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**UNITED STATES DISTRICT COURT
NORTHERN CALIFORNIA**

Case No 4:20-cv-00335-PJH

Kelley Knowles

Plaintiffs,

vs.

Positive Behavior Supports Corp.

Defendant.

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT**

Case Removed: January 15, 2020

Final Approval Hearing 2/3/22

Plaintiff's unopposed motion to preliminarily approve a class and PAGA settlement came on for hearing before this Court on October 14, 2021, before the Honorable Phyllis J. Hamilton.

Having fully considered the papers submitted in support of the motion, carefully analyzed the Class Action and PAGA Settlement, the Notice of PAGA and Class Action Settlement, and in recognition of the Court's duty to make a preliminary determination as to the reasonableness of a proposed class action settlement, the Court hereby GRANTS Plaintiff's motion as follows:

1) The Plaintiff, Kelly Knowles, filed a class action on October 17, 2019, in San Francisco Superior Court case number CGC-19-580094 against Florida-based company Positive Behavior Supports. The Class involved approximately 650 workers misclassified as independent contractors between October 17th, 2015, to December 31st, 2018. The Defendant removed the case to federal court on January 20, 2020, and it was assigned to the Honorable Phyllis J. Hamilton. ECF 3. The Defendant answered the complaint on February 28, 2020. ECF 12. The court ordered the case to mediation at the first Case Management Conference on April 16, 2020. ECF 17.

2) Plaintiff filed an amended complaint on December 27, 2019. ECF 2-2. The amended complaint asked for damages in the form of lost wages, meal and rest period violations, split shift

1 differential, reporting time pay, and reimbursement of business-related expenses. Ms. Knowles
2 additionally filed for waiting time and paystub penalties, expenses, interest and liquidated damages,
3 restitution of wages for herself and other similarly situated employees of Positive Behavior Supports
4 Corp. She also filed a claim for civil penalties under the California Private Attorney General's Act
5 for failure to provide personnel records, payroll records and for inaccurate and incomplete paystubs.
6

7 BACKGROUND OF THE LAWSUIT

8 3) Through formal and informal discovery, Defendant provided Plaintiff's counsel with
9 thousands of pages of payroll records, and aggregate class member data encompassing the relevant
10 time period. The plaintiff hired a team of investigators to speak to the class members. The plaintiff
11 also employed an economist to help calculate the damages.
12

13 4) On April 5, 2021, the Parties attended private mediation with Hon. Carl West (Ret.), where
14 the Parties reached a settlement, as provided herein, to resolve Plaintiffs' claims on a class and
15 representative action basis.

16 5) Following an email memorializing the agreement by Judge West, the Parties negotiated and
17 executed a PAGA and Class Action Settlement (the "Settlement Agreement"), filed with the Court
18 on September 7, 2021. See 20-CV-03335 EFC No. 33 Ex I part 1.
19

20 6) The Settlement Agreement provides for the full settlement and release of all PAGA, and
21 class claims encompassed by the Complaint and the First Amended Complaint. Defendant continues
22 to deny all allegations of wrongdoing, and does not admit or concede that it has, in any manner,
23 violated the California Labor Code, the California Unfair Competition Law, any Wage Orders or any
24 other law. Defendant also denies that this case is appropriate for class action treatment other than for
25 purposes of settlement.

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1 CERTIFICATION OF SETTLEMENT CLASS

2 7) Based on the findings and conclusions set forth below the Court determines that this case
3 meets the requirements for certification of a class under Rule 23(a) and 23(b)(3) of the Federal Rules
4 of Civil Procedure for purposes of settlement, and hereby orders that this case is certified as a class
5 action, for purposes of settlement only, on behalf of the following class:
6

7 “ALL PERSONS IN CALIFORNIA WHO DEFENDANT CLASSIFIED AS INDEPENDENT
8 CONTRACTORS DURING THE CLASS PERIOD OF OCTOBER 17, 2015, TO DECEMBER 31,
9 2018 .”

