

FILED
Superior Court of California
County of Los Angeles

DEC 22 2021

Cherri R. Carter, Deputy Clerk
Alfredo Morales dep
ALFREDO MORALES

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

BERTHA PENA, individually, on behalf of
all others similarly situated,

Plaintiff,

v.

CANYON PLASTICS, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 20STCV34161

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

Date: December 22, 2021
Time: 10:00 a.m.
Dept.: SSC-7

I. BACKGROUND

Plaintiff Bertha Pena sues her former employer, Defendant Canyon Plastics, Inc., for alleged wage and hour violations. Defendant manufactures blow molded and injection molded products for various industries. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

1 On September 3, 2020, Plaintiff filed her class action complaint against
2 Defendant alleging causes of action for: (1) failure to pay minimum wage (Labor Code
3 §§ 1194, 1194.2); (2) failure to provide compliant rest periods, and pay rest period
4 premiums (Labor Code §§ 226.7, 512; IWC Wage Order No. 4); (3) failure to pay
5 overtime wages (Labor Code §§ 510, 1194, 1194.2, 1197, 1199; IWC Wage Order No.
6 4); (4) failure to pay wages upon separation of employment (Labor Code §§ 201-203);
7 (5) failure to provide complete/accurate wage statements (Labor Code § 226(A)); (6)
8 failure to timely pay wages (Labor Code §§ 204, 210); (7) failure to provide suitable
9 seating (Labor Code § 1198; IWC Wage Order No. 4); and (8) UCL violations based on
10 the foregoing (Bus. & Prof. Code §§ 17200-17204).

11 On September 3, 2020, Plaintiff filed a separate Private Attorneys General Act
12 (“PAGA”) representative action complaint against Defendant for PAGA penalties based
13 on Defendant’s violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7,
14 510, 1194, 1194.2, 1197, 1199, and the IWC Wage Order.

15 On March 25, 2021, the parties attended mediation before Lynn Frank and were
16 able to reach a settlement. The terms were finalized in the *Joint Stipulation of*
17 *Settlement and Release of Class Action* (“Settlement Agreement”), a copy of which was
18 filed with the Court.

19 On July 15, 2021, Plaintiff filed her First Amended Complaint adding the PAGA
20 cause of action to the class action complaint.

21 On August 10, 2021, the Court issued a “checklist” to the parties pertaining to
22 deficiencies in the Settlement Agreement. In response, the parties filed supplemental
23 briefing.

24 On October 1, 2021, the Court issued an additional checklist for the parties to
25 address remaining issues noted by the Court. In response, the parties filed further

1 briefing, including the revised Settlement Agreement attached to the Second
2 Supplemental Declaration of Jonathan Melmed ("Melmed Decl.") as Exhibit 3.

3 Now before the Court is Plaintiff's motion for preliminary approval of the
4 settlement. For the reasons set forth below, the Court preliminarily grants approval for
5 the settlement.

6 7 **II. THE TERMS OF THE SETTLEMENT**

8 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

9 "Class" or "Settlement Class" shall mean all California residents who are or
10 were employed by Defendant as hourly workers at any time from February 14, 2019
11 through the date of preliminary approval. Defendant represents that the Class consists
12 of approximately 191 Class Members that worked a total of approximately 6,500
13 workweeks during the Class Period. The terms "Class Member" or "Settlement Class
14 Member" shall mean any person who is a member of the Settlement Class, or, if such
15 person is incompetent or deceased, the person's legal guardian, executor, heir or
16 successor-in-interest. (§I.4)

17 "Class Period" shall mean the period from February 14, 2019 through the date of
18 preliminary approval. (§I.10)

19 Class Counsel represents that due to the presence of a valid arbitration
20 agreement and limited release, the Class Period negotiated is equivalent to the PAGA
21 Period. Therefore, a separate class of aggrieved employees would not be necessary, as
22 the two would be identical. (Supp. Melmed Decl. §§ 6, 9.)

