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and on behalf of other individuals similarly situated

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

FRANCISCO ALBERT SPAGNA,
individually and on behalf of other individuals
similarly situated,

Plaintiff,

v.

INDUSTRIAL APPLE INC., DBA
APPLEONE, a California corporation;
MAJESTIC TERMINAL SERVICES, INC., a
Washington corporation and DOES 1 through
100, inclusive

Defendants.

Case No. CIVSB2103449

Assigned to Hon. David Cohn, Department S26

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION, CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENTS, AND ATTORNEYS FEES
AND COSTS; AND JUDGMENT**

*(Filed concurrently with Notice of Motion and
Motion for Final Approval, Declarations of
Marcus J. Bradley, Esq., Francisco Albert
Spagna and Lluvia Islas of ILYM Group)*

Date: March 21, 2022

Time: 10:00 a.m.

Dept.: S26

Complaint Filed January 11, 2021
First Amend. Complaint filed July 14, 2021

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 22 2022

BY 
JESSICA MORALES, DEPUTY

1 **[PROPOSED] ORDER**

2 The Motion of plaintiff FRANCISCO ALBERT SPAGNA ("Plaintiff") for Final Approval of
3 Class Action and PAGA Settlement came on regularly for hearing before this Court on March 21,
4 2022 pursuant to California Rule of Court, rule 3.769 and this Court's earlier Order Granting
5 Preliminary Approval of Class Action and PAGA Settlement ("Preliminary Approval Order"). Having
6 considered the parties' Stipulation of Settlement ("Settlement" or "Settlement Agreement") and the
7 documents and evidence presented in support thereof, and recognizing the sharply disputed factual
8 and legal issues involved in this case, the risks of further prosecution, and the substantial benefits to
9 be received by the Class Members and the California Labor Workforce Development Agency
10 ("LWDA") pursuant to the Settlement, the Court hereby makes a final ruling that the proposed
11 Settlement is fair, reasonable, and adequate, and is the product of good faith, arm's length negotiations
12 between the parties. Good cause appearing therefore, the Court hereby GRANTS Plaintiff's Motion
13 for Final Approval of Class Action and PAGA Settlement and HEREBY ORDERS THE
14 FOLLOWING:

15 1. Final judgment is hereby entered in conformity with the Settlement and this Court's
16 Preliminary Approval Order. All terms used herein shall have the same meaning as defined in the
17 Settlement Agreement.

18 2. The conditional class certification contained in the Preliminary Approval Order is hereby
19 made final, and the Court thus certifies, for purposes of the Settlement, a Class defined as: "all current
20 and former hourly non-exempt persons who were employed by PrimeFlight within the State of
21 California during the Class Period, all current and former hourly non-exempt persons who were
22 employed by Majestic within the State of California during the Class Period, and all current and former
23 non-exempt hourly persons who were furnished by AppleOne to work at Majestic locations during the
24 Class Period from January 11, 2017 to November ²³~~30~~, 2021".

25 3. Plaintiff FRANCISCO ALBERT SPAGNA is hereby confirmed as Class
26 Representatives, and Marcus J. Bradley, Esq. of BRADLEY/GROMBACHER, LLP is hereby
27 confirmed as Class Counsel.

28 4. Notice was provided to Class Members as set forth in the Settlement Agreement, which

1 was approved by the Court on November ~~30~~, 2021, and the notice process has been completed in
2 conformity with the Court's Orders. The Court finds that said notice was the best notice practicable
3 under the circumstances. The Class Notice provided due and adequate notice of the proceedings and
4 matters set forth therein, informed Class Members of their rights, and fully satisfied the requirements
5 of California Code of Civil Procedure section 1781(e), California Rule of Court, rule 3.769, and due
6 process.

7 5. Out of a class of 6,780 members, there is are no objector in this case. As noted by other
8 courts, "[i]n the context of a settlement agreement, the test is not the maximum amount plaintiffs might
9 have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the
10 circumstances." (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 250). As stated by the court
11 in *Wershba*: "A settlement need not obtain 100 percent of the damages sought in order to be fair and
12 reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if 'the relief
13 afforded by the proposed settlement is substantially narrower than it would be if the suits were to be
14 successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be
15 served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" (*Wershba, supra*, 91 Cal.App.4th at 250, citing *Air Line Stewards, Etc v. American Airlines, Inc.* (7th
16 Cir. 1972) 455 F.2d 101, 109.)

