

1 DAVID YEREMIAN & ASSOCIATES, INC.
2 David Yeremian (SBN 226337)
3 david@yeremianlaw.com
4 Alvin B. Lindsay (SBN 220236)
5 alvin@yeremianlaw.com
6 2540 Foothill Blvd., Suite 201
7 La Crescenta, CA 91214
8 Telephone: (818) 230-8380
9 Facsimile: (818) 230-0308

10 Attorneys for Plaintiff Ovidio G. Gramajo Rodas
11 on behalf of himself and others similarly situated

FILED
Superior Court of California
County of Alameda

10/03/2022

Clad Flake, Executive Officer / Clerk of the Court

By: Nicole Hall Deputy
N. Hall

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ALAMEDA**

10 OVIDIO G. GRAMAJO RODAS, an
11 individual, on behalf of himself and others
12 similarly situated,

13 Plaintiff,

14 vs.

15 ANDREW CHEKENE ENTERPRISES,
16 INC., a California corporation; and DOES 1
17 through 50, inclusive,

18 Defendants.

Case No.: RG20057424

CLASS ACTION

Assigned for All Purposes To:

Hon. Stephen Kaus

Dept.: 19

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS AND
PAGA ACTION SETTLEMENT
AGREEMENT AND RELEASE**

Following hearing on:

Date: August 15, 2022

Time: 3:00 p.m.

Department 19

Original Complaint Filed: March 5, 2020

First Amended Complaint: May 13, 2020

Trial Date: None Set

1 **ORDER**

2 On August 15, 2022 at 3:00 p.m. in Department 19 of the Alameda County Superior Court
3 located at 1221 Oak Street, Oakland, CA 94612, the unopposed motion by Plaintiff OVIDIO G.
4 GRAMAJO RODAS ("Plaintiff"), on behalf of himself and all other similarly situated employees
5 of Defendant ANDREW CHEKENE ENTERPRISES, INC. ("Defendant") (with Plaintiff, "the
6 parties") for final approval of the parties' Amended Class and PAGA Action Settlement
7 Agreement and Release ("Settlement Agreement") came before the Court for hearing. The motion
8 followed successful completion of settlement administration following entry of the Court's Order
9 granting preliminary approval to the Settlement on February 10, 2022. A copy of the Settlement
10 Agreement was attached to the Declaration of Class Counsel in support of final approval.
11 (Yeremian Decl., Settlement, Exhibit A). On August 12, 2022, the Court issued a tentative ruling
12 granting the motion with some changes to the proposed terms, including the amount of attorneys'
13 fees, and the parties submitted. At the hearing on August 15, 2022, the Court therefore entered an
14 Order re: Hearing on Motion for Final Approval of Settlement. Counsel for Plaintiff's asked the
15 Court to recalculate the fee award and the Court agreed, and issued an amended tentative ruling
16 granting final approval on August 19, 2022. The Court later received a request for revisions to the
17 ruling and Order to reflect the corrected PAGA allocation to the LWDA and an amended proposed
18 Order and Judgment reflecting all the finally approved terms.

19 Full and adequate notice having been given to the Class as required in the Court's Order
20 Granting Preliminary Approval, and the Court having considered all papers filed and proceedings
21 held herein and with good cause appearing:

22 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- 23 1. This Order incorporates by reference the definitions in the Settlement, and all terms
24 used, but not defined herein, shall have the same meanings as in the Settlement.
- 25 2. This Court has jurisdiction over the subject matter of the Action and over all parties
26 to the Action, including all Class Members.
- 27 3. The Motion for final approval of the parties' Settlement for a Gross Settlement
28 Fund Value of \$735,000.00 is granted. The Court approves the Settlement as fair, reasonable and

adequate. The Court makes the following awards and approves the following payments:

(a) \$235,868.42 in attorneys' fees and \$12,394.73 in costs incurred to Class Counsel (out of \$15,000 allocated);

(b) \$5,000.00 as a Representative Enhancement and Service Award to Plaintiff Gramajo as the Class Representative; and

(c) \$15,000.00 in costs to the settlement administrator, ILYM Group, Inc.

4. In accordance with the Settlement Agreement and the terms set forth in this order, this Order shall not be deemed a judgment in favor of Class members or any them and shall not constitute an obligation for direct compensation of any one or any number of the Class members, but rather it simply approves and undertakes to monitor the final administration of the settlement between the parties as set forth in the Settlement Agreement. Except for the payments due under the terms of the Settlement Agreement, the parties are each to bear their own respective costs and attorneys' fees. The Court approves the Settlement Agreement and Defendant and the Released Parties are discharged from all Released Claims in accordance with the terms of the Settlement Agreement.

