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FILED
Superior Court of California
County of Los Angeles

12/06/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: L. McGreené Deputy

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

MARCO RODRIGUEZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

HYM ENGINEERING, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 21STCV24146

Assigned for All Purposes to:
Honorable Carolyn B. Kuhl
Department 12

CLASS ACTION

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

Hearing Date: December 6, 2022
Hearing Time: 10:30 a.m.
Hearing Place: Department 12

Complaint Filed: June 30, 2021
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Marco Rodriguez's
2 ("Plaintiff") Motion for Final Approval of Class Action Settlement, and considering the papers
3 submitted in support of the motion, including the Joint Stipulation and Settlement Agreement
4 ("Settlement Agreement," "Settlement," or "Agreement"), hereby FINDS AND ORDERS:

5 Plaintiff and Defendant HYM Engineering, Inc. ("Defendant") entered the Settlement
6 Agreement on or about May 20, 2022, to settle this lawsuit.

7 The Court entered an Order dated July 7, 2022 preliminarily approving the settlement of
8 this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure section
9 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members, scheduling
10 a Final Approval Hearing on December 6, 2022, and providing Class Members with an
11 opportunity to object to the Settlement or exclude themselves from the Class.

12 The Court held a Final Approval Hearing on December 6, 2022 to determine whether to
13 give final approval to the Settlement of this lawsuit.

14 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
15 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
16 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
17 in the Settlement Agreement.

18 2. Jurisdiction. Because adequate notice has been disseminated and the Class been
19 given the opportunity to request exclusion, the Court has personal jurisdiction with respect to the
20 claims of all Class Members. The Court also has subject matter jurisdiction over this lawsuit,
21 including jurisdiction to approve the Settlement and grants final certification of the Class.

22 3. Final Class Certification. The Court finds the Class satisfies all applicable
23 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
24 process. The Court certifies the Class consisting of all persons who worked for Defendant in
25 California as an hourly paid or non-exempt employee during the time period from June 30, 2017
26 to December 31, 2021 ("Class," "Class Members," and "Class Period"). There are two hundred
27 seventy-three (273) Class Members who did not submit valid and timely requests to exclude
28 ("Opt Out") themselves from the Settlement ("Participating Class Members").

1 4. Adequacy of Representation. Class Counsel fully and adequately represented the
2 Class for purposes of entering and implementing the Settlement and satisfied the requirements of
3 Code of Civil Procedure section 382.

4 5. Notice Packet. The Court finds the Notice of Class Action and PAGA Settlement
5 (“Notice”), Election Not to Participate In (“Opt Out” From) Class Action Settlement (“Exclusion
6 Form”) and Notice of Objection Form (“Objection Form”) (collectively, known as the “Notice
7 Packet”) and its distribution to Class Members were implemented pursuant to the Settlement and
8 this Court’s Preliminary Approval Order. The Court also finds the Notice Packet:

9 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
10 the pendency of this lawsuit; (ii) material terms and provisions of the Settlement and their
11 rights; (iii) their right to object to any aspect of the Settlement; (iv) their right to exclude
12 themselves from the Settlement; (v) their right to receive an Individual Settlement Share; (vi)
13 their right to appear at the Final Approval Hearing; and (vii) binding effect of the orders and
14 judgment in this lawsuit on all Participating Class Members;

15 b. constitutes notice that fully satisfied the requirements of Code of Civil
16 Procedure section 382, California Rule of Court 3.769, and due process;

17 c. constitutes the best practicable notice to Class Members under the
18 circumstances of this lawsuit; and

19 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

20 6. Final Settlement Approval. The terms and provisions of the Settlement
21 Agreement have been entered in good faith and are the product of arm’s-length negotiations by
22 experienced counsel who have done a meaningful investigation of the claims. The Settlement
23 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
24 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the
25 Settlement Agreement according to its terms and provisions.

26 7. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
27 any action to enforce the terms and provisions of the Settlement Agreement.

