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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF YOLO**

15 **HILARY CEARLEY and YEKATERINA**
16 **KUCHEROVA, et al.,**

17 **Plaintiff,**

18 **vs.**

19 **UNIVERSITY RETIREMENT**
20 **COMMUNITY AT DAVIS, INC., a**
21 **Corporation; PACIFIC RETIREMENT**
22 **SERVICES, INC., a Corporation; and DOES 1**
23 **through 50, inclusive,**

24 **Defendants.**

CASE NO.: CV-2019-1797

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: February 15, 2023

Hearing Time: 9:00 a.m.

Judge: Hon. Samuel T. McAdam

Dept.: 10

Action Filed: March 26, 2021

Trial date: None Set

1 The motion of Plaintiffs Hilary Cearley and Yekaterina Kucherova (“Plaintiffs”) for an
2 order finally approving the Class Action Settlement Agreement (“Agreement”) with Defendants
3 University Retirement Community at Davis, Inc., and Pacific Retirement Services, Inc.
4 (collectively, “Defendants”), attorneys’ fees and costs, service payments, and the fees and
5 expenses of the Settlement Administrator duly came on for hearing on February 15, 2023 before
6 the Honorable Samuel T. McAdam.

7 **I.**

8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

- 11 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the California Superior Court for the County of Yolo, and over all Parties to this litigation,
14 including the Class.
- 15 3. Based on a review of the papers submitted by Plaintiff and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of Seven Hundred Thousand
17 Dollars (\$700,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 18 4. The Court further finds that the Settlement was the result of arm’s length
19 negotiations conducted after Class Counsel had adequately investigated the claims and became
20 familiar with the strengths and weaknesses of those claims. In particular, the amount the
21 Settlement, the significant risks relating to certification, liability, and damages issues, and the
22 assistance of an experienced mediator in the settlement process, among other factors, support the
23 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

- 25 5. On September 28, 2022, the Court granted preliminary approval of the Settlement.
26 At this same time, the Court approved conditional certification of the Class for settlement
27 purposes only.

1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
3 by first class mail to members of the Class at their last known addresses on or about November 1,
4 2022. Mailing of the Class Notice to their last known addresses was the best notice practicable
5 under the circumstances and was reasonably calculated to communicate actual notice of the
6 litigation and the proposed settlement to the Class. The Class Notice given to the Class Members
7 fully and accurately informed the Class Members of all material elements of the proposed
8 Settlement and of their opportunity to object to or comment thereon or to seek exclusion from the
9 Settlement; was valid, due, and sufficient notice to all Class Members; and complied fully with the
10 laws of the State of California, the United States Constitution, due process and other applicable
11 law. The Class Notice fairly and adequately described the Settlement and provided Class
12 Members adequate instructions and a variety of means to obtain additional information.

13 7. The deadline for opting out of the Class or submitting written objections to the
14 Settlement was December 27, 2022. There was an adequate interval between notice and the
15 deadline to permit Class Members to choose what to do and act on their decision. A full
16 opportunity has been afforded to the Class Members to participate in this hearing, and all Class
17 Members and other persons wishing to be heard have been heard. Class Members also have had a
18 full and fair opportunity to exclude themselves from the proposed Settlement and Class.
19 Accordingly, the Court determines that all Class Members who did not timely and properly submit
20 a request for exclusion are bound by the Settlement and this Final Approval Order and Judgment.

21 **Fairness Of Settlement**

22 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
23 48 Cal.App.4th 1794, 1801 (1996).

24 a. The settlement was reached through arm's-length bargaining between the
25 parties during an all-day mediation before Tripper Ortman, Esq., a respected and experienced
26 mediator of wage and hour class actions based on a mediator's proposal. There has been no
27 collusion between the parties in reaching the proposed settlement.

1 b. Plaintiffs' investigation and discovery have been sufficient to allow the
2 Court and counsel to act intelligently.

3 c. Counsel for both parties are experienced in similar employment class action
4 litigation. All counsel recommended approval of the Agreement.

5 d. The percentage of objectors and requests for exclusion is small. No
6 objections were received. No requests for exclusion were received.