5. The parties settled this matter following mediation with Tripper Ortman on February 3, 2021, where they entered into a Memorandum of Understanding. Class Counsel filed their motion for preliminary approval on November 5, 2021. The Court issued a tentative ruling in advance of the hearing identifying items to address and required amended documents, and continued the hearing to January of 2022. After Class Counsel provided supplemental briefing and the parties agreed to an amended Settlement Agreement and other relevant documents, including the amended Class Notice, the Court entered a tentative ruling granting preliminary approval and then signed and entered the Order granting preliminary approval on February 10, 2022. This included granting approval to mailing of an amended Class Notice to the Class.

6. In California, the notice to class members must have "a reasonable chance of reaching a substantial percentage of the class members." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251. Importantly, however, the plaintiff need not demonstrate that each member of the class received notice. As long as the notice had a "reasonable chance" of reaching a

1 substantial percentage of class members, it should be found effective.

2 7. As reported in the Declaration from the Settlement Administrator, Nathalie
3 Hernandez of ILYM Group, Inc., the Administrator received the class data file and listing from
4 Defendant's counsel on March 30, 2022. (*See* Declaration of Nathalie Hernandez of ILYM Group,
5 Inc. in support of Final Approval ("Hernandez Decl."), at ¶ 5). On April 28, 2022, the Class
6 Notice was finalized and mailed to 1,090 individual Class members. (*Id.* at ¶¶ 6-7; *see also* Exhibit
7 A to Hernandez Decl. for Class Notice as mailed). No Class members objected to the Settlement,
8 there were no disputes, and no Class members requested exclusion from it, thus resulting in 1,090
9 participating Settlement Class Members and a 100% participation rate (*id.* at ¶¶ 10-14), and 37
10 Class Notices remain undeliverable following skip tracing and re mailing by ILYM Group. (*Id.* at
11 ¶¶ 8-10). Plaintiff now seeks final approval of the Settlement. Based on the foregoing, the Court
12 finds that the notice provided to Class members conforms to due process requirements.

13 8. It is the duty of the Court, before finally approving the settlement, to conduct an
14 inquiry in the fairness of the proposed settlement. The trial court has broad discretion in
15 determining whether the settlement is fair. In exercising that discretion, it normally considers the
16 following factors: strength of the plaintiff's case; the risk, expense, complexity and likely duration
17 of further litigation; the risk of maintaining class action status through trial; amount offered in
18 settlement; extent of discovery completed and stage of the proceedings; experience and views of
19 counsel; presence of a governmental participant; and reaction of the class members to the
20 proposed class settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In Re*
21 *Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. This list is not exclusive and the Court is
22 free to balance and weigh the factors depending on the circumstances of the case. *Wershba v.*
23 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245.

24 9. The proponent bears the burden of proof to show the settlement is fair, adequate
25 and reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th
26 1135, 1165-1166; *Wershba, supra*, 91 Cal.App.4th at 245. There is a presumption that a proposed
27 settlement is fair and reasonable when it is the result of arms'-length negotiations. 2 Herbert
28 Newburg & Albert Conte, *Newburg on Class Actions* §11.41 at 11-88 (3d ed. 1992); Manual for

1 Complex Litigation (Third) §30.42.

2 10. The Gross Settlement Fund of **\$735,000.00** represents a reasonable recovery for the
3 Class members. With no objectors and no exclusions, 1,090 Participating Class Members will be
4 sent individual settlement payments. (Hernandez Decl., ¶¶ 9-17). Their estimated average gross
5 payment is **\$348.62** with the estimated highest gross payment being **\$1,593.06**. (Hernandez Decl.,
6 ¶ 17). The Court finds these to be within the range of reasonableness deserving of approval.

7 11. Had this case not settled, there would have been additional risks and expenses
8 associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are
9 also likely to prolong the litigation as well as any recovery by the class members.

10 12. There is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010)
11 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain
12 some flexibility in conducting class actions, which means, under suitable circumstances,
13 entertaining successive motions on certification if the court subsequently discovers that the
14 propriety of a class action is not appropriate.”)

15 13. As part of the Court’s analysis of this factor, the Court should take into
16 consideration the admonition in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
17 133. In *Kullar*, objectors to a class settlement argued the trial court erred in finding the terms of
18 the settlement to be fair, reasonable, and adequate without any evidence of the amount to which
19 class members would be entitled if they prevailed in the litigation, and without any basis to
20 evaluate the reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors
21 that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement
22 terms. Although many factors had to be considered in making that determination, and a trial court
23 was not required to decide the ultimate merits of class members’ claims before approving a
24 proposed settlement, an informed evaluation could not be made without an understanding of the
25 amount in controversy and the realistic range of outcomes of the litigation.

