

FILED
Superior Court of California
County of Los Angeles

APR 11 2023

David W. Clayton, Executive Officer/Clerk of Court
By: R. Aspinas, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SARA ACEVEDO, and JESUS SOTO,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

DEANCO HEALTHCARE, LLC, a limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 21STCV34724

[Assigned for all purposes to Judge William F.
Highberger, Dept. 10]

~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL

Date: April 11, 2023

Time: 11:00 a.m.

Dept.: 10

~~PROPOSED~~ ORDER GRANTING FINAL APPROVAL

1 The Motion for Final Approval of Class Settlement and For Attorneys' Fees and Costs
2 (the "Final Approval Motion") was heard on April 11, 2023, in Department 10, of the above titled
3 court. The Final Approval Motion and Motion for Attorneys' Fees and Costs were unopposed by
4 Defendant Deanco Healthcare, LLC. Having considered the Final Approval Motion and for
5 Attorneys' Fees and Costs, the Joint Stipulation of Class Action and Representative PAGA
6 Settlement and as set forth Amendment to the Joint Stipulation of Class Action and
7 Representative PAGA Settlement (both of which are attached as Exhibits to the Supplemental
8 Declaration of Justin F. Marquez In Support of Plaintiffs' Motion for Preliminary Approval of
9 Class Action Settlement), the Declarations, the *Kullar* analysis in the Motion for Preliminary
10 Approval, and all other materials properly before the Court and having conducted an inquiry
11 pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement
12 Agreement was entered by all Parties in good faith, and the Settlement Agreement is approved.
13 Due and adequate notice having been given to the Class, and the Court having considered the
14 Settlement Agreement, all papers filed and proceedings had herein, and having reviewed the
15 record in this Litigation, and good cause appearing, the Court ORDERS AND MAKES THE
16 FOLLOWING FINDINGS AND DETERMINATIONS:

17 1. All terms used in this Order Granting Final Approval of Class Action Settlement
18 and Attorneys' Fees and Costs (the "Order") shall have the same meanings given as those terms
19 are used and/or defined in the Parties' Settlement Agreement.

20 2. The Court has personal jurisdiction over the Parties to this litigation and subject
21 matter jurisdiction to approve this Settlement:

22 3. The Court is satisfied that ILYM Group, Inc., which functioned as the Settlement
23 Administrator, completed the distribution of the Notices of Settlement to the Class Members in a
24 manner that comports with the requirements of California Code of Civil Procedure section 382,
25 California Civil Code section 1781, California Rules of Court 3.766 and 3.769, the California and
26 United States Constitutions, and other applicable law, and constitutes the best notice practicable
27 under the circumstances. The Notice of Settlement informed the potential Class Members of the
28 Settlement terms, their rights to do nothing and receive their Settlement share, their rights to

1 submit a Request for Exclusion, their rights to comment on or object to the Settlement, and their
2 rights to appear at the Final Approval Hearing and be heard regarding approval of the Settlement.
3 Adequate periods of time to respond and to act were provided by each of these procedures. Based
4 on evidence and other material submitted, the actual notice to the class was adequate.

5 4. The Court finds that the instant action presented a good faith dispute of the claims
6 alleged, and the Court finds in favor of settlement approval.

7 5. Four (4) of the putative Settlement Class Members submitted requests for
8 exclusion and are not members of the Settlement Class nor bound by the Class Release. The
9 individuals who opted-out of the Class Settlement and who are not bound to the terms of the
10 Class Settlement are: Eugenia Baker, Jane C. Uche, Oscar L. Ochoa Gomez and Steve R.
11 Pritchett. Although they will not be bound by the Class Release, if they are a PAGA Aggrieved
12 Employee they will still receive their portion of the employees' share of the PAGA Penalties.

13 6. No Class Members submitted an objection.

14 7. The Court approves the Settlement of the above-captioned action, as set forth in
15 the Settlement Agreement and each of the releases and other terms, as being entered into in good
16 faith and finds that the Settlement and its terms are fair, reasonable, and adequate as to the Class
17 and to each Class Member. The Court orders the Parties to comply with and carry out all terms
18 and provisions of the Settlement.

19 8. For settlement purposes only, the Court finally certifies the Class as defined in the
20 Party's Settlement Agreement and as follows: all individuals who were employed by Deanco
21 Healthcare, LLC as a non-exempt hourly employee in California at any pint between September
22 21, 2017 to November 1, 2022.

