, 2018

Time: 2:00 p.m.

Crtm: 2, 15th Floor

Judge: Hon. Troy L. Nunley

Filed: May 19, 2017

FAC Filed: September 1, 2017

Trial Date: None Set

1 Presently before the Court is named Plaintiff Kelly Hoover's ("Plaintiff") Motion for Preliminary
2 Approval of Class Action Settlement ("Motion"). (ECF No. 21.) Plaintiff filed the present putative
3 class action on May 19, 2017. (ECF No. 1, Ex. A.) By way of the First Amended Complaint against
4 Defendant Mom365, Inc. ("Defendant"), Plaintiff alleges class and Private Attorneys General Act
5 ("PAGA") claims for failure to provide legally compliant rest periods; failure to pay wages for all hours
6 worked, including minimum and overtime wages; failure to provide Paid Time Off benefits in violation
7 of California Labor Code section 227.3; failure to provide Paid Time Off benefits that complied with the
8 California Healthy Workplace Healthy Families Act of 2014 (Cal. Lab. Code sections 245, et seq.);
9 failure to pay all wages due or owed at termination; and failure to provide legally compliant wage
10 statements. (ECF No. 7.) Plaintiff also alleges unfair competition claims based on these allegations.
11 (Id.) Plaintiff properly alleges that she has exhausted administrative remedies on the PAGA claims as
12 detailed in the Motion. Defendant denies all of Plaintiff's claims and denies that this case is appropriate
13 for class treatment.

14 As described in further detail below, the parties have agreed to a PAGA and class settlement.
15 Defendant will provide monetary consideration in exchange for a judgment consistent with the terms of
16 the proposed settlement as set forth in the Joint Stipulation Regarding Class Action Settlement and
17 Release ("Settlement Agreement," ECF No. 21-3, Ex. A). The Court has received and considered
18 Plaintiff's Motion for Preliminary Approval of Class Action Settlement, the declarations in support, the
19 Settlement Agreement itself, the proposed Class Notice, the proposed Distribution Form, and other
20 evidence. For the reasons set forth below, the Motion is GRANTED.

21 **1. SETTLEMENT CLASS, CLASS REPRESENTATIVE, AND CLASS COUNSEL**

22 In order for the Court to properly certify a class, a plaintiff must meet all of the prerequisites of
23 Federal Rule of Civil Procedure 23(a) and at least one of the requirements of Rule 23(b). Fed. R. Civ. P.
24 23; see also *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Rule 23(a) requires
25 the following:

- 26 (1) the class is so numerous that joinder of all members is impracticable;
- 27 (2) there are questions of law or fact common to the class;
- 28 (3) the claims or defenses of the representative parties are typical of the
claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the
interests of the class.

1 Fed. R. Civ. P. 23(a). These factors are known as “numerosity,” “commonality,” “typicality,” and
2 “adequacy,” respectively. Rule 23(b) requires a plaintiff to establish one of the following: (1) that there
3 is a risk of substantial prejudice from separate actions; (2) that declaratory or injunctive relief benefitting
4 the class as a whole would be appropriate; or (3) that common questions of law or fact predominate and
5 the class action is superior to other available methods of adjudication. Fed. R. Civ. P. 23(b). Where the
6 parties have entered into a settlement agreement before class certification, district courts “must pay
7 ‘undiluted, even heightened, attention’ to class certification requirements....” Hanlon v. Chrysler Corp.,
8 150 F.3d 1011, 1019 (9th Cir. 1998) (quoting Amchem Products, Inc. v. Windsor, 521 U.S. 591, 620
9 (1997)).

10 The Court preliminarily and conditionally approves the following class for settlement purposes
11 only, subject to a final fairness hearing and certification of the settlement class, under the Federal Rules
12 of Civil Procedure and related case law:

13 All of Defendant’s California employees who were paid under Defendant’s commission,
14 piece rate, and/or incentive based compensation system, including but not limited to,
15 employees working under the photographer job title from May 17, 2013, to the
Preliminary Approval Date.¹

16 For purposes of preliminary approval, the Court finds that the settlement class meets the
17 requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3). The approximately 1,061
18 individuals who purportedly fall within the class are sufficiently numerous and would make joinder
19 impracticable. The commonality and predominance requirements are met since there are questions of
20 law and fact common to the class and that predominate over individualized issues, which include the
21 following alleged policies and practices: the failure of Defendant’s commission, piece rate, and/or
22 incentive based compensation system to pay for all hours worked, the failure to provide paid rest
23 periods, the failure to provide rest periods for every four hours worked or major fraction thereof, the
24 failure to provide a legally compliant PTO policy, and the failure to provide legally compliant wage
25 statements. Additionally, settlement class members seek the same remedies under state law. The
26 typicality requirement for settlement purposes is also satisfied since the claims of Plaintiff—the named
27

28 ¹ The Court notes that the “Preliminary Approval Date” is a defined term. For further clarification, the date of entry
of this Order shall be the date of electronic filing thereof.