10 8) The findings and conclusions that follow are based on the Court's consideration of: the
11 allegations, information, arguments, and authorities cited in the motion and supporting memorandum
12 and declarations, the allegations, information, arguments, and authorities provided in connection
13 with the Complaints filed in this case; Defendant's agreement, for settlement purposes only, not to
14 oppose certification of the settlement class specified in the Settlement Agreement, the terms of the
15 Settlement, and the elimination of the need, on account of the Settlement, for the Court to consider
16 any potential trial manageability issues that might otherwise bear on the propriety of class
17 certification.
18

19 FACTORS FAVORING PRELIMINARY APPROVAL OF SETTLEMENT CLASS

20 a. Numerosity. The Court finds that the Class is so numerous that joinder of all members is
21 impracticable because there are more than 600 class members. Settlement Class Members' identities
22 can be ascertained from Defendant's records.
23

24 b. Common Questions of Law or Fact. The Court finds that, for purposes of this settlement
25 only, there are questions of law or fact common to the Class, including but not limited to: whether
26 Defendant misclassified the class members as independent contractors, violated California Labor
27 Code §§ 226.2, 510, and 1194 by failing to pay employees for all hours worked; whether Defendant
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1 violated California Labor Code §§ 226.2, 1194, 1194.2, 1194.3, 1197 and 1197.1 by failing to pay
2 minimum wage for all hours worked; whether Defendant violated California Labor Code §§ 226,
3 226.2 and 226.3 by failing to provide accurate wage statements; whether Defendant is liable for
4 waiting time penalties pursuant to California Labor Code §§ 201, 202 and 203; whether Defendant
5 violated California Labor Code § 558; whether Defendant violated California Business and
6 Professions Code §§ 17200, et seq. by failing to pay minimum wages.

7
8 c. Typicality of the Representative Plaintiffs' Claims. The Court finds that, for purposes of this
9 settlement only, the claims of Plaintiffs are typical of the claims of the Class, in that her claims arise
10 from the same alleged events and course of conduct as the claims of the Class and are based on the
11 same legal theories.

12
13 d. Fair and Adequate Representation of the Class's Interests. The Court finds that, for purposes
14 of this settlement only, the Representative Plaintiff will fairly and adequately represent the Class's
15 interests, in that the Representative Plaintiff for purposes of this settlement has the same interests as
16 all members of the Class, has diligently and zealously prosecuted this action to date, and is
17 represented by experienced and competent attorneys who have the resources necessary to represent
18 the Class. The Court hereby appoints Plaintiff Kelly Knowles as the Class Representative, for
19 settlement purposes only, under Rule 23 of the Federal Rules of Civil Procedure.

20
21 e. Predominance and Superiority of the Class Action Procedure. The Court concludes that, for
22 purposes of this settlement only, the requirements of Federal Rule of Civil Procedure 23(b)(3) are
23 satisfied because questions of law and fact common to Settlement Class Members predominate over
24 any questions affecting only individual members and that a settlement class is superior to other
25 available methods for the fair and efficient adjudication of the controversy.

26
27 9) Appointment of Class Counsel. The Court hereby appoints, for purposes of this settlement
28 only James Dal Bon of Law Offices of James Dal Bon as counsel for the settlement class ("Class

1 Counsel"). In making this appointment, the Court has considered that Class Counsel has performed
2 extensive work to date in identifying and investigating potential claims in the action; that Class
3 Counsel has extensive experience in handling class actions and the types of claims asserted in this
4 action; that Class Counsel is very knowledgeable of the applicable law; and that Class Counsel has
5 committed and will continue to commit adequate resources to representing the Class.
6

7 **THE SETTLEMENT IS FAIR AND THE COURT PRELIMINARILY APPROVES THE CLASS**
8 **SETTLEMENT**

9 10) The Court has reviewed the terms of the Settlement and the description of the Settlement set
10 forth in Plaintiffs' moving papers. Based on that review, the Court concludes that the Class
11 Settlement has no obvious deficiency, appears to be fair, reasonable, and adequate, and is within the
12 range of possible settlement approval such that notice of the proposed class settlement to the Class is
13 appropriate.
14

15 11) The Court has read and considered the Declarations of James Dal Bon and Kelly Knowles in
16 support of the motion for preliminary approval. Based on the Court's review of that Declaration, the
17 Court finds that the Settlement was negotiated at arms-length and is not collusive. The Court further
18 finds that Class Counsel were adequately informed about Defendant's financial condition and the
19 strengths and risks of the Class's case when they entered into the Settlement, and that they entered
20 into the Settlement only after conducting extensive informal and formal discovery and investigation,
21 which included interviewing the plaintiffs and other current and former employees of Defendant in
22 California, reviewing and analyzing extensive work and payroll data for the Class produced by
23 Defendant in the course of discovery, the employment of an economist and estimating potential
24 Class recoveries on a 15 minute increment or pay period basis.
25