7 e. The participation rate was high. 469 Participating Class Members will be
8 mailed a settlement payment, representing 100% of the overall Class.

9 9. The consideration to be given to the Class Members under the terms of the
10 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
11 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
12 Members' claims, given the uncertainties and significant risks of the litigation and the delays
13 which would ensue from continued prosecution of the action.

14 10. The Agreement is approved as fair, adequate and reasonable and in the best
15 interests of the Class Members.

16 **Attorneys' Fees and Costs**

17 11. An award of \$233,333 for attorneys' fees, representing one-third of the Gross
18 Settlement Amount, and \$19,890.01 for litigation costs and expenses, is reasonable, in light of the
19 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
20 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
21 and billing statement.

22 **Class Representative Service Payments**

23 12. The Agreement provides for Class Representative Service Payments of not more
24 than \$10,000 to each Plaintiff, subject to the Court's approval. The Court finds that Class
25 Representative Service Payments in the amount of \$10,000 to each of the Plaintiffs is reasonable
26 in light of the risks and burdens undertaken by the Plaintiff in this litigation, for their time and
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1 effort in bringing and prosecuting this matter on behalf of the Class, and for their execution of a
2 general release.

3 **Settlement Administration Expenses**

4 13. The Settlement Administrator shall calculate and administer the payments to be
5 made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
6 transmit the Class Representative Service Payments to the Plaintiffs, distribute the PAGA
7 Payment, issue any required tax reporting forms, calculate withholdings and perform the other
8 remaining duties set forth in the Agreement. The Settlement Administrator ILYM Group has
9 documented \$11,370 in fees and expenses, and this amount is reasonable in light of the work
10 performed by the Settlement Administrator.

11 **PAGA Payment**

12 14. The Agreement provides for a PAGA Payment out of the Gross Settlement
13 Amount of \$15,000, which shall be allocated 75% (\$11,250) to the Labor Workforce
14 Development Agency ("LWDA") as the LWDA's share of the settlement of civil penalties paid
15 under this Agreement pursuant to the PAGA and 25% (\$3,750) will be distributed to the
16 Aggrieved Employees based on their respective pay periods worked during the PAGA Period.
17 The Aggrieved Employees mean all individuals who are or previously were employed by
18 Defendants in California who were classified as hourly, non-exempt employees at any time during
19 the PAGA Period (August 20, 2019 through May 1, 2022). All Aggrieved Employees will be sent
20 their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims
21 as set forth below, whether or not they opt out of the Settlement. The Court finds this PAGA
22 Payment to be fair and reasonable.

23 **II.**

24 **ORDERS**

25 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

26 1. The Class is certified for the purposes of settlement only. The Class is hereby
27 defined as follows:

1 All individuals who are or previously were employed by Defendants in California
2 who were classified as hourly, non-exempt employees at any time during the Class
Period.

3 The Class Period is March 26, 2017 through May 1, 2022.

4 2. All persons who meet the foregoing definition are members of the Class, as there
5 were no individuals who filed a valid request for exclusion (“opt out”) from the Class.

6 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
7 best interest of the Class.

8 4. Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De
9 Blouw, and Jeffrey S. Herman of Blumenthal Nordrehaug Bhowmik De Blouw LLP are confirmed
10 as Class Counsel. Class Counsel are awarded attorneys' fees in the amount of \$233,333 and costs
11 in the amount of \$19,890.01. Class Counsel shall not seek or obtain any other compensation or
12 reimbursement from Defendants, Plaintiffs or members of the Class.

13 5. Plaintiffs are confirmed as the representatives of the Class. The payment of the
14 Class Representative Service Payments in the amount of \$10,000 to each of the Plaintiffs is
15 approved.

16 6. The payment of \$11,370 to the Settlement Administrator ILYM Group for their
17 fees and expenses is approved.

18 7. The PAGA Payment of \$15,000 is approved and shall be allocated in accordance
19 with the Agreement.

