

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

OCT 25 2021

STEPHANIE CAMERON, CLERK
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF TULARE

10 NAZARIO MARTINEZ SANTIAGO, as an
11 individual and on behalf of all others similarly
12 situated,

13 Plaintiff,

14 vs:

15 JNM CONTRACTING, INC., a California
16 corporation; EGC INVESTMENTS, INC., a
17 California corporation; and DOES 1 through 100,
18 Defendants.

Case No. VCU282822

[Assigned for all purposes to the Hon.
Nathan D. Ide]

2 [PROPOSED] FINAL ORDER OF
3 APPROVAL OF CLASS ACTION
4 SETTLEMENT AND FINAL
5 JUDGEMENT

Date: October 25, 2021
Time: 8:30 a.m.
Dept.: 02

Complaint Filed: May 11, 2020
Trial Date: None Set

#135

1 This matter came on regularly for hearing before this Court on October 25, 2021, at 8:30
2 a.m. pursuant to California Rule of Court 3.769 and this Court's June 25, 2021 Order Granting
3 Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order").
4 Having considered the Parties' Stipulation of Settlement (the "Settlement" or "Settlement
5 Agreement") attached as Exhibit A to the Declaration of Daniel J. Brown In Support of Plaintiff's
6 Motion for Preliminary Approval of Settlement, filed on April 23, 2021, and the submissions of
7 counsel, and recognizing the sharply disputed factual and legal issues involved in this case, the
8 risks of further prosecution and the benefits to be received by the Class pursuant to the Settlement,
9 the Court hereby makes a final ruling that the proposed Settlement is fair, reasonable, and
10 adequate, and is the product of good faith, arm's-length negotiations between the Parties.

11 Unless otherwise indicated, all terms used in this Order shall have the same meaning as
12 that assigned to them in the Settlement.

13 Good cause appearing thereof, the Court hereby GRANTS Plaintiff's Motion for Final
14 Approval of Class Action Settlement and ORDERS as follows:

15 1. The conditional class certification contained in the Preliminary Approval Order is
16 hereby made final, and the Court thus certifies, for purposes of the Settlement only, a Settlement
17 Class consisting of:

18 All current and former non-exempt employees of Defendant JNM Contracting, Inc. in
19 California who were subject to Wage Order 14 and performed work for Defendants EGC
20 Investments, Inc., and/or EBC Farms and/or E & C Farms, LLC at any time during the
period of May 11, 2016, to March 15, 2021.

21 2. Plaintiff Nazario Martinez Santiago is hereby confirmed as Class Representative,
22 and Daniel J. Brown of Stansbury Brown Law is hereby confirmed as Class Counsel.

23 3. Notice was provided to the Settlement Class as set forth in the Settlement, which
24 was preliminarily approved by the Court on June 25, 2021. and the notice process has been
25 completed in conformity with the Court's Order. The Court finds that said notice was the best
26 notice practicable under the circumstances. The Class Notice provided due and adequate notice
27 of the proceedings and matters set forth herein, informed Class Members of their rights, and fully
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1 satisfied the requirements of California Code of Civil Procedure § 1781(e), California Rule of
2 Court 3.769, and due process.

3 4. The Court finds that no Class Member objected to the Settlement or opted-out of
4 the Settlement, and that the 100% participation rate in the Settlement supports final approval.

5 5. The Court hereby approves the settlement as set forth in the Settlement as fair,
6 reasonable, and adequate, and directs the Parties to effectuate the Settlement according to its
7 terms.

8 6. For purposes of settlement only, the Court finds that (a) the members of the
9 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
10 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
11 community of interest among members of the Settlement Class with respect to the subject matter
12 of the litigation; (c) the claims of the Class Representative are typical of the claims of the members
13 of the Settlement Class; (d) the Class Representative has fairly and adequately protected the
14 interests of the Class Members; (e) a class action is superior to other available methods for an
15 efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as counsel
16 for the Class Representative and the Settlement Class.

17 7. The Court finds that given the absence of objections, and objections being a
18 prerequisite to appeal, that this Order and Judgment shall be considered final as of the date of
19 notice of entry.

20 8. The Court orders that the Maximum Settlement Amount of One Hundred Thirty
21 Thousand Dollars and Zero Cents (\$130,000.00) shall be deposited with the Settlement
22 Administrator, ILYM Group, Inc. ("ILYM"), as provided in the Settlement.

23 9. Any Settlement funds that remain uncashed after 180 days after they are mailed
24 shall be delivered to Central California Legal Services the designated *cypres* recipient.

25 10. The Court finds that the Settlement Awards, as provided for in the Settlement, are
26 fair, reasonable, and adequate, and orders the Settlement Administrator to distribute the Individual
27 Settlement Awards in conformity with the terms of the Settlement. The Court further orders that
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1 if any of the Settlement Class Members are Defendants' current employees and the Settlement
2 Award mailed to those current employees is returned to the Settlement Administrator as being
3 undeliverable, and the Settlement Administrator is unable to locate a valid mailing address, the
4 Settlement Administrator shall arrange with Defendant to have those Settlement Awards
5 delivered to the employees at their place of employment.

6 11. The Court finds that an Enhancement Payment in the amount of \$5,000.00 for
7 Plaintiff Nazario Martinez Santiago is appropriate for his risks undertaken and service to the
8 Settlement Class. The Court finds that this payment is fair, reasonable, and adequate, and orders
9 that the Settlement Administrator make this payment in conformity with the terms of the
10 Settlement.