26 14. Defendant has agreed to settle for the non-reversionary amount of **\$735,000.00**,
27 with no additional sums being due from Defendant for damages or penalties of any type, taxes,
28 costs, attorneys’ fees, contributions, reimbursements or for any other reason. The employer’s share

1 of payroll taxes will be paid by Defendant separately from the Gross Settlement Fund. (Hernandez
2 Decl., ¶ 15). Additionally, as the allocated costs are up to \$15,000.00, and counsel has incurred
3 **\$12,394.73** in litigation costs, an additional amount of approximately **\$2,605.27** will remain in the
4 Net Settlement Fund Value to slightly increase the average payment to the 1,090 participating
5 Settlement Class Members accordingly.

6 15. Class Counsel conducted an investigation that included informal discovery,
7 reviewed time records, interviewed class members, reviewed Plaintiff's documents, and formed
8 damage models in consultation with an expert based on all of these. The parties also mediated this
9 case with Tripper Ortman, Esq., a respected mediator in wage and hour class actions. In
10 connection with mediation and through discussions with counsel for Defendant, Class Counsel
11 also discussed all aspects of the case, including the risks of litigation and the risks to both parties
12 of proceeding with a motion for class certification as well as the law relating to payment of wages
13 and meal and rest periods, as described in the supporting declarations from counsel.

14 16. Class Counsel has experience with wage and hour class litigation. (Yeremian
15 Declaration re: Preliminary Approval, ¶¶ 3-9; Lindsay Decl. re: Final Approval, ¶¶ 9-18). Class
16 Counsel is of the opinion that this settlement is in the best interest of the class provides substantial
17 benefit to class members.

18 17. The class reacted very positively with an 100% participation rate and no Class
19 Members objecting. No Class Members have outstanding disputes regarding their payments.
20 (Hernandez Decl., ¶¶ 10-14).

21 18. On balance, this is a fair settlement that satisfies the *Dunk* factors such that final
22 approval is warranted.

23 19. Class Counsel requested attorneys' fees of **\$245,000.00** to be allocated to Class
24 Counsel under the Settlement, without objection from Defendant. In common fund cases, the
25 Court may employ a percentage of the benefit method, and the percentage awarded can depend on
26 application of the requirements and as cross-checked against the lodestar, if necessary. *Laffitte v.*
27 *Robert Half Int'l., Inc.* (2016) 1 Cal.5th 480, 503. \

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1 20. Here, Class Counsel seeks fees pursuant to the percentage method, and supports
2 that claim by establishing they have incurred more attorneys' fees than are being requested, and no
3 multiplier is required under the lodestar cross-check. The determination of what constitutes an
4 appropriate percentage "is somewhat elastic and depends largely on the facts of a given case, but
5 certain factors are commonly considered. Specifically, the court may address the percentage likely
6 to have been negotiated between private parties in a similar case, percentages applied in other
7 class actions, the quality of class counsel, and the size of the award." *In re Ikon Office Solutions,*
8 *Inc., Securities Litigation* (E.D. Pa. 2000) 194 F.R.D. 166, 193.

9 21. These factors favor a reduction to the requested \$245,000.00 fee award to
10 \$235,868.42, which represents one-third of the gross recovery after subtracting \$12,394.73 in
11 litigation costs to Class Counsel and \$15,000.00 in administration fees paid to the Administrator.
12 As for the first factor, private contingency fee agreements are routinely 30% to 40% of the
13 recovery. (*In re Ikon*, 194 F.R.D. at 194.) As for the second factor, "most fees appear to fall in the
14 range of nineteen to forty-five percent." (*Id.*) As for the third factor, Class Counsel has experience
15 in class actions, including wage and hour cases. Most importantly, Class Counsel achieved good
16 results for the class as evidenced by the class members' reaction to the settlement. As for the
17 fourth factor, Class Counsel negotiated a \$735,000.00 gross settlement. In this instance, applying
18 the lodestar analysis results in a 1.6 multiplier in cross-check. (Yeremian Decl., ¶¶ 20-26; Lindsay
19 Decl., ¶¶ 3-4). At Counsel's hourly rates of \$750 and \$700 per hour, Counsel reports a total of
20 205.2 attorney hours to date and \$146,080.00 in attorney fees for the lodestar cross-check. The fee
21 award of \$235,868.42 therefore is more than the total of \$146,080.00 in fees counsel has dedicated
22 to this litigation to date, requiring a modest multiplier of 1.6. The lodestar cross-check counsels in
23 favor of approving the fees as awarded.

