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on behalf of himself and all others similarly situated
and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

GABRIEL PASTRANA, on behalf of himself
and all others similarly situated and aggrieved,

Plaintiff,

v.

NATIONAL SIGN & MARKETING
CORPORATION, a California corporation;
JOHN J. KANE, an individual; and DOES 1
through 100, inclusive,

Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 28 2023

BY 
JESSICA MORALES, DEPUTY

CASE NO.: CIVSB2118749

[Assigned for all purposes to the Hon. David
Cohn in Dept. S-26]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND CERTIFYING
CLASS FOR SETTLEMENT PURPOSES
ONLY**

This Court, having considered the Motion of plaintiff GABRIEL PASTRANA ("Plaintiff")
for Preliminary Approval of the Class and Representative Action Settlement and Provisional Class
Certification for Settlement Purposes Only ("Motion for Preliminary Approval"), the Declarations
of David D. Bibiyan, Vedang J. Patel, Plaintiff, and Jodey Lawrence, Class and PAGA Settlement
Agreement (the "Settlement Agreement"), the Notice of Proposed Class Action Settlement and Date
for Final Approval Hearing ("Class Notice"), and other documents submitted in support of the

1 Motion for Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

2 1. The definitions set out in the Settlement Agreement are incorporated by reference
3 into this Order; all terms defined therein shall have the same meaning in this Order.

4 2. The Court certifies the following settlement class ("Settlement Class" or "Settlement
5 Class Members) for the purpose of settlement only: all current and former non-exempt employees
6 of defendants National Sign & Marketing Corporation and John Kane (collectively, "Defendants"),
7 employed in California at any time during the period from July 2, 2017 through Preliminary
8 Approval, unless modified pursuant to the Settlement Agreement ("Class Period").

9 3. The Court preliminarily appoints named plaintiff Gabriel Pastrana as Class
10 Representative, and David D. Bibiyan of Bibiyan Law Group, P.C., as Class Counsel.

11 4. The Court preliminarily approves the proposed class settlement upon the terms and
12 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
13 settlement appears to be within the range of reasonableness of settlement that could ultimately be
14 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
15 amount is fair, adequate and reasonable as to all potential class members when balanced against the
16 probable outcome of further litigation relating to liability and damages issues. It further appears that
17 extensive and costly investigation and research has been conducted such that counsel for the parties
18 at this time are reasonably able to evaluate their respective positions. It further appears to the Court
19 that the settlement at this time will avoid substantial additional costs to all parties, as well as the
20 delay and risks that would be presented by the further prosecution of the Action. It further appears
21 that the settlement has been reached as the result of intensive, non-collusive and arms-length
22 negotiations utilizing an experienced third-party neutral.

23 5. The Court approves, as to form and content, the Class Notice that has been submitted
24 herewith.

25 6. The Court directs the mailing of the Class Notice by first-class mail to the Class
26 Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds
27 that dissemination of the Class Notice set forth in the Settlement Agreement complies with the
28 requirements of law and appears to be the best notice practicable under the circumstances.

1 7. The Court hereby preliminarily approves the definition and disposition of the Gross
2 Settlement Amount of \$825,000.00, which is inclusive of: attorneys' fees of up to thirty-five percent
3 (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement
4 Agreement, amounts to \$288,750.00, in addition to actual costs incurred of up to \$25,000.00; service
5 award of up to \$7,500.00 to Plaintiff; costs of settlement administration of no more than \$6,995.00
6 and Private Attorneys' General Act of 2004 ("PAGA") penalties in the amount of \$20,000.00, of
7 which \$15,000.00 (75%) will be paid to the Labor and Workforce Development Agency ("LWDA")
8 and \$5,000.00 to "Aggrieved Employees," defined as all current and former non-exempt employees
9 of Defendants employed in California at any time during the period from July 1, 2020 through the
10 end of the Class Period ("PAGA Period").

11 8. The Gross Settlement Amount expressly excludes Employer Taxes, which will be
12 paid separately and apart by Defendants on the wages portion of the Gross Settlement Amount.

13 9. Defendants shall pay the Gross Settlement Amount and the amounts necessary to
14 fully pay Defendants' share of payroll taxes by transmitting the funds to the Settlement
15 Administrator within 60 days after the Court's final approval of the Settlement and exhaustion of
16 any appeal, or 18 months after August 18, 2022 if the Court has finally approved the Settlement and
17 appeals have been exhausted, whichever is later.

18 10. Class Member's "Workweek" shall mean any week during which a Class Member
19 worked for Defendants for at least one day, during the Class Period, based on hire dates, termination
20 dates (as applicable), and re-hire dates (as applicable).

21 11. The Gross Settlement Amount is based on Defendants' representation that there are
22 no more than 15,000 Workweeks worked during the Class Period. If the actual number of
23 Workweeks during Class Members during the Class Period increases by more than 10%, or 1,500
24 Workweeks, then, at the sole discretion of Defendants: (1) the Gross Settlement Amount shall be
25 increased proportionally for any excess increase in the total number of Workweeks during the Class
26 Period; or (2) Defendants may end the Class Period on the date that the Workweeks reaches 16,500,
27 to avoid paying any pro rata increase. Thus, for example, should the number of Workweeks during
28 the Class Period increase by 11%, or 1,650 Workweeks, and should Defendants choose option

1 number (1) above to increase the Gross Settlement Amount, then the Gross Settlement Amount shall
2 be increased by 1%, or \$8,250.00, for an increased Gross Settlement Amount of \$833,250.00.