26 12) As to the proposed payment of the net settlement proceeds to the Class set forth in the
27 Agreement, the Court has read and considered the Settlement and Declaration of James Dal Bon and
28

1 finds that the proposed distribution does not improperly grant preferential treatment to any segment
2 of the Class. The payment of the net settlement proceeds is rationally and reasonably related to the
3 relative strengths and weaknesses of the claims asserted and the associated potential recoveries.

4 13) The Court further finds on a preliminary basis that the payment of the Incentive Award of
5 \$7500 to the Representative Plaintiff contemplated by the Settlement is proper, fair, and reasonable
6 in consideration of the facts that the Representative Plaintiff spent significant amounts of time
7 assisting Class Counsel in investigating and preparing the Class's claims, searching for and
8 producing documents, and that the Representative Plaintiff provided an extensive individual release
9 to Defendant, in addition to the releases provided by all Settlement Class Members.
10

11 14) Accordingly, the Court hereby GRANTS preliminary approval of the Class Settlement.

12 **THE COURT PRELIMINARILY APPROVES THE PAGA SETTLEMENT**

13 15) The Court hereby grants preliminary approval of the PAGA Settlement, including the
14 settlement and release of the PAGA Claims, as defined in the Settlement Agreement, and the
15 payment of Fifty Thousand Dollars (\$50,000) from the Gross Settlement Fund to resolve the PAGA
16 Claims ("PAGA Payment").
17

18 16) The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment,
19 or \$37,500, to the California Labor and Workforce Development Agency ("LWDA") no later than
20 ten (10) calendar days after the Defendant funds the Class and any appeal rights have passed or been
21 waived by the Defendant.
22

23 17) Twenty-five percent (25%), or \$12,500, shall be distributed pro rata to all PAGA Releasees,
24 based on the number of weeks worked by a PAGA Releasee, as a fraction of the total weeks worked
25 by all PAGA Releasees. PAGA Releasees will not have the opportunity to opt out of, or object to
26 the PAGA Payment and settlement and release of the PAGA Claims. The payment to each PAGA
27 Releasee shall be made in the form of a check to be mailed to each of them no later than ten (10)
28

1 calendar days after the Defendant funds the Class and any appeal rights have passed or been waived
2 by the Defendant.

3 18) All PAGA Claims are hereby dismissed with prejudice as to the Plaintiff and all PAGA
4 Releasees during the PAGA period. The claims in this Action and the PAGA Claims of each PAGA
5 Releasee against Defendant, and against any and all of the Released Parties as defined in the
6 Settlement Agreement, are fully, finally, and forever released, relinquished and discharged pursuant
7 to the terms of the Settlement Agreement. All PAGA Releasees are permanently enjoined from
8 pursuing or seeking to reopen, any of the PAGA Claims, as defined in the Settlement Agreement to
9 the maximum extent permitted by law.
10

11 THE CLASS NOTICE IS REASONABLE

12 19) Plaintiffs have submitted for the Court's approval a proposed form of Class Notice that has
13 been jointly agreed upon by the Parties. ECF 33 Ex K. The proposed Class Notice appears to be the
14 best notice practical under the circumstances and appears to allow Settlement Class Members a full
15 and fair opportunity to consider the proposed Settlement and develop a response. The Parties'
16 proposed plan for distributing the Class Notice set forth in the Settlement Agreement likewise
17 appears to be a method that is reasonably calculated to reach all members of the Class who would be
18 bound by the Settlement.
19

20 20) The court hereby appoints Simplurus as the Class Administrator.

