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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN BERNARDINO

14 FERNANDO ALCOCER, JR., an individual,
15 on behalf of himself and on behalf of all
persons similarly situated,

16 Plaintiff,

17 v.

18 DSV SOLUTIONS, LLC, a Limited Liability
19 Company; and DOES 1 through 50, inclusive,

20 Defendants.

CASE NO.: **CIVDS2010345**

[Consolidated with case no. CIVDS2018614]

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: December 1, 2021
Hearing Time: 10:00 a.m.

Judge: Hon. David Cohn
Dept.: S-26

Action Filed: June 2, 2020
Trial Date: Not set

28 PRELIMINARY APPROVAL ORDER

1 This matter, having come before the Honorable David Cohn of the Superior Court of the
2 State of California, in and for the County San Bernardino, on December 1, 2021, for the motion by
3 Plaintiff Fernando Alcocer, Jr. ("Plaintiff") for preliminary approval of the class settlement with
4 Defendant DSV Solutions, LLC ("Defendants"). The Court, having considered the briefs,
5 argument of counsel and all matters presented to the Court and good cause appearing, hereby
6 GRANTS Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

7
8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action Settlement Agreement
10 ("Agreement") attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in Support of
11 Plaintiff's Motion for Preliminary Approval of Class Action Settlement. This is based on the
12 Court's determination that the Settlement set forth in the Agreement is within the range of possible
13 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
14 and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all
16 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. As part of the Settlement, the Parties have stipulated to consolidate this action,
18 Case No. CIVDS2010345, with the representative PAGA action, Case No. CIVDS2010345. By
19 Order date August 3, 2021, this Court approved the consolidation of these two cases with Case
20 No. CIVDS2010345 to be the lead case.

21 4. The Gross Settlement Amount is One Million Five Hundred Thousand Dollars
22 (\$1,500,000). It appears to the Court on a preliminary basis that the settlement amount and terms
23 are fair, adequate and reasonable as to all potential Class Members when balanced against the
24 probable outcome of further litigation and the significant risks relating to certification, liability and
25 damages issues. It further appears that investigation and research have been conducted such that
26 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
27 to the Court that settlement at this time will avoid substantial additional costs by all Parties, as

1 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
2 It further appears that the Settlement has been reached as the result of serious and non-collusive,
3 arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,
4 adequate, and reasonable when balanced against the probable outcome of further litigation and the
5 significant risks relating to certification, liability, and damages issues.

6 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
7 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$20,000, and
8 proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
9 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
10 any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence
11 supporting these requests, including lodestar, prior to final approval.

12 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to
13 certification of a class for settlement purposes only. This stipulation will not be deemed
14 admissible in this or any other proceeding should this Settlement not become final. For settlement
15 purposes only, the Court conditionally certifies the following Class: "all individuals who are or
16 previously were employed by Defendant in California who were classified as non-exempt
17 employees at any time during the Class Period." The Class Period is June 2, 2016 to June 15,
18 2021.

19 7. The Court concludes that, for settlement purposes only, the Class meets the
20 requirements for certification under section 382 of the California Code of Civil Procedure in that:
21 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
22 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
23 community of interest amongst the members of the Class with respect to the subject matter of the
24 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
25 the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class
26 action is superior to other available methods for the efficient resolution of this controversy; and (f)

1 counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
2 representative of the Class.

3 8. The Court provisionally appoints Plaintiff as the representative of the Class. The
4 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
5 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

6 9. The Court hereby approves, as to form and content, the Notice of Proposed
7 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
8 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
9 accurately inform the Class of all material elements of the proposed Settlement, of the Class
10 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
11 member’s right and opportunity to object to the Settlement. The Court further finds that the
12 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
13 and this Order meets the requirements of due process, is the best notice practicable under the
14 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
15 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
16 the Agreement.

