

FILED
KERN COUNTY

SEP 16 2022

BY  DEPUTY

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and Proposed Class Counsel

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

JASON MCLELLAND, on behalf of
himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

CUMMINGS VACUUM SERVICE, INC.,
a California corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: BCV-21-100238

Assigned to the Hon. Thomas S. Clark, Dept. 17

CLASS ACTION

~~PROPOSED~~ **ORDER AND JUDGMENT
GRANTING FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: September 16, 2022

TIME: 8:30 a.m.

DEPT.: 17

Action Filed: February 3, 2021

1 Plaintiff's Motion for an Order Granting Final Approval of Class Action Settlement came
2 before this Court on September 16, 2022. The above-captioned Action is a class action lawsuit
3 brought by Plaintiff Jason McLelland ("Plaintiff" or "McLelland") against Defendant Cummings
4 Vacuum Service, Inc. ("Defendant") (all together, the "Parties"). Plaintiff alleges, on behalf of a
5 class of certain of Defendant's current and former employees, that Defendant failed to pay all wages
6 due, failed to pay reporting time pay, failed to provide compliant meal and rest periods of
7 compensation in lieu thereof, failed to timely pay wages due upon separation of employment, and
8 failed to comply with itemized wage statement provisions. Defendant denies any and all alleged
9 wrongdoing and denies any liability to Plaintiff or to members of the Class. Defendant contends
10 that that it has complied at all times with California law, including the California Labor Code, the
11 Industrial Commission Wage Orders, and the California Business and Professions Code.

12 On June 7, 2022, this Court entered an Order Granting Preliminary Approval of Settlement,
13 resulting in certification of the following provisional Settlement Class: All non-exempt employees
14 of Defendant in California employed at any time between February 3, 2017 and February 22, 2022.

15 That Preliminary Approval Order further directed the Parties to provide Notice to the Class,
16 which informed absent class members of: (a) the proposed Settlement, and the Settlement's key
17 terms; (b) the date, time and location of the Final Approval Hearing; (c) the right of any Class
18 Member to object to the proposed Settlement, and an explanation of the procedures to exercise that
19 right; (d) the right of any Class Member to exclude themselves from the proposed Settlement, and
20 an explanation of the procedures to exercise that right; and (e) an explanation of the procedures for
21 Class Members to participate in the proposed settlement.

22 The Court, upon Notice having been given as required in the Preliminary Approval Order,
23 and having considered the Settlement Agreement and Release of Claims (the "Settlement"), as well
24 as all papers filed, hereby ORDERS, ADJUDGES AND DECREES AS FOLLOWS:

25 \\\

26 1. This Court has jurisdiction over the subject matter of the Action and over all Parties
27 to the Action, including all members of the Settlement Class.
28

1 2. The Court finds that the Settlement Class is properly certified for settlement
2 purposes only.

3 3. The Notice provided to the Settlement Class conforms with the requirements of
4 California Code of Civil Procedure section 382, California Civil Code section 1781, California
5 Rules of Court 3.766 and 3.769, the California and United States Constitutions, and any other
6 applicable law, and constitutes the best notice practicable under the circumstances, by providing
7 individual notice to all Class Members who could be identified through reasonable effort, and by
8 providing due and adequate notice of the proceedings and of the matters set forth therein to the
9 Class Members. The notice fully satisfied the requirements of due process.

10 4. The Court finds the settlement was entered into in good faith, that the settlement is
11 fair, reasonable and adequate, and that the settlement satisfies the standards and applicable
12 requirements for final approval of this class action settlement under California law, including the
13 provisions of California Code of Civil Procedure section 382 and California Rules of Court, Rule
14 3.769. The Court approves the Maximum Settlement Amount of Two Hundred Forty-Five
15 Thousand Dollars (\$245,000).

16 5. Zero (0) Class Members have objected to the terms of the Settlement.

17 6. One (1) Class Member has requested exclusion from the Settlement: Keith
18 Woolfolk.

19 7. Upon entry of this Order, compensation to the Class Members shall be affected
20 pursuant to the terms of the Settlement.

21 8. In addition to any recovery that Plaintiff may receive from the Net Settlement
22 Proceeds, and in recognition of the Plaintiff's efforts on behalf of the Settlement Class, the Court
23 hereby approves the payment of an Enhancement Payment to Jason McLelland in the amount of
24 Ten Thousand Dollars (\$10,000). This shall be paid from the Maximum Settlement Amount.

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26 9. The Court approves the payment of attorneys' fees to Class Counsel in the sum of
27 Ninety-Eight Thousand Dollars (\$98,000), and the reimbursement of litigation expenses in the sum
28

1 of Eleven Thousand Two Hundred Fifty-Two Dollars and Ninety-Six Cents (\$11,252.96). This
2 shall be paid from the Maximum Settlement Amount.

3 10. The Court approves and orders payment in the amount of Six Thousand Dollars
4 (\$6,000) to ILYM Group, Inc. for performance of its settlement administration services. This shall
5 be paid from the Maximum Settlement Amount.

6 11. The Court approves the PAGA Payment and its apportionment among the Class
7 Members, and orders payment in the amount of Seven Thousand Five Hundred Dollars (\$7,500) to
8 the California Labor and Workforce Development Agency for its 75% share of PAGA penalties
9 and payment of Two Thousand Five Hundred Dollars (\$2,500) to be allocated among aggrieved
10 Class Members to be included in the Net Settlement Proceeds. This shall be paid from the
11 Maximum Settlement Amount.

12 12. Upon the entry of this Order and Judgment, Plaintiff and all Class Members shall be
13 bound by the release of claims as set forth in the Settlement.

14 13. This "Judgment" is intended to be a final disposition of the above captioned action
15 in its entirety, and is intended to be immediately appealable.

16 14. This Court shall retain jurisdiction with respect to all matters related to the
17 administration and consummation of the Settlement, and any and all claims asserted in, arising out
18 of, or related to the subject matter of the lawsuit, including but not limited to all matters related to
19 the settlement and the determination of all controversies relating thereto.

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25 15. In compliance with California Rules of Court, rule 3.771(b), the parties are ordered
26 to provide notice of this order and judgment to the class by immediately posting this signed final
27

1 approval order and judgment on the settlement administrator's, ILYM Group, Inc.'s, website for a
2 period of sixty (60) calendar days.

3 **IT IS SO ORDERED.**

4
5 Dated: 9-16-22


HON. THOMAS S. CLARK
JUDGE OF THE SUPERIOR COURT