24 22. Attorneys' fees should be awarded as requested to compensate counsel for its
25 efforts and expense in arriving at a swift and efficient resolution of these class proceedings. The
26 hourly rates appear to be reasonable for attorneys with their respective years of experience, and the
27 hours spent are reasonable for this case. It appears that Class Counsel utilized skill in litigating this
28 case, and by all accounts, have good reputations in the legal community; at the very least, there is

1 no evidence before the Court to indicate that the attorneys have negative reputations in the legal
2 community. It also appears that Class Counsel spent appreciable time on the case, which time
3 could have been spent on other meritorious fee-generating cases. Because the fee request is based
4 on a reasonable percentage of the settlement fund and is supported by the lodestar calculation, and
5 because the Class was provided with notice of the fee request and did not object, the Court awards
6 Class Counsel fees in the amount **\$235,868.42**.

7 23. Class Counsel requests costs of **\$12,394.73** out of the \$15,000.00 allocated under
8 the Settlement and preliminarily approved. (Yeremian Decl., ¶ 38, and Exhibit B thereto). These
9 costs appear reasonable and necessary to the conduct of the litigation. Further, as with the fee
10 requests, the maximum cost request was disclosed to class members and deemed unobjectionable.
11 For these reasons, the cost reimbursement request is granted in the amount of **\$12,394.73** The
12 remaining amount of \$2,605.27 to reach the \$15,000.00 allocation will be added back to the Net
13 Settlement Fund by the Settlement Administrator to be distributed to the Settlement Class
14 Members in accordance with the Settlement terms.

15 24. Settlement Administrator ILYM Group, Inc. requests administration costs of
16 \$15,000.00. (Hernandez Decl., ¶ 16). Based upon the work performed and yet to be performed,
17 and the fact that the class was provided notice of the requested claims administration expenses and
18 none objected, the request for administration costs of **\$15,000.00** is granted.

19 25. The Court also finally approves the parties' allocation of \$100,000.00 to settle
20 claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Pursuant to Labor
21 Code § 2699(i), 75% of this amount, or \$75,000.00, shall be paid to the California Labor &
22 Workforce Development agency and the remaining 25%, or \$25,000.00, shall remain in the Net
23 Settlement Fund and will be paid to Class Members in the manner set forth in the Amended
24 Settlement Agreement.

25 26. Finally, Class Counsel seeks a class representative enhancement and service award
26 payment of **\$5,000.00** to the class representative. The Court considers the following factors,
27 among others, in determining whether to pay an incentive or enhancement award to a class
28 representative: whether an incentive was necessary to induce the class representative to participate

1 in the case; actions, if any, taken by the class representative to protect the interests of the class; the
2 degree to which the class benefited from those actions; the amount of time and effort the class
3 representative expended in pursuing the litigation; the risk to the class representative in
4 commencing suit, both financial and otherwise; the notoriety and personal difficulties encountered
5 by the class representative; the duration of the litigation; and the personal benefit (or lack thereof)
6 enjoyed by the class representative as a result of the litigation. California Practice Guide, Civil
7 Procedure Before Trial, ¶14:146.10 (The Rutter Group 2012) (citing *Clark v American Residential*
8 *Services, LLC* (2009) 175 Cal.App.4th 785, 804; *Bell v. Farmers Ins. Exch.* (2004) 115
9 Cal.App.4th 715, 726; *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,
10 1394; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.
11 Plaintiff provided a declaration in support of the motion for preliminary approval and the Court
12 preliminarily approved the requested enhancement. Plaintiff devoted approximately **45 hours** to
13 this litigation. (See Gramajo Decl. re: Approval filed November 5, 2021, ¶ 10). He assisted his
14 attorneys by having multiple conferences with them and by providing documents, and helped
15 Class Counsel prepare for mediation. (*Id.* at ¶¶ 3-11). Plaintiff freely chose to champion the rights
16 of the class and accepted the risks associated with acting as a class representative, and the Court
17 preliminarily approved the requested award. Therefore, the Court grants a Representative Service
18 Payment award of **\$5,000.00** to Plaintiff, as Plaintiff spent significant time on this litigation to
19 achieve an excellent result for the Settlement Class, and Plaintiff's actions benefitted the class.
20 Plaintiff also accepted the risks and notoriety that are associated with acting as a class
21 representative and is agreeing to a general release broader than that of the Settlement Class.