23 24 **B. THE MONETARY TERMS OF SETTLEMENT**

25 The essential monetary terms are as follows:

1 The Gross Settlement Amount (“GSA”) is **\$375,000** (§I.35). This includes
2 payment of a PAGA penalty of **\$20,000** to be paid 75% to the LWDA (\$15,000) and 25%
3 to the Aggrieved Employees (\$5,000) (§I.32).

4 Escalator Provision: If 10% or more members of the Settlement Class timely Opt-
5 Out, Defendant shall have the right (but not the obligation) to void this Class Settlement.
6 If the number of workweeks is greater than 7,150, then the GSA shall be increased
7 proportionately for each additional week worked. (§VIII.2)

8 The Net Settlement Amount (“Net”) (**\$192,500**) is the GSA less:

- 9 ○ Up to **\$125,000** (33 1/3%) for attorney fees (§IV.6);
 - 10 ○ Up to **\$15,000** for attorney costs (*Ibid.*);
 - 11 ○ Up to **\$7,500** for a service award to the proposed class representative
12 (§IV.2); and
 - 13 ○ Estimated **\$15,000** for settlement administration costs (§V.1).
 - 14 • Employer-side payroll taxes will be paid by Defendant separately and not from
15 the GSA. (§I.18)
 - 16 • Assuming the Court approves all maximum requested deductions, approximately
17 \$192,500 will be available for automatic distribution to participating class
18 members. Assuming full participation, the average settlement share will be
19 approximately \$1,007.85. ($\$192,500 \text{ Net} \div 191 \text{ class members} = \$1,007.85$). In
20 addition, each class member will receive a portion of the PAGA penalty,
21 estimated to be \$26.17 per class member. ($\$5,000 \text{ or } 25\% \text{ of } \$20,000 \text{ PAGA}$
22 $\text{penalty} \div 191 \text{ class members} = \26.17).
 - 23 • There is no Claim Requirement (Notice pg. 1).
 - 24 • The settlement is not reversionary (§IV.1).
- 25

1 • Individual Settlement Share Calculation: Individual Settlement Amounts to be
2 paid to Class Participants shall be paid from the Net Settlement Amount. The
3 portion of the Net Settlement Amount shall be distributed pro rata on a “checks
4 cashed” basis based on the proportional number of weeks worked by each Class
5 Member during the Class Period. (§VII.2)

6 ○ Each member of the Class Member shall be entitled to receive a portion
7 of the PAGA Payment. The PAGA Payment shall consist of the penalties
8 pursuant to PAGA that the Parties have agreed is a reasonable sum to be
9 paid in settlement of the PAGA claims included in the Action, which is
10 \$20,000.00. The PAGA Payment must be approved by the Court pursuant
11 to Labor Code section 2699 and is to be distributed as follows: seventy-
12 five percent (75%) (i.e., \$15,000.00) to the LWDA and twenty-five
13 percent (25%) (i.e., \$5,000.00) to the Class Members. The portion of the
14 PAGA Payment allocated to the Class Members shall be distributed to the
15 Class Members based on the pro rata number of pay periods worked by
16 each particular Class Member during the Class Period as a proportion of
17 all pay periods worked by all Class Members. (§VII.2)

- 18 • Tax Withholdings: 20% as wages, 80% as penalties and interest (§IV.4).
- 19 • Uncashed Settlement Payment Checks: Any funds associated with checks that
20 have not been cashed within 180 days, will become void and the Individual
21 Settlement Amount associated with the uncashed check will be distributed
22 pursuant to Code of Civil Procedure section 384 to the State of California
23 Unclaimed Wage or Property Fund in the name of the employee. (§VII.7)
- 24 • Funding and Distribution of Settlement: Defendant shall deposit the GSA in a
25 lump sum payment plus the employer-side payroll taxes to the Administrator

1 within 15 days of the effective date of the Settlement. (§V.2) The Individual
2 Settlement Amounts will be mailed to each Class Participant, by first-class U.S.
3 mail, to their last-known address no later than 5 business days after the Effective
4 Date. (§VII.6)

