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and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

ALBINO NUNEZ, on behalf of himself and
all others similarly situated and aggrieved,

Plaintiffs,

v.

2751 WEST COAST ACQUISITION
COMPANY, LLC, a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 30-2020-01145215-CU-OE-CXC
[Assigned for all purposes to the Hon. Randall
J. Sherman in Dept. CX105]

~~[PROPOSED]~~ **FIRST AMENDED ORDER**
GRANTING FINAL APPROVAL OF
CLASS ACTION AND
REPRESENTATIVE ACTION
SETTLEMENT, APPLICATION FOR
ATTORNEYS' FEES AND COSTS, AND
SERVICE AWARD

This matter having come before the Court on April 21, 2022 for a final approval hearing pursuant to the Order of this Court dated October 29, 2021, granting preliminary approval (“Preliminary Approval Order”) of the class and representative action settlement upon the terms set forth in the Joint Stipulation re: Class Action and Representative Action Settlement Agreement (“Settlement Agreement”) submitted in support of Motion for Preliminary Approval of the Class and Representative Action Settlement and Certifying Class for Settlement Purposes; and due and adequate notice having been given to the Class Members as required in the Preliminary Approval Order; and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed and good cause appearing therefor, it is hereby **ORDERED, ADJUDGED AND DECREED THAT:**

1 1. The Motion for Final Approval of Class Action and Representative Action
2 Settlement; Service Award; and Reasonable Attorneys' Fees and Costs is hereby granted in part ~~its~~
3 ~~entirety~~.

4 2. All terms used herein shall have the same meaning as defined in the Settlement
5 Agreement.

6 3. This Court has jurisdiction over the subject matter of this litigation and over all
7 Parties to this litigation, including all Class Members.

8 4. For settlement purposes only, the Court certifies the following class: all current and
9 former non-exempt, hourly paid employees who worked for defendant 2751 West Coast
10 Acquisition Company, LLC ("Defendant") at any time from March 4, 2016 through May 2, 2021
11 ("Class Period") in California ("Class Members").

12 5. The parties released shall include Defendant and each of its past, present, and
13 future respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint ventures
14 and assigns, and each of these entities' past or present directors, officers, employees, partners,
15 members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and
16 personal or legal representatives (the "Released Parties").

17 6. Upon entry of this Order, entry of Judgment and payment by Defendant to the
18 Settlement Administrator of the full Gross Settlement Amount and Employer's Taxes necessary to
19 effectuate the Settlement, Plaintiff and all Participating Class Members waive, release, and
20 discharge the Released Parties all claims against the Released Parties asserted in the First
21 Amended Complaint filed in the Action, or any and all claims that may be asserted against the
22 Released Parties based on the factual allegations in the First Amended Complaint filed in the
23 Action, as follows: For the duration of the Class Period, the release includes: (a) all claims for
24 failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for
25 failure to provide compliant meal and rest periods and associated premium pay; (d) all claims for
26 the failure to timely pay wages upon termination; (e) all claims for non-compliant wage
27 statements; (f) all claims for failure to reimburse business expenses; (g) all claims for failure to
28 return deposits and accrued interest on deposits; (h) all claims for failure to maintain accurate

1 records; and (i) all claims asserted through California Business & Professions Code § 17200 *et*
2 *seq.* arising out of the Labor Code violations referenced in the First Amended Complaint. For
3 Aggrieved Employees, the release includes, for the duration of the PAGA Period, all claims
4 released during the Class Period, as well as all claims for civil penalties under PAGA arising out
5 of Labor Code Sections 210, 226.3, 558, 1197.1, and 2699 based on the factual allegations and
6 Labor Code sections alleged to have been violated in the First Amended Complaint, which
7 includes, without limitation, Labor Code sections 200, 201, 202, 203, 204, 226, 226.3, 246, 404,
8 432, 510, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and 2810.5.

9 7. Distribution of the Notice of Class Action Settlement (“Class Notice”) directed to
10 the Class Members as set forth in the Settlement Agreement and the other matters set forth herein
11 has been completed in conformity with the Preliminary Approval Order, including individual
12 notice to all Class Members who could be identified through reasonable effort, and was the best
13 notice practicable under the circumstances. This Class Notice provided due and adequate notice
14 of the proceedings and of the matters set forth therein, including the proposed class settlement set
15 forth in the Settlement Agreement, to all persons entitled to such Class Notice, and the Class
16 Notice fully satisfied the requirement of due process.

17 8. Two (2) Class Members – Octavio Hernandez and Teodoro Molina – opted out of
18 the Settlement. Zero (0) Class Members objected to the Settlement.

19 9. The Court further finds that the Settlement is fair, reasonable and adequate and that
20 plaintiff Albino Nunez has satisfied the standards and applicable requirements for final approval
21 of class action settlement under California law, including the provisions of Code of Civil
22 Procedure section 382 and Federal Rules of Civil Procedure, rule 23, approved for use by the
23 California state courts in *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

24 10. This Court hereby approves the settlement set forth in the Settlement Agreement, as
25 amended, and finds that the settlement is, in all respects, fair, adequate and reasonable, and directs
26 the parties to effectuate the settlement according to its terms. The Court finds that the settlement
27 appears to have been reached as a result of intensive, serious and non-collusive arm’s length
28 negotiations. The Court further finds that it appears that the Parties have conducted extensive and

1 costly investigation and research and counsel for the parties are able to reasonably evaluate their
2 respective positions. The Court also finds that settlement at this time will avoid additional
3 substantial costs, as well as avoid the delay and risks that would be presented by the further
4 prosecution of this Action. The Court has noted the significant benefits to the Class Members
5 under the settlement. The Court also finds that the class is properly certified as a class for
6 settlement purposes only.