23 9. The Court deems this definition sufficient for the purpose of California Rule of
24 Court 3.765(a), and solely for the purpose of effectuating the Settlement. The Court also finds and
25 concludes that: (a) the Class Members are ascertainable and so numerous that joiner of all
26 members is impracticable; (b) there are questions of law or fact common to the Settlement Class
27 Members, and there is a well-defined community of interest among the Settlement Class
28 Members with respect to the subject matter of the Action; (c) the claims of the Class

1 Representative are typical of the claims of the Class Members; (d) the Class Representative has
2 fairly and adequately protected the interests of the Class Members; (e) a class action is superior to
3 other available methods for an efficient adjudication of this controversy; and (f) the counsel of
4 record for the Class Representative, *i.e.*, Class Counsel is qualified to serve as counsel for
5 Plaintiff in their individual and representative capacity and for the Settlement Class.

6 10. The Court appoints and confirms Plaintiff Sara Acevedo as Class Representative.

7 11. The Court appoints and confirms Plaintiffs Sara Acevedo and Ronald Flores
8 Nunfio as PAGA representatives.

9 12. The Court finds David S. Winston of Winston Law Group, P.C. and Justin F.
10 Marquez of Wilshire Law Firm to be adequate Class Counsel and appoints David S. Winston and
11 Winston Law Group, P.C. and Justin F. Marquez of Wilshire Law Firm as Class Counsel.

12 13. Under the terms of the Settlement and the Amendment to Stipulation of
13 Settlement, the Settlement Class is releasing "any and all causes of action or claims that were
14 asserted or could have been asserted based upon the facts alleged in the Actions, in the January
15 19, 2021 PAGA Notice in *Flores*, the January 19, 2021 Complaint in *Flores*, the September 21,
16 2021 Complaint in *Acevedo*, the September 22, 2021 PAGA Notice in *Acevedo*, or the November
17 29, 2021 Complaint in *Acevedo* including Defendant's alleged failure to pay minimum wages,
18 overtime wages, provide lawful meal periods, provide lawful rest periods, provide accurate
19 itemized wage statements, timely pay wages during and after employment, as well as timely
20 produce personnel and pay records. This includes alleged violations of Labor Code §§ 201 202,
21 203, 204, 210, 226(a), (c), and (e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1,
22 1198, 1198.5, 2802, as well as IWC Wage Order No. 5-2001 and related claims under PAGA
23 based upon the facts alleged in the Actions. The Released claims do not include any claims for
24 workers compensation, unemployment, or disability benefits or any other claims other than those
25 specified herein."

26 14. The Release in the Parties' Settlement Agreement is not effective until Defendant
27 deposits the entirety of the gross settlement amount (\$2,350,000.00) with the Settlement
28 Administrator.

1 15. Neither the Settlement Agreement nor the Settlement contained therein, nor any
2 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
3 of the Settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of,
4 the validity of any of the Class Members' Released Claims, or of any wrongdoing or liability of
5 Defendant or any of the other Released Parties; or (ii) is or may be deemed to be or may be used
6 as an admission of, or evidence of, any fault or omission of Defendant or any of the other
7 Released Parties in any civil, criminal, or administrative proceeding in any court, administrative
8 agency, or other tribunal.

9 16. Defendant shall comply with the Funding Schedule set forth in Section V(B) of the
10 Parties' Settlement Agreement, which is incorporated below:

11 1. From September 30, 2022¹ until October 31, 2023, Defendant will deposit
12 a total of \$1,300,000 of the Gross Settlement Amount into the QSF. This amount
13 will be paid in 13 monthly deposits of \$100,000 which shall be paid by the last
14 day of the month, with the first \$100,000 deposit made by September 30, 2022,
15 the second \$100,000 deposit made by October 31, 2022, and so forth until the
16 final thirteenth \$100,000 deposit on October 31, 2023. In the event Defendant
17 fails to make a monthly payment on time, then the Settlement Administrator shall
18 give notice of non-payment to the Parties. Defendant shall have 90 days from the
19 date of the notice of non-payment to cure the issue and deposit the monthly
20 payment that is owed. Any cure period for a particular payment, if necessary,
21 will run independent of any other cure period for an independent payment, and
22 the parties agree to bear their own costs and/or fees associated with the notice and
23 cure process, if applicable.

24 2. No later than November 30, 2023, Defendant will deposit the remaining
25 \$1,050,000 of the Gross Settlement Amount, and any remaining amounts
26 necessary (if any prior amounts are subject to the notice/cure process described in
27

28 ¹ The first payment will be made on September 30, 2022, or as soon thereafter as possible once the Settlement
Administrator is established and prepared to accept payment.

1 Section V.B.1), into the QSF.

2 17. In accordance with Section I(Q) of the Settlement Agreement, Defendants shall
3 fund the employer's share of payroll taxes separate and apart from the Gross Settlement Amount
4 and no later than November 30, 2023.