3 12. The Court deems Phoenix Settlement Administrators ("Settlement Administrator" or
4 "Phoenix"), the Settlement Administrator, and payment of administrative costs, not to exceed
5 \$6,995.00 out of the Gross Settlement Amount for services to be rendered by Phoenix on behalf of
6 the class.

7 13. The Settlement Administrator shall prepare and submit to Class Counsel and
8 Defendants' Counsel a declaration attesting to the completion of the notice process as set forth in
9 the Settlement Agreement, including the number of attempts to obtain valid mailing addresses for
10 and re-sending of any returned Class Notices, as well as the identities, number of and copies of all
11 opt-outs and objections received.

12 14. The Court directs Defendants to, within fifteen (15) business days of this Order,
13 provide the Settlement Administrator with the "Class Data" for Settlement Class Members. The
14 Class Data means Class Member identifying information in Defendants' possession including the
15 Class Member's name, last-known mailing address, Social Security number, hire dates, termination
16 dates (as applicable), and re-hire dates (as applicable), and number of Class Period Workweeks and
17 PAGA Pay Periods.

18 15. Because Social Security Numbers are included in the Class List, the Settlement
19 Administrator shall maintain the Class Data in confidence and shall only access and use the list to
20 administer the settlement in conformity with the Court's orders.

21 16. Using best efforts to perform as soon as possible, and in no event later than fourteen
22 (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members
23 identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class
24 Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A.
25 The Class Notice shall include an estimate of the dollar amounts of any Individual Class Payment
26 and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and
27 PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices,
28 the Administrator shall update Class Member addresses using the National Change of Address

1 database.

2 17. "Response Deadline" means forty-five (45) calendar days after the Administrator
3 mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class
4 Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email,
5 or mail his or her objection to the Settlement. Class Members to whom Class Notice is resent after
6 having been returned undeliverable to the Administrator shall have an additional fourteen (14)
7 calendar days beyond the Response Deadline has expired.

8 18. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
9 must send the Administrator, by mail, a signed written Request for Exclusion not later than forty-
10 five (45) calendar days after the Administrator mails the Class Notice (plus an additional fourteen
11 (14) calendar days for Class Members whose Class Notice is re-mailed). A Request for Exclusion
12 is a letter from a Class Member or his/her representative that reasonably communicates the Class
13 Member's election to be excluded from the Settlement and includes the Class Member's name,
14 address and email address or telephone number.

15 19. Any Settlement Class Member who does not opt out of the Settlement by submitting
16 a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including
17 those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court
18 if Final Order Approving Settlement is granted.

19 20. Only Participating Class Members may object to the class action components of the
20 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
21 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment
22 and/or Class Representative Service Payment.

23 21. Participating Class Members may send written objections to the Administrator, by
24 mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to
25 appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class
26 Member who elects to send a written objection to the Administrator must do so not later than forty-
27 five (45) calendar days after the Administrator's mailing of the Class Notice (plus an additional
28 fourteen (14) calendar days for Class Members whose Class Notice was re-mailed).

1 22. Participating Class Members may (though are not required to) appear at the Final
2 Fairness and Approval hearing, either in person or through the objector's own counsel.

3 23. If a Class Member submits both an Objection and a Request for Exclusion, the
4 Request for Exclusion will control and the Objection will be void.

5 24. All papers filed in support of final approval, including supporting documents for
6 attorneys' fees and costs, shall be filed by per CCF.

7 25. A Final Fairness and Approval Hearing shall be held with the Court on
8 7/27/23 at 10:00 .m in Department S-26 of the above-entitled Court to
9 determine: (1) whether the proposed settlement is fair, reasonable and adequate, and should be
10 finally approved by the Court; (2) the amount of attorneys' fees and costs to be awarded to Class
11 Counsel; (3) the amount of service award to the Class Representative; (4) the amount to be paid to
12 the Settlement Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the
13 LWDA and Aggrieved Employees.

14 26. Within fourteen (14) calendar days after Defendants fund the Gross Settlement
15 Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA
16 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel
17 Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative
18 Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
19 Expenses Payment and the Class Representative Service Payment shall not precede disbursement
20 of Individual Class Payments and Individual PAGA Payments.

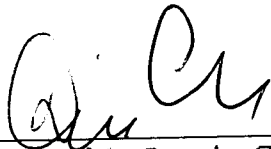
21 27. Any checks issued by the Settlement Administrator to Class Members will be
22 negotiable for one-hundred eighty (180) calendar days. After one-hundred eighty (180) calendar
23 days from the date of mailing, the checks shall become null and void. Funds associated with
24 cancelled checks will be donated to Legal Aid at Work for use in San Bernardino County.

25 28. In the event the settlement does not become effective in accordance with the terms
26 of the Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to
27 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
28 and the parties shall revert to their respective positions as of the entry of the Settlement Agreement.

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IT IS SO ORDERED.

Dated: 2/28/23



Judge of the Superior Court
DAVID COHN

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