5
6 **C. TERMS OF RELEASES**

- 7 • Release of Claims by Settlement Class: Upon the later of the Effective Date and
8 payment by Defendant to the Settlement Administrator of the Gross Settlement
9 Amount and payment of Employer's Taxes, each Settlement Class Member who
10 has not submitted a timely Opt-Out request, and Plaintiff, on her own behalf and
11 as Class Representative, Plaintiff and all Persons purporting to act on their behalf
12 or purporting to assert a claim under or through them, including, but not limited
13 to, their dependents, heirs and assigns, beneficiaries, devisees, legatees,
14 executors, administrators, agents, trustees, conservators, guardians, personal
15 representatives, and successors-in-interest, whether individual, class,
16 representative, legal, equitable, direct or indirect, or any other type or in any
17 other capacity (Releasing Parties) each releases the Released Parties, and each of
18 them, of and from any and all Released Claims during the Class Period. (§X.1)
- 19 ○ Each of the Releasing Parties, including each Settlement Class Member,
20 except those who timely Opt-Out, will be bound to the release of
21 Released Claims as a result of the Class Settlement and to the terms of the
22 final judgment and the satisfaction of such judgment. (*Ibid.*)
 - 23 ○ All Class Members, including those who submitted timely opt-outs, upon
24 the later of the Effective Date and payment by Defendant to the
25 Settlement Administrator of the Gross Settlement Amount and payment

1 of Employer's Taxes, will release any and all claims that are pled in the
2 Action, or which could have been pursued in the Action under PAGA,
3 based on the factual allegations in the Action that arose during from
4 February 14, 2019 through the date of preliminary approval, including but
5 not limited to: failure to pay minimum wage, failure to pay overtime
6 wages, failure to authorize or permit compliant rest periods, failure to
7 issue accurate itemized wage statements, failure to maintain accurate
8 records, failure to timely pay wages, failure to pay all wages due at
9 termination, pursuant to Labor Code sections 201, 202, 203, 204, 210,
10 226, 226.3, 226.7, 510, 1194, 1194.2, 1197. (*Ibid.*)

- 11 ○ "Released Claims" shall mean those claims alleged in the operative
12 Complaint arising out of or related to allegations set forth in the operative
13 Complaint or PAGA Notice to the LWDA, including but not limited to:
14 claims for minimum wage violations; failure to pay overtime wages, rest
15 period violations; failure to timely pay wages; itemized wage statement
16 violations; waiting time penalties; failure to provide suitable seating;
17 claims for violation of Sections 11 and 12 of IWC Wage Order No. 1;
18 unfair competition based on the foregoing; and claims for PAGA
19 penalties pursuant to the California Private Attorneys General Act based
20 on the foregoing Labor Code violations; including, but not limited to,
21 California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7,
22 510, 1194, 1194.2, 1197, and Labor Code §§ 2698-2699.5; liquidated
23 damages, penalties; interest; fees; costs; and all other claims and
24 allegations made or which could have been made in the Action from
25

February 14, 2019 through the date of preliminary approval of the Settlement (the “Released Claims”). (§I.28)

- The Settlement Class will release Defendant and all of its subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, and assigns (the “Released Parties”) from the Released Claims. The Release Period shall be the Class Period. No other claims are released other than those claims specifically plead in the operative Complaint. (*Ibid.*)
- “Released Parties” shall mean Defendant and all of its subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, and assigns. (§I.29)
- The named Plaintiff will also provide a general release and a waiver of the protections of Cal. Civ. Code §1542. (§X.2)
- The releases are effective upon the later of the Effective Date and payment by Defendant to the Settlement Administrator of the Gross Settlement Amount and payment of Employer’s Taxes. Defendant shall deposit the GSA in a lump sum payment plus the employer-side payroll taxes to the Administrator within 15 days of the effective date of the Settlement. (§V.2)