1 class representative in this case—arise from the same factual bases and are based on the same legal
2 theory as those applicable to the purported class members.

3 Furthermore, the Court finds that a class action is superior to other forms of adjudication.
4 Indeed, a class action avoids the inefficiency of each class member litigating similar claims individually.
5 And this settlement will achieve economies of scale for class members with relatively small individual
6 claims and conserve the resources of the judicial system.

7 The Court also finds that Plaintiff Kelly Hoover and her counsel, Galen T. Shimoda and Justin P.
8 Rodriguez of the Shimoda Law Corp., are adequate representatives of the settlement class. Plaintiff
9 provides that neither Plaintiff nor Class Counsel have conflicts with the class members, and it appears to
10 the Court that Plaintiff and counsel have prosecuted the action vigorously up to this point, and nothing
11 indicates they will not continue to do so. The Court therefore preliminarily approves them as class
12 representative and class counsel, respectively.

13 **2. PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT**

14 FRCP 23(e) provides that “[a] class action shall not be dismissed or compromised without the
15 approval of the court” Fed.R.Civ.P. 23(e) (2003). The purpose of preliminary evaluation of
16 proposed class action settlements is to determine whether the terms of the settlement are within a range
17 of possible judicial approval. *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 448 (E.D. Cal.
18 2013) (citing *Newberg on Class Actions* (4th ed. 2002) § 11.26). In reviewing the proposed settlement,
19 the Court does not “reach any ultimate conclusions on the contested issues of fact and law which
20 underlie the merits of the dispute” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th
21 Cir.1992). Instead, the Court weighs several factors, including: (1) the strength of plaintiff’s case; (2)
22 the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class
23 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
24 completed, and the stage of the proceedings; and (6) the experience and views of counsel. *Id.*; see also
25 *Collins v. Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 301 (E.D.Cal.2011).

26 “Given that some of these ‘fairness’ factors cannot be fully assessed until the Court conducts the
27 final approval hearing, ‘a full fairness analysis is unnecessary at this stage.’” *Tijero v. Aaron Bros., Inc.*,
28 301 F.R.D. 314, 324 (N.D. Cal. 2013) (quoting *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 665 (E.D. Cal.

1 2008)). Preliminary approval of a settlement and notice to the proposed class is appropriate if: “[1] the
2 proposed settlement appears to be the product of serious, informed, noncollusive negotiations, [2] [it]
3 has no obvious deficiencies, [3] [it] does not improperly grant preferential treatment to class
4 representatives or segments of the class, and [4] [it] falls with[in] the range of possible approval....”
5 Collins, 274 F.R.D. at 301–02 (quoting In re Tableware Antitrust Litig., 484 F.Supp.2d 1078, 1079
6 (N.D. Cal. 2007)).

7 The Court has reviewed the Settlement Agreement, filed with Plaintiff’s Motion as Exhibit A to
8 the Declaration of Justin P. Rodriguez (ECF No. 21-1). To briefly summarize, the Agreement provides
9 that Defendant will pay a total of \$400,000.00, in addition to any monies necessary to satisfy
10 Defendant’s tax obligations, in exchange for the release of the claims described in the Agreement. Costs
11 of administering the settlement shall be paid from the settlement proceeds; \$10,000.00 of the settlement
12 proceeds will be allocated to PAGA claims (\$2,500.00 to the settlement class; \$7,500.00 to the LWDA);
13 up to 25% will be paid to Plaintiff’s attorneys, and up to \$12,000.00 will cover litigation costs. Class
14 members who fail to timely opt out will waive any and all claims that are pled in the Action or could
15 have been pled. Any amount from settlement checks not cashed within one-hundred-eighty (180) days
16 of issuance will be paid out pursuant to California Code of Civil Procedure § 384(b) as follows: (1) 25%
17 to the State Treasury for deposit in the Trial Court Improvement and Modernization Fund; (2) 25% to
18 the State Treasury for deposit into the Equal Access Fund of the Judicial Branch; and (3) 50% to the
19 Sacramento Voluntary Legal Services Program of Northern California Employment Law Clinic as cy
20 pres beneficiaries. No portion of the Gross Settlement Amount or Net Settlement Amount will revert to
21 Defendant for any reason.