17
18 6. 6,780 class members received notice of the proposed settlement. 6,773 individuals elected
19 to participate in the settlement, representing 99.90% of the 6,780 settlement class members. The
20 individuals who timely and validly opted-out of this Settlement and who will not be bound by this
21 judgment are: Andy Olivares, Daniel Santos Luna, Harold Horvitz, Jonathan Perkins, Rachel Martinez,
22 Rosa Isela Luna, and Samuelu Lealao.

23 7. All Participating Class Members who did not opt out of the Settlement shall be deemed
24 to have released their respective Released Claims against the Released Parties.

25 8. The Court hereby approves the Settlement as set forth in the Settlement Agreement as
26 fair, reasonable, and adequate, and directs the parties to effectuate the Settlement Agreement
27 according to its terms.

28 9. For purposes of settlement only, the Court finds that: (a) the members of the Class are

ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Class and there is a well-defined community of interest among the Class Members with respect to the subject matter of the litigation; (c) the claims of the Class Representative are typical of the claims of the members of the Class; (d) the Class Representative has fairly and adequately protected the interests of the Class Members; (e) a class action is superior to other available methods for an efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as counsel for the Class Representative and the Class.

10. The Court orders that within thirty (30) calendar days of the Effective Date (as defined in the Settlement Agreement), Defendants shall transmit the amount of \$2,000,000 to ILYM Group, Inc. (the "Settlement Administrator"), as provided for in the Settlement Agreement.

11. The Court finds that the Eligible Class Member Share, as provided for in the Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to distribute these payments in conformity with the terms of the Settlement.

12. The Court finds that the payment to the LWDA in the amount of \$75,000 for its 75% share of the civil penalties allocated under the Private Attorneys General Act ("PAGA") is fair, reasonable, and adequate, and orders the Settlement Administrator to distribute this payment in conformity with the terms of the Settlement.

13. The Court finds that a Class Representative enhancement award in the amount of \$15,000 to the Plaintiff is appropriate for the risks undertaken and their service to the Class. The Court finds that this award is fair, reasonable, and adequate, and orders that the Settlement Administrator make this payment in conformity with the terms of the Settlement.

14. The Court finds that attorneys' fees in the amount of \$666,600 and actual litigation costs of \$13,003.36 for Class Counsel are fair, reasonable, and adequate, and orders that the Settlement Administrator distribute these payments to Class Counsel in conformity with the terms of the Settlement.

15. The Court orders that the Settlement Administrator shall be paid \$43,000 from the Maximum Settlement Amount for all of its work done and to be done until the completion of this matter, and finds that sum appropriate.

1 16. This document shall constitute a final judgment pursuant to California Rule of Court, rule
2 3.769(h) which provides, “If the court approves the settlement agreement after the final approval
3 hearing, the court must make and enter judgment. The judgment must include a provision for the
4 retention of the court’s jurisdiction over the parties to enforce the terms of the judgment. The court
5 may not enter an order dismissing the action at the same time as, or after, entry of judgment.” The
6 Court will retain jurisdiction to enforce the Settlement, the Final Approval Order, and this Judgment.

7 17. Defendants nor any of the Released Parties shall have any further liability for costs,
8 expenses, interest, attorneys’ fees, or for any other charge, expense, or liability, except as provided for
9 by the Settlement Agreement.

10 18. Neither the making of the Settlement Agreement nor the entry into the Settlement
11 Agreement constitutes an admission by Defendants, nor is this Order a finding of the validity of any
12 claims in the Action or of any other wrongdoing. Further, the Settlement Agreement is not a
13 concession, and shall not be used as an admission of any wrongdoing, fault, or omission of any entity
14 or persons; nor may any action taken to carry out the terms of the Settlement Agreement be construed
15 as an admission or concession by or against Defendant or any related person or entity.