5 18. The Gross Settlement Amount to be funded under the Settlement Agreement is
6 \$2,350,000.00 in addition to the employer's share of payroll taxes which shall be funded by
7 Defendants separate and apart from the Gross Settlement Amount. From this amount, Class
8 Counsel sought an award of attorneys' fees of \$783,333.33 (1/3 of the monetary Gross Settlement
9 Amount), case costs of \$20,000.00, a Service Award for the Class Representative Sara Acevedo
10 of \$10,000.00 as well as a Service Award for the PAGA Representative Ronald Flores Nunfio of
11 \$5,000.00; and Settlement Administration Costs on behalf of ILYM Group, Inc. of \$20,000.00.
12 Defendant did not oppose these requests. The Court was also advised that the attorneys' fees in
13 this matter were being split 80% to Winston Law Group, P.C. and 20% to Wilshire Law Firm and
14 that the Plaintiffs consented to this division of fees as set forth in the Settlement Agreement and
15 Declarations filed at preliminary approval. The Court also reviewed the Declarations of Sara
16 Acevedo and Ronald Flores Nunfio submitted during preliminary approval. The Court finds that
17 the Settlement Agreement, including the Gross Settlement Amount, is fair, reasonable, adequate,
18 and awards the payments set forth below from the Gross Settlement Amount:

- 19 a. \$783,333.33 to Class Counsel for attorneys' fees;
20 b. \$20,000.00 to Class Counsel for litigation costs/expense reimbursements;
21 c. \$10,000.00 to Class Representative Sara Acevedo as a Service Award;
22 d. \$5,000.00 to PAGA Representative Ronald Flores Nunfio;
23 d. \$20,000.00 to the Settlement Administrator ILYM Group, Inc.;
24 e. PAGA Payment to the LWDA of \$75,000.00 (75% of the \$100,000 in PAGA
25 penalties recovered under the settlement)

26 f. After deducing the foregoing payments from the Amount to be Funded, the
27 remainder of \$1,436,666.67 (including the aggrieved employees' \$25,000.00 in PAGA penalties
28 that will only be distributed to the aggrieved employees) shall form the Net Settlement Amount

1 payable to the participating Class Members and PAGA aggrieved employees and shall be
2 distributed as set forth in and in accordance with the Settlement Agreement and as calculated by
3 the Settlement Administrator.

4 19. The Settling Parties are to bear their own costs, except as otherwise provided in the
5 Settlement Agreement. Nothing in this paragraph shall preclude the Class from recovering
6 damages associated with enforcing the Settlement Agreement following the entry of this Order
7 and any Judgment in this Action.

8 20. The Court hereby set an ~~Order to Show Cause~~ *Non Appearance Case Reopened* Re: Defendant's Compliance with
9 the Settlement terms, including the payment schedule set forth in Section V(B) of the Parties'
10 Settlement Agreement for December 13, 2023 at 9 am in Department 10 of the Los
11 Angeles County Superior Court.

12 21. The Court finds that distribution of any residual funds to the proposed *cy pres*
13 beneficiary CASA of Los Angeles complies with the requirements of Code of Civil Procedure
14 section 384. The Court hereby appoints Casa of Los Angeles as the *cy pres* beneficiary for any
15 residual funds, pursuant to the terms of the Settlement. Upon the expiration of the check cashing
16 deadline, the Settlement Administrator shall promptly send all unclaimed funds to CASA of Los
17 Angeles and provide a report to Class Counsel that shall be filed with this Court evidencing that
18 such payment has been made.

19 22. The Court shall hold a Code of Civil Procedure Section 384 Compliance Hearing
20 on ~~August 13, 2024 or August 14, 2024~~ *Feb. 4, 2025*, at 9 am in Department 10 to confirm the
21 distribution of funds under Code of Civil Procedure Section 384. Class Counsel shall file a
22 declaration on behalf of the ILYM Group, Inc. regarding the Status of Settlement Administration
23 and the amount of residual funds paid to the *cy pres* recipient at least five (5) court days before
24 the Code of Civil Procedure Section 384 compliance hearing.

25 23. Upon entry of this Order, compensation to the Settlement Class shall be effected
26 pursuant to the terms of the Settlement.

27 24. The Court reserves exclusive and continuing jurisdiction over the Action, the Class
28 Representative, the Class Members, and Defendant for purposes of supervising the

1 implementation, enforcement, construction, administration, and interpretation of the Settlement
2 Agreement.

3 25. The Los Angeles County Superior Court shall also retain jurisdiction to enforce
4 this Agreement pursuant to California Code of Civil Procedure section 664.6. The Court shall
5 retain continuing jurisdiction over this Lawsuit and over all Parties and the Class, to the fullest
6 extent to enforce and effectuate the terms and intent of this Agreement.

7
8 DATED:

4/11/2023

W. F. Highberger

Hon. William F. Highberger
Judge of the Superior Court