D. SETTLEMENT ADMINISTRATION

- The proposed Settlement Administrator is ILYM Group, Inc. (§I.34).
- Settlement administration costs are estimated to be \$15,000 (§I.2).
- Notice: The manner of giving notice is described below.
- Opt Out/Objection Dates: “Response Deadline” shall mean the date sixty (60) days following the date on which the Settlement Administrator first mails Class Notice to the Settlement Class Members and the last day on which Settlement

1 Class Members may submit a request for exclusion and/or objection to Settlement.

2 (§I.30) The same deadline applies to the submission of workweek disputes. (§V.2)

- 3 ○ A request to Opt Out of the Class Settlement shall not serve to exclude the
- 4 Class Member from participation in the PAGA settlement. Class Members
- 5 shall have no right or ability to opt out of the portion of this Settlement
- 6 Agreement releasing PAGA claims. (§VI.3)
- 7 ○ If 10% or more members of the Settlement Class timely Opts-Out,
- 8 Defendant shall have the right (but not the obligation) to void this Class
- 9 Settlement. (§VIII.2)
- 10 ● Notice of Final Judgment will be posted on the Settlement Administrator's website
- 11 (§VI.5).

12

13 **III. SETTLEMENT STANDARDS AND PROCEDURE**

14 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise

15 of an entire class action, or of a cause of action in a class action, or as to a party,

16 requires the approval of the court after hearing." "Any party to a settlement agreement

17 may serve and file a written notice of motion for preliminary approval of the settlement.

18 The settlement agreement and proposed notice to class members must be filed with the

19 motion, and the proposed order must be lodged with the motion." See Cal. Rules of

20 Court, rule 3.769(c).

21 "In a class action lawsuit, the court undertakes the responsibility to assess

22 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or

23 dismissal of a class action. The purpose of the requirement [of court review] is the

24 protection of those class members, including the named plaintiffs, whose rights may not

25 have been given due regard by the negotiating parties." *Consumer Advocacy Group,*

1 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
2 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
3 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
4 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
5 agreement to the extent necessary to reach a reasoned judgment that the agreement is
6 not the product of fraud or overreaching by, or collusion between, the negotiating
7 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
8 concerned.”] [internal quotation marks omitted].

9 “The burden is on the proponent of the settlement to show that it is fair and
10 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
11 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
12 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
13 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
14 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

15 Notwithstanding an initial presumption of fairness, “the court should not give
16 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
17 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
18 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
19 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
20 members, the court must independently and objectively analyze the evidence and
21 circumstances before it in order to determine whether the settlement is in the best
22 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
23 In that determination, the court should consider factors such as “the strength of
24 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
25 the risk of maintaining class action status through trial, the amount offered in

1 settlement, the extent of discovery completed and stage of the proceedings, the
2 experience and views of counsel, the presence of a governmental participant, and the
3 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
4 factors is not exclusive and the court is free to engage in a balancing and weighing of
5 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
6 245.

7 At the same time, “[a] settlement need not obtain 100 percent of the damages
8 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
9 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
10 substantially narrower than it would be if the suits were to be successfully litigated,’
11 this is no bar to a class settlement because ‘the public interest may indeed be served by
12 a voluntary settlement in which each side gives ground in the interest of avoiding
13 litigation.’” *Id.* at 250.

14 15 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

16 17 **A. THERE IS A PRESUMPTION OF FAIRNESS**

18 The settlement is entitled to a presumption of fairness for the following reasons:

19 20 **1. The settlement was reached through arm’s-length bargaining**

21 On March 25, 2021, the parties attended mediation before Lynn Frank and were
22 able to reach a settlement. (Melmed Decl. ¶13.)

23 //

24 //

25 //

1 **2. The investigation and discovery were sufficient**

2 Class Counsel represents that their discovery and investigation included, among
3 other things, the inspection and analysis of documents and other information produced
4 by Plaintiff and/or Defendant including time sheets, wage statements, and relevant
5 employment policies. (*Id.* at ¶11.)

6 Class Counsel further represents that in preparation for mediation, Defendant's
7 counsel provided a class list outlining the start and end dates of the putative class
8 members. Defendant further provided all timecards and redacted payroll records for the
9 putative class. (Supp. Melmed Decl. ¶¶ 1-2.) This is sufficient to value the case for
10 settlement purposes.