7 11. Nothing contained in the Settlement Agreement shall be construed or deemed in
8 admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Each of
9 the Parties has entered into this Settlement Agreement with the intention to avoid further disputes
10 and litigation, and the attendant inconvenience and expense. This Settlement Agreement shall be
11 inadmissible in evidence in any action or proceeding, except an action or proceeding to approve,
12 interpret, or enforce its terms.

13 12. The Court approves plaintiff Albino Nunez as class representative.

14 13. The Court approves David D. Bibiyan and Diego Aviles of Bibiyan Law Group,
15 P.C. as Class Counsel.

16 14. The Court approves ILYM Group, Inc. ("ILYM") as the Settlement Administrator.

17 15. The Court hereby awards Class Counsel attorneys' fees in the total amount of
18 \$87,500.00 ~~\$91,875.00~~, which is one-third (33 1/3%) ~~thirty-five percent (35%)~~ of the Gross
19 Settlement Amount and to be deducted therefrom. In addition, the Court awards Class Counsel
20 reimbursement of their costs of \$15,841.88 to be deducted from the Gross Settlement Amount.
21 Attorneys' fees and costs will be paid by the Settlement Administrator from the Gross Settlement
22 Amount as set forth in the Settlement Agreement. In approving the payment of Attorneys' Fees,
23 the Court finds that the Settlement conferred a significant benefit on the Class and the necessity
24 and financial burden of private enforcement of California labor laws makes an attorneys' fee
25 award to Class Counsel appropriate.

26 16. The amount of this award is based on a lodestar analysis and is subject to a
27 reasonable multiplier for awarding reasonable attorney's fees and costs—it is thus reasonable, fair
28 and eminently justified. In setting an award of attorneys' fees, costs and expenses, this Court has

1 considered the following factors: (a) the time and labor required; (b) preclusion of other
2 employment; (c) the contingent nature of the cases; (d) the experience, reputation and ability of
3 Plaintiff's Counsel and the skill they displayed in the litigation; (e) the ~~reasonable~~ hourly rate of
4 attorneys' fees assessed by Class Counsel associated with prosecution of this Class Action, to wit:
5 David Bibiyan, Esq.: \$700; Diego Aviles, Esq.: \$475; Anton Swain-Gil: \$350; Vedang J. Patel,
6 Esq.: \$375; paralegals at \$150 and legal assistants at \$75; (f) the results achieved and benefits
7 conferred on the Settlement Class; and (g) the reaction of Settlement Class Members. (*See, e.g.*
8 *Serrano v. Priest* (1977) 20 Cal.3d 25, 49; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
9 1810 fn. 21.)

10 17. The court hereby approves an incentive award of \$5,000.00 ~~\$7,500.00~~ to plaintiff
11 Albino Nunez in consideration for his time, effort, and risk incurred on behalf of the Settlement
12 Class, and for providing a general release and releasing unknown claims pursuant to Civil Code
13 section 1542. The incentive award will be paid to plaintiff Albino Nunez by the Settlement
14 Administrator from the Maximum Settlement Amount as set forth in the Settlement Agreement.

15 18. The Court hereby approves the Settlement Administrator's cost in the amount of
16 \$10,000.00. The Settlement Administrator, ILYM Group, Inc., shall be paid the cost of
17 administration of the settlement from the Maximum Settlement Amount.

18 19. The Court hereby approves the PAGA penalties amount of \$10,000.00, of which
19 \$7,500.00 shall be paid to the LWDA and the remaining \$2,500.00 to be distributed to the
20 Aggrieved Employees, defined as Class members working for Defendant from March 4, 2019
21 through May 2, 2021 ("PAGA Period"), pursuant to the Settlement Agreement.

22 20. Except as expressly provided herein, the Parties each shall bear all of their own fees
23 and costs in connection with this matter.

24 21. Class Members will have one hundred and eighty (180) calendar days from the date
25 of issuance of the check to cash their check, and any check not cashed shall be canceled and funds
26 associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue
27 pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus
28 accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted to

1 the *cy pres* recipient: Legal Aid at Work, 180 Montgomery St., Suite 600, San Francisco,
2 California 94104 for use in Orange County.

3 22. The Court finds that the class settlement on the terms set forth in the Settlement
4 Agreement was made in good faith, and constitutes a fair, reasonable and adequate compromise of
5 the released claims against Defendant.

6 23. An Order to Show Cause Hearing Re: Final Administration of the Class Action
7 Settlement is hereby scheduled for May 26, 2023, at 10:00 a.m. in Department CX105 of the
8 Orange County Superior Court, Civil Complex Center. At least 16 ~~five (5)~~ calendar days prior to
9 said OSC hearing, the Parties shall file a declaration confirming that the claims have been paid and
10 that administration of all of the terms and conditions of the class action settlement have been
11 completed. Should the Court find that said declaration has sufficiently evidenced full and
12 complete administration of the class action settlement, said OSC hearing will go off-calendar.

13 24. Without affecting the finality of the Judgment in any way, this Court hereby
14 retains continuing jurisdiction over the interpretation, implementation and enforcement of the
15 settlement and all orders and judgments entered in connection therewith.

16
17 **IT IS SO ORDERED.**

18
19 Dated: **April 21, 2022**


Randall J. Sherman
Judge of the Superior Court