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1 8. Binding Effect. The terms and provisions of the Settlement and this Order and
2 Judgment are binding on Plaintiff, Participating Class Members, Eligible Aggrieved Employees,
3 and their spouses, heirs, registered domestic partners, executors, administrators, successors, and
4 assigns. In addition, those terms shall have res judicata and other preclusive effect in all pending
5 and future claims, lawsuits, or other proceedings maintained by or on behalf of any such persons
6 to the extent those claims, lawsuits, or other proceedings involve matters that were or could have
7 been raised in this lawsuit and are encompassed by the Released Class Claims and Private
8 Attorneys General Act of 2004 (“PAGA”) Released Claims. The Settlement will have no binding
9 effect upon, and provide no res judicata preclusion to, those Class Members who have submitted
10 timely and valid requests for exclusion.

11 9. Release of Claims. Upon Defendant’s fulfillment of its payment obligations
12 under section III (J)(9)(a) of the Agreement, Plaintiff and the other Participating Class Members
13 will fully and finally release and discharge the Released Parties from the Released Class Claims.

14 a. Effect of PAGA Settlement. Upon Defendant’s fulfillment of its payment
15 obligations under section III (J)(9)(a) of the Agreement, California Labor and
16 Workforce Development Agency (“LWDA”), and any other representative,
17 proxy, or agent thereof, including, but not limited to, any and all Eligible
18 Aggrieved Employees are barred from pursuing any action for civil penalties
19 under Labor Code section 2698, *et seq.* (PAGA), against the Released Parties,
20 based on or arising out of the alleged violations of Labor Code sections alleged in
21 Plaintiff’s notice letter sent to the LWDA and operative complaint, and occurring
22 during the PAGA Timeframe.

23 b. Released Parties. The Released Parties include Defendant and its present and
24 former officers, directors, employees, shareholders, agents, trustees,
25 representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries,
26 divisions, affiliates, predecessors, successors, fiduciaries, employee benefits
27 plans, assigns and any entity claimed to be a joint employer with Defendant.

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1 10. Class Representative Enhancement Payment. The Court finds the Class
2 Representative Enhancement Payment of \$5,000, to be paid by Defendant to Plaintiff out of the
3 Gross Settlement Amount, to be reasonable and appropriate. Class Representative Enhancement
4 Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

5 a. The rationale for making enhancement payments is class representatives should
6 be compensated for the expense and risk they incurred in conferring a benefit on
7 the Class. Criteria courts consider include: (1) risk to the class representatives in
8 commencing suit; (2) notoriety and personal difficulties; (3) amount of time and
9 effort spent by the class representatives; (4) duration of the litigation; and (5)
10 personal benefit (or lack thereof) enjoyed by class representatives.

11 b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the
12 risks inherent in his services as the class representative, duration of the case and
13 time involved, and benefits created for the Class, the Court approves the payment
14 of the Class Representative Enhancement Payment of \$5,000 to Plaintiff.

15 11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award
16 of \$56,666.67, to be paid out of the Gross Settlement Amount by Defendant to Class Counsel, to
17 be reasonable and appropriate. The Court finds the Cost Award as reimbursement for actual
18 litigation costs incurred of \$6,601.13, to be paid by Defendant to Class Counsel out of the Gross
19 Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant
20 to the terms and provisions set forth in the Settlement. Defendant shall not be required to pay for
21 any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any
22 other counsel representing Plaintiff or Class Members. Defendant shall also not be required to
23 pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiff or
24 Class Members in connection with or related in any manner to this lawsuit, the Settlement, the
25 settlement administration, and/or the Released Class Claims and PAGA Released Claims.

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1 a. The Court has an independent right and responsibility to review the requested
2 Attorney Fee Award and only award so much as it determines reasonable. (See
3 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
4 127-28.) The Attorney Fee Award requested by Class Counsel of \$56,666.67 is
5 one-third (1/3) of the common fund created for the benefit of the Class and is
6 supported by use of the percentage-fee method. (See *Laffitte v. Robert Half*
7 *International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results achieved,
8 financial risk undertaken, novel and difficult nature of this litigation, skills
9 required, percentage fees award in previous and other cases, and contingent fees
10 charged in the marketplace, the Court finds the requested Attorney Fee Award is
11 consistent with the marketplace, is reasonable, and is approved.

12 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
13 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
14 seek reimbursement of up to \$7,000 in litigation costs. The Court finds Class
15 Counsel expended \$6,601.13 in litigation costs, and such costs were reasonable.
16 Thus, the Court approves the payment of the Cost Award of \$6,601.13 from the
17 common fund for the reimbursement of Class Counsel's litigation costs.