11
12 **3. Counsel is experienced in similar litigation**

13 Class Counsel represent that they are experienced in class action litigation,
14 including wage and hour class actions. (Melmed Decl. ¶59.)

15
16 **4. Percentage of the class objecting**

17 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
18 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 ["Should
19 the court receive objections to the proposed settlement, it will consider and either sustain
20 or overrule them at the fairness hearing."].

21
22
23 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
24 **FAIR, ADEQUATE, AND REASONABLE**

25 //

Notwithstanding a presumption of fairness, the settlement must be evaluated in its entirety. The evaluation of any settlement requires factoring unknowns. “As the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and *the exercise of business judgment* in determining whether the proposed settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation*, *supra*, 495 F.2d at p. 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

1. Amount Offered in Settlement

The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Id.* at 130.)

Class Counsel estimated Defendant’s maximum exposure at \$3,631,990, based on the following analysis:

Violation	Maximum Exposure
Unpaid Minimum and Overtime Wages	\$29,250.00
Rest Period Claims	\$585,000.00
Wage Statement Penalties	\$481,100.00
Failure to Timely Pay Wages	\$1,273,200.00
Waiting Time Penalties	\$613,440.00
PAGA Penalties	\$650,000.00
Total	\$3,631,990.00

1 (Melmed Decl. ¶47.)

2 Class Counsel obtained a gross settlement valued at \$375,000. This is
3 approximately 10.32% of Defendant's maximum exposure.

4 5 **2. The Risks of Future Litigation**

6 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
7 motion practice and appeals) are also likely to prolong the litigation as well as any
8 recovery by the class members. Even if a class is certified, there is always a risk of
9 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
10 ["Our Supreme Court has recognized that trial courts should retain some flexibility in
11 conducting class actions, which means, under suitable circumstances, entertaining
12 successive motions on certification if the court subsequently discovers that the propriety
13 of a class action is not appropriate."].) Further, the settlement was negotiated and
14 endorsed by Class Counsel who, as indicated above, are experienced in class action
15 litigation. Based upon their investigation and analysis, the attorneys representing
16 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
17 adequate. (Melmed Decl. ¶15.)

18 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
19 which was sent a copy of the Settlement Agreement on August 3, 2021 and has not yet
20 objected. (Melmed Decl., Exhibit C.) Any objection by it will be considered at the final
21 fairness hearing.

22 23 **3. The Releases Are Limited**

24 The Court has reviewed the Releases to be given by the absent class members and
25 the named plaintiff. The releases, described above, are tailored to the pleadings and

1 release only those claims in the pleadings. There is no general release by the absent
2 class. The named plaintiff's general release is appropriate given that she was represented
3 by counsel in its negotiation.

4 5 **4. Conclusion**

6 Class Counsel estimated Defendant's maximum exposure at \$3,631,990. Class
7 Counsel obtained a gross settlement valued at \$375,000. This is approximately 10.32%
8 of Defendant's maximum exposure, which, given the uncertain outcomes, including the
9 potential that the class might not be certified, that liability is a contested issue, and that
10 the full amount of penalties would not necessarily be assessed even if the class is certified
11 and liability found, the settlement is within the "ballpark of reasonableness."

12 13 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

14 A detailed analysis of the elements required for class certification is not required,
15 but it is advisable to review each element when a class is being conditionally certified.