20 8. The Agreement and this Settlement are not an admission by Defendants, nor is this
21 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
22 wrongdoing by Defendants or that this Action is appropriate for class treatment (other than for
23 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
24 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
25 as, or may be used as an admission by or against Defendants of any fault, wrongdoing or liability
26 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
27 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
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1 admission or concession with regard to the denials or defenses by Defendants. Notwithstanding
2 these restrictions, Defendants may file in the Action or in any other proceeding this Final
3 Approval Order and Judgment, the Agreement, or any other papers and records on file in the
4 Action as evidence of the Settlement to support a defense of res judicata, collateral estoppel,
5 release, or other theory of claim or issue preclusion or similar defense as to the Released Class
6 Claims.

7 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
8 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
9 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
10 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
11 to individual Class Members.

12 10. If the Agreement does not become final and effective in accordance with the terms
13 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
14 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
15 revert to their respective positions as of before entering into the Agreement, and expressly reserve
16 their respective rights regarding the prosecution and defense of this Action, including all available
17 defenses and affirmative defenses, and arguments that any claim in the Action could not be
18 certified as a class action and/or managed as a representative action.

19 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

20 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
21 Plaintiff, and all members of the Class, shall take nothing in the Action.

22 2. The Parties are authorized, with approval from the Court, to agree to and to adopt
23 such amendments, modifications and expansions of the Agreement and all exhibits attached
24 thereto which are consistent with this Final Approval Order and Judgment and do not limit the
25 rights of the Parties or Class Members under the Agreement.

26 3. Each party shall bear its own attorneys' fees and costs, except as otherwise
27 provided in the Agreement and in this Final Approval Order and Judgment.

1 4. The “Released Parties” collectively mean: Defendants, their predecessors,
2 successors, parent companies, related entities, subsidiaries, affiliates, investors, management
3 companies, franchisees, owners, attorneys, vendors, and assigns, and their directors, officers,
4 trustees, employees, agents, insurers, and re-insurers, whether in their individual or official
5 capacities.

6 5. Upon the Effective Date and full funding of the Gross Settlement Amount,
7 Defendants and the Released Parties shall receive a release from the Participating Class Members
8 of all class claims, rights, demands, liabilities, penalties, wages, and causes of action that were
9 pled or could have been pled based on the factual allegations contained in the operative complaint
10 which occurred during the Class Period and expressly excluding all other claims, including claims
11 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
12 workers’ compensation, and class claims outside of the Class Period (“Released Class Claims”).
13 The Released Class Claims specifically include claims for (1) Unfair Competition; (2) Unpaid
14 Minimum Wages; (3) Unpaid Overtime; (4) Failure to Provide Meal Periods, (5) Failure to
15 provide Rest Periods; (6) Failure to Reimburse for Business Expenses; (7) Inaccurate Wage
16 Statements; (8) Waiting Time Penalties; and (9) Civil Penalties under PAGA during the Class
17 Period, and includes claims arising under the following Labor Code statutes which are based on
18 the facts and circumstances alleged in the Complaint: 201 – 204; 210, 226(a), 226.7, 351, 510,
19 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
20 Section 11040 Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s).

21 6. Upon the Effective Date and the full funding of the Gross Settlement Amount,
22 Defendants shall receive a release from the State of California of all PAGA claims for civil
23 penalties under California Labor Code Sections 2698 *et. seq.* that were pled or could have been
24 pled based on the factual allegations contained in the Complaint and PAGA letters sent by
25 Plaintiffs which occurred during the PAGA Period as to the Aggrieved Employees (“Released
26 PAGA Claims”). The release of the Released PAGA Claims shall be effective as regardless of
27 whether an Aggrieved Employee submitted a request for an exclusion from the Class. The
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Released PAGA Claims expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

7. Upon the Effective Date and the full funding of the Gross Settlement Amount, Plaintiffs generally release and discharge the Released Parties from all of the Plaintiffs' Released Claims as set forth fully in the Agreement.

8. The Court hereby enters judgment in the entire Action as of the filing date of this Final Order, pursuant to the terms set forth in the Settlement. Without affecting the finality of this Final Order in any way, the Court hereby retains continuing jurisdiction over the interpretation, implementation, and enforcement of the Settlement and all orders entered in connection therewith pursuant to California Code of Civil Procedure section 664.6.

LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.

Dated: _____

HON. SAMUEL T. MCADAM
JUDGE, SUPERIOR COURT OF CALIFORNIA
COUNTY OF YOLO