22 27. All Parties, including each and all Participating Class Members, are bound by this
23 Final Approval Order and by the Settlement Agreement. All Participating Class Members shall be
24 deemed to have entered into the Settlement and the releases provided therein. Defendant and the
25 Released Parties shall have no obligation to pay any sums in excess of the \$735,000.00 Gross
26 Settlement Fund except as set forth in the Settlement Agreement. Other than as expressly provided
27 in the Settlement Agreement, Defendant and the Released Parties shall have no obligation after
28 entry of judgment to pay any sum to any person, whether for costs, attorneys' fees, damages or

1 penalties of any type, taxes, class member reimbursement or contribution, or otherwise, as a result
2 of entry of judgment.

3 28. The Court previously conditionally certified this action as a class action for
4 Settlement purposes under California Code of Civil Procedure § 382. The Class is defined as
5 follows: “all individuals who are or previously were employed by Defendant as non-exempt,
6 hourly employees within the State of California during the Class Period,” and the Class Period is
7 March 5, 2016 through the date that the court grants preliminary approval of the class action
8 settlement. (Yeremian Decl., Exhibit A, Settlement, ¶¶ 2, 7). There are 1,090 participating
9 Settlement Class members given none objected and none requested exclusion. (Hernandez Decl.,
10 ¶¶ 10-14).

11 29. The certified Class for settlement purposes continues to meet all the requirements
12 of California Code of Civil Procedure section 382, as already found, and for the reasons set forth
13 in the Court’s Preliminary Approval Order and tentative rulings.

14 30. Plaintiff Ovidio G. Gramajo Rodas is the Court-appointed Class Representative for
15 the Class.

16 31. David Yeremian and Alvin B. Lindsay of the law firm David Yeremian &
17 Associates, Inc. are the Court-appointed Class Counsel.

18 32. As of the date of this Order, Plaintiff and the Settlement Class Members shall be
19 and hereby are deemed to have released the Defendant and the Released Parties of and from all of
20 the Released Claims. As of the date of this Order, Plaintiff and Participating Class members, and
21 all persons and entities acting on behalf of, through or in concert with them, shall be and hereby
22 are permanently enjoined and restrained from and against filing, initiating, pursuing or continuing
23 to prosecute any actions, claims, complaints with respect to any of the Released Claims, as more
24 fully set forth in the Settlement Agreement, which is incorporated herein by this reference as
25 though set forth in full and made a part hereof.

26 33. Without affecting the finality of this Order in any way, this Court hereby retains
27 continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution of
28 the Net Settlement Fund, including interest earned thereon; (b) disposition of the Net Settlement

1 Fund; (c) hearing and determining applications for attorney fees and expenses in the Action; and
2 (d) all parties hereto for the purpose of construing, enforcing, and administering the Settlement
3 Agreement and the Settlement therein.

4 34. The Court ORDERS that 10% of the fee award (\$23,586.84) shall be kept in the
5 settlement administrator's trust fund until the completion of the distribution process and Court
6 approval of a final accounting. The Administrator shall not release these funds to counsel until the
7 Court determines that these conditions have been met.

8 35. A compliance hearing is SET for May 9, 2023 at 3:00 p.m., in Department 19,
9 Administration Building (Third Floor), 1221 Oak Street, Oakland, at which time the Court will
10 consider evidence that the distribution process is complete and that a final accounting may be
11 approved.

12 36. There is no just reason for delay in the entry of judgment approving the Class
13 Settlement and immediate entry by the Clerk of the Court is expressly directed.

14
15 **IT IS SO ORDERED.**

16
17 Dated: 10-3, 2022



Hon. Stephen Kaus
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 10/03/2022
PLAINTIFF/PETITIONER: Ovidio G. Gramajo Rodas	Chad Finke, Executive Officer / Clerk of the Court By: <u>Nicole Hall</u> Deputy N. Hall
DEFENDANT/RESPONDENT: Andrew Chekene Enterprises, Inc.	
CERTIFICATE OF MAILING	CASE NUMBER: RG20057424

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Alvin Lindsay
David Yeremian & Associates Inc.
2540 Foothill Blvd, Suite 201
Suite 705
La Crescenta, CA 91214-

Katherine Kimsey
LITTLER MENDELSON, P.C.
333 Bush Street
34th Floor
San Francisco, CA 94104-

Dated: 10/03/2022

Chad Finke, Executive Officer / Clerk of the Court

By:

Nicole Hall

N. Hall, Deputy Clerk

CERTIFICATE OF MAILING