22 The Court finds on a preliminary basis that the Settlement Agreement appears to be fair,
23 reasonable, and adequate. See Fed. R. Civ. P. 23(e)(2). Plaintiff asserts—and Defendants do not
24 oppose—that the parties engaged in substantial investigations and both formal and informal discovery.
25 The Settlement Agreement terms were reached after much negotiation and mediation before a neutral
26 mediator. Class counsel has thoroughly weighed the strengths and weakness of the case, and has
27 assessed the risks of continued litigation. There is no evidence of collusion between the parties and the
28 Settlement Agreement appears to have been entered into only after substantial investigation that enabled

1 the parties to make a reasoned and informed decision regarding settlement. The Settlement Agreement
2 does not give any improper preferential treatment to Plaintiff, their counsel, or a particular segment of
3 the settlement class. Additionally, it appears Class Counsel is experienced in this area of law, which
4 further weighs in favor of preliminary approval. The Court also acknowledges that class members may
5 object to the settlement at a fairness hearing, or may opt-out of being bound by the preliminarily
6 approved class settlement.

7 Because the Court finds the parties' settlement to have been agreed upon only after extensive and
8 costly investigation, arms-length negotiations in mediation, and in an attempt to avoid further delays and
9 costs, the Court preliminarily approves the proposed settlement, which is incorporated by reference in its
10 entirety, as if stated here in full.

11 The Court orders and approves Simpluris, Inc., to act as the Claims Administrator in this case.
12 Appropriate costs for Simpluris, Inc.'s services shall be decided at a final fairness hearing. Those costs
13 are presently estimated to be approximately \$14,499.00, and in no event will they exceed \$30,000.000.
14 Per the Settlement Agreement, costs are to be paid from the settlement proceeds. Any difference
15 between the actual costs and the \$30,000.00 noticed to purported class members will be redistributed to
16 the class pro rata.

17 The releases and waivers for class members who do not exclude themselves from the Settlement
18 Agreement and the releases and waivers by class representatives are also approved by the Court as stated
19 in the Settlement Agreement.

20 Plaintiff shall file a motion for attorneys' fees, costs, and Claims Administrator costs no later
21 than fourteen (14) days before the end of the notice period, which shall be heard on the same day as the
22 final fairness hearing. Per the Agreement, in no event shall the attorney's fees exceed 25% of the total
23 gross settlement amount, and costs shall not exceed \$12,000.00. Any monies not so awarded will be
24 distributed to the settlement class on a pro rata basis.

25 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,
26 OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT, AND
DISBURSEMENT FORM**

27 "Adequate notice is critical to court approval of a class settlement under Rule 23(e)." Hanlon,
28 150 F.3d at 1025. For classes certified under FRCP 23(b)(3), the Court must direct to class members

1 “the best notice practicable under the circumstances, including individual notice to all members who can
2 be identified through reasonable effort.” Fed.R.Civ.P. 23(c)(2)(B). Pursuant to FRCP 23(c)(2)(B), the
3 notice must clearly and concisely state as follows:

- 4 (i) the nature of the action;
- 5 (ii) the definition of the class certified;
- 6 (iii) the class claims, issues, or defenses;
- 7 (iv) that a class member may enter an appearance through an attorney if the member so
8 desires;
- 9 (v) that the court will exclude from the class any member who requests exclusion;
- 10 (vi) the time and manner for requesting exclusion; and
- 11 (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

12 The Court finds that the proposed Class Notice and proposed Disbursement Form, which
13 were filed as Exhibit A to the Declaration of Justin P. Rodriguez in support of Plaintiff’s Motion
14 (ECF No. 21-3), includes the elements required under Rule 23(c)(2)(B). The proposed Class
15 Notice and proposed Disbursement Form fairly and adequately advise the potential class
16 members of the terms of the proposed settlement, the rights being waived, their right to opt out
17 and how to opt out of the class, the ability to dispute the number of Qualifying Workweeks
18 worked during the class period and how to do so, their pro rata share of the settlement, how to
19 participate in the settlement, how to file documentation in opposition to the proposed settlement,
20 and when to appear at the fairness hearing to be conducted on the date set forth below.²

21 The Court further finds that Class Notice and proposed distribution of such notice by first class
22 mail to each identified class member at their most recent address based on a National Change of Address
23 database search from the class members’ last known address and a skip trace on any class members who
24 have the class notice returned as “undeliverable” or “not at this address” comports with all constitutional
25 requirements, including those of due process.