16 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
17 advocating class treatment must demonstrate the existence of an ascertainable and
18 sufficiently numerous class, a well-defined community of interest, and substantial
19 benefits from certification that render proceeding as a class superior to the alternatives."
20 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

21 **1. The Proposed Class is Numerous**

22 There are 191 putative Class Members. (Settlement Agreement ¶I.4.)
23 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
24 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the "requirement that there be many
25 parties to a class action is liberally construed," and citing examples wherein classes of

1 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
2 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

3 **2. The Proposed Class Is Ascertainable**

4 “A class is ascertainable, as would support certification under statute
5 governing class actions generally, when it is defined in terms of objective
6 characteristics and common transactional facts that make the ultimate identification
7 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
8 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

9 The class is defined above. Class Members are ascertainable through
10 Defendant’s records. (Melmed Decl. ¶47.)

11 **3. There Is A Community of Interest**

12 “The community of interest requirement involves three factors: ‘(1) predominant
13 common questions of law or fact; (2) class representatives with claims or defenses typical
14 of the class; and (3) class representatives who can adequately represent the class.’”
15 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

16 As to predominant questions of law or fact, the parties agree, for the purposes of
17 this settlement only, that the Class is subject to common compensation policies, and
18 common policies regarding the provision of rest breaks, rounding, and payment of
19 minimum and overtime wages. (Motion at 21:3-9.)

20 As to typicality, the parties agree, for the purposes of this settlement only, that
21 Plaintiff asserts claims regarding Defendant’s compensation practices and rest break
22 practices that are at the core of the lawsuit. (Motion at 21:11-15.)

23 As to adequacy, Plaintiff represents that she understands her duties and risks of
24 serving as Class Representative, and does not have interests in conflict with those of the
25

1 class. (Declaration of Bertha Pena ¶¶ 4-6.) As previously stated, Class Counsel have
2 experience in class action litigation.

3 4 **4. Substantial Benefits Exist**

5 Given the relatively small size of the individual claims, a class action is superior to
6 separate actions by the class members.

7 8 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 9 **OF DUE PROCESS**

10 The purpose of notice is to provide due process to absent class members. A practical
11 approach is required, in which the circumstances of the case determine what forms of
12 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
13 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
14 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
15 stake of the individual class members; (4) the cost of notifying class members; (5) the
16 resources of the parties; (6) the possible prejudice to class members who do not receive
17 notice; and (7) the res judicata effect on class members.

18 **1. Method of class notice**

19 Within 3 business days after the Preliminary Approval Date, Defendant shall
20 provide the Settlement Administrator with an updated list of Class Members containing
21 names, social security numbers, dates of employment, last-known addresses and phone
22 numbers (the "Database"). The Database shall be marked "Confidential –Settlement
23 Administrator's Eyes Only." Class Counsel shall not receive a copy of this list. (¶VI.2)
24 However, Class Counsel represents that they received a redacted class list. (Second
25 Supp. Melmed Decl. Section 4.a.)

1 Within 14 calendar days following the receipt of the Database from Defendant,
2 the Settlement Administrator shall determine the number of workweeks for each
3 Settlement Class Member, populate the Settlement Class for each accordingly, and send
4 each Settlement Class Member the Class Notice via first-class, United States mail. The
5 Class Notice shall also contain an easily understood statement alerting the Class
6 Members that, unless they elect to Opt-Out of the Class Settlement, the Settlement
7 Class Member is releasing and waiving all Released Claims against the Released
8 Parties. (§VI.2)

9 Prior to mailing the Class Notice to the Class, the Settlement Administrator will
10 perform a search based on the National Change of Address Database to update and
11 correct the Class Members' addresses, contained in the Class List, for any known or
12 identifiable address changes. The Settlement Administrator will perform a skip-trace
13 search and re-mail all Class Notices that are returned as undelivered on or before the
14 Response Deadline, within three (3) business days of receiving the returned Class
15 Notice. Class Members who are presently employed with Defendant at the time of
16 mailing and have their Class Notice returned as undelivered shall be contacted directly
17 by the Settlement Administrator with information provided by Defendant. (*Ibid.*)

18 Settlement Class Member(s) whose notice was re-mailed shall have an additional
19 14 days in which to Opt-Out. The Settlement Administrator shall include the following
20 sentence in bold font at the top of each re-mailed Notice: "This is a re-mailing. Your
21 new Response Deadline is [date]." and change all Response Deadlines throughout the
22 re-mailed Notice to the updated date. (*Ibid.*)

23 **2. Content of class notice.**

24 A copy of the proposed class notice is attached to Second Supp. Melmed Decl. as
25 Exhibit 5. The notice includes information such as: a summary of the litigation; the

1 nature of the settlement; the terms of the settlement agreement; the maximum
2 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
3 the enhancement award, and claims administration costs); the procedures and deadlines
4 for participating in, opting out of, or objecting to, the settlement; the consequences of
5 participating in, opting out of, or objecting to, the settlement; and the date, time, and
6 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
7 given in both English and Spanish. (Supp. Melmed Decl. ¶30.)