16 19. The Parties will bear their own costs and attorneys’ fees except as otherwise provided by
17 this Court’s Order awarding Class Counsels’ award for attorneys’ fees and litigation costs.

18 20. By virtue of this Judgment and as of the date Defendants fund the settlement, all
19 Settlement Class Settlement Class Members (as defined in the Settlement Agreement), have released
20 and discharged Defendants and each of their present and former predecessors, successors, parent
21 companies, subsidiaries, divisions, related or affiliated companies, and each of their shareholders,
22 officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual
23 or entity which could be liable for any of the Released Claims (collectively the “Released Parties”)
24 from all claims, causes of action and factual or legal theories that were alleged on behalf of the Class
25 Members in Plaintiff’s Action, or could have been alleged based on the facts and legal theories
26 contained in the Action. The period of this release shall extend from January 11, 2017 through
27 November ²³~~30~~, 2021. The definition of Released Claims shall not be limited in any way by the
28 possibility that Plaintiff or Class Members may discover new facts, legal theories, or legal arguments

1 not alleged in the operative complaints in the Action but which might serve as an alternative basis for
2 pursuing the same claims, causes of action, or legal theories of relief falling within the definition of
3 Released Claims.

4 21. Also, by virtue of this Judgment and as of the date Defendant funds the settlement,
5 Plaintiff Francisco Albert Spagna has released, in addition to the Released Claims described above,
6 all claims, whether known or unknown, under federal or state law, against the Released Parties.
7 Plaintiff understand that this release includes unknown claims and that each is, as a result, waiving all
8 rights and benefits afforded by Section 1542 of the California Civil Code, which provides: “A general
9 release does not extend to claims that the creditor or releasing party does not know or suspect to exist
10 in his or her favor at the time of executing the release and that, if known by him or her, would have
11 materially affected his or her settlement with the debtor or released party.”

12 22. As of the date Defendant funds the settlement, this Judgment also bars (i) any and all
13 PAGA Covered Employees, and (ii) the California Labor Workforce and Development Agency, any
14 other agency of the State of California, or any person acting on its behalf, from pursuing claims against
15 any Released Party for civil penalties recoverable under PAGA that arise out of or relate to the
16 Released Claims (“PAGA Released Claims”). The res judicata effect of the Judgment will be the same
17 as that of this release. The definition of PAGA Released Claims shall not be limited in any way by the
18 possibility that Plaintiff, the LWDA or PAGA Covered Employees may discover new facts, legal
19 theories, or legal arguments not alleged in the operative complaint in the Action but which might serve
20 as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling
21 within the definition of PAGA Released Claims.

22 23. The Court retains continuing jurisdiction to enforce this Settlement pursuant to California
23 Rule of Court, rule 3.769(h), even after the entry of judgment based thereon. Without affecting the
24 finality of the Settlement or Judgment entered, this Court shall retain exclusive and continuing
25 jurisdiction over the action and the Parties, including all Participating Class Members, for purposes of
26 enforcing and interpreting this Order and the Settlement.

27 24. By this judgment, the Settlement Class Members shall be deemed to have, and by
28 operation of the judgment shall have, fully, finally, and forever released, relinquished and discharged

1 all Released Claims.

2 25. Plaintiff shall give notice of this Judgment to Settlement Class Members pursuant to rule
3 3.771 of the California Rules of Court, by posting an electronic copy of the Judgment on the Settlement
4 Administrator's Website.

5 26. Plaintiff's Complaint is dismissed with prejudice. Pursuant to Code of Civil Procedure
6 section 664.6, the Court shall retain continuing jurisdiction over the Parties to this action to ensure
7 effectuation of the Settlement in accordance with the terms of the Settlement and this Order and
8 Judgment.

9 27. Plaintiff shall submit a copy of this Order to the LWDA within ten (10) days of entry of
10 this Order.

11 28. Pursuant to Code of Civil Procedure section 668.5, judgment shall be entered through the
12 filing of this Order and Judgment.

13
14 IT IS SO ADJUDICATED.

15
16 DATED: 3.22.22

DAVID COHN

HON. DAVID COHN
SAN BERNARDINO SUPERIOR COURT