11 12. The Court finds that attorneys' fees in the amount of \$43,290.00, and actual
12 litigation costs of \$6,963.15 for Class Counsel, are fair, reasonable, and adequate, and orders that
13 the Settlement Administrator distribute these payments to Class Counsel in conformity with the
14 terms of the Settlement.

15 13. The Court finds that a payment to the Labor & Workforce Development Agency
16 ("LWDA") in the amount of \$3,750.00 for the LWDA's share of civil penalties under the Labor
17 Code Private Attorneys General Act is fair, reasonable, and adequate, and orders that the
18 Settlement Administrator make this payment in conformity with the terms of the Settlement.

19 14. The Court orders that the Settlement Administrator shall be paid \$15,996.96 from
20 the Maximum Settlement Amount for all of its work done and to be done until the completion of
21 this matter, and finds that sum appropriate.

22 15. Pursuant to the terms of Settlement, the employer's share of payroll taxes for the
23 portion of the Net Settlement Amount allocated to wages shall be paid by Defendants separately,
24 and in addition to, the Maximum Settlement Amount.

25 16. The Court finds and determines that upon satisfaction of all obligations under the
26 Settlement and this Order, all Settlement Class Members will be bound by the Settlement and will
27 have released the Released Claims as set forth in the Settlement.

1 17. Settlement is not an admission by Defendants, nor is this Order and Final
2 Judgment a finding of the validity of any allegations or of any wrongdoing by Defendants.
3 Neither this Order and Final Judgment, the Settlement, nor any document referred to herein, nor
4 any action taken to carry out the Settlement, shall be construed or deemed an admission of
5 liability, culpability, or wrongdoing on the part of Defendants.

6 18. As of the date of this Order and Final Judgment, Plaintiff and every member of
7 the Settlement Class shall be deemed to have released and discharged Defendants, their past and
8 present officers, directors, shareholders, members, owners, employees, agents, insurers,
9 reinsurers, principals, heirs, trustees, representatives, and their respective successors and
10 predecessors in interest, and attorneys (collectively the "Released Parties") for all claims that
11 were pled or could have been pled based on the factual allegations in the proposed SAC,
12 including: (a) minimum wage violations (b) failure to pay all overtime wages; (c) meal period
13 violations; (d) rest period violations; (e) failure to reimburse necessary business expenses; (f)
14 wage statement violations; (g) waiting time penalties; (h) all claims arising out of unfair business
15 practices under Business & Professions Code § 17200, *et seq.* that could have been premised on
16 the claims that were pled or could have been pled based on the factual allegations in the SAC;
17 and (i) all claims for civil penalties under the PAGA, that could have been premised on the claims
18 that were pled or could have been based on the factual allegations in the SAC (collectively, the
19 "Released Claims"). The period of the Release shall extend to the limits of the Class Period.

20 Plaintiff and all Settlement Class Members who were employed by Defendant in
21 California at any time from May 11, 2019 through March 15, 2021, will not have the opportunity
22 to opt out or object to the PAGA Amount, as described in section 3(B)(5) of the Settlement,
23 and/or release of PAGA claims set forth in the Settlement. Notwithstanding the paragraphs above
24 nor anything else in the Settlement, Plaintiff's waiver and release in the Settlement does not apply
25 to (i) those rights that as a matter of law cannot be waived, including, but not limited to, workers'
26 compensation claims, pending or otherwise; and (ii) rights or claims arising out of this Settlement.

27 19. The releases identified herein shall be null and void should the Settlement not be
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1 fully funded.

2 20. This document shall constitute a final judgment pursuant to California Rule of
3 Court 3.769(h) which provides, "If the court approves the settlement agreement after the final
4 approval hearing, the court must make and enter judgment. The judgment must include a
5 provision for the retention of the court's jurisdiction over the parties to enforce the terms of the
6 judgment. The court may not enter an order dismissing the action at the same time as, or after,
7 entry of judgment." Pursuant to section 664.6 of the California Code of Civil Procedure, the
8 Court will retain jurisdiction to enforce the Settlement and this Final Order and Judgment.

9 21. The Settlement Class Members will be provided notice with their Individual
10 Settlement Awards that the Final Order and Judgment is posted on the landing page of the
11 Settlement Administrator's website. A copy of the Final Order and Judgment entered by the Court
12 shall be posted by the Settlement Administrator on the Settlement Administrator's website on the
13 landing page at (<https://ilymgroup.com/>).

14 22. The Settlement Administrator shall file a declaration regarding the disbursement
15 of Settlement funds on or before June 20, 2022, and the date for the Final Report (Nonappearance)
16 Hearing shall be set for July 13, 2022. The declaration shall state the date the checks were mailed,
17 the total number of checks mailed to Settlement Class Members, the average amount of those
18 checks, the number of checks that remain uncashed, the total value of those uncashed checks, the
19 average amount of the uncashed checks, and the nature and date of the disposition of those
20 unclaimed funds.

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22 IT IS SO ORDERED. JUDGMENT IS HEREBY ENTERED.

23 Dated: 10/25, 2021

24 
25 Honorable Nathan D. Ide
26 Judge of the Superior Court
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