17 10. The Court hereby appoints ILYM Group as Settlement Administrator. No later
18 than twenty (20) calendar days after preliminary approval of the Settlement by the Court,
19 Defendant shall provide to the Settlement Administrator an electronic spreadsheet with the Class
20 Data. The Settlement Administrator will perform address updates and verifications as necessary
21 prior to the mailing of the Class Notice. Using best efforts to mail it as soon as possible, and in no
22 event later than 14 days after receiving the Class information spreadsheet, the Settlement
23 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail.

24 11. The Court hereby preliminarily approves the proposed procedure for exclusion
25 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
26 from the Class as provided in the Class Notice by following the instructions for requesting
27 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
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1 postmarked by no later than forty-five (45) calendar days after the date of the mailing of the Class
2 Notice and received by the Settlement Administrator. If the Class Notice Packet is re-mailed, the
3 response date for requests for exclusion will be extended an additional 15 days. Any such person
4 who chooses to opt out of and be excluded from the Class will not be entitled to any recovery
5 under the Settlement and will not be bound by the Settlement or have any right to object, appeal or
6 comment thereon. Class Members who have not requested exclusion shall be bound by all
7 determinations of the Court, the Agreement and the Judgment. A request for exclusion may only
8 opt out that particular individual, and any attempt to effect an opt out of a group, class, or subclass
9 of individuals is not permitted and will be deemed invalid.

10 12. Any Class Member who has not opted out may appear at the final approval hearing
11 and may object or express the Member's views regarding the Settlement, and may present
12 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
13 and determined by the Court as provided in the Notice. Class Members will have forty-five (45)
14 calendar days from the date of the mailing of the Class Notices to submit their written objections
15 to the Settlement Administrator in accordance with the instructions in the Class Notice. If the
16 Class Notice Packet is re-mailed, the response date for written objections will be extended an
17 additional 15 days. Alternatively, Class Members may appear at the Final Approval Hearing to
18 make an oral objection.

19 13. A Final Approval Hearing shall be held before this Court on _____
20 _____ at _____ in Department 26 at the San Bernardino Justice Center of the San
21 Bernardino County Superior Court to determine all necessary matters concerning the Settlement,
22 including: whether the proposed settlement of the Action on the terms and conditions provided for
23 in the Agreement is fair, adequate and reasonable and should be finally approved by the Court;
24 whether the Final Approval Order and Judgment should be entered herein; whether the plan of
25 allocation contained in the Agreement should be approved as fair, adequate and reasonable to the
26 Class Members; and to finally approve attorneys' fees and costs, the service award, and the
27 expenses of the Settlement Administrator. All papers in support of the motion for final approval
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1 and the motion for attorneys' fees, costs and service awards shall be filed with the Court and
2 served on all counsel no later than sixteen (16) court days before the hearing.

3 14. Neither the Settlement nor any exhibit, document, or instrument delivered
4 thereunder shall be construed as a concession or admission by Defendant in any way that the
5 claims asserted have any merit or that this Action was properly brought as a class or representative
6 action, and shall not be used as evidence of, or used against Defendant as, an admission or
7 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
8 omission by Defendant or with respect to the truth of any allegation asserted by any person.
9 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
10 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
11 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
12 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
13 evidence of a presumption, concession, indication or admission by Defendant of any liability,
14 fault, wrongdoing, omission, concession or damage.

15 15. In the event the Settlement does not become effective in accordance with the terms
16 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
17 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
18 and the Parties shall revert to their respective positions as of before entering into the Agreement,
19 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
20 including all available defenses and affirmative defenses, and arguments that any claim in the
21 Action could not be certified as a class action and/or managed as a representative action. In such
22 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
23 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
24 the Agreement with respect to the effect of the Agreement if it is not approved.

25 16. The Court reserves the right to adjourn or continue the date of the final approval
26 hearing and all dates provided for in the Agreement without further notice to Class Members, and
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1 retains jurisdiction to consider all further applications arising out of or connected with the
2 proposed Settlement.

3 17. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
4 further orders of the Court at the Final Approval Hearing.

5 **IT IS SO ORDERED.**

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7 Dated: _____

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HON. DAVID COHN
JUDGE, SUPERIOR COURT OF CALIFORNIA

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PRELIMINARY APPROVAL ORDER