8 **3. Settlement Administration Costs**

9 Settlement administration costs are estimated at **\$15,000**, including the cost of
10 notice (¶V.1). Prior to the time of the final fairness hearing, the settlement
11 administrator must submit a declaration attesting to the total costs incurred and
12 anticipated to be incurred to finalize the settlement for approval by the Court.

14 **E. ATTORNEY FEES AND COSTS**

15 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
16 implied, that has been entered into with respect to the payment of attorney fees or the
17 submission of an application for the approval of attorney fees must be set forth in full in
18 any application for approval of the dismissal or settlement of an action that has been
19 certified as a class action.”

20 Ultimately, the award of attorney fees is made by the court at the fairness
21 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
22 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
23 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
24 1132-1136. In common fund cases, the court may use the percentage method. If
25 sufficient information is provided a cross-check against the lodestar may be conducted.

1 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
2 agreement by the parties to the contrary, “the court ha[s] an independent right and
3 responsibility to review the attorney fee provision of the settlement agreement and
4 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
5 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

6 The question of class counsel’s entitlement to **\$125,000** (33 1/3%) in attorney
7 fees will be addressed at the final fairness hearing when class counsel brings a noticed
8 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
9 the court with current market tested hourly rate information and billing information so
10 that it can properly apply the lodestar method and must indicate what multiplier (if
11 applicable) is being sought.

12 Class counsel should also be prepared to justify the costs sought (capped at
13 **\$15,000**) by detailing how they were incurred.

14 15 **F. SERVICE AWARD**

16 The Settlement Agreement provides for a service award of up to **\$7,500** for the
17 class representative. Trial courts should not sanction enhancement awards of thousands
18 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,
19 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
20 quantification of time and effort expended on the litigation, and in the form of reasoned
21 explanation of financial or other risks incurred by the named plaintiffs, is required in
22 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
23 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
24 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

1 In connection with the final fairness hearing, the named Plaintiffs must submit a
2 declaration attesting to why they should be compensated for the expense or risk they
3 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

4 The Court will decide the issue of the enhancement award at the time of final
5 approval.

6
7 **V. CONCLUSION AND ORDER**

8 The Court hereby:

9 (1) Grants preliminary approval of the settlement as fair, adequate, and
10 reasonable;

11 (2) Grants conditional class certification;

12 (3) Appoints Bertha Pena as Class Representative;

13 (4) Appoints Melmed Law Group, P.C. as Class Counsel;

14 (5) Appoints ILYM Group, Inc. as Settlement Administrator;

15 (6) Approves the proposed notice plan; and

16 (7) Approves the proposed schedule of settlement proceedings as follows:

- 17 • Preliminary approval hearing: December 22, 2021
- 18 • Deadline for Defendant to provide class list to settlement administrator:
19 December 28, 2021 (within 3 business days from preliminary approval)
- 20 • Deadline for settlement administrator to mail notices: January 11, 2022 (within
21 14 calendar days from receipt of the class list)
- 22 • Deadline for class members to opt out: March 12, 2022 (60 calendar days from
23 the initial mailing of the Notice Packets)
- 24 • Deadline for class members to object: March 12, 2022 (60 calendar days from
25 the initial mailing of the Notice Packets)

- Deadline for class counsel to file motion for final approval: 16 court days prior to final fairness hearing
- Final fairness hearing: April 13, 2022, at 11:00 a.m.

Dated: December 22, 2021


AMY D. HOGUE

Hon. Amy D. Hogue
Judge of the Superior Court