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Superior Court of California,
County of San Diego

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

DANIEL LUPERCIO, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

WESTERN CNC, INC., a California corporation,
and DOES 1 through 10, inclusive,

Defendants,

Defendants.

Case No.: 37-2021-00010314-CU-OE-CTL

CLASS ACTION

[Assigned to: Hon. Loren G. Freestone, Dept.
C-64]

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

FINAL APPROVAL HEARING

Date: January 26, 2024

Time: 10:30 a.m.

Dept: C-64

1 This matter coming before the Court on Plaintiff Daniel Lupercio's ("Plaintiff") Motion
2 for Final Approval of Class Action Settlement (the "Final Approval Motion"), and after review
3 and consideration of the parties' fully-executed Class Action and PAGA Settlement Agreement
4 and Class Notice (collectively, the "Settlement" or "Settlement Agreement") and the papers in
5 support of the Final Approval Motion, due and adequate notice having been given to the Class,
6 and the Court having reviewed and considered the Settlement, all papers filed, the record,
7 proceedings in the above-entitled action ("Litigation" or "Action"), and all oral and written
8 comments received regarding the Settlement, and good cause appearing therefor,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

10 1. Other than the defined terms set forth in this Order, the Court, for purposes of this
11 Order, adopts all defined terms as set forth in the Settlement filed in this case.

12 2. The Court has jurisdiction over all claims asserted in the Action, Plaintiff, all
13 members of the Settlement Class, and Defendant Western CNC, Inc. ("Defendant").

14 3. The Court finds that the Settlement appears to have been made and entered into in
15 good faith and hereby approves the settlement subject to the limitations on the requested fees and
16 enhancements as set forth below.

17 4. Plaintiff and all Participating Class Members shall have, by operation of this Final
18 Order and Judgment, fully, finally, and forever released, relinquished, and discharged Defendant
19 and the Released Parties from all released claims as set forth in the Settlement.

20 5. Plaintiff, the State of California, and all Aggrieved Employees shall have, by
21 operation of this Final Order and Judgment, fully, finally, and forever released, relinquished, and
22 discharged Defendant and the Released Parties from all released PAGA claims as set forth in the
23 Settlement.

24 6. The Parties shall bear their own respective attorneys' fees and costs, except as
25 otherwise provided for in the Settlement and approved by the Court.

26 7. Solely for purposes of effectuating the settlement, the Court finally certified the
27 following Class: all individuals employed by Western CNC, Inc. in California and classified as an
28 hourly-paid or non-exempt employee during the Class Period.

- 1 8. The Settlement Period is March 9, 2017 to February 28, 2023.
- 2 9. The PAGA Period is March 10, 2020 to February 28, 2023.
- 3 10. No Settlement Class Members have objected to the terms of the Settlement.
- 4 11. No Settlement Class Members have requested exclusion from the Settlement.
- 5 12. The Notice provided to the Class conforms with the requirements of California
- 6 Rules of Court 3.766 and 3.769, and constitutes the best notice practicable under the circumstances,
- 7 by providing individual notice to all Class Members who could be identified through reasonable
- 8 effort, and by providing due and adequate notice of the proceedings and of the matters set forth
- 9 therein to the Class Members. The Notice fully satisfies the requirements of due process.
- 10 13. The Court finds the Settlement Amount, the Net Settlement Amount, and the
- 11 methodology used to calculate and pay the Individual Class Payments to each Participating Class
- 12 Member are fair and reasonable and authorizes the Settlement Administrator to pay the Individual
- 13 Class Payments to the Participating Class Members in accordance with the terms of the Stipulation.
- 14 14. The Court approves the Settlement and finds that it is fair, reasonable, and adequate,
- 15 and worthy of final approval.
- 16 15. The Court also finds the PAGA Settlement is fair and reasonable, and that Plaintiff
- 17 provided notice of the proposed Settlement to the Labor and Workforce Development Agency
- 18 (LWDA) and will fully and adequately comply with the notice requirements of California Labor
- 19 Code section 2699(1). The Court hereby approves the PAGA Settlement.
- 20 16. Defendant shall pay the total of \$1,000,000 to resolve this litigation no later than
- 21 fourteen (14) calendar days following the Effective Date as defined in the Settlement (i.e., the date
- 22 on which Court enters a Judgment on its Order Granting Final Approval of the Settlement if no
- 23 Participating Class Member objects to the Settlement). Defendant shall deposit this amount and
- 24 employer-side payroll taxes into an account established by the Settlement Administrator.
- 25 Thereafter, compensation to the Participating Class Members and Aggrieved Employees shall be
- 26 disbursed pursuant to the terms of the Settlement (i.e., within 14 calendar days of Defendant
- 27 funding the Gross Settlement Amount).
- 28 (a) From the Settlement Amount, \$37,500 shall be paid to the California Labor

1 and Workforce Development Agency, representing approximately 75% of
2 the penalties awarded under the terms of the Settlement Agreement pursuant
3 to the Labor Code Private Attorneys General Act of 2004, California Labor
4 Code section 2698, *et seq.*

5 (b) From the Settlement Amount, \$15,000 shall be paid to the named Plaintiff
6 for his service as class representative and for his agreement to release claims.

7 (c) From the Settlement Amount, \$16,380 shall be paid to the Settlement
8 Administrator, ILYM Group, Inc.

9 17. Participating Class Members will have 180 calendar days from the date of the
10 mailing of the Individual Settlement Payments to cash their checks. Uncashed checks will be
11 cancelled by the Settlement Administrator after the 180-day period and remitted to the Controller
12 of the State of California pursuant to the Unclaimed Property Law, California Civil Code § 1500,
13 *et seq.*, to be held in trust for those Participating Class Members who did not timely cash their
14 checks, until such time as they claim their property.

15 18. The Court hereby confirms Justin F. Marquez, Benjamin H. Haber, and Arrash T.
16 Fattahi of Wilshire Law Firm, PLC as Class Counsel.

17 19. From the Settlement Amount, Class Counsel is awarded \$333,333.33 for their
18 reasonable attorneys' fees and \$31,413.32 for their reasonable costs incurred in the Action. The
19 fees and costs shall be distributed to Class Counsel as set forth in the Settlement. The Court finds
20 that the fees are reasonable in light of the benefit provided to the Class.

21 20. Notice of entry of this Final Approval Order and Judgment shall be given to Class
22 Members by posting a copy of the Final Approval Order and Judgment on ILYM Group, Inc.'s
23 website for a period of at least sixty (60) calendar days after the date of entry of this Final Approval
24 Order and Judgment.

25 21. Without affecting the finality of this Final Judgment in any way, this Court retains
26 continuing jurisdiction over the implementation, interpretation, and enforcement of the Settlement
27 with respect to all Parties to this action, and their counsel of record.

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22. Plaintiff's Motion for Final Approval of Class Action Settlement is hereby granted and the Court directs that judgment shall be entered in accordance with the terms of this Order.

IT IS SO ORDERED.

DATE:

2/26/24

Hon. Loren G. Freestone

Judge of the San Diego County Superior Court