21 21) Under this plan, Simplurus will distribute the Class Notice to Settlement Class Members by
22 U.S. First Class Mail and e-mail. There appears to be no additional method of distribution that
23 would be reasonably likely to result in the receipt of notice by Settlement Class Members who may
24 otherwise not receive notice pursuant to the proposed distribution plan.
25

26 22) Accordingly, the Court HEREBY ORDERS that the Parties' proposed forms and manner of
27 distributing notice to the Class are approved.
28

1 23) The Court directs the mailing of the Class Notice by first-class mail to the Settlement Class
2 Members in accordance with the Implementation Schedule set forth below. The Court finds the
3 dates and process selected for the mailing and distribution of the Notice, as set forth in the
4 Implementation Schedule and the Settlement Agreement, meet the requirements of due process and
5 provide the best notice practicable under the circumstances and shall constitute due and sufficient
6 notice to all persons entitled thereto.
7

8 24) The Court orders the following Implementation Schedule for further proceedings:

9 25) Within 14 days of the order for preliminary approval the Defendant will submit the class list
10 to the class administrator.

11 26) Within 20 days of the Preliminary Approval Order the Class Administrator shall send notice
12 to all class members by first class mail.

13 27) The Class Administrator will skip trace and remail Notices returned by the post office within
14 7 days of receipt of the returned Notice and make the Parties' counsel aware of such notice.

15 28) Objections to the Settlement must be mailed within 21 days after the first Notice is mailed
16 and any Objections will be heard on the date set for the Final Approval Hearing.

17 29) Exclusions from the class settlement must be made 45 days after the date the Notice is first
18 mailed.
19

20 30) Requests for exclusion from the Settlement must be postmarked on or before the expiration
21 of the Response Deadline and returned to the Settlement Administrator, in compliance with the
22 terms of the Settlement Agreement and Class Notice. Any Settlement Class Member may seek
23 exclusion from the Settlement, except the PAGA portion of the settlement as provided in the
24 Settlement Agreement. Requests for exclusion that do not comply with this paragraph and the
25 requirements set forth in the Settlement Agreement and Class Notice shall not be effective.
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1 31) Objections to the Class Settlement must be filed with the Court by the close of the Response
2 Deadline in compliance with the terms of the Settlement Agreement and Class Notice. Objections
3 must state the specific grounds on which they are being made and include all supporting facts. If an
4 objector intends to appear at the Final Approval Hearing, either in person or through an attorney, the
5 objector must file and serve with the objection a notice of intention to appear at the Final Approval
6 Hearing. Objections that do not comply with this paragraph and the requirements set forth in the
7 Settlement Agreement and Class Notice shall not be considered.

9 32) A Final Approval and Fairness Hearing on the separate questions of whether (i) the proposed
10 Class Settlement, (ii) the proposed award of Class counsel's Fees and Expenses to Class Counsel,
11 and (iii) the proposed Class Representatives' Incentive Awards should be finally approved as fair,
12 reasonable, and adequate as to the members of the Class is scheduled for February 3, 2021 at 1:30
13 pm, in the Courtroom of the Honorable Phyllis J. Hamilton. All briefs and materials in support of an
14 Order Granting Final Approval of the Class Settlement, an Order Granting Class Counsel's
15 Attorneys' Fees and Costs, and an Order granting the Class Representatives' Incentive Awards shall
16 be filed and served by December 30, 2021 if opposed, and January 13, 2022 if unopposed.

18 33) If, for any reason, the Court does not execute and file an Order of Final Approval, or if the
19 Effective Date of the Settlement does not occur for any reason, the Settlement Agreement and the
20 proposed Settlement that is the subject of this Order, and all evidence and proceedings had in
21 conjunction therewith, shall be without prejudice to the status quo ante rights of the Parties to the
22 litigation, as more specifically set forth in the Settlement Agreement.

24 34) This Order, the Settlement Agreement, and all papers related thereto, are not, and shall not
25 be construed to be, an admission by Defendant of any liability, claim or wrongdoing whatsoever, and
26 shall not be offered as evidence of any such liability, claim or wrongdoing or the appropriateness of
27 class certification in the non-settlement context in this Action or in any other proceeding. The
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1 Settlement and this Agreement shall have no impact on the validity or enforceability of the
2 Arbitration Agreements entered into by some of the Settlement Class Members, and the settlement
3 shall not prejudice Defendant or the Released Parties from seeking to enforce such Arbitration
4 Agreements.

5
6 35) Pending further order of this Court, all proceedings in this matter other than those
7 contemplated herein and in the Settlement Agreement, are hereby stayed.

8 36) This Court may adjourn or continue the Final Approval Hearing from time to time without
9 further notice to Settlement Class Members.

10
11 IT IS SO ORDERED.

12
13 Dated: October 25, 2021

14 By:

Honorable Phyllis J. Hamilton