18 12. Administration Costs. The Court finds Administration Costs of \$6,500, to be paid
19 by Defendant to the Settlement Administrator out of the Gross Settlement Amount, to be
20 reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and
21 provisions set forth in the Settlement Agreement.

22 a. The Court reviewed the declaration of Denise Islas from Simpluris, Inc.
23 ("Simpluris"), the Court-approved Settlement Administrator. The Court finds
24 notice was provided to the Class pursuant to the Preliminary Approval Order,
25 constitutes the best practicable notice to the Class, and satisfied due process.
26 Thus, the Court approves the payment of the Administration Costs of \$6,500 for
27 Simpluris' services in administering the Settlement.

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1 13. PAGA Payment. The Court finds the PAGA Payment of \$10,000, seventy-five
2 percent (75%) of which (\$7,500) will be paid to the LWDA out of the Gross Settlement Amount
3 and twenty-five percent (25%) of which (\$2,500) shall be distributed to Eligible Aggrieved
4 Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment is to be
5 paid pursuant to the terms and provisions set forth in the Settlement Agreement.

6 14. Funding of the Settlement. Within twenty-one (21) calendar days of the Effective
7 Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of \$170,000 into
8 the Qualified Settlement Fund. Defendant shall also at this time provide any tax information that
9 the Settlement Administrator may need to calculate each Participating Class Member's
10 Individual Settlement Share. Defendant will also deposit the amount due for employer-side
11 payroll taxes as calculated by the Settlement Administrator. Within fourteen (14) calendar days
12 after the funding of the Settlement, the Settlement Administrator shall calculate and pay all
13 payments due under the Settlement.

14 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
15 Settlement is entitled to a presumption of fairness. In his moving papers, Plaintiff contends the
16 Settlement was the product of arm's-length negotiations following extensive litigation,
17 discovery, and exchange of documentation. The negotiations were facilitated with the aid of Jeff
18 Owensby, Esq., an experienced and well-respected mediator.

19 a. The fairness of the Settlement is demonstrated by there being no objections to and
20 no requests for exclusion from the Settlement.

21 b. The fairness of the Settlement is also illustrated by the gross *average* Individual
22 Settlement Share being approximately \$312.21, and the gross *highest* Individual
23 Settlement Share being about \$3,162.02.

24 16. Uncashed Checks. Participating Class Members must cash or deposit their
25 Individual Settlement Share checks within one hundred eighty (180) calendar days after the
26 checks are mailed to them. All uncashed settlement checks will be canceled and paid to the
27 California State Controller: Unpaid Wage Fund.

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1 17. Modification of Settlement Agreement. The Participating Class Members are
2 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or
3 modifications of the Settlement Agreement by an express written instrument signed by all Parties
4 or their successors-in-interest and approved by the Court. Such amendments or modifications
5 shall be consistent with this Order and Judgment and cannot limit the rights of Participating
6 Class Members under the Settlement Agreement.

7 18. Final Accounting and Compliance. The Court sets a ~~final accounting and~~ non-appearance case
8 ~~review re final report of the administrator~~
9 ~~compliance hearing~~ for August 11, 2023 at 10:30 a.m. in Department 12. Within five (5) court
10 days before this hearing, Plaintiff shall file a compliance status report. Pursuant to Code of Civil
11 Procedure section 384, the compliance status report shall specify the total amount paid to
12 Participating Class Members and the residual of the unclaimed settlement funds that will be paid
13 to the entity identified as the recipient of such funds in the Settlement Agreement.

14 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
15 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
16 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
17 and for any other necessary purpose, including, without limitation:

- 18 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
19 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
20 arise out of the Settlement or this Order and Judgment;
21 b. entering such additional orders as may be necessary or appropriate to protect or
22 effectuate this Order and Judgment approving the Settlement, and permanently
23 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the
24 fair and orderly administration of the Settlement; and
25 c. entering any other necessary or appropriate orders to protect and effectuate this
26 Court's retention of continuing jurisdiction.

27 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost
28 Award, and Class Representative Enhancement Payment is GRANTED. The Settlement
Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

8
9 IT IS SO ORDERED.

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11 DATED: 12/06/2022



A handwritten signature in black ink that reads "Carolyn B. Kuhl".

Carolyn B. Kuhl / Judge

HONORABLE CAROLYN B. KUHL
SUPERIOR COURT JUDGE

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