26 The Court also finds that because there is a strong interest in providing class members the
27 opportunity to participate in the class settlement, along with the parties’ efforts to minimize any
28 intrusion to privacy rights, the sharing of employment information, including social security numbers, is
not a serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide social

² The Court notes that the proposed Class Notice has a typo on the final page. This Court holds hearings in Courtroom 2 (not “Courtroom G” as stated on the notice) of the 15th Floor of the Courthouse.

1 security number information, last known contact information, and any other readily available
 2 information to the Claims Administrator only, and not to Plaintiff or her counsel, in order to process this
 3 settlement as contemplated within the Settlement Agreement and approved by this Order. The Claims
 4 Administrator shall only use this information for settlement purposes identified herein, and this
 5 information shall be kept confidential and not be shared with any third-party.

6 **4. IMPLEMENTATION SCHEDULE**

7 Accordingly, with good cause shown, the Court hereby approves and orders the following
 8 implementation schedule:

9 10	Last day for Defendant to provide Claims Administrator with Class Member information	Within 14 calendar days of the date of electronic filing of the Preliminary Approval
11 12	Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice Packets	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants
13 14	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	90 calendar days after mailing of Notice Packet
15 16	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests for Notice Packets re-mailed on or after the conclusion of the Notice Period	15 calendar days after the conclusion of the Notice Period
17 18	Last day for Claims Administrator to provide Parties with list of all Class Members who have timely requested to opt-out	21 calendar days after conclusion of the Notice Period
19 20	Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration	21 calendar days after conclusion of the Notice Period
21 22	Last day for Claims Administrator to calculate and report to Parties the amounts owed to fund settlement, employer tax payments, Net Settlement Amount, and Claim Amounts for Qualified Claimants	7 calendar days after Final Approval Date
23 24		
25 26		
27 28		

1 2 3	Last day for Defendant to fund settlement payments	14 calendar days after Claims Administrators report to Parties the amounts owed to fund settlement, Net Settlement Amount, and Claim Amounts for Qualified Claimants
4 5 6	Last day for Claims Administrator to deliver payment of Class Counsel's attorneys' fees and costs, Enhancement Payments, PAGA Payment, Settlement Administration Costs, and payment to Qualified Claimants	7 calendar days after receipt of funds from Defendants
7 8	Last day for Qualified Members to cash settlement checks	180 days after issuance of checks Qualified Members
9 10 11	Last day for Claims Administrator to deliver value of uncashed settlement checks to cy pres beneficiary	14 days after settlement check cashing deadline

12
13 **FINAL APPROVAL AND HEARING**

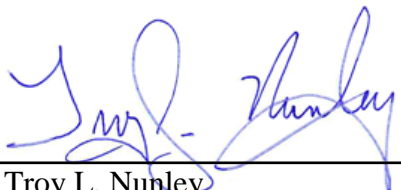
14 For the reasons set forth above, the Court GRANTS Plaintiff's unopposed Motion for
15 Preliminary Approval of Class Action Settlement (ECF No. 21). The Court hereby sets a hearing for
16 final approval of the Settlement Agreement and certification of the settlement class on **November 14,**
17 **2019**, at 2:00 p.m., with briefs and supporting documentation to be filed no later than **October 17, 2019.**
18 Class members who object in a timely manner, and in the manner set forth in the Class Notice, may
19 appear and present such objections at the fairness hearing in person or by counsel.

20 If for any reason the Court does not grant final approval of the Settlement Agreement, all
21 evidence and proceedings held in connection therewith shall be without prejudice to the status quo and
22 rights of the parties to the litigation. The parties will revert to their respective positions as if no
23 settlement had been reached at all.

24 IT IS SO ORDERED.

25 Dated: May 10, 2019

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Troy L. Nunley
United States District Judge